



14th Annual Forum
of Developing Country
Investment Negotiators
ABUJA, NIGERIA



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14th Annual Forum of Developing Country Investment Negotiators

Forum Report

Introduction

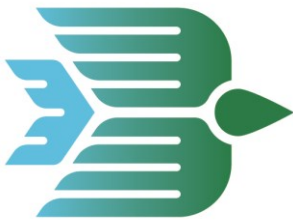
The 14th Annual Forum of Developing Country Investment Negotiators (the “Forum”) was held in Abuja, Nigeria, from October 11 to 13, 2022. The theme of the Forum was “Coherence in International Investment Governance, Crafting a Holistic Approach to Investments that Work for Sustainable Development.” Over 60 participants representing 29 developing country governments and 11 regional and international organizations attended in person. Ninety participants also registered to attend the Forum online.

DAY 1, TUESDAY, OCTOBER 11, 2022

Formal Opening and Welcome Remarks

The Forum formally opened with a speech made on behalf of **His Excellency, Professor Yemi Osinbajo GCON, Vice President of Nigeria** by **Otunba Niyi Adebayo, Minister of Industry, Trade and Investment, Federal Republic of Nigeria**. The speech briefly touched upon ongoing reform efforts in Nigeria to attract responsible, inclusive, balanced, and sustainable investments. Mr. Adebayo, speaking on behalf of the Vice President, explained that the opportunity to host the Forum underscored Nigeria’s commitment to the ongoing global reform efforts to ensure that the economic benefits of investment policy-making are realized by both investors and host states. The Forum was declared open with an exhortation to delegates to network, exchange ideas, and engage in fruitful discussion.

Hajiya Saratu Umar, Executive Secretary, Nigerian Investment Promotion Commission (NIPC) delivered a goodwill message to the participants. Her message noted the symmetry between the Forum’s theme and the current policy direction of the Federal Government of Nigeria. Noting the pressing need for rebalancing investor and state obligations under investment treaties, the message emphasized the importance of the Forum and expressed the hope that the Forum would help participants guide their governments in negotiating balanced investment agreements that align with the investment objectives of the 2030 Agenda for Sustainable Development.



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Nathalie Bernasconi-Osterwalder, Executive Director, International Institute for Sustainable Development (IISD) Europe; Senior Director, Economic Law & Policy, IISD, thanked the Federal Government of Nigeria for hosting the Forum. She voiced her hope that the Forum would nurture a spirit of confidence and bravery to ensure that international investment law and policy contribute to Sustainable Development Goals (SDGs) and support developing countries' national priorities. Ms. Bernasconi-Osterwalder then formally announced the Forum theme and provided a brief overview of what participants could expect over the course of the next 3 days.

Keynote Address

Professor Makane Moïse Mbengue, Professor of International Law at the Faculty of Law of the University of Geneva and Director of the Department of International Law and International Organizations provided the keynote address and set the tone for the discussions for the remainder of the Forum.

Professor Mbengue first delved into the meaning of “coherence.” He explained that the ultimate goal of international coherence is to treat legal subjects equally. He noted that the need for equal treatment, or coherence, becomes especially clear in times of crisis and that the growing calls for coherence in international investment law today could be drawn back to country experiences with COVID-19. He explained that the present calls for coherence needed to be answered by ensuring that investors and investments would not benefit more than other people during the pandemic in response to challenges created by the pandemic. He cautioned, however, that coherence should not only be a concern in times of crisis; coherence is a must in an era of sustainable development.

Professor Mbengue then provided a framework of what coherence entails in investment governance by focusing on five main questions: Why do we need coherence? What does coherence mean? Where should coherence be achieved? When should coherence be achieved? Who should be the subject(s) of coherence? Answering the “why,” he explained that we need coherence: (1) to defragment government-level efforts to achieve sustainable development, (2) to defreeze the states' sovereign right to regulate, and (3) to depolarize the investment regime and its governance. Explaining the “what,” he said that the investment regime does, of course, contain rules for complementarity (between different regimes), consistency (in terms of interpretation and application of norms), cohesion (in terms of exceptions), and convergence (in terms of investment governance objectives). However, by themselves, these features do not lead to greater incorporation of sustainable development goals within investment governance; only coherence *per se* (in the meaning of ‘integration’) can provide that. On the “where,” he explained that coherence efforts need to take place at the international institutional level as well as at all levels within the state. Professor Mbengue explained that we need to guarantee both horizontal coherence (between different treaties at the international and regional levels) and vertical coherence (between domestic investment laws, investment contracts, and investment treaties). Next, on the “when,” he



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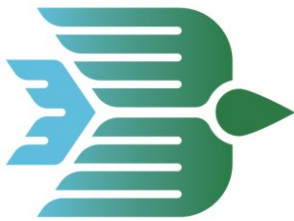
explained that coherence requires efforts at all life stages of investment law and policy formulation. Countries must ensure (1) *ex-ante* coherence by establishing a clear vision of coherence tuned to their development objectives, (2) *ex-post* coherence to ensure that investment policy cannot be undermined by new challenges that crop up with time, and, most importantly, (3) *ex-parte* coherence (i.e., cooperation), which requires integrating all stakeholders, public participation, and fostering a culture of dialogue between host states and foreign investors. Finally, in answer to the “who” of coherence, Professor Mbengue noted that coherence should be sought and ensured by the states, who are the masters of the international investment regime, and not left to investment tribunals.

These reform efforts, he explained, require developing countries to act collectively. This requires, as a first step, capacity building among investment negotiators to ensure that public international law and other fields of general international law that are relevant to investment law and policy, such as environmental and tax law, are taken more carefully into account in all future negotiations. This, according to Professor Mbengue, was the only way to end the “clinical” isolation of investment governance.

Panel Discussion: Recent Developments in International Investment Law, Policy-Making, and Arbitration in an Era of Overlapping Crises

The Forum’s first panel was moderated by **Opeyemi Abebe, Adviser and Head, Trade Competitiveness Section, Trade, Oceans and Natural Resources Directorate, Commonwealth Secretariat**. To introduce the topic of the panel, she highlighted some of the “overlapping crises” of the COVID-19 pandemic and its attendant economic and public health repercussions, the climate and environmental crises and their impacts on small states and developing economies, the energy and food security crises, and the global economic recession facing both developed and developing states—and how these crises could impact states in designing their investment promotion and facilitation regulatory policies.

Vincent Beyer, Economic Affairs Officer, United Nations Conference on Trade and Development (UNCTAD) shared recent trends in international investment policy-making and reform and investor–state dispute settlement (ISDS). With regard to investment treaty negotiations, he noted that for the last 2 years, countries had been proactively terminating investment treaties at a faster rate than they were signing new ones. He also referenced the growing trend of the consolidation of investment treaties by way of regional agreements, such as the Energy Charter Treaty (ECT) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. With regard to ISDS cases arising out of investment treaties, he noted that COVID-19-related measures had, so far, not given rise to an ISDS wave. Somewhat alarmingly though, he highlighted that, since 2014, an average of 75 ISDS cases commenced each year, and of these cases, 85% invoked the fair and equitable treatment standard. He also noted that of 1,190 ISDS cases brought under investment treaties, over 80% of cases were brought under treaties



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concluded before 2000. On behalf of UNCTAD, he recommended that countries urgently deal with their existing stock of investment treaties. In this regard, he reminded participants of the three phases of reform specified in UNCTAD's 2018 reform package: (1) create a new generation of international investment agreements (IIAs), including a new model; (2) deal with the existing stock of IIAs; and (3) coherence.

Sovyana Putranti, Officer, Investment, Services and Investment Division, Market Integration Directorate, Association of Southeast Asian Nations (ASEAN) Economic Community Department, ASEAN Secretariat, discussed recent developments on the Asian continent, particularly in Southeast Asia. In terms of important regional investment instruments, she drew attention to the Regional Comprehensive Economic Partnership, which entered into force in January 2022 and formed one of the world's largest free trade agreements, covering 30% of the global GDP and population. She also noted that ASEAN has been and is currently negotiating several investment agreements and free trade agreements (FTAs) with investment chapters. With respect to COVID-19 recovery efforts, Ms. Putranti spoke of the ASEAN Investment Facilitation Framework, a mandate of the ASEAN Comprehensive Recovery Framework adopted by the ASEAN leaders in November 2020, which aims to facilitate investment in the region in the post-pandemic world by improving the ease of doing business and implementing and monitoring investment facilitation in the region. ASEAN member states are required to provide a record of activities in this regard. Finally, with respect to the inclusion of sustainable investment objectives in ASEAN's investment policy objectives, Ms. Putranti noted that while sustainable investment does not appear in current ASEAN investment agreements per se, it has been a point of discussion in ASEAN, particularly since late 2020. ASEAN is currently preparing an analytical report to discuss investment-related issues on sustainable development in ASEAN.

Roslyn Ng'eno, Senior Investment Expert, African Continental Free Trade Area (AfCFTA) Secretariat, spoke to the African perspective and, in particular, about the AfCFTA Investment Protocol which, Ms. Ng'eno noted, it provides an opportunity to adopt an investment regime that advances the objectives of AfCFTA to promote and facilitate investment, protect investment, promote inclusive growth and development, and ensure the attainment of the broader objectives of the African Union Agenda 2063 and the United Nations Agenda 2030. The negotiations on the Protocol on Investment—one of five protocols to the AfCFTA—have been undertaken in line with reform processes already underway at the regional level, particularly in terms of investment regulations formulated by the Common Market for Eastern and Southern Africa, the East African Community, the Economic Community of West African States, and the Southern African Development Community. The negotiation provides, among others, an opportunity to strengthen rules and policies applicable to investments, with the objective of ensuring that specific national development objectives are met and that health, environmental, and social safeguards are integrated into national and continental frameworks and processes. To achieve these objectives, the protocol targets several threads of reform, including reaffirming the host state's right to regulate in the public interest and expressly addressing sustainable



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development (including measures specifically targeting the effects of COVID-19) and investor obligations in the protocol.

Finally, **Chantal Ononaiwu, Trade Policy and Legal Specialist, Caribbean Community (CARICOM) Secretariat**, discussed recent developments in Latin America and the Caribbean. She drew attention to the various approaches to international investment law, policy-making, and arbitration in the region. While Brazil continues to conclude Investment Cooperation and Facilitation Agreements that exclude ISDS and encourage dispute prevention, other countries—like Colombia, Mexico, and Uruguay—continue to incorporate investment protection standards and ISDS in investment treaties and FTAs (for example, the Pacific Alliance–Singapore FTA and the Central America–Korea FTA). She noted that many of these recently concluded IIAs feature reform-oriented provisions, such as limits on or clarifications of investment protection standards and limits on recourse to ISDS. With respect to ISDS trends, Ms. Ononaiwu noted that some countries in the region, such as Colombia, Mexico, Panama, and Peru, have boosted their institutional capacity to defend claims after facing increased investment arbitration claims. She also noted Ecuador’s decision to rejoin the International Centre for Settlement of Investment Disputes (ICSID) Convention after withdrawing from it and the regional initiative to create the Union of South American Nations Centre for the Settlement of Investment Disputes, which has not flourished. With respect to the Caribbean specifically, Ms. Ononaiwu highlighted the continuing efforts in CARICOM to elaborate the Community Investment Policy framework as part of the work to establish a CARICOM Single Market. She commented that recent crises, such as the COVID-19 pandemic and the climate crisis, have reinforced the importance of ensuring that investment treaty obligations do not hamper a country’s ability to take measures pursuing important public policy objectives, such as measures to protect public health and climate action. She emphasized the need for countries to review their existing treaties to assess their compatibility with current development agendas and imperatives. She stressed that the reform of old-generation IIAs is a key challenge that should be addressed proactively, not reactively.

The panel concluded with a question-and-answer session. Participants reflected on, among other things, the importance and the scope of interregional cooperation between Latin America, the Caribbean, and Africa.

Informal Survey: Reforming National Strategies for Investment Treaty Negotiation: Practical steps, processes, and tools

Participants filled out a survey that aimed to formulate strategies that could be used in investment treaty negotiations. The survey proposed strategy options and invited participants to select those they considered appropriate and add any options they thought should also be considered.



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Breakout Session: Sharing Recent Developments and Practical Experiences in Reforming Existing Old-Generation Investment Treaties

This session focused on the actions that developing countries are taking to modernize their international investment regimes. Participants were asked to (1) represent their countries' old-generation treaties as animals, (2) identify reform actions (among the options provided) that their countries or regional groupings had already undertaken to reform these treaties, (3) enumerate the main challenges facing such reform options, and (4) highlight reform success stories.

DAY 2, WEDNESDAY, OCTOBER 12, 2022

Parallel Breakfast Side Sessions: OECD-G20 Inclusive Framework on Global Minimum Tax Reform/Energy Charter Treaty Modernization and Expansion/UNCITRAL Working Group III Reform on ISDS

Day two of the Forum began with three breakfast side discussions that were conducted simultaneously. Participants had the option to choose between the three discussions:

What Does the Global Minimum Tax Deal Mean for Developing Countries?

This discussion, held by **Thomas Lassourd, Senior Policy Advisor, Tax and Extractives, IISD/Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), Eniye Ogbebor, Senior Legal Program Officer, International Senior Lawyers' Project, and Kudzai Mataba, Research Fellow, IGF**, revolved around the Organisation for Economic Co-operation and Development (OECD) Inclusive Framework on Base Erosion and Profit Shifting's agreed-upon major reforms of global tax rules in October 2021, including the introduction of a new 15% global minimum tax on multinational corporations' (MNCs') profits. The discussion also touched upon the likely effects of the global minimum tax on investment in developing and emerging economies and possible policy responses.

The Most Highly Litigated Treaty: Key Policy Implications of the Energy Charter Treaty Expansion

Suzy Nikièma, Lead, Sustainable Investment, IISD, and Lukas Schaugg, International Law Analyst, IISD, led a discussion on the ECT. They briefly introduced the legal profile of the ECT, concerns raised by its contracting parties, and recent efforts to reform it. The discussion then focused on the expansion of the ECT to developing countries and emerging economies—and its policy implications and impacts on regulatory flexibility in particular.



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UNCITRAL WGIII on Reform of ISDS: State of Play, Stakes, and What Issues Really Matter

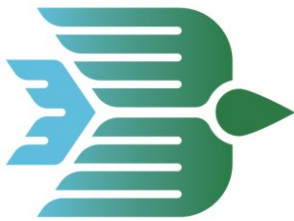
The third discussion was conducted by Nathalie Bernasconi-Osterwalder, IISD, and Danish, Program Officer, Sustainable and Climate Change Program, South Centre. The discussion briefly introduced the UNCITRAL Working Group III (WGIII) process: its mandate, the main concerns with ISDS that the process has identified, and its work so far. They then discussed the key topics currently under consideration in WGIII and highlighted some of the most important ISDS concerns that the countries should address. Participants discussed courses of action with high reform potential.

Panel Discussion: Horizontal Coherence: Understanding the Relationship Between International Investment Law and Other International Laws

This panel was moderated by **Patience Okala, Director, Legal Services, NIPC.**

Mr. Lassourd, IISD/IGF, spoke of the global minimum tax reform—the second of a two-pillar solution to the tax challenges arising from the digitalization of the economy piloted by the OECD and the G20. As part of an Inclusive Framework on Base Erosion and Profit Shifting, over 130 countries agreed to the design of global minimum tax rules in October 2021. This reform, as he explained, would lead to a minimum 15% effective tax rate on MNCs in every country of operation starting in 2023, thus preventing situations where these MNCs take advantage of different tax regimes between jurisdictions and effectively avoid paying tax. Mr. Lassourd explained that while the broader implication of this reform would be increased tax collection, which could support the achievement of the SDGs, some countries could lose their tax revenue to other countries where MNCs are based if they continue to tax below 15%. For this reason, he stressed that developing countries must urgently assess their domestic tax and investment frameworks to identify and modify those tax incentives that will be affected by a global minimum tax.

Ms. Bernasconi-Osterwalder, IISD, spoke of how the realities of climate change, as well as countries' international, regional, and national commitments to address this issue, were clashing with the protections afforded to investors by investment treaties. Using the ECT as an illustration, she spoke of the increase in investor claims arising from countries' energy transition-focused regulatory changes. She explained that a serious challenge facing developing and emerging economies today is therefore devising a means of dealing with this uptick in investor claims. In response to an audience question, she reiterated that the solution would have to come from the governments themselves. While there are some efforts underway to sensitize arbitrators to issues revolving around sustainable investment-focused treaty interpretation and country concerns, their effectiveness in the absence of any state-level interventions to indicate to tribunals how treaty language should be adopted is uncertain.



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Maria Andrea Echazu, Human Rights Officer, Office of the United Nations High Commissioner for Human Rights (OHCHR), spoke of recent developments in human rights law that are relevant to investment negotiators and how international human rights instruments such as the UN Guiding Principles on Business and Human Rights are interlinked with international investment law. She explained the relevance of the drafting processes for international human rights treaties that contain provisions on investment and the state's duty to regulate, among others, investment law once such treaties come into force. By virtue of being international law, they can be imported into investment treaties as standards. State parties would be in a position to refer to their legal duties with regard to those treaties when negotiating or revising investment agreements.

The panel concluded with a question-and-answer session. Participants asked the panelists about, among other things, the practical implications and challenges arising from the global minimum tax and how to better integrate human rights and climate action components when designing modern investment legal frameworks.

Panel Discussion: Vertical Coherence: Understanding the Interaction Among Different Levels of Legal and Policy Instruments Governing Investment

This discussion was moderated by **Ryan Romeo P. Perez, Division Chief, Legal and Compliance Service, Philippines – Board of Investments**.

Panelists provided country perspectives from Bolivia, the Philippines, Kenya, and Vietnam. The common consensus was that there is a need for improved communication at the national and sub-national levels.

Suzy Nikièma, Lead, Sustainable Investment, IISD, recalled the importance of ensuring coherence and coordination between investment treaties, domestic laws governing investment, and investment contracts. She emphasized the need to invest in a clear and robust national investment policy and legal framework that will guide negotiations of investment treaties and contracts. In this regard, she touched upon an ongoing IISD research project on investment laws or codes—a key legal instrument that poses risks for coherence in investment governance but is often neglected in reform efforts. The study, divided into three parts, first surveyed the evolution of investment codes, showing where the idea of these codes came from and how they have changed. The second phase of the study will examine key provisions in contemporary investment codes, evaluating their prevalence and their consequences. The third part of the study will look to the future, providing questions for states to consider when drafting or updating investment codes. Ms. Nikièma explained that the initial results of the research already indicate that investment codes are “very particular” legal instruments with functions that have evolved over time and space.



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On the basis of this finding, she urged countries with investment codes to rethink their raison d'être and role in national investment governance.

Isaac Gitone, Senior Economist, National Treasury, Republic of Kenya, spoke of the siloed nature of the various governmental organs whose work affected investment law and policy, numerous and fragmented laws governing investments, and the rapid and ever-evolving nature of investment law and policy. Mr. Gitone diagnosed the internal incoherence in policy as a result of limited coordination between the various ministries and a lack of the requisite technical capacity. By way of a solution to these issues, he proposed the establishment of coordination mechanisms, like the interministerial committee/council now in place in Kenya, to foster dialogue and communication across government offices and regular capacity building for officers involved in investment law and policy-making.

Nguyen Thi Thao Linh, Legal Official, Ministry of Planning and Investment, Socialist Republic of Viet Nam, spoke of the difficulty of ensuring coordination within different levels of government. Sharing Vietnam's own experience in law enforcement in several sectors, she explained the challenges of achieving horizontal coherence when each legal sector has its own law and regulations that govern investment activity. She also touched upon Vietnam's response to this issue—an "early warning system" that would encourage the local government to notify the central government in case of a potential investor dispute in order to prevent the dispute.

Zulema Wendy Espejo Candia, Head, Evaluation, Monitoring and Legal Control Unit, Upstream Management, Evaluation, Monitoring and International Relations, Bolivian Fiscal Oil Fields, Yacimientos Petroliferos Fiscales Bolivianos Plurinational, State of Bolivia, echoed the need to improve internal coordination but warned that even with this heightened communication, the risk of investor–state disputes could never fully be eliminated. Using Bolivia as an example, she explained that even after adopting a country-level policy of termination of existing investment treaties, Bolivia was still receiving investor–state dispute claims. She explained that one of the most important challenges for developing economies is to define expectations from foreign direct investment (FDI) and the role that FDI should play in economies. Ms. Candia explained that once these questions are internally addressed, countries' legal, economic, and institutional frameworks should be systematically realigned with the FDI policy defined.

At the end of the panel, participants were invited to share their thoughts and/or pose questions to the panellists based on the discussion. Participants spoke of lessons and strategies learned to ensure coherence. In response to audience questions, the panellists emphasized the need for greater interaction between investment contracts and domestic laws, particularly in countries with a federal system.



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Breakout Session: Reflecting on Options to Integrate Other Components of Sustainable Development in Ongoing Investment Negotiations and Reform Processes

This session considered the extent to which other areas of international law are being considered and integrated into ongoing national, regional, and global negotiation processes. Participants were requested to (1) identify what areas of policy (among the options provided) their countries are integrating into investment negotiations, (2) identify the advantages of integrating these policy areas into treaties, (3) identify the disadvantages of the same, and (4) identify the purpose of their countries' national investment codes among the options provided.

Panel Discussion: Coherence in Investment Dispute Settlement: Global and Regional Processes

The final panel for the day, moderated by **Omar Chedda, Director, Investment Unit, Ministry of Industry, Investment and Commerce, Jamaica**, explored how ongoing reform processes for dispute prevention and resolution can help achieve coherent outcomes that fulfill sustainable development objectives.

Danish, South Centre spoke of how there were both instances of coherence (e.g., the application of the UNCITRAL WGIII draft Code of Conduct to proceedings under ICSID and UNCITRAL rules once it comes into effect) and divergence (e.g., differing positions on third-party reform between WGIII and ICSID) at the multilateral level. Citing the recent award in *Eco Oro v. Colombia*, he also explained the dangers of expansive interpretations by tribunals and countries leaving their old stock of treaties untouched. He urged countries to undertake holistic reform at the national level.

Margie-Lys Jaime, Advisor, Head of Compliance and Liabilities Office, Ministry of Finance, Republic of Panama, briefed participants on the steps taken by Panama on the dispute prevention side: (1) capacity building for treaty negotiators, attorneys handling disputes, and all ministries involved in a case, (2) maximizing the cooling off period, and (3) including provisions for mediation and conciliation in new treaties. On the existing investor claims against Panama, Ms. Jaime indicated that six of 17 cases filed against Panama so far were filed during the COVID-19 pandemic and that all of the claims arose from treaties signed before 2010. Ms. Jaime emphasized the importance of capacity building and treaty renegotiations for dispute prevention.

Mohammad Usman Piracha, Advisor to the Senate Standing Committee (Heritage and Culture) on Sustainable Development, Islamic Republic of Pakistan explained that Pakistan follows a multi-pronged approach to dispute prevention and resolution. Mr. Piracha stated that Pakistan was participating in UNCITRAL WGIII discussions. He had also recently



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chaired the Organisation of Islamic Cooperation's First Intergovernmental Experts Group Meeting to reform ISDS. He explained that, in parallel, Pakistan has terminated just under half of its bilateral investment treaties and has prepared a model bilateral investment treaty that emphasizes using local dispute resolution. Citing the exorbitant damages award in the Tethyan Copper arbitration against Pakistan, Mr. Piracha reminded participants of the crucial role that arbitral institutions play in investment disputes and urged countries to be more prudent in choosing what institutions to include in the ISDS clauses during treaty negotiations. In particular, he urged participants to pay attention to treaty provisions on the calculation of damages/compensation and the use of the Modern Discount Cash Flow method in large mining projects. Mr. Piracha also urged participants to approach both treaty negotiations and dispute resolution processes with the collective experiences of developing countries in mind and to reach out to one another when the need arises for assistance or insights.

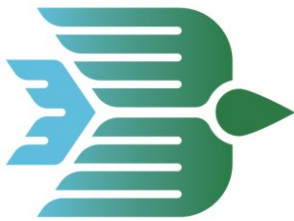
Rahmat Kurniawan, Legal Adviser, Legal and Treaties on Economic Affairs Directorate, Ministry of Foreign Affairs, Republic of Indonesia, gave a snapshot of Indonesia's efforts in dispute prevention. He explained that Indonesia was involved in the ICSID Rules amendment process—wherein Indonesia paid special attention to the rules on third-party funding, mediation, and security for costs—and in the work of WGIII, wherein Indonesia is focused on promoting mediation and the establishment of an advisory centre. At the regional level, he mentioned that Indonesia is taking part in joint efforts to create an international organization for mediation (IOMed) through a convention. The establishment of IOMed is expected to advance and promote the use of mediation and would be a useful complement to existing international dispute settlement mechanisms. So far, this IOMed will provide mediation services for economic dispute cases (be they commercial or investment).

Before the panel ended, participants had the opportunity to share their experiences in preventing and managing ISDS claims, discuss how to achieve coherence in ISDS reform, and highlight the critical need for states to take an active role in determining standards and calculation methods for damages.

DAY 3, THURSDAY, OCTOBER 13, 2022

Panel Discussion: Bringing It All Together: Identifying Key Building Blocks to Ensure Coherent Investment Policy-Making

Building on discussions from the first two days, the Forum's final panel explored key steps needed to enable a holistic approach to governing investment for sustainable development. The panel was moderated by **Chantal Ononaiwu, CARICOM**.



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Aminata Traoré Cissé, Permanent Secretary, Higher Council for the Private Sector, Ministry of Industry and Commerce, Republic of Mali, spoke of the need for ministerial departments to work collaboratively and intelligently in order to ensure coherent policy-making. She identified frequent rotations and promotions of staff within ministries (including during the treaty negotiation process) and limited financial resources devoted to such efforts as obstacles to the creation of a collaborative environment. Ms. Cissé suggested the following solutions to meet these challenges: (1) the establishment of an on-chain validation system involving all actors in the public and private administration, from the beginning of the process to the end, with representatives and their substitutes, (2) the development of standard documents (such as guides, strategies, and templates) and tools that will serve as guidelines across ministries, (3) the reservation of a portion of the national budget to establish the institutional framework required to achieve internal coordination and communication, and (4) the establishment of a permanent joint committee composed of representatives of the public and private administration for the negotiation of investment treaties, agreements, and contracts.

Hamed El Kady, Senior Programme Coordinator, International Investment Agreements Section, UNCTAD, explained that there can be tension between the aging investment treaty network and states' responses to the concurrent crises of today: COVID-19, climate change, and energy and food security concerns precipitated by the conflict in Ukraine. Mr. El Kady advocated for a comprehensive reform of the IIA regime. At the substantive level, Mr. El Kady explained that countries should develop strategies to align their investment treaties with the SDGs and ensure coherence between investment agreements, investment contracts, and national laws. In doing so, countries should ascertain their right to regulate in tackling global crises. At the procedural level, Mr. El Kady explained that, currently, reform efforts were separated from the substantive elements of the investment treaty regime. He called for a holistic approach to the reform of the IIA regime and highlighted that there is a need for more cooperation and synchronization of IIA reform efforts between countries. Finally, he emphasized that UNCTAD will accelerate and intensify its support to developing countries that wish to reform their international investment policy regimes to make them more conducive to sustainable development.

Serge Bertrand Abessolo, Legal Advisor to the Minister of Economy and Recovery, Gabonese Republic, explained that procedural coherence, in the specific context of investment contracts, needs to be achieved at three levels. First, at the contract negotiation stage, Mr. Abessolo explained that the contract should provide for (1) the establishment of a warning mechanism to verify the theoretical effectiveness of the contract, (2) the establishment of a mechanism for permanent collaboration between the contracting parties, and (3) an appropriate method of dispute resolution, such as amicable settlement. Second, once the dispute has arisen, he explained that consistency requires taking into account the behaviour of the state—the state must ensure that it has the necessary human and financial resources in case of arbitration. Third, at the enforcement stage, he stressed the value of guaranteeing the enforcement of awards. Institutional



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coherence, he explained, would require, among other things, the development of standard documents to address the mobility of agents, the promotion of regional arbitration, and the development of national and regional policy positions.

Nathalie Bernasconi-Osterwalder, IISD stressed that environmental and social aspects need to be integrated into investment treaties and contracts in order to achieve substantive coherence; states' regulatory powers must not be excessively limited, and there needs to be a balancing of rights and obligations of the investor, home state, and host state. On horizontal coherence, she explained that states must allow national policy and interests to guide treaty negotiations and ensure they are not compromised by the process.

The panel ended with a discussion wherein participants, drawing from the panellists' speeches, shared relevant experiences and concerns from their countries. Of particular interest to the discussions was the topic of investor obligations; the overwhelming consensus appeared to be in favour of imposing obligations on investors.

Plenary Discussion: Guiding Principles for Crafting a Holistic Approach to Investment for Sustainable Development

This session of the Forum, facilitated by **Professor Mbengue, University of Geneva**, aimed to take stock of the knowledge learned and exchanged over the course of the Forum and translate that learning into an agenda for coherence in international investment governance. Professor Mbengue emphasized that this agenda was not meant to be a comprehensive tool for achieving investment governance but instead aimed to sensitize governments to the reform aspects that must be addressed in order for any reform efforts to be successful.

Prof. Mbengue provided a framework that the participants, with incisive and farsighted comments, then helped populate. The agenda revolved around four elements: (1) challenges and concerns, (2) systemic objectives for coherence, (3) general guiding principles for coherence, and (4) a roadmap for countries to strengthen coherence within the investment regime.

The participants agreed to share the contents and principles of this agenda with the relevant national authorities and encourage initiatives for coherence in the investment regime for sustainable development.

Open Mic: Taking Stock and Charting the Future

In the penultimate event of the Forum, Suzy Nikièma, IISD, officially launched the new title of the Forum: "Investment Policy Forum: Advancing Reform for Sustainable Development." The new Forum branding was also launched. Speaking on behalf of IISD, she took the opportunity to announce that the next edition of the Forum would be held in Latin America.



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**NIGERIAN
INVESTMENT
PROMOTION
COMMISSION**

Closing Ceremony

The Forum was officially closed by **Suzy Nikièma, IISD**, and **Patience Okala, NIPC**.

Ms. Nikièma, on behalf of IISD, offered thanks to the host country, co-sponsors, partners of the Forum, the keynote speaker, session speakers, and participants, as well as the IISD team for ensuring, through their commitment and participation, an impactful Forum.

Ms. Okala, speaking on behalf of the Federal Republic of Nigeria, thanked all the delegates for their attendance and spirited participation in the Forum. She concluded with an expression of hope that the Forum and agenda agreed to by the participants would translate into actual change in participant countries.