Investment Policies and Bilateral Investment Treaties in Africa

Implications for Regional Integration

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Acronyms

AfDB	African Development Bank
ARIA VI	Assessing Regional Integration in Africa VI
AU	African Union
AUC	African Union Commission
BIT	Bilateral Investment Treaty
CAADP	Comprehensive Africa Agricultural Development Program
CCIA	COMESA Common Investment Area
CEN-SAD	Community of Sahel-Saharan States
CFTA	Continental Free Trade Area
CIM	Common Investment Market
COMESA	Common Market for Eastern and Southern Africa
DRC	Democratic Republic of the Congo
DTT	Double Taxation Treaty
EAC	East African Community
ECA	United Nations Economic Commission for Africa
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
FDI	Foreign Direct Investment
FIP	SADC Protocol on Finance and Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GVC	Global Value Chain
ICC	International Chamber of Commerce
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IGAD	Inter-Governmental Authority on Development
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IPFSD	Investment Policy Framework for Sustainable Development
ISDS	Investor–State Dispute Settlement
LPI	Land Policy Initiative
MAI	Multilateral Agreement on Investment
M&As	Mergers and Acquisitions
MFN	Most-Favoured Nation
MIGA	Multilateral Investment Guarantee Agency
NAFTA	North American Free Trade Agreement
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental Organization
OECD	Organisation for Economic Co-operation and Development
PIDA	Program for Infrastructural Development in Africa
REC	Regional Economic Community
RITD	Regional Integration and Trade Division
R&D	Research and Development
SADC	Southern African Development Community
TRIMs	Trade-Related Investment Measures Agreement
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UMA	Arab Mahgreb Union
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

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Foreword

Africa is no longer a risk-prone region. Or should we rather say it should be considered so? Indeed a lot has changed and many consider that the prospects for Africa to become the next frontier for investments are real. Bolstered by improved governance, stable and improving macro-economic conditions, investment-friendly policies, dynamic and burgeoning population and urbanization, and abundant natural resource endowments, the continent is being rediscovered by investors. These factors have contributed to changing perceptions.

Countries can be attractive for good or bad reasons. Good reasons are the ones that appeal for long term and reliable business initiatives or endeavours. But, as we are all too familiar, many places are fantastic opportunities for predatory and unsustainable activities. The latter contributes to associate Africa to a bad branding. Such investors prefer for the competition to stay at bay by pronouncing pessimistic views and amplifying how much difficult and risky it is to do business in Africa. Fortunately, this simplistic risk assessments are being challenged.

Despite negative perceptions remaining, the recent period has seen increasing investments moving into Africa, because investors see opportunities in the continent and appreciable internal rates of return. The region still needs greater levels of investments than ever before to support its development and transformation, so attracting increased FDI will continue to remain an important objective.

The continent needs FDI to bolster such strategic sectors as infrastructure, energy, and the beneficiation of mineral resources. Sound national investment policies are key in attracting both foreign and domestic investment. Consequently, most African governments have been keen to encourage and facilitate FDI by signing bilateral investment treaties (BITs), while reinforcing the regulatory environment for these investments. This has not stopped a number of African countries facing punitive actions arising from disputes in the implementation of these BITs, leading some countries to review and renegotiate their terms.

This publication aims to shed light and contribute to the policy dialogue on the experience with BITs in Africa and on the risks that restrict countries' policy space and legitimate public policy making. It offers informed lessons on how governments should approach and craft future international investment agreements, including regional models. The goal should be to minimize costly disputes and allow countries policy space to pursue their national and regional transformation objectives.

Carlos Lopes
Executive Secretary, Economic Commission for Africa

Executive Summary

Investment in Africa has surged in recent years due largely to its growth performance in the last decade, its rising consumer market and middle class, high rates of return on investment, as well as natural resources wealth. These pull factors for investment have been boosted by an increasing demand for its natural resources, especially from emerging economies. The continent's share of global foreign direct investment (FDI) reached 4.4% in 2014. At the regional level, West Africa had the highest share (24%), followed by Central Africa (23%) and North Africa (21%).

But although prospects for increased investment have improved, the perception of Africa as a "risky" investment destination is still deeply ingrained among some foreign investors. To overcome this attitude, many African countries have reduced regulatory barriers to foreign investment and signed numerous agreements to attract more investment.

Yet the impact of these efforts on economic and social development in Africa remains contested. The region's experiences are a mixture of good and bad, and little is known about the role of investment agreements in attracting FDI. Furthermore, it is often argued that such agreements favour foreign over domestic investors, reducing potential benefits and the policy space for development in Africa.

Against this backdrop, the African Union Conference of Ministers of Trade in 2013 identified the need to critically examine international investment agreements and the extent to which they may help Africa industrialize and develop. As a consequence, the United Nations Economic Commission for Africa (ECA) has initiated policy work on international investment agreements in Africa. The findings of this report provide some answers to the questions raised by the Conference and contribute to the debate on how Africa may better harness investment for its economic and social transformation.

Overview of international investment treaties

The world has witnessed a surge in international investment treaties over the past two or three decades. Legal instruments have been developed bilaterally, regionally, and globally. Though their scope varies widely, all share elements of investment protection and promotion.

Trade-Related Investment Measures (TRIMs) Agreement

TRIMs plays an important role in today's multilateral trading system, concentrating on investment measures affecting trade in goods. In addition to TRIMs, commercial and individual investments are covered by the General Agreement on Trade in Services (GATS). All World Trade Organization (WTO) members are bound by the investment provisions of TRIMs and GATS, including all 42 African WTO members. However, because the commitment level of these countries varies—that is, their access to markets and national treatment—so does progress in spreading investments across the continent.

Nine African countries are taking steps to join the WTO.[1] The process is lengthy—some countries have been working at it for more than a decade.

Organisation for Economic Co-operation and Development (OECD) investment-related instruments and initiatives

The OECD Declaration on International Investment and Multinational Enterprises is a formal commitment to improve the investment climate, promote social and economic contributions by multinational enterprises to society, and reduce the constraints they face. The Declaration is an open agreement, adopted by all 34 OECD countries as well as 12 non-members, including three African countries—Egypt, Morocco and Tunisia.

Another important OECD document is the Code of Liberalisation of Capital Movements. This legally binding instrument consists of progressive, non-discriminatory rules loosening constraints on invest-

ment, employment, and on the provision of services. In 2012, the OECD Council agreed to delegate full decision-making powers to the Investment Committee, which will be enlarged to include non-members. In the near future, African countries that have adopted other OECD legislation are also expected to adopt the Code.

Other multilateral investment frameworks relevant to Africa

Fifty-three African countries are members of the Multilateral Investment Guarantee Agency (MIGA), and 45 have ratified the Convention of the International Centre for Settlement of Investment Disputes (ICSID). African countries are also represented in the United Nations Commission on International Trade Law (UNCITRAL).

There are also guidelines, principles, and draft instruments focused on investment policies. Non-binding, they aim mainly to assist countries in formulating investment policies or in building governance elements into existing policies and regulations. Some examples are the UN Code of Conduct on Transnational Corporations, the UN Guiding Principles on Business and Human Rights, the International Labour Organization (ILO) Tripartite Declaration on Multilateral Enterprises, the World Bank's Investment Guidelines, and the UNCTAD Investment Policy Framework for Development.

Overview of treaties concerning bilateral investment and double taxation

African countries are trying hard to improve their investment climates. Among those efforts, bilateral investment treaties (BITs) and double taxation treaties (DTTs) are used to attract investment. Traditionally, African countries signed such agreements with countries outside Africa, in particular those that had controlled them as colonies.

The first BIT between two African countries was signed in 1982 by Egypt and Somalia. By then African countries had already signed 110 BITs with non-African countries. The signing of DTTs among African countries started in 1956 with an agreement between South Africa and Zambia. Similarly to the trend of BITs, once African countries gained independence, DTTs served the dual purpose of setting standards that would allow the repatriation of capital without double taxation while strengthening recognition of the statehood of newly independent African countries.

Africa's involvement in BIT disputes

By standard practice, BITs contain provisions for settling investment disputes. Some of the first-generation BITs focused solely on state-to-state dispute settlement. More recent BITs also incorporate investor-to-state arbitration, which allows private investors to submit a claim against the host country.

African countries have been involved in 111 investment dispute cases, or roughly one-fifth of all documented, treaty-based cases between 1972 and 2014. Sixty-eight cases have received an award, been settled, or been discontinued (often due to lack of jurisdiction) and are considered concluded. About 44 cases are pending, with some cases dating as far back as 2004. In virtually all reported cases, the claimant has been a company invoking the violation of a BIT. Among African countries, Egypt is respondent in the largest number of cases (25) and ranks third globally on International Centre for Settlement of Investment Disputes (ICSID) dispute settlement. It is followed by the Democratic Republic of Congo (DRC)(8 cases), Algeria (6 cases), and Guinea (5 cases).

African regional investment treaties and initiatives

Some regional economic communities(RECs) have signed regional regulations that relate to investment. Among these are the Investment Agreement for the COMESA Common Investment Area, the Supplementary Act adopting Community Rules on Investment and the Modalities for their Implementation with the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC) Protocol on Finance and Investment. The East African Community (EAC)and SADC have developed model laws on investment.

In SADC, the Protocol on Finance and Investment (FIP) came into force in 2010. FIP is a comprehen-

sive document covering all areas typically covered by BITs and additional annexed issues. According to the FIP, investment in signatory states is protected against uncompensated expropriation. Investors are also guaranteed most-favoured nation (MFN) treatment, but not national treatment. FIP grants investors the right to employ key personnel from any country. For free movement of capital, the FIP is worded rather cautiously, calling on state parties to "encourage the free movement of capital". The SADC "Model BIT" tries to reflect a balanced approach between member states' development objectives and investor interests. Thus, while it contains substantive provisions to protect investors, it also provides for obligations of investors regarding corruption, environmental and social impacts, transparency, and human rights and labour standards, among other areas.

In ECOWAS, a Supplementary Act A/SA.3/12/08 on the Common Investment Rules for the Community was adopted in 2008. As is customary in BITs, the Supplementary Act includes protection against uncompensated expropriation. ECOWAS investors are guaranteed free transfer of assets, which includes in essence all payments related to the investment. In investor–state and state–state disputes, the parties can refer their case to a national court or tribunal or to the ECOWAS Court of Justice. The Supplementary Act is different from most BITs in that it contains a designated chapter on "obligations and duties of investors and investments". These include a provision for a "pre-establishment" environmental and social impact assessment. The investor obligations also include "post-establishment" requirements, including the protection of human rights and respect for fundamental labour standards. Some of these investor obligations are mirrored in the subsequent chapter on "host state obligations", which also calls on member states to refrain from competing against each other using investment incentives.

In COMESA, the Investment Agreement for the COMESA Common Investment Area (CCIA) was adopted in 2007. This agreement aims to attract higher levels of investment from within and outside the region, but has not yet been enforced.

In EAC, the East African Model Investment Code was adopted in 2006. This document is not legally binding, but is rather a reference guide for the design of national investment policies and laws. Its goal is to improve the business climate in the EAC region and to harmonize investment laws and policies of member states. The Model also includes provisions for the free transfer of assets and protection from uncompensated expropriation. According to the code, investors can apply for an investment certificate to the designated national investment agency. In 2010, the Protocol on the Establishment of the EAC Common Market came into force. It provides for freedom of movement of goods, labour, services, and capital, with provisions on investment including protection and harmonization of tax regulations.

Towards an African Continental Investment Code—a survey

A natural question arising from the regional initiatives—and from their limitations—is whether a common investment code at continental level would be desirable. If so, what legal and policy framework would be required, and does Africa already fulfil some of the preconditions for an African Continental Investment Code and other regional investment codes on the continent?

Such codes would assist in simplifying investment rules and regulations, making them clearer and easier to understand, creating an environment more conducive to investment. But as foreign investment flows into Africa and economies grow, capital controls and liquidity are becoming important issues. Establishing continental or regional investment codes should help here and in raising low intra-African investment.

In line with the recommendations of the Ninth AU-RECs-ECA-AfDB Committee meeting held in Addis Ababa, Ethiopia, in January 2012, the African Union Commission undertook a study on drafting a Pan-African Investment Code, based on international best practice, to establish a business climate to stimulate investment at national, regional, and continental levels, and to develop a roadmap and strategy on how African countries can adopt this code to their own contexts. The study's primary objective was to find the elements of an enabling environment in the sectors that have the greatest potential to promote economic and social development in Africa.

Deepening regional integration significantly enhances the attractiveness of Africa as an investment destination. Well-known issues concerning fragmented markets, small market sizes, and heterogeneous regulatory environments can be overcome by harmonization and integration, while regional cooperation can help avoid any "race to the bottom" in investment incentives. Finally, removing these obstacles can help unlock the potential for intra-African investment, which already accounts for 23% of FDI projects on the continent.

Findings

The study's survey results highlight some of the key challenges for investment in Africa. These include poor infrastructure, tariff and non-tariff barriers, limited movement of persons and capital, high transaction costs, high risk perception, limited access to credit, and rent seeking. Most respondents indicated that some BITs need to be reviewed, given this context of new economic challenges and country-specific needs.

Many respondents indicated that investment treaties do not necessarily bring in much investment. Many respondents pointed out that BITs may be politically motivated, and more investment is coming from countries without a BIT (e.g., China). Sound policies need to be put in place first, the most important policy areas being competitiveness, availability of capital, government regulations and policies, political and economic stability, and regional integration.

According to survey respondents, investment agreements need to include key areas such as market access, access to finance, access to land and proprietary rights, investment incentives, infrastructure, environmental compliance, and employment and labour practices. About 34% saw little importance in including employment and labour practices in investment agreements. Eleven of the 29 countries responded that investment agreements should not include issues relating to land because of their complexity. Investment promotion agencies in some countries have helped to improve the business climate.

Most respondents saw little connection between investment in Africa and global value chains. Many African countries are suppliers of raw materials and most finished products are processed outside the continent. Some 69% of respondents considered their country at the bottom of the value chain, 23% intermediate, and only 8% at the higher end.

Africa has in the past been associated with high levels of poverty, conflicts, corruption, and heavy dependency on aid. The data to change this perception exist. For instance, five of the 12 fastest-growing economies in the world are in Africa, FDI is five times what it was a decade ago, and there is an emerging middle class. Africa is now the second most attractive investment destination in the world according to global business leaders. However, survey respondents still felt that a high risk perception is an obstacle for foreign investment.

A great majority of respondents cited high risk perceptions, high transaction costs, inadequate infrastructure, and tariff and non-tariff barriers as main challenges for inward investment. Yet 17 countries did not believe that existing restrictions on investment are a major challenge. Respondents were divided about the free movement of capital: about 44% felt that it was not a major issue, 56% did.

Conclusions and policy recommendations

African leaders are increasingly recognizing that investment is key to Africa's growth and transformation. If it is channelled well, it can expand productive capacity, generate jobs, and boost incomes and finance development.

Hence the number of treaties—854 BITs and over 400 DTTs—all sharing elements of investment protection and promotion, and most geared towards attracting FDI. But most BITs are with countries outside the continent. The survey results reveal that respondents see only an ambiguous link between BITs and investment.

Some of the concerns of African governments, and possible solutions, are listed below:

- The focus of BITs has mainly been towards protecting investors and their investments.
- African governments are worried about their responsibility and potential liability according to existing agreements.

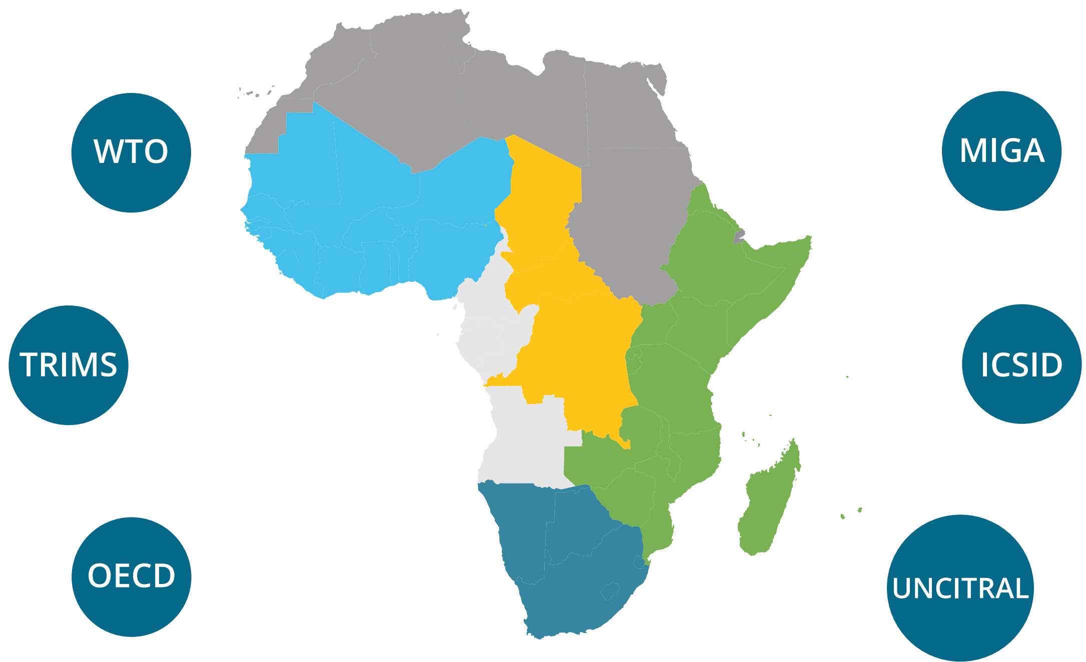
- It is important to understand what type of dispute settlement provisions exist in BITs.
- An emerging consensus is that, rather than relying on BITs exclusively, African countries should consider regional approaches to assist in the development of a legal framework for foreign investment.
- An African strategy is needed to stocktake African cases, which will lead to treaty negotiations and renegotiations.

African countries thus need to develop a framework to attract more investment from within and outside the continent. The following policy recommendations are proposed:

- Countries need to look at the wording of provisions being negotiated with their counterparts to ensure that a balance is struck between protecting investors and giving government sufficient policy space for development objectives.
- Such agreements must not lead to the crowding out or discriminatory treatment of domestic and regional investors.(They often face unfair conditions due to the "layers" of standards of treatment that foreign investors obtain from BITs.)
- Termination "in self-interest" is not a new approach. Countries have terminated BITs in the recent past, e.g., South Africa.
- The continent could consider a pan-African solution such as the African Court of Justice. This court would also be used for the proposed Continental Free Trade Area (CFTA),which is to be set up by an indicative date of 2017.
- Given the ambiguity on BITs' effects on investment in Africa, further research may be required in the future on which to base more policy recommendations.

Overview of international investment treaties

The world has witnessed a surge in international investment treaties over the past two or three decades. Legal instruments have been developed bilaterally, regionally, and globally. Though their scope varies widely, all share elements of investment protection and promotion.



The Trade-Related Investment Measures Agreement (TRIMS) concentrates on investment measures affecting trade in goods. In addition to TRIMS, commercial and individual investments are covered by the General Agreement on Trade in Services (GATS). All World Trade Organization (WTO) members are bound by the investment provisions of TRIMS and GATS, including all 42 African WTO members. Nine African countries are taking steps to join the WTO (Algeria, Comoros, Equatorial Guinea, Ethiopia, Liberia, Libya, São Tomé and Príncipe, Seychelles, and Sudan.). The process is lengthy—some countries have been working at it for more than a decade.

The OECD Declaration on International Investment and Multinational Enterprisesis a formal commitment to improve the investment climate, promote social and economic contributions by multinational enterprises to society, and reduce the constraints they face. The Declaration is an open agreement, adopted by three African countries—Egypt, Morocco, and Tunisia.

The OECD Code of Liberalisation of Capital Movements, a legally binding instrument, has progressive, non-discriminatory rules loosening constraints on investment, employment, and the provision of services. African countries that have adopted other OECD legislation are also expected to adopt the Code.

Fifty-three African countries are members of the Multilateral Investment Guarantee Agency (MIGA), and 45 have ratified the Convention of the International Centre for Settlement of Investment Disputes (ICSID).

African countries are also represented in the United Nations Commission on International Trade Law (UNCITRAL).

Dealing with concerns about BITs

African countries need a framework to attract more investment from within and outside the continent.

Look at the wording of the provisions being negotiated with counterparts to strike a balance between protecting investors and giving government sufficient policy space for development objectives.

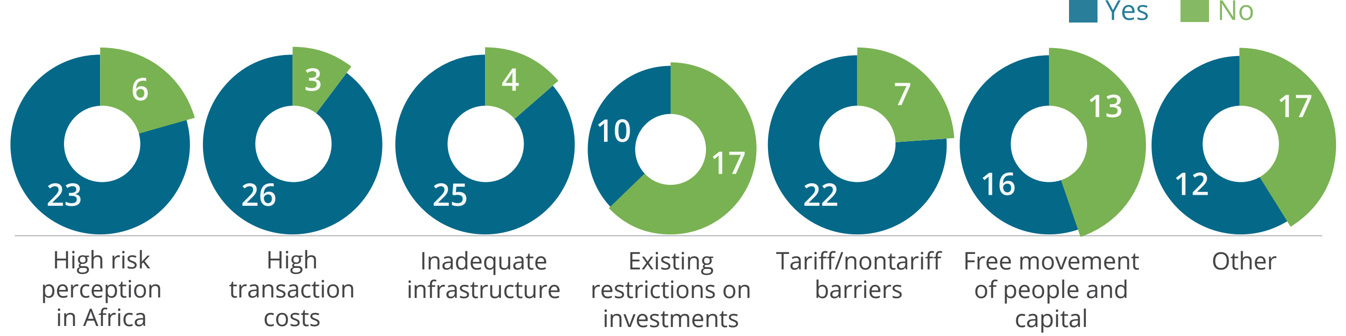
Be sure not to crowd out or discriminate against domestic and regional investors.

Consider a pan-African solution, such as the African Court of Justice.

Commission further research as a basis for policy recommendations.

Challenges hampering regional and national investments in Africa

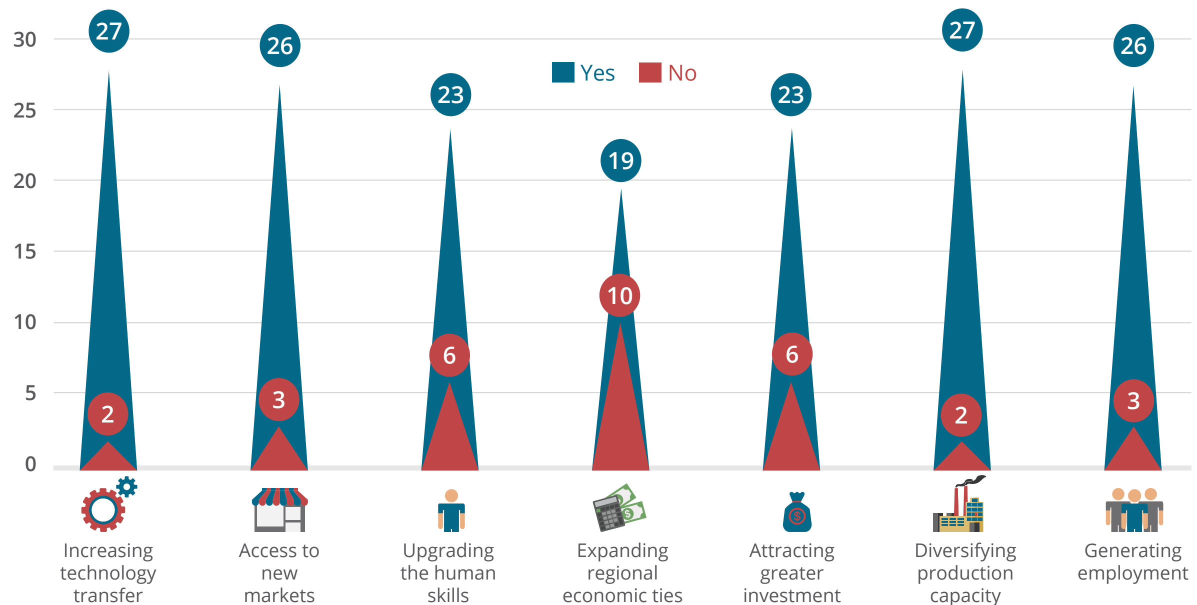
Note that 17 countries did not believe that existing restrictions on investments are a major challenge.



Source: ECA Survey on Investment Agreement Landscape in Africa, 2014.

Importance of value chains in various sectors

Value chains are important in all the economic sectors under review, with increasing technology transfer and diversifying production capacity topping the ranking.



Source: ECA Survey on Investment Agreement Landscape in Africa, 2014.

Africa's involvement in BIT disputes

African countries have been involved in 121 investment dispute cases, or roughly one-fifth of all documented, treaty-based cases (and, in a few instances, contract-based cases) between 1972 and 2014.

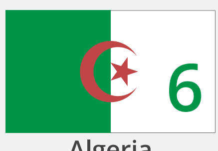
A total of 68 cases have received an award, been settled, or been discontinued and are considered concluded.

43 cases are pending, with some cases dating as far back as 2004.

Among African countries, Egypt is the respondent in the largest number of cases (25), followed by the Demogratic Republic of Congo, Algeria, and Guinea.

Egypt

Democratic Republic of Congo

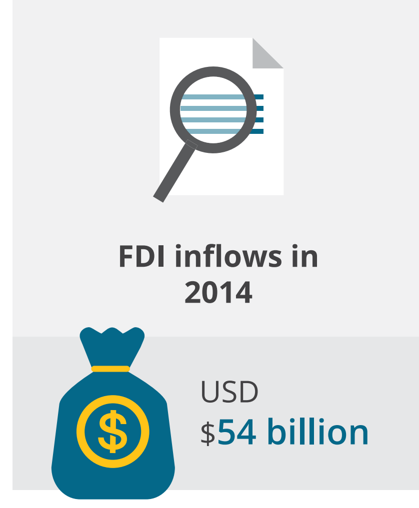


Algeria

Guinea

Mispricing to evade taxes

BITs and DTTs may ultimately facilitate capital siphoning from the continent to the original source of FDI.DTTs can lead to tax evasion, through mispricing activities to bloat operating costs. Such evasion has resulted in tax rebates as well as transfer pricing to benefit from low taxes on profits and high taxes on costs based on differences in taxing structures across countries.



An estimated **US$ 50 billion** is lost to Africa as a result of mispricing of natural resources, almost matching total FDI inflows to Africa in 2014 and twice what Africa receives in official development assistance.

1 Introduction

The investment climate in Africa has experienced great dynamism during the past two decades. A shift towards a more positive view of foreign direct investment (FDI) has led to significant changes in the investment policy framework. African governments have implemented numerous reforms targeted at attracting foreign investors, including domestic reforms, regional integration initiatives, and bilateral investment treaties (BITs) with potential FDI source countries.

Recently, the continent has become more engaged in investment issues for several reasons. First, policymakers have increasingly recognized that investment is a key driver for economic growth and sustainable development. It can greatly improve productive capacity, generate jobs, and boost incomes. Second, as most investment in Africa has focused on only a few sectors—mostly extractive industries—the continent should initiate policies aimed at attracting investment in other sectors. Third, Africa's struggle to finance its development agenda and investment (international and domestic) is crucial in filling this gap.

Investment in Africa faces challenges, including weak infrastructure. Infrastructure is vital given the catalytic role of, for example, transport and energy in transforming the economy by unlocking market potential. But investment needs for infrastructure are estimated at US$ 93 billion a year, against US$ 45 billion spent (World Bank, 2010). Hence, plugging this gap is a priority for most countries, and initiatives are in place to facilitate such investment.

Africa has seen a surge in investment inflows in recent years largely because of its growth performance over the last decade, rising consumer markets and middle class, and high rates of return on investment, coupled with its abundant natural resources, including recent discoveries of minerals, gas, and oil. These intrinsic endowments are major pull factors for investment against a backdrop of increasing demand for Africa's natural resources from emerging economies such as the BRICS.[2]But the continent has traditionally failed to use these abundant resources well, given its weak savings and capital base, creating an opening for foreign investors.

African countries have an enormous potential to change the livelihoods of millions of their people and lift them out of poverty. While foreign aid is a strong weapon against poverty, greater investment would provide long-term solutions. Aware of this potential, African leaders are trying hard to make the continent the next haven for investment, including harmonizing regulations among regions; reducing tax from multiple jurisdictions; improving infrastructure, especially energy sectors and transport; tackling governance and political issues; and improving macroeconomic conditions.

These efforts were needed because, until recently, the continent did not attract much investment relative to other regions of the world (Africa received less than 5% of global FDI between 2007 and 2013). But although investment has surged, FDI is still overwhelmingly in extractive industries, especially minerals, gas, and oil; and because these industries have minimal links to local economies, FDI has not elevated these millions of people out of poverty. African countries should therefore guide—even push—investors into productive sectors such as manufacturing and agriculture, but to reap the rewards fully they first need to reform their investment codes and streamline bureaucratic procedures for approving new investment projects.

Despite the recent investment surge, the perception of Africa as being a "risky" investment remains deeply engrained in the minds of many investors, anchored on the belief that Africa is a continent of poverty, hunger, and incessant strife. Global media sometimes reinforce this attitude by focusing more on Africa's problems than on its economic and social gains. Still, Africa is changing and has started telling its own story—that the continent is moving forward.

Many countries have, for example, reduced regulatory barriers on FDI, overhauling their laws to allow greater freedom and protection for investors and private-sector participation more widely. Other efforts include accelerating approval procedures via one-stop shops for investors, as well as increasing intellectual property rights protection. And African countries have signed many investment agreements, especially since the 1990s. But as perceptions of political instability and corruption linger among many potential investors in Africa, further measures are necessary to improve governance. Closer and more productive collaboration between business and government will also help to encourage FDI.

But the impact of all these efforts on economic and social development in Africa remains debatable. For instance, little is known, or has been proved, about the role of investment agreements in attracting investment. Furthermore, it is often argued that such agreements confer more protection and rights on foreign investors, skewing conditions to the detriment of domestic or third-party investors and reducing potential benefits for Africa, as well as exposing member states to legal disputes.

The benefits of regional integration for FDI, however, are clearer. Promoting regional investment and trade by opening up cross-border and regional business opportunities will create markets with greater critical economic mass, coherence, and density. However, the benefits will only be realized with heavy investment both in transport infrastructure to move goods and services across regions, and in regional energy pools, to support manufacturing and other industrial subsectors.

Why then, despite huge investment coming into Africa, is poverty still so high and widespread and education and health infrastructure so inadequate, with millions of children still going to bed hungry? One reason, as mentioned above, is that much investment is still in the "wrong" sectors, such as oil, gas, and minerals. Another is that Africa too often accepts unethical investments that stifle efforts to foster inclusive growth, reduce poverty, and enhance food and nutrition security. Finally, some investment is neither transparent nor accountable, costing many African governments estimably huge sums of money.

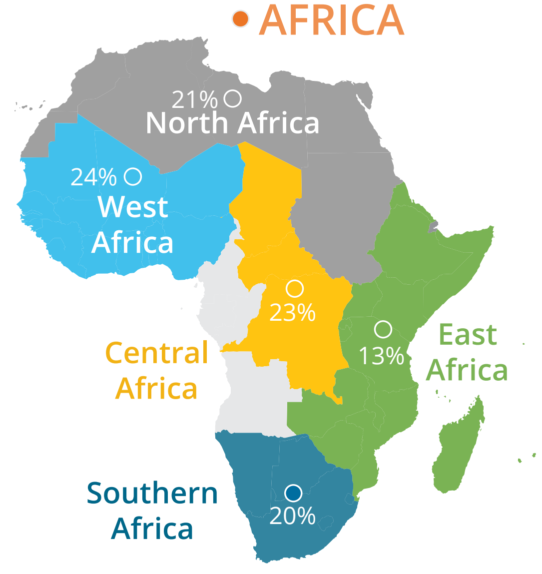
To try to resolve this conundrum, ECA undertook a policy survey on the landscape of international investment agreements in Africa. Drawing on this survey, this report seeks to contribute to the policy dialogue on BITs and how they can help accelerate Africa's economic and social transformation. It also examines regional approaches to such treaties and the need to harmonize legal frameworks (particularly for trade and investment) given the moves towards regional integration among the regional economic communities (RECs).

This report, looking at these matters in far more detail, is structured as follows: Chapter 2 looks at the dynamics of investment in Africa; Chapter 3 provides an overview of international investment treaties; Chapter 4 gives some historical background and statistics on BITs and double taxation treaties (DTTs) between African countries and the rest of the world, and between African countries themselves; Chapter 5 examines BIT disputes involving African countries; Chapter 6 discusses African regional investment treaties and instruments; Chapter 7 analyses the survey findings; and Chapter 8 concludes with policy recommendations for consideration by member states.

BITs and DTTs

DTTs by region

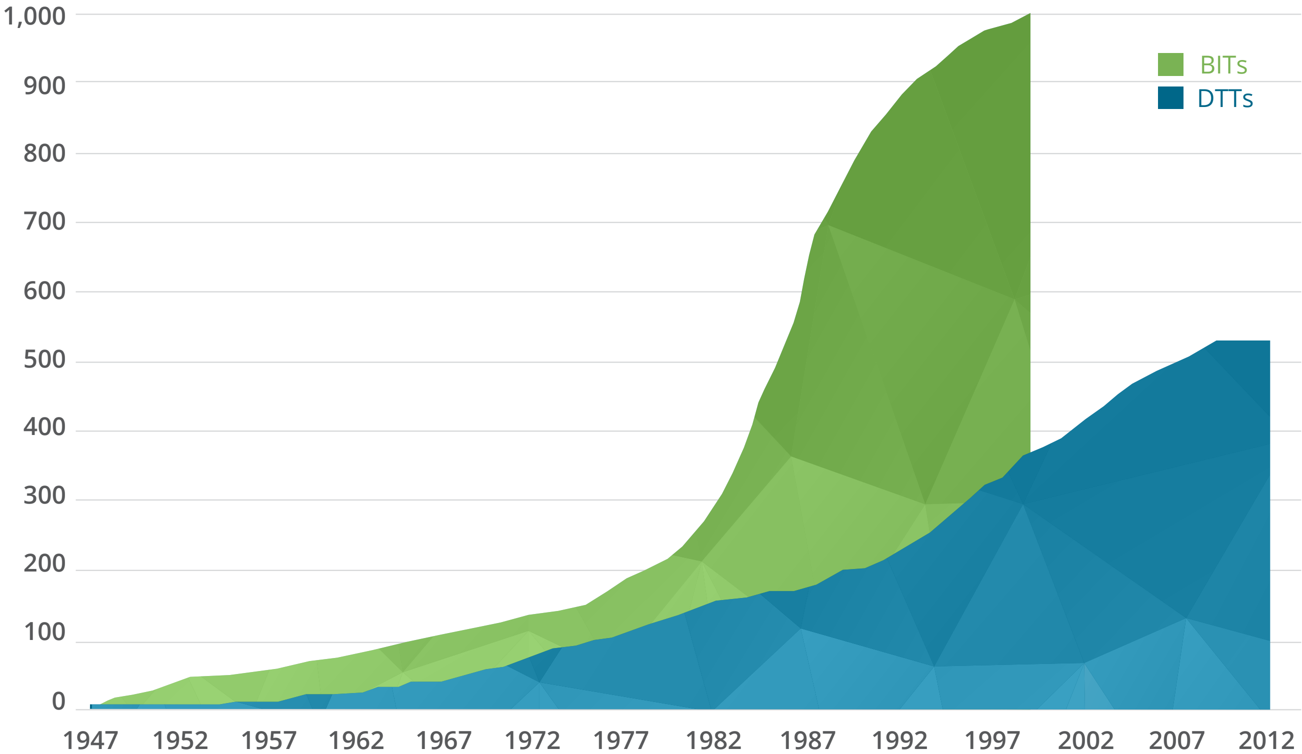
Although Africa saw a steep drop in FDI in 2010 —to around US$ 44 billion from about US$ 54 billion in 2009—due to the global economic and financial crisis, its share of global FDI projects reached 4.4% in 2014, at US$ 54 billion. West Africa had the highest share (24%), followed by Central Africa (23%) and North Africa (21%).



Source: UNCTADStat online database, http://unctadstat.unctad.org/.

The rise of BITs and DTTs

Africa experienced a marked rise in the number of BITs and DTTs in the mid-1990s, as did the rest of the world. More important, some of the early agreements have been the basis (or model) for many of subsequent investment agreements and instruments that still prevail in many African countries.

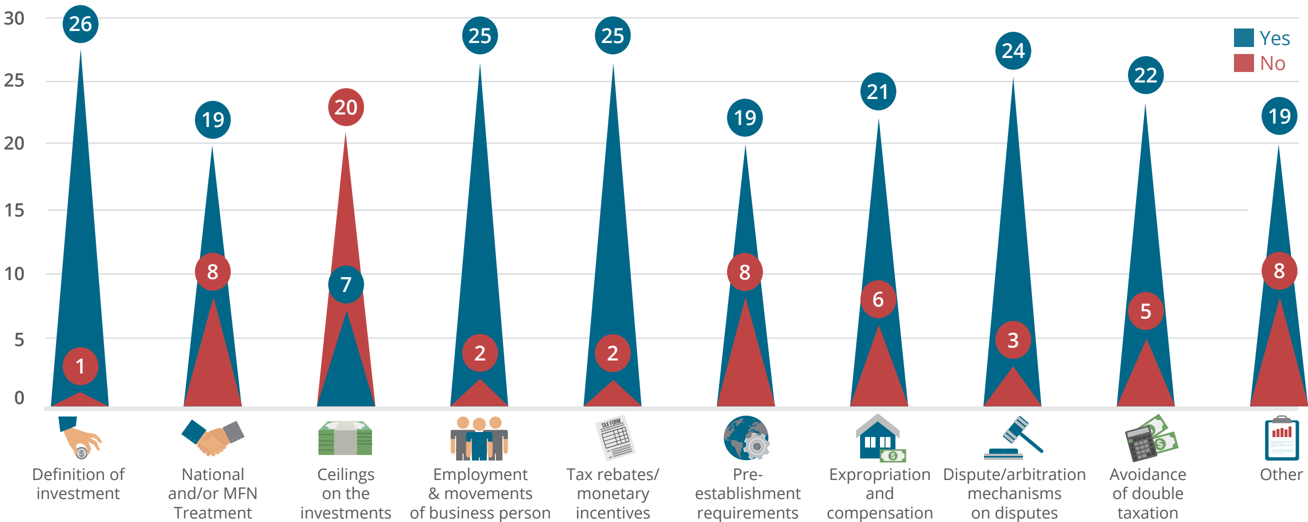


Source: Constructed on the basis of data from UNCTAD's Database of DTTs and Investment Policy Hub, http://investmentpolicyhub.unctad.org/IIA/IiasByCountry#iiaInnerMenu

Note: This surge was mainly driven by the traditional trade and investment partners of the continent, reflecting the colonial linkages and heritage. They were primarily geared to protect and lock in vested investment interests of developed-country partners already prevalent in the region, in particular for sectors such as the minerals and natural resource extraction industries.

What treaties cover

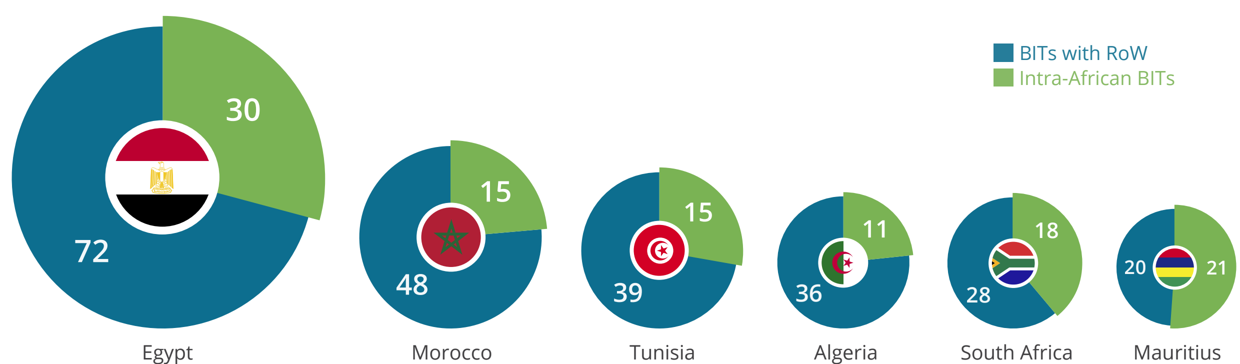
The investment-agreement landscape covers almost all the areas in the questionnaire, except ceilings on investments. Of the 29 countries, 20 indicated that their national regulations/policies on investments do not cover ceilings. Many countries are exercising flexible monetary policy, so investors are free to transfer any amount of capital when establishing a business.



Source: UN Economic Commission for Africa (ECA), 2014 Survey on Investment Agreement Landscape in Africa, 2014.

The rest of the world dominates

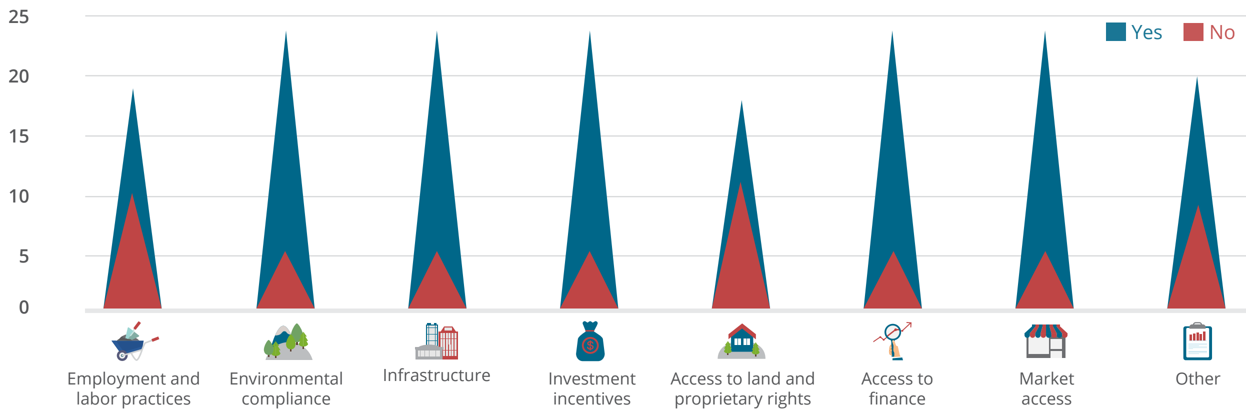
African signatories of BITs with the rest of the world surpass intra-African signatories. Africa has signed 854 BITs, both within the continent and internationally.



Source: ECA compilation based on data from UNCTAD Investment Policy Hub online database, accessed June 2015, http://investmentpolicyhub.unctad.org/IIA (RoW= "rest of world")

Sound policies are essential

Investment treaties do not necessarily bring the much-needed investments in their countries, and sound policies are needed to attract more investors. Some bilateral treaties are oriented toward political considerations rather than investment, and some countries have engaged in BITs just to enhance political ties. Some countries were receiving more investment from countries without investment agreements. So countries need to do more than sign BITs.



Source: ECA Survey on Investment Agreement Landscape in Africa, 2014.
*Note: "Other" includes a reference to the existing legal and regulatory framework and utilities.

The dynamics of investment in Africa 2

After a long period of economic stagnation and bad perceptions abroad, Africa's image started to change in the 21st century. The continent has many growth opportunities and has become a magnet for investment, driven by improved governance, better macroeconomic policies, abundant human and natural resources, urbanization and the rise of the middle class, steady population growth, good economic performance, rising FDI, and huge market potential. Of the 15 fastest-growing economies in the world, 10 are in Africa. This resurgence has led to growing recognition of Africa as an emerging market and a potential global growth pole, ready for economic take-off.

Unleashing these pent-up opportunities and making the continent the destination of choice for investment will, however, require decisive government actions to strengthen governance institutions; reform agriculture; accelerate technology acquisition and invest in innovation; invest in human and physical capital; promote exports and accelerate regional integration; and mobilize resources. Economic transformation is also vital.

In recent years, Africa's macroeconomic performance has been strong and stable, as reflected in economic growth averaging 4–6% over the last decade. An increasingly stable and predictable environment has reduced political and economic risks for businesses considering investing, whether local or multinational. The rate of return on investment in Africa today, adjusting for real and perceived business risks, is higher than in any other developing region (Roxburgh, Dörr, Leke, et al.,2010).

The continent's huge quantity of natural resources provides opportunities for high rates of return. Among these resources are about 12% of the world's oil reserves and 40% of its gold, and vast amounts of arable land and forests. There is a strong demand for these natural resources (especially oil and minerals) from emerging markets such as China and India.

Africa has a large and growing population, with a potentially integrated market size of about 1 billion people, including a burgeoning youth share. The number of middle-class households, too, is set to rise by almost 50% between 2010 and 2020. Africa's combined consumer spending power is projected to increase from US$ 860 billion in 2008 to more than US$ 1.3 trillion by 2020, with 128 million households possessing discretionary income (Roxburgh, Dörr, Leke, et al.,2010).

At the continental level, there is growing recognition of the need for intensified intra-African cooperation and integration, as evidenced by the decision of the January 2012 African Union(AU) Summit to fast-track the establishment of a continental free trade area (CFTA) by an indicative date of 2017. The realization of the CFTA would be a major stepping stone towards the Abuja Treaty's vision of an African Common Market by 2023. Regional integration bears the promise of Africa broadening its economic and market space that will allow for investment in scale production and open up opportunities for important trade and investment complementarities. If exploited, these opportunities would allow for value chain creation within Africa, which will generate much-needed employment and income generation for the poorer segments of society.

Recognizing infrastructure as a vital asset for investment, Africa is also working towards overcoming infrastructure constraints to advance the continent's

interconnectivity through the Program for Infrastructural Development in Africa (PIDA). Countries, collectively and individually, are implementing key transport and trade facilitation measures, including single windows and one-stop border posts.

Despite setbacks among individual African economies, analysis suggests that Africa has strong long-term growth prospects, propelled by external trends and internal changes. From 1970,[3] the total amount of FDI into Africa was about US$ 1.26 billion, which rose to about US$ 54 billion by 2014. But its determinants (beyond extractive industries) are hard to analyse, especially because some countries receiving FDI impose numerous restrictions to protect and foster domestic industries and to prevent the outflow of foreign exchange. Restrictions encompass local content, manufacturing, the trade balance, domestic sales, and remittances.

And as seen, Africa's growth has not translated into higher incomes and jobs. So what can African countries do to achieve middle-income status? They need a sustained flow of development finance, primarily because they have a low savings ratio—certainly relative to East Asia and Pacific and most middle-income countries—and so many of their development plans remain underfinanced. In short, they need to attract more and better-targeted FDI.

2.1 Current foreign investment flows

FDI into Africa has surged over the last decade—and this trend is likely to continue. The only difficulty for many investors is where to invest given the multiple factors attracting investment. The sheer size of the continent can prove daunting for many investors, as are the plethora of rules, regulations, stakeholders, and market dynamics across its 54 countries. There is no template for "doing business in Africa". Although Africa saw a steep drop in FDI in 2010—to around US$ 44 billion from about US$ 54 billion in 2009—due to the global economic and financial crisis, its share of global FDI projects reached 4.4% in 2014, at US$ 54 billion, as shown in Figure 1. Regional FDI flows in 2013 and 2014 are shown in Figure 2. Figure 3 shows the top 10 FDI recipients in those two years combined.

Countries with extractive industries (minerals, oil, and gas) attract the most FDI (Table 1), though information from the survey (Chapter 7) indicates that the manufacturing industry as well as

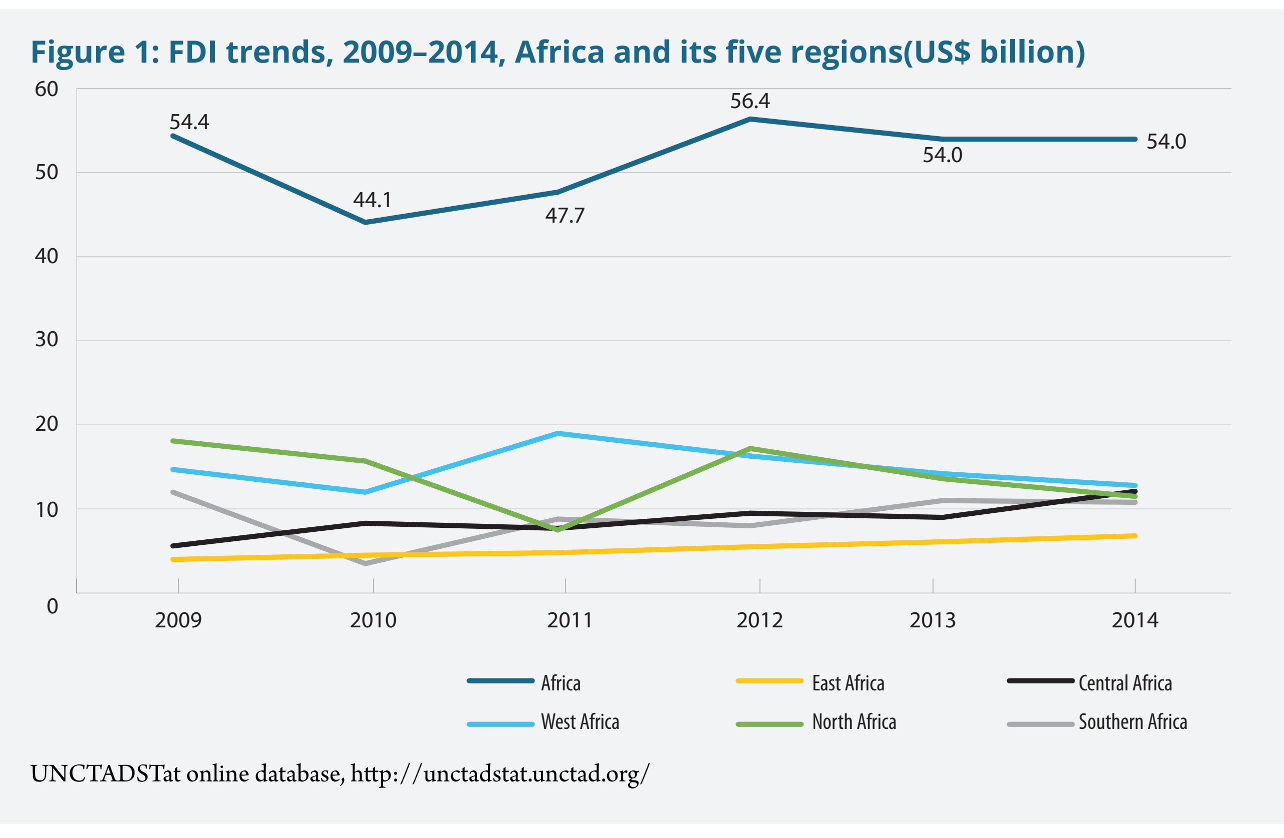


Figure 1: FDI trends, 2009–2014, Africa and its five regions(US$ billion)

UNCTADSTat online database, http://unctadstat.unctad.org/

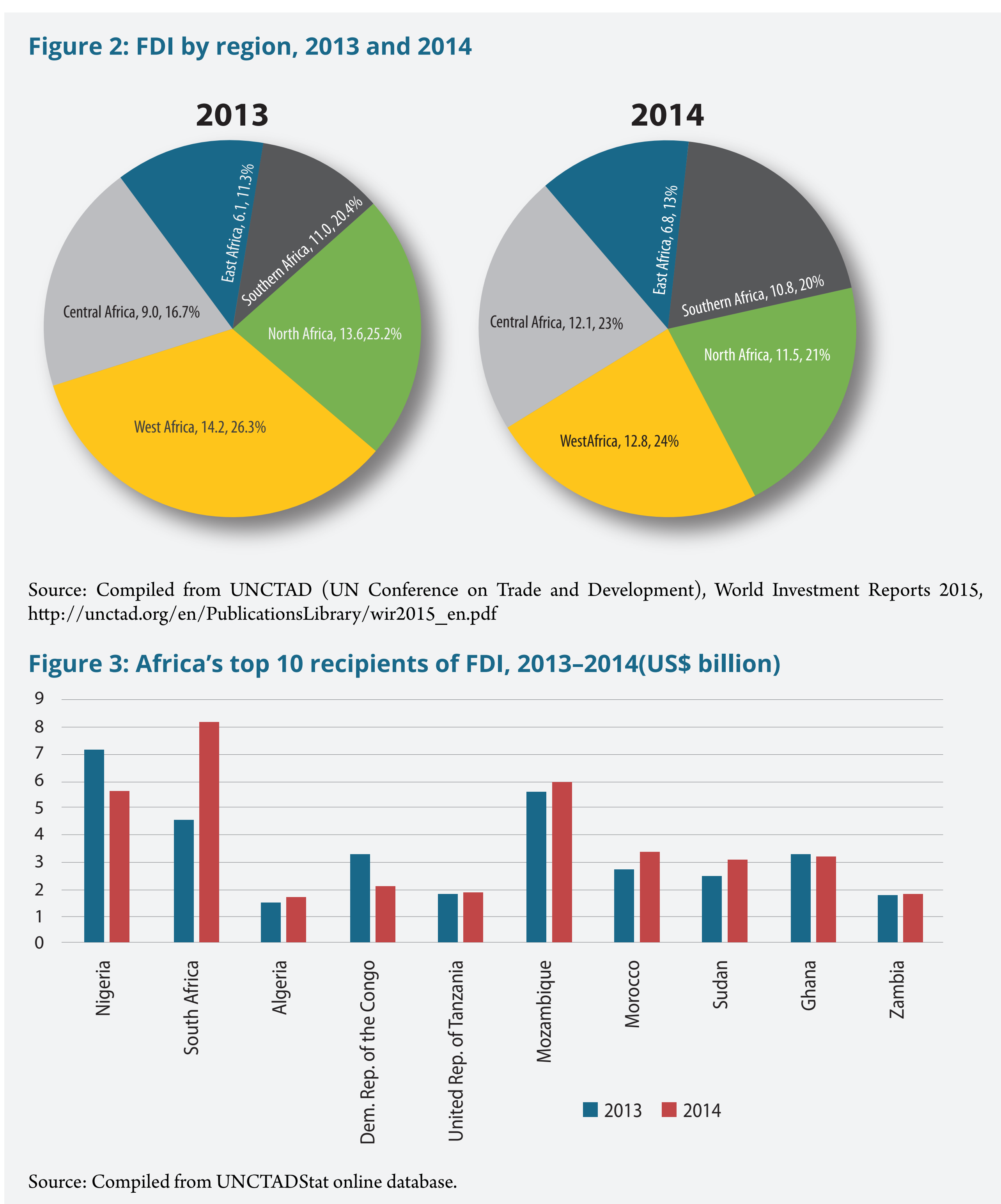


Figure 2: FDI by region, 2013 and 2014

Source: Compiled from UNCTAD (UN Conference on Trade and Development), World Investment Reports 2015, http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf

Figure 3: Africa's top 10 recipients of FDI, 2013–2014(US$ billion)

Source: Compiled from UNCTADStat online database.

services are also showing potential. Between 2009 and 2011, some of the top 10 saw a decline in FDI due to the global crisis, though the economy began to improve in 2012 (but not in Nigeria and the DRC). Mozambique is showing greater potential in attracting FDI. Due to political unrest in North Africa, Algeria's FDI inflows dropped by nearly half from 2011 to 2012.

South Africa registered the highest FDI inflows in 2013, followed by Mozambique. And despite a steep fall from 2011 to 2013, Nigeria stands third in 2013. Zambia, though landlocked, is attracting more FDI, driven by its copper resources. Ghana is moving up the list and has further potential, reflecting discovery of a major oil and gas field off the coast in 2007. The resulting improvement in the economy is already evident there.[4]

Table 1: Africa's top recipients of FDI inflows, 2008–2013 (US$ billion)

Countries	Years					
	2008	2009	2010	2011	2012	2013
South Africa	9.209	7.502	3.636	4.243	4.559	8.188
Mozambique	0.592	0.893	1.018	2.663	5.629	5.935
Nigeria	8.249	8.650	6.099	8.915	7.127	5.609
Morocco	2.487	1.952	1.574	2.568	2.728	3.358
Ghana	1.220	2.897	2.527	3.222	3.293	3.226
Sudan	2.600	2.572	2.894	2.692	2.488	3.094
Congo,Dem. Rep.	1.727	.664	2.939	1.687	3.312	2.098
United Rep. of Tanzania	1.383	.953	1.813	1.229	1.800	1.872
Zambia	0.939	0.695	1.729	1.108	1.732	1.811
Algeria	2.632	2.746	2.301	2.581	1.499	1.691

Source: UN Economic Commission for Africa (ECA) compilation using UNCTAD, World Investment Report 2013.

Moreover, there is strong and encouraging evidence from many African countries. They have liberalized their foreign investment codes, including BITs, and many are members of the Multilateral Investment Guarantee Agency (MIGA) and have established investment promotion agencies as one-stop centres. Progress in regional integration has also been an important "pull factor" underlying investment and capital flows not only between Africa and other regions but also within Africa. Even so, the distribution of benefits depends on supportive favourable conditions in the different national markets as well as the types and strategies of investors.

Most African countries remain committed to implementing political and economic reforms as a precondition for attracting investors and maintaining their confidence in Africa. Still, while Africa's attractiveness as an investment destination is improving, FDI inflows fail to match the continent's potential. Africa received less than 6% of global FDI between 2007 and 2013, according to UNCTAD data, begging the question why investment in Africa has not accelerated more when it appears that investment perceptions have improved so dramatically (EY Attractiveness Survey, Africa 2014).

The answer is rooted in the untapped opportunities for FDI. Africa's comparative advantage lies in agriculture and minerals, but the continent has failed to unleash its full potential, weighed down by constraints that impede it from embarking on fully fledged commodity-based industrialization. For example, almost two-thirds of the world's total non-cultivated land suitable for cropping is in Africa, yet only 8% of Africa's arable land is irrigated. This partly explains the low levels of agricultural productivity and portrays the vast potential of the continent as a global agricultural hub—if the constraints were removed and opportunities exploited, for instance, through FDI in research and development (R&D) geared to improving seedlings and harvesting, and upgrading mechanized harvesting, storage, and transport (Box 1).

Minerals also promise high rates of return, mainly due to the commodities boom in recent years, spurred by a growing demand from emerging economies. Although prices for Africa's minerals have risen sharply, wider investment in mining projects remains a constraint due to Africa's large infrastructure deficit, mainly attributed to perceived risk. A further problem is that domestic sources of capital, and the private sector, do not fully participate in infrastructure projects. As a result, foreign investors look elsewhere for more stable situations.

The possibility of simultaneous infrastructure and mining investment—for example, by establishing a natural resources-driven development corridor—offers a pragmatic approach towards unlocking not only mining and infrastructure projects, but also other collateral economic and social opportunities. In essence, this means that the continent needs to move away from its traditional "enclave development pattern", where only standardized goods with

Box 1: BITs and land governance for sustainable development

One of the greatest challenges facing Africa today is structurally transforming its agriculture, given its vast land and agricultural resources and that about 60–70% of Africa's poor live in rural areas. The rapidly growing urban population and middle class demand more and more food and other consumables. And as the world's population increases rapidly, Africa can become the world's food and agricultural hub.

But this progression requires broad-scale investments in production, development of value chains, and input and output markets—in a nutshell, investment in basic productive capacities, including agribusiness and market infrastructure. There is enormous potential for investors and companies across the value chain, as in upstream products such as fertilizers, seeds, and pesticides, and in downstream activities such as grain refining, biofuels, and other types of food processing.

Agriculture thus remains a critical component of Africa's transformation agenda, and initiatives such as the Comprehensive Africa Agricultural Development Program (CAADP) have been designed to advance this vision. Under CAADP, African countries plan to expand agricultural output by 6% annually through increased domestic spending and external investments. Because smallholder farmers contribute more than 70% of Africa's agricultural output under constraints such as lack of access to land, other productive resources, and efficient market outlets, they are a key target beneficiary.

Over the past decade, Africa has seen large-scale land deals, estimated to account for more than a quarter of global land acquisitions. But for most of these land deals (from 2008 onward), often completed through international investment agreements, BITs, or land contracts, many African countries were unable to negotiate contracts to make investments sustainable. Land had not been mapped, landowners were not properly identified and, as a result, land dwellers lost the most. Land deals often led to land and human-rights violations and displacement of communities and thus contributed little to increasing domestic agricultural production and food security, because many investors aimed to export everything land dwellers produced. Most of these investments also occurred without transparency and without proper consultation of the local communities concerned, and while they benefit investors and perhaps some of the local elites, they create much less employment and contribute much less to rural development than they could. Furthermore, in many of the countries leasing large amounts of land to foreign investors, rural poverty remains pervasive.

BITs are becoming increasingly controversial as a result of the several disputes that have imposed unforeseen costs on member states. Under these treaties, foreign investment is heavily protected, with little or no responsibilities and obligations to the host economy and the people, particularly in terms of protecting land, social, cultural, and environmental rights. This form of neglect, or contempt, creates a challenging environment for policymakers whose job is to address food security concerns and safeguard land and human rights. A review of some land contracts in Africa suggests that they often grant long-term rights to extensive areas of land, and in some cases priority rights over water, in exchange for little public revenue or vague promises of investment and jobs.

Against this background, in 2014, in the context of the Land Policy Initiative (LPI) jointly sponsored by the AU, the Economic Commission for Africa (ECA), and the African Development Bank (AfDB), a major blueprint entitled "Guiding Principles on Large Scale Land Based Investments" was developed and adopted by Africa's political leaders in line with the broader African Union (AU) Declaration on Land Issues and Challenges.

These Principles empower African countries to properly articulate and implement national land policies that take into account their peculiar needs, safeguard the human and land rights of local communities, are responsive to environmental concerns and the particular needs of women such as their access to land, and take into account cost-benefit assessments of the land use and the concept of mutual accountability between the host country and the investor. They also advocate to align land governance and investments in land with national strategies for sustainable agriculture and food security.

Issues around land use and management will continue to gain prominence as Africa remains an attractive destination for foreign and local investors. The abundance of untapped arable land resources will continue to put more pressure on governments to negotiate deals that are both economically and socially beneficial and create jobs and promote prosperity for their people. And this would have tremendous implications for the way land is allocated and the consequences on populations living on or close to the land.

Ultimately, the Principles are designed to enable governments to manage land in a transparent and sustainable manner and to negotiate investments including BITs with full knowledge of the rights attached to the land, and the need to preserve policy space and governments' ability to allocate, reallocate, and manage land to achieve national sustainable development goals.

high import content are produced and no links to the rest of the economy are developed.

To attract FDI to the right sectors, the continent needs to reform and if necessary establish policies that better balance investment protection and promotion. Macroeconomic, industrial, trade, and technological policies should maximize the potential of greater FDI in targeted sectors that contribute to improving Africans' livelihoods and lift millions out of poverty.

Intra-African FDI is important, too. Over the past four years, some FDI has gone into activities like mining, financial services, telecommunications, and resource-based industries in manufacturing. But the bulk of intra-African FDI goes into finance mergers and acquisitions (M&As) rather than greenfield investments, making them attractive to countries privatizing state enterprises or seeking to increase export output from existing firms. The pattern of flows, which indicates linkage between FDI flows and trade, also indicates that their development can be co-dependent. Another positive consideration is that, because of the activities in which it is involved, intra-African FDI can exist for the long term. Also important, intra-African FDI can be quickly and easily integrated into host countries, coming as it does from countries with similar outlooks and challenges. Attracting external resources provides an incentive for countries to strengthen economic links among themselves and to take other steps to enhance intra-regional financial flows. Already, a few of the RECs have protocols or agreements encouraging and facilitating cross-border movement of investment. And many individual countries have adjusted their economic policies to enhance their attractiveness to private capital and investment.

2.2 The relationship between BITs, FDI, and development in Africa

Following the first signing of a BIT in 1959 between Germany and Pakistan, more than 3,000 of these treaties have been adopted. The main motivation for African countries has been FDI; that for developed countries, cheaper labour and raw materials. But have BITs brought much-needed investment? The answer so far eludes us (Box 2). Despite many African countries continuing to sign BITs among themselves or with the rest of the world, the debate continues. The methodological approaches of these empirical studies differ, such as the choice of the dependent variable, sample size, dyadic versus non-dyadic model, and estimation techniques. Thus it is perhaps unsurprising that this literature does not offer a clear answer. One could hypothesize additional reasons for such lack of clarity in research based on economet-

Box 2: A snapshot of empirical studies on BITs

An early study by UNCTAD (1998) did not identify a statistically significant relationship between the conclusion of a BIT and an increase in the amount of FDI between signatories, based on an assessment of 200 BITs concluded between 1971 and 1994. However, in an additional exercise looking at cross-sectional data for 133 countries in 1995, this same study found a positive, though limited, impact of the number of BITs on total FDI inflows.

Hallward-Driemaier (2003) studied dyadic (country-pair) data on FDI flows from 20 OECD to 31 developing countries over 1980–2000 and concluded that BITs in general do not increase FDI flows. Furthermore, the author found that BITs complement rather than substitute for good institutional quality—developing countries cannot make up for weak institutions by signing BITs.

Egger and Pfaffermayer (2004) took outward FDI stock of OECD countries as the dependent variable and showed that BITs coming into force have a positive effect on FDI. The country sample had 19 OECD home countries and 57 host countries, of which 30 were developing countries (four in Africa).

Tobin and Rose-Ackerman (2005) undertook analyses of both dyadic and non-dyadic FDI data. In their analysis of the effect of the total number of BITs on a developing country's share of global FDI flows to developing countries in 1985–2000, they did not find a statistically significant relationship. They only found an impact when BITs enter the regression equation contingent on political risk; however, the effect seems to be positive only for countries that already have a low level of political risk and thus runs counter to the argument that BITs provide one way to reduce investment risk in an otherwise unstable business environment. In a dyadic analysis of FDI flows from the United States to developing countries from 1980 to 2000, these same authors found no evidence of a BIT–FDI link.

Salacuse and Sullivan (2005) undertook cross-sectional estimations (for 1998, 1999, and 2000) of FDI flows to more than 100 developing countries as well as a panel regression focusing on the effect of a BIT with the United States on 31 developing countries including four in Africa. Their results suggest a strong positive effect of a US BIT on FDI inflows.

Neumayer and Spess (2005) found a positive relationship between the total number of BITs signed by a developing country with OECD countries and FDI inflows. They attribute this partially to a signalling effect that shows potential investors that a government is committed to the protection of foreign investment.

Based on a gravity-model approach and a large dataset of bilateral FDI flows from UNCTAD, Busse et al. (2008) concluded that BITs increase FDI flows to developing countries. Moreover, as opposed to Hallward-Driemaier (2003), the authors found that BITs can substitute for strong institutions.

Aisbett (2009) addressed methodological issues of previous studies that had found a significant and positive BIT-FDI relationship (in particular Salacuse and Sullivan, 2005; and Neumayer and Spess, 2005). In a dataset of bilateral FDI flows from OECD to developing countries they showed that, if endogeneity is properly addressed, there is no evidence that BITs increase FDI flows.

In another study estimating a dyadic model, Kerner (2009) found a significant positive relationship between BITs and FDI flows to developing countries. In a sample covering 127 developing host countries over 1982–2001, the study concluded that BITs have positive and statistically significant direct (BITs with an OECD source country in place) and indirect (BITs with other OECD countries in place) effects on FDI.

Büthe and Milner (2009) analysed the effect of the cumulative number of BITs signed by developing countries on FDI inflows on the basis of a dataset covering 122 developing countries for 1970–2000. Taking an approach similar to Neumayer and Spess (2005),they concluded that more BITs led to more FDI in developing countries.

Yackee (2008) constructed a dataset of almost 1,000 BITs that are coded as having strong or weak dispute-settlement provisions. They found no meaningful evidence that strong BITs lead to higher FDI. Nor did they identify consistent evidence for accomplishment of this same effect by weak BITs.

In another study on the effects of the strength of specific provisions in regional trade agreements (RTAs) and BITs on FDI flows to developing countries, Berger et al. (2010) found that the existence of a BIT increases bilateral FDI to developing countries. They also showed that investor–state dispute settlement (ISDS) provisions in RTAs or BITs do not affect FDI. This finding is remarkable in that ISDS is one of the most contentious elements of BITs, while the results in Berger et al. (2010) suggest that ISDS is not a relevant factor for FDI. The latter finding is corroborated by Berger et al. (2011), who showed that the effect of ISDS in BITs on FDI flows is elusive and depends on the exact specification of ISDS.

Yackee (2010) empirically addressed three questions surrounding the BIT–FDI debate, aiming to test the hypothesis that BITs reduce investment risk and make investment more likely. The results suggest that BITs do not reduce country ratings of political risk; nor do insurers of political risk take BITs consistently into consideration when calculating premiums; nor do general counsel at large US firms believe that BITs are an important factor in investment decisions. In other words, Yackee (2010) did not find any evidence suggesting that BITs have a significant influence on FDI.

Studies that are based exclusively on country samples that exclude African countries (such as Banga, 2003; Grosse and Trevino, 2005; Gallagher and Birch, 2006; and Egger and Merlo, 2007) are not included in the review. See also UNCTAD (2009) for a detailed survey of the literature up to 2008.

ric methods: for instance, existing studies generally treat BITs as identical or, as in Yackee (2008) and Berger et al. (2010), as largely homogeneous.

It is likely that not all BITs have the same effect on FDI, as the content of a BIT and the economic and legal characteristics of the two signatory countries no doubt matter. Also, for lack of availability of systematic and comprehensive FDI data disaggregated by sector, FDI flows—or sometimes stocks—are treated as homogeneous (see Colen et al. [2014] for an exception), when in fact they cover an extremely heterogeneous set of sectors ranging from banking services to mining operations and from acquisitions to greenfield projects. Whatever the reason for the overall inconclusive evidence, the BIT–FDI link is likely to continue to stimulate research.

From the existing literature, we can draw tentative conclusions. First, empirical research has been unable to demonstrate consistently and reliably that developing countries signing BITs receive more FDI as a result. Thus, from an evidence-based policy perspective, BITs cannot be recommended as an instrument to attract FDI, simply because that base is not strong enough. This conclusion does not of course mean the opposite—that BITs do not attract FDI. However, for such a far-reaching and—at least over

the medium term—irreversible decision as signing a BIT, no general recommendation can be derived from the literature.

Second, if the policy objective is to increase FDI, there are potentially more effective and less risky means than signing BITs, such as improving the business climate and infrastructure, which—unlike individual BITs—benefit all domestic and foreign investors and serve broader development objectives.[5]

Finally, even if BITs increase FDI and the investment induced by BITs contributes to host-country development, it is far from clear that the benefits outweigh the costs of lost policy space and investor–state litigation risks. Whereas the benefits of BITs seem to be elusive, their costs—particularly from disputes—are indisputable and significant. The original intention of ISDS provisions in BITs was to protect foreign investors from arbitrary expropriation, but ISDS has, in practice, become a tool for foreign investors to challenge almost any host-government decision affecting their profit expectations as well as a highly profitable operating field for specialized law firms.[6] ISDS is probably the most contentious element of BITs[7](see Chapter 5).

One cannot answer yes or no to the question, "Have BITs brought much-needed investment?" It would therefore seem prudent for individual governments to assess how the costs and benefits of BITs work for their countries.

Overview of international investment treaties

3

Investment is central to global economic relations. It is unlikely that international business transactions would take place without the flow of capital across borders. Indeed, trade in goods and services relies on the existence of a predictable, transparent, and enforced set of multilateral rules. Legal instruments have been developed globally (this chapter), bilaterally(Chapters 4 and 5), and regionally(Chapter 6). Though their scope varies widely among agreements, they all share elements of investment protection and promotion and are mostly and explicitly geared towards attracting FDI.

While many countries enjoy open policies on investment, some continue to protect domestic investors. Many still believe that openness to international companies will damage domestic industries, which in this scenario will not be able to compete with foreign companies. With the growing liberalization and globalization in many parts of the world including Africa, concern regarding industrial competitiveness is growing—more with developing than with developed countries.

3.1 Multilateral investment regulations

Most international efforts to regulate investment in the past have been led by organizations representing groups of countries and can at best be categorized as multilateral instruments—such as the Trade-Related Investment Measures (TRIMs)Agreement, part of the agreements that stem from the World Trade Organization (WTO).[8]Its scope of application is limited to investment measures affecting trade in goods, not services or internal trade. In addition, investments made in the form of "commercial presence" as well as investors in the form of "presence of natural persons" are covered by the General Agreement on Trade in Services (GATS).

TRIMs

The rules in TRIMs apply to the domestic regulations a country applies to foreign investors, often as part of an industrial policy. The agreement was negotiated and agreed on by all members of the WTO during the Uruguay Round (1986–1994). Under TRIMs, WTO members have agreed not to apply certain investment measures, related to trade in goods, that restrict or distort trade. The rules restrict a host country's preference of domestic firms and thereby enable international firms to operate more easily in foreign markets.

All 42 African countries have inscribed sectoral and/or horizontal commitments in their schedules in the form of "commercial presence" and/or "presence of natural persons".[9]However, the level of commitment of each country is very different as defined by its limitations on market access and national treatment. The TRIMs agreement contains transitional arrangements allowing members to maintain notified TRIMs for a limited time following the introduction of WTO requirements. It also establishes a Committee on TRIMs to monitor the operation and implementation of these commitments.

Nine African countries are taking steps to accede to the WTO.[10]The process is lengthy, with some countries' accession already spanning more than a decade. The cost of joining the WTO is high, as these countries must adopt a schedule of liberalization of commitments for goods and services, on a request–offer basis by the 159 members. It is expected that

once this process is completed, the new members will adopt the WTO agreements in a Single Undertaking—they will automatically be bound by the existing provisions on investment under the TRIMs and the GATS.

GATS

The rationale for services liberalization under GATS does not differ from the old initiative that has driven the liberalization of merchandise trade under the GATT since 1948. Services had been largely ignored in international trade negotiations for a long time because of the traditional perception that services were non-tradable, but GATS was the first set of multilateral rules the WTO agreed to; it entered into force in January 1995.[11]

The main objectives are to create a credible and reliable system of international trade rules; to ensure fair and equitable treatment of all participants (principle of non-discrimination); to stimulate economic activity through guaranteed policy bindings; and to promote trade and development through progressive liberalization.

Many developing countries have taken steps to liberalize trade in services since 1995. In Africa, the leaders of COMESA, East African Community (EAC), and SADC decided to configure their regions in a way that would liberalize services along similar lines to those provided for by GATS, although the impact of this decision has lagged. Among the three regions, only the EAC region has progressed, in ways that include negotiating priority sectors among the member states. Despite some anxieties, most African countries have realized the importance of liberalizing services, especially when this step is combined with regional integration (Chapter 6), but many still need to adopt principles and take concrete steps.

3.2 OECD-based frameworks

OECD has instruments that constitute a body of soft and hard law pertaining to instruments for FDI. For example, the Declaration and Decisions on International Investment and Multinational Enterprises,[12] adopted in 1976, is a commitment of OECD members to improve the investment climate, promote the social and economic contribution of multinational enterprises to society, and reduce the constraints faced by these entities. The Declaration is an open agreement, subsequently adopted by all 34 OECD countries as well as 12 OECD non-members (including Egypt, Morocco, and Tunisia). It is periodically revised and updated, the last time in 2011.

The Declaration has four components or instruments. The second, "National Treatment", refers to equal treatment of foreign companies and domestic enterprises. Members are allowed to deviate from this component, provided that the companies concerned are notified. Though this instrument is broad, covering all FDI in the form of multinationals, its level of protection is confined to preventing unfair treatment of foreign investment after the foreign enterprise has been set up. Furthermore, the instrument is not binding. Nonetheless, to encourage enforcement, and as is common with other OECD instruments, the National Treatment instrument also envisions periodic examination by members through country reviews. The instrument also includes a "standstill pledge", whereby members have committed to avoid incorporating new exceptions to their treatment of companies, thereby becoming more predictable about the level of their protection of investors.

The "Conflicting Requirements" instrument commits members to minimizing the imposition of conflicting requirements on multinationals. Members have to give due consideration to consultation requests, with a view to solving investment-related problems in good faith and in a cooperative manner. The "International Investment Incentives and Disincentives" instrument fosters transparency of existing incentives and disincentives for investment, to diminish the impact of such measures on investment flows.[13]

Another important contribution of the OECD to investment regulation is the Code of Liberalisation of Capital Movements of 1961. The Code constitutes binding rules; stipulates progressive, non-discriminatory liberalization of capital movements and the right of establishment; and covers "current invisible transactions" (i.e., services).

The goal of the Code is to free international capital movement and services transactions from all restrictions and to protect capital flows at the pre- and post-establishment levels; it also contains obligations to avoid discrimination and to provide

equal treatment of all concerned. The Code pursues progressive liberalization based on mutual concessions and is regularly updated (the last time was in 2013) to reflect changes in the liberalization levels of OECD members.[14]

In June 2012, the OECD Council adopted a decision on governance of the Code, whereby full decision-making powers have been delegated to the Investment Committee, which will be enlarged to include non-members willing and able to meet the standards of adherence. It may be reasonably presumed that in the future, African countries that have adopted other OECD legislation, such as the Declaration and Decisions on International Investment and Multinational Enterprises discussed above, will adopt the Code.

Finally, other "soft law" instruments emanate from the OECD, which also bear on investment in Africa, such as the Policy Framework for Investment. This instrument was developed in 2006 as a means to raise investment issues for policymakers. It emphasizes the fundamental principles of rule of law, transparency, non-discrimination, and the protection of property rights and is intended to assist governments in the design and implementation of policy reforms that create an environment conducive to domestic and foreign investment.

Participating African countries include Egypt, Morocco, Mozambique, Senegal, South Africa, and Tanzania. In addition, the Policy Framework for Investment is also a basis for the NEPAD (New Partnership for Africa's Development)–OECD Africa Investment Initiative,[15] which entails investment-policy reviews. Countries such as Botswana, Mauritius, Mozambique, Nigeria, Tanzania, Tunisia, and Zambia have been reviewed, and more such reviews are expected.

3.3 Other multilateral investment frameworks relevant to Africa

The above agreements are legally binding, yet a second set of instruments is not always so. Some are ad hoc mechanisms that result in concrete rights and obligations case by case or when activated. Their main focus ranges from investment guarantees to legal dispute-settlement procedures arising from investment. African countries participate in some of these frameworks, such as the Multilateral Investment Guarantee Agency (MIGA), the International Centre for Settlement of Investment Disputes (ICSID), and the United Nations Commission on International Trade Law (UNCITRAL).

Finally there are guidelines, principles, and draft instruments that deal with the policy dimension of investment. These instruments, too, are non-binding and are mainly designed to assist countries in designing investment policies or building governance elements into their policies and regulations. Some examples that include Africa are the UN Code of Conduct on Transnational Corporations, the UN Guiding Principles on Business and Human Rights,[16] the International Labour Organization (ILO) Tripartite Declaration on Multilateral Enterprises, the World Bank Investment Guidelines, and the UNCTAD Investment Policy Framework for Sustainable Development.

4 BITS and DTTs in Africa

As the world's economy continues to interlink, treaties promoting international investment are found more and more on the agendas of many African leaders. By signing BITs and DTTs, African countries aim to give confidence to investors, ensuring that investment will be legally protected under international law in case of political turmoil; they also aim to reduce the possibility of double taxation of foreign entities.

Africa's share of world FDI inflows in 2012 was 3.7%, a fraction of what Asia or Latin America registered for the year at 30.1% and 18.1%, respectively. Part of its failure to attract greater investment relates to the perceived risks, even though the continent has higher rates of return on investment than do other world regions (UNCTAD, 2013).[17]

This challenge has led many member states to reinvigorate efforts to improve their investment climates, including via BITs and DTTs. Traditionally, African countries signed such agreements with countries outside Africa, in particular with those where a colonial tie existed. However, more recently, and in order to enjoy the advantages of a wider economic market, African countries have increased their efforts to sign BITs and DTTs within the continent.

4.1 Rationale behind BITs and DTTs

The traditional rationale behind the signing of BITs is to protect and thus to promote foreign investments. Given that the empirical basis for the latter reasoning is questionable (see Box 2), developing countries, including those in Africa, should seriously consider alternative ways to attract foreign investors.

A similar argument applies to DTTs. They aim to reduce the administrative operations of foreign investments and to ease potential double-taxation problems. It is expected that the loss of revenues owing to DTTs will be offset by an increase in FDI. If this balance is not achieved, then developing countries will suffer.

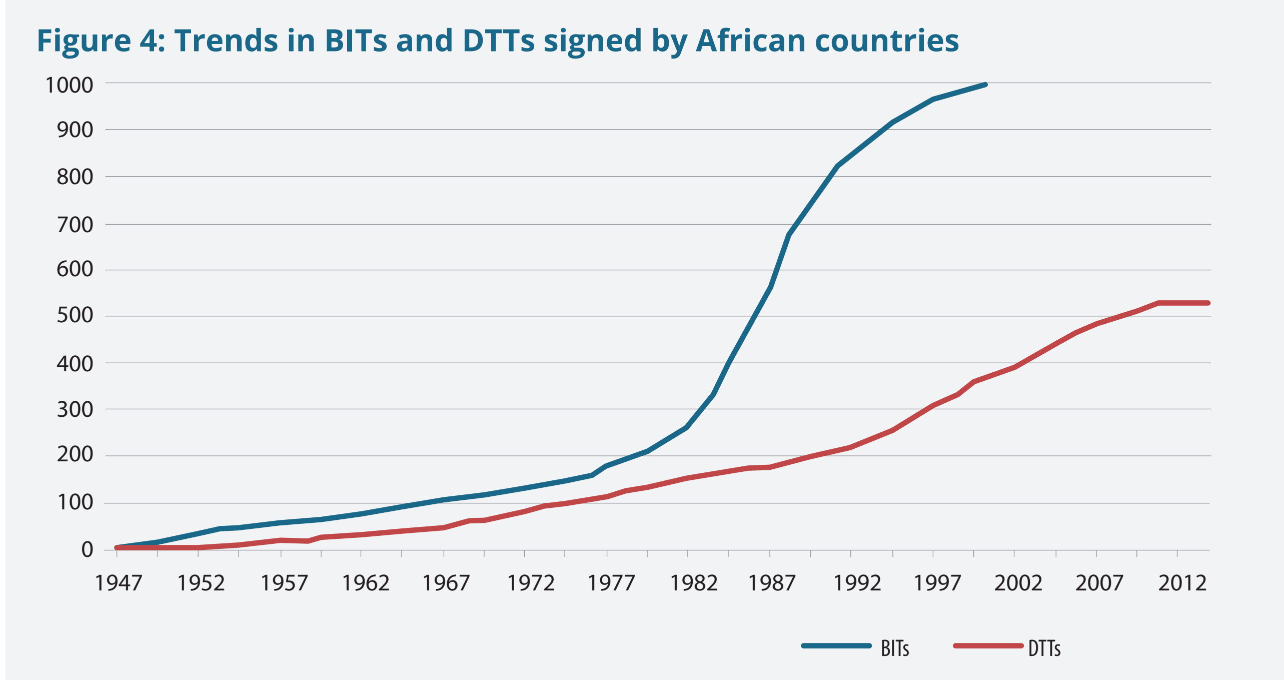
A number of BITs and DTTs are agreed to or signed at the highest levels when heads of state meet without necessarily considering some of the associated implications. Such "political" signings result in social and economic problems, particularly during implementation. For this reason, there is a growing consensus on the need to critically examine African countries' BITs and DTTs.

4.2 Trends in BITs and DTTs

The world has seen a flurry of investment and taxation treaties especially since the 1990s. Over 2,750 BITs and 2,894 DTTs are known to exist globally.[18] Africa accounts for more than 854 BITs (157 intra-African and 696 with the rest of the world) and more than 400 DTTs. (See also Annexes 1, 2, and 7.)

There are several important trends relating to BITs and DTTs on the continent. First, Africa experienced a marked rise in the number of BITs and DTTs in the mid-1990s, as did the rest of the world (Figure 4). More important, some of the early agreements have been the basis (or model) for many of subsequent investment agreements and instruments that still prevail in many African countries. At the time most of these agreements were signed in the 1990s, the emphasis was on assuring investors that their investments would be protected, in the belief that such practices would attract FDI and its related benefits.

Figure 4: Trends in BITs and DTTs signed by African countries



Source: Constructed on the basis of data from UNCTAD's Database of DTTs and Investment Policy Hub, http://investment-policyhub.unctad.org/IIA/IiasByCountry#iiaInnerMenu.

Second, this surge in BITs was mainly driven by the traditional trade and investment partners of the continent, reflecting colonial links and heritage (Table 2). They were primarily intended to protect the vested interests of developed-country partners already present in the region, particularly in sectors such as the minerals and natural resource extraction industries. From a historical perspective, because many African countries had gained independence and became sovereign states these countries hastened to assert their rights and gain recognition by signing these agreements.

Third, as can be seen in Table 2, the reality today still depicts a slanted picture: in almost all African member states, the majority of BITs are with countries outside the continent, with a few exceptions (Burkina Faso, Comoros, Guinea, Mali, and Niger). But there are also indications that this trend may be reversed in the near future, given that African coun-

Table 2: Scope of BITs by country

	BITs with other African countries	BITs with non-African countries	Total BITs by country
Angola	2	8	10
Algeria	11	37	48
Benin	7	9	16
Botswana	4	5	9
Burkina Faso	8	7	15
Burundi	3	4	7
Cameroon	6	10	16
Cape Verde	1	8	9
Central African Republic	2	2	4
Chad	7	7	14
Comoros	4	1	5
Congo, Rep.	6	9	15

	BITs with other African countries	BITs with non-African countries	Total BITs by country
Congo, Dem. Rep.	2	16	18
Côte d'Ivoire	3	8	11
Djibouti	1	8	9
Egypt, Arab Rep.	32	79	111
Equatorial Guinea	3	5	8
Eritrea	1	3	4
Ethiopia	8	23	31
Gabon	5	11	16
Gambia	6	9	15
Ghana	11	16	27
Guinea	12	9	21
Guinea-Bissau	1	1	2
Kenya	2	11	13
Lesotho	0	3	3
Liberia	0	4	4
Libya	11	25	36
Madagascar	2	9	11
Malawi	4	7	11
Mali	10	7	17
Mauritania	9	11	20
Mauritius	19	21	40
Morocco	19	56	75
Mozambique	5	20	25
Namibia	1	13	14
Niger	3	2	5
Nigeria	4	22	26
Rwanda	2	5	7
São Tomé and Príncipe	0	1	1
Senegal	7	18	25
Seychelles	1	3	4
Sierra Leone	0	4	4
Somalia	1	1	2
South Africa	18	28	46
South Sudan	0	0	0
Sudan	6	25	31
Swaziland	2	3	5
Tanzania	4	15	19
Togo	1	3	4
Tunisia	17	42	59
Uganda	5	11	16
Zambia	2	9	11
Zimbabwe	10	22	32
Total	157	696	854

Source: Based on the UNCTAD Database of BITs, June 2013, updated using ECA Survey on Investment Agreement Landscape in Africa, 2014.

tries are gradually signing more investment treaties with each other. There are also new opportunities for investment attraction from other emerging economies and "South-South" partners, such as China and India, that seek to invest in the region and would prefer to invest with programs other than BITs.

Indeed, Africa has recently seen a sharp increase in Chinese private-sector investment, particularly in manufacturing, that is likely to continue in the near future. Underpinning this trend is increased demand stemming from moves to restructure industry in parts of China, as labour-intensive firms relocate their operations to other parts of the developing world, including Africa. Due to the simplicity of operations of Chinese companies, many African countries are responding to China's demand by providing development policies and strategies conducive to maximizing private Chinese investment.

Another important reason for this kind of shift is the deepening regional-integration ties between African nations bilaterally. Some of the resulting regional economic communities have developed model regional investment agreements to guide their member states.

Fourth, BITs are also being used increasingly alongside DTTs. The latter are designed to enable repatriation of investments through holding companies, at the lowest levels of tax possible. DTTs also provide a strong incentive for subsidiary companies that wish to repatriate profits and proceeds from their investments abroad back to the parent company.[19] This has led to the rise of efficiency-seeking FDI, which is no longer driven by merely cutting costs through cheaper inputs and factors sourced in the host country. Rather, this FDI looks at reducing transaction costs derived from the affiliation of the company given the tax structures (which are also defined by DTTs and the loopholes they may generate vis-à-vis the domestic tax regulation) in the host and source countries.

This trend is very much aligned with today's global value chain (GVC) structures where the different locations of a firm internalize and specialize through its affiliate structure. As shown in Figure 4, there was an increasing trend of DTTs alongside BITs, although the evidence for their success in attracting FDI is weak (Box 3). The continent has over 400 DTTs, mainly with non-African partners. Few countries have not signed any DTTs[20]but some of these may sign them soon.

And as with BITs, DTTs are also and increasingly being concluded between African countries, such as South Africa and Mauritius, with 18 and 16 such DTTs, respectively. DTTs are a major source of FDI for some African countries, through investments from third countries. Mauritius is now Africa's largest offshore financial centre.[21]

Yet DTTs can lead to tax evasion, through mispricing activities to bloat operating costs. Such evasion has successfully resulted in tax rebates, as well as transfer pricing to benefit from low taxing on profits and high taxing on costs based on differences in taxing structures across countries. The magnitude of illicit financial flows stemming from such practices in Africa has yet to be fully assessed. ECA has already reported that an estimated US$ 50 billion is lost by Africa as a result of mispricing of natural resources.[22] The amount of lost revenue matched total FDI inflows to Africa in 2012 (WIR, 2013) and is double the sum that Africa received in official development assistance. Thus BITs and DTTs may ultimately facilitate siphoning of capital from the continent to the original source of FDI.

Box 3: Definition of double taxation

Double taxation is generally defined as the imposition of comparable taxes in at least two countries on the same taxpayer with respect to the same subject matter and for identical periods. Double taxation treaties aim to reduce double taxation. Developing countries have signed double taxation treaties to attract more FDI, but the empirical evidence on whether they succeed is unclear, because most of the factors attracting FDI are not easily measurable.

Double taxation treaties have no effect on FDI from developed into less developed countries, mainly because the former unilaterally provide for relief from double taxation and the prevention of fiscal evasion regardless of the treaty status of a host country. Such treaties are more helpful at regional levels through their role in reducing the tax burden on taxpayers involved in transactional businesses, and are likely to play a significant role in boosting regional trade.

4.3 Africa's BITs and DTTs today

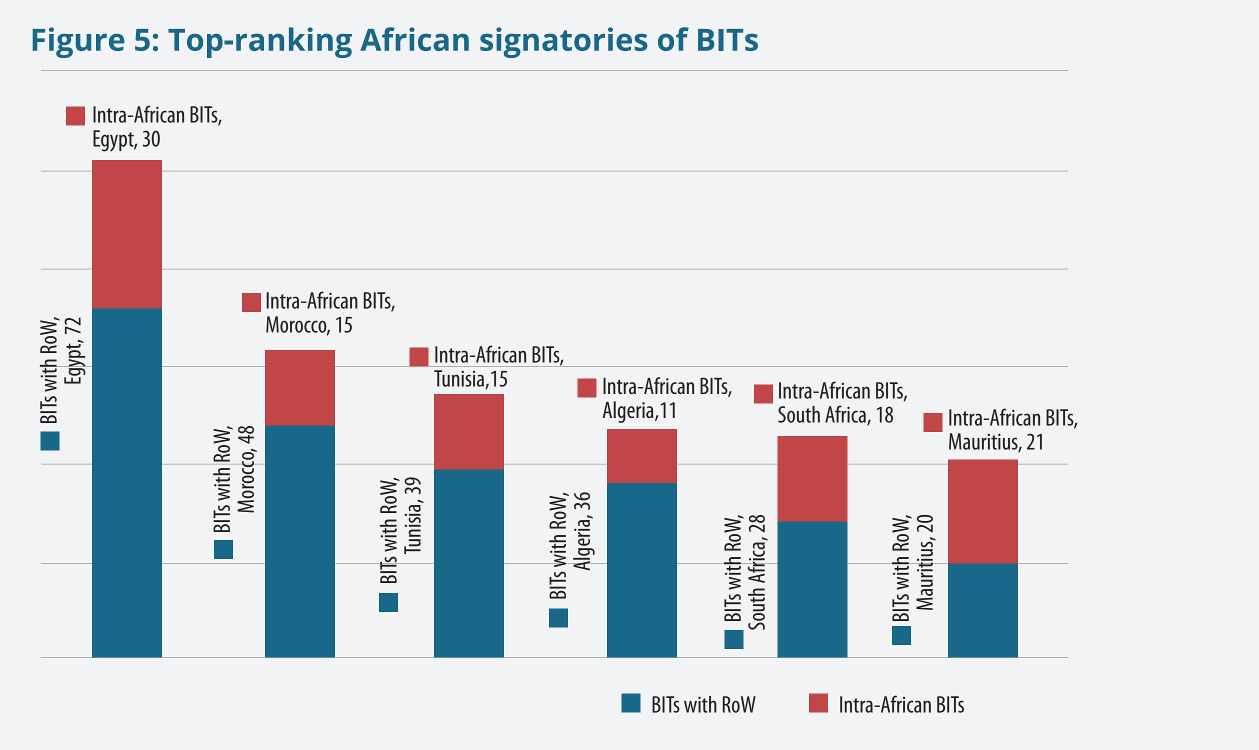
African signatories of BITs with the rest of the world surpass intra-African signatories. Africa has signed 854 BITs, both within the continent and internationally (see Table 2 and Figure 5).[23]

When these agreements are split across the different regional groupings, some regions appear more prolific than others (Table 3). Given the high variation in member numbers per REC, any explanation on absolute regional numbers may be skewed in favour of the bigger RECs(simply because of their larger membership), and hence comparisons are difficult. Still, some regional groupings appear to be more intertwined when it comes to sharing investment treaties. The most prolific BIT regions are CENSAD and COMESA, followed by SADC and ECOWAS. This relativity may reflect the potential a bigger region has as a pull factor for FDI, especially when attracting a market-seeking FDI. Indeed, all of the RECs mentioned have market integration programs, and a majority have made real progress in establishing free trade areas and customs unions, and some are even moving towards common markets (ARIA VI, 2014).

On double taxation, SADC appears to be the most prolific region, while EAC, ECCAS, ECOWAS, and IGAD members have not signed a single DTT.

Finally, for the future COMESA–EAC–SADC Tripartite agreement, there is already a high degree of connectivity in investment matters: 45 BITs and 32 DTTs exist between member countries of one or more of the three groupings. Regional integration is an important dimension for some BITs, albeit a sub-optimal one. As discussed in Chapter 6, some RECs are trying to promote a regional approach to BITs.[24]

Figure 5: Top-ranking African signatories of BITs



Source: ECA compilation based on data from UNCTAD Investment Policy Hub online database, accessed June 2015, http://investmentpolicyhub.unctad.org/IIA.

Note: RoW is "rest of world".

4.4 Africa's BITs and DTTs in earlier years and knock-on effects for today

African countries were more involved in BITs during the 1960s than any other region. The first BIT between two African countries was signed in 1982 by Egypt and Somalia. At that time, African countries had already signed 110 BITs with non-African coun-

Table 3: Intra-regional BITs and DTTs in Africa

RECs	BITs between REC members	DTTs between REC members
CEN-SAD (28 countries)	61	14
COMESA (20 countries)	27	11
EAC (5 countries)	1	0
ECCAS (10 countries)	0	0
ECOWAS (15 countries)	13	0
IGAD (8 countries)	2	0
SADC (15 countries)	18	24
UMA (5 countries)	8	4
COMESA-EAC-SADC (26 countries)	45	32

Source: Calculation based on UNCTAD Database for BITs and DTTs.

terparts since 1960 (when the first BIT between Chad and France was signed).

The underlying objective of these first-generation BITs for most of the non-African partners was to ensure that investments made in strategic sectors in their former colonies were protected and regulated to ensure continuity in already-established commercial links for sourcing primary goods as inputs for their industries after independence. Equally, these initial agreements also responded to strategic asset-seeking FDI, which they sought in order to lock in market benefits and investor potential before other competitors came in. (The political motive of establishing their legal personalities as sovereign states was discussed previously.)

However, it was only in the late 1990s that BITs gained currency among African countries (see Figure 4). In this second phase, BITs between African countries responded mainly to two additional motivations: the formal endorsement of like-minded states sharing a common objective of regulating investment through domestic and international law-making,[25] and the recognition of investment regulation as a means to attract greater investment and to deepen regional integration.

The signing of DTTs among African member states started in 1956 with an agreement between South Africa and Zambia. As with intra-African BITs, these first-generation DTTs were completed at a time when the majority of African countries had not yet gained independence and relations with other member states had been regulated overseas, between the former colonial power and non-African countries. Thus, once independence had been gained, DTTs served a dual purpose: economic (to avoid double taxation)and political (to proclaim recognition of state personality).

Intra-African DTTs doubled in number during 1992–2002, responding to another motivation—all African countries had gained independence by then. The notion of attracting investment through the establishment of multinational companies gained ground in the 1990s in Africa, and many countries sought to achieve this by improving the business environment. For this purpose, a set of accompanying measures deemed to improve the business environment were promulgated. Some countries went as far as offering tax rebates and facilitating the repatriation of capital from the proceeds of investment. To accompany such measures, treaties that would allow firms to decide where to pay their taxes, either in the source country or the host country, became prominent and are still viewed as a means to attract investment by multinational firms today.

Because some of these agreements have regulatory loopholes some companies today are illegally reducing their tax bases using various techniques such as mispricing. Investors have an incentive to triangulate their investments, which means that a holding company based in an African country makes its investment and channels it to an activity rendering higher profits that will be subject to the lowest possible tax per the DTT, without having to file taxes in the country of origin of the FDI.

And so there are 33 African country pairs with both a BIT and DTT on the continent (Annex 3). Three countries—Mauritius, South Africa, and Tunisia—have nine double partnerships each within Africa. Only South Africa has a double partnership with both a BIT and DTT (Mauritius and Tunisia have a DTT but not a BIT with each other) and is channelling the largest FDI inflows into Africa. These 33 DTTs attract efficiency-seeking FDI as well as speculative capital.

Their number could increase soon, stemming from intra-African greenfield investment, which has been growing rapidly from a low base. It is estimated that during 2000–2013 the share of such (announced) cross-border investment projects rose from less than 10% to 18%. South Africa is the leading source, followed by Kenya and Nigeria. These countries are expanding their intra-African investment to sectors other than oil and mining, primarily manufacturing and transport (WIR, 2014). Such expansion suggests that deepening regional integration holds the potential to not only further unlock Africa-based sources of capital for investment, but also to promote an investment portfolio containing a greater share of higher value-added activities.

Africa's involvement in BIT disputes

5

African countries have been silent in discussions of the Investor–State Dispute Settlement (ISDS) system and reforms to it, which has led to widespread belief that the system is dormant in Africa, compared with Latin America and Asia and the Pacific. Recently, though, some African leaders have pushed for reforms to the ISDS. Notable initiatives include the Investment Agreement for the COMESA Common Investment Area (CCIA); the SADC Model Bilateral Investment Treaty Template (SADC Model BIT); and the SADC Protocol on Finance and Investment. But most of these initiatives are not binding and few countries pay more than lip service to them.[26]

To strengthen the current ISDS system, African countries need to support implementation of the proposed initiatives in the relevant regions. The UN Conference on Trade and Development's (UNCTAD's) proposals on ISDS reform, which are based on five main paths, provides a good framework[27]from which African countries can choose their own paths. Reforms should strike a balance between foreign investors and the host country. Collectively, African countries should seriously review their investment policies, particularly regarding international investment law.

5.1 ISDS mechanisms in Africa

Recorded investor–state arbitrations have risen steeply in recent years worldwide, from 51 in 2000 (UNCTAD, 2014b) to 568 by the end of 2013 (UNCTAD, 2014a). With state-to-state arbitration cases taking a backstage role—only four cases have come under investment treaties[28]—given the huge cost to launch or defend an arbitration case, many African countries are looking for alternatives. The best option may be state-to-state dispute settlement, though opponents argue that this may politicize the whole dispute-settlement system.

Investors are increasingly bringing claims against African countries, which some argue is against the intent of the BITs and multilateral treaties that underpin the ISDS system.[29] Many African countries are struggling with complex and unsettled investment cases, which have cost governments huge sums. So to address the functioning of the ISDS system, including concerns about lack of legitimacy, lack of transparency, and the cost of arbitration, Africa's leaders should accelerate efforts to reform the arbitration system.

5.2 Investor–state disputes involving Africa

Virtually all BITs to which African countries are signatories have provisions for dispute settlement, usually along three avenues. Some of the first-generation agreements allowed only for state-to-state dispute settlement, such as the Switzerland–Madagascar BIT (1964), Belgium–Morocco BIT (1965), and Germany–Chad BIT (1976).

Dispute settlement in most cases was envisaged as ad hoc; that is, an arbitration panel was only set up once a dispute arose and after the traditional channels of conciliation and mediation had all been exhausted. Though some BITs may pose no obligation to follow these channels first, they are often considered a starting point, and only when they are exhausted do some agreements refer to the international arbitration mechanisms.

Fewer still mention local remedies (i.e., seeking redress through domestic courts) as an alternative to

international arbitration, such as in the Morocco–Italy BIT of 1990 and the South Africa–Madagascar BIT of 2006. Indeed, in many instances of the case law reviewed for this section, local remedies were not considered before international arbitration procedures were sought.

More recent BITs involving Africa incorporate investor–state arbitration, which allows private investors to submit a claim against the host country. This development has given rise to a number of investor–state disputes, which are probably one of the most contentious aspects of BITs, as seen in high-profile cases where the right of a government to regulate in the public interest assumes less importance than private investors' rights, especially on issues relating to expropriation. Investor–state dispute settlement also remains contentious because it is one-sided, allowing a private investor to take a state to international tribunals, but not the opposite. On investment-dispute rules and venues, BITs with an African party envisage ad hoc or permanent dispute settlement procedures (or both approaches), as well as local and international instruments (Box 4).

The dispute settlement provisions in BITs have brought Africa into more and more cases involving private investors (Table 4; Annex 4 provides an exhaustive list).

These 111 cases represent about one-fifth of the documented treaty-based cases: 68 cases have received an award, been settled, or been discontinued (often due to lack of jurisdiction)and are considered concluded; 43 cases are pending, some dating as far back as 2004 (e.g., ABCI Investments v Tunisia (ICSID Case No. ARB/04/12; see Annex 4).

Geographically there is a wide dispersion. Egypt is a defendant in by far the largest number of cases (25)—it is in fact the number three defendant in the world with ICSID, after Argentina and Venezuela. It is followed by DRC (8 cases), Algeria (6 cases), Guinea (5 cases), Republic of the Congo, Gambia, Zimbabwe, Senegal, Tunisia, and Tanzania (each with 4 cases), Cameroon, Morocco, Liberia, Ghana, Burundi, and Nigeria (each with 3 cases), and Central African Republic, Côte d'Ivoire, Gabon, Mali, Seychelles, and Uganda (each with 2 cases). Equatorial Guinea, Kenya, Madagascar, Niger, South Africa, Mozambique, South Sudan, Sudan, and Togo have had one case each.

ICSID has dealt with (or is dealing with) 107 of the 111 cases; and tribunals established under UNCITRAL are handling three cases. The other venue included the SADC Tribunal and arbitration rules of the Unified Agreement for the Investment of Arab Capital in the Arab States.

Table 5 summarizes some of the financially more taxing cases involving African countries, which paid heavy fines. Some of these cases spanned several years, raising the interest accruing, e.g., Wena Hotels v Egypt, invoked under the Egypt–UK BIT of 1975. The award dictated that Wena Hotels be compensated a total of US$ 8 million, with interest amounting to US$ 11.4 million.

African countries have continued signing BITs in the wake of rising investment disputes. Three basic explanations are that first, many African countries were not fully aware of the obligations emanating from these agreements (or their interpretation) at the time they signed, nor the financial implications

Box 4: Examples of BITs involving African countries with investor–state arbitration provisions on rules and venues

Many such BITs refer to ICSID dispute settlement, including those signed between the United Kingdom and Egypt (1975),and between the United Kingdom and: Lesotho (1981), Ghana (1982), Congo (1989), and Cameroon (1985). Other rules and venues include the United Nations Commission on International Trade Law (UNCITRAL) (e.g., the Poland–Egypt BIT of 1995 and the Algeria–Egypt BIT of 1997) and the dispute-resolution mechanism of the International Chamber of Commerce (e.g., the France–Libya BIT of 1977 and the Poland–Egypt BIT of 1995).

The International Court of Justice in The Hague is also mentioned in some BITs in designating their arbitrators, which means assembling ad hoc state-to-state arbitration panels; it is also mentioned as a venue for addressing an arising dispute (e.g., the Switzerland–Benin BIT of 1966, the France–Mauritius BIT of 1973, the Germany–Sierra Leone BIT of 1965, and the DRC–US BIT of 1984). Even the UN Secretary General has been put forward (e.g., the France–Liberia BIT of 1979).

Table 4: Summary of investor–state disputes involving Africa, 1972–2014

Total number of cases reviewed:	111
Of which:	Concluded: 68 Pending: 43 Breakdown of concluded cases: Award rendered: 36 Settled: 20 Discontinued for other reasons: 12
Rules/Venues*:	ICSID: 107 UNCITRAL: 3 Other: 2

Sources: Registered cases in UNCITRAL, ICSID, and International Chamber of Commerce (ICC) repositories.

*The number of cases sums to 112 because for one dispute parallel cases are brought before ICSID and UNCITRAL tribunals.

Table 5: Examples of investment disputes involving Africa with final awards

Year	Parties	Rules/Venues	Decisions	Status	Nature of settlement
1993	American Manufacturing and Trading v Zaire (ICSID Case No. ARB/93/1)	ICSID	Award issued on February 21, 1997	Awarded in favour of the investor	US$9 million awarded plus interest at 7.5% per annum in default of payment
1995	Antoine Goetz and others v Burundi (ICSID Case No. ARB/95/3)	ICSID	Awarded in favour of the investor	Awarded in favour of the investor	Tribunal has jurisdiction and finds breach of BIT. In a settlement reached thereafter on December 23,1998, "Burundi agreed to reimburse (the investors) the taxes and custom duties it had to pay, amounting to almost US$ 3 million, and to create a new free zone regime".
1998	Wena Hotels Ltd. v Egypt (ICSID Case No. ARB/98/4)	ICSID	Decision on Jurisdiction issued in June 1999; Final Award issued in December 2000; Decision on Application for Annulment issued in February 2002; Decision on the Claimant's Application for Interpretation of the Arbitral Award dated December 8, 2000 issued on 31 October 2005	Awarded in favour of the investor	US$ 8,061,897 awarded plus interest of US$ 11,431,386 (calculated at rate of 9%, compounded quarterly) awarded in 2000. Interest in default of payment at the same rate.
1999	Middle East Cement Shipping and Handling Co.v Arab Republic of Egypt (ICSID Case No. ARB/99/6)	ICSID	Award issued on April12, 2002	Awarded in favour of the investor	US$ 2,190,430 awarded plus US$ 1,558,970 in relation to compound interest up to date of award, plus interest at 6% compounded annually until payment

Year	Parties	Rules/Venues	Decisions	Status	Nature of settlement
2003	BernadusHenricus-Funnekotter and others v Republic of Zimbabwe (ICSID Case No. ARB/05/6)	ICSID	Award issued on April 22, 2009	Awarded in favour of the investor	€ 8,220,000 (approx. US$ 12 million) awarded plus interest
2012	Al-Kharafi v Libya	Ad hoc tribunal[1]	Award issued in March 2013, ordering Libya to pay damages to Al-Kharafi, a Kuwaiti conglomerate, for obstructing the planned tourism development project in Libya	Awarded in favour of the investor	The award of US$ 935 million in the Al-Kharafi v Libya case ranks as the second-highest known award ever

Sources: Based on the registered cases in ICSID and UNCITRAL repositories.

[1] Under the Unified Agreement for the Investment of Arab Capital in the Arab States.

of violating them; second, the change of government, political instability, and element of conflict in the African region has made it impossible for some to uphold their obligations to protect investors and investments, hence triggering disputes; and third, provisions in these investment agreements are sometimes worded in such a loose and general manner that they increase the potential liability of the state, opening the door for the filing of investment disputes on almost any account by investors(see Table 6).

On the basis of the three explanations above, it is clear that assessing the potential liability of the state in the context of BITs is particularly difficult and subject to the discretionary interpretation of tribunals. It all depends on what standard of review is applied by the arbitrator, which may range from applying provisions in a very broad sense (such as regarding the definition of an investor in the American Manufacturing and Trading v Zaire case), to building cases around sometimes questionable arguments (such as in the Al-Kharafi v Libya case, where damages were claimed for the loss of a 90-year revenue stream from a resort project that had never been constructed).

Given the recent case law and the financial implications of investment disputes, some countries such as Morocco and South Africa are renegotiating and even terminating BITs to avoid litigation.[38] Indeed, this concern is shared among other countries, such as Indonesia, given the human and financial resources that litigation implies. Some countries have even gone as far as withdrawing from international arbitration mechanisms such as ICSID (e.g., Bolivia, Ecuador, and Venezuela), on the grounds that litigation outcomes often appear arbitrary, unaffordable, and unjustified, going beyond the intended objectives and spirit of the BITs invoked.[39]

The cases presented in this section give grounds to believe that some of the BITs that have been signed by African countries are skewed in favour of investors, posing a financial and technical burden on governments, as well as a cap on their policy space. The mere wording of BITs seems to raise the potential liability of the state and suggests that African countries need to be cautious when signing and renewing these agreements. The last chapter offers some policy recommendations. But first we consider the question, "What promise do African treaties hold for African investors?

Table 6: Examples of cases that led to investment disputes and their explanations

Examples of cases	Parties involved	Type of cases	Remedy
First explanation[30]	Antoine Goetz and others v Burundi (ICSID Case No. ARB/95/3).	Goetz, owning a company that produced and commercialized precious metals, invoked breach of the Belgium–Burundi BIT of 1989, on the grounds that the Burundi government withdrew the company's certificate of free zone, which conferred certain tax and customs exemptions, due to a change in the free zone regime.	The arbitration panel decided in favour of Goetz, arguing that the government's measure had an effect similar to a measure expropriating or restricting property.[31]
First explanation	Middle East Cement Shipping and Handling Co v Egypt (ICSID Case No. ARB/99/6)	A claim was filed in 1999 invoking the Egypt–Greece BIT of 1993 due to the expropriation of Middle East Cement's interest and subsequent inability to ensure the re-exportation of the company's assets.	The award, issued in April 2002, dictated that a compensation of US$ 2.19 million be paid, plus US$ 1.55 million in relation to compound interest up to date of award, plus interest at 6% compounded annually until payment.[32]
Second explanation[33]	Al-Kharafi vs Libya	The second-highest known award in investment arbitration history to a Kuwaiti conglomerate that was supposed to construct a tourism development project, which was thwarted as a result of the recent political developments in Libya.[34]	An award of about US$ 935 million to a Kuwaiti conglomerate.
Second explanation	*Funnekotter v Zimbabwe* (ICSID Case No. ARB/05/6) in 2003	A case was filed by Mr. Funnekotter and friends on investments in large commercial farms in Zimbabwe and invoked the Dutch–Zimbabwean BIT of 1996 as a result of the seizing of their property without adequate and timely compensation under the Land Acquisition Act by the Government of Zimbabwe. Zimbabwe argued that a state of necessity or emergency existed at the time of the seizure of such land by settlers and veterans, which relieved it of the responsibility of complying with the BIT.	Arguments were dismissed by the tribunal on the grounds that "necessity" can only be invoked in certain strictly defined conditions, and that the decision whether such conditions have been met is not exclusively to be determined by the state. Further, the tribunal noted that the government did not explain what difficulties it faced in addressing the situation and that it did not explain why this prevented it from calculating and paying compensation to the affected.
Third explanation[35]	*Biwater vs Tanzania* (ICSID Case No. ARB/05/22)	A highly controversial case which at the time set the standard for looking at government conduct in response to investor requests for extra-deal renegotiations.	The tribunal criticized the government because it had no legal duty to renegotiate a contract with the company Biwater and that it did so on the basis of goodwill.[36]
Third explanation	*American Manufacturing and Trading v Zaire* (ICSID Case No. ARB/93/1).	American Manufacturing invoked the violation (breaching) of the DRC–US BIT of 1984.[37] Zaire contended that American Manufacturing was not an investor as it had never made a direct investment in Zaire, but only participated as a stockholder, and hence the government could not be held responsible.	The arbitral panel determined that the definition of the term "investment" in Article I of the BIT was broad enough to include every kind of investment, and hence the treaty did apply.

6 African regional investment treaties and initiatives

African countries are making important strides towards accomplishing their regional integration agenda, and many regional economic communities (RECs) are working towards setting up free trade areas, customs unions, or even a common market, all steps in realizing an Africa Economic Community. Promoting investment among RECs through investment protocols is a key feature. But what are the prospects for further regional integration in investment in Africa?

This chapter and the next respond in three ways: by seeing how much progress has been made in harmonizing investment regulations; by reviewing the scope and plausibility of a continental investment area, which is high on the agenda of the African Union (AU); and (next chapter) by capturing the views of a wide range of African investment constituents in the UN Economic Commission for Africa (ECA) Survey on Investment Agreement Landscape in Africa of 2014.

Various RECs have signed regional-investment protocols or other regulations, including the Investment Agreement for the Common Market for Eastern and Southern Africa (COMESA) Common Investment Area, the Supplementary Act adopting Community Rules on Investment and the Modalities for their Implementation with the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC) Protocol on Finance and Investment. The East African Community (EAC) and SADC have developed model laws on investment, namely the EAC Model Investment Code and the SADC Model Bilateral Investment Treaty Template (SADC Model BIT; Annex 6).

Regional regulation spans a majority of REC countries and represents a complex regulatory web that affects investments and sometimes also finance and taxation matters at national and regional levels (Table 7). Though implementation of some protocols is still awaiting ratification and implementation nationally may take time, investments are already being affected (and targeted), which calls for a deeper understanding of this emerging body of regulation.

Table 7: Matrix of regional investment instruments within selected RECs

Country	COMESA	EAC	ECOWAS	SADC	UMA
Algeria					
Angola					
Benin					
Botswana					
Burkina Faso					
Burundi					
Cameroon					
Cape Verde					
Central African Republic					

Country	COMESA	EAC	ECOWAS	SADC	UMA
Chad					
Comoros	Investment Protocol				
Congo, Rep.					
Côte d'Ivoire			Investment Protocol		
Congo, Dem. Rep.	Investment Protocol			Both	
Djibouti	Investment Protocol				
Egypt, Arab Rep.	Investment Protocol				
Eritrea	Investment Protocol				
Ethiopia	Investment Protocol				
Equatorial Guinea					
Gabon					
Gambia			Investment Protocol		
Ghana			Investment Protocol		
Guinea			Investment Protocol		
Guinea-Bissau			Investment Protocol		
Kenya	Investment Protocol	Finance/taxation protocol			
Lesotho				Both	
Liberia			Investment Protocol		
Libyan Arab Jamahiriya	Investment Protocol				Both
Madagascar	Investment Protocol			Both	
Malawi	Investment Protocol			Both	
Mali			Investment Protocol		
Mauritania					Both
Mauritius	Investment Protocol			Both	
Morocco					Both
Mozambique				Both	
Namibia				Both	
Niger			Investment Protocol		
Nigeria			Investment Protocol		
Rwanda	Investment Protocol	Finance/taxation protocol			
São Tomé and Príncipe					
Senegal			Investment Protocol		
Seychelles	Investment Protocol			Both	
Sierra Leone			Investment Protocol		
Somalia					
South Africa				Both	
Sudan	Investment Protocol				
Swaziland	Investment Protocol			Both	
Togo			Investment Protocol		
Tunisia					Both
Uganda	Investment Protocol	Finance/taxation protocol			
Tanzania		Finance/taxation protocol		Both	
Zambia		Finance/taxation protocol		Both	
Zimbabwe	Investment Protocol			Both	

Source: Based on the UNCTAD Database for BITs and DTTs.

Key: **Investment Protocol** **Finance/taxation protocol** **Both**

6.1 REC initiatives: SADC, ECOWAS, COMESA, and EAC

SADC

The SADC Protocol on Finance and Investment (FIP) was signed in 2006 and came into force in 2010 after two-thirds of member states had ratified it.[40]Its objective is to "foster harmonization of the financial and investment policies of the state parties in order to make them consistent with the objectives of SADC", to be achieved through "facilitation of regional integration, co-operation and co-ordination within finance and investment sectors with the aim of diversifying and expanding the productive sectors of the economy, and enhancing trade in the Region to achieve sustainable economic development and growth and eradication of poverty".

The FIP is a comprehensive document covering all areas typically covered by BITs, primarily in Annex 1 on cooperation on investment, as well as additional issues in the remaining 11 annexes. The FIP stipulates that investments in signatory states are protected against uncompensated expropriation. Whether this guarantee extends to foreign investments originating in third countries (non-SADC members) is unclear, since the definition of investments and investors does not exclude non-signatories.[41]

Investors are guaranteed most-favoured nation treatment (Article 6 of Annex 1), but not national treatment granted by many BITs. The FIP grants investors the right to employ "key personnel and other necessary human resources" from any country, subject to the conditions that the necessary skills are not available in the host country of the investment, regional policies are complied with, and employment of foreign personnel enhances local capacity. On free movement of capital, it is worded cautiously, calling on state parties to "encourage the free movement of capital", but allowing state parties to "regulate capital movements subject to their domestic laws and regulations, when necessitated by economic constraints" (Article 15 of Annex 1).

The FIP does not regulate double taxation in the context of investments, but member states agree to seek to sign agreements to avoid double taxation among themselves and with countries outside SADC.

Investor–state disputes are to be first referred to a competent court in the host country and can then be referred to international arbitration. The disputants may decide to refer their case to the SADC Tribunal, ICSID, or an arbitration panel according to the UN Commission on International Trade Law (UNCITRAL) rules; if there is no agreement between the disputants, the last option is to be pursued.

Annexes 2–12 of the FIP are on cooperation in areas important for the investment climate in the region as well as regional integration in general. These include macroeconomic convergence (measured by inflation, budget deficit, public debt, and the current account balance), taxation (including tax incentives), foreign exchange controls, and payment systems.

Following up on the FIP and in a further move to harmonize investment policies in the SADC region, the SADC Model BIT was completed in 2012. Member states can choose to use all or some of the model provisions in developing their own BITs or as a guide for investment treaty negotiations. The SADC Model BIT is therefore not intended to be a legally binding document. It also provides an educational tool for officials and may serve as the basis of training sessions for SADC government officials.

The SADC Model BIT covers most of the areas included in standard BITs. But it does not recommend including a provision for most-favoured nation treatment. In terms of investor–state disputes, the SADC Model BIT does not recommend including provisions that give investors the right to initiate arbitration, but contains language that can be used by countries wishing to do so. The SADC Model BIT tries to reflect a balanced approach between the member states' development objectives and investor interests. Thus, while it contains substantive provisions to protect investors, it also provides for a number of obligations for investors, including refraining from taking part in acts of corruption, assessment of environmental and social impacts of investments, transparency, and compliance with minimum human rights and labour standards. If a member state seeks to follow the Model BIT, however, it may not be able to secure all the provisions in bilateral negotiations.

In practice, BITs signed by SADC member states do not seem to follow the SADC Model BIT very closely. According to the UNCTAD database of interna-

tional investment agreements,[42] three SADC countries have signed seven BITs patterned on the SADC Model BIT. And two of these seven (Mozambique–Japan and Tanzania–Canada)deviate sharply from the SADC Model BIT by containing provisions for most-favoured nation treatment and international arbitration for investor–state disputes.

ECOWAS

The revised ECOWAS Treaty signed in 1993 in Cotonou, Benin, called for "the harmonisation of national investment codes leading to the adoption of a single Community investment code" (Article 3i). At their December 2008 meeting in Abuja, the ECOWAS Heads of State and Government adopted the Supplementary Act A/SA.3/12/08 on the Common Investment Rules for the Community.[43] At the same meeting, two additional Supplementary Acts relevant for the establishment of the Common Investment Market (CIM) were adopted.[44]Common investment rules set out in Supplementary Act A/SA.3/12/08 cover all investments made by an investor before or after the entry into force of the Act, provided that an investor is any individual or company of any member state of ECOWAS or a company that has invested or is making an investment in the territory of an ECOWAS member state.

Community rules provide three levels of treatment: national treatment, most-favoured nation treatment, and minimum regional standards. The first will be granted to investors case by case, after examination to determine if the "in like circumstances" concept is respected (national investor and foreign investor need to be in the same situation). Most-favoured nation treatment does not oblige an ECOWAS state to extend privileges resulting from a customs union, a free trade area, a common market, or an international agreement on taxation. Minimum regional standards include fair and equitable treatment, as well as the prohibition of discrimination. Article 7 bases this treatment on the customary international law and has minimal treatment of aliens.

As is customary in BITs, Supplementary Act A/SA.3/12/08 includes protection against uncompensated expropriation. In case of expropriation, investors are to be compensated without delay, according to market value and in convertible currency. ECOWAS investors are guaranteed free transfer of assets, which includes in essence all payments related to the investment (such as profits, dividends, and proceeds from sale of the investment). Performance requirements are allowed to promote domestic development benefits from investments. They can cover exportations, preference to goods produced, volume or value of imports and exports, and restrictions on sales of goods and services.

Supplementary Act A/SA.3/12/08 is different from most BITs in that it contains a designated chapter on "obligations and duties of investors and investments". These include a provision for a pre-establishment environmental and social impact assessment, the results of which are to be made available to the community where the investment takes place as well as to other "affected interests". The investor obligations also include a number of post-establishment requirements including the protection of human rights and respect for fundamental labour standards according to the ILO Declaration on Fundamental Principles and Rights at Work. Some of these investor obligations are mirrored in the subsequent chapter on "host state obligations", which also calls on member states to refrain from competing against each other in the area of investment incentives. In case of investor–state and state–state disputes, the parties can refer their case to a national court or tribunal or, in case of disagreement, to the ECOWAS Court of Justice.

Article 31 of Supplementary Act A/SA.3/12/08 is noteworthy in that it calls on member states to renegotiate all existing investment agreements that are not consistent with it and ensure that all future investment agreements signed by member states are consistent with it "particularly with the balance of rights and obligations it establishes". The draft ECOWAS Investment Code and Policy are being validated with relevant stakeholders before being presented to the ECOWAS Council of Ministers for adoption. The harmonization of investment codes and regulations in the region according to the draft ECOWAS Investment Code and Policy would constitute a further key improvement of the regional investment climate.

COMESA

In the treaty establishing COMESA,[45] signed in 1993 in Kampala, member states recognized the importance of higher investment flows for development

of the region and agreed to promote and protect private investments (Articles 158 and 159). In the final communiqué of their 1998 summit in Kinshasa, the Authority of Heads of State or Government designated COMESA as a Common Investment Area. After almost a decade of preparation and negotiations, the Investment Agreement for the COMESA Common Investment Area (CCIA) was adopted by the Authority at its May 2007 summit in Nairobi.[46] One year earlier, in June 2006, the COMESA Regional Investment Agency (RIA) was launched in Cairo with the aim to promote the COMESA region as an integrated investment area.

The CCIA agreement aims to attract investment from within and outside the region. However, it has not entered into force since the required threshold number (of at least six member states ratifying the agreement) has not been reached—in fact, as of February 2014, not a single country had.[47]

The entry into force of the CCIA could be an important vehicle for investment promotion and facilitation in the COMESA. Among the key provisions in the agreement is the definition of "investment" (Article 1.9), which is defined as assets admitted or admissible in accord with the relevant laws and regulations of the COMESA member state in whose territory the investment is made. This definition is completed by an indicative list including (i) moveable and immovable property and other related property rights such as mortgages, liens, and pledges; (ii) claims to money, goods, services, or other performance having economic value; (iii) stocks, shares, and debentures of companies and interest in the property of such companies; (iv) intellectual property rights, technical processes, know-how, goodwill, and other benefits or advantages associated with a business operating in the territory of the COMESA member states in which the investment is made; and (v) business concessions conferred by law or under contract, including build, operate, own/transfer, rehabilitate, expand, restructure, and/or improve infrastructure; concessions to search for, cultivate, extract, or exploit natural resources.

The Council can declare other activities as investments. In addition, some exclusions are mentioned: goodwill market share, claims to money deriving solely from commercial contracts for the sale of goods and services to or from the territory of a member state to the territory of another member state, or a loan to a member state or to a member state enterprise; a bank letter of credit; or the extension of credit in connection with a commercial transaction, such as trade financing.

In terms of scope, the Agreement only applies to investments of COMESA investors that have been specifically registered pursuant to the Agreement with the relevant authority of the member state in which the investment is made. COMESA Investors are nationals or judicial person of member states. A judicial person owned or controlled by foreign national must maintain substantial business activity in the member state to be considered as a COMESA Investor.

The CCIA Agreement specifies that investments are admitted in accord with national laws and regulations (Article 1.9). Moreover, according to Article 13, COMESA investors and their investments must comply with all applicable domestic measures of the member state in which their investment is made. Pre- and post-establishment are also subject to national rules and regulations. The protection provided in the Agreement covers both phases.

The standard is for fair and equitable treatment, in accord with customary international law. The avoidance of denial of justice in criminal, civil, or administrative adjudicatory proceedings is the main content of this treatment. In addition, the National Treatment (Article 17) is provided to the COMESA investors and it is stated that each member state shall accord to COMESA investors and their investments treatment no less favourable than the treatment it accords, in like circumstance, to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation, and disposition of investments in its territory. The Sensitive and the Temporary Exclusion List are the only exceptions to this treatment. Most-favoured nation treatment is accorded to COMESA investors, but not to non-member states before the entry into force of the CCIA Agreement. Moreover, there are exceptions about preference or privilege resulting from any customs union, free trade area, common market or monetary union, or international agreements pertaining to taxation.

There are no explicit restrictions on the transfer of assets in the CCIA agreement. Hence, COMESA

investors have the right to repatriate investment returns, funds for repayment of loans, proceeds from compensation upon expropriation, and the liquidation or sale of the whole or part of the investment including an appreciation or increase of the value of the investment capital. In addition, they may also transfer payments for maintaining or developing the investment project, such as funds for acquiring raw or auxiliary materials or semi-finished products, as well as replacing capital assets; and remit the unspent earnings of expatriate staff of the investment project. However, a transfer must be done in accord with national laws and regulations (Article 15).

Expropriation is only admitted in the public interest, under due process of law, on a non-discriminatory basis, and subject to prompt, adequate, and effective compensation. This compensation, once paid, is freely transferable. Investors are free to present their case before a judicial or other independent authority. COMESA investors have the right to hire qualified persons from any country with priority to qualified member state workers with same qualifications. Foreign qualified persons have full rights to enter and receive the necessary authorizations to reside in the member state subject to the laws in force in that member state promptly and without burdensome requirements.

The agreement also defines rules for dispute settlement for state–state and investor–state disputes. These prescribe for the case of state-to-state disputes that a decision may be sought from a tribunal constituted under the COMESA Court of Justice, an independent arbitral tribunal. In investor–state disputes, an investor from a COMESA member state may submit to arbitration to the competent court of the state where the investment has been made, the COMESA Court of Justice, or international arbitration (under the ICSID Convention, UNCITRAL rules, or any other arbitration institution that both parties of the dispute agree upon). The choice of the arbitration forum for the dispute is definitive, which means that an investor cannot bring the same claim before two of the above fora (e.g., seek international arbitration after the national court has ruled on the case).

The agreement states that each member state must publish all relevant measures that pertain to, or affect, the operation of the agreement. Transparency is also required in the application and interpretation of national laws, regulations, and administrative procedures. The agreement also contains goals on investment promotion and facilitation, including simplifying procedures for approval of investment projects and organizing joint (intra-COMESA) investment-promotion activities.

EAC

The EAC does not have an investment agreement or investment protocol between its member states. However, the Treaty Establishing the EAC, signed by the East African Heads of State at their fourth Summit in Arusha in November 1999 and entering into force in 2000, contains some language on investment issues in the region. Article 80 f of the Treaty states the member states' ambition to "harmonise and rationalise investment incentives including those relating to taxation of industries particularly those that use local materials and labour with a view to promoting the Community as a single investment area".

The East African Model Investment Code was drafted in 2002 and adopted in 2006. This document is not legally binding on EAC member states, but is rather a reference guide for the design of national investment policies and laws. Its aim is to improve the business climate in the EAC region and to harmonize investment laws and policies of member states.

The Code is in six parts, dealing with preliminary issues (including definitions, application, and scope of the code), right of establishment, investment promotion agencies, special economic zones, and miscellaneous issues pertaining to regulation. A singularity of the Code is that it does not contain Articles per se, but rather sections and subsections phrased in the form of provisions. Member states have the option to adopt any or all of the provisions of the Code, as stated in Section 3(1).

The Code provides for national treatment of and non-discrimination against foreign investors (the code does not seem to restrict this provision to investors from member states). Furthermore, the Code includes provisions for the free transfer of assets and protection from uncompensated expropriation. According to the Code, investors can apply for an investment certificate to the designated national investment agency. The eligibility for such a certificate can be defined by member states (e.g., quali-

fying sectors, minimum investment threshold). If a certificate is granted, investors can elect to include a provision that allows them to submit any disputes with the host state of the investment to international arbitration according to ICSID rules (Article 15).

Perhaps the most important aspect of the Code is that it goes beyond suggesting provisions dealing exclusively with traditional aspects of investment protection and promotion in the context of investment treaties. In particular, it incorporates provisions on special economic zones, covering fiscal and non-fiscal incentives allowed, as well as ceilings or limits to them.

The Protocol on the Establishment of the EAC Common Market was signed by the EAC Heads of State in Arusha in November 2009 and entered into force in July 2010 after ratification by all member states. It provides for freedom of movement of goods, labour, services, and capital ("the four freedoms") and contains some provisions on investment, including protection of cross-border investments (Articles 5 and 29) and the harmonization of tax regulations with the aim of promoting intra-EAC investment (Article 32). The full implementation of the common market protocol is likely to bring the EAC closer to the goal of becoming a single investment area as stated in its establishing Treaty. The EAC and United States are negotiating an investment treaty, though negotiations are on hold until EAC partner states have agreed on the model. The region is pushing for a review on some of the contentious issues in the United States Model BIT, including definition of investment, national treatment, most-favoured nation, transfers, and performance requirements.

6.2 Continental initiatives to harmonize investment regulation

The regulatory environment for investments in Africa is heavily cluttered given the numerous BITs and DTTs. Pleas for harmonizing investment regulations are not new: 40 years ago Akiwumi (1975) recognized the disparities, and that the absence of coordination at national and subregional levels was hindering economic development.

Some RECs, such as ECOWAS, SADC, COMESA, and EAC, have tried to address this weakness in part by promulgating common investment regulation and model laws (even if the latter are unenforceable). A common element of regional investment regulations is that wider economic space is a powerful means for attracting investment. The economic rationale is that economies of scale can be harvested better, particularly for small and fragmented national markets. Needless to say, intra-regional trade barriers, including non-tariff barriers, would have to be removed. External investment, attracted to these regional markets, could help provide funds for regional integration projects.

But beyond regional models for investment treaties, policymakers recognize that there are limits to what RECs can do and that a pan-African approach to negotiating contracts and investment treaties is needed.[48] Senior African officials dealing with trade have initiated a dialogue in the context of the AU on the role of international investment agreements, especially to support a regulatory environment that fosters Africa's industrialization and transformation process—and crucially, one that does not reduce the policy space for the shift.[49]

Dispute settlement—at the heart of the policy space concerns—is a central element that needs attention but is not getting it. An earlier chapter provided a sobering look at the inconsistencies in the legal interpretation of investment disputes involving African member states, which calls for urgent change. More important, adoption and enforcement of proposals are needed to reform the current dispute-settlement system.[50]

Thus dispute settlement bodies in Africa need to be beefed up. It is encouraging that an arbitration centre for investment disputes has been created in Mauritius. In that same vein, the viability of expanding the legal redress mandate of the African Union Commission on International Law, as a source of legal opinions and interpretations of existing BITs but also as a dispute venue, should be explored. Finally, the institutional weaknesses that dispute resolution on the continent faces—starkly revealed in Campbell v Zimbabwe, as the SADC Tribunal was effectively suspended after reaching a decision against the government of Zimbabwe—show that African efforts will also have to be accompanied by capacity and institution building.

Another key but often overlooked element is bringing consistency into legal practice and rulemaking for investment in negotiating contracts. Indeed, some of the disputes discussed earlier pertain to allegations of a breach of investment contracts, in which an African state was involved. Some efforts have been made at the continental level to bring some consistency into the extractive industry through the Africa Mining Vision and more recently through the creation of the African Minerals Development Centre, in particular in building capacities for contract negotiations, so that contracts signed with investors are aligned with the development and policy priorities of African member states.

COMESA-EAC-SADC Tripartite Free Trade Area

African countries have gone beyond regional initiatives to establish inter-REC initiatives. A notable example is the COMESA-EAC-SADC tripartite free trade area, approved at the Tripartite Summit of the Heads of State and Government in Kampala in October 2008. According to its 2011 roadmap, the single free trade area should enter into force in 2016.

The draft agreement contains the provisions that Tripartite member states intend to "market the Tripartite member states as a single investment area" and "develop policies and strategies which promote cross-border investment, reduce the cost of doing business in the region, and create a conducive environment for private sector development" (Article 24). While not an investment agreement in itself, it does aim at creating a large African free trade area("-from Cairo to Cape Town") and at harmonizing policy.

Regional initiatives—good but only go so far

Regional initiatives seem to address two spheres. First, they cover the issues typically found in BITs, that is, reciprocal exchange of guarantees and rights to foreign investors such as protection of investments from expropriation and most-favoured nation or national treatment (or both). Second, regional investment initiatives aim at harmonizing rules and regulations of national investment policies. It is not clear whether a regional approach is advantageous in the former area, which could be in principle—and is in practice—also addressed at the bilateral level. The latter sphere—regional integration and cooperation—clearly calls for a regional effort.

Deepening regional integration is an important aspect for the attractiveness of Africa as an investment destination. Well-known issues around fragmented markets, small market sizes, and heterogeneous regulatory environments can be overcome by harmonization and integration. Also, cooperation at the regional level can help avoid harmful practices such as a "race to the bottom" in the area of investment incentives. Finally, removing obstacles to intra-regional investment flows can contribute to further unlock the potential for intra-African investment flows, which today already account for 23% of FDI projects on the continent.[51]

At this point, it seems too early to assess the extent to which regional investment agreements can contribute in practice to an attractive investment climate at the regional level. It is likely that we will continue to see investment agreements and initiatives both at regional and bilateral levels, and perhaps they are indeed complementary. What seems clear is that further deepening regional integration—including in areas such as payment systems, capital markets, currency convertibility, and trade barriers—is a no-regrets option to make investments in Africa more attractive for both African and non-African investors.

Towards a Continental Investment Agreement

A natural question arising from regional initiatives—and from their limitations—is whether a common investment code at the continental level would take things further. If so, what legal and policy framework would be required, and does Africa already fulfil some of the preconditions for an African Continental Investment Code and other regional investment codes on the continent?

Consolidated investment agreements are vital for attracting investment. Continental or regional investment codes will assist in simplifying investments rules and regulations and making them clearer and easier to understand. It is believed that the development of continent and regional investment codes will create a conducive environment, making the African continent a better destination for investments. As foreign investment flows into Africa and economies grow, capital controls and liquidity are also be-

coming important issues (African countries face big challenges when capital suddenly moves). Establishing continental or regional investment codes should help here and in raising low intra-African investment which, at only 10–13% of total trade, is much lower than in other regions such as the EU or Asia.

It is imperative that the investments benefit African countries and local economies. African countries should reap the benefits through skills transfer, technology transfer, job creation, and infrastructure development. The codes should also cover the concept of reciprocity of investments between countries to allow inward and outward flows of goods and services.

In line with the recommendations of the Ninth AU-RECs-EAC-AfDB Committee meeting, held in Addis Ababa in January 2012, the African Union Commission undertook a study (including a questionnaire-based survey) on a Pan-African Investment Code. The primary objective was to find the elements of an enabling environment in the sectors that have the greatest potential to promote economic and social development in Africa. The study is part of the process of elaborating a Pan-African Investment Code based on international best practice to establish a business climate to stimulate investment at national, regional, and continental levels, and to develop a roadmap and strategy on how African countries can adopt this code to their own contexts. The next chapter presents results from the survey, highlighting some of the key challenges for investment in Africa.

Study objectives, methodology, and findings

7

Under its approved 2014–2015 biennial work program, the UN Economic Commission for Africa (ECA)undertook the review of Investment Policies and Bilateral Investment Treaties Landscape in Africa: Implications for Regional Integration. This review was conducted as part of efforts by ECA to assist African member states in accelerating regional integration, particularly for investment.

7.1 Objectives

The focus was to find the elements of an enabling environment for investment in the sectors that have the greatest potential to promote economic and social development in Africa. It was hoped that the outcome would help elucidate and shape the debate on how Africa might better harness investment for its economic and social transformation and how harmonizing the existing legal frameworks at the regional economic community (REC) and continental levels might accelerate this process. There were five objectives:

- Undertake research on the investment agreements landscape, including the agreements' prevalence, scope, application, and contribution to investment in Africa;

- Identify key challenges leading to limited investment flows in Africa and how these agreements are addressing these challenges;

- Examine the extent to which regional integration is being addressed in these agreements and identify how they may be instrumental in attracting greater foreign direct investment (FDI) to African regions (RECs) by improving the investment climate and harmonization of policies in Africa;

- Provide policy guidelines on how member states and RECs could contribute to improving the investment climate and levelling the playing field for a wider range of investors/investment in economic sectors/activities that may spur Africa's transformation; and

- Determine the degree of implementation of these agreements and what may be done to improve and raise awareness on how they may be relevant to supporting the private sector.

7.2 Methodology

The study was conducted through a survey questionnaire sent to five key ministries[53] and institutions directly responsible for investment in African countries. Some of these ministries were also visited. The survey garnered responses from 36 countries (Table 8) and 69 ministries. It received 164 filled-in questionnaires. Analysis also came from face-to-face interviews held by the ECA team. To obtain unbiased results among all regions, a geographical sampling technique was applied.

7.3 Survey findings

Institutional structures for investments in African countries

The general observations from the survey results are that the RECs' investment policy frameworks have helped to attract FDI to many African countries. But some of these frameworks fail to promote equitable distribution of investments among the regions of

Table 8: Countries in the survey in five African regions

North Africa	West Africa	Central Africa	East Africa	Southern Africa
Egypt	Benin	Cameroon	Ethiopia	Angola
Tunisia	Burkina Faso, Côte d'I-voire, Ghana	Chad	Kenya	Botswana
Sudan		DRC	Rwanda	Lesotho
Cape Verde	Gambia	Equatorial Guinea	Tanzania	Madagascar, Malawi
	Nigeria	Gabon	Uganda	Mauritius, Mozambique
	Senegal	Niger		Namibia
	Sierra Leone, Togo			South Africa, Swaziland
				Zambia
				Zimbabwe

their countries. Investment is concentrated in urban areas where the infrastructure is. Linked to this, the survey highlighted some of the challenges hindering more equitable distribution of investments across the continent, including (beyond poor infrastructure) tariff and non-tariff trade barriers; limited movement of persons and capital; high transaction costs of doing business; still-high risk perceptions of investing in Africa; limited access to credit; and corruption.

Yet on the bright side the survey reveals that some African countries (especially at the regional level) are attempting to address these challenges. The harmonized investment agreements like the Bilateral Investment Treaties (BITs) at the REC level are also recommendable while, nationally, most countries have designated the Ministry of Trade, Commerce and Industry to direct the coordination of investment activities. The survey reveals that most BIT negotiations are coordinated by the Ministry of Foreign Affairs and the Ministry of Justice, though the private sector and non-governmental organizations are rarely involved, making implementation of signed agreements problematic. The Ministry of Finance and Economic Planning is responsible for formulating tax policies on investment, including investment-promotion incentives.

Almost half of the countries from the survey group expressed concerns about tax incentives granted to foreign investments, because this practice has hurt the tax base and led to a huge loss of budget revenues.

Promotion and facilitation of investment policies is the responsibility of investment promotion agencies. A common feeling among respondents was that promotion agencies try to provide information on opportunities, guidelines, and requirements for investments to both foreign and domestic investors. In many African countries, most research work in investment promotion is done by promotion agencies.

The level of coordination among these ministries and institutions varies from country to country. Many local investors have scant information on investment opportunities and are unsurprisingly disappointed when the benefits they expect from them do not materialize. There also appears to be gaps in information in many countries on implementing investment agreements and policies. Private sector players and other stakeholders feel isolated when it comes to preparing and negotiating investment agreements. Many respondents reported that governments negotiated independently without involving the private sector, parliamentarians, or civil society groups. Coordination between government ministries and other agencies was a challenge, particularly in attempts to form a cohesive and systemic flow of investment information once the agreements were signed. Coherence among these groups is, therefore, needed.[54]

Most respondents indicated that investment agreements need to be reviewed to consider new economic challenges and country-specific needs. Some of these agreements had been signed a long time ago, often when African countries had little capacity to negotiate. Many officials in key ministries and institutions raised concerns about the low levels of capacity building. The survey results also indicate that countries lack in-depth studies to analyse the impact of investment agreements on attracting FDI.

Investment policies and agreements

Attracting investment is not an end in itself, but it should support development goals and structural transformation. Liberalization, including reduced barriers to trade and investment, needs to be balanced with those goals. Most countries are calling for a review of the agreements they signed many years ago to make them more compatible with their current stage of economic development.[55]

Further, there seems to be no real evidence that investment treaties increase FDI. Most respondents indicated that the presence or absence of an investment agreement is not a significant factor determining investment decisions of foreign investors. The survey results also revealed that many African countries are facing challenges in their investment policies as a result of signing BITs. Most of the agreements do not support national development frameworks.

A general feeling among respondents was that BITs were negotiated and signed without considering the complexities of socioeconomic challenges or national development policies. There are inequities and inadequacies in existing bilateral agreements between developed and developing countries due to the unequal bargaining power during negotiations. Further, most treaties have no time limit, which makes them hard to amend. New BITs need to be negotiated with clear analysis, taking into consideration national development strategies and changing socioeconomic development, striking a balance between the targets of national policies and development needs.

The survey results reveal that most bilateral investment treaties being signed or implemented by African countries favour foreign investors. To a large extent, treaties focus on issues such as protection of foreign investments and national treatment of foreign investors. Issues of how to deal with environmental or social problems created by investments are not clearly specified, and African countries have limited power to leverage and create obligations on the investors if such environmental problems are created. In addition to BITs, countries need to improve features vital to attracting other forms of investment, such as infrastructure, political environment, and macroeconomic policies and governance.

The scope of BITs is critical if both parties are to benefit. Respondents were asked to indicate issues covered by their treaties.[56]However, they also underscored the need for these policies to be clear and transparent and felt that mainstreaming into national development strategies was critical if countries were to benefit from the treaties.

The general perception was that the impact of BITs was minimal—for example, some countries that have signed treaties see little investment. Most of Africa's investment comes from emerging economies such as China, India, and Brazil, rather than Western countries with which African countries have signed treaties. The common view was that BITs defend and promote investment from abroad by protecting foreign investors and reducing investors' exposure to political risk and uncertain business environments, without necessarily addressing some of the core programs or initiatives in developing countries.

Many respondents indicated that coordination between government ministries and other agencies was difficult—particularly the process of formulating a cohesive and systemic flow of investment information once the agreements are signed. They felt that local investors have scant information about available investment opportunities, which obviously cuts them off from the associated benefits. Respondents also felt that consultations between government ministries and key stakeholders, before some investment agreements were signed, were inadequate.

Investment protection and promotion

With numerous categories of instability among potential host countries (among other problems)—including political, macroeconomic, and governmental—foreign investors are looking for protections before making key investment decisions. In principle, incentives should direct investments to specific sectors or areas, particularly those less attractive for investment. To become more useful, incentives need to be well structured (and time bound) and transparent. There should be clear guidelines on how governments provide incentives to companies that do not invite suspicions and doubts.

The level of familiarity with the national investment policy framework in African countries depends on respondents' engagement in developing and applying investment policies and investment agreements. Most respondents were familiar with the basic investment policy framework of their countries, but

its variation among ministries and institutions could be confusing. Respondents were also more familiar with regional than continental investment policies. (Some caution is necessary, though, as familiarity with investment policies also depends on the individuals being interviewed, and on which ministry or institution they represent.)

Respondents were asked to indicate the areas covered by investment regulations/policies in their countries. As shown in Figure 6, the investment-agreement landscape covers almost all the areas in the questionnaire, except ceilings on investments. Twenty of the 29 countries indicated that their national regulations/policies on investments do not cover ceilings. As much as ceiling is considered an important area in investment, many countries are exercising flexible monetary policy and hence investors are free to transfer any amount of capital when establishing a business.

The link between BITs and investment

A number of countries indicated that the argument on the proclaimed benefits of BITs had not been researched fully and hence they offered few or no conclusions. For most respondents, investment inflows were primarily driven by expectation of profits or returns. The correct question is how investment agreements should be designed to ensure the presumed benefits of foreign investments.

Theoretically, bilateral investment treaties are supposed to contribute to economic growth and sustainable development. However, this is not the case in all examples due to factors such as the level and quality of investments, infrastructure challenges, the political situation, and the type of agreements signed.

Many respondents indicated that the creation of promotion agencies in a number of countries has contributed significantly to creating a conducive business environment. However, they also felt that these agencies have not effectively implemented investment policies.

Many respondents indicated that investment treaties do not necessarily bring the much- needed investments in their countries. Many recommended that sound policies are needed to attract more investors. Many respondents also pointed out that some bilateral treaties are oriented toward political considerations rather than investment related, and felt that some countries have engaged in BITs just to

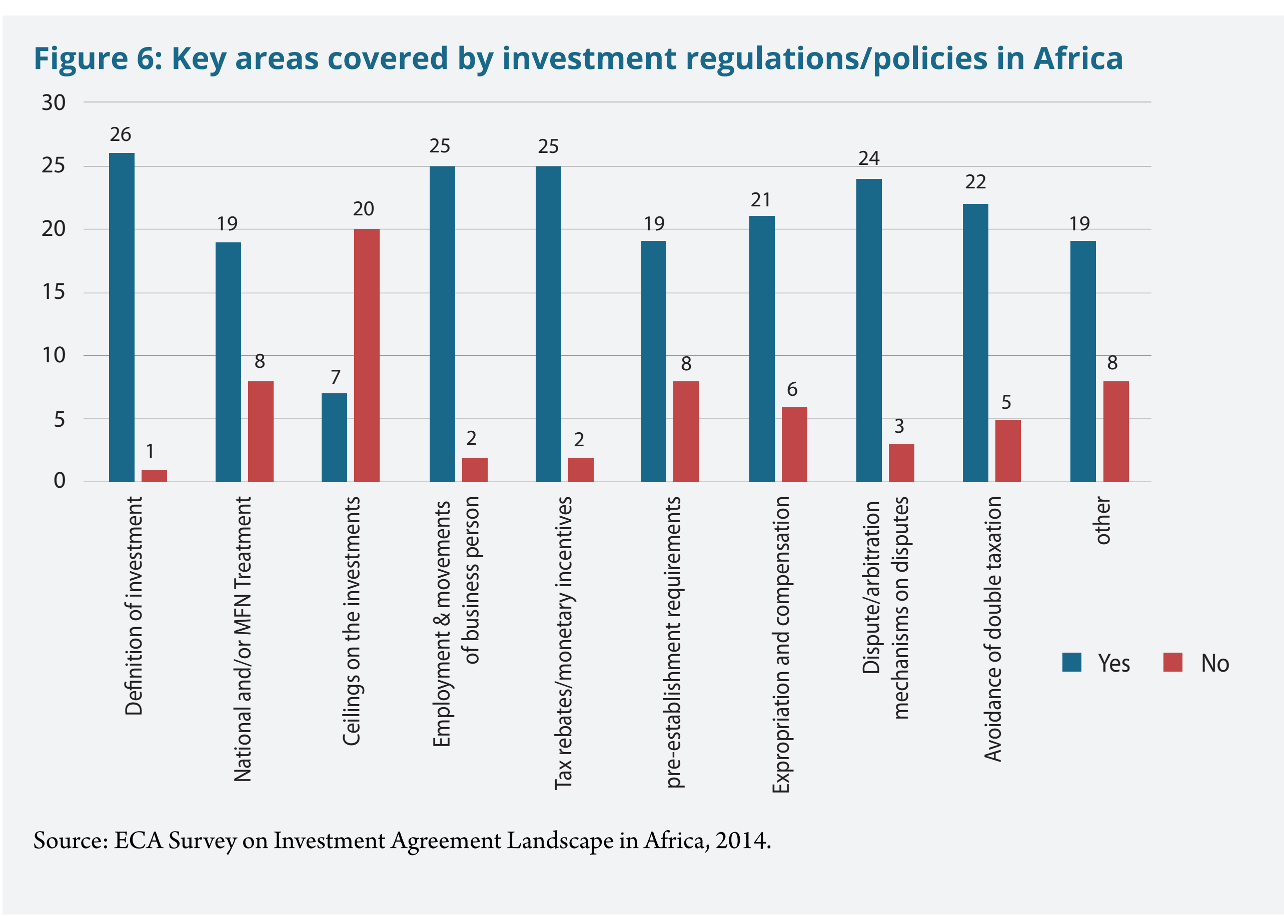


Figure 6: Key areas covered by investment regulations/policies in Africa

Source: ECA Survey on Investment Agreement Landscape in Africa, 2014.

enhance political ties. Some respondents stated that their countries were receiving more investment from countries without investment agreements. Hence, countries need to do more than sign BITs. Some respondents recommended emphasis on capacity building, and on improved awareness of investment issues among ministries and institutions dealing with such subjects. At the regional level, many respondents regarded investment initiatives such as the Common Market for Eastern and Southern Africa (COMESA) Regional Investments Agency and Southern African Development Community (SADC) Best Available Techniques as good tools for attracting investments. Numbers agreeing that key areas should be included in investment agreements appear in Figure 7.

The link between DTTs and investment

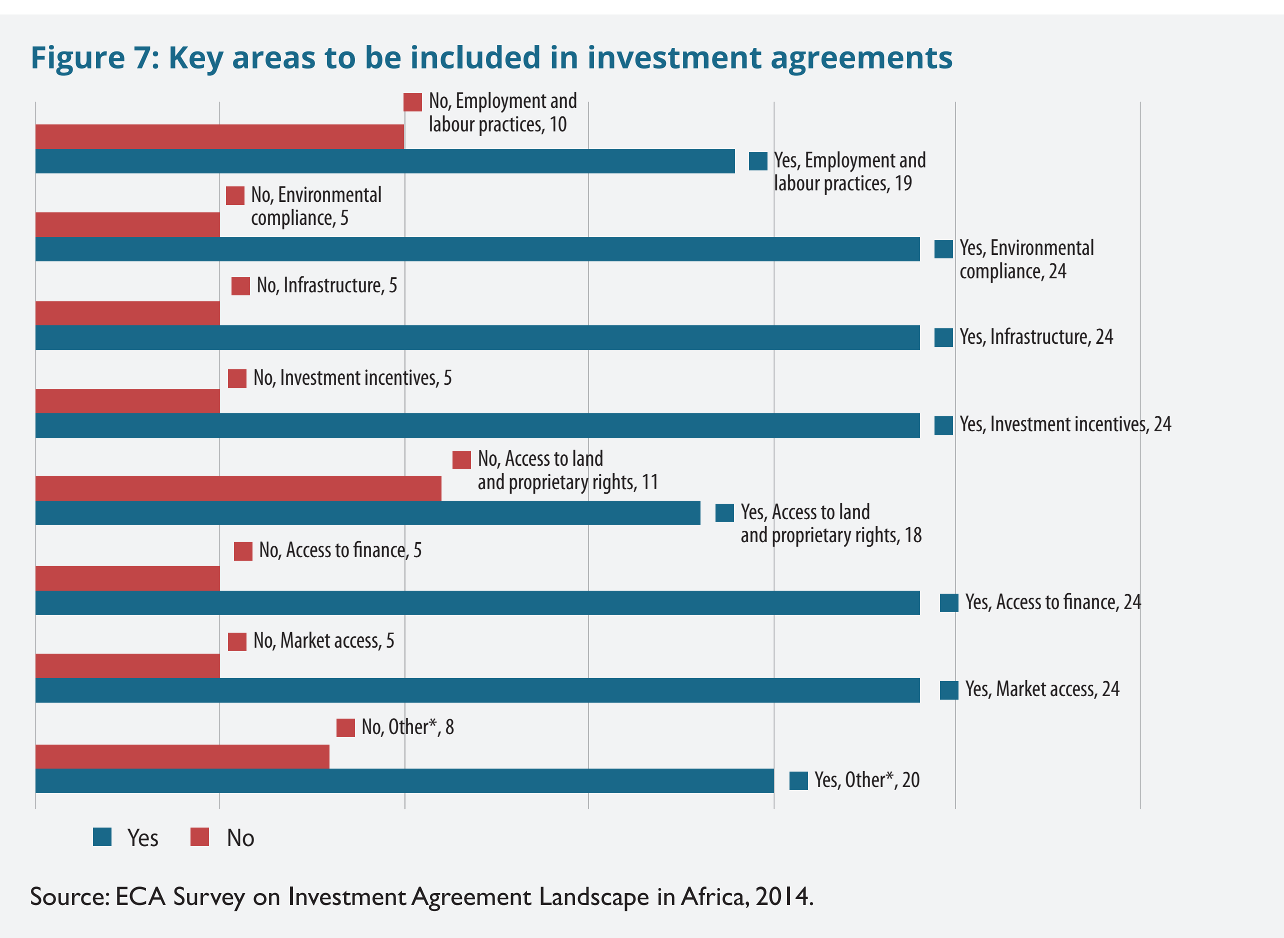
The survey asked respondents how double taxation treaties (DTTs) are impacting bilateral agreement negotiations. Double taxation is generally defined as the imposition of comparable taxes in at least two countries on the same taxpayer with respect to the same subject matter and for identical periods (further information is in Chapter 4). Although questions have been raised about the usefulness of DTTs in attracting investments, some governments still consider them as important tools for instilling confidence among investors.

Investment, international trade, and global value chains

Most respondents felt that there is no/little correlation between investments and Global Value Chains (Box 5) in their countries. Many thought that African countries are only the suppliers of raw materials and most of the finished products are being processed abroad, which leads to minimal value creation. The general consensus from the survey is that the impact of investment on value creation is dominant in job creation, as many companies need labour at any level of production.

Many respondents indicated that the creation of GVCs through BITs in most African countries is minimal

Figure 7: Key areas to be included in investment agreements



Source: ECA Survey on Investment Agreement Landscape in Africa, 2014.

* "Other" includes a reference to the existing legal and regulatory framework and utilities.

Box 5: Global Value Chains

Globalization has boosted international investment, trade, and Global Value Chains (GVC)s. The pattern of today's business dealings has changed, consistent with changes in information technology, trade liberalization, labour costs, quantities of natural resources available, and economies' openness. Such changes have led companies to revisit their strategies—splitting operations, inputs, manufacturing, assembling and marketing, and creation of GVCs. These chains have largely contributed to the flows of intermediate inputs as companies continue to search for cheaper raw materials.

Many larger companies now produce in countries where costs are cheaper. In developing countries, huge value chains are being created among small and medium-sized firms, where most actors are involved, supplying raw materials, intermediate inputs, and other essentials. At this stage also, host countries benefit through the creation of temporary and permanent jobs. There is a need for multinational, medium-sized and small firms to position themselves to promote GVCs, but this in turn requires infrastructure development and trade promotion.

and not exploited fully. The respondents felt that value-chain integration would only be achieved if there is full interconnectivity and coordination among multinational companies, small and medium-sized firms, and host countries. They also believed that in-depth studies were needed to analyse the extent to which value chains are created through BITs.

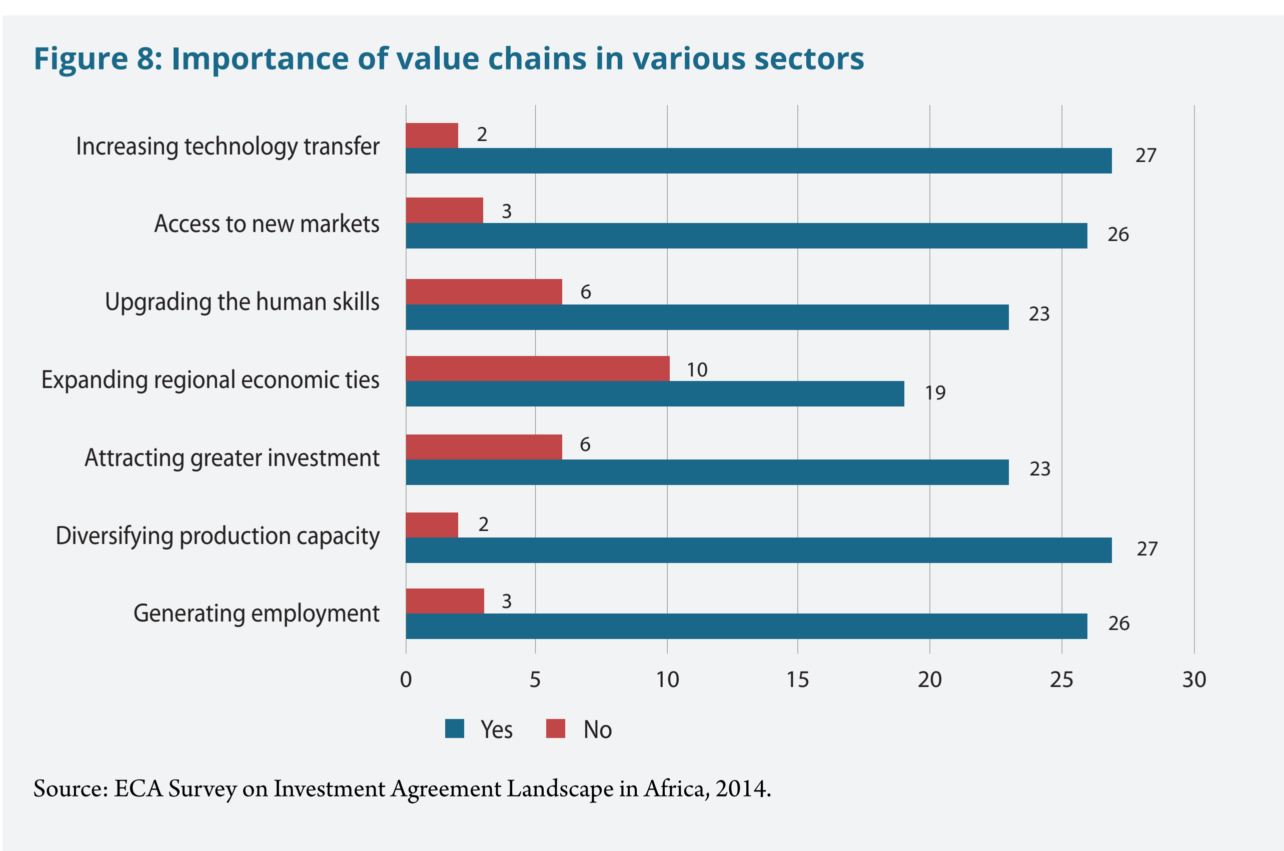
About 69% of respondents located their country at the bottom of the value chain; about 23% thought that their countries exceeded the intermediate level; and only 8% located their country at the higher end of value chains.[57]

As shown in Figure 8, many respondents indicated that value chains are important in all the economic sectors under review, with increasing technology transfer and diversifying production capacity topping the ranking.

Investing in Africa: opportunities and challenges

Until very recently, the perception of Africa as a locus for investment has been negative. The good news is that this perception is now changing. For instance, five of the 12 fastest-growing economies in the world are African, FDI is five times what it was a decade

Figure 8: Importance of value chains in various sectors



Source: ECA Survey on Investment Agreement Landscape in Africa, 2014.

ago, and there is an emerging African middle class. Key facilities such as infrastructure, Internet, and energy access are improving, offering new investment opportunities in Africa. In less than five years, Africa has risen to become the second most attractive investment destination in the world, tied with Asia (Ernst & Young, 2014).

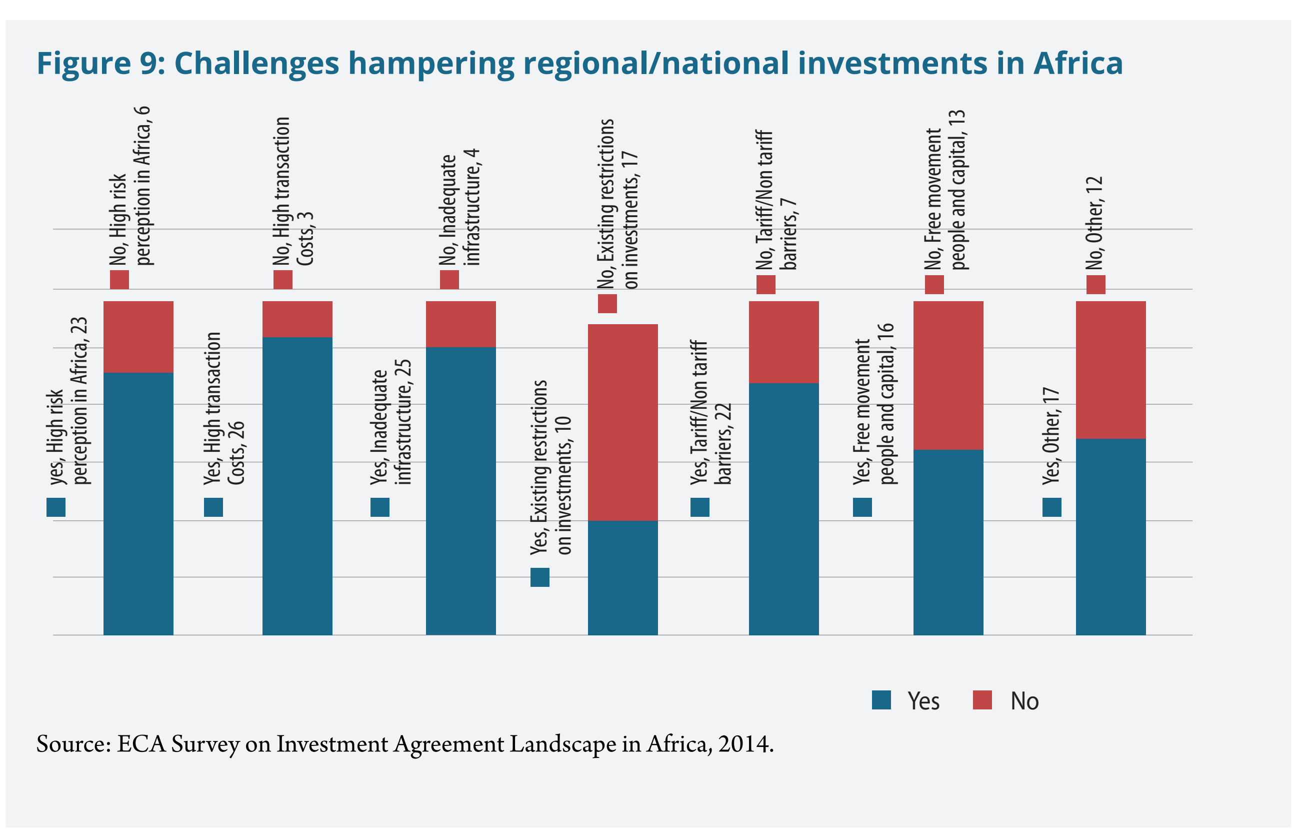
Issues must be addressed. Regional integration could assure that African people benefit from greater regional investments and trade (see Chapter 6).With its rich natural resources such as gold, platinum, copper, and gas, the return on investment in Africa is higher than in developed countries. In addition, Africa has a larger untapped market with low penetration and great potential. Despite this recent progress and abundant resources, the continent still faces numerous development challenges.

Figure 9 shows the main challenges as perceived by respondents: 17 countries did not believe that existing restrictions on investments are a major challenge.

Towards an African Continental Investment Code

Respondents viewed regional integration as an important vehicle for improving the investment climate. Many (24 out of 27 countries) felt that the Pan-African Investment Code will give valuable guidance to countries in negotiating investment agreements, including BITs, as well as addressing challenges in the area of investments. However, they also felt that the Pan-African Investment Code should consider ongoing initiatives in the RECs such as the SADC Protocol on Investments and Trade; the COMESA Investment Agreement for the Common Investment Area; the EAC Model Investment Code; and the ECOWAS Community Investment Code. Many believed that the Pan-African Investment Code should be a template offering guidance on regulations and policies.

Figure 9: Challenges hampering regional/national investments in Africa



Source: ECA Survey on Investment Agreement Landscape in Africa, 2014.

8 Conclusions and policy recommendations

8.1 Conclusions

Investments form an integral part of global economic relations. They are of vital importance to private sector growth and Africa's transformation in general. In the past two decades, Africa has become increasingly engaged in investment issues. First, African leaders have recognized that investment is a key driver for economic growth, and if channelled adequately as a factor in economic activity, can expand productive capacity, generate employment, and contribute to income creation. Second, foreign and domestic investments are crucial to development in Africa.

In almost all African countries, most Bilateral Investment Treaties (BITs)have been signed with countries outside the continent. However, African countries are gradually signing more treaties with each other, which reflects deepening regional integration between African nations bilaterally or tighter intra-Regional Economic Community (REC) ties. Opportunities for signing BITs with non-African partners have largely been exhausted because new southern partners such as China and India prefer other modalities for engaging with Africa.

BITs are increasingly being signed along with Double Taxation Treaties (DTTs), because these latter agreements enable the repatriation of profits through holding companies at the lowest possible tax rates. DTT shave stimulated efficiency-seeking foreign direct investment (FDI), driven not only by lower costs accomplished through cheaper inputs and factors sourced in the host country but also by reduced transaction costs derived from the company's affiliation, given the tax regimes in the host and source countries.

Some of the undesirable practices often attributed to DTTs are tax evasion, mispricing of activities to bloat operating costs (and so generate tax rebates), and transfer pricing (to benefit from low-profit taxes and high taxes on costs, based on differences in tax structures between jurisdictions).

Besides BITs or DTTs, there are other international investment agreements such as cooperation agreements, regional trade agreements, and regional protocols with an investment chapter. Of late, Africa has also been participating in such agreements, in particular through regional protocols dealing with investment issues. African countries also take part in, for example, the Multilateral Investment Guarantee Agency, the International Centre for Settlement of Investment Disputes (ICSID), and the UN Commission on International Trade Law (UNCITRAL).

The case law statistics on investment disputes and claims strongly suggest that some BITs signed by African countries are skewed in favour of investors, posing a financial and technical burden on governments, as well as a cap on their policy space. Some of their concerns, as well as solutions, follow:

- The focus of BITs has mainly been towards protecting investors and their investments. Though numerous BITs are in force and many have been signed, it is widely accepted that BITs alone do not bring development gains and that there is no definitive evidence that these have attracted FDI. In addition, the wording in BITs does matter, as shown by the numerous ways in which BITs provisions are interpreted in the context of investment disputes.

- African governments are also worried about their responsibility and potential liability vis-à-vis existing agreements. This goes beyond how BITs were negotiated and signed, as most of them were signed without consideration of the social economic changes of many African countries.

- Though the standard for considering expropriation in many arbitral cases is set relatively high, treaties still have clauses on full protection and security as well as provisions on legitimate expectations of investors, which often favour investors during arbitration.

- The types of dispute settlement provisions in BITs are important to understand. Indeed, major divergence points between negotiating parties of BITs often relate to which national law (i.e., local remedies) to refer to when a dispute occurs—that of the host country or that of the source country. African countries believe that the law of the host country should prevail.

- Countries have to consider the decision to outsource their defence in a dispute, which they often now do. It is not only costly as a legal service, but also sometimes the legal defence firms that specialize in investment arbitration also offer their services to private investors and hence may face a conflict of interest when defending a state, especially if an investor could become their future client in another case.

- There is also an emerging consensus that rather than relying on BITs exclusively, African countries should consider regional approaches, to assist in the development of a legal framework for foreign investment. Legal positions on the interpretation of existing BITs, for instance at the REC level, would help avoid disputes that disadvantage member states of a common region and could raise their bargaining power in a dispute.

- A joint African agreement on investment dispute could be a standard for interpretation without necessarily focusing on all aspects of treaties.

- For an African strategy, stocktaking of the existing African cases is important, as is the outcome of treaty negotiations and renegotiations. Termination of treaties and even withdrawal from the International Centre for Settlement of Investment Disputes (ICSID) convention of other developing countries has occurred in the past because countries have not explored the option of renegotiation, whereby many BITs have provisions allowing renegotiation.

8.2 Policy recommendations

Given these concerns, African countries need to consider developing a framework to attract more investments from within and outside the continent. Existing investment initiatives such as BITs need to be strengthened to take into account current varying national levels of socioeconomic development. African countries need to critically review BIT texts before signing. There is a need to explore what to frame in negotiating and renegotiating treaties, as well as alternative rules and venues.

So what type of provisions do countries need to craft to curb their potential liability from investment policy changes?

- In essence, countries need to look at the wording of the provisions being negotiated with their counterparts to ensure that a balance is struck between protecting the investors and giving government sufficient policy space to achieve development objectives. Hence, provisions containing a narrow-based definition of investment, mandatory exhaustion of local remedies, regional approaches to dispute resolution, pre-approval of investment, and standard of treatment, among other considerations, have to be worded carefully. Useful guidelines in this exercise may be provided by existing models and policy frameworks, such as the Southern African Development Community, the Common Market for Eastern and Southern Africa, and the East African Community (EAC) models, the International Institute for Sustainable Development model, and the UN Conference on Trade and De-

velopment Investment Policy Framework for Sustainable Development model.

- Attention to the wording of such agreements is necessary, so that it does not allow for the crowding out or discriminatory treatment of domestic and regional investors, which often face unfair conditions as a result of the various "layers" of standards of treatment that foreign investors obtain from BITs. Especially as the continent is receiving more intra-African investment, providing for this type of investment is paramount.

- Termination is not a new approach (consider Morocco and South Africa, for example) to the other party's refusal to renegotiate. Refusal has set a precedent for other African countries as a means towards renegotiation and could imply a surge of a new model of jurisprudence of BITs that is Africa-based.

- Arbitration conducted at the ICSID provides a relatively neutral procedure and is a preferred venue for most disputes, but needs not be the only one. Further, recent experience in Africa also reveals a risk of forum shopping for arbitration, where cases were filed under both UNCITRAL and ICSID. Given that a growing number of disputes from intra-African BITs may be expected, the interest in a home-grown solution is increasing, both to standardize how disputes should be handled and from a legal- economy perspective.[58]However, this interest will need to be paired with institution building, legal independence, and enforcement mechanisms to ensure that they are viewed as credible alternatives to ICSID.

- The continent could also consider a pan-African solution, such as the African Court of Justice,[59]requiring that the proposed Continental Free Trade Area, be set up by an indicative date of 2017.

- Given the ambiguity of the impact of BITs on investment in Africa, further research may be necessary in this area on which to base more policy recommendations.

- Finally, Africa needs to sketch out a strategy for investment regulation. This strategy needs to restore the balance between investment protection and the legitimate right of a state to act in accord with its development needs and objectives. Options include the following:
  a) Not negotiating new investment treaties;
  b) Renegotiating and amending existing agreements;
  c) Negotiating new agreements that narrow the scope of misinterpretation and reduce potential liability;
  d) Communicating a legal position on the interpretation of existing agreements; and
  e) Seeking alternative venues for legal redress.

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Databases:

Double Taxation Treaties (DTTs)
http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Country-specific-Lists-of-BITs.aspx

International Investment Agreements (IIAS)
http://unctad.org/en/pages/DIAE/International%20Investment%20Agreements%20(IIA)/IIA-Tools.aspx

Investment Policy Hub
http://investmentpolicyhub.unctad.org/IIA/IiasByCountry#iiaInnerMenu

Legal Texts:

The East African Community Model Investment Code 2006
http://www.eac.int/invest/index.php?option=com_docman&task=doc_view&gid=9&tmpl=component&format=raw&Itemid=70

Investment Agreement for the Common Market for Eastern and Southern Africa (COMESA) Common Investment Area, 2007
http://vi.unctad.org/files/wksp/iiawksp08/docs/wednesday/Exercise%20Materials/invagreecomesa.pdf

South African Development Community (SADC) Model Bilateral Investment Treaty Template
http://www.iisd.org/itn/wp-content/uploads/2012/10/sadc-model-bit-template-final.pdf

SADC Protocol on Finance and Investment
http://www.sadc.int/files/4213/5332/6872/Protocol_on_Finance_Investment2006.pdf

Supplementary Act Adopting Community Rules on Investment and the Modalities for Their Implementation with Economic Community of West African States (ECOWAS)
http://www.ecobiz.ecowas.int/en/pdf/cim-vision-english-version.pdf

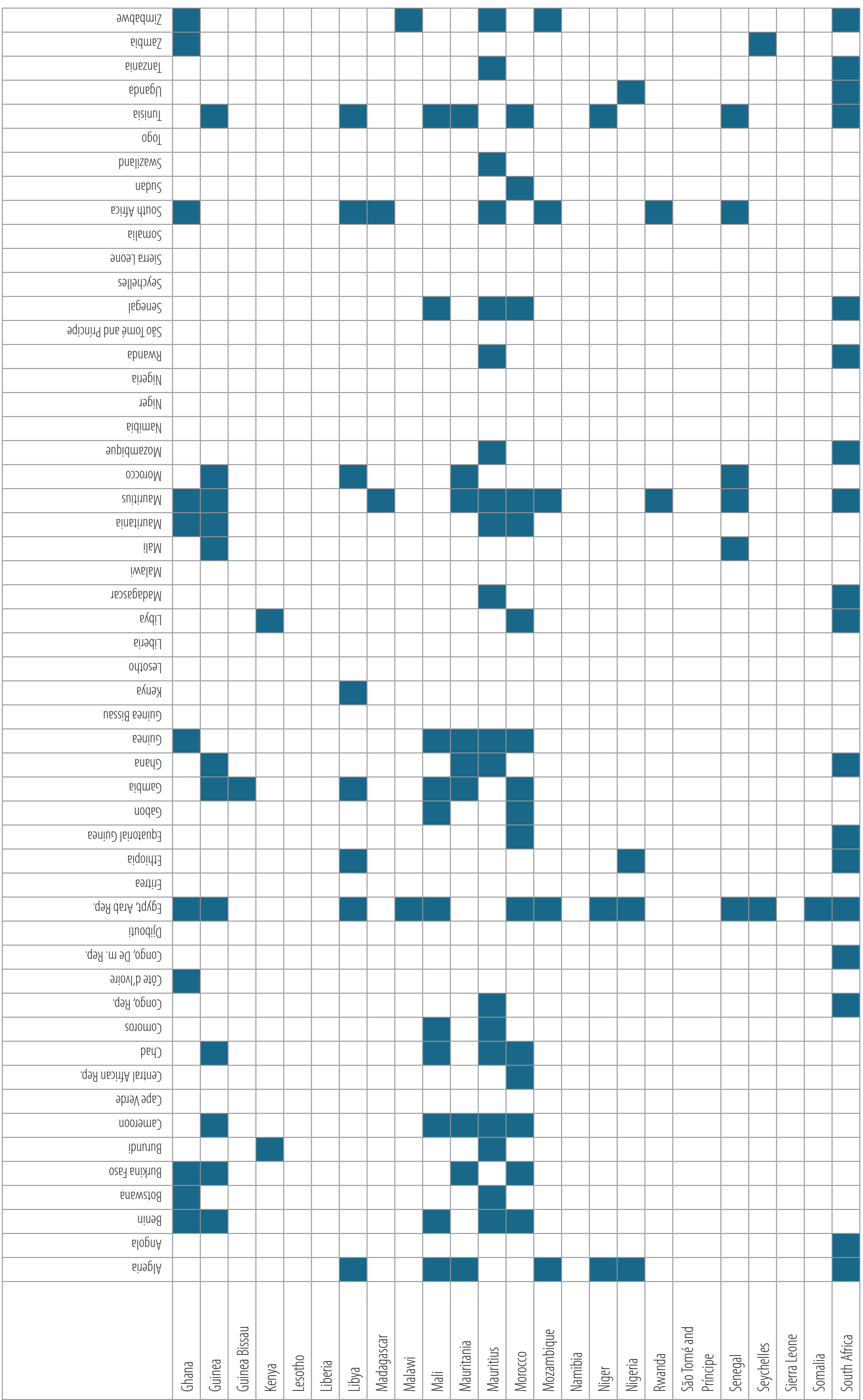
World Trade Organization (WTO)legal texts
http://www.wto.org/english/docs_e/legal_e/legal_e.htm

Annexes

Annex 1: Matrix of bilateral investment treaties (BITs) between African member states

	Algeria	Angola	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Cape Verde	Central African Rep.	Chad	Comoros	Congo, Rep.	Côte d'Ivoire	Congo, De m. Rep.	Djibouti	Egypt, Arab Rep.	Eritrea	Ethiopia	Equatorial Guinea	Gabon	Gambia	Ghana	Guinea	Guinea Bissau	Kenya	Lesotho	Liberia
Algeria																■		■									
Angola								■																			
Benin					■					■												■	■				
Botswana																						■					
Burkina Faso			■							■	■											■	■				
Burundi											■														■		
Cameroon																■							■				
Cape Verde		■																									
Central African Rep.																■											
Chad			■		■											■							■				
Comoros					■	■										■											
Congo, Rep.																											
Côte d'Ivoire																						■					
Congo, Dem. Rep.																■											
Djibouti																■											
Egypt, Arab Rep.	■						■		■	■	■			■	■			■		■		■	■				
Eritrea																											
Ethiopia	■															■			■								
Equatorial Guinea																		■									
Gabon																■											
Gambia																							■	■			

	Libya	Madagascar	Malawi	Mali	Mauritania	Mauritius	Morocco	Mozambique	Namibia	Niger	Nigeria	Rwanda	São Tomé and Principe	Senegal	Seychelles	Sierra Leone	Somalia	South Africa	Sudan	Swaziland	Togo	Tunisia	Uganda	Tanzania	Zambia	Zimbabwe
Algeria	■			■	■			■		■	■							■	■			■				
Angola																		■								
Benin				■		■	■																			
Botswana						■																				■
Burkina Faso					■		■															■				
Burundi						■																				
Cameroon				■	■	■	■																			
Cape Verde																										
Central African Rep.							■																			
Chad				■		■	■																			
Comoros				■		■																				
Congo, Rep.						■												■				■				
Côte d'Ivoire																						■				
Congo, Dem. Rep.																		■								
Djibouti																										
Egypt, Arab Rep.	■		■	■			■	■		■	■			■	■		■	■	■	■		■	■	■	■	■
Eritrea																							■			
Ethiopia	■										■							■	■			■				
Equatorial Guinea							■											■								
Gabon				■			■																			
Gambia	■			■	■		■																			



	Ghana	Guinea	Guinea Bissau	Kenya	Lesotho	Liberia	Libya	Madagascar	Malawi	Mali	Mauritania	Mauritius	Morocco	Mozambique	Namibia	Niger	Nigeria	Rwanda	São Tomé and Príncipe	Senegal	Seychelles	Sierra Leone	Somalia	South Africa
Algeria							■			■	■			■		■	■							■
Angola																								■
Benin	■	■								■		■	■											
Botswana	■											■												
Burkina Faso	■	■									■		■											
Burundi				■								■												
Cameroon		■								■	■	■	■											
Cape Verde																								
Central African Rep.													■											
Chad		■								■		■	■											
Comoros										■		■												
Congo, Rep.												■												■
Côte d'Ivoire	■																							
Congo, Dem. Rep.																								■
Djibouti																								
Egypt, Arab Rep.	■	■					■		■	■			■	■		■	■			■	■		■	■
Eritrea																								
Ethiopia							■										■							■
Equatorial Guinea													■											■
Gabon										■			■											
Gambia		■	■				■			■	■		■											
Ghana		■									■	■												■
Guinea	■									■	■	■	■											
Guinea Bissau																								
Kenya							■																	
Lesotho																								
Liberia																								
Libya				■									■											■
Madagascar												■												■
Malawi																								
Mali		■																		■				
Mauritania	■	■										■	■											
Mauritius	■	■						■			■	■	■	■				■		■				■
Morocco		■					■				■									■				
Mozambique												■												■
Namibia																								
Niger																								
Nigeria																								
Rwanda												■												■
São Tomé and Príncipe																								
Senegal										■		■	■											■
Seychelles																								
Sierra Leone																								
Somalia																								
South Africa	■						■	■				■		■				■		■				
Sudan													■											
Swaziland												■												
Togo																								
Tunisia		■					■			■	■		■			■				■				■
Uganda																	■							■
Tanzania												■												■
Zambia	■																				■			
Zimbabwe	■								■			■		■										■

	Sudan	Swaziland	Togo	Tunisia	Uganda	Tanzania	Zambia	Zimbabwe
Algeria	■			■				
Angola								
Benin								
Botswana								■
Burkina Faso				■				
Burundi								
Cameroon								
Cape Verde								
Central African Rep.								
Chad								
Comoros								
Congo, Rep.				■				
Côte d'Ivoire				■				
Congo, De m. Rep.								
Djibouti								
Egypt, Arab Rep.	■	■		■	■	■	■	■
Eritrea					■			
Ethiopia	■			■				
Equatorial Guinea								
Gabon								
Gambia								
Ghana							■	■
Guinea				■				
Guinea Bissau								
Kenya								
Lesotho								
Liberia								
Libya				■				
Madagascar								
Malawi								■
Mali				■				
Mauritania				■				
Mauritius		■				■		■
Morocco	■			■				
Mozambique								■
Namibia								
Niger				■				
Nigeria					■			
Rwanda								
São Tomé and Principe								
Senegal				■				
Seychelles							■	
Sierra Leone								
Somalia								
South Africa				■	■	■		■
Sudan				■				
Swaziland								
Togo				■				
Tunisia	■		■					
Uganda								■
Tanzania								■
Zambia								
Zimbabwe					■	■		

Annex 2: Matrix of double taxation treaties (DTTs) between African member states

	Algeria	Angola	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Cape Verde	Central African Rep.	Chad	Comoros	Congo, Rep.	Côte d'Ivoire	Congo, Dem. Rep.	Djibouti	Egypt, Arab Rep.	Eritrea	Ethiopia	Equatorial Guinea	Gabon	Gambia	Ghana	Guinea	Guinea Bissau	Kenya	Lesotho	Liberia	Libya	Madagascar	Malawi	Mali	Mauritania	Mauritius	Morocco	Mozambique	Namibia	Niger	Nigeria	Rwanda	São Tomé and Príncipe	Senegal	Seychelles	Sierra Leone	Somalia	South Africa	Sudan	Swaziland	Togo	Tunisia	Uganda	Tanzania	Zambia	Zimbabwe
Algeria																																																					
Angola																																																					
Benin																																																					
Botswana																																																					
Burkina Faso																																																					
Burundi																																																					
Cameroon																																																					
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Central African Rep.																																																					
Chad																																																					
Comoros																																																					
Congo, Rep.																																																					
Côte d'Ivoire																																	2																2				
Congo, Dem. Rep.																																																					
Djibouti																																																					
Egypt, Arab Rep.																																																					
Eritrea																																																					
Ethiopia																																																					
Equatorial Guinea																																																					
Gabon																																																					
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Ghana																																																					
Guinea																																																					
Guinea Bissau																																																					
Kenya																																																					
Lesotho																																																					
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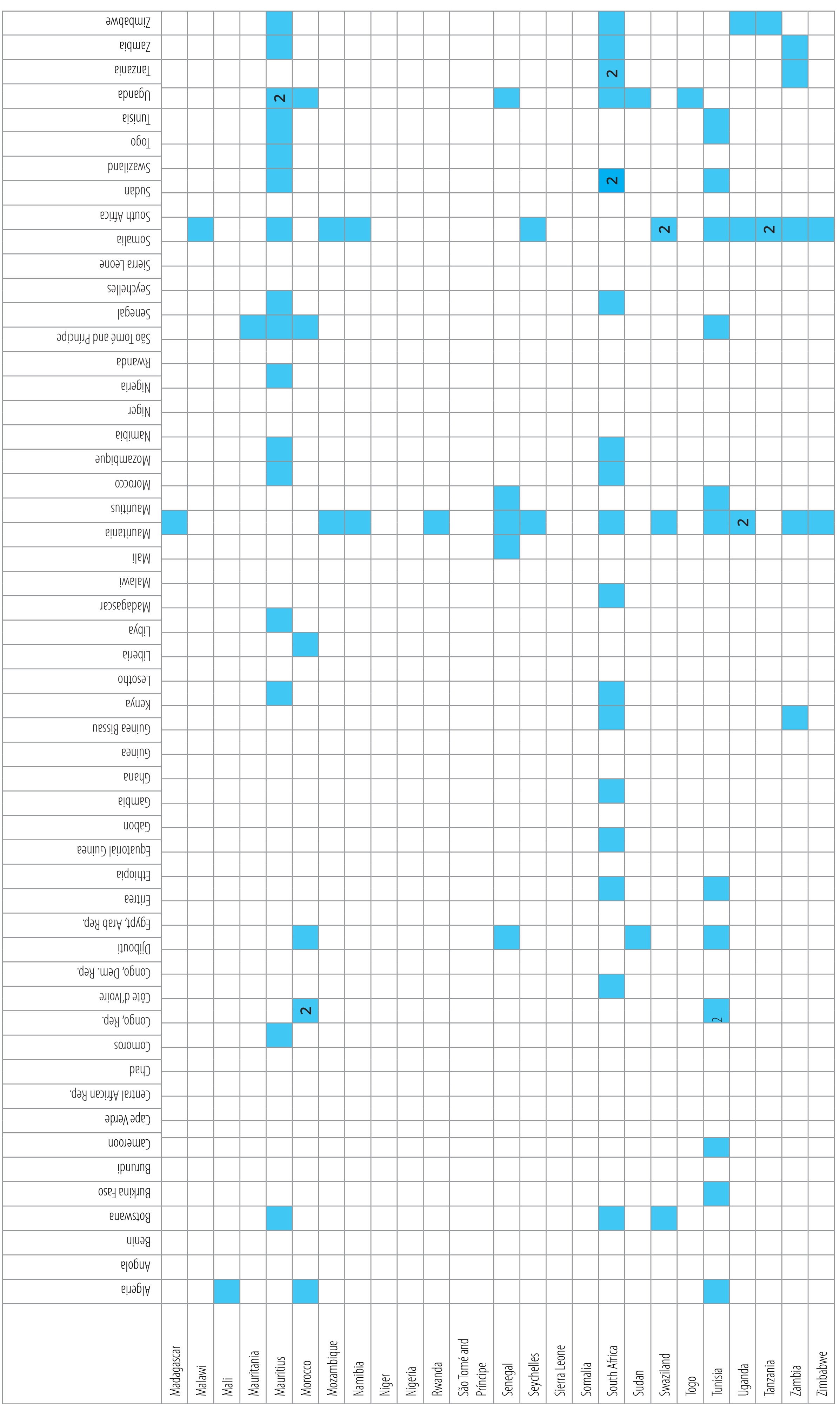

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Rep.
Chad
Comoros
Congo, Rep.
Côte d'Ivoire
Congo, Dem. Rep.
Djibouti
Egypt, Arab Rep.
Eritrea
Ethiopia
Equatorial Guinea
Gabon
Gambia
Ghana
Guinea
Guinea Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
São Tomé and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Togo
Tunisia
Uganda
Tanzania
Zambia
Zimbabwe
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
São Tomé and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Togo
Tunisia
Uganda
Tanzania
Zambia
Zimbabwe
2

Annex 3: Matrix of country pairs that have signed BITs and DTTs

	Algeria	Angola	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Cape Verde	Central African Rep.	Chad	Comoros	Congo, Rep.	Côte d'Ivoire	Congo, Dem. Rep.	Djibouti	Egypt, Arab Rep.	Eritrea	Ethiopia	Equatorial Guinea	Gabon	Gambia	Ghana	Guinea	Guinea Bissau	Kenya	Lesotho	Liberia	Libya	Madagascar	Malawi	Mali	Mauritania	Mauritius	Morocco	Mozambique	Namibia	Niger	Nigeria	Rwanda	São Tomé and Principe	Senegal	Seychelles	Sierra Leone	Somalia	South Africa	Sudan	Swaziland	Togo	Tunisia	Uganda	Tanzania	Zambia	Zimbabwe
Algeria																		■													■																						
Angola																																																					
Benin																																																					
Botswana																																	■																				
Burkina Faso																																																					
Burundi																																																					
Cameroon																																																					
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Congo, Dem. Rep.																																													■								
Djibouti																																																					
Egypt, Arab Rep.																																		■							■					■							
Eritrea																																																					
Ethiopia	■																																												■								
Equatorial Guinea																																																					

	Gabon	Gambia	Ghana	Guinea	Guinea Bissau	Kenya	Lesotho	Liberia	Libya	Madagascar	Malawi	Mali	Mauritania	Mauritius	Morocco	Mozambique	Namibia	Niger	Nigeria	Rwanda	São Tomé and Príncipe	Senegal
Algeria												■										
Angola																						
Benin																						
Botswana														■								
Burkina Faso																						
Burundi																						
Cameroon																						
Cape Verde																						
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Congo, Rep.														■								
Côte d'Ivoire																						
Congo, Dem. Rep.																						
Djibouti																						
Egypt, Arab Rep.															■							■
Eritrea																						
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Equatorial Guinea																						
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Guinea Bissau																						
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Madagascar														■								
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Mauritius																						■
Morocco									■													■
Mozambique														■								
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Niger																						
Nigeria																						
Rwanda														■								
São Tomé and Príncipe																						
Senegal														■	■							
Seychelles																						
Sierra Leone																						
Somalia																						
South Africa			■											■		■						
Sudan																						
Swaziland														■								
Togo																						
Tunisia															■							■
Uganda																						
Tanzania																						
Zambia																						
Zimbabwe														■								

	Seychelles	Sierra Leone	Somalia	South Africa	Sudan	Swaziland	Togo	Tunisia	Uganda	Tanzania	Zambia	Zimbabwe
Zimbabwe												
Zambia												
Tanzania												
Uganda												
Tunisia												
Togo												
Swaziland												
Sudan												
South Africa												
Somalia												
Sierra Leone												
Seychelles												
Senegal												
São Tomé and Principe												
Rwanda												
Nigeria												
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Guinea Bissau												
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Gambia												
Gabon												
Equatorial Guinea												
Ethiopia												
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Egypt, Arab Rep.												
Djibouti												
Congo, Dem. Rep.												
Côte d'Ivoire												
Congo, Rep.												
Comoros												
Chad												
Central African Rep.												
Cape Verde												
Cameroon												
Burundi												
Burkina Faso												
Botswana												
Benin												
Angola												
Algeria												

Annex 4: List of investor–state cases involving Africa (International Centre for Settlement of Investment Disputes [ICSID]), 1972–2014

Year	Parties	Rules/ Venues	Decisions	Status	Nature of Settlement	Links/Sources
1972	Holiday Inns S.A. and others v. Morocco (ICSID Case No. ARB/72/1)	ICSID	Order taking note of the discontinuance issued by the Tribunal on October 17, 1978 pursuant to Arbitration Rule 43(1).	Concluded	Settlement agreed to by the parties, and proceeding discontinued at their request.	
1974	Adriano Gardella S.p.A. v. Côte d'Ivoire (ICSID Case No. ARB/74/1)	ICSID	Award of August 29, 1977.	Concluded		
1977	AGIP S.p.A. v. People's Republic of the Congo (ICSID Case No. ARB/77/1)	ICSID	Award rendered on November 30, 1979.	Concluded		
1977	S.A.R.L. Benvenuti&Bonfantv. People's Republic of the Congo (ICSID Case No. ARB/77/2)	ICSID	Award rendered on August 8, 1980. National court decisions: Trib. gr. inst., Paris, decision of December 23, 1980, Courd'appel, Paris, Decision of June 26, 1981.	Concluded		
1978	Guadalupe Gas Products Corporation v. Nigeria (ICSID Case No. ARB/78/1)	ICSID	Award embodying the parties' settlement agreement rendered on July 22, 1980, pursuant to Arbitration Rule 43(2).	Concluded	Settlement agreed to by the parties.	
1981	KlöcknerIndustrie-Anlagen GmbH and others v. United Republic of Cameroon and Société Camerounaise des Engrais (ICSID Case No. ARB/81/2)	ICSID	Award rendered on October 21, 1983. Ad hoc committee makes decision on annulment of May 3, 1985. Award rendered on January 26, 1988. Decision rejecting the parties' applications for annulment signed by the ad hoc Committee on May 17, 1990.	Concluded		https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC665_En&caseId=C127
1982	Société Ouest Africaine des Bétons Industriels v. Senegal (ICSID Case No. ARB/82/1)	ICSID	Award rendered on February 25, 1988; attached to the Award is a Dissenting Opinion by one of the arbitrators.	Concluded	CFA Franc 150 million, plus 553 million for losses, plus 256 million at 10% interest per annum.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC667_Fr&caseId=C128
1983	Liberian Eastern Timber Corporation v. Republic of Liberia (ICSID Case No. ARB/83/2)	ICSID	Award rendered on March 31, 1986. Award of March 31, 1986, and Rectification of June 17, 1986.	Concluded		
1984	Atlantic Triton Company Limited v. People's Revolutionary Republic of Guinea (ICSID Case No. ARB/84/1)	ICSID	Award rendered by the Tribunal on April 21, 1986. National court decisions: Courd'appel, Rennes, decision of October 26, 1984; Cour de cassation, Paris, decision of November 18, 1986.	Concluded		

Year	Parties	Rules/ Venues	Decisions	Status	Nature of Settlement	Links/Sources
1984	Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt (ICSID Case No. ARB/84/3)	ICSID	Award rendered on May 20, 1992; attached to the Award is a Dissenting Opinion by one of the arbitrators. Order taking note of the discontinuance issued by the Committee on March 9, 1993, pursuant to Arbitration Rule 43(1)	Concluded	Settlement agreed to by the parties, and proceeding discontinued at their request.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC671_En&caseId=C135
1984	Maritime International Nominees Establishment v. Republic of Guinea (ICSID Case No. ARB/84/4) (ICSID Case No. ARB/84/4)	ICSID	Award rendered on January 6, 1988. Decision partially annulling the Award issued on December 22, 1989. Order taking note of the discontinuance issued on November 20, 1990, pursuant to Arbitration Rule 43(1).	Concluded	Settlement agreed to by the parties, and proceeding discontinued at their request.	
1986	Ghaith R. Pharaonv. Republic of Tunisia (ICSID Case No. ARB/86/1)	ICSID	Order taking note of the discontinuance issued by the Tribunal on November 21, 1988, pursuant to Arbitration Rule 43 (1).	Concluded	Settlement agreed to by the parties, and proceeding discontinued at their request.	
1987	Société d'Etudes de Travaux et de Gestion SETIMEG S.A. v. Republic of Gabon (ICSID Case No. ARB/87/1)	ICSID	Order taking note of the discontinuance issued by the Tribunal on January 21, 1993, pursuant to Arbitration Rule 43(1).	Concluded	Settlement agreed to by the parties, and proceeding discontinued at their request.	
1989	Manufacturers Hanover Trust Company v. Arab Republic of Egypt and General Authority for Investment and Free Zones (ICSID Case No. ARB/89/1)	ICSID	Order taking note of the discontinuance issued by the Tribunal on June 24, 1993, pursuant to Arbitration Rule 44.	Concluded	Settlement agreed to by the Claimant and one of the Respondents, and proceeding discontinued at their request.	
1992	Vacuum Salt Products Ltd. V. Republic of Ghana (ICSID Case No. ARB/92/1)	ICSID	Award declining jurisdiction over the dispute rendered on February 16, 1994.	Concluded	Dismissed for lack of jurisdiction.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC679_En&caseId=C143
1993	American Manufacturing and Trading v. Zaire (ICSID Case No. ARB/93/1)	ICSID	Award issued on February 21, 1997. Settlement agreed to by the parties, and proceeding discontinued at the request of the Respondent. Order taking note of the discontinuance issued by the Tribunal on July 26, 2000, pursuant to Arbitration Rule 44).	Concluded	US$ 9 million awarded, plus interest at 7.5% per annum, in default of payment awarded in favour of the investor.	http://ita.law.uvic.ca/documents/AmericanManufacturing.pdf
1995	Antoine Goetz and others v. Burundi (ICSID Case No. ARB/95/3)	ICSID	Settlement agreed to by the parties, and settlement recorded at their request in the form of an Award embodying the parties' settlement agreement rendered on February 10, 1999, pursuant to ICSID Arbitration Rule 43(2).	Concluded	Settlement consisting of agreement by Burundi to pay US$ 3 million to the investor and the creation of a new free zone regime.	http://www.worldbank.org/icsid/cases/goetz.pdf

Year	Parties	Rules/ Venues	Decisions	Status	Nature of Settlement	Links/Sources
1997	Société d'Investigation de Recherche et d'Exploitation Minière v Burkina Faso (ICSID Case No. ARB/97/1)	ICSID	Award of the Tribunal (January 19, 2000).	Concluded	Dismissed for objections to jurisdiction.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC546_Fr&caseId=C157
1997	Société Kufpec (Congo) Limited v. Republic of Congo (ICSID Case No. ARB/97/2)	ICSID	Order taking note of the discontinuance issued by the Secretary-General on September 8, 1997, pursuant to Arbitration Rule 44.	Concluded	Proceeding discontinued at the request of the Claimant.	
1997	Compagnie Française pour le Développement des Fibres Textiles v. Côte d'Ivoire (ICSID Case No. ARB/97/8)	ICSID	Award embodying the parties' settlement agreement rendered on April 4, 2000	Concluded	Settlement agreed to by the parties.	
1998	International Trust Company of Liberia v. Republic of Liberia (ICSID Case No. ARB/98/3)	ICSID	The Tribunal issued an order for the discontinuance of the proceeding on July 24, 2002, for lack of payment of advances, pursuant to Regulation 14(3)(d) of the Administrative and Financial Regulations.	Concluded	Discontinued.	
1998	Wena Hotels Ltd. v. Egypt (ICSID Case No. ARB/98/4)	ICSID	Decision on Jurisdiction issued on June 29,1999. Final Award issued on December 8, 2000. Decision on Application for Annulment issued on February 5, 2002. Interpretation of the Arbitral Award dated December 8, 2000, issued on October 31, 2005.	Concluded	US$ 8,061,897 awarded, plus interest of US$ 11,431,386 (calculated at rate of 9%, compounded quarterly), in favour of investor. Interest in default of payment at the same rate.	http://ita.law.uvic.ca/documents/Wena-1999-Final.pdf http://ita.law.uvic.ca/documents/Wena-2000-Final.pdf http://ita.law.uvic.ca/documents/Wena-annulment.pdf http://ita.law.uvic.ca/documents/WenaInterpretationDecision.pdf
1998	Banro American Resources, Inc. and Société Aurifère du Kivu et du Maniema S.A.R.L. v. Democratic Republic of the Congo (ICSID Case No. ARB/98/7)	ICSID	Award of the Tribunal (September 1, 2000).	Concluded	The Tribunal decided it had no jurisdiction.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC577_En&caseId=C173

Year	Parties	Rules/ Venues	Decisions	Status	Nature of Settlement	Links/Sources
1998	Tanzania Electric Supply Company Limited v. Independent Power Tanzania Limited (ICSID Case No. ARB/98/8)	ICSID	Award rendered on July 12, 2001. The Tribunal issued an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 44 on August 19, 2010.	Concluded		https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC578_En&caseId=C174
1999	Alimenta S.A. v. Republic of The Gambia (ICSID Case No. ARB/99/5)	ICSID	Order taking note of discontinuance of the proceeding issued by the Arbitral Tribunal on May 3, 2001, pursuant to Arbitration Rule 43(1)	Concluded	Settlement agreed to by the parties, and proceeding discontinued at their request.	
1999	Middle East Cement Shipping and Handling Co v. Arab Republic of Egypt (ICSID Case No. ARB/99/6)	ICSID	Award issued on April 12, 2002.	Concluded	US$ 2,190,430 awarded to the investor, plus US$ 1,558,970 as compounded interest, plus interest at 6% compounded annually until payment.	http://www.worldbank.org/icsid/cases/me_cement-award.pdf
1999	Patrick Mitchell v. Democratic Republic of the Congo (ICSID Case No. ARB/99/7)	ICSID	Final Award issued on February 9, 2004. Annulment Decision issued on November 1, 2006.	Concluded	Final Award was annulled.	http://www.investmentclaims.com/decisions/Mitchell-Congo-Annulment_Decision.pdf
2000	SaliniCostruttori and Italstradev. Morocco (ICSID Case No. ARB/00/4)	ICSID	Decision on Jurisdiction issued on July 22, 2001. Order taking note of the discontinuance pursuant to Arbitration Rule 43(1) issued on February 4, 2004.	Concluded	Settlement agreed to by the parties, and proceeding discontinued at their request.	http://ita.law.uvic.ca/documents/Salini-English.pdf
2000	Consortium RFCC v. Morocco (ICSID Case No. ARB/00/6)	ICSID	Decision on Jurisdiction issued on July 16, 2001. Award issued on December 22, 2003. Annulment Decision issued on January 18, 2006.	Concluded	Tribunal dismissed all claims.	
2000	World Duty Free Company Limited v. Republic of Kenya (ICSID Case No. ARB/00/7)	ICSID	Award rendered on October 4, 2006.	Concluded		
2000	Ridgepointe Overseas Developments, Ltd. V. Democratic Republic of the Congo and Générale des Carrières et des Mines (ICSID Case No. ARB/00/8)	ICSID	Order taking note of the discontinuance of the proceeding issued by the Tribunal on August 30, 2004, pursuant to Arbitration Rule 44.	Concluded	Discontinued.	

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2001	Antoine Goetz and others v. Burundi (ICSID Case No. ARB/01/2)	ICSID	Award rendered on June 21, 2012.	Concluded		https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC2651_Fr&caseId=C2
2001	Société d'Exploitation des Mines d'Or de Sadiola S.A. v. Republic of Mali (ICSID Case No. ARB/01/5)	ICSID	Award rendered on February 25, 2003.	Concluded		
2002	Lafarge v. Republic of Cameroon (ICSID Case No. ARB/02/4)	ICSID	The Acting Secretary-General issued an order taking note of the discontinuance of the proceeding on June 13, 2003, pursuant to Arbitration Rule 43(1).	Concluded	Discontinued.	
2002	Champion Trading Company and others v. Arab Republic of Egypt (Case No. ARB/02/9)	ICSID	Decision on Jurisdiction issued on October 21, 2003. Award issued on October 27, 2006.	Concluded	Tribunal rejected all remaining claims based on merit.	http://italaw.com/sites/default/files/case-documents/ita0148.pdf
2002	CDC Group plc v. Republic of Seychelles (ICSID Case No. ARB/02/14)	ICSID	Award issued on December 17, 2003. Decision of the ad hoc Committee on the Application for Annulment of the Republic of the Seychelles issued on June 29, 2005.	Concluded	Initially award totalled £ 1.77 million, plus interest at 9% per annum, stayed after annulment request rejected.	http://ita.law.uvic.ca/documents/CDCvSeychellesAward_001.pdf http://ita.law.uvic.ca/documents/CDCSeychellesAnnulmentDecision.pdf
2002	Ahmonseto, Inc. and others v. Arab Republic of Egypt (Case No. ARB/02/15)	ICSID	Award issued June 18, 2007. Ad hoc Committee issues an order for the discontinuance of the proceeding for lack of payment of the required advances, pursuant to ICSID Administrative and Financial Regulation 14(3)(d) and (e) on October 13, 2010.	Concluded	Tribunal's decision is not public; claimant brings annulment proceedings, which were discontinued.	
2003	Consortium Groupement L.E.S.I.-DIPENTA v. Algeria (ICSID Case No. ARB/03/8)	ICSID	Decision on Jurisdiction issued on January 10, 2005.	Concluded	Tribunal lacked jurisdiction.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC645_En&caseId=C228
2003	Joy Mining Machinery v. Egypt (ICSID Case No. ARB/03/11)	ICSID	Decision on Jurisdiction issued on July 30, 2004. Order taking note of the discontinuance pursuant to Arbitration Rule 43 (1) issued by the Tribunal on December 16, 2005.	Concluded	Tribunal lacked jurisdiction. During annulment, settlement was agreed to by the parties and proceeding discontinued.	http://ita.law.uvic.ca/documents/JoyMining_Egypt.pdf

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2003	Miminco LLC and others v. Democratic Republic of the Congo (ICSID Case No. ARB/03/14)	ICSID	Award embodying the parties' settlement agreement rendered on November 19, 2007.	Concluded	Settlement agreed to by the parties.	
2004	Telekom Malaysia Berhadv. The Republic of Ghana, Case No. HA/RK 2004, 788	UNCITRAL	Final award issued on November 5, 2004.	Concluded	Judge rejected claims.	http://italaw.com/cases/documents/1201
2004	Compagnie d'Exploitation du Chemin de Fer Transgabonais v. Gabonese Republic (ICSID Case No. ARB/04/5)	ICSID	Décision sur la compétence du Tribunal, le 19 décembre 2005. The ad hoc Committee issued its decision on the application for annulment on May 11, 2010.	Concluded		
2004	Russell Resources International Limited and others v. Democratic Republic of the Congo (ICSID Case No. ARB/04/11)	ICSID	Order for discontinuance on February 10, 2009, for lack of payment of the required advances, pursuant to ICSID Administrative and Financial Regulation 14(3)(d).	Concluded	The Tribunal issued an order for the discontinuance of the proceeding	
2004	ABCI Investments v. Tunisia (ICSID Case No. ARB/04/12)	ICSID	Following exchanges between the parties, the Tribunal issued a decision on the Respondent's request for production of documents contained in its memorial on preliminary matters on May 13, 2014.	Pending		
2004	Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt (ICSID Case No. ARB/04/13)	ICSID	Decision on Jurisdiction issued on June 16, 2006. Award issued on October 24, 2008.	Concluded	Tribunal found that it had jurisdiction. Claims were dismissed on merits in final award.	http://ita.law.uvic.ca/documents/JandeNuljurisdiction061606.pdf
2005	LESI S.p.A. and Astaldi S.p.A v. Algeria (ICSID Case No. ARB/05/3)	ICSID	Decision on Jurisdiction issued on July 12, 2006. Award issued on November 12, 2008.	Concluded	Tribunal had jurisdiction. Claims were dismissed on the merits in final award.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC890_Fr&caseId=C48
2005	Bernadus Henricus Funnekotter and others v. Republic of Zimbabwe (ICSID Case No. ARB/05/6)	ICSID	Award issued on April 22, 2009.	Concluded	€ 8,220,000 awarded in favour of the investor plus interest.	http://italaw.com/documents/ZimbabweAward.pdf
2005	Waguih Elie George Siag and Clorinda Vecchiv. Arab Republic of Egypt (ICSID Case No. ARB/05/15)	ICSID	Decision on Jurisdiction issued on May 28, 2007. Award issued on June 1, 2009. The ad hoc Committee issued an order taking note of the discontinuance of the proceeding, pursuant to ICSID Arbitration Rule 45, on July 26, 2010.	Concluded	US$ 74,550,794.75 awarded, plus interest. Annulment proceedings discontinued.	http://www.investmentclaims.com/decisions/Siag-Egypt-Jurisdiction.pdf

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2005	Helnan International Hotels A/S v. Arab Republic of Egypt (ICSID Case No. ARB/05/19)	ICSID	Decision on Objections to Jurisdiction issued on October 17, 2006. Award issued on June 7, 2008. The ad hoc Committee issued a decision on the application for annulment on June 14, 2010.	Concluded	Tribunal had jurisdiction. Claims were dismissed on the merits, and annulment was partially accepted.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC1631_En&caseId=C64
2005	African Holding Company of America, Inc. and Société Africaine de Construction au Congo S.A.R.L. v. Democratic Republic of the Congo (ICSID Case No. ARB/05/21)	ICSID	Award (on jurisdiction) issued on July 29, 2008.	Concluded	Tribunal lacked competence.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC776_Fr&caseId=C66
2005	Biwater Gauff (Tanzania) Ltd. V. United Republic of Tanzania (ICSID Case No. ARB/05/22)	ICSID	Award rendered on July 24, 2008.	Concluded	Claims were dismissed by the Tribunal.	http://www.italaw.com/sites/default/files/case-documents/ita0095.pdf
2006	Togo Electricité and GDF-Suez Energie Services v. Republic of Togo (ICSID Case No. ARB/06/7)	ICSID	Tribunal rendered its award on August 10, 2010. Decision on Annulment (September 6, 2011).	Concluded	Award was of FCFA 10.6 billion, plus charges at 6.5% interest per annum. Annulment motion was rejected.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC2271_Fr&caseId=C75
2006	Scancem International ANS v. Republic of Congo (ICSID Case No. ARB/06/12)	ICSID	Order taking note of the discontinuance issued by the Acting Secretary-General on July 10, 2008, pursuant to ICSID Arbitration Rule 44.	Concluded	Settlement agreed to by the parties. Proceeding discontinued.	
2007	PieroForesti, Ida Laura De Carli, and others v. Republic of South Africa (ICSID Case No. ARB(AF)/07/1)	ICSID	Tribunal rendered its award on August 4, 2010.	Concluded	Claims were dismissed, and case was discontinued	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC1651_En&caseId=C90
2007	RSM Production Corporation v. Central African Republic (ICSID Case No. ARB/07/2)	ICSID	Award issued on July 11, 2011. The ad hoc Committee issued its decision on the application for annulment on February 20, 2013.	Concluded	Tribunal had competence and rejected claims. Annulment request rejected. Committee determined lack of competence.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC3934_Fr&caseId=C92

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2007	M. Meerapfel Söhne AG v. Central African Republic (ICSID Case No. ARB/07/10)	ICSID	Award issued on May 12, 2011.	Concluded	Tribunal rejected claims.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC2813_Fr&caseId=C102
2007	Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria (ICSID Case No. ARB/07/18)	ICSID	Order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1) on August 1, 2011.	Concluded	Proceeding discontinued.	
2007	Gustav F W Hamester GmbH & Co KG v. Republic of Ghana (ICSID Case No. ARB/07/24)	ICSID	Award rendered on June 18, 2010.	Concluded		
2007	Mike Campbell (Pvt) Ltd and others v. Republic of Zimbabwe (SADC (T) Case No. 2/2007)	SADC Tribunal	November 28, 2008, the Tribunal issued its decision June 5, 2009; another application is filed. On August 17, 2010, the Summit of the SADC Heads of State and Government decided to suspend the Tribunal.	Concluded	Tribunal decided it had jurisdiction and that the claimants were entitled to compensation. Tribunal held that Zimbabwe had failed to comply with the Tribunal's previous decision.	
2008	Participaciones Inversiones Portuarias SARL v. Gabonese Republic (ICSID Case No. ARB/08/17)	ICSID	Order taking note of the discontinuance of the proceeding pursuant to ICSID Administrative and Financial Regulation 14(3)(d) on January 10, 2011.	Concluded	Proceeding discontinued.	
2008	Malicorp Limited v. Egypt (ICSID Case No. ARB/08/18)	ICSID	Award on February 7, 2011. The ad hoc Committee issued its decision on the application for annulment on July 3, 2013.	Concluded	Tribunal had jurisdiction and rejected claims. Both parties to bare costs on equal shares. Annulment request rejected.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC1911_En&caseId=C461
2008	Millicom International Operations BV et al v. Senegal (ICSID Case No. ARB/08/20)	ICSID	Award embodying the parties' settlement agreement rendered on November 27, 2012, pursuant to ICSID Arbitration Rule 43(2).	Concluded	Settlement agreed to by the parties and recorded in the form of an award.	
2009	MærskOlie, Algeriet A/S v. People's Democratic Republic of Algeria (ICSID Case No. ARB/09/14)	ICSID	Order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1) on September 30, 2013.	Concluded	Tribunal issued an order for discontinuance of the proceeding.	

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2009	H&H Enterprises Investments, Inc. v. Arab Republic of Egypt (ICSID Case No. ARB/09/15)	ICSID	Award rendered on May 6, 2014.	Concluded		
2009	Carnegie Minerals (Gambia) Limited v. Republic of The Gambia (ICSID Case No. ARB/09/19)	ICSID	The Respondent filed a statement of costs on June 5, 2014.	Pending		
2010	Antoine Abou Lahoud and Leila Bounafeh-Abou Lahoudv. Democratic Republic of the Congo (ICSID Case No. ARB/10/4)	ICSID	Award rendered on February 7, 2014. Annulment proceeding filed on June 19, 2014. Ad hoc Committee recently constituted.	Pending	Decision on annulment proceeding is pending.	
2010	Olyana Holdings LLC v. Republic of Rwanda (ICSID Case No. ARB/10/10)	ICSID	Order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1) on January 7, 2011.	Concluded	Tribunal issued an order taking note of the discontinuance of the proceeding.	
2010	Standard Chartered Bank v. United Republic of Tanzania (ICSID Case No. ARB/10/12)	ICSID	Award rendered on November 2, 2012. Tribunal arbitration for lack of jurisdiction. Annulment proceeding filed on February 11, 2013.	Pending	Annulment proceeding was suspended, pursuant to the parties' agreement.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC2754_En&caseId=C1080
2010	Bernhard von Pezold and others v. Republic of Zimbabwe (ICSID Case No. ARB/10/15)	ICSID	Tribunal issued Procedural Order No. 11 concerning post-hearing procedural matters on July 15, 2014.	Pending		
2010	Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited (ICSID Case No. ARB/10/20)	ICSID	Tribunal issued a decision on jurisdiction and liability on February 12, 2014.	Pending		https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC4272_En&caseId=C1220
2010	International Quantum Resources Limited, Frontier SPRL and Compagnie Minière de Sakania SPRL v. Democratic Republic of the Congo (ICSID Case No. ARB/10/21)	ICSID	Order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 43(1) on April 12, 2012.	Concluded	Tribunal issued a procedural order taking note of the discontinuance of the proceeding.	
2010	Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe (ICSID Case No. ARB/10/25)	ICSID	Tribunal issued Procedural Order No. 11 concerning post-hearing procedural matters on July 15, 2014.	Pending		

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2011	Bawabet Al Kuwait Holding Company v. Arab Republic of Egypt (ICSID Case No. ARB/11/6)	ICSID	The suspension of the proceeding was extended until July 19, 2014, pursuant to the parties' agreement on June 19, 2014.	Pending		
2011	National Gas S.A.E. v. Arab Republic of Egypt (ICSID Case No. ARB/11/7)	ICSID	Award rendered on April 3, 2014.	Concluded		
2011	AHS Niger and Menzies Middle East and Africa S.A. v. Republic of Niger (ICSID Case No. ARB/11/11)	ICSID	Award rendered on July 15, 2013.	Pending	Tribunal had competence. Will decide on the dispute in a second phase.	https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC3932_Fr&caseId=C1540
2011	Diamond Fields Liberia, Inc. v. Republic of Liberia (ICSID Case No. ARB/11/14)	ICSID	Following appointment by the Claimant, Glen M. Ashworth (U.S.) accepted his appointment as arbitrator on September 21, 2012.	Pending		
2011	Hussain Sajwani, Damac Park Avenue for Real Estate Development S.A.E., and Damac Gamsha Bay for Development S.A.E. v. Arab Republic of Egypt (ICSID Case No. ARB/11/16)	ICSID	The suspension of the proceeding was further extended until June 30, 2014, on June 10, 2014.	Pending		
2011	Getma International and others v. Republic of Guinea (ICSID Case No. ARB/11/29)	ICSID	The Tribunal issued Procedural Order No. 5 concerning the procedural calendar on July 7, 2014.	Pending		https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC2912_Fr&caseId=C1900
2011	Indorama International Finance Limited v. Arab Republic of Egypt (ICSID Case No. ARB/11/32)	ICSID	The Respondent filed a rejoinder on the merits on April 23, 2014.	Pending		
2012	Grupo Francisco Hernando Contreras v. Republic of Equatorial Guinea (ICSID Case No. ARB(AF)/12/2)	ICSID	On January 16, 2014, each party filed answers to the questions posed by the Tribunal on December 23, 2013.	Pending		
2012	Société Industrielle des Boissons de Guinée v. Republic of Guinea (ICSID Case No. ARB/12/8)	ICSID	Award rendered on May 21, 2014	Concluded		
2012	Ampal-American Israel Corporation and others v Arab Republic of Egypt (ICSID Case No. ARB/12/11)	ICSID	The Respondent filed a rejoinder on jurisdiction and the merits on July 17, 2014.	Pending		

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2012	Veolia Propretév. Arab Republic of Egypt (ICSID Case No. ARB/12/15)	ICSID	The Claimant filed a counter-memorial on jurisdiction and admissibility on April 24, 2014.	Pending		
2012	Sudapet Company Limited v. Republic of South Sudan (ICSID Case No. ARB/12/26)	ICSID	The Respondent filed a counter-memorial on jurisdiction and the merits on July 23, 2014.	Pending		
2012	Lundin Tunisia B.V. v. Republic of Tunisia (ICSID Case No. ARB/12/30)	ICSID	The Tribunal decided on the Respondent's request to address the objections to jurisdiction as a preliminary question, and the admissibility of the Claimant's ancillary claims on August 6, 2014.	Pending		
2012	Gelsenwasser AG v. People's Democratic Republic of Algeria (ICSID Case No. ARB/12/32)	ICSID	Pierre Mayer withdrew his acceptance of the appointment as arbitrator on January 28, 2013.	Pending		
2012	Tullow Uganda Operations PTY LTD v. Republic of Uganda (ICSID Case No. ARB/12/34)	ICSID	The proceeding was suspended until August 19, 2014, pursuant to the parties' agreement on April 11, 2014.	Pending		
2012	Orascom TMT Investments S.àr.l. v. People's Democratic Republic of Algeria (ICSID Case No. ARB/12/35)	ICSID	The Respondent filed a memorial on preliminary objections on June 20, 2014.	Pending		
2012	Société Civile Immobilière de Gaëta v. Republic of Guinea(ICSID Case No. ARB/12/36)	ICSID	The Tribunal issued a procedural order concerning production of documents on May 19, 2014.	Pending		
2012	Orascom Telelcom Holding v. Algeria	ICSID/ UNCITRAL	A two-year-old UNCITRAL case brought by Egypt's Orascom Telecom against Algeria over mobile phone operator Djezzy-was stayed following a US$4 billion deal—but a parallel ICSID claim brought by an indirect shareholder in Djezzy continued. The dispute related to alleged breaches of the Algeria–Egypt BIT in relation to the operation of Global Telecom Holding SAE (formerly Orascom Telecom Holding SAE).	Pending	USD$ 16 billion is at stake over an alleged unfair treatment and expropriation of Global Telecom's Algerian subsidiary, Djezzy.	
2012	Al-Kharafi v. Libya	UAICAS	Ad-hoc arbitration subject to the Unified Agreement for the Investment of Arab Capital in the Arab States (UAICAS). Rendered in Cairo on March 22, 2013.	Concluded	The award of US$935 million in favour of Al-Kharafi is the second highest known award.	http://italaw.com/sites/default/files/case-documents/italaw1554.pdf
2012	Mr. Yosef Maiman and others v. Egypt	UNCITRAL	Notice of arbitration is not public.	Pending		http://www.italaw.com/cases/documents/2035

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2013	Ossama Al Sharif v. Arab Republic of Egypt (ICSID Case No. ARB/13/3)	ICSID	The suspension of the proceeding was further extended until September 4, 2014, pursuant to the parties' agreement on August 4, 2014.	Pending		
2013	Ossama Al Sharif v. Arab Republic of Egypt (ICSID Case No. ARB/13/4)	ICSID	The suspension of the proceeding was further extended until September 1, 2014, pursuant to the parties' agreement on August 4, 2014	Pending		
2013	Ossama Al Sharif v Arab Republic of Egypt (ICSID Case No. ARB/13/5)	ICSID	The suspension of the proceeding was further extended until September 1, 2014, pursuant to the parties' agreement on August 4, 2014.	Pending		
2013	Joseph Houbenv. Republic of Burundi (ICSID Case No. ARB/13/7)	ICSID	The Respondent filed a counter-memorial on the merits on April 29, 2014.	Pending		
2013	RSM Production Company v. Republic of Cameroon (ICSID Case No. ARB/13/14)	ICSID	The suspension of the proceeding was extended until September 15, 2014, pursuant to the parties' agreement on August 4, 2014.	Pending		
2013	Lundin Tunisia B.V. v. Republic of Tunisia (ICSID Case No. ARB/13/15)	ICSID	Following appointment by the Respondent, Andreas Reiner (Austrian) accepted his appointment as arbitrator on December 30, 2013.	Pending		
2013	Société des Mines de Loulo S.A. v. Republic of Mali (ICSID Case No. ARB/13/16)	ICSID	The Respondent filed a counter-memorial on the merits, including objections to jurisdiction on July 28, 2014.	Pending		
2013	Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria (ICSID Case No. ARB/13/20)	ICSID	The Tribunal held a hearing on preliminary objections in London on June 26, 2014.	Pending		
2013	ASA International S.p.A. v. Arab Republic of Egypt (ICSID Case No. ARB/13/23)	ICSID	Following appointment by the Respondent, Kamal Hossain (Bangladeshi) accepted his appointment as arbitrator on December 15, 2013.	Pending		
2013	Tullow Uganda Operations Pty Ltd and Tullow Uganda Limited v. Republic of Uganda (ICSID Case No. ARB/13/25)	ICSID	Tribunal recently constituted on June 25, 2014. The Claimants filed a request for provisional measures on August 1, 2014.	Pending		
2013	Cementos La Union S.A. and Aridos Jativa S.L.U v. Arab Republic of Egypt (ICSID Case No. ARB/13/29)	ICSID	Following appointment by the Respondent, Philippe Sands (British/French) accepted his appointment as arbitrator on March 10, 2014.	Pending		
2013	Courts (Indian Ocean) Limited and Courts Madagascar S.A.R.L. v. Republic of Madagascar (ICSID Case No. ARB/13/34)	ICSID	Tribunal constituted on May 9, 2014. Tribunal issued Procedural Order No. 1 concerning procedural matters on July 21, 2014.	Pending		

Year	Parties	Rules/ Venues	Decisions	Status	Nature of Settlement	Links/Sources
2013	Utsch M.O.V.E.R.S. International GmbH, Erich Utsch Aktiengesellschaft, and Mr. Helmut Jungbluthv. Arab Republic of Egypt (ICSID Case No. ARB/13/37)	ICSID	Following appointment by the Respondent, Mark A. Clodfelter (U.S.) accepted his appointment as arbitrator on March 26, 2014.	Pending		
2014	Michael Dagherv. Republic of the Sudan (ICSID Case No. ARB/14/2)	ICSID	Tribunal recently constituted.	Pending		
2014	Unión Fenosa Gas, S.A. v. Arab Republic of Egypt (ICSID Case No. ARB/14/4)	ICSID	Following appointment by the Respondent, J. Christopher Thomas (Canadian) accepted his appointment as arbitrator on June 4, 2014.	Pending		
2014	African Petroleum Gambia Limited (Block A1) v. Republic of The Gambia (ICSID Case No. ARB/14/6)	ICSID	Following appointment by the Respondent, Loretta Malintoppi (Italian) accepted her appointment as arbitrator on April 30, 2014.	Pending		
2014	African Petroleum Gambia Limited (Block A4) v. Republic of The Gambia (ICSID Case No. ARB/14/7)	ICSID	Following appointment by the Respondent, Loretta Malintoppi (Italian) accepted her appointment as arbitrator on April 30, 2014.	Pending		
2014	Oded Besserglikv. Republic of Mozambique (ICSID Case No. ARB(AF)14/2)	ICSID	Tribunal not yet constituted.	Pending		
2014	VICAT v. Republic of Senegal (ICSID Case No. ARB/14/19)	ICSID	Tribunal not yet constituted.	Pending		

Sources: Based on the registered cases in the UN Commission on International Trade Law (UNCITRAL), ICSID, and ICC (International Chamber of Commerce) repositories.

Abbreviation: ICSID, International Centre for Settlement of Investment Disputes.

Annex 5: Major instruments, policies, and institutions on investment at the Regional Economic Community (REC) level

RECs	Treaties, agreements, or instruments on investment	Major principles and policies	Institutions
CEN-SAD	n/a	n/a	**Sahel-Saharan Investment and Trade Bank** (The idea of the creation of a regional bank was highlighted in Article 4 of the Treaty. The Convention on establishment of the Sahel-Saharan Investment and Trade Bank, BSIC, was signed on April 14, 1999. BSIC is a regional banking institution that provides financial and trade services, including funding of foreign investment and foreign trade.) *The drafting process of the Free Trade Area Treaty is ongoing.
COMESA	1. Investment Agreement for the COMESA Common 2. Investment Area (CCIA) 2007	**1.*Definition of Investment:** *Investment* means assets admitted or admissible in accordance with the relevant laws and regulations of the COMESA member state in whose territory the investment is made, and includes the following: a. moveable and immovable property and other related property rights, such as mortgages, liens, and pledges; b. claims to money, goods, services, or other products that have economic value; c. stocks, shares, and debentures of companies and interest in the property of such companies; d. intellectual property rights, technical processes, know-how, goodwill, and other benefits or advantages associated with a business operating in the territory of the COMESA member states in which the investment is made; e. business concessions conferred by law or under contract, including the following: **i.** build, operate, own/transfer, rehabilitate, expand, restructure, and/or improve infrastructure **ii.** concessions to search for, cultivate, extract, or exploit natural resources f. such other activities that may be declared by the Council as investments, excluding goodwill market share, whether or not they are based on foreign-origin trade or rights to trade; claims to money deriving solely from commercial contracts for the sale of goods and services to or from the territory of a member state to the territory of another member state, or a loan to a member state or to a member state enterprise; a bank letter of credit; or the extension of credit in connection with a commercial transaction, such as trade financing. **2. Objectives of the Common Investment Area**: a. substantially increase the free flow of investments into COMESA from both COMESA and non-COMESA sources; b. jointly promote COMESA as an attractive investment area; c. strengthen and increase the competitiveness of COMESA's economic activities; and d. gradually eliminate investment restrictions and conditions that may impede investment flows and the operation of investment projects in COMESA.	Regional Investment Agency (the RIA seeks to optimize investment and trade opportunities in the region by developing and establishing synergies, networks, alliances, and co-operation with other Regional Economic Communities, cooperating partners, and international institutions to achieve high investment levels that lead to rapid and sustainable economic growth and development.) A copy of Investment Agreement for the COMESA Common Investment Area (CCIA) 2007 may be found here: http://vi.unctad.org/files/wksp/iiawksp08/docs/wednesday/Exercise%20Materials/invagreecomesa.pdf.A summary of the agreement can be found at http://programmes.comesa.int/index.php?option=com_content&view=article&id=111&Itemid=149.

RECs	Treaties, agreements, or instruments on investment	Major principles and policies	Institutions
		3. General Obligations: Transparency and consistency in the application and interpretation of their investment laws, regulations, and administrative procedures; facilitation, promotion, and liberalization; appropriate actions to enhance the attractiveness of their investment environment for direct investment flows. Existence of a COMESA Common Investment Area Committee. **4. Different Programmes**: co-operation and facilitation programme; promotion and awareness programme; and liberalization programme. **5. About International Multilateral Agreements:** Member states shall, where they have not done so, endeavour to accede to the following: a. the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; b. the International Convention on Settlement of Investment Disputes between States and Nationals of Other States; c. the Convention Establishing the Multilateral Investment Guarantee Agency; d. the Agreement Establishing the African Trade Insurance Agency; and e. any other multilateral agreement designed to promote or protect investment. **6. Protection and Incentives:** Fair and equitable treatment/transfer of assets/movement of labour/national treatment/most-favoured-nation treatment /protection against expropriation (in the public interest; on a nondiscriminatory basis; in accordance with due process of law; and on payment of prompt adequate compensation)/compensation for losses (exceptional situations). 7**.** In the event of serious balance-of-payment and external financial difficulties or threat thereof, a Member State may adopt or maintain restrictions on investments. **8. Dispute settlement:** National courts or international arbitration (ICSID/under the UNCITRAL Arbitration Rules). 9. In the framework of the co-operation and facilitation programme, the Member States must examine the possibility of a COMESA Double Taxation Agreement.	

RECs	Treaties, agreements, or instruments on investment	Major principles and policies	Institutions
EAC	*Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect of taxes on income (28.04.1997). *Protocol on the Establishment of the East African Community Customs Union (2/3/2004) *Protocol on the Establishment of EAC Common Market	**1. Development of Industry through Investments:** Partner States shall take measures to rationalize investments and the full use of established industries so as to promote efficiency in production; harmonize and rationalize investment incentives, including those relating to taxation of industries—particularly those that use local materials and labour, with a view to promoting the community as a single investment area; and avoid double taxation. **(Article 80 of the Treaty for the Establishment of an East African Community)** **2. Movement of Capital** The Partner States shall a. ensure the unimpeded flow of capital within the Community through the removal of controls on the transfer of capital among the Partner States; b. ensure that the citizens of and persons resident in a Partner State are allowed to acquire stocks, shares, and other securities or to invest in enterprises in the other Partner States; and c. encourage cross-border trade in financial instruments. **(Article 86 of the Treaty establishing an East African Community**) **3. Principles of the Common Market Encouraging Investments:** The free movement of goods; the free movement of persons; the free movement of labour; the right of establishment; the right of residence; the free movement of services; the free movement of capital; nondiscrimination against nationals of other Partner States on grounds of nationality; treatment of nationals of other Partner States no less favourable than the treatment accorded to third parties; transparency in matters concerning the other Partner States; elimination of tariff, nontariff, and technical barriers to trade.	EAC Investment Promotion Agency http://www.eac.int/treaty/index.php?option=com_content&view=article&id=75&Itemid=156
ECCAS	*Treaty establishing the ECCAS	**Provisions of the Establishing Treaty**: abolition between member states of quantitative restrictions and other trade barriers; progressive abolition between member states of obstacles to the free movement of persons, goods, services, and capital and to the right of establishment; most-favoured nation treatment	Promoting Private Investment in ECCAS countries: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Quarterly%20Thematic%20Review%20Central%20Africa%20-%20Issue%20N%C2%B01%20-%20March%202013.pdf

RECs	Treaties, agreements, or instruments on investment	Major principles and policies	Institutions
ECOWAS	*Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation with ECOWAS *Supplementary protocol A/SP.2/5/90 on the implementation of the third phase (right of establishment) of the protocol on free movement of persons, right of residence and establishment *Supplementary protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the protocol on free movement, right of residence and establishment *Supplementary protocol A/SP.1/7/86 on the second phase (right of residence) of the protocol on free movement of persons, the right of residence and establishment *Supplementary protocol A/SP.1/7/85 on the code of conduct for the implementation of the protocol on free movement of persons, the right of residence and establishment *Protocol A/P.1/5/79 relating to free movement of persons, the right of residence and establishment	**1. Definition of Investment:** *Investment* means a. a company; b. shares, stock, and other forms of equity participation in a company, and bonds, debentures, and other forms of debt interests in a company; c. contractual rights, such as under turnkey, construction, or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts; d. tangible property, including real property, and intangible property, including rights such as leases, mortgages, liens, and pledges on real property; e. rights conferred pursuant to law, such as licences and permits, provided that • such investments are not in the nature of portfolio investments that shall not be covered by this Supplementary Act; • a significant physical presence of the investment exists in the host state; • the investment in the host state is made in accordance with the laws of that host state; • the investment is part or all of a business or commercial operation; and • the investment is made by an investor, as defined herein. 2. *This Supplementary Act applies to any measure adopted or maintained by a Member State, after the entry into force of this Supplementary Act by a governmental authority of the host state. **3. Principles of national Treatment/Most-Favoured-Nation Treatment/Minimum Regional Standards/no Expropriation:** Only for a public purpose; on a non-discriminatory basis; in accordance with due process of law; and on payment of compensation in accordance/free transferability. **4. Investors' Duties:** a. Investors and investments are subject to the laws and regulations of the host state. b. investors and investments must comply with the host state measures prescribing the formalities of establishing an investment and accept host state jurisdiction with respect to the investment. c. Investors shall strive, through their management policies and practices, to contribute to the development objectives of the host states and the local levels of government where the investment is located. d. Investors and investments shall conduct an environmental and social impact assessment of the potential investment. e. Investors and their investments shall, before or after the establishment of an investment, refrain from involving themselves in corrupt practices. f. Investors or investments shall, in keeping with best practice requirements relating to their activities and the size of their investments, strive to comply with hygiene, security, health, and social welfare rules in force in the host country. g. Investors shall uphold human rights in the workplace and the community in which they are located.	*http://www.ecobiz.ecowas.int/en/pdf/cim-vision-english-version.pdf*http://www.privatesector.ecowas.int/en/III/Supplementary_Act_Investment.pdf *Feasibility Study on the Establishment of an ECOWAS Investment Guarantee/Reinsurance Agency: http://acpbusinessclimate.org/pseef/Documents/028_PRI_booklet_en.pdf

RECs	Treaties, agreements, or instruments on investment	Major principles and policies	Institutions
		5. Incentives: Potential host Member States should avoid competition for the attraction of investment or investments through incentives or other means that distort regional competition for investments. To that effect, Member States shall initiate negotiations to harmonize incentive schemes. 6. Host states may impose performance requirements to promote domestic development benefits from investments. Measures adopted before the completion of the host state measures prescribing the formalities for establishing an investment shall be deemed to be in compliance with this Supplementary Act. **7. Implementation of Community Rules on Investment Promotion and Facilitation of Investment:** a. The community shall create regional structures for the implementation of the community investment rules Member States shall and facilitation. b. The Member States shall establish or maintain appropriate national structures for the same purpose. c. The Member States shall take appropriate steps to facilitate diaspora investment into the region. d. The Member States shall adopt relevant regional initiatives to promote investments in the region, including investment-guarantee mechanisms, integration of capital, and other measures. **8. Assistance and Facilitation for Cross-Border Investment:** Home States may facilitate cross-border investment to other states in the community in line with the ECOWAS treaty. However, such assistance shall be consistent with the development goals and priorities of the receiving states of such investment and must not violate the commitments of Member States to the community. Suchassistance may include a. capacity building with respect to host state agencies and programmes for investment promotion and facilitation; b. insurance programmes based on commercial principles; c. technology transfer; and d. periodic trade missions, support for joint business councils, and other cooperative activities to promote sustainable investments. **9. Regional Cooperation:** Member States may conclude co-operation agreements on matters covered by this Supplementary Act (Adopting Community Rules on Investment and the Modalities for their Implementation with ECOWAS), as well as on the development of regional capacities in this field.	

RECs	Treaties, agreements, or instruments on investment	Major principles and policies	Institutions
IGAD	*Agreement Establishing the Inter-Governmental Authority on Development	**Provisions of the Establishing Agreement:** Work towards the promotion of trade and gradual harmonization of their trade policies and practices and the elimination of tariff and non-tariff barriers to trade so that it can lead to regional economic integration; create an enabling environment for cross-border investment, and gradually harmonize their investment policies; and facilitate the free movement and right of establishment of residence of their nationals within the subregion.	
SADC	Protocol on Finance and Investment	**1. Purposes:** Create a favourable investment climate within SADC with the aim of promoting and attracting investment in the region; co-operate with regard to taxation and related matters within the region; facilitate the development of capital markets in the region; co-ordinate their investment regimes; and cooperate to create a favourable investment climate within the region. **2. Cooperation in Taxation:** State parties shall co-operate in taxation matters and co-ordinate their tax regimes within the region (Article 5). **3. Definition of Investment:** *Investment* means the purchase, acquisition, or establishment of productive and portfolio investment assets, and in particular, though not exclusively, includes a. movable and immovable property and any other property rights, such as mortgages, liens, or pledges; b. shares, stocks, and debentures of companies or interest in the property of such companies; c. claims to money or to any performance under contract having a financial value, and loans; d. copyrights, know-how (goodwill), and industrial property rights, such as patents for inventions, trademarks, industrial designs, and trade names; e. rights conferred by law or under contract, including licences to search for, cultivate, extract, or exploit natural resources. This definition of ***investment*** applies provided that nothing in this definition shall prevent a state party from excluding short-term portfolio investments of a speculative nature or any sector sensitive to its development or which would have a negative effect on its economy. 4. Main Principles: a. Admission of investments in accordance with its laws and regulations. b. Investments shall not be nationalized or expropriated in the territory of any state party except for a public purpose, under due process of law, on a non-discriminatory basis, and subject to the payment of prompt, adequate, and effective compensation. c. Fair and equitable treatment. d. Most-favoured nation-treatment.	*The SADC Protocol on Finance and Investment contains an annex for "Co-Operation in Taxation and Related Matters." *SADC Protocol on Finance & Investment National & Int. Legal Implications:http://www.finmark.org.za/wp-content/uploads/pubs/Pres_SADCProtFin_Inv0412.pdf * Existence of the Committee of Ministers of Finance and Investment: it shall consist of the ministers responsible for finance and for investment of each state party, and it shall meet at least once a year. *Existence of an SADC tax database

RECs	Treaties, agreements, or instruments on investment	Major principles and policies	Institutions
		e. Repatriation of investments and returns, in accordance with the rules and regulations stipulated by the host state. f. State parties shall, subject to their national laws and regulations, permit investors to engage key personnel and other necessary human resources of their choice, regardless of nationality, under the following circumstances: • where the skills do not exist in the host state and the region; • where state parties are satisfied that the sourcing of such skills will be in compliance with regional policies; and • where such sourcing would enhance the development of local capacity through skills transfer. g. Free movement of capital. h. Parties conclude between themselves agreements for the avoidance of double taxation. i. In recognizing the importance of the link between trade and investment, state parties agree to pursue trade openness and intraregional industrial policies and to reduce barriers to intraregional trade in pursuance of the principles of the SADC Protocol on Trade and any other relevant SADC instruments. j. State parties shall pursue harmonization with the objective of developing the region into an SADC investment zone. k. Adherence to international conventions and practices. l. Disputes between an investor and a state party concerning an obligation of the latter in relation to an admitted investment of the former, which have not been amicably settled, and after exhausting local remedies, shall, after a period of six (6) months from written notification of a claim, be submitted to international arbitration if either party to the dispute so wishes. **5. About Taxation:** SADC states shall a. avoid harmful tax competition; b. develop a common policy for the negotiation of tax agreements between or amongst themselves or with countries outside the region; c. take such steps as are necessary to establish amongst themselves a comprehensive network of agreements for the avoidance of double taxation; and d. co-operate in the harmonization of the administration of indirect taxes.	

Annex 6: Legal elements of regional investment protocols in the RECs

Element	Investment Agreement for the COMESA Common Investment Area (CCIA) 2007	Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation with ECOWAS	SADC Protocol on Finance and Investment
Definitions	Definition of ***investment*** is linked to the provisions of Member States' laws and regulations. An indicative list is provided (moveable and immovable property and other related property rights, such as mortgages, liens, and pledges; claims to money, goods, services, or other performance having economic value; stocks, shares, and debentures of companies and interest in the property of such companies; intellectual property rights, technical processes, know-how, goodwill, and other benefits or advantages associated with a business operating in the territory of the COMESA Member States in which the investment is made; business concessions conferred by law or under contract; and such other activities that may be declared by the council as investments). Some exclusions exist (goodwill market share, loan to a member state, and so forth).	***Investment*** is defined through a list: a company; shares, stock, and other forms of equity participation in a company, and bonds, debentures, and other forms of debt interests in a company; contractual rights, such as under turnkey, construction, or management contracts, production or revenue-sharing contracts, concessions or other similar contracts; tangible property, including real property; and intangible property, including rights, such as leases and mortgages; liens and pledges on real property; rights conferred pursuant to law, such as licences and permits. Portfolio investments are excluded.	Broad definition of ***investment***: moveable and immovable property and other related property rights, such as mortgages, liens and pledges; claims to money, goods, services, or other performance having economic value; stocks, shares, and debentures of companies and interest in the property of such companies; intellectual property rights, technical processes, know-how, goodwill, and industrial property rights; rights conferred by law or under contract. A state has the right to exclude short-term portfolio investments of a speculative nature or sensitive sectors.
Scope	The agreement shall apply only to investments of COMESA investors that have been specifically registered, pursuant to the agreement, with the relevant authority of the Member State in which the investment is made. COMESA investors are nationals or judicial persons of Member States. A judicial person owned or controlled by a foreign national must maintain substantial business activity in the Member State to be considered a COMESA investor.	All investments made by an investor before or after the entry into force of the Supplementary Act.	Not clearly stated. From interpretation: party and non-party investments and investors.
Admission	Admission of investments in accordance with national laws and regulations.	Admission of investments in accordance with national laws and regulations.	Admission of investments in accordance with national laws and regulation. Host state shall create favourable conditions to attract investments.
Treatment	Fair and equitable treatment /national treatment (not applied to Temporary Exclusion List and Sensitive List) / MFN Treatment.	National treatment/MFN treatment/minimum regional standards.	Fair and equitable treatment/MFN treatment.
Transfers	Investors have the right to transfer assets (returns, proceeds from compensation, payments, unspent earnings of expatriate staff, and so forth).	All transfers related to an investment can be made freely and without delay.	Repatriation of investments, returns, and capital movements are encouraged. They are done in accordance with national laws and regulations.

Element	Investment Agreement for the COMESA Common Investment Area (CCIA) 2007	Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation with ECOWAS	SADC Protocol on Finance and Investment
Expropriation	Expropriation only for public purpose, under due process of law, on a non-discriminatory basis, and subject to prompt, adequate and effective compensation.	Expropriation only for public purpose, under due process of law, on a non-discriminatory basis, and subject to prompt, adequate. and effective compensation.	Expropriation only for public purpose, under due process of law, on a non-discriminatory basis, and subject to prompt, adequate, and effective compensation.
Rules of origin and key personnel provisions	Right to hire qualified persons from any country (priority to qualified Member States workers with same qualifications). Foreign qualified persons have full rights to enter and receive the necessary authorizations to reside in the Member State subject to the laws in force in that Member State promptly and without burdensome requirements.	No requirement of particular nationality for senior management and boards of directors.	Engagement of key personnel regardless of nationality when skills are missing in the region, in compliance with regional policies and possibility of skills transfer.
Reservations and exceptions	The agreement is not applicable to taxation measures (unless allegations of expropriation are present).A Member State can take measure to fulfil its international obligations (UN Charter), protect its security interests, or safeguard its balance of payments.	State parties can take measures to avoid or abate a balance-of-payments emergency. The provisions of the act do not apply to laws that promote equality or that protect people who suffered long-term discrimination.	State parties may grant preferential treatment to qualifying investments and investors to achieve national development objectives.
Dispute resolution	State to state: negotiation, mediation, independent arbitral tribunal, COMESA Court of Justice. Investor to state: negotiation, mediation, competent court of the Member State, COMESA Court of Justice, ICSID, UNCITRAL, or any other arbitration institution agreed by the parties.	Mediation (through national mediation centres), a national court, the ECOWAS Court of Justice. No mention of UNCITRAL or ICSID.	State to state: SADC Tribunal. Investors to state: SADC Tribunal, ICSID, ad hoc tribunal by special agreement or under UNCITRAL rules

Element	Investment Agreement for the COMESA Common Investment Area (CCIA) 2007	Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation with ECOWAS	SADC Protocol on Finance and Investment
Performance requirements	No performance requirements mentioned.	Performance requirements are allowed to promote domestic developments benefits from investments. They can cover exportations, preference to goods produced, volume or value of imports and exports, restrictions on sales of goods and services, and the like.	No performance requirements mentioned.
Incentives		Member States shall avoid competition through incentives.	General tax incentives: Local and regional entrepreneurs can receive support from state parties (skills development and enhancement programmes; micro, small and medium enterprise [MSME] development; appropriate investments into supporting infrastructure; and other supply-side measures and policies necessary to enhance global competitiveness.
Pre- and post-establishment	Pre- and post-establishment are subject to national rules and regulations. The protection covers both phases.	Environmental and social impact assessment of the potential investment to be conducted by the investor and made accessible to the local community and the state before completion of measures prescribing the formalities for establishment. Post-establishment obligations: Respect of rules related to hygiene, security, health, social welfare, human rights, and labour standards.	Pre- and post-establishment are subject to national rules and regulations. The protection covers both phases.
Transparency	Each Member State must publish all relevant measures that pertain to, or affect the operation of, the agreement. Transparency is also required in the application and interpretation of national laws, regulations and administrative procedures.	The transparency mentioned in the protocol is related to the dispute settlement procedures.	Predictability, confidence, trust and integrity are promoted. Open and transparent policies, practices, regulations and procedures related to investment are enforced.

Sources: Investment Agreement for the COMESA Common Investment Area (CCIA) 2007:
http://vi.unctad.org/files/wksp/iiawksp08/docs/wednesday/Exercise%20Materials/invagreecomesa.pdf;

Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation with ECOWAS:
http://www.ecobiz.ecowas.int/en/pdf/cim-vision-english-version.pdf; SADC, Protocol on Finance and Investment: http://www.sadc.int/files/4213/5332/6872/Protocol_on_Finance_Investment2006.pdf.

Annex 7: African signatories of BITs (African and non-African parties)

Country	Intra-African	Africa –RoW	Total Africa	Parties
Angola	2	8	10	Cape Verde; Germany; Italy; Portugal; Russian Federation; South Africa; Spain; and United Kingdom
Algeria	11	37	48	Romania; Russian Federation; Serbia; South Africa; Spain; Sudan; Sweden; Switzerland; Syrian Arab Republic; Tajikistan; Tunisia; Turkey; Ukraine; United Arab Emirates; Viet Nam; and Yemen
Benin	7	9	16	Belgium-Luxembourg Economic Union; Burkina Faso; Canada; Chad; China; Germany; Ghana; Guinea; Lebanon; Mali; Mauritius; Morocco; Netherlands; Switzerland; United Arab Emirates; and United Kingdom
Botswana	4	5	9	Belgium-Luxembourg Economic Union; China; Germany; Ghana; Malaysia; Mauritius; Switzerland; and Zimbabwe
Burkina Faso	8	7	15	Benin; Belgium-Luxembourg Economic Union; Chad; Comoros; Germany; Ghana; Guinea; Korea, Rep.; Malaysia; Mauritania; Morocco; Netherlands; Singapore; Switzerland; and Tunisia
Burundi	3	4	7	Belgium-Luxembourg Economic Union; Comoros; Germany; Kenya; Mauritius; Netherlands; and United Kingdom
Cameroon	6	10	16	Belgium-Luxembourg Economic Union; China; Egypt, Arab Rep.; Germany; Guinea; Italy; Mali; Mauritania; Mauritius; Morocco; Netherlands; Romania; Switzerland; Turkey; United Kingdom; and United States of America
Cape Verde	1	8	9	Angola; Austria; China; Cuba; Germany; Italy; Netherlands; Portugal; and Switzerland
Central African Republic	2	2	4	Egypt, Arab Rep.; Germany; Morocco; and Switzerland
Chad	7	7	14	Benin; Burkina Faso; China; Egypt, Arab Rep.; France; Germany; Guinea; Italy; Lebanon; Mali; Mauritius; Morocco; Qatar; and Switzerland
Comoros	4	1	5	Belgium-Luxembourg Economic Union; Burkina Faso; Egypt, Arab Rep.; Mali; and Mauritius
Congo, Rep.	6	9	15	China; Germany; Italy; Korea, Rep.; Libya; Mauritius; Namibia; Portugal; South Africa; Spain; Switzerland; Tunisia; United Kingdom; and United States of America
Congo,Dem. Rep.	2	16	18	Belgium-Luxembourg Economic Union; China; Congo, Rep.; Egypt, Arab Rep.; France; Germany; Greece; India; Israel; Italy; Jordan; Korea, Rep.; Portugal; South Africa; Switzerland; and United States of America
Côte d'Ivoire	3	8	11	Belgium-Luxembourg Economic Union; China; Germany; Ghana; Italy; Netherlands; Singapore; Sweden; Switzerland; Tunisia; and United Kingdom
Djibouti	1	8	9	China; Egypt, Arab Rep.; France; India; Iran, Islamic Rep.; Italy; Malaysia; Switzerland; and Turkey

Country	Intra-African	Africa –RoW	Total Africa	Parties
Egypt, Arab Rep.	32	79	111	Albania; Algeria; Argentina; Armenia; Australia; Austria; Azerbaijan; Bahrain; Belarus; Belgium-Luxem-bourgEconomicUnion; Bosnia and Herzegovina; Bulgaria; Cameroon; Canada; Central AfricanRepublic; Chad; Chile; China; Comoros; Congo, Dem. Rep.; Croatia; Cyprus; CzechRepublic; Denmark; Djibouti; Ethiopia; Finland; France; Gabon; Georgia; Germany; Ghana; Greece; Guinea; Hungary; Iceland; India; Indonesia; Iran, Islamic Rep.; Italy;Jamaica; Japan; Jordan; Kazakhstan; Korea, Dem. Rep.; Korea, Rep.; Kuwait; Latvia; Lebanon; Libya; Macedonia; Malawi; Malaysia; Mali; Malta; Mongolia; Morocco; Mozambique; Netherlands; Niger; Nige-ria; OccupiedPalestinianTerritory; Oman; Pakistan; Poland; Portugal; Qatar; Romania; RussianFederation; Sen-egal; Serbia; Seychelles; Singapore; SlovakRepublic; Slovenia; Somalia; South Africa; Spain; Sri Lanka; Sudan; Swaziland; Sweden; Switzerland; Syrian Arab Rep.; Tanzania; Thailand; Tunisia; Turkey; Turkmenistan; Uganda; Ukraine;United Arab Emirates; United Kingdom; United States of America; Uzbekistan; Viet Nam; Yemen; Zam-bia; and Zimbabwe
Equatorial Guinea	3	5	8	China; Ethiopia; France; Morocco; Portugal; Russian Federation; South Africa; and Spain
Eritrea	1	3	4	Italy; Netherlands; Qatar; and Uganda
Ethiopia	8	23	31	Algeria; Austria; Belgium-Luxembourg Economic Union; China; Denmark; Egypt, Arab Rep.; Equatorial Guinea; Finland; France; Germany; India; Iran, Islamic Rep.; Israel; Italy; Kuwait; Libya; Malaysia; Netherlands; Nigeria; Russian Federation; South Africa; Spain; Sudan; Sweden; Switzerland; Tunisia; Turkey; United Kingdom; and Yemen
Gabon	5	11	16	Belgium-Luxembourg Economic Union; China; Egypt, Arab Rep.; Germany; Italy; Lebanon; Mali; Mauritius; Morocco; Portugal; Romania; Spain; Switzerland; and Turkey
Gambia	6	9	15	Guinea; Guinea-Bissau; Iran, Islamic Rep.; Kuwait; Libya; Mali; Mauritania; Morocco; Netherlands; Qatar; Spain; Switzerland; Taiwan, China; Turkey; and United Kingdom
Ghana	11	16	27	Benin; Botswana; Bulgaria; Burkina Faso; China; Côte d'Ivoire; Cuba; Denmark; Egypt; France; Germany; Guin-ea; India; Italy; Malaysia; Mauritania; Mauritius; Netherlands; Romania; Serbia; South Africa; Spain; Switzerland; United Kingdom; United States of America; Zambia; and Zimbabwe
Guinea	12	9	21	Benin; Burkina Faso; Cameroon; Chad; China; Egypt, Arab Rep.; Gambia; Germany; Ghana; Italy; Lebanon; Malaysia; Mali; Mauritania; Mauritius; Morocco; Serbia; Switzerland; Tunisia; and Turkey
Guinea- Bissau	1	1	2	Gambia and Portugal
Kenya	2	11	13	Burundi; China; Finland; France; Germany; Iran, Islamic Rep.; Italy; Kuwait; Libya; Netherlands; Slovak Republic; Switzerland; and United Kingdom
Lesotho	0	3	3	Germany; Switzerland; and United Kingdom
Liberia	0	4	4	Belgium-Luxembourg Economic Union; France; Germany; and Switzerland
Libya	11	25	36	Algeria; Austria; Belarus; Belgium-Luxembourg Economic Union; Bulgaria; China; Congo, Rep.; Croatia; Egypt, Arab Rep.; Ethiopia; France; Gambia; Germany; India; Iran; Italy; Kenya; Korea, Rep.; Malta; Morocco; Portugal; Qatar; Russian Federation; San Marino; Serbia; Singapore; Slovak Republic; South Africa; Spain; Switzerland; Syrian Arab Rep.; Tunisia; and Turkey
Madagascar	2	9	11	Belgium-Luxembourg Economic Union; China; France; Germany; Mauritius; Norway; South Africa; Sweden; and Switzerland

Country	Intra-African	Africa –RoW	Total Africa	Parties
Malawi	4	7	11	Brazil; Egypt, Arab Rep.; Germany; India; Italy; Libya; Malaysia; Mauritius; Netherlands; Taiwan, China; and Zimbabwe
Mali	10	7	17	Algeria; Benin; Cameroon; Chad; China; Comoros; Egypt, Arab Rep.; Gabon; Gambia; Germany; Guinea; Korea, Dem. Rep.; Netherlands; Qatar; Senegal; Switzerland; and Tunisia
Mauritania	9	11	20	Algeria; Belgium-Luxembourg Economic Union; Burkina Faso; Cameroon; Gambia; Germany; Ghana; Guinea; Italy; Korea, Repub.; Kuwait; Lebanon; Lithuania; Mauritania; Mauritius; Morocco; Qatar; Romania; Spain; Switzerland; and Tunisia
Mauritius	19	21	40	Barbados; Benin; Belgium-Luxembourg Economic Union; Botswana; Burundi; Cameroon; Chad; China; Comoros; Congo, Rep.; Czech Republic; Finland; France; Gabon; Germany; Ghana; Guinea; India; Indonesia; Korea, Rep.; Kuwait; Madagascar; Mauritania; Mozambique; Nepal; Pakistan; Portugal; Romania; Rwanda; Senegal; Singapore; South Africa; Swaziland; Sweden; Switzerland; Tanzania; Turkey; United Kingdom; and Zimbabwe
Morocco	19	56	75	Argentina; Austria; Bahrain; Benin; Belgium-Luxembourg Economic Union; Bulgaria; Burkina Faso; Cameroon; Central African Republic; Chad; China; Croatia; Czech Republic; Denmark; Dominican Republic; Egypt, Arab Rep.; El Salvador; Equatorial Guinea; Estonia; Finland; France; Gabon; Gambia; Germany; Greece; Guinea; Hungary; India; Indonesia; Iran, Islamic Rep.; Iraq; Italy; Jordan; Korea, Rep.; Kuwait; Lebanon; Libya; Macedonia; Malaysia; Mauritania; Morocco; Netherlands; Oman; Pakistan; Poland; Portugal; Qatar; Romania; Senegal; Serbia; Slovak Republic; Spain; Sudan; Sweden; Switzerland; Syrian Arab Rep.; Tunisia; Turkey; Ukraine; United Arab Emirates; United States of America; Viet Nam; and Yemen
Mozambique	5	20	25	Algeria; Belgium-Luxembourg Economic Union; China; Cuba; Denmark; Egypt, Arab Rep.; Finland; France; Germany; India; Indonesia; Italy; Japan; Mauritius; Netherlands; Portugal; South Africa; Spain; Sweden; Switzerland; United Arab Emirates; United Kingdom; United States of America; Viet Nam; and Zimbabwe
Namibia	1	13	14	Austria; China; Congo, Rep.; Cuba; Finland; France; Germany; Italy; Malaysia; Netherlands; Russian Federation; Spain; Switzerland; and Viet Nam
Niger	3	2	5	Algeria; Egypt, Arab Rep.; Germany; Switzerland; and Tunisia
Nigeria	4	22	26	Algeria; Austria; Bulgaria; China; Egypt, Arab Rep.; Ethiopia; Finland; France; Germany; Italy; Jamaica; Korea, Rep.; Netherlands; Romania; Russian Federation; Serbia; Spain; Sweden; Switzerland; Taiwan,China; Turkey; Uganda; and United Kingdom
Rwanda	2	5	7	Belgium-Luxembourg Economic Union; Germany; Mauritius; South Africa; Switzerland; and United States of America
São Tomé and Príncipe	0	1	1	Portugal
Senegal	7	18	25	Argentina; Egypt, Arab Rep.; Germany; India; Italy; Korea, Rep.; Malaysia; Mali; Mauritius; Morocco; Netherlands; Portugal; Qatar; Romania; South Africa; Spain; Sweden; Switzerland; Syrian Arab Republic; Taiwan, China; Tunisia; Turkey; United Kingdom; and United States of America
Seychelles	1	3	4	China; Cyprus; Egypt, Arab Rep.; and India
Sierra Leone	0	4	4	China; Germany; and United Kingdom
Somalia	1	1	2	Egypt and Germany

Country	Intra-African	Africa –RoW	Total Africa	Parties
South Africa	18	28	46	Algeria; Angola; Argentina; Austria; Belgium-Luxembourg Economic Union; Brunei Darussalam; Canada; Chile; China; Congo, Dem. Rep.; Cuba; Czech Republic; Denmark; Egypt; Equatorial Guinea; Ethiopia; Finland; France; Germany; Ghana; Greece; Iran, Islamic Rep.; Israel; Italy; Korea, Rep.; Libya; Madagascar; Mauritius; Mozambique; Netherlands; Paraguay; Qatar; Russian Federation; Rwanda; Senegal; Spain; Sweden; Switzerland; Tanzania; Tunisia; Turkey; Uganda; United Kingdom; Yemen; and Zimbabwe
South Sudan	0	0	0	
Sudan	6	25	31	Algeria; Bahrain; Belgium-Luxembourg Economic Union; Bulgaria; China; Egypt, Arab Rep.; Ethiopia; France; Germany; India; Indonesia; Iran, Islamic Rep.; Italy; Jordan; Kuwait; Lebanon; Malaysia; Morocco; Netherlands; Oman; Qatar; Romania; Switzerland; Syrian Arab Rep.; Tunisia; Turkey; United Arab Emirates; and Yemen
Swaziland	2	3	5	Egypt, Arab Rep.; Germany; Mauritius; Taiwan, China; and United Kingdom
Tanzania	4	15	19	Canada; China; Denmark; Egypt, Arab Rep.; Finland; Germany; Italy; Jordan; Korea, Rep.; Mauritius; Netherlands; Oman; South Africa; Sweden; Switzerland; Turkey; United Kingdom; and Zimbabwe
Togo	1	3	4	Belgium-Luxembourg Economic Union; Germany; Switzerland; and Tunisia
Tunisia	17	42	59	Albania; Algeria; Argentina; Austria; Belgium-Luxembourg Economic Union; Bulgaria; Burkina Faso; Chile; China; Congo, Rep.; Côte d'Ivoire; Czech Republic; Denmark; Egypt, Arab Rep.; Ethiopia; Finland; France; Germany; Greece; Guinea; Hungary; Indonesia; Iran, Islamic Rep.; Italy; Jordan; Korea, Rep.; Kuwait; Lebanon; Libya; Mali; Malta; Mauritania; Morocco; Netherlands; Niger; Oman; Pakistan; Poland; Portugal; Qatar; Romania; Senegal; South Africa; Spain; Sudan; Sweden; Switzerland; Syrian Arab Rep.; Togo; Turkey; United Arab Emirates; United Kingdom; United States of America; and Yemen
Uganda	5	11	16	Belgium-Luxembourg Economic Union; China; Cuba; Denmark; Egypt, Arab Rep.; Eritrea; France; Germany; Italy; Netherlands; Nigeria; South Africa; Switzerland; United Kingdom; and Zimbabwe
Zambia	2	9	11	Belgium-Luxembourg Economic Union; China; Cuba; Egypt, Arab Rep.; Finland; France; Germany; Ghana; Italy; Netherlands; and Switzerland
Zimbabwe	10	22	32	Austria; Botswana; China; Croatia; Czech Republic; Denmark; Egypt; France; Germany; Ghana; India; Indonesia; Iran, Islamic Rep.; Italy; Jamaica; Malawi; Malaysia; Mauritius; Mozambique; Netherlands; Portugal; Serbia; Singapore; South Africa; Sweden; Switzerland; Tanzania; Thailand; Uganda; and United Kingdom
Total	311	696	1,007	

Source: ECA Survey on Investment Agreement Landscape in Africa, 2014.

Note: RoW = rest of world.

Annex 8: Bilateral investment treaties of African countries with OECD countries plus China, India, and Russia[60]

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Algeria	Austria	01/01/2006	01/01/2016	until terminated	01/01/2016	none (1 year notice)	15 years
Algeria	Belgium	13/02/1992	13/02/2002	10 years	13/12/2022	13/06/2021	10 years
Algeria	China	28/01/2003	28/01/2013	until terminated	until terminated	none (1 year notice)	10 years
Algeria	Denmark	15/07/2005	15/07/2015	until terminated	until terminated	none (1 year notice)	10 years
Algeria	Finland	25/02/2007	25/02/2027	until terminated	25/02/2027	25/02/2026	20 years
Algeria	France	27/06/2000	27/06/2010	until terminated	until terminated	none (1 year notice)	15 years
Algeria	Germany	30/05/2002	30/05/2012	until terminated	until terminated	none (1 year notice)	20 years
Algeria	Greece	21/09/2007	21/09/2017	10 years	21/09/2017	21/09/2016	10 years
Algeria	Italy	26/11/1993	26/11/2003	10 years	26/11/2023	26/11/2022	10 years
Algeria	Luxembourg	13/02/1992	13/02/2002	10 years	13/12/2022	13/06/2021	10 years
Algeria	Netherlands	01/08/2008	01/08/2023	10 years	01/08/2023	01/02/2023	15 years
Algeria	Portugal	08/09/2005	08/09/2015	10 years	08/09/2025	08/09/2024	10 years
Algeria	Korea, Rep.	30/09/2001	30/09/2021	20 years	30/09/2021	30/09/2020	20 years
Algeria	Spain	17/01/1996	17/01/2006	2 years	17/01/2016	17/07/2015	10 years
Algeria	Sweden	01/04/2005	01/04/2025	until terminated	01/04/2025	01/04/2024	20 years
Algeria	Switzerland	15/08/2005	15/08/2020	5 years	15/08/2020	15/02/2020	15 years
Angola	Germany	01/03/2007	01/03/2017	until terminated	01/03/2017	01/03/2016	15 years
Angola	Italy	21/05/2007	21/05/2017	5 years	21/05/2017	21/05/2016	5 years
Angola	Russia	12/01/2011	12/01/2021	5 years	12/01/2021	12/02/2020	10 years
Benin	Belgium	30/08/2007	30/08/2017	10 years	30/08/2017	28/02/2017	10 years
Benin	Germany	18/07/1985	18/07/1995	until terminated	until terminated	none (1 year notice)	15 years
Benin	Luxembourg	30/08/2007	30/08/2017	10 years	30/08/2017	28/02/2017	10 years
Benin	Netherlands	15/12/2007	15/12/2022	10 years	15/12/2022	15/06/2022	15 years
Benin	Switzerland	06/10/1973	31/12/1973	1 year	31/12/2015	30/09/2015	10 years
Benin	United Kingdom	28/11/1987	28/11/1997	until terminated	until terminated	none (1 year notice)	20 years
Botswana	Germany	06/08/2007	06/08/2017	until terminated	06/08/2017	06/08/2016	20 years
Botswana	Switzerland	13/04/2000	13/04/2010	2 years	13/04/2016	13/10/2015	10 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Burkina Faso	Belgium	13/01/2004	13/01/2014	10 years	13/01/2024	13/07/2023	10 years
Burkina Faso	Germany	21/11/2009	21/11/2019	until terminated	21/11/2019	21/11/2018	20 years
Burkina Faso	Luxembourg	13/01/2004	13/01/2014	10 years	13/01/2024	13/07/2023	10 years
Burkina Faso	Switzerland	15/09/1969	15/09/1979	1 year	15/09/2015	15/06/2015	10 years
Burundi	Belgium	12/09/1993	12/09/2003	10 years	12/09/2023	12/03/2023	10 years
Burundi	Germany	09/12/1987	09/12/1997	until terminated	until terminated	none (1 year notice)	20 years
Burundi	Luxembourg	12/09/1993	12/09/2003	10 years	12/09/2023	12/03/2023	10 years
Burundi	Netherlands	01/08/2009	01/08/2019	10 years	01/08/2019	01/02/2019	15 years
Burundi	United Kingdom	14/09/1990	14/09/2000	until terminated	until terminated	none (1 year notice)	20 years
Cameroon	Belgium	01/11/1981	01/11/1991	10 years	01/11/2021	01/05/2021	10 years
Cameroon	Germany	21/11/1963	21/11/1973	until terminated	until terminated	none (1 year notice)	20 years
Cameroon	Italy	04/01/2004	04/01/2014	until terminated	until terminated	none (1 year notice)	5 years
Cameroon	Luxembourg	01/11/1981	01/11/1991	10 years	01/11/2021	01/05/2021	10 years
Cameroon	Netherlands	07/05/1966	07/05/1967	1 year	07/05/2015	07/02/2015	unlimited
Cameroon	Switzerland	06/04/1964	31/12/1964	1 year	31/12/2015	30/09/2015	12 years
Cameroon	United Kingdom	07/06/1985	07/06/1995	until terminated	until terminated	none (1 year notice)	20 years
Cameroon	United States	06/04/1989	06/04/1999	10 years	06/04/2019	06/04/2018	10 years
Cape Verde	Austria	01/04/1993	01/04/2003	10 years	01/04/2023	01/04/2022	10 years
Cape Verde	Germany	15/12/1993	15/12/2003	until terminated	until terminated	none (1 year notice)	20 years
Cape Verde	Netherlands	25/11/1992	25/11/2007	10 years	25/11/2017	25/05/2017	15 years
Cape Verde	Portugal	04/10/1991	04/10/2001	until terminated	until terminated	none (1 year notice)	20 years
Cape Verde	Switzerland	06/05/1992	06/05/2002	5 years	06/05/2017	06/12/2016	10 years
Central African Republic	Germany	21/01/1968	21/01/1978	until terminated	until terminated	none (1 year notice)	20 years
Central African Republic	Switzerland	04/07/1973	04/07/1983	1 year	04/07/2015	04/04/2015	10 years
Chad	Germany	23/11/1969	23/11/1979	until terminated	until terminated	none (1 year notice)	10 years
Chad	Italy	11/06/1969	11/06/1979	until terminated	until terminated	none (1 year notice)	5 years
Chad	Switzerland	31/10/1967	31/12/1967	1 year	31/12/2015	30/09/2015	10 years
Congo, Rep.	Germany	14/10/1967	14/10/1977	until terminated	until terminated	none (1 year notice)	20 years
Congo, Rep.	Italy	10/01/2003	10/01/2013	5 years	10/01/2018	10/01/2017	5 years
Congo, Rep.	Korea, Rep.	13/08/2011	13/08/2021	10 years	13/08/2021	13/08/2020	20 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Congo, Rep.	Switzerland	11/07/1964	31/12/1964	1 year	31/12/2015	30/09/2015	10 years
Congo, Rep.	United Kingdom	09/11/1990	09/11/2000	until terminated	until terminated	none (1 year notice)	20 years
Congo, Rep.	United States	13/08/1994	13/08/2004	until terminated	until terminated	none (1 year notice)	10 years
Côte d'Ivoire	Germany	10/06/1968	10/06/1978	until terminated	until terminated	none (1 year notice)	15 years
Côte d'Ivoire	Netherlands	08/09/1966	08/09/1967	1 year	08/09/2015	08/06/2015	unlimited
Côte d'Ivoire	Sweden	03/11/1966	03/11/1967	1 year	03/11/2015	03/08/2015	10 years
Côte d'Ivoire	Switzerland	18/11/1962	31/12/1963	1 year	31/12/2015	09/31/2015	10 years
Côte d'Ivoire	United Kingdom	09/10/1997	09/10/2007	until terminated	until terminated	none (1 year notice)	15 years
Djibouti	France	15/06/2012	15/06/2022	until terminated	15/06/2022	15/06/2021	20 years
Djibouti	Switzerland	10/06/2001	10/06/2011	2 years	10/06/2017	10/12/2016	10 years
Congo, Dem. Rep.	Belgium	01/01/1977	01/01/1987	10 years	01/01/2017	01/01/2016	10 years
Congo, Dem. Rep.	France	01/03/1975	01/03/1985	10 years	01/03/2025	01/03/2024	10 years
Congo, Dem. Rep.	Germany	22/07/1971	22/07/1981	until terminated	until terminated	none (1 year notice)	15 years
Congo, Dem. Rep.	Luxembourg	01/01/1977	01/01/1987	10 years	01/01/2017	01/01/2016	10 years
Congo, Dem. Rep.	Switzerland	10/05/1973	11/05/1978	2 years	11/05/2016	11/12/2015	5 years
Congo, Dem. Rep.	United States	28/07/1989	28/07/1999	until terminated	until terminated	none (1 year notice)	10 years
Egypt, Arab Rep.	Australia	05/09/2002	05/09/2017	until terminated	05/09/2017	05/09/2016	15 years
Egypt, Arab Rep.	Austria	29/04/2002	29/04/2012	until terminated	until terminated	none (1 year notice)	10 years
Egypt, Arab Rep.	Belgium	24/05/2002	24/05/2012	10 years	24/05/2022	24/01/2021	10 years
Egypt, Arab Rep.	Canada	03/11/1997	03/11/2012	until terminated	until terminated	none (1 year notice)	15 years
Egypt, Arab Rep.	China	01/04/1996	01/04/2006	until terminated	until terminated	none (1 year notice)	10 years
Egypt, Arab Rep.	Czech Republic	04/06/1994	04/06/2004	10 years	04/06/2024	04/06/2023	10 years
Egypt, Arab Rep.	Denmark	29/10/2000	29/10/2010	until terminated	until terminated	none (1 year notice)	10 years
Egypt, Arab Rep.	Finland	05/02/2005	05/02/2025	until terminated	05/02/2025	05/02/2024	20 years
Egypt, Arab Rep.	France	01/10/1975	01/10/1985	10 years	01/10/2025	01/10/2024	unlimited
Egypt, Arab Rep.	Germany	22/11/2009	22/11/2024	until terminated	22/11/2024	22/11/2023	20 years
Egypt, Arab Rep.	Greece	06/04/1995	06/04/2005	until terminated	until terminated	none (1 year notice)	20 years
Egypt, Arab Rep.	Hungary	21/08/1997	21/08/2007	10 years	21/08/2017	21/08/2016	10 years
Egypt, Arab Rep.	India	22/11/2000	22/11/2010	until terminated	until terminated	none (1 year notice)	10 years
Egypt, Arab Rep.	Italy	01/05/1994	01/05/2014	20 years	01/05/2034	01/05/2033	15 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Egypt, Arab Rep.	Japan	14/01/1978	14/01/1988	10 years	14/01/2018	14/01/2017	10 years
Egypt, Arab Rep.	Korea, Rep.	25/05/1997	25/05/2007	10 years	25/05/2017	25/05/2016	10 years
Egypt, Arab Rep.	Luxembourg	24/05/2002	24/05/2012	10 years	24/05/2022	24/01/2021	10 years
Egypt, Arab Rep.	Netherlands	01/03/1998	01/03/2013	15 years	01/03/2028	01/03/2017	15 years
Egypt, Arab Rep.	Poland	17/01/1998	17/01/2008	10 years	17/01/2018	17/01/2017	10 years
Egypt, Arab Rep.	Portugal	23/12/2000	23/12/2010	5 years	23/12/2020	23/12/2019	10 years
Egypt, Arab Rep.	Russian Federation	12/06/2000	12/06/2010	until terminated	until terminated	none (1 year notice)	10 years
Egypt, Arab Rep.	Slovak Republic	01/01/2000	01/01/2010	5 years	01/01/2020	01/01/2019	10 years
Egypt, Arab Rep.	Slovenia	07/02/2000	07/02/2010	10 years	07/02/2020	07/02/2019	10 years
Egypt, Arab Rep.	Spain	26/04/1994	26/04/2004	2 years	26/04/2016	26/10/2015	10 years
Egypt, Arab Rep.	Sweden	29/01/1979	29/01/1999	until terminated	until terminated	none (1 year notice)	20 years
Egypt, Arab Rep.	Switzerland	15/05/2012	15/05/2022	2 years	15/05/2022	15/12/2021	10 years
Egypt, Arab Rep.	Turkey	31/07/2002	31/07/2012	until terminated	until terminated	none (1 year notice)	10 years
Egypt, Arab Rep.	United Kingdom	24/02/1976	24/02/1986	until terminated	until terminated	none (1 year notice)	10 years
Egypt, Arab Rep.	United States	27/06/1992	27/06/2002	until terminated	until terminated	none (1 year notice)	10 years
Equatorial Guinea	France	23/09/1983	23/09/1993	until terminated	until terminated	none (1 year notice)	20 years
Equatorial Guinea	Spain	22/11/2003	22/11/2013	until terminated	until terminated	none (1 year notice)	8 years
Eritrea	Italy	14/07/2003	14/07/2013	5 years	14/07/2018	14/01/2018	5 years
Ethiopia	Austria	01/11/2005	01/11/2015	until terminated	until terminated	none (1 year notice)	10 years
Ethiopia	China	01/05/2000	01/05/2010	until terminated	until terminated	none (1 year notice)	10 years
Ethiopia	Denmark	21/08/2005	21/08/2015	until terminated	until terminated	none (1 year notice)	10 years
Ethiopia	Finland	03/05/2007	03/05/2027	until terminated	03/05/2027	03/05/2017	20 years
Ethiopia	France	07/08/2004	07/08/2024	until terminated	07/08/2024	07/08/2023	20 years
Ethiopia	Germany	04/05/2006	04/05/2016	until terminated	04/05/2016	04/05/2015	15 years
Ethiopia	Israel	22/03/2004	22/03/2014	until terminated	until terminated	none (1 year notice)	10 years
Ethiopia	Italy	08/05/1997	08/05/2007	until terminated	until terminated	none (1 year notice)	5 years
Ethiopia	Netherlands	01/07/2005	01/07/2020	10 years	01/07/2020	01/01/2020	15 years
Ethiopia	Russian Federation	06/06/2000	06/06/2015	until terminated	until terminated	none (1 year notice)	15 years
Ethiopia	Sweden	01/10/2005	01/10/2025	until terminated	01/10/2015	01/10/2024	20 years
Ethiopia	Switzerland	07/12/1998	07/12/2008	5 years	07/12/2018	07/12/2017	10 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Gabon	Belgium	28/05/2005	28/05/2015	10 years	28/05/2025	28/05/2024	10 years
Gabon	Germany	04/07/2007	04/07/2017	until terminated	04/07/2017	04/07/2016	20 years
Gabon	Italy	07/07/2006	07/07/2016	until terminated	07/07/2016	07/07/2015	5 years
Gabon	Luxembourg	28/05/2005	28/05/2015	10 years	28/05/2025	28/05/2024	10 years
Gabon	Spain	12/12/2001	12/12/2011	2 years	12/12/2015	12/06/2015	10 years
Gabon	Switzerland	18/10/1972	18/10/1973	1 year	18/10/2015	18/07/2015	10 years
Gambia	Netherlands	01/04/2007	01/04/2022	10 years	01/04/2022	01/10/2021	15 years
Gambia	Switzerland	30/03/1994	30/03/2004	2 years	30/03/2016	30/09/2015	10 years
Ghana	China	22/11/1991	22/11/2001	until terminated	until terminated	none (1 year notice)	10 years
Ghana	Denmark	06/01/1995	06/01/2005	until terminated	until terminated	none (1 year notice)	10 years
Ghana	Germany	23/11/1998	23/11/2008	until terminated	until terminated	none (1 year notice)	15 years
Ghana	Switzerland	16/06/1993	16/06/2003	5 years	16/06/2018	16/12/2017	10 years
Ghana	United Kingdom	25/10/1991	25/10/2001	until terminated	until terminated	none (1 year notice)	15 years
Guinea	Germany	13/03/1965	13/03/1975	until terminated	until terminated	none (1 year notice)	20 years
Guinea	Italy	20/02/1964	20/02/1969	until terminated	until terminated	none (1 year notice)	5 years
Guinea	Switzerland	29/07/1963	31/12/1963	1 year	31/12/2015	09/31/2015	15 years
Guinea-Bissau	Portugal	08/04/1996	08/04/2006	until terminated	until terminated	none (1 year notice)	20 years
Kenya	Germany	07/12/2000	07/12/2010	until terminated	until terminated	none (1 year notice)	15 years
Kenya	Italy	04/08/1999	04/08/2009	5 years	04/08/2014	none	5 years
Kenya	Netherlands	11/06/1979	11/06/1984	5 years	11/06/2019	11/12/2015	unlimited
Kenya	Switzerland	10/07/2009	10/07/2019	until terminated	10/07/2019	10/07/2018	10 years
Kenya	United Kingdom	13/09/1999	13/09/2009	until terminated	until terminated	none (1 year notice)	20 years
Lesotho	Germany	17/08/1985	17/08/1995	until terminated	until terminated	none (1 year notice)	20 years
Lesotho	Switzerland	07/05/2010	07/05/2025	until terminated	07/05/2025	07/05/2024	15 years
Lesotho	United Kingdom	18/02/1981	18/02/1991	until terminated	until terminated	none (1 year notice)	20 years
Liberia	France	22/01/1982	22/01/1992	until terminated	until terminated	none (1 year notice)	15 years
Liberia	Germany	22/10/1967	22/10/1977	until terminated	until terminated	none (1 year notice)	20 years
Liberia	Switzerland	22/09/1964	until terminated	until terminated	until terminated	none (1 year notice)	10 years
Libya	Austria	01/01/2004	01/01/2014	until terminated	until terminated	none (1 year notice)	10 years
Libya	Belgium	08/12/2007	08/12/2017	10 years	08/12/2017	08/12/2016	10 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Libya	France	29/01/2006	29/01/2016	until terminated	until terminated	none (1 year notice)	20 years
Libya	Germany	14/07/2010	14/07/2020	until terminated	14/07/2020	14/07/2019	20 years
Libya	Italy	20/10/2004	20/10/2014	10 years	10/20/2024	none (1 year notice)	5 years
Libya	Luxembourg	08/12/2007	08/12/2017	10 years	08/12/2017	08/12/2016	10 years
Libya	Portugal	19/06/2005	19/06/2015	10 years	19/06/2025	19/06/2024	10 years
Libya	Russian Federation	15/10/2010	15/10/2025	5 years	15/10/2025	15/10/2024	10 years
Libya	Spain	01/08/2009	01/08/2019	until terminated	01/08/2019	01/08/2018	10 years
Libya	Switzerland	28/04/2004	28/04/2014	2 years	28/04/2016	28/10/2015	10 years
Madagascar	Belgium	29/11/2008	29/11/2018	10 years	29/11/2018	29/11/2017	10 years
Madagascar	China	01/06/2007	01/06/2017	until terminated	01/06/2017	01/06/2016	10 years
Madagascar	France	17/04/2005	17/04/2015	until terminated	17/04/2015	none (1 year notice)	15 years
Madagascar	Germany	21/03/1966	21/03/1976	until terminated	until terminated	none (1 year notice)	20 years
Madagascar	Luxembourg	29/11/2008	29/11/2018	10 years	29/11/2018	29/11/2017	10 years
Madagascar	Sweden	23/06/1967	23/06/1968	1 year	23/06/2015	23/03/2015	10 years
Madagascar	Switzerland	31/03/1966	31/12/1966	1 year	31/12/2015	30/09/2015	10 years
Malawi	Netherlands	01/11/2007	01/11/2022	10 years	01/11/2022	01/05/2022	15 years
Mali	Germany	16/05/1980	16/05/1990	until terminated	until terminated	none (1 year notice)	10 years
Mali	Netherlands	01/03/2005	01/03/2020	10 years	01/03/2020	01/09/2019	15 years
Mali	Switzerland	08/12/1978	08/12/1983	2 years	08/12/2015	08/09/2015	10 years
Mauritania	Germany	26/04/1986	26/04/1996	until terminated	until terminated	none (1 year notice)	20 years
Mauritania	Korea, Rep.	21/07/2006	22/07/2016	until terminated	22/07/2016	22/07/2015	10 years
Mauritania	Switzerland	30/05/1978	30/05/1979	1 year	30/05/2015	28/02/2015	6 years
Mauritius	Belgium	16/01/2010	16/01/2020	10 years	16/01/2020	16/01/2019	10 years
Mauritius	China	08/06/1997	08/06/2007	until terminated	until terminated	none (1 year notice)	10 years
Mauritius	Finland	17/10/2008	17/10/2028	until terminated	17/10/2028	17/10/2027	20 years
Mauritius	Germany	27/08/1973	27/08/1983	until terminated	until terminated	none (1 year notice)	20 years
Mauritius	India	20/06/2000	20/06/2010	until terminated	until terminated	none (1 year notice)	10 years
Mauritius	Luxembourg	16/01/2010	16/01/2020	10 years	16/01/2020	16/01/2019	10 years
Mauritius	Portugal	03/01/1999	03/01/2009	5 years	03/01/2019	03/01/2018	10 years
Mauritius	Korea, Rep.	09/05/2008	09/05/2023	until terminated	09/05/2023	09/05/2022	20 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Mauritius	Sweden	01/06/2005	01/06/2025	until terminated	01/06/2025	01/06/2024	20 years
Mauritius	Switzerland	21/04/2000	21/04/2010	until terminated	until terminated	none (1 year notice)	15 years
Mauritius	United Kingdom	13/10/1986	13/10/1996	until terminated	until terminated	none (1 year notice)	15 years
Morocco	Austria	01/07/1995	01/07/2005	until terminated	until terminated	none (1 year notice)	10 years
Morocco	Belgium	29/05/2002	29/05/2012	10 years	29/05/2022	29/11/2021	10 years
Morocco	China	27/11/1999	27/11/2009	10 years	27/11/2019	27/05/2019	10 years
Morocco	Czech Republic	30/01/2003	20/01/2013	10 years	20/01/2023	20/07/2022	10 years
Morocco	Finland	06/04/2003	06/04/2013	10 years	06/03/2023	06/09/2022	10 years
Morocco	France	30/05/1999	30/05/2014	until terminated	until terminated	none (1 year notice)	15 years
Morocco	Germany	12/04/2008	12/04/2018	until terminated	12/04/2018	12/04/2017	15 years
Morocco	Greece	28/06/2000	28/06/2010	10 years	28/06/2020	28/12/2019	10 years
Morocco	Hungary	03/02/2000	03/02/2010	10 years	03/02/2020	03/08/2019	10 years
Morocco	India	22/02/2001	22/02/2011	until terminated	until terminated	none (1 year notice)	10 years
Morocco	Italy	26/04/2000	26/04/2010	10 years	26/04/2020	26/04/2019	10 years
Morocco	Luxembourg	29/05/2002	29/05/2012	10 years	29/05/2022	29/11/2021	10 years
Morocco	Netherlands	27/07/1978	27/07/1988	10 years	27/07/2018	27/01/2017	10 years
Morocco	Poland	09/07/1999	09/07/2009	10 years	09/07/2019	09/01/2017	10 years
Morocco	Portugal	22/03/1995	22/03/2005	until terminated	until terminated	none (1 year notice)	10 years
Morocco	Korea, Rep.	08/05/2001	08/05/2016	15 years	08//05/2016	08/05/2015	15 years
Morocco	Spain	13/04/2005	13/04/2015	2 years	13/04/2017	13/10/2016	10 years
Morocco	Sweden	16/06/2008	16/06/2028	until terminated	16/06/2028	16/06/2017	20 years
Morocco	Switzerland	12/04/1991	12/04/2001	2 years	12/04/2015	12/01/2015	10 years
Morocco	Turkey	30/05/2004	30/05/2014	10 years	30/05/2024	30/11/2023	10 years
Morocco	United Kingdom	14/02/2002	14/02/2012	until terminated	until terminated	none (1 year notice)	10 years
Morocco	United States	29/05/1991	29/05/2001	until terminated	until terminated	none (1 year notice)	10 years
Mozambique	Belgium	01/09/2009	01/09/2019	10 years	01/09/2019	01/03/2019	10 years
Mozambique	Denmark	30/12/2002	30/12/2012	until terminated	until terminated	none (1 year notice)	10 years
Mozambique	Finland	21/09/2005	21/09/2015	until terminated	until terminated	none (1 year notice)	10 years
Mozambique	France	06/07/2006	06/07/2021	until terminated	06/07/2021	06/07/2020	10 years
Mozambique	Germany	15/09/2007	15/09/2022	until terminated	15/09/2022	15/09/2021	15 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Mozambique	Italy	17/11/2003	17/11/2013	5 years	17/11/2018	17/11/2017	5 years
Mozambique	Luxembourg	01/09/2009	01/09/2019	10 years	01/09/2019	01/03/2019	10 years
Mozambique	Netherlands	01/09/2004	01/09/2019	10 years	01/09/2019	01/03/2019	15 years
Mozambique	Portugal	31/10/1998	31/10/2008	10 years	31/10/2018	31/0/2017	10 years
Mozambique	Sweden	01/11/2007	01/11/2027	until terminated	01/11/2027	01/11/2026	20 years
Mozambique	Switzerland	17/02/2004	17/02/2024	until terminated	17/02/2024	17/02/2023	20 years
Mozambique	United Kingdom	12/05/2004	12/05/2014	until terminated	until terminated	none (1 year notice)	20 years
Mozambique	United States	03/03/2005	03/03/2015	until terminated	03/03/2015	none (1 year notice)	10 years
Namibia	Austria	01/09/2008	01/09/2018	until terminated	01/09/2018	01/09/2017	10 years
Namibia	Finland	21/05/2005	21/05/2025	until terminated	21/05/2025	21/05/2024	15 years
Namibia	France	26/02/2006	26/02/2016	until terminated	26/02/2016	26/02/2015	20 years
Namibia	Germany	21/12/1997	21/12/2007	until terminated	until terminated	none (1 year notice)	20 years
Namibia	Netherlands	01/10/2004	01/10/2019	10 years	01/10/2019	01/04/2019	15 years
Namibia	Spain	28/06/2004	28/06/2014	2 years	28/06/2016	28/12/2015	10 years
Namibia	Switzerland	26/04/2000	26/04/2010	2 years	26/04/2016	26/12/2015	10 years
Niger	Germany	10/01/1966	10/01/1976	until terminated	until terminated	none (1 year notice)	20 years
Niger	Switzerland	17/11/1962	31/12/1963	1 year	31/12/2015	30/09/2015	5 years
Nigeria	Finland	20/03/2007	20/03/2022	until terminated	20/03/2022	20/03/2021	15 years
Nigeria	France	19/08/1991	19/08/2001	until terminated	until terminated	none (1 year notice)	15 years
Nigeria	Germany	20/09/2007	20/09/2017	until terminated	20/09/2017	20/09/2016	15 years
Nigeria	Italy	22/08/2005	22/08/2015	5 years	22/08/2020	22/08/2019	5 years
Nigeria	Netherlands	01/02/1994	01/02/2004	until terminated	until terminated	none (1 year notice)	15 years
Nigeria	Korea, Rep.	01/02/1999	01/02/2009	until terminated	until terminated	none (1 year notice)	15 years
Nigeria	Spain	19/01/2006	19/01/2016	until terminated	19/01/2016	19/07/2015	10 years
Nigeria	Sweden	01/12/2006	01/12/2016	until terminated	until terminated	none (1 year notice)	15 years
Nigeria	Switzerland	01/04/2003	01/04/2013	until terminated	until terminated	none (1 year notice)	10 years
Nigeria	United Kingdom	11/12/1990	11/12/2000	until terminated	until terminated	none (1 year notice)	15 years
Rwanda	Belgium	01/08/1985	01/08/1990	5 years	01/08/2015	01/02/2015	5 years
Rwanda	Germany	28/02/1969	28/02/1979	until terminated	until terminated	none (1 year notice)	20 years
Rwanda	Luxembourg	01/08/1985	01/08/1990	5 years	01/08/2015	01/02/2015	5 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Rwanda	Switzerland	15/10/1963	31/12/1964	1 year	31/12/2015	09/31/2015	12 years
Rwanda	United States	01/01/2012	01/01/2022	until terminated	01/01/2022	01/01/2021	10 years
Senegal	Germany	16/01/1966	16/01/1976	until terminated	until terminated	none (1 year notice)	10 years
Senegal	Netherlands	05/05/1981	05/05/1991	until terminated	until terminated	none (1 year notice)	10 years
Senegal	Korea, Rep.	02/09/1985	02/09/1995	until terminated	until terminated	none (1 year notice)	10 years
Senegal	Sweden	23/02/1968	23/02/1969	1 year	23/02/2016	23/11/2015	10 years
Senegal	Switzerland	13/08/1964	13/08/1966	2 years	13/08/2016	13/05/2016	5 years
Senegal	United Kingdom	09/02/1984	09/02/1994	until terminated	until terminated	none (1 year notice)	10 years
Senegal	United States	25/10/1990	25/10/2000	until terminated	until terminated	none (1 year notice)	10 years
Sierra Leone	Germany	10/12/1966	10/12/1969	until terminated	until terminated	none (1 year notice)	15 years
Sierra Leone	United Kingdom	20/11/2001	20/11/2011	until terminated	until terminated	none (1 year notice)	20 years
Somalia	Germany	15/02/1985	15/02/1995	until terminated	until terminated	none (1 year notice)	20 years
South Africa	Czech Republic	17/09/1999	17/09/2009	until terminated	until terminated	none (1 year notice)	15 years
South Africa	Denmark	23/04/1997	23/04/2007	until terminated	until terminated	none (1 year notice)	10 years
South Africa	Finland	03/10/1999	03/10/2019	until terminated	03/10/2019	03/10/2018	20 years
South Africa	France	22/06/1997	22/06/2007	until terminated	until terminated	none (1 year notice)	20 years
South Africa	Greece	05/09/2001	05/09/2011	10 years	05/09/2021	05/09/2020	10 years
South Africa	Italy	16/03/1999	16/03/2009	10 years	16/03/2019	16/03/2018	10 years
South Africa	Korea, Rep.	06/06/1997	06/06/2012	15 years	06/06/2027	06/06/2026	20 years
South Africa	Sweden	01/01/1999	01/01/2019	until terminated	01/01/2019	01/01/2018	20 years
South Africa	United Kingdom	27/05/1998	27/05/2008	until terminated	until terminated	none (1 year notice)	20 years
Sudan	France	05/07/1980	05/07/1990	until terminated	until terminated	none (1 year notice)	unlimited
Sudan	Germany	24/01/1967	24/01/1972	until terminated	until terminated	none (1 year notice)	20 years
Sudan	Netherlands	27/03/1972	27/03/1977	5 years	27/03/2017	27/09/2016	unlimited
Sudan	Switzerland	14/12/1974	14/12/1979	5 years	14/12/2019	14/06/2019	10 years
Swaziland	Germany	07/08/1995	07/08/2005	until terminated	until terminated	none (1 year notice)	20 years
Swaziland	United Kingdom	05/05/1995	05/05/2005	until terminated	until terminated	none (1 year notice)	20 years
Tanzania	Canada	09/12/2013	09/12/2023	until terminated	09/12/2023	09/12/2023	15 years
Tanzania	Denmark	21/10/2005	21/10/2015	until terminated	until terminated	none (1 year notice)	10 years
Tanzania	Finland	30/10/2002	30/10/2012	until terminated	until terminated	none (1 year notice)	15 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Tanzania	Germany	12/07/1968	12/07/1978	until terminated	until terminated	none (1 year notice)	20 years
Tanzania	Italy	25/04/2003	25/04/2013	until terminated	until terminated	none (1 year notice)	20 years
Tanzania	Netherlands	01/04/2004	01/04/2019	10 years	01/04/2019	01/10/2018	15 years
Tanzania	Sweden	01/03/2002	01/03/2012	until terminated	until terminated	none (1 year notice)	15 years
Tanzania	Switzerland	06/04/2006	06/04/2016	2 years	06/04/2016	06/10/2015	10 years
Tanzania	United Kingdom	02/08/1996	02/08/2006	until terminated	until terminated	none (1 year notice)	20 years
Togo	Germany	21/12/1964	21/12/1974	until terminated	until terminated	none (1 year notice)	20 years
Togo	Switzerland	09/08/1966	31/12/1966	1 year	31/12/2015	30/09/2015	10 years
Tunisia	Austria	01/01/1997	01/01/2007	until terminated	until terminated	none (1 year notice)	10 years
Tunisia	Belgium	18/10/2002	18/10/2012	10 years	18/10/2022	18/10/2021	10 years
Tunisia	China	01/07/2006	01/07/2016	until terminated	01/07/2016	01/07/2015	10 years
Tunisia	Czech Republic	08/07/1998	08/07/2008	10 years	08/07/2018	08/07/2017	10 years
Tunisia	Denmark	11/05/1998	11/05/2008	until terminated	until terminated	none (1 year notice)	10 years
Tunisia	Finland	04/09/2003	04/09/2018	until terminated	04/09/2018	04/09/2017	15 years
Tunisia	France	30/06/1972	30/06/1982	10 years	30/06/2022	30/06/2021	unlimited
Tunisia	Germany	06/02/1966	06/02/1976	until terminated	until terminated	none (1 year notice)	20 years
Tunisia	Greece	21/04/1995	21/04/2005	10 years	21/04/2025	21/04/2024	10 years
Tunisia	Italy	24/06/1989	24/06/1999	5 years	24/06/2019	24/06/2018	10 years
Tunisia	Korea, Rep. of	28/11/1975	28/11/1985	5 years	28/11/2020	28/11/2019	10 years
Tunisia	Luxembourg	18/10/2002	18/10/2012	10 years	18/10/2022	18/10/2021	10 years
Tunisia	Netherlands	01/08/1999	01/08/2014	15 years	01/08/2029	01/02/2028	15 years
Tunisia	Poland	22/09/1993	22/09/2003	until terminated	until terminated	none (1 year notice)	10 years
Tunisia	Portugal	10/11/2006	10/11/2016	until terminated	10/11/2016	10/11/2015	10 years
Tunisia	Spain	20/06/1994	20/06/2004	10 years	20/06/2024	20/06/2023	10 years
Tunisia	Sweden	13/05/1985	13/05/2005	until terminated	until terminated	none (1 year notice)	15 years
Tunisia	Switzerland	19/01/1964	19/01/1974	until terminated	until terminated	none (1 year notice)	10 years
Tunisia	Turkey	28/04/1994	28/04/2004	until terminated	until terminated	none (1 year notice)	10 years
Tunisia	United Kingdom	04/01/1990	04/01/2000	until terminated	until terminated	none (1 year notice)	15 years
Tunisia	United States	07/02/1993	07/02/2003	until terminated	until terminated	none (1 year notice)	10 years

African party	Other party	Entry into force	Initial validity until	Renewal period[61]	Current validity until[62]	Deadline for earliest termination[63]	Survival clause
Uganda	Denmark	19/10/2005	19/10/2015	until terminated	until terminated	none (1 year notice)	10 years
Uganda	France	20/12/2004	20/12/2024	until terminated	20/12/2024	20/12/2023	20 years
Uganda	Germany	19/08/1968	19/08/1978	until terminated	until terminated	none (1 year notice)	20 years
Uganda	Italy	24/09/1999	24/09/2009	5 years	lapsed	none	5 years
Uganda	Netherlands	01/01/2003	01/01/2018	10 years	01/01/2018	01/07/2017	15 years
Uganda	Switzerland	08/05/1972	08/05/1979	until terminated	until terminated	none (6 months'notice)	10 years
Uganda	United Kingdom	24/04/1998	24/04/2008	until terminated	until terminated	none (1 year notice)	20 years
Zambia	France	03/03/2014	03/03/2034	until terminated	03/03/2034	03/03/2033	20 years
Zambia	Germany	25/08/1972	25/08/1977	until terminated	until terminated	none (1 year notice)	20 years
Zambia	Switzerland	07/03/1995	07/03/2005	2 years	07/03/2017	07/09/2016	10 years
Zimbabwe	Denmark	02/02/1999	02/02/2009	until terminated	until terminated	none (1 year notice)	10 years
Zimbabwe	Germany	14/04/2000	14/04/2010	until terminated	until terminated	none (1 year notice)	20 years
Zimbabwe	Netherlands	01/05/1998	01/05/2013	10 years	01/05/2023	01/11/2022	15 years
Zimbabwe	Switzerland	09/02/2001	09/02/2011	2 years	09/02/2017	09/08/2016	10 years

Endnotes

[1] Algeria, Comoros, Equatorial Guinea, Ethiopia, Liberia, Libya, São Tomé and Príncipe, Seychelles, and Sudan.
[2] BRICS is Brazil, Russia, India, China, and South Africa.
[3] This is the first year for which FDI data were available in Africa.
[4] Ghana: the new land of opportunity for oil &gas investment(2011).Ghana Energy Summit Report, , Accra, 14 and 15 November.
[5] It is very likely that not all FDI has the same development effect and that host country conditions, such as level of education, codetermine the effects of FDI. That means that "the more the better" is not a meaningful policy objective; rather, the aim should be to maximize the host country benefits from existing FDI and attract the type of FDI with the highest development effect.
[6] This is not just an issue for African countries or even—and solely—for developing countries more widely. For instance, in 2011, the tobacco enterprise Philip Morris challenged Australia's legislation on plain packaging of tobacco products, a measure that the government introduced in the interest of public health. Arbitration is ongoing.
[7] ISDS is included not only in BITs but also in several free trade agreements, such as the North American Free Trade Agreement (NAFTA).
[8] For a comprehensive list of WTO agreements discussed in this section, see WTO legal texts: http://www.wto.org/English/docs_e/legal_e.htm.
[9] For a comprehensive list of GATS schedules of commitments for WTO members, see http://i-tip.wto.org/services/Search.aspx.
[10] Those countries are Algeria, Comoros, Equatorial Guinea, Ethiopia, Liberia, Libya, São Tomé and Príncipe, Seychelles, and Sudan.
[11] Although discussions were ultimately successful, there was extensive resistance from influential developing countries, such as Brazil and India, and from some developed countries. Their argument was that services should be dealt with by domestic regulation, not by the global trading system. Others argued that the establishment of multilateral rules and disciplines for services would hamper development goals and policy objectives by forcing them to open up and deregulate their service sectors.
[12] See OECD (2012b).
[13] All four instruments are available at
http://www.oecd.org/daf/inv/investment-policy/oecddeclarationanddecisions.htmand Decisions.
[14] See OECD (2013).
[15] This initiative aims to (a) strengthen the capacity of African countries to design and implement reforms that improve their business climate and (b) raise the profile of Africa as an investment destination while facilitating regional cooperation and highlighting the African perspective in international dialogue on investment policies.
[16] These principles represent a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, the first corporate human rights responsibility initiative to be endorsed by the United Nations in 2011.
[17] Africa's rate of return in 2011 was 9.3%, compared to the 7.2 % reported at the global level and higher than that of emerging markets, such as Asia and Latin America, at 8.8% and 7.1%, respectively.
[18] Based on World Investment Report (WIR) 2010.
[19] See WIR 2013 (UNCTAD 2013)and Henn (2013) for discussions.
[20] Angola, Burundi, Djibouti, Equatorial Guinea, São Tomé and Príncipe, and Somalia.
[21] See Blas (2013).
[22] More information at http://www.uneca.org.
[23] Based on the ECA Survey on Investment Agreements Landscape in Africa, 2014. Also see ECA (2013).
[24] There are other international investment agreements, including cooperation agreements, regional trade agreements, or regional protocols with an investment chapter. Africa has signed those agreements, in particular regional protocols dealing with investment issues.
[25] Though investment laws were enacted in the aftermath of independence in a number of African countries, not until the 1990s did many African countries actually see the relevance of FDI in their national development plans and strategies. See Akiwumi (1975) for a discussion on earlier investment law in Africa.

[26] South Africa stands out as the only country on the continent to have openly criticized the ISDS system and to have expressed general dissatisfaction with the very foundation of the ISDS system–BITs. The South African government also stands out as the only government in Africa that is taking active steps to limit exposure to the ISDS system by attempting to preserve domestic policy space while at the same time offering protection to foreign investors.
[27] Those five paths include promoting alternative dispute resolution; tailoring the existing system through individual IIAs; limiting investor access to ISDS; introducing an appeals facility; and creating a standing international investment court.
[28] International Institute of Sustainable Development (IISD) Best Practices Series—October 2014.
[29] Those instruments include the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the International Convention on Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA Convention), and the Agreement Establishing the African Trade Insurance Agency.
[30] This example relates to obligations that have not been foreseen as a result of treaty interpretation.
[31] For a discussion, see Dugan et al. (2008), pp. 446–49. The proceeding was discontinued after the award had been issued in 1997 in favour of the investor, and both Burundi and Goetz agreed on a settlement in 2000. This case is an interesting example of how the interpretation of the court summarily and quickly determined, without deeper legal analysis, that this particular government action was tantamount to expropriation.
[32] The award cited the practice for calculating compensation and interest used in Wena Hotels Ltd. v Egypt as the appropriate standard of international law.
[33] These are disputes due to political instability and conflict.
[34] The novelty of this particular award is that it has happened under the venue and rules of the Arab League from obligations emanating from the Unified Agreement for the Investment of Arab Capital in the Arab States, and in the absence of an existing BIT between Kuwait and Libya; it may be opening yet another dimension to which countries of a subgroup of African countries are subject.
[35] The argument relates to how the wording of some of the BITs increases the potential liability of the state.
[36] The tribunal proceeded to scrutinize the government's approach to procedural and substantive aspects of those talks (Johnson, 2014).
[37] The argument was that the government had failed to protect the company against destruction and damage of its properties and installations as a result of armed force intervention and looting.
[38] Among the known terminated BITs of Morocco are the ones signed with Belgium (1965), France (1975), Germany (1961), and Spain (1989). South Africa has also terminated initial BITs with Belgium (1998), Germany (1995), Luxembourg (1998), Netherlands (1995), Switzerland (1995), and Spain (1998) and is currently discussing a bill to change investment legislation.
[39] See De Gama (2014) Hurt (2013), and Khor (2014).
[40] See Annex 5 for further background on the RECs in this area.
[41] See also H. Van Roessel, 2014, The SADC Protocol on Finance and Investments: Summary of a comparison with Bilateral Investment Treaties, 2011. Available online at http://www.tralac.org/wp-content/blogs.dir/12/files/2011/uploads/SADC_FIP_Summary_8March2011.pdf; accessed August 11, 2014.
[42] See http://investmentpolicyhub.unctad.org/IIA, accessed August 15, 2014.
[43] For the full text of the Supplementary Act and details of the Common Investment Market (CIM) vision, see ECOWAS Commission, 2009, ECOWAS Common Investment Market Vision, Abuja, Nigeria. Available online at http://www.ecobiz.ecowas.int/en/pdf/cim-vision-english-version.pdf; accessed August 5, 2014.
[44] Those acts were the Supplementary Act A/SA.1/12/08 on community competition rules and the modalities for their application within ECOWAS and Supplementary Act A/SA.2/12/08 on the Establishment, Functions and Operation of the Regional Competition Authority for ECOWAS.
[45] See http://www.comesa.int/attachments/article/28/COMESA_Treaty.pdf for the full text of the treaty; accessed August 3, 2014.
[46] See http://investmentpolicyhub.unctad.org/Download/TreatyFile/3092 for the full text of the agreement; accessed August 3, 2014.
[47] COMESA, Report of the Thirty Second Meeting of the Council of Ministers, Doc. CS/CM/XXXII/2, February 2014.

[48] See Final Communiqué of the 18th Session of the Intergovernmental Committee of Experts (ECA 2014a).
[49] See African Union (2013a and 2013b).
[50] Ewelukwa Ofodile (2014)argues that the desire to radically transform the current status quo can be appreciated in the dispute settlement provisions contained in regional protocol and in soft law instruments, such as the Investment Agreement for the COMESA Common Investment Area, the SADC Model Bilateral Investment Treaty Template, and even the SADC Protocol on Finance and Investment.
[51] Ernst & Young, EY's attractiveness survey: Africa 2014: executing growth, available online at http://www.ey.com/Publication/vwLUAssets/EY-attractiveness-africa-2014/$FILE/EY-attractiveness-africa-2014.pdf; accessed August 20, 2014.
[52] Local content should include issues such as a certain share of local procurement to support local industries and (b) recruitment of local professionals.

[53] Ministries directly involved in the area of investment policy—such as the Ministry of Finance and Economic Planning; Ministry of Trade, Commence and Industry; Ministry of Infrastructure and Works; and Ministry of Foreign Affairs—were considered. The report also benefited from the information collected from investment promotion agencies.
[54] Stakeholder consultation can be important towards achieving transparency in the negotiation process and for outcomes (e.g., the United States was not willing to negotiate the terms of the investment agreement it put before the EAC because it did not have congressional approval for deviations from its model).
[55] South Africa has revised all its BITs in response to a cabinet decision requesting that the Ministry of Trade review all the signed investment agreements. It has announced its decision to terminate three of its most important BITs: those with Germany, Switzerland, and the Netherlands.
[56] Those issues include definition of investment; national treatment and/or most-favoured-nation treatment; non-convertibility and non-transferability risk of investments, gains, or proceeds; employment provisions and provisions on the movement of businesspersons; tax rebates and other monetary incentives; sectoral incentives or special regimes; expropriation and compensation; dispute mechanism or litigation/arbitration provisions for investment disputes; one-stop shop for investors; and avoidance of double taxation.
[57] Most countries in which major investments are in the agriculture sector are marginalized at the bottom of the value chain.
[58] Some countries are already exploring alternatives. In 2011, Mauritius established a new arbitration centre known as the Mauritius International Arbitration Centre. At the regional level, the SADC tribunal had been established.
[59] The African Court of Justice, one of the AU's principal organs, recently merged with the African Court of Human Rights and Justice. Though the Court needs the signature and ratification of all member states to become operational (44 members have signed the protocol and 16 have ratified it), as a pan-African institution it would naturally be recognized to judge disputes stemming from African BITs and even to issue legal opinions on the interpretation and meaning of clauses in existing BITs.
[60] The table covers all BITs between African countries and OECD countries plus China, Russia, and Indiathat are in force and for which the treaty texts could be found. The data was extracted from the original treaty texts. The main source for the treaties was the UNCTAD International Investment Agreements database. Missing treaties were researched from official sources.
[61] This column reflects the time period by which BITs are automatically renewed at the end of their original period of validity; "until terminated" means that the BIT stays in force indefinitely (or until it is terminated by one of the parties) after its initial validity has lapsed.
[62] In this column, "until terminated" means that the BIT has lapsed its initial validity and is currently in force until one of the parties terminates it.
[63] This column shows the deadlines by which notice of termination has to be given by one of the parties to avoid the next automatic renewal(i.e., to ensure termination at the end of the current validity).

Africa has seen a positive trend in investments inflows in recent years due to factors such as its growth performance over the last decade, its rising consumer market and middle class, high rates of return on investment, coupled with existing natural resources and recent discoveries of minerals, gas and oil. Foreign Direct Investments (FDI) continue to be a leading source of external finance for many developing countries, including those in Africa. Although net FDI flows to Africa have increased more than five-fold from USD 9.6 billion in 2000 to USD 54 billion in 2014, the share of Africa in global FDI remains limited at 4.4% in 2014. In order for the continent to achieve its goal of structural transformation, a boost in investment flows, of which FDI is an important source, is necessary. However, there are a number of challenges that affect increased FDI flows to Africa, including poor infrastructure networks. The good news is that African governments have initiated bold reform agendas in order to improve the investment climate and attract foreign investment, and that there are already signs of progress. Many African countries have opened up their economies and dismantled regulatory barriers to foreign investment. Across the continent policies that protect investments from expropriation have been adopted. Some countries have gone further to establish one-stop shops aimed at promoting and facilitating investments. African countries have also signed a host of bilateral investment treaties (BITs). However, there are doubts as to whether such treaties are really an effective vehicle to increase FDI flows. Little is known about the role bilateral investment treaties have played in attracting investments which promote development. Furthermore, there are concerns that such agreements often confer more protection and rights to foreign investors, skewing conditions in detriment of domestic or third party investors and exposing member States to legal disputes. This publication aims to shed light and contribute to the policy dialogue on the experience of BITs in Africa and on the risks that restrict countries' policy space and legitimate public policy making. The publication addresses topics including the prevalence, scope, application and contribution of BITs to investment in Africa, and the extent to which regional integration is being addressed in these agreements. The publication offers informed lessons on how governments should approach and craft future BITs including regional models, with a view to minimizing costly disputes arising from the implementation of these agreements and allow countries some policy space to pursue their national and regional transformation objectives.

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