INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT



"Reimagining International Investment Agreements: Mapping 21st Century Treaty Innovations for Sustainable Development"

New Delhi/ Jabalpur (India)

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS 4

INTRODUCTION 5

BACKGROUND 6

APPROACH AND METHODOLOGY 7

Literature Review and Treaty Analysis Framework 7

Methodological Approach to Innovations Covered 7

i. Indigenous Communities 7

ii. Gender 8

iii. Corporate Social Responsibility 8

iv. Dispute Resolution and Mitigation 8

v. Investment Facilitation and Promotion 9

INDIGENOUS COMMUNITY 9

Responsibilities of the Parties to a Treaty 14

i. State's Obligation 14

ii. Investors Obligation 14

Positive Treaty Practices 16

i. Exception clauses to protect the rights of indigenous peoples and promote sustainable development 16

ii. Carve outs 17

iii. Allowing standing to the stakeholder community 17

GENDER RELATED PROVISIONS 18

Scope of Gender Related Provisions in IIAs 19

Best Practices 23

DISPUTE PREVENTION AND RESOLUTION 25

Investment Ombudsman Systems: Proactive Conflict Prevention 25

State-State Dispute Settlement 26

Problems in Traditional Investment Policy in BITs 27

Modern Approaches and Solutions in BITs (2015–2025) 28

A. Institutional and Procedural Reforms 28

B. Unique Innovations and Comparative Developments 29

Application: Comparative Analysis of BITs (2014-2025) 30

Analytical Observations 30

Comparative Analysis 31

Critical Reflections 34

INVESTMENT FACILITATION AND COOPERATION IN IIAS 35

Reconceptualizing Facilitation and Promotion 35

1. Promoting Favourable Investment Environments and Entry 35

2. Transparency and Accessibility of Information 37

3. Streamlining Administrative Processes and Institutional Support 37

4. Broadening Cooperation and Development Objectives 41

CORPORATE SOCIAL RESPONSIBILITIES 43

Nature and Evolution of CSR in IIAs 44

Trends and Patterns 49

a. Labour Rights 50

b. Environmental Protection and Sustainable Development 50

c. Human Rights 51

d. Anti-corruption Measures 52

e. Community Relations and Local Development 52

f. Good Corporate Governance and Transparency 52

g. Gender Equality and Inclusiveness 53

Imperatives for Treaty Design 54

CONCLUSION 55

LIST OF ABBREVIATIONS

Abbreviation	Full Form
IISD	*International Institute for Sustainable Development*
IIA	*International Investment Agreement*
ISDS	*Investor-State Dispute Settlement*
UNCTAD	*United Nations Conference on Trade and Development*
BIT	*Bilateral Investment Treaty*
MIT	*Multilateral Investment Treaty*
SDG	*Sustainable Development Goals*
UNDRIP	*United Nations Declaration on the Rights of Indigenous Peoples*
ICESCR	*International Covenant on Economic, Social and Cultural Rights*
FET	*Fair and Equitable Treatment*
WTO	*World Trade Organization*
FY	*Financial Year*
GATT	*General Agreement on Tariffs and Trade*
ABS	*Access and Benefit Sharing*
e.g.	*Exempli Gratia*
i.e.	*That is*
etc.	*Et Cetera*
UN	*United Nations*
US	*United States*
ICT	*Information and Communication Technology*
OECD	*Organisation for Economic Co-operation and Development*
VCLT	*Vienna Convention on the Law of Treaties*
CSR	*Corporate Social Responsibility*
CETA	*Comprehensive Economic and Trade Agreement*
R&D	*Research and Development*
PCA	*Permanent Court of Arbitration*
MFN	*Most Favoured Nation*
MOU	*Memorandum of Understanding*

INTRODUCTION

The landscape of international investment governance has seen significant changes over the past decade, driven by globalization, increasing socio-economic disparities, technological advancements, and the urgent need for environmental sustainability. Traditionally, Bilateral Investment Treaties (BITs) and Multilateral Investment Treaties (MITs) have focused on ensuring investor protection.[1] However, there is now a growing recognition that these treaties must evolve beyond solely investor-centric models to include sustainable development principles, human rights protections, gender equality, Indigenous rights, and digital economy regulations.[2] In light of this paradigm shift, this research critically examines emerging trends and innovations within modern International Investment Agreements (IIAs) between 2015 and 2025. This period marks a significant evolution in treaty-making practices, aligning with global efforts to adapt to the impending reform discourse on international investment law (IIL). Employing a qualitative methodology, the research systematically analyses treaty texts from authoritative databases like the UNCTAD Investment Policy Hub.

This analysis is complemented by scholarly literature and relevant policy documents. The study closely examines treaty provisions to determine how well they address or overlook these critical imperatives. Additionally, the research investigates whether treaty definitions of investment encompass digital assets, cross-border data flows. In the area of dispute resolution, particular attention is given to evolving Investor State Dispute Settlement (ISDS) mechanisms. The analysis also focuses on recent reforms aimed at enhancing transparency, fairness, and accessibility for marginalized groups such as Indigenous communities and women. Through this detailed examination, the paper highlights positive developments such as gender sensitive chapters or protections for Indigenous rights but also points out ongoing challenges. Many modern treaties still lack binding obligations on investors or fail to ensure equitable benefit-sharing. Furthermore, regulatory autonomy for host states is often limited by rigid dispute settlement structures and unclear treaty language. Nonetheless, the researchers aim to map innovative dispute settlement procedures in modern IIAs. Ultimately, this research aims to provide concrete policy recommendations for reforming IIAs. It advocates for enforceable social and environmental safeguards, expanding stakeholder participation in dispute resolution processes, and developing clear definitions that reflect the realities of digital and inclusive economies. Such reforms are essential to align international investment governance with contemporary global priorities of equity, sustainability, and technological resilience.

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[1] UNCTAD, World Investment Report 2020: International Production Beyond the Pandemic (United Nations 2020) <https://unctad.org/system/files/official-document/wir2020_en.pdf> accessed 14 April 2025

[2] United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2015: Reforming International Investment Governance* ***(UNCTAD 2015) ch 4 <https://unctad.org/system/files/official-document/wir2015ch4_en.pdf>***

BACKGROUND

The international investment treaty regime has historically prioritized the protection and liberalization of foreign investment, often at the expense of regulatory autonomy, environmental sustainability, and social equity.[3] However, there is a growing recognition of global challenges such as climate change, socio-economic inequality, and digital transformation that necessitates a rethinking of the objectives and design of IIAs.

Traditionally, IIAs have focused heavily on investor protection and ISDS, facing increasing criticism for their failure to align with contemporary policy objectives & SDGs.[4] Critics argue that these treaties often provide extensive rights to investors while imposing minimal obligations on them, which can limit host states' ability to regulate in the public interest.[5] Furthermore, there is ongoing debate about whether these treaties genuinely boost foreign direct investment, raising questions about their overall effectiveness.

In response to these critiques, reform efforts are emerging at national, regional, and international levels to reshape the investment governance landscape. A significant contribution to this dialogue is the IISD's 2024 publication, "Rethinking Investment Treaties: A Roadmap".[6] This paper envisions investment treaties not just as tools for protecting investments but as dynamic instruments that can promote sustainable investment, mitigate negative social and environmental impacts from investment projects, and encourage institutional cooperation to tackle systemic global issues.

The roadmap categorizes key policy challenges under three broad themes:

1. ***Encouragement and Support of Sustainable Investment: This theme focuses on how treaties can incentivize green and responsible investments while discouraging harmful ones.***
2. ***Impact of Investment Projects: This addresses regulatory frameworks designed to reduce adverse social and environmental effects while maximizing positive contributions to sustainable development.***
3. ***Investment Governance and International Cooperation: This emphasizes transparency, capacity-building, technology transfer, and stakeholder engagement to ensure that investment governance supports equitable global growth.***

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[3] **International Institute for Sustainable Development,** *Why Is Investment Treaty and Investor–State Dispute Settlement Reform Needed? Questions & Answers* **(IISD 2025) <https://www.iisd.org/system/files/2025-03/investment-treaty-and-isds-reform-questions-answers.pdf>**

[4] **Ibid**

[5] **N Jansen Calamita,** *APEC Handbook on Obligations in International Investment Treaties* **(APEC Secretariat 2020) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/apec_handbook_on_obligations_in_iit.pdf>**

[6] **International Institute for Sustainable Development,** *Rethinking Investment Treaties: A Roadmap* **(IISD 2024) <https://www.iisd.org/system/files/2024-05/rethinking-investment-treaties-roadmap.pdf>**

Building on these frameworks, the current Research Proposal aims to further explore how recent IIAs reflect these evolving priorities. Specifically, it seeks to map innovative treaty features related to investment facilitation, sustainable finance, green transition, digital economy governance, and cross-border cooperation mechanisms. The objective is to assist policymakers in creating forward-looking IIAs that balance investor rights with public interest imperatives, thereby advancing sustainable and inclusive economic governance in the 21st century.

LITERATURE REVIEW

The literature on international investment law has evolved remarkably over recent years, reflecting wider societal changes and shifting policy priorities. Earlier scholarships primarily focused on protecting investors' rights and securing investment flows through robust dispute settlement mechanisms. However, contemporary research increasingly highlights the necessity of broadening this traditional focus to incorporate issues of sustainability, social inclusion, and good governance within International Investment Agreements (IIAs).

One prominent area of this evolving scholarship is the recognition of Indigenous communities within investment policy. While several treaties and policy frameworks such as Canada's Gender-Based Analysis Plus (GBA Plus) and some digital economy agreements have acknowledged the importance of Indigenous peoples, these references often remain symbolic rather than substantive. Literature consistently points out that such provisions lack strong, enforceable mechanisms to protect Indigenous rights comprehensively, including their traditional knowledge, lands, and free, prior, and informed consent (UNCTAD, 2019;[7] IISD, 2021[8]). The existing body of work calls for more explicit and binding treaty commitments that empower Indigenous communities not just in theory but in practice.

Gender equality has also gained increasing prominence across investment treaties and trade agreements. Research chronicles a growing trend to mainstream gender considerations, emphasizing women's economic empowerment and reducing disparities exacerbated by investment policies. Despite these advances, many gender-related provisions remain aspirational or voluntary, often characterized by "best endeavour" language rather than enforceable obligations.[9] Scholars emphasize that without robust data collection and monitoring systems, it is difficult to assess whether these commitments translate into meaningful outcomes for women affected by foreign investment.

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[7] *"World Investment Report 2019 | Special Economic Zones" (UN Trade and Development (UNCTAD), June 12, 2019) <https://unctad.org/publication/world-investment-report-2019>*

[8] *"What to Expect in the January 2020 Session of UNCITRAL Working Group III on ISDS Reform – Investment Treaty News" (December 17, 2019) <https://www.iisd.org/itn/2019/12/17/what-to-expect-in-the-january-2020-session-of-uncitral-working-group-iii-on-isds-reform-nathalie-bernasconi-osterwalder-lise-johnson/>*

[9] *Trade Policy and Gender Equality (2023) <https://www.cambridge.org/core/books/trade-policy-and-gender-equality/EECD723F67B7555150C926A78A0DB439>*

Dispute resolution mechanisms, especially the reform of Investor-State Dispute Settlement (ISDS), form another critical thread in the literature. UNCTAD's "Road Map for IIA Reform"[10] and subsequent analyses have articulated innovative pathways for dispute settlement, including increased use of alternative dispute resolution and the potential establishment of an appellate mechanism or standing international investment court (UNCTAD, 2017;[11] Bernasconi-Osterwalder et al., 2020[12]). However, these proposals rarely address how such reformed mechanisms could enforce new social and environmental obligations embedded in modern IIAs. Literature reveals a notable gap in integrating gender and Indigenous rights into formal dispute processes, which often exclude these sensitive provisions from effective legal enforcement.

Investment facilitation has been highlighted as an emerging priority in aligning investment policy with sustainable development goals. Recent studies recognize the role of Investment Promotion Agencies and multilateral initiatives like the WTO's Joint Statement Initiatives in attracting "quality FDI" (World Bank, 2023;[13] Sauvant & Gabor, 2021[14]). Nonetheless, the literature stresses that explicit incorporation of gender and Indigenous considerations within facilitation efforts is limited. Facilitation provisions often emphasize economic growth and job creation broadly, but lack detailed mechanisms to ensure investments genuinely empower marginalized groups.

Corporate Social Responsibility (CSR) continues to be a vital, yet underutilized, component of the investment policy framework. While CSR is increasingly referenced in IIAs usually within preambles or non-binding chapters academic and policy analyses concur that these references are rarely linked to enforceable obligations or precise accountability measures.[15] This gap undermines the potential of CSR to safeguard environmental standards and promote equitable investment outcomes for vulnerable populations.

In essence, the current literature portrays a growing acknowledgment among scholars, policymakers, and international organizations that IIAs must evolve to address complex, contemporary challenges. Although strides have been made to incorporate social justice, gender equality, Indigenous rights, dispute innovation, investment facilitation, and CSR within investment governance, much of this progress remains aspirational and lacks

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[10] *Unctad, "IMPROVING INVESTMENT DISPUTE SETTLEMENT: UNCTAD POLICY TOOLS" (unctad 2017) <https://unctad.org/system/files/official-document/diaepcb2017d8_en.pdf>*

[11] *"World Investment Report 2017 | Investment and the Digital Economy" (UN Trade and Development (UNCTAD), June 7, 2017) <https://unctad.org/publication/world-investment-report-2017>*

[12] *Bernasconi-Osterwalder N, "Inclusion of Investor Obligations and Corporate Accountability Provisions in Investment Agreements," Springer eBooks (2020) <https://link.springer.com/rwe/10.1007/978-981-13-5744-2_56-1>*

[13] *Adarov A, Pallan H, and World Bank, "Foreign Direct Investment in Retreat" (2020) <https://openknowledge.worldbank.org/server/api/core/bitstreams/7c3cf4fc-7fea-4e17-9d52-0aa7ed15fd15/content> accessed August 26, 2025*

[14] *Sauvant KP and Gabor E, "Advancing Sustainable Development by Facilitating Sustainable FDI, Promoting CSR, Designating Recognized Sustainable Investors, and Giving Home Countries a Role" [2019] SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3496967>*

[15] *"World Investment Report 2020 | International Production Beyond the Pandemic" (UN Trade and Development (UNCTAD), June 16, 2020) <https://unctad.org/publication/world-investment-report-2020>*

enforceability. There is a clear and urgent need for future research to focus on the operationalization of these social objectives through precise treaty language, binding dispute settlement provisions, and robust monitoring frameworks. Bridging this gap would help transform IIAs from instruments that merely acknowledge broad principles to frameworks that actively promote inclusive and sustainable investment outcomes.

RESEARCH METHODOLOGY

This research adopts a doctrinal methodology to systematically address and analyse the innovations in IIAs central to the study. The doctrinal approach is well-suited to the nature of this research as it allows for an in-depth, context-driven exploration of the legal and socio-economic dimensions embedded in various BITs and MITs. The study aims to identify treaty provisions that answer modern policy questions and further uncover the inherent gaps, overlaps and trends within the international framework concerning these imperatives through literature reviews, treaty analysis, and interpretative assessments.

The focus of the research was to look for innovations pertaining to IIAs. When analysing the treaties, the focus was specifically on BITs and MITs that were signed between 2015 and 2025. The dataset for this study comprises a total of 381 IIAs, including 241 bilateral investment treaties (BITs) and 140 treaties with investment provisions (TIPs). However, our study was limited to the IIAs which are available in English i.e., 258 treaties. This timeframe was chosen to capture recent trends in treaty-making and to assess how investment law has changed over the past decade.

To analyse the treaties, BITs and TIPs were gathered from public databases like the UNCTAD Investment Policy Hub and official government sources. There are currently 2,843 BITs, with 2,221 in force.[16] While acknowledging this large number, the research prioritized treaties that address the specific policy objectives in the specified time period.

Methodological Approach to Innovations Covered

i. Indigenous Communities

For the Indigenous Communities , the research combined treaty analysis with a targeted review of existing literature. Following the treaty analysis, the examination was expanded by referring to the Special Rapporteur's report to the United Nations titled "Impact of international investment and free trade on the human rights of indigenous peoples". This report sheds light on the systemic harms that investment treaties may pose to indigenous communities. The report emphasized how treaty structures often side-line indigenous

[16] *UNCTAD, World Investment Report 2023: Investment and Sustainable Development (United Nations 2023) 101 <https://unctad.org/system/files/official-document/wir2023_en.pdf> accessed 14 April 2025*

concerns, leading to violations of land rights, displacement, and environmental degradation without proper legal recourse.

The research also looked at how BITs and TIPs interact with domestic legal frameworks to protect indigenous communities. Specifically, the assessment focused on whether treaties recognize the primacy of domestic constitutional protections or international human rights standards in safeguarding indigenous rights. The analysis also discussed whether addressing indigenous rights requires reliance solely on domestic frameworks, international treaties, or a hybrid approach involving both.

ii. Gender

In relation to gender, a similar treaty-based analysis was applied, combined with an analysis of secondary literature. The treaty review focused on identifying provisions related to gender equality, women's economic participation, and gender-sensitive policies within investment treaties. Although gender is not traditionally addressed in investment law, the analysis sought to identify emerging practices or indirect references to gender considerations.

To complement this analysis, the publicly available document titled "Mainstreaming Gender in Free Trade Agreements" was referred to, which provided insights into how gender perspectives are increasingly integrated into trade and investment agreements.

iii. Corporate Social Responsibility

The research on CSR focused on IIAs signed between 2015 and 2025. It examined provisions that address CSR obligations and responsible investment practices aligned with the SDGs. The study analysed whether CSR commitments in these treaties were presented as voluntary or mandatory, exploring how such clauses are shaping the evolving landscape of investment governance.

The research also tracked changes in treaty language, noting a shift from broad encouragement of ethical behaviour to more clearly defined expectations around ESG standards. By comparing treaties across different regions, the study provided insights into how CSR is integrated into various treaty practices.

Furthermore, the study explored whether CSR obligations function independently or alongside domestic and international legal standards. It highlighted a gradual trend toward formalizing CSR within the framework of IIAs.

iv. Dispute Resolution and Mitigation

The study entails a close examination of recent treaties that evidence a conscious departure from conventional ISDS mechanisms. Rather than using arbitration alone, such treaties

employ layered and preventive frameworks that seek to de-escalate conflicts at early stages and encourage cooperative resolution.

The approach critically assesses the function of new mechanisms like investment ombudsman schemes that offer early-stage, government-backed channels for settling investor complaints before they solidify into legal cases. It also takes into account the increasing use of SSDS, not just for specific interpretative differences, but also for more general issues regarding treaty compliance, public policy, and consistency with international obligations like the Paris Agreement. Through this methodology, the study seeks to learn how modern IIAs are reshaping the structure of dispute resolution

v. Investment Facilitation and Promotion

The research for this imperative Investment Facilitation and Promotion involved a close examination of treaties, with a focus on how these instruments are evolving beyond investor protection to serve broader development goals. Treaties were analysed to distinguish between facilitation measures such as regulatory transparency, digital access, and single-window mechanisms and promotion provisions that encourage investment in sectors aligned with national priorities and the SDGs.

This analysis identified treaty clauses that enhance inclusivity, simplify administrative processes, and establish institutional frameworks like joint committees and facilitation councils. Overall, the study treated facilitation and promotion as twin pillars of modern investment governance, highlighting their role in advancing inclusive and sustainable development.

INDIGENOUS COMMUNITY

The core premise behind countries signing IIAs is that foreign investment can act as a catalyst for positive change in a host country's economy and society.[17] However, this presumed benefit does not always extend evenly within host states.[18] Moreover, they may also exacerbate the already dim condition of Indigenous communities.[19] Development

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[17]APEC Committee on Trade and Investment (CTI), Handbook on Obligations in International Investment Treaties *(2020) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/apec_handbook_on_obligations_in_iit.pdf>*

[18]Gathii JT and Mbori HO, "Reform and Retrenchment in International Investment Law: Introduction to a Special Issue" (2023) 24 The Journal of World Investment & Trade 535 <https://brill.com/view/journals/jwit/24/4-5/article-p535_1.xml#:~:text=As%20many%20of%20the%20contributions,come%20with%20international%20investment%20law. >

[19]The Columbia Center on Sustainable Investment (CCSI), "Submission Re: Criminalization and Attacks against Indigenous Peoples Defending Their Rights: Proposals for Action to Prevent and Protect" (2018) <https://ccsi.columbia.edu/sites/default/files/content/docs/our%20focus/extractive%20industries/Input-regarding-criminalization-of-human-rights-defenders-16-March-18-FINAL.output.pdf>For instance, the Bear Creek v. Peru case. Canadian company Bear Creek Mining Corporation's Santa Ana silver project in Peru faced strong

outcomes under the investment law regime should be aligned with the host state's social, economic, and cultural framework, ensuring that foreign investment does not undermine social cohesion, limit equitable economic opportunities, or displace established normative and regulatory practices.

The Special Rapporteur to the United Nations in "Impact of international investment and free trade on the human rights of indigenous peoples" documented direct and systemic harm to the Indigenous community from the investment treaties.[20] These agreements often prioritize investor protections such as clauses on expropriation, fair and equitable treatment, and non-discrimination without corresponding safeguards for Indigenous rights.[21] Indigenous rights referred to in the context of international investment agreements generally include the rights of Indigenous peoples to maintain and strengthen their distinct cultural identity, spiritual relationship, and stewardship over their traditionally owned or occupied lands and natural resources. These rights encompass the principle of free, prior, and informed consent (FPIC) before any development or investment projects affect their territories, as well as protections against displacement, environmental degradation, and violations of their cultural and communal property. These rights are recognized in international instruments like the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)[22] and are crucial for preserving Indigenous peoples' social, economic, and cultural well-being in the face of economic development pressures.[23] Against this backdrop, the prioritization of investor protections causes an imbalance which can lead to the erosion of Indigenous land rights, especially when states are compelled to compensate investors at market rates for land restitutions, making it financially challenging to uphold Indigenous claims. The report underscores the systemic nature of these issues, noting that the lack of Indigenous participation in the negotiation of such agreements further exacerbates their marginalization and undermines their rights to self-determination and free, prior, and informed consent.[24]Contemporary investment agreements often secure positive returns for investors but

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opposition from local Aymara communities due to environmental concerns and lack of consultation. Protests escalated, leading the Peruvian government to revoke the company's mining concession in 2011.In response, Bear Creek filed a claim under the Canada–Peru Free Trade Agreement, alleging indirect expropriation and seeking over $500 million in damages. The tribunal acknowledged the expropriation but awarded only $18 million, citing the project's early stage and lack of necessary permits.During this period, Aymara leader Walter Aduviri Calizaya was sentenced to seven years in prison and fined two million soles (approximately $600,000) for his role in the protests.

[20]Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples, "Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples on the Impact of International Investment and Free Trade on the Human Rights of Indigenous Peoples" (2010) Seventieth session: Item 70 (a) of the provisional agenda <https://un.arizona.edu/sites/default/files/2022-03/2015_VTC_Impact-International-Investment-Free-Trade_GA.pdf> accessed April 11, 2025

[21] United Nations Human Rights Council, 'Report of the Special Rapporteur on the rights of indigenous peoples on the impacts of international investment agreements and investor-State dispute settlement on indigenous peoples' rights' (2016) UN Doc A/HRC/33/42, paras 23–24.

[22] UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) arts 10, 26, 32.

[23] James Anaya, 'International Investment and the Rights of Indigenous Peoples' (2004) Columbia Center on Sustainable Investment.

[24] Columbia Center on Sustainable Investment, 'Free, prior and informed consent: Addressing political realities to improve impact' (2020) 7–8 https://ccsi.columbia.edu/sites/default/files/content/docs/publications/Eng-Report-Free-prior-and-informed-consent-Addressing-political-realities-to-improve-impact.pdf accessed 26 August 2025.

rarely include clear provisions ensuring that local communities, particularly Indigenous peoples, share proportionally in these benefits.[25] For example, many treaties acknowledge access and benefit-sharing (ABS) principles but do not bind parties to enforce them effectively.[26] Identification and management of risks specific to Indigenous peoples remain uneven across investment treaties.[27] While references to sustainable development are common, few agreements incorporate the specific standards and protections established by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[28] Importantly, Indigenous peoples are frequently excluded from the "institutional logic" of these investment regimes meaning the fundamental structures and decision-making frameworks rarely recognize or include Indigenous participation or address their concerns meaningfully.[29] For instance, the Australia-Hong Kong Investment Agreement (2019) includes general exceptions allowing host states to take measures favoring Indigenous communities but does not establish mechanisms for Indigenous peoples to participate in investment project decisions or have their voices heard throughout the investment process[30].This systemic exclusion reinforces Indigenous marginalization and impedes their rights to self-determination and free, prior, and informed consent (FPIC).[31]

Furthermore, the belowmentioned table highlights the investment treaties that include provision related to Indigenous peoples' rights or corporate social responsibility (CSR). The selection focuses on recent, regionally significant agreements that explicitly reference Indigenous rights or social/environmental safeguards. This focus reflects the growing, though still limited, incorporation of Indigenous concerns into investment law, as many traditional investment treaties historically lacked direct Indigenous provisions.

Table 1

[25] Columbia Center on Sustainable Investment, 'Workshop on International Investment and the Rights of Indigenous Peoples: Outcome Document' (Nov 2016) 5–6.
[26] C Wang et al, 'International Investment and Indigenous Peoples' Environment' (2021) 11 Journal of Environmental Management 305, 312–315.
[27] Ibid.
[28] UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (13 Sept 2007) arts 10, 19, 32.
[29] Columbia Center on Sustainable Investment (n 1) 7.
[30] Australian Government, Department of Foreign Affairs and Trade, 'Australia - Hong Kong Investment Agreement' (2019), ch 14 exceptions and investment protections.
[31] Columbia Center on Sustainable Investment (n 1) 5.

Treaty/Instrument	Provision/Approach	Effectiveness/Limitations	Language and Flexibility
AfCFTA Protocol on Investment (2023) Art 35[32]	*Requires respect for indigenous rights and FPIC in line with international standards*	*FPIC not enforceable where Indigenous groups are unrecognized domestically, limiting practical protection*	*Aspirational, soft law language; draft allows wide discretion for states to implement measures, emphasizing consensus-building over binding commitments. This flexibility can dilute enforceability but supports broad participation across member states.*[33]
Australia-Hong Kong Investment Agreement (2019)	*General exceptions for measures benefiting indigenous communities*	*No mechanism for indigenous communities to enforce rights* [34]	*Broadly phrased exceptions grant significant regulatory autonomy to host states but exclude procedural rights for Indigenous peoples. This reflects a host-state-centric drafting typical of traditional IIAs with limited Indigenous safeguards.*[35]

[32] *African Continental Free Trade Area (AfCFTA) Protocol on Investment (2023) Art 35*

[33] *Columbia Center on Sustainable Investment, 'Workshop on International Investment and the Rights of Indigenous Peoples: Outcome Document' (Nov 2016) 5-6.*

[34] *Australia-Hong Kong Investment Agreement (signed 26 March 2019, entered into force 17 January 2020) art 17.*

[35] *C Wang et al, 'International Investment and Indigenous Peoples' Environment' (2021) 11 Journal of Environmental Management 305.*

Canada-Ukraine FTA (2023)	*Affirms right to regulate in support of indigenous peoples*	*Carve-outs are jurisdiction-specific*[36]	*Moderate specificity; language balances regulatory space with Indigenous interests but remains confined to domestic scopes, limiting regional or international binding effect.*
CPTPP (2018) Art 29.6 (M□ori Exception)	*Carve-out for M□ori preferences in New Zealand*	*Geographically limited; does not create direct investor obligations*	*Precise, country-specific clause restricting application solely to New Zealand; represents a defined, exception-based approach rather than broad normative protection.*
Canada-UK Trade Continuity Agreement (2020)	*Aboriginal carve-outs to preserve preference regimes*	*Relies on domestic legal reinforcement*[37]	*Rigid language ties carve-outs explicitly to national law, restricting international enforceability and expansion, emphasizing state sovereignty over Indigenous rights enforcement.*

Many traditional international investment agreements (IIAs) are** 'traditional' **in that they prioritize investor protections such as fair and equitable treatment and protection against expropriation without explicitly addressing Indigenous rights or social concerns. This exclusion explains why CSR provisions are relevant here: they serve as soft law tools that encourage ethical investor conduct in the absence of binding Indigenous rights protections.*[38] *Soft law, defined as non-legally binding norms or principles that nevertheless influence

[36] *Canada-Ukraine Free Trade Agreement (signed 11 July 2016, entered into force 1 August 2017) art 24.2.*
[37] *Canada-United Kingdom Trade Continuity Agreement (signed 9 December 2020, entered into force 1 April 2021) art 28.*
[38] *Laurence Dubin, 'Corporate Social Responsibility Clauses in Investment Treaties' (Investment Treaty News, International Institute for Sustainable Development, 20 December 2018) https://www.iisd.org/itn/2018/12/21/corporate-social-responsibility-clauses-in-investment-treaties-laurence-dubin/ accessed 26 August 2025*

behavior, allows treaties to promote responsible practices while preserving broad regulatory flexibility for states.[39]

For example, recent agreements like the MERCOSUR-Singapore Free Trade Agreement (2023) encourage alignment with international principles such as the OECD Guidelines and the UN Guiding Principles on Business and Human Rights (as highlighted in table 2). These are framed in flexible, declaratory language, giving states substantial room to interpret and implement them without binding enforcement mechanisms. Similarly, bilateral investment treaties with Argentina and the UAE, Canada and Guinea, Burkina Faso and Canada, and Argentina and Japan all include aspirational CSR provisions. (refer table 2) These encourage voluntary adoption of responsible business conduct, offering political flexibility but lacking legal teeth or dispute resolution pathways, which diminishes their practical impact.

Contrastingly, the African Continental Free Trade Area (AfCFTA) Protocol on Investment (2023) combines mandatory requirements like environmental and social impact assessments with discretionary language allowing states to balance enforcement with sovereignty concerns. While non-compliance can lead to a loss of treaty benefits, enforcement mechanisms remain limited, showing the delicate negotiation between accountability and domestic autonomy.

Additionally the language and flexibility column further highlights how treaty drafters balance recognition of Indigenous rights with states' preference for sovereign regulatory autonomy. Broad, flexible language allows states and treaty parties room for negotiation and discretion, which can be critical for treaty adoption but comes at the cost of weakened protections and enforceability. This balancing act is visible across all surveyed treaties, demonstrating the persistent tension between promoting Indigenous rights and preserving investor protections and state sovereignty in international investment law.[40]

Table 2

Treaty/Instrument	*Provision/Approach*	*Effectiveness/Limitations*	*Language and Flexibility*

[39] United Nations Human Rights Council, 'Report of the Special Rapporteur on the rights of indigenous peoples on the impacts of international investment agreements and investor-State dispute settlement on indigenous peoples' rights' (2016) UN Doc A/HRC/33/42 paras 23–24.

[40] Hannah Ruddy, 'International Investment Agreements and Indigenous Peoples' Rights' in Carwyn Jones, Lise Johnson, and Lisa Sachs (eds), *Investment Law within International Law* ***(Cambridge University Press 2018) 226–230.***

MERCOSUR-Singapore FTA (2023)	*Encourages alignment with international RBC principles (OECD, UNGPs)*	*Soft law; no binding obligations or enforcement*	*Declaratory and flexible phrasing offers state significant latitude, reflecting soft law instruments that promote but do not mandate responsible business conduct.*[41]
Argentina-UAE BIT (2022) Art 21	*Encourages voluntary adoption of international CSR standards*	*Aspiration only; no binding obligations or dispute resolution linkages*	*Hortatory soft law language used to encourage CSR practices without legal compulsion or investor accountability.*[42]
Canada-Guinea BIT (2015) Art 16	*Encourages enterprises to voluntarily incorporate internationally recognized CSR standards*	*Non-binding, aspirational only*	*Language mirrors Argentina-UAE BIT's approach, indicating political flexibility at the expense of enforceability*[43]
Burkina Faso-Canada BIT (2015) Art 16	*Same as above*	*Aspirational only*	*Consistent non-binding language across BITs designed to promote but not require responsible practices*[44]
Argentina-Japan BIT (2018) Art 17	*Encourages voluntary adoption of CSR standards*	*Non-binding*	*Typical soft law approach offers maximal state discretion without enforceability*[45]

[41] *MERCOSUR-Singapore Free Trade Agreement (2023); OECD Guidelines for Multinational Enterprises (2011).*

[42] *Argentina-United Arab Emirates Bilateral Investment Treaty (BIT) (2022) Art 21, text available via UNCTAD Investment Policy Hub or national treaty archives.*

[43] *Canada-Guinea BIT (2015) Art 16, UNCTAD investment treaties database.*

[44] *Burkina Faso-Canada BIT (2015) Art 16, UNCTAD Investment Policy Hub.*

[45] *Argentina-Japan BIT (2018) Art 17, available on UNCTAD or national treaty registries.*

AfCFTA Protocol on Investment (2023) Art 35	*Mandates environmental/social impact assessments and public disclosure*	*Non-compliance may involve loss of treaty protections, but enforcement scope is limited*	*Mixed language combining some mandatory elements with significant discretion, balancing enforcement needs and sovereignty concerns*[46]

Recent trends in international investment treaties show a clear movement towards the removal of broad exception clauses and the introduction of more specific carve-outs aimed at protecting Indigenous rights. This shift reflects an increasing recognition of the need to safeguard Indigenous peoples' legal obligations and cultural interests within trade and investment frameworks. For instance, New Zealand has negotiated a 'Treaty of Waitangi' exception in its free trade agreements, allowing the government to fulfill its obligations to M□ori without breaching treaty commitments. [47]***Similarly, the United States-Mexico-Canada Agreement (USMCA) includes a pioneering Indigenous rights exception to ensure that legal duties towards Indigenous communities are balanced against trade obligations.***[48] ***These developments indicate a gradual but significant effort to embed Indigenous protections directly into the text of modern agreements, replacing older, broader exceptions with more targeted and enforceable provisions to better respect Indigenous sovereignty and promote inclusive economic participation.***[49]

These provisions commonly allow preferential treatment for Indigenous peoples, protection of cultural heritage, and the implementation of affirmative action measures. While they mark progress, such clauses are often narrowly drafted and do not establish enforceable rights for Indigenous communities nor binding obligations for investors. Their effectiveness is further limited by reliance on domestic legal frameworks and the absence of robust international enforcement mechanisms. Therefore, although exception clauses and carve-outs provide important legal space to protect Indigenous rights, they do not guarantee substantive outcomes without strong domestic implementation and oversight.

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[46] *African Continental Free Trade Area Protocol on Investment (adopted 2023) Art 35 (accessed via African Union Treaty Database).*

[47] *New Zealand Ministry of Foreign Affairs and Trade, 'Treaty of Waitangi exceptions in free trade agreements' (2023) https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/treaty-of-waitangi-exceptions/ accessed 26 August 2025.*

[48] *Government of Canada, 'International trade agreements and Indigenous Peoples: The Canadian approach' (2024) https://international.canada.ca/en/services/business/trade/policy/inclusive/indigenous/approach accessed 26 August 2025.*

[49] *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (n 5) art 29.6.*

Table 3

Treaty/Instrument	*Provision/Approach*	*Effectiveness/Limitations*
Australia-UAE BIT (2024)	*Exceptions for measures protecting indigenous rights*	*No enforceable rights for indigenous communities*[50]
New Zealand-UAE BIT (2025)	*Similar exceptions for M□ori rights*	*Geographically limited*[51]
CPTPP (2018) Art 29.6 (M□ori Exception)	*Carve-out for M□ori preferences*	*Stronger than general exceptions, but limited in scope*
Canada–UK Trade Continuity Agreement (2020)	*Explicit Aboriginal carve-outs*	*Requires domestic legal support*

A fundamental shortcoming of most IIAs is the lack of meaningful participation by indigenous communities in investment decision-making and dispute resolution.While Canada's approach in some treaties provides for a degree of negotiation and consultation with Indigenous groups often as a result of constitutional and legal obligations this inclusion remains limited to select agreements and lacks uniformity across the IIA landscape.[52] Indigenous peoples are rarely consulted during treaty negotiations, and most treaties do not grant them standing in investor-state dispute settlement (ISDS) proceedings.[53] Current practice limits indigenous participation to amicus curiae submissions, which allow interested third parties to provide information or legal arguments but do not confer rights to initiate or directly participate in disputes. In dispute settlement, Indigenous participation is typically confined to submitting amicus curiae briefs, which allow interested third parties to present information or arguments but do not grant formal rights to initiate claims or directly engage in proceedings. This limited procedural role restricts Indigenous communities' ability to influence decisions that affect their lands and rights, undermining the fairness and legitimacy of the dispute process[54]There is growing recognition of this gap, and reforms are being discussed at UNCITRAL's Working Group III, which is considering mechanisms for broader third-party participation and even counterclaims by affected communities.[55] However, these reforms remain at the proposal stage, and most existing treaties do not provide explicit avenues for indigenous participation or remedy.[56]

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[50] Australia-United Arab Emirates Bilateral Investment Treaty (signed 2024, not yet in force) art 20.
[51] New Zealand-United Arab Emirates Bilateral Investment Treaty (signed 2025, not yet in force) art 23.
[52] Government of Canada, Canada-United States-Mexico Agreement (CUSMA) (2020), Art 24.14; Canada-Korea Free Trade Agreement (2015), Annex 20-B.
[53] United Nations, 'Impact of international investment and free trade on the human rights of indigenous peoples' (n 1) para 41.
[54] Patrick Wieland, 'Why the Amicus Curiae Institution is Ill-Suited to Address Indigenous Peoples' Rights Before Investor-State Arbitration Tribunals: Glamis Gold and the Right of Intervention' (2011) 3(2) Trade Law & Development 334–367.
[55] United Nations Commission on International Trade Law, 'Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its forty-fifth session' (2023) UN Doc A/CN.9/1124.
[56] Ibid.

Table 4

Treaty/Instrument	*Provision/Approach*	*Effectiveness/Limitations*
UNCITRAL Working Group III (ISDS Reform)	*Proposes broader third-party participation, including affected communities*	*Still under discussion; not yet operational*
EU-Malaysia PCA (2022)	*Cooperative mechanisms for environmental protection with indigenous involvement*	*Limited to environmental contexts*[57]
Most IIAs	*Amicus curiae participation only*	*Does not grant standing or enforceable rights*[58]

Even where treaties reference indigenous rights or CSR, their practical impact is often limited by inconsistent implementation and weak enforcement. Corporate Social Responsibility (CSR) represents voluntary commitments by businesses to operate ethically, taking into account social, environmental, and sometimes Indigenous concerns. However, CSR is fundamentally different from Indigenous rights, which are legally binding entitlements recognized under international law, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Indigenous rights guarantee protections including free, prior, and informed consent (FPIC) and self-determination rights that CSR frameworks alone cannot ensure.[59] While CSR can encourage responsible corporate behavior and complement Indigenous rights, it cannot replace them, as CSR lacks enforceable legal obligations and relies heavily on voluntary compliance and domestic enforcement, which are often inconsistent and insufficient for the meaningful protection of Indigenous peoples.[60]National Contact Points (NCPs) established under the OECD Guidelines can issue recommendations but lack enforcement power.[61] National Contact Points (NCPs) are non-judicial grievance mechanisms established under the OECD Guidelines for Multinational Enterprises, designed to facilitate the resolution of issues arising from a company's activities, including those affecting Indigenous communities.[62] Although NCPs cannot enforce legally binding decisions or impose sanctions, their relevance lies in providing a platform for Indigenous peoples and other stakeholders to raise concerns, promote dialogue, and seek mediation or negotiated solutions with companies. This informal dispute resolution framework helps bridge gaps left by formal investor-state dispute settlement (ISDS)

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[57] *European Union-Malaysia Partnership and Cooperation Agreement (signed 2022, not yet in force) art 38.*
[58] *Comprehensive and Progressive Agreement for Trans-Pacific Partnership (n 5) art 9.23.*
[59] *United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (13 September 2007).*
[60] *Organisation for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises' (n 11).*
[61] *Ibid.*
[62] *OECD, 'National Contact Points for Responsible Business Conduct: A Guide for Stakeholders' (2023) https://www.oecd.org/investment/responsible-business-conduct/ncps.htm accessed 26 August 2025.*

procedures, which often exclude Indigenous participation.[63] *NCPs thus contribute to greater transparency, accountability, and responsiveness by encouraging companies to consider Indigenous rights and interests early, potentially preventing conflicts from escalating into adversarial legal proceedings. However, their effectiveness depends on the willingness of companies and governments to engage constructively and act on NCP recommendations. Similarly, the UN Guiding Principles on Business and Human Rights provide interpretive guidance but are not self-executing.*[64]*Some treaties, such as the AfCFTA Protocol on Investment, attempt to link fulfilment of obligations to access to dispute resolution, but the effectiveness of such provisions depends on the willingness and capacity of states to enforce them. As a result, there is a significant gap between the normative aspirations of treaty texts and the lived realities of indigenous communities affected by investment projects.*

To understand state responsibilities under International Investment Agreements (IIAs), it is essential to distinguish between universal human rights, which apply to all individuals, and Indigenous rights, which recognize the unique collective identities and specific protections Indigenous peoples require. This distinction explains why states must adopt targeted policies within IIAs that not only uphold broad human rights but also specifically safeguard Indigenous communities.

Responsibilities of the Parties to a Treaty

i. State's Obligation

States have the duty to protect their citizens and promote their welfare. It must ensure that its policies do not disproportionately harm the indigenous communities. Some scholars argue the existence of this obligation sans territorial limits i.e., extraterritorial human rights obligations.[65] *In furtherance of this obligation, they must enact and strengthen domestic law regulating outward investment.*[66]

ii. Investors Obligation

Investment treaties were designed to primarily serve and safeguard investors and their assets. As a result, these agreements place minimal, if any, direct responsibilities on investors. Instead, they mainly consist of provisions that obligate host states to uphold specific standards of treatment for foreign investors and their investments. Substantive obligations can be imposed on the investors via two mechanisms; firstly, through interpretation by arbitration tribunal and secondly, by explicit incorporation into the IIAs.[67] *While we have seen examples of the former in the above sections, the latter is a recent practice, albeit without*

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[63] *OECD, OECD Guidelines for Multinational Enterprises (2011) Chapter on Implementation Procedures https://www.oecd.org/publications/oecd-guidelines-for-multinational-enterprises-2011-edition-9789264115415-en.htm accessed 26 August 2025*

[64] *United Nations, 'Guiding Principles on Business and Human Rights' (n 12).*

[65] *"International Investment and the Rights of Indigenous Peoples | Columbia Center on Sustainable Investment" https://ccsi.columbia.edu/content/international-investment-and-rights-indigenous-peoples*

[66] *Ibid*

[67] *Inès EH, "Investor Conduct" (Jus Mundi) <https://jusmundi.com/en/document/publication/en-investors-conduct> accessed March 16, 2025*

any tooth to bite. Therefore, the states have referred to domestic legislation as well as international treaties to create obligations for the investors.[68]

The **AfCFTA Protocol on Investment (2023)**[69]*, formally affirms investor obligations to respect Indigenous peoples' rights and ensures their access to free, prior, and informed consent (FPIC) in line with international standards. It also mandates that investors comply with environmental and social impact assessments and disclose relevant information publicly, enhancing accountability. However, the Protocol clarifies that investors are not obligated to secure agreements with Indigenous groups in states that do not legally recognize such communities. This limits the practical enforceability of FPIC where formal recognition is absent. Crucially, including binding investor obligations in the treaty must go beyond simply allowing Indigenous peoples to participate in discussions; it requires that the potential impacts of investment projects on Indigenous rights be closely scrutinized and assessed. Without such scrutiny, merely providing Indigenous groups with "space" in consultation does not amount to a genuine realization of the FPIC principle, which demands that Indigenous peoples have the power to approve, modify, or reject projects affecting their lands and rights. Only through rigorous impact assessment and meaningful consent processes can the FPIC principle be fully respected and operationalized.*

Other agreements adopt a softer, yet significant approach. The MERCOSUR–Singapore FTA (2023)[70] *encourages investors to align with international principles of responsible business conduct. While these commitments are not legally binding, they play a crucial role in shaping business norms and expectations, encouraging investors to voluntarily adopt internationally recognized standards of responsible business conduct and thus fostering a culture of accountability and ethical investment.*[71]*Several treaties also safeguard the regulatory autonomy of states to prioritize Indigenous rights. The Canada–Ukraine Modernized FTA (2023)*[72] *and the Canada–UK Trade Continuity Agreement (2020)*[73] *reaffirm each state's right to regulate in support of Indigenous peoples, with Canada including specific carve-outs to preserve preferences for Aboriginal communities. The EU–Malaysia Partnership and Cooperation Agreement (2022)*[74] *reflects a cooperative model by environmental protection with explicit regard for Indigenous communities.*

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[68] *Ibid*

[69] *Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area (AfCFTA) (2023), art 35*

[70] *Mercosur - Singapore FTA (signed on December 2023) (Singapore-Southern Common Market)*

[71] *OECD, Promoting Responsible Business Conduct in Trade and Investment: The Role of International Investment Agreements (2024) https://www.oecd.org/publications/promoting-responsible-business-conduct-in-trade-and-investment-2024.htm accessed 26 August 2025.*

[72] *Canada–Ukraine Modernized FTA (Date of signature on 22/09/2023; Date of entry into force on 07/01/2024) (Canada-Ukraine)*

[73] *Joint Interpretative Instrument on the Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada (2020), para 14*

[74] *EU–Malaysia Partnership and Cooperation Agreement (signed 14 December 2022) WTO 145, art 29(3)(k)*

Treaties can also make the 'fulfilment of obligations' a jurisdictional issue,[75] whereby an investor violating its obligation, under either domestic or international framework, would be incapacitated from resolving the dispute through the tribunal.

Positive Treaty Practices

A treaty-focused approach promotes changes that bring international investment law more in line with Indigenous rights .[76] Against this backdrop a treaty-focused approach herein means that negotiators of international investment agreements can explicitly recognize Indigenous rights when drafting new treaties or revising existing ones. This way, Indigenous rights are directly integrated into the legal framework governing investments, rather than being treated as an afterthought. Essentially, this approach seeks to make investment law more consistent with Indigenous rights by including specific provisions that protect Indigenous peoples and require investors and states to respect those rights.Treaty negotiators can directly acknowledge Indigenous rights in new IIAs drafted or incorporate them during revisions to current agreements.[77] These provisions would allow states to adopt measures to protect the rights of Indigenous peoples. For instance, IIAs may require foreign investors to comply with existing indigenous rights before a claim under the treaty is brought.

i. Exception clauses to protect the rights of indigenous peoples

The protection to the Indigenous communities can be ensured if an exception has been provided within the standard protection clauses or in the treaty.[78] The proliferation of guidelines, standards, and model contractual provisions in the recent years have changed the norms regarding the obligation of the investors.[79] For instance, the OECD Guidelines for Multinational Enterprises are non-binding recommendations that encourage MNEs to uphold standards in areas such as human rights, labor, environmental protection, and anti-corruption.[80] To promote adherence, the OECD established NCPs in each member country to address allegations of non-compliance. However, these NCPs lack enforcement power and

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[75] "Investor Obligations – A Sustainability Toolkit for Trade Negotiators" (Environment and Trade Hub) <https://www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/5-investment-provisions/5-3-investor-and-home-state-obligations/5-3-1-investor-obligations/> accessed March 16, 2025

[76] Vadi V, "The Protection of Indigenous Cultural Heritage in International Investment Law and Arbitration" (2018) <https://romatrepress.uniroma3.it/wp-content/uploads/2020/02/The-Protection-of-Indigenous-Cultural-Heritage-in-International-Investment-Law-and-Arbitration.pdf>

[77] Ibid

[78] United Nations, "Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples on the Impact of International Investment and Free Trade on the Human Rights of Indigenous Peoples" (2015) report A/70/301 <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/resource-materials2/reports-and-publications/78-the-impact-of-international-investment-and-free-trade-on-the-human-rights-of-indigenous-peoples-report-to-the-general-assembly-2015/file

[79] George K. Foster, 'Foreign Investment and Indigenous Peoples: Options for Promoting Equilibrium between Economic Development and Indigenous Rights' (2012) 33 Mich J Int'l L 627

[80] "OECD Guidelines for Multinational Enterprises on Responsible Business Conduct" (OECD, June 8, 2023) <https://www.oecd.org/en/publications/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990.html>

can only issue recommendations, limiting their effectiveness in compelling MNEs to comply with the Guidelines.[81]

Exception clauses can be strategically employed to protect Indigenous communities. These clauses typically operate by allowing states to deviate from treaty obligations under specific conditions, such as protecting national cultural heritage. For example, the Australia–UAE BIT (2024)[82] *and New Zealand–UAE BIT (2025)*[83] *both contain such clauses, albeit with limitations, as they do not create enforceable rights for Indigenous peoples or obligations for investors.*

ii. Carve outs

Existing protections for Indigenous communities in investment treaties often take the form of carve-outs, allowing states to provide preferential treatment without violating treaty obligations.[84] *For example, the Australia–UAE BIT (2024)*[85] *and New Zealand–UAE BIT (2025)*[86] *include carve-outs allowing the protection of Indigenous rights and cultural heritage.These provisions create space for policies that support Indigenous groups, their products, and traditional production methods. Another notable example is the M□ori exception in the CPTPP and other trade agreements involving New Zealand, which reflects a broader approach to integrating Indigenous rights within trade and investment frameworks.*[87] *Canada's treaties, including its Trade Continuity Agreement with the UK, feature explicit Aboriginal carve-outs, preserving space for Indigenous preference regimes.*[88] *This approach provides a stronger shield than general exceptions but remains underutilized globally.*

iii. Allowing standing to the stakeholder community

Only a small minority of investment treaties explicitly provide for counterclaims by respondent States against investors. According to ICSID commentary and case law, counterclaims in investment treaty arbitration are rare and typically difficult to uphold because most treaties are asymmetrical granting rights mainly to investors while limiting

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[81] *OECD, "OECD Guidelines for Multinational Enterprises" (2008) <https://globalnaps.org/wp-content/uploads/2018/08/oecd-guidelines-for-multinational-enterprises.pdf>*

[82] *Agreement between the Government of Australia and the Government of the United Arab Emirates on the Promotion and Protection of Investments (signed 6 November 2024) [2024] ATNIF 42, Annex VII*

[83] *Agreement between the Government of New Zealand and the Government of the United Arab Emirates on the Promotion and Protection of Investments (signed 14 January 2025) [2025], art 13(2) fn 9*

[84] *Puig S, "International Indigenous Economic Law," vol 52 (University of California, Davis, 2019) <https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/52-3_Puig.pdf>*

[85] *Australia-UAE Bilateral Investment Treaty (2024), Art 3, available at https://dea.gov.in/sites/default/files/BIT%20MoU%20Engilsh.pdf accessed 26 August 2025.*

[86] *New Zealand-UAE Bilateral Investment Treaty (2025), relevant exception clause (text not publicly available; referenced in policy summaries).*

[87] *Ibid*

[88] *Joint Interpretative Instrument on the Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada (2020), para 14*

direct obligations on them. For example, ICSID statistics indicate that counterclaims by States have had a limited success rate in the 30+ years of arbitration history, described as "30 years of failure" by a notable commentator.[89]

Furthermore, ICSID data from 1973 to 2023 shows that around 15% of cases were contract-based claims rather than treaty claims, where counterclaims are somewhat easier since contracts typically allow claims from both parties. In treaty-based arbitrations, however, the percentage of cases including viable counterclaims is much smaller, often less than 5%, reflecting treaty drafting and tribunal practice limitations.[90]

Third-party intervention of the interested parties could be allowed to participate in the dispute resolution process. However, the current scope of the participation is limited to the role of an *amicus curiae.*[91]***The Investor-State Dispute Settlement Reforms, the Working Group III (WGIII) is discussing the limitations on the current scope of the third party intervention.[92] Allowing third parties to join the proceedings can promote the correct interpretation of law and identification of norms, leading to the finality of the judgement.[93]***

Treaties, however, do not specifically mention counterclaims. Rather, the tribunals allow it based on the treaty's dispute settlement clauses.[94] Therefore, the broadness of the dispute resolution clauses determine whether it encompasses counterclaims or not.[95] While the discourse on its contours is going on, expansion of its scope is more favoured. In favour of certainty, the parties should include the counterclaim clause in the investment treaty.[96]

Thus, treaty design must affirmatively provide for counterclaims or community-standing provisions if meaningful participatory reform is to be achieved.

GENDER RELATED PROVISIONS

In recent years, there has been a growing recognition of the importance of integrating gender considerations. Gender equality and women's economic empowerment are not only moral imperatives but also preconditions for sustainable development and economic growth.[97] The

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[89] Ana Vohryzek-Griest, "Counterclaims in Investment Arbitration – Towards an Integrated Approach," ICSID Review, World Bank, 2021.
[90] Legal500, "Procedural requirements for counterclaims under the ICSID Convention," July 2025.
[91]UNCITRAL, *UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration* ***(United Nations 2014) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rules-on-transparency-e.pdf>***
[92] United Nations Commission on International Trade Law (UNCITRAL), 'Report of Working Group III (InvestorState Dispute Settlement Reform) on the Work of its 37th Session (New York, 1–5 April 2019)
[93] Coleman J and others, "Third-Party Rights in Investor–State Dispute Settlement: Options for Reform" (2019) <https://ccsi.columbia.edu/sites/default/files/content/docs/our%20focus/extractive%20industries/uncitral-submission-third-party-participation-en.pdf>
[94] Ibid
[95]Bjorklund AK, "THE ROLE OF COUNTERCLAIMS IN REBALANCING INVESTMENT LAW," vol 17 (2013) <https://law.lclark.edu/live/files/14086-lcb172art4bjorklundpdf>
[96] Ibid
[97]International Trade Centre (2020). *Mainstreaming Gender in Free Trade Agreements* ***ITC, Geneva***

process of gender mainstreaming in IIAs involves incorporating gender perspectives into the drafting and implementation of these agreements, aiming to reduce gender inequalities and promote women's empowerment.[98]

Although gender provisions in trade agreements have made notable progress with more than 20% of free trade agreements including them in an explicit manner, the investment agreement environment has less impressive developments.[99] ***Recent model BITs by nations such as Canada***[100] ***and the Netherlands***[101] ***(discussed below) are significant steps, although implementation remains a challenge, especially for developing nations with negotiation capacity deficits. Out of the BITs we perused between 2015 and 2025, 29 treaties were identified as containing references to gender. These provisions fall into two distinct regulatory modalities;*** *Treatment of Investors and Investments and promotion* ***and*** *protection of investment.* ***14 BITs include references to gender within the context of treatment standards. These provisions often integrate gender-related language in clauses concerning national treatment, non-discrimination, or general obligations to ensure equitable conditions for investment. 14 BITs address gender in provisions aimed at fostering responsible investment or cooperation between the contracting parties. These may include references to promoting inclusive development, responsible business conduct, or facilitating investment in sectors advancing gender equality. One treaty - the*** **Moldova–United Arab Emirates BIT**[102] ***–*** ***includes a provision explicitly titled*** *"Protection and Treatment of Investors"*, ***thereby reflecting an formulation that addresses both modalities within a single provision which is notable because it combines both the standards for protecting investors (such as safeguards against unfair treatment) and the rules for how investors should be treated (including non-discrimination and national treatment) into a single, unified clause. By doing so, the treaty ensures that both protection and equitable treatment are addressed together rather than in separate sections. This integrated formulation is relatively unique compared to other treaties that often separate these two concepts, and it highlights a modern approach to encompassing multiple dimensions of investment governance in one provision.In the case of treaties with investment provisions (TIPs),*** **41 treaties** ***were found to contain references to gender, using either the word*** *gender* ***or*** *women*. ***These references often extend beyond investment-specific provisions and appear across a range of treaty sections. A particular example is the*** **ACP-EU Samoa Agreement (2023)**, ***which includes gender considerations in multiple parts of the treaty.***

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[98] ***World Trade Organization (2022).*** *Gender mainstreaming in trade agreements*

[99] ***Amrita Bahri,*** *Gender Mainstreaming in Free Trade Agreements: A Regional Analysis and Good Practice Examples* ***(Gender, Social Inclusion and Trade Knowledge Product Series 2021) <https://wtochairs.org/sites/default/files/7.%20Gender%20mainstreaming%20in%20FTAs_final%20%286%29.pdf > accessed 15 April 2025***

[100] ***Global Affairs Canada, 'Canada Model Bilateral Investment Treaty' (12 May 2021) <https://jusmundi.com/en/document/treaty/en-model-agreement-between-canada-and-for-the-promotion-and-protection-of-investments-2021-canada-model-bit-2021-wednesday-12th-may-2021> accessed 15 April 2025***

[101] ***Kingdom of the Netherlands, 'Netherlands Model Investment Agreement' (22 March 2019) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5832/download> accessed 15 April 2025***

[102] ***Moldova–United Arab Emirates BIT, 'Protection and Treatment of Investors' Art. X.***

These references are not limited to investment-specific clauses; rather, they appear throughout various sections of the treaties, indicating a broader recognition of gender equality in the context of investment.

Beyond SIFA, several recent model investment treaties have set new precedents:

- *The Canadian Model Foreign Investment Promotion and Protection Agreement (FIPA) 2021 incorporates provisions to encourage gender equality in right-to-regulate, minimum standard of treatment, and responsible business conduct articles. These aim to ensure that policies advancing gender equality are not undermined by investment protections and proactively seek to make investment more inclusive for women-led businesses.*[103]
- *The Dutch model BIT similarly includes language fostering equal opportunities for men and women, embedding gender across various obligations, rather than relegating these issues to aspirational or preambular statements.*[104]

In Africa, the African Continental Free Trade Area (AfCFTA) Protocol on Investment is another progressive example, with its explicit support for gender-equal pay, anti-discrimination in labour provisions, promotion of gender equality policies within corporate social responsibility, and inclusion of gender equality in standards of fair and equitable treatment.[105]

Scope of Gender Related Provisions in IIAs

The incorporation of provisions related to gender in IIAs has received growing attention, as the international community works towards ensuring greater gender equality in global investments.[106] *Traditionally, such provisions were either non-existent or narrow in application, but contemporary trends have shown increased tendencies towards overt*

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[103] *Government of Canada, '2021 Model Foreign Investment Promotion and Protection Agreement (FIPA)', https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/model-model.aspx accessed 28 August 2025; see also, R Elsaman, 'Exploring Investment Treaties' Role in Advancing Gender Equality' (2024) https://www.iisd.org/itn/2024/01/13/exploring-investment-treaties-role-in-advancing-gender-equality/.*

[104] *Kingdom of the Netherlands, Model BIT (2019) Art. 2(1)(c) and Art. 7(1), https://www.rijksoverheid.nl/documenten/publicaties/2018/07/19/nieuwe-modeltekst-investeringsakkoorden accessed 28 August 2025.*

[105] *AfCFTA Protocol on Investment, detailed in 'AfCFTA Protocol on Investment: Three steps for ensuring gender equality and women's economic empowerment' https://www.tradeunionsinafcfta.org/afcfta-protocol-on-investment-three-steps-for-ensuring-gender-equality-and-womens-economic-empowerment/ accessed 28 August 2025.*

[106] *Elsaman R, "Exploring Investment Treaties' Role in Advancing Gender Equality" (IISD, January 13, 2024) https://www.iisd.org/itn/2024/01/13/exploring-investment-treaties-role-in-advancing-gender-equality/ accessed March 18, 2025*

inclusions. Interestingly, of 84 model agreements that the UNCTAD Investment Policy Hub made available online, just seven of them mention gender explicitly, largely through provisions couched in broad language that mention 'fair and equitable treatment' between men and women.[107] Regional trade agreements with investment chapters have also begun incorporating gender provisions.[108] According to WTO research, out of 305 RTAs notified and in force as of December 2020, 83 agreements include at least one provision that explicitly mentions gender or women. If we include those with implicit references such as mentions of vulnerable groups or social development the figure increases to 257 agreements.[109]

These gender provisions appear in a variety of locations within RTAs, including preambles, chapters dedicated to cooperation, labour, or investment, and in some cases even in stand-alone chapters devoted solely to gender. For example, the Canada Chile Free Trade Agreement was amended in 2017 to add an entire chapter on trade and gender, increasing gender-related provisions from just 2 in the original side labour agreement to 40 provisions spanning investment, gender, and labour chapters.[110] Similarly, the Southern African Development Community (SADC) Protocol on Gender and Development integrated and expanded gender provisions in multiple sections, focusing on promoting women's empowerment across diverse areas of investment and cooperation.[111]

Recent agreements have gone further: the Global Trade and Gender Arrangement (GTGA), concluded by Canada, Chile, and New Zealand in 2020, is notable for committing parties not to weaken gender equality laws to promote trade or investment, and for establishing institutional arrangements to monitor and resolve issues related to gender within investment chapters.[112]

The incorporation of gender provisions in IIAs is highly disparate in terms of wording, coverage, and enforceability.[113] The provisions of these agreements tend to follow a binary

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[107]Bahri A and Amaral R, "Gender Equality Provisions in Trade and Investment Agreements: Are They Widening the Negotiation Capacity Gap?" [2023] World Trade Review 1 <https://www.cambridge.org/core/journals/world-trade-review/article/gender-equality-provisions-in-trade-and-investment-agreements-are-they-widening-the-negotiation-capacity-gap/C4715F616E4062BBF72EED53C5FBE093> The paper maps Model BITs signed till December 2022. The model BITs that mention gender were signed by Morocco (adopted 1 June 2019), Belgium–Luxemburg (adopted 28 March 2019), Netherlands (adopted 22 March 2019), Slovakia (adopted 2019), India (adopted 28 December 2015), and Serbia (adopted 2014).

[108] Ibid.

[109] José-Antonio Monteiro, 'The evolution of gender-related provisions in regional trade agreements' (WTO Staff Working Paper ERSD-2021-08, January 2021) 8–9 https://www.econstor.eu/bitstream/10419/231365/1/1749361787.pdf accessed 30 August 2025.

[110] Ibid 13; Canada–Chile Free Trade Agreement (amended 2017).

[111] Southern African Development Community, 'Protocol on Gender and Development' https://www.sadc.int/sites/default/files/2021-05/Protocol_on_Gender_and_Development_2008.pdf accessed 30 August 2025.

[112] Global Trade and Gender Arrangement (Canada–Chile–New Zealand 2020) https://www.mfat.govt.nz/en/trade/free-trade-agreements/global-trade-and-gender-arrangement/ accessed 30 August 2025.

[113]Monteiro J-A, "GENDER-RELATED PROVISIONS IN REGIONAL TRADE AGREEMENTS" (2018) https://www.wto.org/english/res_e/reser_e/ersd201815_e.pdf accessed March 18, 2025

concept of gender, addressing mainly men and women. For example, the East African Community (EAC) treaty defines "gender" as the women's and men's roles in society, which supports this binary view.[114] In the same vein, almost all the agreements employ terms like "gender equality" without offering specific definitions.

Even when gender provisions appear in investment agreements, they often lack substantive depth and enforceability mechanisms. These gender-related provisions are formulated in best-endeavour language, representing aspirational goals rather than binding commitments. For instance, the ACP–EU Samoa Agreement (2023) commits to "*strengthen policies, programmes and mechanisms aimed at promoting gender equality****" (Art. 48(1)), without binding enforcement. The use of "shall" in the provision may strengthen the obligation.[115] However, creating absolute rights at this stage of budding evolution of these obligations would not be the best choice.[116]***

While model agreements represent important advances, the translation of these models into actual signed agreements shows considerable variation and inconsistency. The authors observe that there is little correlation between countries that have included gender provisions in their model BITs and countries that have successfully incorporated these provisions into the BITs they negotiate and sign. For example, Brazil's model investment agreement did not address gender,[117] yet the government addresses the issue in most of its recently signed investment cooperation and facilitation treaties[118]. Conversely, Morocco's 2019 model BIT addressed gender,[119] but its most recent BIT signed with Japan in August 2020[120] does not include these provisions. This disconnect shows the challenges of translating model provisions into actual treaty commitments.

The gender provisions in IIAs are structured into distinct **regulatory modalities or types** ***through which they are addressed.***

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[114] The Treaty for the Establishment of the East African Community (Signed 30th 1999, entered into force 7th July 2000) EAC Publication No. 1 at art 1

[115] UNCTAD, "INVESTMENT PROMOTION PROVISIONS IN INTERNATIONAL INVESTMENT AGREEMENTS" <https://unctad.org/system/files/official-document/iteiit20077_en.pdf> accessed April 13, 2025

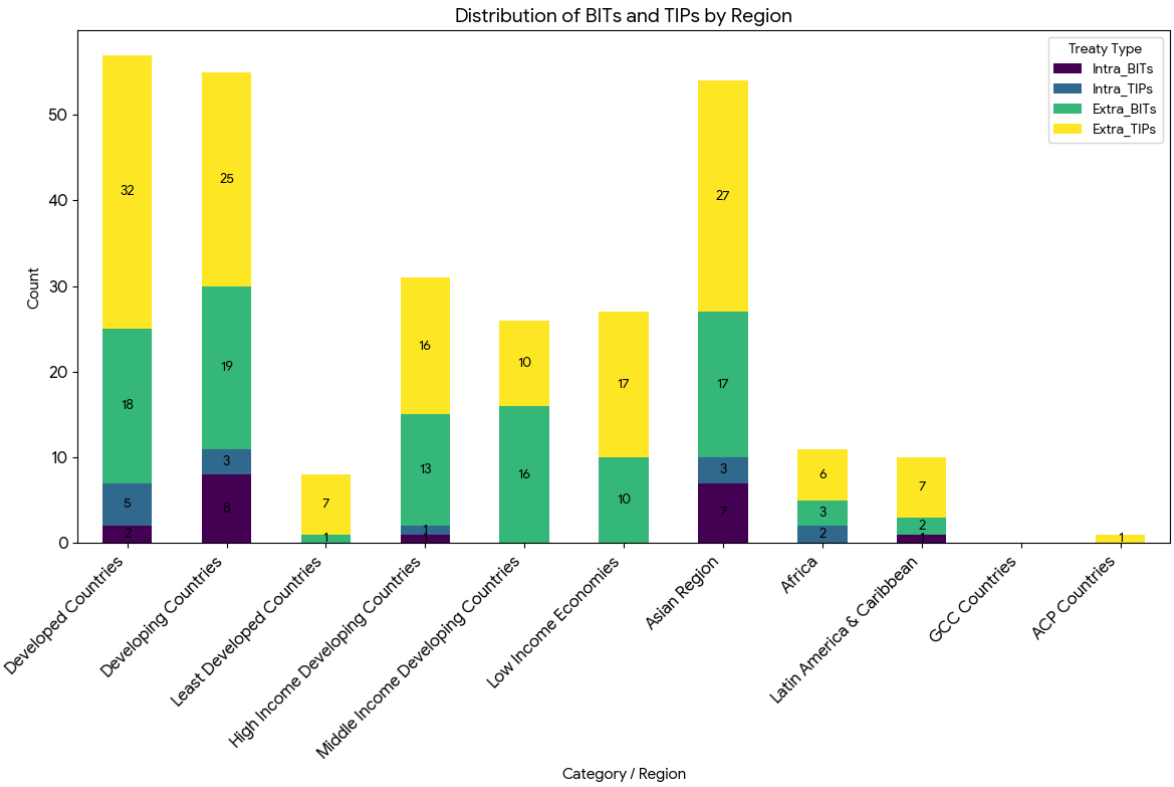
[116] Ibid

[117] Brazilian Ministry of Foreign Affairs, 'Model Cooperation and Facilitation Investment Agreement' (2015) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download> accessed 15 April 2025

[118] See for example the Cooperation and Facilitation Investment Agreement Between the Federative Republic of Brazil and the United Arab Emirates (signed 15 March 2019). For more information See, Ana Sarmento, 'The Scope of New Brazilian Investment Protections: Intellectual Property and the Limits of an Alternate Approach' (Inter-American Law Review, 22 April 2021) <https://inter-american-law-review.law.miami.edu/scope-brazilian-investment-protections-intellectual-property-limits-alternate-approach/> accessed 15 April 2025

[119] Kingdom of Morocco, Model Agreement for the Reciprocal Promotion and Protection of Investments (2019) <https://edit.wti.org/document/show/b5908c50-ef94-4902-b71d-12024f285ef8> accessed 15 April 2025

[120] Agreement between the Kingdom of Morocco and Japan for the Promotion and Protection of Investment (signed 8 January 2020, entered into force 23 April 2022) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5908/download> (accessed 15 April 2025).



Based on our analysis, Developed Countries, Developing Countries have approximately the same number of treaties which contain treaty provisions. Region wise, the Asian Region has the highest number of investment agreements. The dominant trend across almost all categories is that agreements are overwhelmingly extra-regional (with external partners) rather than intra-regional. Conversely, several categories, such as the GCC and Least Developed Countries, show very little to no activity in forming these treaties.[121]

Non-Discrimination and FET

The India-Uzbekistan BIT (2024), Article 4, prohibits violation of customary international law through "*targeted discrimination on manifestly unjustified grounds, such as gender, race or religious belief****". Similar is the case with Australia- UAE BIT, Article 3[122] and Turkey-UAE BIT[123]. The New Zealand-UAE BIT (2025), Article 2(3), stipulates the "****targeted discrimination on manifestly wrongful grounds, such as gender, race, or religious belief****" as a breach of FET obligation.[124] In particular to Brazil CIFAs, Brazil started including similar references to gender in non-discrimination clauses after 2018, particularly from Brazil-Guyana BIT (2018).***

[121] *See, Annexure II, Gender Provisions in IIAs*
[122] *Australia- UAE BIT, Article 3.*
[123] *Turkey-UAE BIT (2023)*
[124] *New Zealand-UAE BIT (2025), Article 2(3)*

The AfCFTA, Protocol on Investment too prohibits discriminatory treatment based on "*gender, race or religious beliefs****".[125] This is the most common form of gender related reference in IIAs. However, these provisions show a lack of positive obligation to promote gender equality.***

Standalone Gender Equality and Women's Economic Empowerment Provisions

Another way of including gender equality and/or women's economic empowerment is the standalone provisions. Such provisions could be found in FTAs such as EU New Zealand FTA (2023)[126], EFTA- Thailand FTA (2023)[127] and EFTA Moldova FTA (2023).

The Sustainable Investment Facilitation Agreement between the European Union and the Republic of Angola links investment and gender equality.[128]

ARTICLE 35

Investment and gender equality

> ***1. The Parties recognise that inclusive investment policies can contribute to advancing women's economic empowerment and gender equality, in line with Sustainable Development Goal 5 of the UN 2030 Agenda. They acknowledge the important contribution by women to economic growth through their participation in economic activity, including investment. The Parties underline their intention to implement this Agreement in a manner that promotes and enhances gender equality. 2. The Parties shall work together bilaterally and in relevant fora, as appropriate, to strengthen their cooperation on investment-related aspects of gender equality policies and measures, including activities designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement.***
>
> ***…(emphasis supplied)***

This reflects a progressive framing of gender equality. However, there is a rarity of standalone gender provisions in the IIAs.

Right to Regulate and Gender Equality

Some regional agreements also frame gender equality as a regulatory goal. The Cambodia–UAE CEPA (2023) includes gender equality under legitimate policy objectives such as

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[125] Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area (AfCFTA) (2023)
[126] EU New Zealand FTA (2023), Article 19.4
[127] EFTA- Thailand FTA (2023)
[128] EFTA Moldova FTA (2023)

public health and safety (Art. 10.5).[129] The IPEF Clean Economy Agreement (2024) also references gender inclusion in its stakeholder engagement provisions, stating that "*resources and formal training opportunities are available... to all persons, including women, Indigenous Peoples..."* ***(Art. 22, Preamble).[130] the EU–Thailand Framework Agreement (2022), which connects gender equality to international instruments like CEDAW and UNSCR 1325, reaffirming the necessity of gender mainstreaming throughout implementation.***

Gender as a Cross-Cutting Objective

The integration of gender equality as a horizontal issue influences all areas of cooperation. These provisions mandate mainstreaming gender in all activities under the agreement, not limited to investment. For instance, ACP–EU Samoa Agreement (2023), includes gender equality in its cross cutting themes provision.[131]

ARTICLE 7

Cross-cutting themes

2. ***The Parties agree that systematic account shall be taken of the following cross-cutting themes to inform action in all areas of cooperation: human rights, democracy, gender equality, peace and security, environmental protection, the fight against climate change, culture and youth.***
3. ***The Parties shall cooperate to support capacity building to effectively address challenges and achieve the objectives set out in this Agreement. They shall aim to foster the strengthening of institutions, promote the exchange of best practices and facilitate knowledge transfer and sharing.***
4. *The Parties shall strengthen the resilience of countries, communities and individuals, and particularly that of vulnerable populations, in the face of environmental and climate change-related challenges, economic shocks, conflicts and political crises and epidemics and pandemics.*

Similarly, AfCFTA Protocol on Investment also includes gender in the general objectives of the agreement.

Gender-Sensitive Cooperation, Capacity Building, and Stakeholder Engagement

Treaties may also be used to build institutional capacity to encourage women's participation in trade/investment. For instance, IPEF Clean Economy Agreement (2024)[132] includes women in the stakeholder engagement.

[129] *Cambodia–UAE CEPA (2023), art 10.5*
[130] *IPEF Clean Economy Agreement (2024)*
[131] *ACP–EU Samoa Agreement (2023), Article 7.*
[132] *IPEF Clean Economy Agreement (2024)*

> **Article 22: Society Engagement**: ***Each Party, in developing policies and seeking to achieve the objectives of this Agreement, intends to engage individuals and groups outside the public sector, such as non-governmental organizations, representative workers' organizations, academic and research institutions, enterprises including business organizations and industry associations, MSMEs, women, Indigenous Peoples, persons with disabilities, rural and remote populations, minorities, and local communities.***

Gender Representation in Adjudication and Governance Mechanisms

Treaties may also promote balanced gender representation in dispute settlement bodies. For instance, the EU-Chile Framework Agreement (2025) suggests gender representation in appointment of tribunal judges and appeal members in its "Investment Court Systems" provision. It states that in Article 17.34 that "...*in appointing the Judges, the Joint Committee is encouraged to consider the need to ensure diversity and a fair gender representation.****"***

Best Practices

The Netherlands stands as one of the pioneers in incorporating substantive gender provisions in its investment agreement model. The 2019 revised Dutch model BIT[133] includes a commitment to promote equal opportunities and participation for women and men in the economy. The preamble explicitly recognizes the importance of gender equality in international trade and investment policies, establishing gender equality as a foundational principle of the agreement rather than a peripheral concern. More substantively, Article 6, paragraph 3 of the model agreement underscores "*the importance of incorporating a gender perspective into the promotion of inclusive economic growth****" and stipulates that "****Contracting Parties commit to promote equal opportunities and participation for women and men in the economy****".[134] This approach represents a significant advancement from earlier models that either ignored gender entirely or addressed it only in limited procedural contexts.***

Canada has similarly demonstrated leadership in developing gender-sensitive investment frameworks through its 2021 model bilateral investment treaty. In May 2021, the Government of Canada introduced its model BIT with several provisions addressing gender issues, highlighting "*a number of new provisions that aim to help women and other groups benefit more from the agreements, and to ensure that investment protections do not impede policies promoting gender equality****".[135] The Canadian model goes beyond mere recognition of gender equality as an important***

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[133] ***Kingdom of the Netherlands,*** *Model Investment Agreement* ***(22 March 2019) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5832/download> accessed 15 April 2025***

[134] ***Ibid at art 6(3)***

[135] ***Global Affairs Canada, 'Canada Model Bilateral Investment Treaty' (12 May 2021) <https://jusmundi.com/en/document/treaty/en-model-agreement-between-canada-and-for-the-promotion-and-protection-of-investments-2021-canada-model-bit-2021-wednesday-12th-may-2021> accessed 15 April 2025***

principle by attempting to ensure that the investment protection framework does not undermine domestic policies aimed at addressing gender inequalities. This represents an important recognition of the potential tensions between investment protection and gender-responsive regulation, seeking to create space for gender equality initiatives within the investment protection framework.

DISPUTE PREVENTION AND RESOLUTION

The global investment treaty regime is undergoing a paradigm shift towards prioritizing sustainable development goals and ensuring procedural fairness for all stakeholders. This means treaties are no longer solely focused on protecting investor rights but are increasingly designed to promote responsible investment that supports environmental sustainability, social inclusion, and transparency. Recent treaties such as Brazil's Cooperation and Investment Facilitation Agreements (CIFAs) and reforms proposed by UNCITRAL Working Group III exemplify this transformative trend.

This shift reflects growing concerns about the limitations of the traditional investor-state dispute settlement (ISDS) framework and the need for investment treaties to better align with global sustainability goals.

The traditional ISDS system, enshrined in over 3,000 bilateral investment treaties (BITs), has been criticized for enabling foreign investors to challenge environmental regulations, public health measures, and other sovereign policies through arbitration.[136] High-profile cases such as *Vattenfall v. Germany* ***(over nuclear phase-out policies) and*** *Philip Morris v. Australia* ***(over plain tobacco packaging laws) have fueled demands for reform.[137] Simultaneously, the sustainable development agenda has necessitated IIAs that prioritize climate action, social equity, and responsible business conduct.[138]***

In response to these challenges, modern investment treaties are increasingly incorporating innovative mechanisms designed to balance investor protection with states' regulatory autonomy and sustainable development objectives.

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[136] United Nations Conference on Trade and Development, Dispute Settlement: State-State (UNCTAD Series on Issues in International Investment Agreements, UNCTAD/ITE/IIT/2003/1, United Nations 2003) <https://unctad.org/system/files/official-document/iteiit20031_en.pdf> accessed 15 April 2025

[137] Nathalie Bernasconi-Osterwalder and Martin Dietrich Brauch, 'Brazil's Innovative Approach to International Investment Law' (15 September 2015) International Institute for Sustainable Development <https://www.iisd.org/articles/insight/brazils-innovative-approach-international-investment-law> accessed 15 April 2025

[138] United Nations Conference on Trade and Development, Investment Treaty Conference 2025: Modernising Investment Treaties to Support the Sustainable Development Goals (31 March 2025) <https://unctad.org/meeting/investment-treaty-conference-2025-modernising-investment-treaties-support-sustainable> accessed 15 April 2025

This dual pressure has led to three key innovations in modern IIAs:

1. **Preventive mechanisms** *like investment ombudsman to resolve grievances before disputes escalate.*
2. **State-state dispute settlement** *to address systemic treaty interpretation issues.*
3. **Institutionalized oversight bodies** *such as joint committees to monitor compliance and facilitate dialogue.*

One of the most prominent preventive mechanisms gaining traction is the investment ombudsman system, which serves as an early intervention tool to address investor grievances.

Investment Ombudsman Systems: Proactive Conflict Prevention

The investment ombudsman system plays a role in conflict mitigation, coordination and investment facilitation. The function of the Ombudsman is preventive in nature, aiming to resolve the differences before they take the form of an official dispute. Brazil's CIFAs,[139] for example, explicitly include provisions requiring each party to establish a national investment ombudsman.This office assists investors by addressing concerns related to regulatory barriers, bureaucratic delays, or other administrative issues that may hinder investment.[140] The ombudsman is also tasked with coordinating among relevant public and private authorities, and it plays an advisory role by recommending improvements to the state's domestic investment framework to align with treaty obligations. [141]While certain countries have established an investment ombudsman mechanism embedded within its national legal framework rather than as a mandated function under international treaties. Established under the Foreign Investment Promotion Act, Korea's Foreign Investment Ombudsman serves as an internal grievance channel for foreign investors, aiming to address complaints and improve investment conditions within the country's administrative system. While effective at national level, such internal mechanisms differ from treaty-based ombudsman roles like Brazil's, which bear an international governance mandate across treaty partners. [142] This distinction underscores the emerging landscape of investor grievance management : treaty-based ombudsman provides a formal cross-border interface, reinforcing treaty commitments and fostering consistency between states, whereas national ombudsman operate within a country's integral legal and regulatory environment, addressing investment issues

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[139] **Nathalie Bernasconi-Osterwalder and Martin Dietrich Brauch,** *Comparative Commentary to Brazil's Cooperation and Investment Facilitation Agreements (CIFAs) with Mozambique, Angola, Mexico, and Malawi* **(International Institute for Sustainable Development, September 2015) <https://www.iisd.org/system/files/publications/commentary-brazil-cifas-acfis-mozambique-angola-mexico-malawi.pdf> accessed 15 April 2025**

[140]**Nathalie Bernasconi-Osterwalder and Martin Dietrich Brauch, 'Brazil's Innovative Approach to International Investment Law' (International Institute for Sustainable Development, 15 September 2015) <https://www.iisd.org/articles/insight/brazils-innovative-approach-international-investment-law> accessed 15 April 2025**

[141] **Ibid,** *Role of Ombudsman in Regulatory Coordination and Framework Recommendation.*

[142] **Ibid**

domestically. Against this backdrop, Brazil's CIFAs with Mozambique, Angola, Malawi, Mexico, Colombia, and Chile replace ISDS with a layered dispute resolution framework:[143]

1. **Ombudsman intervention**: *Investors must submit complaints to a designated focal point within designated time period.*
2. **Joint Committee mediation**: *A bilateral body comprising government and civil society representatives negotiates solutions.*
3. **SSDS arbitration**: *Only states may initiate binding arbitration for unresolved systemic issues.*

Alongside preventive measures, state-to-state dispute settlement (SSDS) mechanisms are being thoughtfully redesigned to better address the increasing complexity of treaty interpretation and to handle disputes that affect the broader investment system. Rather than simply resolving individual conflicts, these updated SSDS provisions aim to tackle systemic issues that may arise between countries, such as differing interpretations of treaty obligations or recurring challenges in implementing agreed standards. This evolution reflects a more collaborative and strategic approach to managing investment disputes, promoting clarity, consistency, and fairness in the interpretation and application of international investment agreements.

State-State Dispute Settlement

SSDS clauses, once relegated to resolving narrow interpretive disagreements, are being redesigned to address systemic conflicts over public policy.[144] *The IISD's 2023 analysis SSDS provisions in investment treaties are gaining renewed attention because of issues regarding the cost, transparency, and challenge to public policy measures of investor-state arbitration.*[145]*SSDS mechanisms, such as judicial, quasi-judicial, and arbitration processes, can resolve disputes like treaty interpretation and diplomatic protection claims*[146]*. Making the interaction between SSDS and investor-state mechanisms clearer improves the treaty coherence and state control over dispute resolution.*

Article 20 of the Canada-China FIPA[147] *provides a structure for ISDS in which investors may bring arbitration cases against a contracting party for violations of stipulated treaty*

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[143] *Geraldo Vidigal, 'Brazil's New Model of Dispute Settlement for Investment: Return to the Past or Alternative for the Future?' (2018) 19(3) Journal of World Investment & Trade 475 https://brill.com/view/journals/jwit/19/3/article-p475_6.xml accessed 15 April 2025*

[144] *United Nations Conference on Trade and Development (UNCTAD),* Reform of Investor-State Dispute Settlement: In Search of a Balanced Approach *(UNCTAD, 2019) https://unctad.org/system/files/official-document/diaepcbinf2019d3_en.pdf*

[145] *IISD,* Investor-State Dispute Settlement (ISDS) Mechanisms and the Right to Regulate: Submission to UNCITRAL Working Group III *(IISD, 26 September 2023) https://www.iisd.org/publications/brief/iisd-ciel-clientearth-isds-sustainable-enivronment-submission-2023 accessed 31 August 2025.*

[146] *ibid*

[147] *Agreement between the Government of Canada and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investments (signed 12 May 2012, entered into force 1 October 2014) art 20 <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/china-chine/fipa-apie/index.aspx?lang=eng> accessed 15 April 2025*

provisions.. Importantly, when the respondent state invokes the defense under Article 33(3) which is generally understood to relate to exceptions in financial services the investor-state dispute settlement (ISDS) tribunal is not allowed to decide whether this defense is valid or legitimate.

Instead, the issue is submitted to the contracting parties' financial services authorities for consultation. If these authorities are unable to agree within 60 days, the issue is referred to a state-to-state arbitral tribunal, whose ruling is binding on the ISDS tribunal. . While this approach is tailored to financial services, it serves as an example of how SSDS can be designed to clarify the division of responsibilities between investor-state and state-state dispute mechanisms, thereby preserving state sovereignty in specialized, sensitive policy areas. However, its direct relevance to general investment disputes outside financial services may be limited, given the sector-specific nature of these provisions.

The CPTPP has both ISDS and SSDS provisions. Specifically, Chapter 28 prescribes procedures for the resolution of member state disputes, such as consultations and arbitration panels, with flexibility in handling both investor and state-level disputes.[148] These rules provide flexibility to address both investor-related and state-level disputes, with Articles 28.2 and 28.5 detailing the mechanisms for state-to-state dispute resolution. The Brazil-Mozambique CIFA (2015)does not include provisions for investor-state arbitration, instead proposing SSDS as a backup mechanism for resolving disputes between the investor and the host state.[149] Additionally, Article 24 and Article 25 of Brazil-Chile BIT (2015) mandates SSDS before ISDS and limits the scope of the dispute to that referred for direct consultation and negotiations.[150]

Despite these innovations, traditional BITs have historically faced significant challenges that modern reforms seek to address. Traditional BITs, especially those prevalent before the mid-2010s, faced several recurring and systemic problems:

- **Over Reliance on ISDS:** *The ease of access to investor-state dispute settlement (ISDS) led to a proliferation of claims, high costs, and unpredictability, often discouraging states from regulating in the public interest due to fear of litigation.[151]*

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[148] Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), signed 8 March 2018, entered into force 30 December 2018, Chapter 8 <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investmentprovisions/5074/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-cptpp-2018-> accessed 15 April 2025

[149] Brazil–Mozambique Bilateral Investment Treaty (signed 30 March 2015) UNCTAD Investment Policy Hub: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3664/brazil---mozambique-bit-2015-> accessed 15 April 2025

[150] Brazil–Chile Bilateral Investment Treaty (signed 23 November 2015) art 24 & art 25 <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3661/brazil---chile-bit-2015-> accessed 15 April 2025

[151] Jonathan Bonnitcha, 'What is the Problem with Investment Disputes? The Case of the Draft Legislative Guide on Investment Dispute Prevention and Mitigation' (2024) 118 AJIL Unbound 230, 231–232.

- **Coordination Failures:** ***Disputes often arose from fragmented government responses, poor inter-agency communication, and the absence of centralized mechanisms to address investor grievances at an early stage.***[152]
- **Uniformity Over Context:** ***Many BITs assumed a one-size-fits-all model, ignoring differences in domestic legal, constitutional, and administrative systems.***[153]
- **Neglect of Dispute Prevention:** ***The focus was primarily on adjudication rather than on mechanisms for dispute prevention or mitigation, resulting in missed opportunities for early resolution.***[154]

Moreover, understanding how disputes arise requires recognizing the social and institutional contexts that influence whether disagreements escalate into formal disputes. The policy debate often assumes disputes are independent of their institutional context, overlooking how dispute prevention initiatives themselves can sometimes generate disputes by reframing ordinary disagreements as investment grievances.[155] ***The linear model-from disagreement to grievance to legal dispute-fails to capture the complex, socially embedded processes by which disputes arise.***[156]

In light of these challenges, recent BITs have introduced a range of institutional and procedural reforms aimed at fostering early dispute prevention and more effective resolution.

Modern Approaches and Solutions in BITs (2015–2025)

A. Institutional and Procedural Reforms

1. Lead Agencies and Coordination Mechanisms

Recent BITs recommend establishing or designating a lead government agency with the authority to coordinate responses to investor grievances. For example, in Brazil's Cooperation and Facilitation Investment Agreements (CFIAs), a Direct Investment Ombudsman serves as a focal point for investor interaction and grievance handling, bridging aftercare with dispute prevention.[157]***The document notes similar structures in countries like Peru, where the Coordination and Response System for International Investment Disputes (SICRECI) ensures inter-agency coordination and centralized management of investment disputes.***[158] .[159]

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[152] ***ibid 232-233.***
[153] ***ibid 233-234.***
[154] ***ibid 234-235.***
[155] ***ibid 230-231.***
[156] ***ibid 232-234.***
[157] ***Federative Republic of Brazil,*** *Creation, Structure and Attributions of the Direct Investment Ombudsman*, ***Decree No. 8863, 28 September 2016; see UNCITRAL Working Group III (2023) p. 18-19.***
[158] ***Republic of Peru,*** *Coordination and Response System for International Investment Disputes (SICRECI)*, ***Law No. 28933 (2006); UNCITRAL Working Group III (2023) p. 10-11.***
[159] ***UNCITRAL, 'Possible Reform of ISDS: Draft Legislative Guide on Investment Dispute Prevention and Mitigation' UN Doc A/CN.9/WG.III/WP.228 (19 January 2023) paras 7-8, 13-14.***

This approach is rooted in the belief that improved inter-agency coordination and early engagement can prevent escalation.[160]

2. Investor Grievance Mechanisms and Ombudsman Models
Brazil's CFIAs institutionalize ombudsman offices empowered to facilitate dialogue, assess investor complaints, and make recommendations to improve the investment environment.[161] *Similarly, South Korea operates the Office of the Foreign Investment Ombudsman (OFIO), providing a structured domestic grievance mechanism to address investor concerns and potentially prevent disputes from reaching arbitration.*[162]*Such mechanisms prioritize dialogue, transparency, and timely resolution.*[163]

3. Emphasis on ADR and Mediation
Certain agreements incorporate clear provisions mandating mediation or conciliation before arbitration. For instance, UNCITRAL's Working Group highlights that some BITs require mediation as a preliminary step to arbitration, fostering dispute mitigation over litigation. This practice is consistent with reforms advocated by UNCITRAL Working Group III to encourage early resolution and reduce arbitration caseloads.[164] *The Brazil CFIA, for example, includes stages for amicable settlement and dispute prevention through joint committees before proceeding to arbitration.*[165]

4. Flexibility and Context Sensitivity
The revised UNCITRAL Guidelines (2023) move away from prescriptive models, acknowledging the need for diversity in institutional arrangements and allowing states to tailor mechanisms to their constitutional and administrative contexts.[166]

These reforms collectively underscore a paradigm shift towards dialogue, coordination, and flexibility in managing investment disputes.

B. Unique Innovations and Comparative Developments

Various countries have adopted distinctive models reflecting their unique priorities and contexts, contributing to a diverse landscape of dispute prevention mechanisms.

- **China's SIRM:**
  China's Systemic Investment Retention Mechanism (SIRM) is designed for proactive

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[160] ***UNCITRAL Working Group III on ISDS Reform,*** *Compilation of Best Practices*, ***March 2023, pp. 2-6.***
[161] ***Federative Republic of Brazil,*** *Brazilian Cooperation and Facilitation Agreement (CFIA) Model* ***(2016); UNCITRAL Working Group III (2023) p. 18-19.***
[162] ***Republic of Korea,*** *Office of the Foreign Investment Ombudsman*; ***UNCITRAL Working Group III (2023) p. 19.***
[163] ***UNCITRAL Working Group III (2023),*** *Compilation of Best Practices*, ***pp. 17-19.***
[164] ***UNCITRAL Working Group III (2023),*** *Draft Legislative Guide on ISDS Reform*, ***paras 143-145.***
[165] ***Brazilian Cooperation and Facilitation Agreement, Article 23; UNCITRAL Working Group III (2023) p. 21.***
[166] ***UNCITRAL, 'Possible Reform of ISDS: Draft Guidelines on Prevention and Mitigation of International Investment Disputes' UN Doc A/CN.9/WG.III/WP.235 (20 November 2023).***

investor aftercare, focusing on retention and expansion of FDI by addressing grievances before they become disputes.[167]

- **EU's Permanent Investment Courts:** *The EU-Vietnam IPA and similar treaties introduce permanent investment courts and appellate mechanisms, aiming for greater consistency, transparency, and legitimacy in dispute settlement.*[168] *Under Article 27.4 of the IPA, once the permanent investment tribunal is operational, all disputes arising under the agreement will be submitted to this court, replacing prior dispute settlement mechanisms. This arrangement is similarly reflected in the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada (Article 8.27)*[169]*, where the investment court system and appellate tribunal have jurisdiction over cases once established, aiming to promote consistency, transparency, and legitimacy in investment dispute resolution.*

Application: Comparative Analysis of BITs (2014-2025)

Table 5: Comparative Features of Selected Modern BITs

BIT/Agreement	Dispute Prevention Mechanism	ADR/Mediation Provisions	Unique Features (2014-2025)	Primary Source/Reference
Brazil-India BIT (2020)	*Ombudsman, Joint Committee*	*Yes*	*Ombudsman as primary dispute resolution*	*Brazil-India BIT, Art. 23*[170]
China-Ethiopia BIT (2020)	*Lead Agency, SIRM*	*Yes*	*Systemic Investment Retention Mechanism*	*China-Ethiopia BIT, Art. 12*[171]
EU-Vietnam IPA (2019)	*Pre-arbitration consultation*	*Yes*	*Permanent investment court, appellate tribunal*	*EU-Vietnam IPA, Arts. 3.41-3.59*[172]

[167] *Roberto Echandi et al, 'Retention and Expansion of Foreign Direct Investment: Political Risk and Policy Responses' (2019) xii; China-Ethiopia BIT (2020) Art 12.*
[168] *EU-Vietnam Investment Protection Agreement (2019) Arts 3.41-3.59.*
[169] *UNCITRAL, Working Group III, Compilation of Best Practices on Investment Dispute Prevention and Mitigation, March 2023, CETA, Art. 8.27*
[170] *Brazil-India BIT (2020) Art 23.*
[171] *China-Ethiopia BIT (2020) Art 12.*
[172] *EU-Vietnam Investment Protection Agreement (2019) Arts 3.41-3.59.*

India-Kyrgyzstan BIT (2019)	*Joint Committee*	*Yes*	*Emphasis on consultation and amicable settlement*	*India-Kyrgyzstan BIT, Art. 14*[173]
Morocco-Nigeria BIT (2016)	*Joint Committee*	*Yes*	*Sustainable development, state right to regulate*	*Morocco-Nigeria BIT, Arts. 24-26*[174]
Netherlands-UAE BIT (2021)	*Early engagement, mediation*	*Yes*	*Sustainable development, mediation before ISDS*	*Netherlands-UAE BIT, Art. 22*[175]

Analytical Observations

- **Ombudsman and Joint Committees:** *Brazil-India and Morocco-Nigeria BITs institutionalize joint committees or ombudsman offices, reflecting a shift toward state-led, non-adversarial dispute resolution. This reduces the likelihood of disputes escalating to arbitration and places greater emphasis on prevention and amicable settlement.*[176]

- **Systemic Investment Retention:** *China's SIRM, referenced in the China-Ethiopia BIT, represents a proactive approach to investor aftercare, aiming to address grievances before they crystallize into legal disputes. This model is increasingly influential among developing states.*[177]

- **Permanent Investment Courts:** *The EU-Vietnam IPA introduces a standing tribunal and appellate mechanism, addressing concerns over consistency, impartiality, and legitimacy in ISDS. This marks a significant departure from ad hoc arbitration panels.*[178]

- **Sustainable Development and Regulatory Space:** *The Morocco-Nigeria and Netherlands-UAE BITs explicitly recognize the right of states to regulate for public purposes, including sustainable development, which*

[173] *India-Kyrgyzstan BIT (2019) Art 14.*
[174] *Morocco-Nigeria BIT (2016) Arts 24-26.*
[175] *Netherlands-UAE BIT (2021) Art 22.*
[176] *Brazil-India BIT (2020) Art 23; Morocco-Nigeria BIT (2016) Arts 24-26.*
[177] *China-Ethiopia BIT (2020) Art 12.*
[178] *EU-Vietnam Investment Protection Agreement (2019) Arts 3.41-3.59.*

addresses concerns about regulatory chill and the prioritization of investor rights over public interest.[179]

- **Mandatory Mediation:** *Several BITs now require mediation or conciliation as a prerequisite to arbitration, reflecting a broader trend toward dispute mitigation.*[180]

This comparative analysis highlights the growing emphasis on ombudsman roles, joint committees, and alternative dispute resolution as central pillars of modern investment treaty design.

Comparative Analysis

Table 4

Treaty Name & Year	*Dispute Prevention Mechanism*	*ADR/Mediation/ISDS Provisions*	*Unique/Notable Features*	*Relevant Articles*
Japan-Morocco BIT (2020)	*Mandatory consultations; possibility of mediation*	*ISDS allowed after 6 months of consultations; mediation explicitly encouraged*	*Sustainable development objectives, transparency in dispute resolution*	*Arts. 15-17*[181]
Slovakia-Iran BIT (2016)	*Negotiation and cooling-off period required*	*ISDS permitted if no settlement after 6 months; local remedies not mandatory*	*Sustainable development, environmental protection*	*Arts. 13-15*[182]
Turkey-Ukraine BIT (2017)	*Negotiation and consultation required*	*ISDS after 6 months if no settlement; mediation possible*	*Explicit reference to sustainable development*	*Arts. 12-14*[183]
Brazil-Ethiopia BIT (2018)	*Ombudsman, Joint Committee for dispute prevention*	*No ISDS; only state-to-state arbitration if Joint Committee fails*	*Ombudsman as primary dispute prevention, state-to-state only*	*Arts. 18-20*[184]

[179] *Morocco-Nigeria BIT (2016) Arts 24-26; Netherlands-UAE BIT (2021) Art 22.*
[180] *Netherlands-UAE BIT (2021) Art 22; EU-Vietnam Investment Protection Agreement (2019) Arts 3.41-3.59.*
[181] *Japan-Morocco BIT (2020) Arts. 15-17*
[182] *Slovakia–Iran BIT (2016) Arts. 13-15*
[183] *Turkey-Ukraine BIT (2017) Arts. 12–14*
[184] *Brazil-Ethiopia BIT (2018) Arts. 18-20*

Brazil-Mexico BIT (2015)	*Ombudsman, Joint Committee*	*No ISDS; state-to-state arbitration only*	*Emphasis on dispute prevention and mitigation, ombudsman role*	*Arts. 17-19*[185]

The* Japan-Morocco BIT (2020) *and the* Netherlands-UAE BIT (2021) *require that disputes first undergo mandatory consultations and mediation (Japan-Morocco BIT, Arts. 15-16; Netherlands-UAE BIT, Art. 22). Only if these efforts fail may the investor proceed to arbitration, and even then, the treaties embed principles of sustainable development and regulatory space, reflecting a more balanced approach to investment protection and public policy objectives.

This trend is most pronounced in the innovative model pioneered by Brazil, as seen in the* Brazil-Ethiopia BIT (2018) *and* Brazil-Mexico BIT (2015)*. These agreements institutionalize ombudsmen and joint committees as the primary channels for dispute prevention and resolution (Brazil-Ethiopia BIT, Arts. 18-20; Brazil-Mexico BIT, Arts. 17-19). Notably, they exclude ISDS altogether, permitting only state-to-state arbitration if a dispute is not resolved through these mechanisms. The Brazilian model reflects a deep skepticism toward ISDS and a belief in the efficacy of state-led, institutionalized dispute management. It also illustrates the shift from a reactive, litigation-driven paradigm to one that prioritizes dialogue, transparency, and early resolution.

***China's approach, as reflected in the* China-Ethiopia BIT (2020)*, draws on the World Bank's Systemic Investment Retention Mechanism (SIRM) and emphasizes the role of a lead agency in hearing and addressing investor grievances before they escalate (China-Ethiopia BIT, Arts. 12-13). This is consistent with the recommendations of the UNCITRAL Draft Legislative Guide, which advocates for a coordinated, government-wide response to investor concerns as a means of bridging the "gap" between aftercare and legal defense.*[186]**

The belowmentioned table presents a curated overview of newer international investment agreements showcasing their evolving design on investment dispute settlement. The purpose is to highlight how modern treaties incorporate dispute prevention mechanisms such as joint committees, centralized grievance units, and early consultation stages, as well as alternative dispute resolution (ADR) options like mediation or conciliation.

Table 5

[185] *Brazil-Mexico BIT (2015) Arts. 17-19*

[186] *UNCITRAL, Possible Reform of ISDS: Draft Legislative Guide on Investment Dispute Prevention and Mitigation, UN Doc. A/CN.9/WG.III/WP.228 (19 January 2023).*

BIT/Agreement	BIT/Agreement	ADR/Mediation Provisions	Unique Features (2014-2025)	Primary Source/Reference
Chile - Switzerland BIT (2025)	*Institutional cooperation through a Joint Committee*	*Yes - structured consultation and dispute resolution steps*	*Combined administrative and diplomatic dispute prevention steps*	*Chile - Switzerland BIT, Ch. on Dispute Settlement, Art. 15-17*[187]
EU - Moldova FTA (2023)	*State-coordinated dispute prevention and monitoring mechanisms*	*Yes - mandatory consultations, mediation encouraged*	*Strong sustainability and gender inclusivity focus, Indigenous participation recognized*	*EU - Moldova FTA, Ch. 9 (Sustainable Development) & Ch. 11 (Dispute Settlement*[188]*)*
Indo-Pacific Economic Framework (IPEF)	*Designated focal points for dispute management in investment*	*Yes - voluntary mediation and consultation*	*Emphasis on inclusive economic participation, gender and Indigenous people's recognition*	*IPEF Agreement, Dispute Settlement Chapter & Economic Empowerment Sections*[189]
Canada - Ukraine Modernized FTA (2023)	*Institutionalized joint committees, coordinated state defense*	*Yes - multi-institutional coordinated dispute process; transparency provisions*	*Detailed procedural framework, including early dismissal of frivolous claims*	*Canada - Ukraine FTA, Ch. on Dispute Settlement, Art. 9-12*[190]
Sri Lanka - UAE BIT (2025)	*Lead agency with administrative grievance handling*	*Yes - explicit ADR options prior to formal dispute*	*Partial exclusion of Investor-State Arbitration in specific disputes*	*Sri Lanka - UAE BIT, Art. 18 & dispute chapters*[191]

[187] *Chile - Switzerland BIT, Ch. on Dispute Settlement, Art. 15-17*
[188] *EU - Moldova FTA, Ch. 9 (Sustainable Development) & Ch. 11 (Dispute Settlement)*
[189] *IPEF Agreement, Dispute Settlement Chapter & Economic Empowerment Sections*
[190] *Canada - Ukraine FTA, Ch. on Dispute Settlement, Art. 9-12*
[191] *Sri Lanka - UAE BIT, Art. 18 & dispute chapters*

Mauritius - UAE CEPA (2023)	*Central coordination unit for dispute claims*	*Yes - negotiated settlement encouraged*	*Emphasis on dispute prevention mechanisms with multi-level government involvement*	*Mauritius - UAE CEPA, Ch. on Dispute Settlement*[192]
Japan - Jordan BIT (2018)	*Required pre-arbitration consultation period and cooling-off*	*Yes - mediation included as amicable settlement alternative*	*Provisions for multi-institutional panel, clear stages for binary dispute resolution*	*Japan - Jordan BIT, Ch. on Disputes, Art. 22-23*[193]
EU - Kenya EPA (2023)	*Intergovernmental cooperation on dispute management*	*Yes - transparent dispute process with early consultations*	*Explicit integration of climate, labour and environmental standards*	*EU - Kenya EPA, Ch. on Trade & Sustainable Development & Dispute Chapters*[194]
Angola - EU Sustainable Investment Agreement (2023)	*State-led complaint and grievance mechanism*	*Yes - structured mediation and consultation process*	*Strong ESG provisions including Indigenous rights and environmental safeguards*	*Angola - EU Agreement, Art. 31 & Dispute Settlement sections*[195]
Ghana - Trinidad & Tobago BIT (2023)	*No specific institutional mechanism; traditional ISDS*	*Limited mediation references; emphasis on arbitration framework*	*Standard procedural provisions with focus on legal certainty*	*Ghana - Trinidad & Tobago BIT, Dispute Settlement Art. 18-20*[196]

[192] *Mauritius - UAE CEPA, Ch. on Dispute Settlement*
[193] *Japan - Jordan BIT, Ch. on Disputes, Art. 22-23*
[194] *EU - Kenya EPA, Ch. on Trade & Sustainable Development & Dispute Chapters*
[195] *Angola - EU Agreement, Art. 31 & Dispute Settlement sections*
[196] *Ghana - Trinidad & Tobago BIT, Dispute Settlement Art. 18-20*

EU - New Zealand FTA (2023)	*Institutional cooperation to prevent and manage disputes*	*Yes - mandatory consultation, mediation staged before arbitration*	*Indigenous Maori rights clause, gender equality and sustainable development objectives*	*EU - New Zealand FTA, Ch. 9 & 20; Dispute chapters*[197]
Morocco - Côte d'Ivoire BIT (2019)	*Institutional coordination, pre-arbitration consultations*	*No specific mediation; traditional arbitration*	*Robust procedural rules to avoid parallel proceedings and repetitive claims*	*Morocco - Côte d'Ivoire BIT, Ch. on Dispute Settlement*[198]

Notably, many agreements include structured dispute management processes that require pre-arbitration cooling-off periods, emphasize confidential mediation, and promote amicable settlement before proceeding to formal arbitration or adjudication. This aligns with broader global reform trends emphasizing dispute avoidance, reducing costly arbitration, and maintaining stable investor-State relations.

Among unique features, we observe increasing recognition of:

- ***Indigenous peoples' rights and consultation (e.g., New Zealand, EU-led FTAs)***
- ***Explicit gender inclusivity and women's economic empowerment commitments***
- ***Sustainable development safeguards linked to environmental and social norms***
- ***Institutionalization of permanent or standing tribunals or appellate bodies in some agreements***
- ***Enhanced transparency and cooperation at both state and investment management levels***

Against this backdrop, recent treaty practices are premised on the idea that investment disputes arise primarily from coordination failures within government and that these can be addressed through institutional reforms such as lead agencies and formal grievance mechanisms.[199] Yet, this view tends to overlook the social and cognitive processes by which ordinary disagreements are transformed into investment grievances; a process that can be shaped, and even amplified, by the very institutionalization of dispute prevention.[200] In other words, this perspective often overlooks how normal disagreements between investors and states can evolve into formal investment grievances. This transformation is influenced by the very systems set up to prevent disputes. Over time, as investment dispute prevention

[197] *EU - New Zealand FTA, Ch. 9 & 20; Dispute chapters*
[198] *Morocco - Côte d'Ivoire BIT, Ch. on Dispute Settlement*
[199] *Jonathan Bonnitcha, 'What is the Problem with Investment Disputes? The Case of the Draft Legislative Guide on Investment Dispute Prevention and Mitigation' (2024) 118 AJIL Unbound 230, 232-234.*
[200] *ibid 233-234.*

mechanisms become more institutionalized and widely known, both investors and government officials may start to view a broader range of issues as potential breaches of investment treaties. Consequently, more disputes may be framed and addressed within the context of investment law, potentially increasing the number of treaty-based claims.

Moreover, the institutional models adopted in treaties like those of Brazil and China are found almost exclusively in developing states, raising questions about their transferability and the equity of the global investment regime.[201]*The prescriptive tone of early drafts of the Guide was roundly rejected by states in UNCITRAL Working Group III, who emphasized the need for context-sensitive solutions that reflect domestic legal and administrative diversity.*[202] *The revised UNCITRAL Guidelines now encourage flexibility, but the underlying assumptions about the causes of disputes and the universality of institutional solutions remain largely unchanged.*[203]

Recent BITs also increasingly reference sustainable development, environmental protection, and the right to regulate. These provisions signal a broader policy rebalancing, as states seek to reconcile investment protection with public interest objectives and avoid the regulatory chill associated with earlier treaty practice.

Critical Reflections

Assumptions and Limitations:
Many modern reforms are predicated on the assumption that coordination failures are the primary cause of disputes, this view may overlook deeper underlying issues such as conflicts over resource distribution, democratic policymaking processes, and competing interests between investors and the public[204] [205] *The focus on institutional solutions may also risk reframing ordinary regulatory disagreements as investment grievances, potentially increasing the number of disputes in the long run.*[206]

Recognizing these broader social and political dynamics is important to design more effective and context-sensitive dispute prevention strategies.

Diversity of Approaches:

The rejection of the prescriptive tone by states in Working Group III underscores the need for

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[201] *ibid 234.*
[202] *Anthea Roberts & Taylor St John, 'UNCITRAL and ISDS Reform: Lifelong Learning' EJIL:TALK! (23 November 2023).*
[203] *UNCITRAL, Possible Reform of ISDS: Draft Guidelines on Prevention and Mitigation of International Investment Disputes, UN Doc. A/CN.9/WG.III/WP.235 (20 November 2023).*
[204] *Jonathan Bonnitcha, 'What is the Problem with Investment Disputes?' (n 1) 232-234.*
[205] *ibid 231-232.*
[206] *ibid 233-234.*

context-sensitive solutions.[207] *The revised Guidelines reflect this, encouraging states to adapt dispute prevention mechanisms to their unique legal and administrative environments.*[208]

Developing vs. Developed States:

While institutionalized dispute prevention mechanisms are predominantly found in developing countries, including models found in BITs involving countries like Brazil and China, their design and implementation reflect specific contexts and challenges unique to these states. [209] *This raises important questions about whether such mechanisms can be effectively transferred or adapted to other jurisdictions with different legal, political, and economic environments. Moreover, the prominence of these models in BITs negotiated by developing countries also highlights broader concerns about the equity and inclusiveness of the global investment regime, inviting reflection on how dispute prevention approaches can accommodate diverse State interests and capacities in a fair manner.*

The evolution from traditional to modern investment policy in BITs signed between 2014 and 2025 is characterized by a shift from active, litigation-focused approaches to proactive, prevention-oriented mechanisms. Key innovations include the institutionalization of lead agencies, the adoption of ombudsman and mediation mechanisms, and a greater emphasis on flexibility and context sensitivity. These reforms have been particularly significant for developing states, which often face coordination and capacity challenges in managing investor relations and disputes. At the same time, they hold relevance for developed states by encouraging more context-sensitive, efficient, and balanced approaches to dispute prevention. However, these reforms also raise important questions regarding how disputes are framed, how to balance investor protection with public interests, and how different national legal and political contexts shape implementation. The ongoing discussions within UNCITRAL and among States demonstrate the necessity of critically examining the underlying assumptions of these reforms to ensure their effectiveness and fairness across diverse country settings.

INVESTMENT FACILITATION, SUSTAINABLE INVESTMENT, AND COOPERATION IN IIAs

The landscape of IIA is undergoing a significant transformation.[210] *These agreements are no longer just about providing static protections for investors; they are evolving into dynamic tools of investment governance, aimed at addressing pressing development challenges.*[211]

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[207] *ibid 234-235.*
[208] *UNCITRAL, 'Possible Reform of ISDS: Draft Guidelines' (n 10).*
[209] *Jonathan Bonnitcha, 'What is the Problem with Investment Disputes?' (n 1) 234.*
[210] *UNCTAD, World Investment Report 2024: Investment Facilitation and Digital Government (United Nations 2024) https://unctad.org/publication/world-investment-report-2024 accessed 13 April 2025*

Facilitation refers to reducing barriers and streamlining procedures to make investment easier and more transparent, fostering a stable and predictable environment for investors. Cooperation involves the collaboration between states and stakeholders to address issues such as sustainable development, responsible business conduct, and social inclusion, including gender equality. Meanwhile, promotion entails actively encouraging investments that align with broader policy goals like economic development, environmental protection, and inclusive growth. Together these elements transform investment agreements into dynamic governance tools by not only protecting investors but also guiding investments towards positive developmental outcomes.

Reconceptualizing Facilitation and Promotion

The distinction between investment promotion and facilitation is crucial. Promotion refers to proactive strategies designed to attract investment, such as marketing campaigns, sector prioritization, and incentive structures.[212] Facilitation, on the other hand, focuses on streamlining processes reducing administrative hurdles, enhancing regulatory transparency, and easing market access for investors.[213] Together, these two approaches create a comprehensive framework that enables states to not only attract foreign investment but also regulate it in ways that foster broader socio-economic development.

1. Promoting Favourable Investment Environments and Entry

At a foundational level, many IIAs commit to fostering favourable conditions for investment. Treaties often contain a general commitment to "encourage and create favourable conditions" for investors from the other party. For example:

- *The India - Uzbekistan BIT (2024) emphasizes the promotion of favourable conditions for mutual investment flows in Article 10.[214]*
- *The Canada - Ukraine Modernized BIT (2023) similarly highlights efforts to enhance investment opportunities and cooperation under Article 7.[215]*
- *The EFTA - Thailand Free Trade Agreement (2025), in Article 10.5 of the chapter on Sustainable Development, underlines commitments towards inclusive economic growth and equal opportunities, contributing to a more favourable investment climate.[216]*

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[211] *Olga Demianiuk, Ivan Piekh, Yurii Kushnir, Transformation of international investment in the face of global challenges, April 2025.*
[212] *OECD, Investment Promotion and Facilitation (OECD Publishing, 2021) https://www.oecd.org/en/topics/investment-incentives-promotion-and-facilitation.html accessed 12 April 2025*
[213] *UNCTAD (2017), Investment Facilitation: A Review of Policy Practices.*
[214] *India - Uzbekistan BIT (2024) Article 10.*
[215] *Canada - Ukraine Modernized BIT (2023) Article 7.*
[216] *EFTA - Thailand FTA (2025) Article 10.5.*

- ***The EU - Kyrgyzstan Enhanced Partnership and Cooperation Agreement (2024), in Article 5, promotes cooperation in human rights and governance, implicitly supporting improved investment environments.***[217]
- ***The EU - Kenya Economic Partnership Agreement (2023) incorporates provisions on cooperation for development and economic growth in Article 83.***[218]

Beyond general encouragement, some agreements directly address the physical entry of personnel essential for investments. Provisions like the Article 10 India - Uzbekistan BIT (2024)„[219] ***Article 10 India - United Arab Emirates BIT (2024)„***[220] ***and Article 10 EU - Kenya EPA (2023),***[221] ***state that each party "****shall permit the entry and sojourn of natural persons of the other Party who are seeking to render services or undertake other activities in connection with an investment.***"**

Table 6

India - Uzbekistan BIT (2024)	***India - United Arab Emirates BIT (2024)***	***EU - Kenya EPA (2023)***
Article 10 Entry and Sojourn of Personnel ***Subject to its laws relating to the entry and sojourn of non-citizens and on the basis of reciprocity, each Party shall permit natural persons of the other Party employed by the investor or the locally established enterprise with the participation of the investors of the other Party to enter and remain in its territory for the purpose of engaging in activities connected with the investment.***	***Article 10 Entry and Sojourn of Personnel*** ***Subject to its Law relating to the entry and sojourn of non-citizens, each Party shall permit natural persons of the other Party employed by the Investor or the locally established Enterprise to enter and remain in its Territory for the purpose of engaging in activities connected with the Investment.***	***Article 10 – Entry and Sojourn of Personnel*** ***Each Party shall permit natural persons of the other Party employed by the Investor or the locally established Enterprise to enter and remain in its Territory for the purpose of engaging in activities connected with the Investment.***

Similarly, the Angola - China BIT (2023), Article 11,[222] ***and specify granting visas and permits to foreign workers, employees, and consultants. This addresses a crucial operational aspect for investors, recognizing that the movement of key personnel is vital for establishing and managing investments. The AfCFTA Protocol on Investment (2023), Article 7.2***

[217] *EU - Kyrgyzstan EPCA (2024) Article 5.*
[218] *EU - Kenya EPA (2023) Article 83.*
[219] *India - Uzbekistan BIT (2024), Article 10*
[220] *India - United Arab Emirates BIT (2024), Article 10*
[221] *EU - Kenya EPA (2023), Article 10*
[222] *Angola - China BIT (2023), Article 11*

(investment facilitation),[223] also encourages facilitating visas and permits for foreign workers.

Table 7

Angola - China BIT (2023)	AfCFTA Protocol on Investment (2023)
Article 11: **Entry of Personnel** ***Subject to its measures relating to public health and safety and national security applicable to the entry and sojourn, a Party shall permit:*** ***(a) natural person who have the nationality of the other Party and attempt to make, are making, or have made an investment in its territory to enter and remain temporarily in its territory;*** ***(b) managers, executives and specialists defined as senior employees of an enterprise of the other Party that has established a representative office, branch or subsidiary in its territory, temporarily moving as intra-corporate transferees, shall be permitted entry for an initial stay of three years;*** ***(c) managers, executives and specialists defined as senior employees of an enterprise of the other Party, being engaged in the foreign invested enterprises in its territory for conducting business, shall be granted a long-term stay permit as stipulated in the terms of contracts concerned or an initial stay of three years, whichever is shorter.***	**Article 7** **Investment Facilitation** ***1. State Parties shall, subject to their respective laws and regulations, facilitate investments that contribute to sustainable development.*** ***2. State Parties shall, subject to their respective laws and regulations, facilitate the granting of visas and permits to foreign workers, employees and consultants as designated by the investor.*** ***3. State Parties are encouraged to streamline investment administration procedures and requirements, establish mechanisms for business entry facilitation including setting up One Stop Shops, aftercare services and digitalisation of business facilitation procedures.*** ***4. State Parties are encouraged to establish a framework for cooperation and coordination between relevant and competent national regulatory authorities with a view to facilitating investment flows.***

2. Transparency and Accessibility of Information

IIAs include detailed provisions to ensure investors have timely and comprehensive access to relevant information. Agreements frequently mandate the prompt publication or public availability of laws, regulations, procedures, administrative rulings, and judicial decisions related to investment. The Burkina Faso - Canada BIT (2015), Article 12.2,[224] for instance, requires "*promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them****". Many treaties go further by encouraging advance***

[223] *AfCFTA Protocol on Investment (2023), Article 7.2.*
[224] *Burkina Faso - Canada BIT (2015), Article 12.2*

publication of proposed measures and providing a "*reasonable opportunity to comment****" for interested persons. This proactive transparency, seen in the Burkina Faso - Canada BIT (2015), Article 12.3,[225] allows for stakeholder input and helps shape regulations that are more predictable and investment-friendly. Some also include provisions for providing information upon request about measures that may impact covered investments. For instance, Slovakia - United Arab Emirates (2016), Article 14,[226] addresses the public availability of investment contracts, subject to redaction of confidential information. It states that "****Each Contracting Party shall as far as possible publish, or otherwise make publicly available, its laws and regulations of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party****." More modern agreements, like the ACP-EU Samoa Agreement (2023), emphasize on "****the effective utilisation of digital tools to facilitate investment****".[227] The Indonesia - Switzerland BIT (2022), Article 43, specifically promotes the "****dissemination of investment information, including investment rules, regulations, policies and procedures****" and mentions establishing mechanisms for "****assistance and advisory services to investors including facilitation of operating licences and permits****".*

3. Streamlining Administrative Processes and Institutional Support

The AfCFTA Protocol on Investment (2023), Article 7.3, encourages "*streamlin[ing] investment administration procedures and requirements, establish[ing] mechanisms for business entry facilitation including setting up One Stop Shops, aftercare services and digitalisation of business facilitation procedures****".[228] This holistic approach ensures support throughout the investment lifecycle.*

Modern IIAs are increasingly establishing institutional structures like Joint Committees, Facilitation Councils, and public–private dialogue platforms to operationalize both facilitation and promotion objectives effectively.[229] The India–Belarus BIT (2018)[230] sets up a Joint Committee tasked with monitoring implementation challenges faced by small and local investors. This institutional responsiveness marks a departure from earlier generations of IIAs that were rigidly focused on investor interests alone. Examples include the Japan - Zambia BIT (2025), Article 27,[231] New Zealand - United Arab Emirates BIT (2025),[232] Article 18, India - Uzbekistan BIT (2024), Article 38,[233] and the Australia - United Arab Emirates BIT (2024), Articles 19 & 20[234]. These bodies are typically tasked with reviewing implementation, identifying opportunities, holding consultations, removing barriers, assisting investors, and monitoring trade and investment relations.

Table 8

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[225] Ibid, Art 12.3
[226] Slovakia - United Arab Emirates (2016), Article 14
[227] ACP-EU Samoa Agreement (2023), Article 42
[228] AfCFTA Protocol on Investment (2023), Article 7.3
[229] India–Belarus BIT (2018), Chile–Indonesia BIT (2019)
[230] Ibid
[231] Japan - Zambia BIT (2025), Article 27
[232] New Zealand - United Arab Emirates BIT (2025)
[233] India - Uzbekistan BIT (2024), Article 38
[234] Australia - United Arab Emirates BIT (2024), Articles 19 & 20

Treaty	Provision
Japan - Zambia BIT (2025)	*Article 27* *Joint Committee* *1. The Contracting Parties shall establish a Joint Committee (hereinafter referred to as "the Committee") with a view to accomplishing the objectives of this Agreement. The functions of the Committee shall be: (a) to discuss and review the implementation and operation of this Agreement; (b) to exchange information on and to discuss investment-related matters within the scope of this Agreement which relate to improvement of investment environment; and (c) to discuss any other investment-related matters concerning this Agreement. 2. The Committee may, as necessary, make appropriate recommendations by consensus to the Contracting Parties for the more effective functioning or the attainment of the objectives of this Agreement. 3. The Committee shall be composed of representatives of the Contracting Parties. The Committee may, upon mutual consent of the Contracting Parties, invite representatives of relevant entities other than the Governments of the Contracting Parties with the necessary expertise relevant to the issues to be discussed, and hold joint meetings with the private sectors. 4. The Committee shall determine its own rules of procedure to carry out its functions. 5. The Committee may establish sub-committees and delegate specific tasks to such sub-committees. 6. The Committee shall meet upon the request of either Contracting Party.*

New Zealand - United Arab Emirates BIT (2025)	*ARTICLE 18* *Joint Committee on Investment* *1. The Parties hereby establish a Joint Committee on Investments (hereinafter referred to as "the Committee"), composed of representatives of each Party and headed by the United Arab Emirates Ministry of Finance and the Ministry of Investment and for New Zealand the Ministry of Foreign Affairs and Trade. 2. Unless otherwise agreed by the Parties, the Committee shall meet every two years or on the request of either Party at any time as requested. 3. The functions of the Committee may include the following: (a) a general review of this Agreement with a view to furthering its objectives; (b) to discuss and review the implementation and operation of this Agreement; (c) to review the non-conforming measures maintained, amended, or modified for the purpose of contributing to the reduction or elimination of such nonconforming measures; (d) to exchange information on and to discuss investment-related matters within the scope of this Agreement that relate to the improvement of the investment environment; (e) to review the possibility of further facilitation of investment between the Parties; (f) evaluation of the results obtained from the application of this Agreement and consideration of any other issues or matters related to the implementation of this Agreement, including dispute prevention, solving problems and obstacles, and dispute resolution before its progression to arbitration; and (g) to exchange information on both Parties' legislation, regulations and procedures regarding investment opportunities. 4. The Committee may, as necessary, make appropriate recommendations for the effective operation of this Agreement. 5. The Committee may, upon mutual agreement of the Parties, invite representatives of relevant non-government entities with the necessary expertise relevant to the function of the Committee and hold joint meetings with the private sector. 6. The Committee may establish sub-committees and delegate specific tasks to such sub-committees.*

India - Uzbekistan BIT (2024)	*Article 38* *Consultations and Periodic Review* *38.1 Either Party may request, and the other Party shall promptly agree to, consultations in good faith on any issue regarding the interpretation, application, implementation, execution or any other matter including, but not limited to: (i) reviewing the implementation of this Treaty; (ii) reviewing the interpretation or application of this Treaty; (iii) exchanging legal information; and (iv) subject to Article 32, addressing disputes arising under Chapter IV of this Treaty or any other disputes arising out of investment. Further to consultations under this Article, the Parties may take any action as they may jointly decide, including making and adopting rules supplementing the applicable arbitral rules under Chapter IV or Chapter V of this Treaty, issuing binding interpretations of this Treaty, and adopting joint measures in order to improve the effectiveness of this Treaty. 38.3 The Parties shall meet every five (5) years after the entry into force of this Treaty to consult and review the operation and effectiveness of this Treaty*
Australia - United Arab Emirates BIT (2024)	*Article 19* *Council on Investment* *1. The Parties hereby establish an Australia-United Arab Emirates Council on Investment ("the Council"). 2. The Council will promote and enhance economic cooperation between the Parties on investment including in relation to any investment priorities as may be identified by the Parties in accordance with the role and objectives of the Council set out in Article 20 (Role and Objectives of the Council). 3. The Council shall be convened at Ministerial or senior official level within 12 months of entry into force of this Agreement and thereafter at least once every two years. In principle, the Council shall be convened alternately in Australia and the UAE, unless agreed otherwise by the Parties. 4. When convened, the Council shall be co-chaired: (a) for Australia, jointly by the Treasurer and Minister for Trade and Tourism or their authorised representatives; and (b) for the UAE, jointly by the Minister of Investment and the Minister of Finance or their authorised representatives*

The Türkiye - United Arab Emirates CEPA (2023), Article 10.9, establishes a "*Subcommittee for Trade- Investment Facilitation Matters****" with objectives including promoting cooperation, monitoring relations, identifying opportunities, and removing impediments.[235] Such institutional arrangements provide a structured platform for ongoing dialogue and problem-solving, which is crucial for dynamic investment relationships.***

The EU–Vietnam Investment Protection Agreement (2020)[236] incorporates Annex 4, which outlines a bilateral cooperation framework for investment facilitation. This framework emphasizes the use of digital platforms and online portals to improve transparency and access. In countries where rural or under-resourced populations face significant information asymmetries, such digital integration can play a vital role in empowering non-traditional investors. The Brazil–India BIT (2020)[237] includes a provision under Article 6 that requires the establishment of single-window clearance mechanisms. It also obligates states to ensure the timely and transparent dissemination of regulatory information. These measures have transformative potential, particularly for small enterprises and local actors who often struggle with navigating complex bureaucratic systems.

4. Broadening Cooperation and Development Objectives

Investment facilitation and cooperation provisions within dedicated IIAs increasingly extend to broader economic development goals, recognizing investment as a powerful tool for sustainable growth. Significant international economic agreements like the EFTA - Thailand FTA (2025), Article 6.13, explicitly recognize "*the importance of promoting cross-border investment and technology flows… identifying investment opportunities****".[238] The EFTA - India TEPA (2024), Article 7.1, highlights "****the importance of promoting and facilitating foreign direct investment as a means for fostering economic growth, innovation and green transition****" and aims to "****increase foreign direct investment from investors of the EFTA States into India by 50 billion (US dollars) within 10 years from the entry into force of this Agreement and an additional 50 billion (US dollars) in the succeeding 5 years****".[239]***

Some treaties encourage specific developmental outcomes, such as the Burkina Faso - Canada BIT (2015), Article 3, which encourages "*the creation of jobs in Burkina Faso through Canadian investments... as well as the development of the skills related to these jobs****".[240] The AfCFTA Protocol on Investment (2023), Article 7.1, explicitly states that parties shall "****facilitate investments that contribute to sustainable development****".[241] Furthermore, broader partnership agreements like the ACP***

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[235] Türkiye - United Arab Emirates CEPA (2023), Article 10.9
[236] Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part (signed 30 June 2019) Annex 4 <https://edit.wti.org/document/show/66f74a5f-5c00-455d-97f5-709f837d2bb4> accessed 15 April 2025
[237] Agreement between the Federative Republic of Brazil and the Republic of India on Investment Cooperation and Facilitation (signed 25 January 2020) art 6 <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/4910/brazil---india-bit-2020-> accessed 15 April 2025
[238] EFTA - Thailand FTA (2025), Article 6.13
[239] EFTA - India TEPA (2024), Article 7.1
[240] Burkina Faso - Canada BIT (2015), Article 3
[241] AfCFTA Protocol on Investment (2023), Article 7.1

- EU Samoa Agreement (2023), emphasize leveraging "*digital tools to facilitate investment****",[242] and support for "****micro, small and medium-sized enterprises (MSMEs) in the context of domestic investment mobilisation****".[243] The IPEF Clean Economy Agreement (2024), Articles 17 and 18, focuses on "****mobilizing investment and sustainable finance, including blended finance, public-private partnerships****" and "****technical cooperation, project development, and capacity building****".[244] This signifies a move towards actively structuring investment to achieve specific developmental and environmental objectives. The Georgia - United Arab Emirates CEPA (2023), Article 14.4, details extensive economic cooperation, including joint organization of conferences, exchange programs, and knowledge-sharing platforms to foster government development and modernization.[245] Such provisions reflect a holistic understanding of investment as a driver of wider economic and social progress. Another example is the Morocco–Nigeria BIT (2016)[246], where Article 2 commits both parties to fostering a favourable environment for investment with explicit references to inclusive development. Although it does not directly mention indigenous or marginalized populations, its emphasis on equitable economic participation allows for an interpretation that aligns with broader concerns about inclusion. Here, facilitation extends beyond simplification to encompass inclusion as well.The Chile–Indonesia BIT (2019)[247] introduces cooperation mechanisms that enable parties to exchange best practices in sustainable and inclusive investment governance reflecting a shift toward institutional learning and policy experimentation.*

While facilitation aims to simplify access, promotion provisions often serve a normative purpose by directing investments into sectors critical for national development.[248] Provisions encouraging investments in health care, education, infrastructure, and sustainable technologies align investment treaties with SDGs and other public policy objectives. The Brazil–Malawi BIT (2015)[249] offers a compelling example by going beyond conventional language to actively support technical cooperation and investments in infrastructure and human capital. This approach is especially meaningful for marginalized communities that have historically been excluded from private investment initiatives and state support. A subset of agreements includes technical cooperation clauses aimed at enhancing institutional and regulatory capacity. These often include training, workshops, and exchange programs. For instance, Australia–Singapore GEA (2022), Article 9[250] recognizes that "*trade and*

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[242] *ACP - EU Samoa Agreement (2023), Article 42(2)*
[243] *ACP - EU Samoa Agreement (2023), Article 41*
[244] *IPEF Clean Economy Agreement (2024), Articles 17 and 18*
[245] *Georgia - United Arab Emirates CEPA (2023), Article 14.4*
[246] *Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria on the Reciprocal Promotion and Protection of Investments (signed 3 December 2016) art 2 <https://edit.wti.org/document/show/bde2bcf4-e20b-4d05-a3f1-5b9eb86d3b3b> accessed 15 April 2025*
[247] *Ibid*
[248] *Rodrigo Polanco, Axel Berger and Manjiao Chi, 2 - Investment Facilitation Provisions in International Investment Agreements and the Multilateral Framework on Investment Facilitation for Development from Part I - Investment Facilitation Rules in International and Domestic Law, Published online by Cambridge University Press: 13 March 2025*
[249] *Agreement between the Federative Republic of Brazil and the Republic of Malawi on Investment Cooperation and Facilitation (signed 25 June 2015) <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/3663/brazil---malawi-bit-2015-> accessed 15 April 2025*
[250] *Australia–Singapore GEA (2022), Article 9*

investment are central to a green economy" **and cooperate to** "*work together across relevant government agencies to exchange information, experience and best practices that advances our knowledge and ability to equip workers with in-demand skills and capabilities to effectively participate in the green economy*".

The Brazil–Guyana BIT (2018)[251] adds further depth by including commitments to promote investments in targeted sectors like renewable energy and public health. These sector-specific clauses are particularly significant for indigenous populations and rural areas disproportionately affected by underdevelopment and ecological degradation. By aligning promotion efforts with national development plans, investment treaties can function as redistributive tools that address systemic inequalities.

Another treaty reflecting this approach is the India–UAE Comprehensive Economic Partnership Agreement (2022)[252], which promotes SMEs and startup ecosystems through institutional support frameworks. By focusing on micro-enterprises many led by women or located in underserved regions this agreement underscores the potential of investment treaties as instruments of social empowerment rather than mere facilitators of capital mobility.

A comparative analysis reveals several noteworthy trends:

i. ***Quantified FDI and Job Creation Targets***
ii. ***Aftercare Services and One-Stop Shops***
iii. ***Green Economy Investment Platforms***
iv. ***Digital Tools for Investment Facilitation***
v. ***Dedicated Subcommittees or Investment Focal Points***
vi. ***Institutionalized Private Sector Consultation***

CORPORATE SOCIAL RESPONSIBILITIES

In recent years, there has been an increasing acknowledgment of the need for responsible investment practices that align with SDGs. This has catalysed the gradual incorporation of CSR into IIAs. CSR represents a commitment by investors to conduct their business operations in a manner that is ethical, socially conscious, and environmentally sustainable.[253]

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[251] Agreement between the Federative Republic of Brazil and the Cooperative Republic of Guyana on Investment Cooperation and Facilitation (signed 13 December 2018) <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateralinvestment-treaties/3864/brazil---guyana-bit-2018-> accessed 15 April 2025

[252] Comprehensive Economic Partnership Agreement between the Government of the Republic of India and the Government of the United Arab Emirates (signed 18 February 2022, entered into force 1 May 2022) <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/5006/india---united-arab-emirates-cepa-2022-> accessed 15 April 2025

[253] Irana Boki, The role of investment laws in strengthening corporate social responsibility: Ethiopia's investment regime in focus, J. Law, Policy Glob. 1000 (Jun. 2020) 1–11.

Nature and Evolution of CSR in IIAs

Nature and Evolution of CSR in IIAs Corporate Social Responsibility in IIAs has evolved from peripheral mentions in preambles and voluntary guidelines to a more central and structured presence within the operative clauses of treaties. Initially, CSR appeared in non-binding language, often framed as aspirational conduct with minimal legal consequence. Treaties would typically "encourage" investors to act responsibly, leaving ample discretion in terms of implementation. However, as host states and civil society actors began demanding greater accountability from multinational enterprises, the treaty practice began to reflect these normative shifts. Increasingly, states are incorporating references to internationally recognized CSR standards, such as the OECD Guidelines, UN Guiding Principles on Business and Human Rights (UNGPs), and the ILO Tripartite Declaration.[254] The incorporation of these instruments serves to contextualize the expectations from investors and create interpretive benchmarks. Additionally, the evolution of CSR in IIAs is characterized by the gradual movement towards quasi-obligatory language, enhanced specificity in expectations, and procedural obligations such as due diligence requirements. This trend marks a shift from soft encouragement to the formalization of responsible investor conduct within treaty law.

For instance, the Canada - Guinea BIT (2015), Article 16[255], and the Burkina Faso - Canada BIT (2015), Article 16,[256] state that "*Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies****." Similarly, the Argentina-Japan BIT (2018), Article 17,[257] and the Argentina-United Arab Emirates BIT (2022), Article 21,[258] affirm the importance of encouraging enterprises to "****voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility****".*

Table 9

Canada - Guinea BIT (2015)	Burkina Faso - Canada BIT (2015)	Argentina-Japan BIT (2018)	Argentina-United Arab Emirates BIT (2022)

[254] S. Bijlmakers, The UN Guiding Principles on Business and Human Rights, Corp. Soc. Responsib. Hum. Rights, Law, 2018, pp. 45–63, The UN Guiding Principles on business and human rights | 3 | Principle, accessed, 08th April 2025.
[255] Canada - Guinea BIT (2015), Article 16
[256] Burkina Faso - Canada BIT (2015), Article 16
[257] Argentina-Japan BIT (2018), Article 17
[258] Argentina-United Arab Emirates BIT (2022), Article 21

Article 16 Corporate Social Responsibility	Article 16 Corporate Social Responsibility	Article 17 Corporate Social Responsibility	Article 17 Corporate Social Responsibility
Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption.	***Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption.***	***The Contracting Parties reaffirm the importance that each of them encourages enterprises operating within its Area or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Contracting Party.***	***The Parties, being mindful of intonationally-recognized corporate social responsibility standards, guidelines and principles, including the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, shall endeavour to encourage enterprises doing business in its territory or subject to its jurisdiction to voluntarily include said standards, guidelines and principles.*** .

However, as host states and civil society demanded greater accountability, treaty practices began to reflect these shifts. Increasingly, IIAs incorporate explicit references to internationally recognized CSR standards, such as the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights (UNGPs), and the ILO Tripartite Declaration. For example, the Netherland UAE BIT, Article 2.3,[259] promotes the application of the OECD Guidelines. The Dutch Model BIT, Article 7, explicitly states that "*Investors and their investments shall comply with domestic laws and regulations of the host state, including laws and regulations on human rights, environmental protection and labor laws****" and refers to the UNGPs and OECD Guidelines.[260] It states***

[259] ***Netherland UAE BIT, Article 2.3***
[260] ***Dutch Model BIT, Article 7***

> ***"The Contracting Parties reaffirm the importance of each Contracting Party to encourage investors operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party, such as the OECD Guidelines for Multinational Enterprises, the United Nations Guiding Principles on Business and Human Rights, and the Recommendation CM/REC(2016) of the Committee of Ministers to Member States on human rights and business."***[261]

The Morocco-Nigeria BIT, Article 24, highlights the ILO Tripartite Declaration.[262] ***This incorporation serves to contextualize expectations and establish interpretive benchmarks for investor conduct. The evolution is further characterized by a move towards quasi-obligatory language and enhanced specificity. While "encourage" remains common, some agreements, notably the Brazilian CIFAs like the Brazil-Malawi CIFA (2015), Article 9, state that "****Investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the Host Party and the local community... based on the voluntary principles and standards set out in this Article.****"***[263] ***This marks a shift from mere encouragement to a formalization of responsible investor conduct within treaty law. The India-Brazil ICFT (2020), Article 12, also uses similar language, stating investors "****shall endeavour to comply with the following voluntary principles and standards****".***[264]

Table 10

Treaty	Provision

[261] ***Ibid at Art 7(2)***
[262] ***Morocco-Nigeria BIT, Article 24***
[263] ***Brazil-Malawi CIFA (2015), Article 9***
[264] ***India-Brazil ICFT (2020), Article 12***

Brazil - Malawi BIT (2015)	***Article 9*** ***Corporate Social Responsibility*** ***1. Investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the Host Party and the local community, through the adoption of a high degree of socially responsible practices, based on the voluntary principles and standards set out in this Article.*** ***2. The investors and their investment shall develop their best efforts to comply with the following voluntary principles and standards for a responsible business conduct and consistent with the laws adopted by the Host Party receiving the investment:*** ***a) Stimulate the economic, social and environmental progress, aiming at achieving sustainable development;*** ***b) Respect the human rights of those involved in the companies' activities, consistent with the international obligations and commitments of the Host*** ***Party;*** ***c) Encourage the strengthening of local capacities building through close cooperation with the local community;*** ***d) Encourage the development of human capital, especially by creating employment opportunities and facilitating access of workers to professional training;*** ***e) Refrain from seeking or accepting exemptions that are not established in the legislation of the*** ***f)Host Party, relating to environment, health, security, work or financial incentives, or other issues;*** ***f) Support and maintain good corporate governance principles, and develop and apply good practices of corporate governance;*** ***g) Develop and apply effective self-regulatory practices and management systems that foster a relationship of mutual trust between the companies and the society in which the operations are conducted;*** ***h) Promote the knowledge of workers about the corporate policy, through*** ***appropriate dissemination of this policy, including programs for professional training;*** ***i) Refrain from discriminatory or disciplinary action against the employees who submit grave reports to the board or, whenever appropriate, to the competent public authorities, about practices that violate the law or violate the standards of corporate governance that the company is subject to*** ***j) Encourage, whenever possible, the business associates, including service*** ***providers and outsources, to apply the principles of business conduct consistent with the principles provided in this Article; and*** ***k) Respect local political activities and processes.***

India-Brazil ICFT (2020)	***Article 12*** ***Corporate Social Responsibility*** ***12.1 Investors and their investments shall strive to achieve the highest possible level of contribution to the sustainable development of the Host State and the local community, through the adoption of a high degree of socially responsible practices, based on the voluntary principles and standards set out in this Article and internal policies, such as statements of principle that have been endorsed or are supported by the Parties.*** ***12.2 The investors and their investments shall endeavour to comply with the following voluntary principles and standards for a responsible business conduct and consistent with the laws adopted by the Host State:*** ***a) contribute to the economic, social and environmental progress, aiming at achieving sustainable development;*** ***b) respect the internationally recognized human rights of those involved in the companies' activities;*** ***c) encourage local capacity building through close cooperation with the local community;*** ***d) encourage the creation of human capital, especially by creating employment opportunities and offering professional training to workers;*** ***e) refrain from seeking or accepting exemptions that are not established in the legal or regulatory framework relating to human rights, environment, health, security, work, tax system, financial incentives, or other issues;*** ***f) support and advocate for good corporate governance principles, and develop and apply good corporate governance practices, including anti-corruption measures;*** ***g) develop and implement effective self-regulatory practices and management systems that foster a relationship of mutual trust between the companies and the societies in which their operations are conducted;*** ***h) promote the knowledge of _and the adherence, by workers, to the corporate policy, through appropriate dissemination of this policy, including professional training programs;*** ***i) refrain from discriminatory or disciplinary action against employees who submit grave reports to the board or, whenever appropriate, to the competent public authorities, about practices that violate the law or corporate policy;*** ***j) encourage, whenever possible, business associates, including service providers and outsources, to apply the principles of business conduct consistent with the principles provided for in this Article; and*** ***k) refrain from any undue interference in local political activities.***

Brazil - United Arab Emirates BIT (2019)	***Article 15*** ***Corporate Social Responsibility*** ***1. Investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the Host State and the local community, through the adoption of a high degree of socially responsible practices, based on the voluntary principles, and standards set out in the OECD Guidelines for Multinational Enterprises.*** ***2. The investors and their investment shall endeavor to comply with the following voluntary principle~ and standards for a responsible business conduct and consistent with the laws adopted by the Host State receiving the investment:*** ***a) Contribute to the economic, social and environmental progress, aiming at achieving sustainable development;*** ***b) Respect the internationally recognized human rights of those involved in the companies' activities;*** ***c) Encourage local capacity building through close cooperation with the local community;*** ***d) Encourage the creation of human capital, especially by creating employment opportunities and offering professional training to workers;*** ***e) Refrain from seeking or accepting exemptions that are not established in the legal or regulatory framework relating to human rights, environment, health, security, work, tax system, financial incentives, or other issues;*** ***f) Support and advocate for good corporate governance principles, and develop and apply good practices of corporate governance;*** ***g) Develop and implement effective self-regulatory practices and management systems that foster a relationship of mutual trust between the companies and the societies in which its operations are conducted;*** ***h) Promote the knowledge of and the adherence to, by workers, the corporate policy, through appropriate dissemination of this policy, including programs for professional training;*** ***i) Refrain from discriminatory or disciplinary action against employees who submit grave reports to the board or, whenever appropriate, to the competent public authorities, about practices that violate the law or corporate policy;*** ***j) Encourage, whenever possible, business associates, including service providers ' and outsources, to apply the principles of business conduct consistent with the principles provided for in this Article; and*** ***k) Refrain from any undue interference in local political activities***

Brazil-Mozambique CIFA (2015)	***Article 10*** ***Corporate Social Responsibility*** ***The investors and their investments shall strive to carry out the highest level possible of contributions to the sustainable development of the host State and the local community, by means of the adoption of a high degree of socially responsible practices, taking as a reference the voluntary principles and standards defined in Annex II – "Corporate Social Responsibility."***
Brazil-Angola CIFA (2015)	***Article 10*** ***Corporate Social Responsibility*** ***The investors and their investments shall strive to carry out the highest level possible of contributions to the sustainable development of the host State and the local community, by means of the adoption of a high degree of socially responsible practices, taking as a reference the voluntary principles and standards defined in Annex II – "Corporate Social Responsibility."***

Trends and Patterns

CSR provisions are now more systematically integrated into treaty texts, particularly in model BITs and recent bilateral agreements. A common pattern is the use of preambular language that affirms the shared commitment of the contracting parties to sustainable development, followed by operative clauses that encourage or mandate CSR compliance. For example, the preambles of the **Belarus-Hungary BIT (2019)**[265] ***and*** **Hungary - Kyrgyzstan BIT (2020)**[266] ***acknowledge the importance of "****…the protection of health, safety and the environment, the promotion and protection of internationally and domestically recognised human rights, labour rights, and internationally recognised standards of corporate social responsibility****".***

Treaty	**Provision**
Hungary-United Arab Emirates BIT	***Recognizing that these objectives should be achieved in a manner consistent with the promotion and protection of public health, environment, security, safety, and sustainable development as well as with the promotion of internationally recognized principles of corporate social responsibility***

[265] ***Belarus-Hungary BIT (2019)***
[266] ***Hungary - Kyrgyzstan BIT (2020)***

Hungary-San Marino BIT	***Seeking to ensure that investment is consistent with the protection of health, safety and the environment, the promotion and protection of internationally and domestically recognised human rights, labour rights, and internationally recognised standards of corporate social responsibility***
Hungary-Oman BIT	***Recognizing that these objectives should be achieved in a manner consistent with the promotion and protection of public health, environment, security, safety, and sustainable development as well as with the promotion of internationally recognized labour rights and principles of corporate social responsibility,***
Hungary-Turkmenistan BIT.	***Seeking to ensure that investment is consistent with the protection of health, safety and the environment, the promotion and protection of internationally and domestically recognised human rights, labour rights, and internationally recognised standards of corporate social responsibility***
Austria-Nigeria BIT	***EXPRESSING their belief that responsible corporate behaviour can contribute to mutual confidence between enterprises and host countries;***
Lithuania-Turkey BIT	***Recognising that these objectives should be achieved in a manner consistent with the protection of public health, environment, security, safety, and sustainable development as well as with the promotion of internationally recognised labour rights and principles of corporate social responsibility***

Furthermore, treaties increasingly reference international CSR standards, lending clarity and coherence to the obligations and expectations placed upon investors. These provisions frequently address a wide range of issues:

a. Labour Rights

Many agreements emphasize the importance of internationally recognized labour rights. The Morocco-Nigeria BIT, Article 18, goes further, mandating investors "*apply the ILO Tripartite Declaration on Multinational Investments and Social Policy as well as specific or sectorial standards of responsible practice where these exist****".[267] The Angola - EU SIFA (2023), Article 34, also refers to the ILO Tripartite Declaration on Multinational Enterprises and Social Policy, albeit in this case, the obligation is put on the Parties to "promote the uptake by enterprises and investors of corporate social responsibility or responsible business practices with a view to contributing to sustainable development and responsible investment".[268] Similar is the case with Serbia - Türkiye BIT (2022).[269]***

[267] ***Morocco-Nigeria BIT, Article 18***
[268] ***Angola - EU SIFA (2023), Article 34***
[269] ***Serbia - Türkiye BIT (2022)***

b. Environmental Protection and Sustainable Development

The commitment to environmental protection and contributions to sustainable development are pervasive. The Netherland UAE BIT, Article 2.3,[270] recognizes the right of each Party to establish its own level of domestic environmental protection and its own sustainable development policy and priorities, while also promoting the application of OECD Guidelines. The Morocco-Nigeria BIT, Article 18, requires investments to "maintain an environmental management system."[271] The AfCFTA Protocol on Investment (2023), Article 38, explicitly links CSR to "sustainable development" and the UN Sustainable Development Goals.[272] Moreover, Brazil-Mozambique and Brazil-Angola CIFAs also mandate best effort towards *environmental progress.*

Brazil-Mozambique CIFA (2015)	**Brazil-Angola CIFA (2015)**
Incentivizing economic, social and environmental progress with the aim of achieving sustainable development;	***Respecting the protection of the environment and sustainable development and encouraging the use of technologies that do not harm the environment, in accordance with the national policies of the Parties, in a way that incentivizes economic, social and environmental progress;***

c. Human Rights

The emphasis on respecting and promoting human rights is growing. The Dutch Model BIT, Article 7, states that "*Investors and their investments shall comply with domestic laws and regulations of the host state, including laws and regulations on human rights".[273]* ***Similar is the case with India Model BIT[274] and Norway Model BIT[275]. The Australia - United Arab Emirates BIT (2024), Article 14, and the Indonesia - Korea, Republic of CEPA (2020), Article 7.18, encourage enterprises to incorporate the UN Guiding Principles on Business and Human Rights. The Morocco-Nigeria[276] BIT obligates the investors***

[270] Netherlands Model Bilateral Investment Treaty (2019) art 2.3.
[271] Morocco-Nigeria BIT, Article 18
[272] AfCFTA Protocol on Investment (2023), Article 38
[273] Dutch Model BIT, Article 7
[274] Article 12: Corporate Social Responsibility; Investors and their enterprises operating within its territory of each Party shall endeavour to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles may address issues such as labour, the environment, human rights, community relations and anti-corruption.
[275] Article 31. CORPORATE SOCIAL RESPONSIBILITY
The Parties agree to encourage investors to conduct their investment activities in compliance with the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and to participate in the United Nations Global Compact.
[276] Morocco-Nigeria BIT, Article 18

and investments to "*uphold human rights in the host state****". Other IIAs such as Australia UAE BIT[277], India Uzbekistan BIT[278], India-UAE BIT[279], Angola EU SIFA[280], Hungary-Turkmenistan BIT[281], Serbia-Turkey BIT[282],* *Brazil - India Investment Cooperation and Facilitation Treaty (2020)[283], Brazil-UAE BIT[284], Belarus-India BIT[285], Brazil-Suriname BIT[286], Brazil Ethiopia BIT[287], Canada magnolia BIT[288], Brazil - Malawi BIT (2015)[289], Canada Guinea BIT[290], Burkina Faso - Canada BIT (2015)[291]* ***also emphasise on respecting human rights.***

d. Anti-corruption Measures

Anti-corruption is a consistent theme within CSR provisions. The **Canada-Burkina Faso BIT (2015), Article 16,***[292]* ***and*** **Canada-Mali BIT (2015), Article 15,***[293]* ***both state that CSR principles address "anti-corruption." The*** **India Model BIT, Article 12,** ***also includes anti-corruption as a principle for investors to endeavour to comply with.***[294]

e. Community Relations and Local Development

There's an increasing focus on the positive impact of investments on local communities. The **Brazil-Malawi CIFA (2015), Article 9,** ***encourages investors to foster "****close cooperation with the local community****" and "****make the maximum feasible contributions to the sustainable development of the Host Party and the local community****."***[295] ***The*** **AfCFTA Protocol on Investment (2023), Article 38,** ***expands on this by including "****strengthening of local capacities through close cooperation with the local community****" and "****foster[ing] the benefit sharing arising from an investment with the local communities concerned****."***[296]

f. Good Corporate Governance and Transparency

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[277] ***Australia UAE BIT, Art 14***
[278] ***India Uzbekistan BIT, Article 13,***
[279] ***India-UAE BIT, Article 13,***
[280] ***Angola EU SIFA, Article 34,***
[281] ***Hungary-Turkmenistan BIT, Preamble***
[282] ***Serbia-Turkey BIT, Article 11***
[283] ***Brazil - India Investment Cooperation and Facilitation Treaty (2020), Article 12***
[284] ***Brazil-UAE BIT, Article 15***
[285] *Belarus-India BIT,* ***Article 12***
[286] *Brazil-Suriname BIT,* ***Article 15***
[287] *Brazil Ethiopia BIT,* ***Article 14***
[288] *Canada magnolia BIT,* ***Article 14***
[289] *Brazil - Malawi BIT (2015),* ***Article 9***
[290] *Canada - Guinea BIT (2015),* ***Article 16***
[291] ***Canada-Burkina Faso BIT (2015), Article 16***
[292] ***Canada-Burkina Faso BIT (2015), Article 16***
[293] ***Canada-Mali BIT (2015), Article 15***
[294] ***India Model BIT, Article 12***
[295] ***Brazil-Malawi CIFA (2015), Article 9***
[296] ***AfCFTA Protocol on Investment (2023), Article 38***

Several agreements highlight the importance of good corporate governance. The **Lithuania-Turkey BIT, Article 17**, ***advises investors and investments to "****apply national, and internationally accepted, standards of corporate governance for the sector involved, in particular for transparency and accounting practices.****"***[297] ***The*** **SADC Model BIT, Article 16**, ***details comprehensive requirements for corporate governance, emphasizing "****transparency and in the application of internationally accepted accounting standards.****"***[298]

g. Gender Equality and Inclusiveness

A more recent trend, as seen in the **AfCFTA Protocol on Investment (2023), Article 38**, ***is the inclusion of principles to "****promote gender equality and inclusiveness in their activities****" reflecting evolving global priorities.***[299]

Notably, treaties such as the **Morocco-Nigeria BIT, Article 18**, ***and the*** **SADC Model BIT**, ***move beyond mere encouragement to assign affirmative responsibilities to investors, thereby redefining the traditional asymmetry of rights and obligations.***

The Morocco-Nigeria BIT reads as follows:[300]

Article 24. Corporate Social Responsibility

1. *In addition to the obligation to comply with all applicable laws and regulations of the Host State and the obligations in this Agreement, and in accordance with the size, capacities and nature of an investments, and taking into account the development plans and priorities of the Host State and the Sustainable Development Goals of the United Nations, investors and their investments should strive to make the maximum feasible contributions to the sustainable development of the Host State and local community through high levels of socially responsible practices.*

2. Investors should apply the ILO Tripartite Declaration on Multinational Investments and Social Policy as well as specific or sectorial standards of responsible practice where these exist.

3. Where standards of corporate social responsibility increase, investors should strive to apply and achieve the higher-level standards.

Interestingly, the SADC Model BIT mentions that the "*…Investments shall meet or exceed national and internationally accepted standards of corporate governance for the sector involved".*[301] ***Moreover, in case the Investor or Investment breaches the obligations set out in the agreement,*** *"the Host State, including political subdivisions and officials thereof, private persons, or private organizations, may initiate a civil action in domestic courts".*[302]

This shift is reflective of a growing consensus that foreign investment must not only avoid harm but also actively contribute to the host country's development goals. The **Brazilian**

[297] ***Lithuania-Turkey BIT, Article 17***
[298] ***SADC Model BIT, Article 16***
[299] ***AfCFTA Protocol on Investment (2023), Article 38***
[300] ***Morocco-Nigeria BIT, Article 18***
[301] ***SADC Model BIT, Article 16***
[302] ***Ibid, Article 19.3***

CIFAs ***(e.g.,*** **Brazil-Mozambique CIFA, Article 9**[303]***;*** **Brazil-Angola CIFA, Article 9**[304]***)*** ***further exemplify this by outlining detailed "voluntary principles and standards" that investors "shall strive to achieve," representing a comprehensive articulation of voluntary CSR. As such, CSR provisions are progressively shaping the normative foundations of modern IIAs, reflecting a move towards a more holistic and impactful approach to responsible investment.***

Table 11: *Enforcement & Legal Status of CSR*

Approach	Examples	Comment
Soft Law/Voluntary	**India Model BIT, Argentina BITs, Brazil CIFA**	**Most common-safe space for policy experimentation.**
Quasi-binding (influence on remedies)	**Dutch Model BIT (Art. 23)**	**CSR non-compliance may reduce compensation-elevates CSR from "voluntary" to "relevant in arbitration".**
Hard law/Post-establishment duties	**Morocco–Nigeria BIT**	**CSR embedded as mandatory conduct standard (environmental certification, human rights, labor standards).**

Imperatives for Treaty Design

To operationalize CSR effectively, future treaty design must address these gaps through strategic reforms. *Firstly,* ***the language of CSR provisions should reflect a stronger normative expectation of compliance. Phrases like "shall endeavour to" or "shall strive to," as seen in the Brazil CIFAs, strike a balance between flexibility and normative guidance.***[305] ***The provisions guide the actions of the investors and the Parties while also giving the parties flexibility in regulatory space.*** *Secondly,* ***treaties should explicitly incorporate references to international CSR instruments, anchoring investor obligations in widely accepted standards.*** *Thirdly,* ***institutionalizing procedural obligations, such as mandatory environmental and human rights due diligence, periodic reporting, and stakeholder consultations, would transform CSR from aspirational commitments into actionable practices.*** *Fourth,* ***treaty design can benefit from introducing legal linkages between CSR compliance and procedural aspects of ISDS, such as admissibility filters or counterclaims by host states.***[306] ***While not a direct ISDS claim, the*** **Dutch Model BIT, Article 23,** ***states that "****a Tribunal, in deciding on the amount of compensation,*

[303] *Brazil-Mozambique CIFA*
[304] *Brazil-Angola CIFA, Article 9*
[305] *F. Quairel, M. Capron, Le couplage « responsabilit´ e sociale des entreprises » et « d´ eveloppement durable » : mise en perspective, enjeux et limites, Rev. Française Socio-´ Economie 11 (1) (2013) 125.*
[306] *V. Kube, E.-U. Petersmann, Human rights law in international investment arbitration, SSRN Electron. J. (2016) 1–28. LAW 2016/0.*

is expected to take into account noncompliance by the investor with its commitments under the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises".[307] ***The* SADC Model BIT, Article 19.3*, also allows for*** *"civil action in domestic courts against the Investor or Investment for damages arising from an alleged breach of the obligations set out in this Agreement".*[308] ***Finally, treaties should recognize the role of home states in encouraging and regulating the overseas conduct of their investors, potentially through reporting requirements and extraterritorial legislation.***[309]

Table 12: *Key institutional and procedural innovations concerning CSR in IIAs*

Category of Innovation	Specific Innovation	Brief Description
Joint Committees with CSR Mandates	Joint Committee	Establishes a Joint Committee tasked with discussing issues related to CSR, sustainable development, public health, anti-corruption, employment, and human rights.
Provisions for Domestic Civil Actions for CSR Breaches	Domestic Civil Action	Permits the Host State, private persons, or organizations to initiate civil action in domestic courts for damages arising from an alleged breach of obligations in the agreement.
Exclusion from ISDS Claims	Exclusion from ISDS	Explicitly states that an investor cannot make a claim under ISDS for a breach of Corporate Social Responsibility Standards.
Due Diligence Frameworks	Encouragement of Due Diligence	Encourages responsible business conduct, including through environmental and social due diligence procedures.

CONCLUSION

Drawing on the detailed analysis presented, this study highlights critical insights for reforming International Investment Agreements (IIAs) to address the complex realities and

[307] *Dutch Model BIT, Article 23.*
[308] *SADC Model BIT, Article 19.3*
[309] *I. Berger-Walliser, Inara Gerlinde, Redefining corporate social responsibility in an era of globalization and regulatory hardening, Am. Bus. Law J. 55 (1) (2018) 167–218*

priorities of the 21st century. While considerable progress has been made in incorporating themes such as Corporate Social Responsibility (CSR), Investment Facilitation and Promotion, Indigenous rights, gender equality, and dispute resolution innovations, these developments remain uneven and often lack binding force. The analysis underscores that the mere inclusion of these elements in treaty texts without well-designed enforcement mechanisms significantly limits their real-world impact.

A key takeaway is the essential need for IIAs to move beyond aspirational language and soft commitments toward concrete, enforceable provisions that clearly define obligations of States and investors alike. For Indigenous communities, this means embedding robust protections that guarantee meaningful participation, respect for traditional knowledge, and the principle of free, prior, and informed consent elements currently underrepresented or operationally weak in existing treaties. Similarly, advancing gender equality requires integrating measurable standards and establishing monitoring mechanisms that target genuinely inclusive economic participation rather than symbolic acknowledgment.

The evolving experience with dispute prevention and mitigation reflects a promising shift from adversarial arbitration towards collaborative, institutionally supported frameworks such as investment ombudsman offices, structured mediation, and joint committees. These innovations demonstrate how proactive governance can reduce costly disputes and foster regulatory certainty, benefitting both host States and investors. However, their implementation remains geographically uneven and often excludes social dimensions like gender and Indigenous rights from effective dispute resolution, an area demanding further reform.

Investment facilitation and promotion provisions have expanded IIAs' scope by emphasizing regulatory transparency, streamlined procedures, and alignment with Sustainable Development Goals (SDGs). Yet, as the analysis shows, these provisions frequently fail to embed social inclusivity, especially for marginalized groups, or to harness emerging opportunities in the digital economy. Moreover, the rapid pace of digital transformation exposes a governance gap that IIAs must urgently address to prevent digital inequality and ensure equitable access and cybersecurity protections.

CSR provisions, evolving from non-binding exhortations to more defined obligations, remain at the frontier of treaty innovation but require stronger integration with dispute settlement and compliance mechanisms to be truly effective. Encouragingly, some modern treaties increasingly reference international instruments and establish institutional frameworks to guide responsible business conduct, offering a foundation for systemic accountability.

From a policy perspective, these observations collectively suggest that investments in IIA negotiation and reform must prioritize clarity, enforceability, and inclusiveness. States and negotiating parties should consider designing IIAs that:

- *Clearly delineate the respective responsibilities of investors and States on social and environmental matters;*

- ***Embed participatory rights and protection mechanisms for Indigenous peoples and marginalized groups within the substantive and procedural treaty fabric;***
- ***Incorporate gender-responsive provisions with concrete implementation pathways;***
- ***Innovate dispute management by institutionalizing proactive prevention mechanisms while expanding dispute resolution scope to encompass social and sustainability concerns;***
- ***Recognize and adapt to the challenges posed by the digital economy through specific treaty language and cooperation frameworks;***
- ***Strengthen CSR obligations through binding commitments coupled with systematic monitoring and reporting requirements.***

Ultimately, this study illustrates that IIAs, if thoughtfully reimagined and restructured, can become powerful instruments to harness international investment as a driver of equitable, inclusive, and sustainable development.