Designing Sustainable Investment Treaties in East Africa

Operationalising Policy Space in the Era of ISDS Reform

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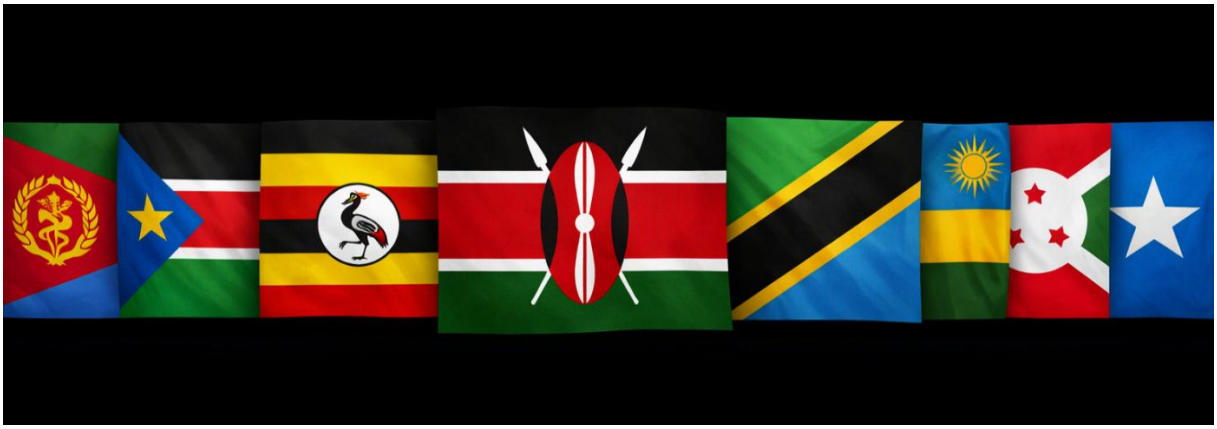

Executive Summary

East African states face the dual imperative of attracting foreign investment and safeguarding regulatory autonomy to pursue sustainable development. Legacy bilateral investment treaties (BITs) contain broad substantive protections and unfettered access to Investor-State Dispute Settlement (ISDS), which have cumulatively constrained policy space, exposed governments to costly arbitration, and generated regulatory chill. Against this backdrop, states including Kenya, Uganda, and Tanzania are reassessing treaty commitments, renegotiating legacy agreements, and participating in global reform discussions at *UNCITRAL Working Group III*. This brief argues that East African governments must shift from reactive litigation management to proactive treaty design that aligns investment protection with sustainable development objectives. Key reform

proposals include: (1) narrowing and clarifying *fair and equitable treatment* (FET); (2) requiring exhaustion of local remedies; (3) embedding investor obligations and host-state counterclaims; (4) articulating public-interest carve-outs; and (5) engaging in multilateral ISDS reform. A sequenced implementation roadmap is outlined to guide institutional action.

1.0 Introduction

Investment Treaty reform is now a fiscal, regulatory, and developmental imperative, not an academic debate. Across Africa, governments are recalibrating the investment governance framework to address three interconnected issues: attracting foreign capital, preserving regulatory autonomy, and advancing sustainability in development. Recent multilateral reform processes reflect this systemic shift.[1]The challenge is no longer whether there is sufficient Foreign Direct Investment (FDI) or investor-protection, but rather how to structure protection in a way that is compatible with domestic priorities and long-term development goals.

According to the Third World Approaches to International Law (TWAIL), traditional bilateral investment treaties (BITs) entered into in the 1990s and early 2000s appear to advance asymmetrical legal orders rather than fostering structured economic transformation, climate resilience, and poverty reduction.[2] As most agreements were drafted by the capital-exporting states, the provisions prioritised their protection while marginalising host states' regulatory sovereignty.[3] Mechanisms such as the Investor-State Dispute Settlement system further widen this gap by perpetually constraining the domestic policy space through exposure to international liability for measures taken in pursuit of public-interest objectives.[4]

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[1] UNCITRAL, *Report of Working Group III (Investor–State Dispute Settlement Reform) on the work of its resumed forty-seventh session* UN Doc A/CN.9/1194 (2024).
[2] M Sornarajah, *The International Law on Foreign Investment* (5th edn, CUP 2021) 78–95.
[3] ibid 394–430.
[4] UNCTAD, *Reform of Investor–State Dispute Settlement: Facts and Figures 2025 Update* (United Nations 2025) 10–14.

Against this backdrop, reform efforts have emerged at multiple levels of governance. They include:

I. Multilateral reform discussions at the *United Nations Commission on International Trade Law under Working Group III (UNCITRAL WG III),* focusing on systemic reforms of ISDS.[5]

II. Regional recalibration of the investment policy under the *African Continental Free Trade Area (AfCFTA) Investment Protocol*, seeking to embed sustainable development and policy space.[6]

III. *Unilateral Treaty terminations and renegotiations by African States*, including Tanzania, and South Africa.[7]

This policy brief, therefore, argues that East African governments must move away from reactive defence strategies, characterised by ad hoc litigation management and post-dispute reforms, and towards proactive, deliberate treaty design. The main goal is not to eliminate investment protection, but rather to embed sustainability objectives and regulatory flexibility that enhance development while preserving legitimate regulatory space.

2.0 The Predominant Problem: Constrained Policy Space in Traditional BITs

Central to the reform debate is the concept of Policy Space, understood as a State's capacity to design, implement, and adapt regulatory measures in response to domestic priorities without incurring disproportionate legal constraints.[8] Many of the outdated East African BITs negotiated in the 1990s and remained in force well into the 2010s, significantly adding to these challenges through a number of investor protection clauses, such as:

[5] UNCITRAL (n 1).
[6] Agreement Establishing the African Continental Free Trade Area (signed 21 March 2018, entered into force 30 May 2019).
[7] OECD, *Investment Treaty Reform and Sustainable Development: Progress and Prospects* (OECD Publishing 2024) 21–35.
[8] Sornarajah (n 2) 120–145.

- Broadly framed Fair and Equitable Treatment (FET) clauses.
- Umbrella Clauses elevating contractual commitments to treaty obligations.
- Expansive Most-Favoured Nation (MFN) provisions capable of importing more favourable protections from third treaties; and
- Direct access to ISDS as the dispute settlement mechanism without exhausting local remedies.

Such provisions are not self-limiting, as the treaty text itself does not set clear boundaries on the scope of the obligation. The constraining challenges arise from the interpretation by arbitral tribunals under institutions such as the International Centre for Settlement of Investment Disputes (ICSID).[9]As illustrated in *Tecmed v Mexico* and *CMS v Argentina*, tribunals interpreted unqualified FET clauses to include protection of "Legitimate Expectations" even where states responded to regulatory conditions. [10] As such, measures adopted in crisis-driven contexts are interpreted as potential breaches of treaty obligations, weakening regulatory space, securing awards and exposing states to significant damages.

For East African States, the jurisprudential trajectory has material consequences. Pursuing environmental protection, climate resilience, and land reform in industrial policies are core components of national development strategies. Yet treaties drafted without explicit regulatory safeguards create grounds for *regulatory chill*, whereby governments temper or delay reforms out of fear of arbitration.[11] Over time, this dynamic weakens States' capacity to recalibrate laws in response to environmental degradation or social harm, particularly in land- or resource-intensive sectors.

[9] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (opened for signature 18 March 1965, entered into force 14 October 1966) 575 UNTS 159.
[10] *Técnicas Medioambientales Tecmed SA v United Mexican States* (Award) ICSID Case No ARB(AF)/00/2; *CMS Gas Transmission Company v Argentine Republic* (Award) ICSID Case No ARB/01/8.
[11] OECD (n 7) 65–74.

3.0 Risk Exposure: Fiscal and Regulatory Vulnerability

The cumulative effect of a constrained policy space is heightened fiscal and regulatory vulnerability. According to UNCTAD data from 2025, developing countries remain parties to a considerable number of ISDS claims, especially in the natural resources and infrastructure sectors.[12] African States, including those in East Africa, face numerous ISDS claims related to natural resource concessions, energy and infrastructure projects, taxation measures, and licensing disputes, all sectors that intersect investment protection and public governance. *Biwater Gauff v Tanzania* Case, adjudicated under ICSID rules, is a prominent illustration of the fiscal and reputational costs of poorly structured investment frameworks.[13] The dispute arose from the termination of a water services concession in Dar es Salaam due to concerns about service delivery and public welfare.

Although Tanzania prevailed on several claims, the case imposed substantial litigation costs and reputational challenges.[14] Similarly, in the *Cortec Mining v Kenya* Case, the tribunal dismissed the investor's claim due to non-compliance with domestic environmental and licensing requirements.[15] While the outcome affirmed Kenya's regulatory authority, the proceedings entailed significant defence costs and administrative costs. For middle-income countries, such expenses divert public resources from state development and social spending.

Beyond individual cases, large arbitral awards carry broader implications, including potential liabilities, heightened sovereign risk, and complex public investment planning, and they adversely affect creditworthiness. For most East African governments, which are currently pursuing Sustainable Development Goals (SDGs) initiatives, particularly SDG 15 (Life on Land) and SDG 13 (Climate Action), ISDS liabilities directly compete with environmental and social-cultural priorities, as funds are allocated to arbitration defence and preparedness.[16]

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[12] UNCTAD (n 4) 6–9.
[13] *Biwater Gauff (Tanzania) Ltd v United Republic of Tanzania* (Award) ICSID Case No ARB/05/22 (24 July 2008).
[14] ibid paras 378–392.
[15] *Cortec Mining Kenya Limited v Republic of Kenya (Award) ICSID Case No ARB/15/29 (22 October 2018).*
[16] UNCTAD, *World Investment Report 2024* (United Nations 2024) 173–180.

4.0 Structural Weaknesses in Older East African BITs

A review of the legacy BITs signed in Kenya, Uganda and Tanzania reveals recurrent weaknesses. They are as follows:

4.1 Unqualified Fair and Equitable Treatment (FET) Clauses

Many older BITs require states to accord "fair and equitable treatment" without the customary international law underpinnings that define its content. Kenyan and Ugandan BITs concluded with European capital-exporting states contain these unqualified FET clauses, which mirror the Mexico-Spain BIT at issue in *Tecmed v Mexico,* which also contained a bare FET provision.[17] This means that arbitral tribunals treat FET as an autonomous and expansive right which incorporates concepts of legitimate expectations, regulatory stability and procedural propriety.[18] For these reasons, tribunals can scrutinise ordinary regulatory change rather than state bad-faith conduct. This is an interpretive risk that leads to arbitral awards granted in favour of investors and, in return, punitive consequences to the host state.

4.2 Broad definitions of "Investment"

Legacy BITs adopt asset-based definitions of investment that cover every kind of asset, including shares, contracts, intellectual property, and indirect interests. Such definitions extend treaty protections beyond long-term development investments. Short-term financial arrangements and contractual claims can qualify as protected investments, whether they contribute to the host state's economy. For instance, in Tanzania, older BITs define investments to encompass contractual rights and associated financial interests. This is as evidenced in *Biwater Gauff v Tanzania.*[19] The case

[17] *Tecmed SA v United Mexican States* (n 10).
[18] S Schill, 'The Multilateralization of International Investment Law' in C Brown and A Byrnes (eds), *Multilateral Reform of International Investment Law* (Cambridge University Press 2020) 42–53.
[19] *Biwater Gauff v United Republic of Tanzania* (n 13).

demonstrates just how expansive investment definitions allow regulatory and contractual disagreements, which would ordinarily fall within domestic administrative law or contract law, to be reframed as treaty violations and presented to ICSID.[20]

4.3 Absence of Investor Obligations

In most BITs, binding obligations are limited to states, while investors assume no corresponding duties regarding environmental protection, labour standards, or human rights. This is an asymmetrical engagement where a one-directional accountability structure leaves states legally constrained while investors remain insulated from treaty-based responsibilities. Such responsibilities include how their conduct or investments contribute to environmental degradation, social-cultural erosion and overall social harm.

This is a common gap in BITs in Kenya and Uganda, and countries are forced to fulfil treaty obligations despite domestic environmental and human rights laws that could serve as conditions for treaty protection. As a result, investor misconduct is disregarded at the jurisdictional level, sometimes based on merit-based standards of the projects and how they align with developmental objectives, and only raises concern at limited, narrow thresholds of illegality of the investment.

Jurisprudence has indeed progressed over time. In the case of *Urbaser SA v. Argentina*, the tribunal made a notable decision by accepting jurisdiction over the State's counterclaim, acknowledging that corporations can be responsible under international law.[21] While the counterclaim ultimately failed, this case suggests a willingness to reshape the existing power dynamics. Recent discussions around reform are also leaning towards the inclusion of obligations for investors and the ability for counterclaims.[22]

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[20] Ibid.
[21] *Urbaser SA and Consorcio de Aguas Bilbao Bizkaia v Argentine Republic* (Award) ICSID Case No ARB/07/26 (8 December 2016) paras 1193–1210.
[22] UNCTAD (n 17) 175–178.

4.4 Unconditional Investor Access to ISDS Absent Exhaustion of Local Remedies

Older Bilateral treaties grant investors direct and immediate access to international arbitration, with no obligation to exhaust local remedies. This design sidelines domestic courts and systems, not to mention removing host states from familiar legal frameworks and displacing disputes into international arbitration, detached from domestic constitutional, administrative, and socio-economic realities. In the long run, host states face weakened institutional development, reduced opportunities for local dispute resolution, and underdeveloped capacities in resolving regulatory disagreements.

This dynamic is illustrated by *WalAm Energy Inc v Kenya*, where disputes arising from the revocation of petroleum exploration rights were brought directly before an international arbitral tribunal rather than being pursued under Kenya's judicial review mechanisms.[23] This case shows how ISDS access enables regulatory licensing decisions to be internationalised as treaty claims, notwithstanding the availability of domestic remedies. The conversation around reintroducing exhaustion requirements has gained traction within UNCITRAL Working Group III. [24] This topic is being considered as part of a larger discussion on broad procedural reforms. This could significantly shift how disputes are handled and may lead to more efficient resolutions.

4.5 Absence of Explicit Sustainable Development Language

Social welfare, environmental protection, and sustainable development objectives are often relegated to non-binding aspirational language, if not completely absent. Without operative clauses, preservation of the regulatory space that affirms sustainability priorities is left with little textual basis to balance investment protection against public interest regulation. In practice, these

[23] *WalAm Energy Inc v Republic of Kenya* (Award) PCA Case No 2016-36; see also K J Heller, 'Investment Treaty Arbitration: Not so Independent' (2019) 37 Berkeley Journal of International Law 1.
[24] UNCITRAL (n 1) paras 62–78.

features reflect a capital-protection paradigm characteristic of first-generation BITs. The treaties prioritise legal certainty for investors while under-specifying regulatory autonomy, public-interest safeguards, and development priorities. For East Africa, the BIT architecture translates into heightened exposure to investment claims and constrained policy space - particularly in sectors central to sustainable development such as natural resources, land and public services.

Fortunately, however, modern treaty practices, such as the Morocco–Nigeria Bilateral Investment Treaty (BIT), are increasingly incorporating language focused on sustainable development and adding regulatory safeguards directly into their operative provisions.[25] Recent findings from UNCTAD highlight that a growing number of treaties now include clauses affirming the right to regulate and providing specific protections for the environment.[26] Regardless, without clear drafting safeguards, the interpretation of these provisions is often left to arbitrators' discretion, leading to ongoing uncertainty and ambiguity. This gap underscores the importance of precise language to ensure that the parties' intentions are upheld and that sustainability goals are met in practice.

5.0 Reform Options: Designing Sustainable Investment Treaties

For reform to be more systemic and less cosmetic, treaty design must align with emerging international reform trends and structural reform agendas advanced by institutions such as IISD and reflected in ongoing multilateral negotiations.[27] The following options provide a coherent pathway for East African States seeking to recalibrate investment protection in favour of sustainable development and regulatory autonomy.

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[27] OECD, *Investment Treaty Reform and Sustainable Development: Progress and Prospects* (OECD Publishing 2024) 15–39.

5.1 Narrowing and Clarifying FET

Reform treaties ought to explicitly tie FET to customary international law and provide an exhaustive list of violations, including denial of justice, fundamental breaches of due process, and targeted discrimination. [28] Legitimate expectations should be excluded unless based on specific written representations presented by the State. The truth is that the uncertainties surrounding FET have led to a wide range of interpretations in arbitration.[29] This inconsistency has created a climate of regulatory caution known as the *regulatory chill,* leading to unpredictable legal outcomes.[30] Modern treaty models such as the 2016 Morocco-Nigeria BIT demonstrate that drafting precision reduces interpretive unpredictability.[31] UNCTAD's 2025 reform update highlights that modern treaty models are narrowing the scope of Fair and Equitable Treatment (FET) language to minimise systemic uncertainty.[32] Careful drafting serves as a risk-management tool by reducing interpretive flexibility and ensuring that investor protection aligns with legitimate public policy objectives.

5.2 Exhaustion of Local Remedies

Reform of East African investment treaties should include a requirement that investors exhaust domestic remedies before initiating international arbitration. By mandating that investors pursue remedies in local courts for a defined period, such as 18 months, states can strengthen domestic judicial institutions, filter out frivolous claims, and encourage negotiated settlements between parties. Historically, the ICSID Convention permitted consideration of customary international law

[28] M Sornarajah, *The International Law on Foreign Investment* (5th edn, CUP 2021) 394–430.
[29] UNCTAD, *Reform of Investor–State Dispute Settlement: Facts and Figures 2025 Update* (United Nations 2025) 10–14.
[30] Ibid.
[31] Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria Concerning the Reciprocal Promotion and Protection of Investments (signed 3 December 2016) art 7.
[32] UNCTAD (n 3) 12–18.

when expressly stipulated by the host state.[33] If not, ISDS mechanisms are made readily available, leading to premature claims and long, expensive legal battles.

However, there are ongoing procedural reform discussions at the United Nations Commission on International Trade Law (UNCITRAL) by Working Group III, which examines dispute prevention and alternative procedural filters, including local remedies requirements and cooling-off mechanisms.[34] This serves as an added benefit in enhancing the long-term credibility of the rule of law within East African jurisdictions, as the exhaustion clauses will serve three main functions: strengthening domestic judicial institutions, filtering speculative or premature claims, and encouraging negotiated settlement. Recent trends in treaty practice indicate a growing interest in including provisions that support procedural adjustments.[35] Thoughtfully crafted clauses can strengthen the credibility of domestic rule-of-law institutions while ensuring that access to international arbitration remains available as a last resort.

5.3 Counterclaim for Environmental Harm

Modern treaty design should incorporate host-state counterclaims, particularly concerning environmental harm. Traditional Bilateral Investment Treaties (BITs) often allow only investors to initiate claims, creating a structural imbalance that favours capital interests over public welfare. Reform efforts must explicitly authorise counterclaims, integrate investor obligations related to environmental protection and human rights, and reference relevant international environmental agreements.

This rebalancing ensures that investment protection aligns with Sustainable Development Goals (SDGs) and national development priorities. The jurisprudential basis for such counterclaims has progressed, as illustrated in the *Urbaser v. Argentina case*, where the tribunal

[33] ICSID Convention (opened for signature 18 March 1965, entered into force 14 October 1966) 575 UNTS 159 art 26.
[34] UNCITRAL, *Report of Working Group III (Investor–State Dispute Settlement Reform) on the work of its resumed forty-seventh session* UN Doc A/CN.9/1194 (2024) paras 62–78.
[35] OECD (n 1) 41–52.

acknowledged that corporations could bear obligations under international law and accepted a state counterclaim, despite ultimately dismissing it on the merits.[36] This demonstrates a growing openness to addressing treaty asymmetry.

Recent discussions on reform, including UNCTAD's reports for 2024 and 2025, emphasise the increasing adoption of investor obligations and explicit counterclaim provisions in treaties.[37] By embedding environmental counterclaims, these reforms ensure the treaty framework does not protect environmentally harmful practices, fostering a more equitable relationship between investment and sustainable development.

5.4 Carve-outs for Public Interest Regulation

A crucial aspect of modern treaty design is the incorporation of explicit carve-outs for public-interest regulations. These carve-outs should specifically protect state measures aimed at addressing climate change, safeguarding biodiversity, promoting public health, and upholding indigenous and community land rights. By providing clear textual protections for these regulatory objectives, the carve-outs mitigate the risk of regulatory chill and offer essential interpretive guidance to arbitral tribunals. This ensures that public welfare measures are not unduly restricted by investor claims.

Arbitral jurisprudence has reiterated the State's right to regulate in the public interest, as seen in cases like *Philip Morris v Uruguay*, where the tribunal recognised bona fide public health measures as part of legitimate regulatory authority.[38] Similarly, in *Methanex v United States*, the centrality of environmental regulatory autonomy was affirmed, emphasising the legitimacy of non-

[36] *Urbaser SA and Consorcio de Aguas Bilbao Bizkaia v Argentine Republic* (Award) ICSID Case No ARB/07/26 (8 December 2016) paras 1193–1210.
[37] UNCTAD, *World Investment Report 2024: Investment Facilitation and Sustainable Development* (United Nations 2024) 173–180.
[38] *Philip Morris Brands Sàrl v Oriental Republic of Uruguay* (Award) ICSID Case No ARB/10/7 (8 July 2016) paras 287–306.

discriminatory public welfare regulation.[39]However, the existing reliance on tribunal interpretation alone remains inadequate.

Express textual carve-outs are necessary to diminish interpretive uncertainty and further alleviate potential regulatory chill. OECD analyses indicate that recent treaty models increasingly include general exceptions and right-to-regulate clauses influenced by public international and trade law precedents.[40] Clear drafting not only provides interpretive clarity but also strengthens policy space without compromising investor protection.

5.5 Engage on Appellate Mechanisms and Multilateral Reform

East African states should prioritise active engagement in the multilateral reform discussions taking place within UNCITRAL Working Group III. Current proposals focus on establishing a standing multilateral investment court, appellate review mechanisms, and enhanced safeguards for arbitrator independence and ethics.[41] The forthcoming 2024 and 2025 UNCITRAL reports indicate progress in drafting appellate structures and in establishing an Advisory Centre on International Investment Dispute Resolution.[42]

It is imperative that these nations participate actively to ensure that African perspectives, particularly those related to sustainable development, regulatory autonomy, and fiscal stability, are considered in the ongoing reforms. This strategic engagement not only mitigates the risk of normative marginalisation but also integrates regional priorities into the evolving framework of global investment governance.

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[39] *Methanex Corporation v United States of America* (Final Award) UNCITRAL (3 August 2005) pt IV, ch B, para 7.
[40] OECD (n 1) 65–74.
[41] UNCITRAL, *Report of Working Group III on the work of its forty-eighth session* UN Doc A/CN.9/1200 (2024) paras 45–78.
[42] UNCITRAL, *Draft Statute of an Advisory Centre on International Investment Dispute Resolution* (2025 Working Draft).

6.0 From Reform Concepts to Implementation: A Government Roadmap

Step 1: Treaty Audit

- Review all existing BIT obligations.

  Well-designed treaties should:

  - ✓ Incentivise quality investment
  - ✓ Promote technology transfer
  - ✓ Encourage local value addition
  - ✓ Safeguard environmental integrity
- Assess exposure to ISDS claims.
- Examine termination clauses and sunset provisions.

Step 2: Model Treaty Development

- Draft a regional model BIT.
- Align the model with sustainable development objectives.
- Ensure consistency with the AfCFTA Investment Protocol.

Step 3: Capacity Building

- Train government negotiators on treaty reform.
- Build the capacity of domestic judges on investment law.
- Support parliamentary oversight committees.
- Include economic, environmental, and legal analysis in training.

Step 4: Renegotiation and Termination Strategy

- Identify treaties that require renegotiation.
- Plan coordinated termination of legacy BITs where needed.
- Avoid survival clause traps that extend outdated obligations.

Step 5: Contract-Level Reform

- Review investment contracts for consistency with treaty reforms.
- Prevent treaty shopping by aligning contracts with new provisions.
- Ensure contracts do not circumvent regulatory objectives.

Step 6: ***Institutional Engagement: Positioning East Africa in Global Reform***

Active engagement in:

- UNCITRAL WG III
- AfCFTA Investment Protocol implementation
- Regional judicial strengthening initiatives

ensures that East African states move from rule-takers to rule-makers.

Bibliography

Cases

Biwater Gauff (Tanzania) Ltd v United Republic of Tanzania (Award) ICSID Case No ARB/05/22 (24 July 2008)

Cortec Mining Kenya Limited v Republic of Kenya (Award) ICSID Case No ARB/15/29 (22 October 2018)

CMS Gas Transmission Company v Argentine Republic (Award) ICSID Case No ARB/01/8 (12 May 2005)

Philip Morris Brands Sàrl v Oriental Republic of Uruguay (Award) ICSID Case No ARB/10/7 (8 July 2016)

Tecnicas Medioambientales Tecmed SA v Mexico (Award) ICSID Case No ARB(AF)/00/2 (29 May 2003)

Urbaser SA and Consorcio de Aguas Bilbao Bizkaia v Argentine Republic (Award) ICSID Case No ARB/07/26 (8 December 2016)

WalAm Energy Inc v Republic of Kenya (Award) ICSID Case No ARB/15/7 (26 October 2018)

Treaties and International Instruments

Agreement Establishing the African Continental Free Trade Area (2018)

Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria Concerning the Reciprocal Promotion and Protection of Investments (2016)

Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965

Reports and Institutional Materials

OECD, *Investment Treaty Reform and Sustainable Development: Progress and Prospects* (OECD Publishing 2024)

UNCITRAL, *Report of Working Group III (Investor–State Dispute Settlement Reform) on the work of its resumed forty-seventh session* UN Doc A/CN.9/1194 (2024)

UNCTAD, *Reform of Investor–State Dispute Settlement: Facts and Figures 2025 Update* (United Nations 2025)

UNCTAD, *World Investment Report 2024* (United Nations 2024)

Books

Sornarajah M, *The International Law on Foreign Investment* (5th edn, CUP 2021)

Book Chapter

Schill S, 'The Multilateralization of International Investment Law' in C Brown and A Byrnes (eds), *Multilateral Reform of International Investment Law* (Cambridge University Press 2020)