

Critical Examination of Investor-State Dispute Settlement: Its Application and Implications in Tanzania

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Abstract

The proliferation of international investment treaties (IIAs) has introduced a specific mechanism for resolving investment disputes globally. Most IIAs in force today have embraced investor-state dispute settlement (ISDS), through which many host States are sued in international arbitral institutions. One of the critical aspects of the operationalisation of the ISDS system is that many host states, like Tanzania, have been slapped with excessive arbitral awards that have, in some cases, threatened such countries' sovereign debts, resulting in both 'regulatory chill' and 'compensation chill'. To create a balance between investor protections and obligations at the domestic level, Tanzania should create a conducive domestic environment to manage IIAs. Such positive and effective management of IIAs can be realised by Tanzania adopting effective policy, legislative, administrative and institutional reform measures, including adopting positive policy options on IIAs; harmonising and strengthening legal frameworks with IIAs; creating effective coordination, monitoring and evaluation mechanisms for IIAs.

Keywords: foreign direct investment (FDI); international investment treaties (IIAs); investor protection vis-à-vis investor obligations; investor-state dispute settlement (ISDS); Tanzanian national investment legislation; reform measures to create a balance between investor protections and obligations.

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1. General Overview

International investment agreements (IIAs) and national investment laws recognise the critical role that investor-state dispute settlement (ISDS) plays in resolving disputes between a foreign investor and a host State. Today, almost all existing IIAs and

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national investment laws contain provisions that identify international arbitration as one of the mechanisms for resolving investment disputes, mainly after amicable settlement between the parties fails. It has been asserted time and again that the rationale for introducing ISDS is to create a neutral dispute resolution mechanism that is free and independent of influence and manoeuvre by the relevant state authorities in the host State.

As considered below, the ISDS system is intended ‘to protect foreign companies against expropriation or discrimination on the basis of nationality.’² Common allegations in ISDS cases involve seizures, expropriation and the nationalisation of foreign investments; termination or nonrenewal of contracts, licenses, and permits; state harassment through improper criminal prosecution or wrongful detention; and policy as well as legislative reforms that ‘adversely impact investments.’³ To date, investors claim damages ranging from several million to tens of billion dollars through ISDS.⁴

The pioneer of ISDS in contemporary IIAs is the 1959 Germany-Pakistan bilateral investment treaty (BIT).⁵ Notably, this agreement featured the groundbreaking use of an ISDS mechanism, as understood today.⁶ Since then, thousands of similar provisions have been incorporated into IIAs globally, including those involving Tanzania. Today, all existing BITs that Tanzania has signed contain an ISDS provision.⁷ Investment-related laws in Tanzania also contain some ISDS-related provisions.⁸ Tanzania has also participated in more than a dozen ISDS cases. As such, ISDS is a very critical mechanism of dispute resolution in both international and municipal investment laws in relation to Tanzania.

Therefore, this article critically examines the international legal framework governing the ISDS system, its application and implications to Tanzania. The article also conceptualises ISDS, its purpose, genesis and legal basis. In addition, the article canvases existing ISDS mechanisms and institutions, the proliferation of ISDS at both the global and domestic levels and its implications in Tanzania. In conclusion, the article draws lessons learnt from Tanzania’s participation in ISDS and proposes the way

² Wendt, M. H., “The Evolution of Invest Investor-State Disputes Settlements in a Global Economy,” *South Carolina Journal of International Law and Business*, Vol. 19 Issue, 2022, pp. 1–15, at p. 1. See also the Office of the U.S. Trade Representative, “ISDS: Important Questions and Answers,” March 2015; available at <https://ustr.gov/about-us/policy-offices/press-office/blog/2015/march/isds-important-questions-and-answers-0> (accessed 14 July 2025).

³ Wendt, *ibid.* See also the United Nations, *Fact Sheet on Investor-State Disp. Settlement Cases in 2018* (Geneva/New York: United Nations Conference on Trade and Development – UNCTAD –, 2019), p. 1 (‘UNCTAD Report’); available at https://unctad.org/en/PublicationsLibrary/diaepcbinf2019d4_en.pdf (accessed 14 July 2025).

⁴ Wendt, *ibid.*; and UNCTAD Report, *ibid.*

⁵ A trade agreement executed by Germany and Pakistan in 1959 to promote and safeguard investments between the two nations (‘the Germany-Pakistan BIT’).

⁶ Thomas, B., “Transforming Tanzania: A Call for Reform in Investor-State Dispute Settlement Mechanisms (ISDS),” *The Chanzo*, 28 December 2023; available at <https://thechanzo.com/2023/12/28/transforming-tanzania-a-call-for-reform-in-investor-state-dispute-settlement-mechanisms-isds/> (accessed 18 July 2025).

⁷ *Ibid.*

⁸ See particularly Section 40 of the Tanzania Investment and Special Economic Zones Act (No. 6 of 2025) and Section 34 of the Zanzibar Investment Promotion and Protection Act (No. 14/2018). See also Section 33 of the repealed Tanzania Arbitration Act (Cap 38 R.E. 2022) and Section 30(1)(c)(i) – (iv) of the repealed Export Processing Zone Act (Cap. 373 R.E. 2002).

forward in relation to effective implementation of IIAs in Tanzania and avowing the negative ramifications of the ISDS arbitration cases.

2. Overview of Investor-State Dispute Settlement

ISDS is a procedural mechanism that allows an investor from one country to resort to a dispute settlement mechanism stipulated in an IIA as well as in national investment legislation. Most commonly, foreign investors bring arbitral proceedings directly against the country in which it has invested in light of a given IIA.

2.1. The Concept of Investor-State Dispute Settlement

ISDS or investment court system (ICS) is a system through which disputes between host States and foreign investors are determined on grounds of discriminatory, expropriators, or unfair treatment; or unproductive practices concerning foreign direct investment. Simply stated, ISDS is a mechanism in an IIA that provides foreign investors with the right to access an international arbitral tribunal to resolve investment disputes arising under, from or in connection with an IIA. Quite often, the ISDS system only provides for foreign companies to sue host States in international arbitral tribunals, not the other way around.⁹

Both in principle and practice, settling invest-state disputes relies on arbitration rather than public courts.¹⁰ The ISDS mechanism is a legal provision found in BITs, MITs, as well as in the investment protection sections of free trade agreements (FTAs). ISDS provisions are also contained in national investment laws and foreign investment contracts, as canvassed in previous Chapters. A typical ISDS provision grants investors the right, ‘to engage in international arbitration if they believe that a foreign government, which is a party to the agreement, has violated any of its provisions.’¹¹

ISDS is basically based on the host State’s failure to discharge its duty to ‘protect’ a foreign investor or a foreign investment basing on the common investor protections canvassed in Chapters One and Two above (*i.e.* MFN, FET, full protection, umbrella clauses, expropriation and compensation rights of the investor). As the Columbia Centre on Sustainable Investment (CCSI) points out, IIAs allow protected or covered foreign investment and investors¹² (including individuals and companies) to allege treaty violations by suing states through international arbitration.¹³

International arbitral tribunals are appointed and arbitrators are paid for by one or both of the disputing parties. Both in principle and practice, arbitral tribunals ‘are not

⁹ ISDS Forum, “The Basics: Frequently Asked Questions About ISDS,” available at <https://isds.bilaterals.org/the-basics> (accessed 11 July 2025).

¹⁰ *Ibid.*

¹¹ Thomas, B., “Transforming Tanzania: A Call for Reform in Investor-State Dispute Settlement Mechanisms (ISDS),” *op. cit.*

¹² Protected investors can include not only a multinational enterprise (MNE) headquartered in a State party to an IIA, but also a subsidiary established in a treaty party, debt or equity investors, holders of IP rights, third party funders who invest in companies to assume ISDS privileges, and other individuals and entities.

¹³ Columbia Centre on Sustainable Investment, “Primer on International Investment Treaties and Investor-State Dispute Settlement,” January 2022; available at <https://ccsi.columbia.edu/content/primer-international-investment-treaties-and-investor-state-dispute-settlement> (accessed 12 July 2025).

bound by precedent',¹⁴ a fact that usually results in contradictions between arbitral awards. In fact, instances of inconsistent findings 'have been revealed in arbitral decisions that have become public, demonstrating recurring episodes of divergent legal interpretations of identical or similar treaty provisions.'¹⁵ In addition, arbitral tribunals 'can order remedies (usually in the form of monetary awards) to investors if they find that states have breached treaty obligations.'¹⁶

In most cases, investors are not required to attempt to resolve disputes through available domestic remedies before filing ISDS claims. This is extraordinary and unusual: by contrast, the WTO only permits *states* to raise claims against other states, and international human rights courts and tribunals require claimants to attempt to exhaust domestic remedies before raising disputes at the international level.

States do negotiate to include ISDS provisions in IIAs in order to provide protection to their nationals investing abroad. This is primarily because the ISDS promotes investor confidence and protects investors against sovereign or political risks that may occur in a host State. The ISDS system ensures that; if a host State does not uphold its investment obligations (*i.e.* it fails to discharge any of the investor protections canvassed in Chapters One and Two above), an investor can have their claim determined by an independent international arbitral tribunal, usually comprising three arbitrators seated in a neutral jurisdiction.

It has been pointed out time and again that the ISDS system was devised towards the end of the 1950s in order to protect former colonisers' properties and assets from being nationalised or expropriated by newly Independent States.¹⁷ Multinational corporations then argued that the ISDS system was needed because 'the rule of law was lacking in overseas territories, usually former colonies.'¹⁸ Therefore, they wanted protection against expropriation – that is to say, the taking of their private property by the government for a purpose deemed to be in the interest of the public. Today, investors and some developed States claim that domestic justice systems (such as courts) in developing countries lack independence to be able to objectively resolve investment disputes, pitting host governments or their agencies and foreign investors.¹⁹ For developed countries, the ISDS mechanism is 'a powerful legal tool for corporations to achieve policy objectives that suit their interests around the world.'²⁰

Moreover, ISDS provisions are intended to avoid state-to-state conflicts, protect citizens abroad, and signal to potential investors that the international rule of law will be respected in relation to their investment ventures abroad. Without ISDS provisions to enforce its rights, an investor would normally need to seek the intervention of the government of its home State.²¹ As Rachel Thrasher rightly posits, the original rationale

¹⁴ *Ibid.*

¹⁵ Thomas, B., "Transforming Tanzania: A Call for Reform in Investor-State Dispute Settlement Mechanisms (ISDS)," *op. cit.*

¹⁶ Columbia Centre on Sustainable Investment, "Primer on International Investment Treaties and Investor-State Dispute Settlement," *op. cit.*

¹⁷ ISDS Forum, "The Basics: Frequently Asked Questions About ISDS," *op. cit.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Thomson Reuters, "Investor-State Dispute Settlement (ISDS)," Practical Law; available at [https://uk.practicallaw.thomsonreuters.com/0-624-6147?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-624-6147?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 12 July 2025).

for IIAs ‘was rooted in a lack of trust that developing country institutions [would] provide fair legal protections to foreigners,’²² amongst other considerations. According to her, the lack of trust in domestic institutions ‘is a much smaller concern than it may have been in the mid-20th century, and developed countries have not delivered on their promises.’²³ The primary concern addressed in the most common treaty language is that of state overreach or ‘political risk’, which can better be mitigated by resorting to ISDS. Over the years since the first IIA contained ISDS – *i.e.* the 1959 Germany-Pakistan BIT – research has revealed that ‘investors from high-income states are more likely to prevail in their claims’²⁴ in the ISDS system.

Therefore, contemporary IIAs ensured that a foreign investor investing overseas can use ISDS to seek redress (including compensation) for certain breaches of a host State’s investment obligations imposed on it by IIAs. For example obligations setting parameters on expropriation of a foreign investor’s investment; non-discrimination and minimum standards of treatment (such as protection against denial of justice); or a commitment to ensure foreign investors will be able to move capital relating to their investments freely, subject to appropriate safeguards laid down in legislation.

2.2. The Genesis of Investor-State Dispute Settlement

ISDS emerged with the advent of decolonisation of former colonies in the 1950s and 1960s.²⁵ Prior to the Second World War, the protection of FDI was not often a concern in IIAs, since most of them concerned themselves with ‘establishing trade relations.’²⁶ Only a few of those early IIAs – particularly the famous US treaties of Friendship, Commerce and Navigation (FCN)²⁷ – contained some provisions guaranteeing ‘special protection’²⁸ or ‘full and perfect protection’²⁹ to the property of foreign investors in another State. They also contained provisions requiring payment of compensation for expropriation; MFN and national treatment ‘with respect to the right to engage in certain business activities in the territory of the other party.’³⁰ Then, the focus was on protecting property, not investment, of foreign nationals.

²² Thrasher, R., “FAQs: What is Investor-State Dispute Settlement and What Does it Mean for Climate Action?” Global Policy Development Centre, Boston University; available at <https://www.bu.edu/gdp/2022/12/12/faq-what-is-investor-state-dispute-settlement-and-what-does-it-mean-for-climate-action/> (accessed 14 July 2025).

²³ Ibid.

²⁴ Ibid.

²⁵ See Vandevelde, K. J., “A Brief History of International Agreements,” *U.C. Davis Journal of International Law & Policy*, Vol. 12, No. 1, 2005, p. 157.

²⁶ Ibid, p. 158.

²⁷ This is a generic name in that not all treaties bore the name “friendship, commerce and navigation”.

²⁸ See, for example, Article 10 of the US-Colombia General Convention on Peace, Amity, Navigation and Commerce (adopted on 13 October 1824); Article 13 of the US-Bolivia Treaty of Peace, Friendship, Commerce and Navigation (adopted 13 May 1858); and Article 13 of the US-El Salvador General Treaty of Amity, Commerce, Navigation and Consular Privilege (adopted on 6 December 1870).

²⁹ See, for instance, Article IX of the US-Paraguay Treaty of Friendship, Commerce and Navigation (adopted on 4 February 1859); Article VII of the US-Argentina Treaty of Friendship, Commerce and Navigation (adopted on 27 July 1853); and Article VII of the US-Costa Rica Treaty of Friendship, Commerce and Navigation (adopted on 10 July 1851).

³⁰ Vandevelde, “A Brief History of International Agreements,” *op. cit.*, p. 159.

During this time, the principal source of norms for the protection of foreign investment stocks was customary international law, which obliged host States to treat foreign investment in accordance with an international minimum standard.³¹ However, customary international law offered inadequate protection to foreign investment, since it was opposed by several States on several factors, one of which being the contention that; in the absence of an agreement through which the host State should submit investment disputes to arbitration, the ‘only mechanism offered by customary law for enforcement of customary norms was espousal.’³²

Notably, espousal is a diplomatic mechanism through which an injured national’s home State assumes the national’s claim, ‘as its own and presents the claim against the State that injured the national.’³³ In international law, (diplomatic) espousal (or diplomatic protection) is a means by which a State takes diplomatic and other action against another State on behalf of its national whose rights and interests have been injured by the other State. It has been confirmed in different cases³⁴ of the defunct Permanent Court of International Justice (PCIJ)³⁵ and the International Court of Justice (ICJ),³⁶ is a discretionary right of a State and may take any form that is not prohibited by international law. It can include consular action, negotiations with the other States, political and economic pressure, judicial or arbitral proceedings or other forms of peaceful dispute settlement.

However, being a discretionary right of a State, espousal is an “unsatisfactory remedy” for several reasons. Firstly, the concerned national’s home State is under no obligation to espouse a claim.³⁷ Secondly, a home State is often reluctant to espouse because ‘espousal can disrupt the home State’s (diplomatic) relations with the host State.’³⁸ Thirdly, the home State may espouse a claim only after the national in question has exhausted his/her remedies under the law of the host State,³⁹ a process which may

³¹ Brownlie, I., *Principles of International Law* (25th edn.) (Oxford: Oxford University Press 1998), pp. 527–528.

³² Vandevelde, “A Brief History of International Agreements,” *op. cit.*, p. 160.

³³ *Ibid.*

³⁴ See, for example, *S.S. Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).

³⁵ The PCIJ, which existed between 1922 and 1946 before it was replaced by the International Court of Justice (ICJ) in 1946, had a limited jurisdiction over only for disputes between states. However, it regularly accepted disputes that were between a state and an individual if a second state brought the individual’s case to the Court. It argued that the second state asserts led its rights, and the cases therefore became one between two states. See particularly Jacoby, SB., “Some Aspects of the Jurisdiction of the Permanent Court of International Justice,” *The American Journal of International Law*, Vol. 30 No. 2, 1936 (DOI: 10.2307/2191089. ISSN 0002–9300. JSTOR 2191089. S2CID 146929876); Koessler, M., “Government Espousal of Private Claims Before International Tribunals,” *The University of Chicago Law Review*, Vol. 13, No. 2 (February, 1946), pp. 180–194; and Parlett, K., “Diplomatic Protection and the International Court of Justice,” in *Tams, C.J. and J. Sloan (eds.), The Development of International Law by the International Court of Justice* (Oxford: Oxford University Press, 2013); <https://doi.org/10.1093/acprof:oso/9780199653218.001.0001>.

³⁶ See, for example, *Interhandel (Switzerland v. US)*, 1959 I.C.J. 6, 27 (Mar. 21); *Ambatielos Claim (Greece v. UK)* 23 I.L.R. 306, 344 (1956); and *Panevezys-Saldhutiskis Ry. (Estonia v. Lithuania)* 1939 P.C.I.J. (ser. A/ B) No. 76, at 18 (Feb. 28).

³⁷ Whiteman, M. M., *Digest of International Law* (Washington, D. C.: U.S. Government Printing Office, 1967), pp. 1216–19.

³⁸ Vandevelde, “A Brief History of International Agreements,” *op. cit.*, p. 160.

³⁹ See, for example, *Interhandel (Switzerland v. US)*, 1959 I.C.J. 6, 27 (Mar. 21); *Ambatielos Claim (Greece v. UK)* 23 I.L.R. 306, 344 (1956); and Whiteman, *Digest of International Law*, *op. cit.*, pp. 769–807.

require a substantial expenditure of time and money without satisfactory resolution.⁴⁰ Fourthly, once local remedies have been exhausted and the home State has been persuaded to espouse the claim in question, the investor ‘loses control over the claim,’⁴¹ as the home State is entitled to determine the claim on any terms as it wishes.⁴²

Since espousal is a diplomatic process, there is no guarantee that the host State will agree the claim on any term. For these reasons, the remedy of espousal was inadequate in protecting foreign investors and this was seemingly challenging with the decolonisation of former colonies, where nationalistic tendencies emerged with the advent of independence. As such, a more effective remedy had to be conceived to ensure a certainty and risk-free environment for foreign investors after decolonisation in the 1950s and 1960s. As such, ISDS was conceived to array fear amongst foreign investors, as it is now generally accepted that ‘without an ISDS mechanism, foreign investors may be wary of entering the market of the hosting State.’⁴³

With the advent of decolonisation, developed countries, some of which were former colonial masters, were concerned that ‘assets of their citizens could be expropriated by their former colonies.’⁴⁴ History reveals that newly independent states around the world were ‘fiercely protective of their independence’⁴⁵ and came to regard foreign investment as ‘a form of neo-colonialism because it involved foreign control over the means of production.’⁴⁶ Concerns were also expressed to the effect that ‘foreign investors would interfere in the domestic affairs of the host State.’⁴⁷ Even though FDI was seen as creating the greatest concerns, since it involved ‘a foreign presence in the territory of the developing country,’⁴⁸ trade with developed countries ‘was viewed with suspicion.’⁴⁹ Then, the prevalent fear was that trade between developed and developing countries would ‘result in exploitation of the latter.’⁵⁰ As a consequence, developing countries, Tanzania inclusive, “closed their economies” and began to nationalise or expropriate existing investment.⁵¹ In lieu thereof, developing countries opted to trade amongst themselves rather than with developed countries.⁵²

On the other front, the emergency of the socialist bloc after the Second World War pioneered by the defunct Soviet Union led to massive expropriations of private investment, including foreign-held assets.⁵³ Socialist states also “encouraged” their allies

⁴⁰ *Panevezys-Saldutiskis Ry. (Estonia v. Lithuania)* 1939 P.C.I.J. (ser. A/ B) No. 76, at 18 (Feb. 28).

⁴¹ Vandevelde, “A Brief History of International Agreements,” *op. cit.*, p. 160.

⁴² Whiteman, *Digest of International Law*, *op. cit.*, pp. 1216-19.

⁴³ Wendt, M. H., “The Evolution of Invest Investor-State Disputes Settlements in a Global Economy,” *South Carolina Journal of International Law and Business*, Vol. 19 Issue, 2022, pp. 1–15, at p. 8.

⁴⁴ *Ibid.*, p. 5.

⁴⁵ Sornarajah, M., *International Law on Foreign Investment* (4th edn.) (Cambridge: Cambridge University Press, 2017), p. 12.

⁴⁶ Vandevelde, “A Brief History of International Agreements,” *op. cit.*, p. 166. See also Hanink, D. M., *The International Economy: A Geographic Perspective* (Wiley, 1994), p. 234.

⁴⁷ Vandevelde, *ibid.* See also Gilpin, R., *The Political Economy of International Relations* (Princeton University Press, 1987), pp. 247-48.

⁴⁸ Vandevelde, *ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ As considered in Chapter Four, in 1967, Tanzania embarked on the *Ujamaa* policy through which unprecedented nationalisation of private investment took place.

⁵² Vandevelde, *op. cit.*, p. 167.

⁵³ *Ibid.* See also Brown, M. B., *Models in Political Economy* (2nd edn.) (London: Penguin Books, 1995), pp.

in the developing world to relinquish their economic ties with Western Europe and North America for it was deemed to be exploitative; that is the 'best path to economic development [laid] in extensive state regulation of the economy rather than through the free market.'⁵⁴

Holding a numeric majority in the UN, developing and socialist countries successfully mounted an effort in the UN General Assembly (UNGA) in the 1970s that resulted in the adoption of the Declaration of the New International Economic Order (NIEO) on 1 May 1974.⁵⁵ The NIEO decreed, *inter alia*, that states have 'full permanent sovereignty' over their natural resources and other economic activities.⁵⁶ The NIEO also decreed that state sovereignty includes 'the right of nationalisation or transfer of ownership to its nationals.'⁵⁷ However, the Declaration did not specify any state obligation to pay compensation for the said nationalisation.

Similarly, on 12 December 1974, developing and socialist countries influenced⁵⁸ the adoption by the UNGA of the UN Charter of Economic Rights and Duties of States (CERDS).⁵⁹ In particular, Article 2.2(c) of the CERDS, which was adopted by a separate vote of 104-16 with 6 abstentions, decreed that the State has the right to '*nationalise, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State applying such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent*'.⁶⁰ In fact, the CERDS stated that compensation should, not it must, be paid; and that the amount of compensation would be based on national laws, which might not provide for any compensation, instead of basing on international law norms relating to compensation upon expropriation.

As a response to the nationalisation and expropriation threats, developing countries in Western Europe and North America devised measures to tame the risk of uncompensated expropriation by particularly conceiving BITs. Subsequently, Germany became the first developed country in Western Europe to conclude a BIT with a developing country. Having lost its foreign investments and assets as a result of the Second World War, Germany was 'Especially sensitive to the political risks to which foreign investment was exposed.'⁶¹ Specifically, in 1959, Germany concluded two BITs with Pakistan and the Dominican Republic.⁶² Subsequently, other Western European

193–267; and Rapley, J., *Understanding Development: Theory and Practice in the Third World* (3rd edn.) Lynne Rienner Publishers, 2007), pp. 22–25.

⁵⁴ Vandevelde, *ibid.* See also Nafziger, E. W., *The Economics of Developing Countries* (3rd edn.) (Upper Saddle River, NJ: Prentice Hall, 1997) pp. 106–08; and Rapley, *ibid.*, pp. 18–20.

⁵⁵ United Nations Declaration on the Establishment of a New Economic Order, G.A. Resolution 3201 (S-VI), U.N. GAOR, 6th Special Session, 2229th Plenary Meeting, U.N. Doc. A/ RES/3021 (S-VI) (1 May 1974).

⁵⁶ *Ibid.*, Article 4(e).

⁵⁷ *Ibid.*

⁵⁸ Vandevelde, *op. cit.* (noting that: the CERDS was adopted by 120-6 votes with 10 abstentions).

⁵⁹ United Nations Charter of Economic Rights and Duties of States, G.A. Resolution 3281 (XXIX), U.N. GAOR, 29th Plenary Meeting, U.N. Doc. A/ RES/3281 (XXIX) (12 December 1974).

⁶⁰ *Ibid.*, Article 2.2(c).

⁶¹ See Vandevelde, "A Brief History of International Agreements," *op. cit.*, p. 168. See also Salacuse, J. W. and N.P. Sullivan, "Do BITs Really Work? An Evolution of Bilateral Investment Treaties and their Grand Bargain," *Harvard International Law Journal*, Vol. 46, 2005, p. 73.

⁶² United Nations, *Bilateral Investment Treaties in the Mid-1990s* (UN Series No. E.98, II. D. 8) (Geneva/New York: UNCTAD, 1998), p. 177.

countries followed suit – France concluded its first BIT in 1960,⁶³ followed by Switzerland in 1961,⁶⁴ The Netherlands in 1963,⁶⁵ Italy⁶⁶ and Belgium-the Luxembourg Union in 1964,⁶⁷ Denmark⁶⁸ and Sweden in 1965⁶⁹ and Norway in 1966.⁷⁰

Further expropriations that took place in the 1970s were prompted by the NIEO and the CERDS.⁷¹ This triggered the conclusion of the second wave of BITs in the 1970s and 1980s, with the UK concluding its first BIT in 1975,⁷² followed by Austria in 1976⁷³ and Japan in 1977.⁷⁴ The US followed suit by inaugurating its BIT programme and started negotiations for BITs in the 1980s.⁷⁵ These BITs were remarkably uniform in content and were principally negotiated between a developing country and a developed country.⁷⁶ They were typically drafted by developed countries and offered to developing countries for signature.⁷⁷

Although both parties formally assumed the same obligations under the BITs, these BITs were perceived as ‘unreciprocal because, in practice, the obligation all fell on the developing country’s part.’⁷⁸ While the only motivation for developing countries to conclude BITs was to “attract” FDI, developed countries were motivated to obtain protection of their foreign investments and payment of fair, prompt and adequate compensation in the event of expropriation.⁷⁹ Unlike the US’s FCN, which sought to establish trade relations between the parties, contemporary BITs are ‘a defensive reaction to past expropriations of existing investments without payment of fair market value.’⁸⁰

One of the major “innovations” in the early BITs, particularly those concluded from the 1960s, was the inclusion of a provision in which the host State consented to ISDS through international investment arbitration.⁸¹ This provision was given further

⁶³ Ibid, p. 175 (BIT with Chad). This was the first BIT to be signed by an African State. See particularly the United Nations, *Investment Policies and Bilateral Investment Treaties in Africa: Implications for Regional Integration and Implications for Regional Integration* (Addis Ababa: Economic Commission for Africa, 2016).

⁶⁴ United Nations, *Bilateral Investment treaties in the Mid-1990s*, ibid., p. 205 (BIT with Tunisia).

⁶⁵ Ibid, p. 192 (BIT with Tunisia).

⁶⁶ Ibid, p. 184 (BIT with Guinea).

⁶⁷ Ibid, p. 163 (BIT with Tunisia).

⁶⁸ Ibid, p. 172 (BIT with Madagascar).

⁶⁹ Ibid, p. 204 (BIT with Ivory Coast).

⁷⁰ Ibid, p. 193 (BIT with Madagascar).

⁷¹ Salacuse and Sullivan, *op. cit.*, p. 75 (note 54) state that; between 1960 and 1974, 875 expropriations took place in 62 countries.

⁷² United Nations, *Bilateral Investment treaties in the Mid-1990s*, *op. cit.*, p. 219 (BIT with Egypt).

⁷³ Ibid, p. 161 (BIT with Romania).

⁷⁴ Ibid, p. 185 (BIT with Egypt).

⁷⁵ Vandevelde, K. J., “The Bilateral Investment Treaty Program of the United States,” *Cornell International Law Journal*, Vol. 21, 1988, pp. 209-11.

⁷⁶ United Nations, *Bilateral Investment treaties in the Mid-1990s*, *op. cit.*, pp. 8–19.

⁷⁷ See Vandevelde, “A Brief History of International Agreements,” *op. cit.*, p. 170. See also Sornarajah, *International Law on Foreign Investment*, *op. cit.*, p. 227.

⁷⁸ Ibid, p. 171. See also the United Nations, *Bilateral Investment treaties in the Mid-1990s*, *op. cit.*, pp. 211-13.

⁷⁹ Ibid, pp. 171–174. See also the United Nations, *Bilateral Investment treaties in the Mid-1990s*, ibid., pp. 2–6.

⁸⁰ Ibid, p. 171.

⁸¹ Ibid, p. 174.

impetus by the adoption of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ('the ICSID Convention') in September 1966 by 26 States.⁸² The ICSID Convention is a multilateral treaty adopted under the auspices of the World Bank⁸³ with the purpose of encouraging private investments in developing countries and enumerating procedures on how to resolve disputes between investors and host States.⁸⁴ Notably, the number of States parties to the ICSID Convention has risen from 26 in 1966 to 158 in 2024.⁸⁵ Recognising the need for protecting their overseas assets and investments, developed countries began, around the same time, to include arbitration in IIAs (particularly BITs) with developing countries as a means of resolving disputes between foreign investors and the "hosting State."⁸⁶

With the advent of globalisation in the late 1980s, many BITs that have been concluded since then have reflected the same spirit of investment protection against expropriation and other breaches of IIAs by host States. Contemporary IIAs have incorporated few changes to ISDS as a reaction to arbitral tribunals' decisions, particularly those filed under the defunct NAFTA Investment Chapter. Such changes include: (i) the addition of the language specifying that the fair and equitable treatment (FET) standard 'merely incorporates the international minimum standard,'⁸⁷ (ii) clarifying the extent to which the expropriation provision applies to regulatory actions by the host State, and (iii) modifying the procedures employed in arbitration under the ISDS provisions.⁸⁸ Similar provisions have also been incorporated in the World Trade Organization (WTO) frameworks as well as in MITs and regional free trade agreements that have been recently concluded.⁸⁹

3. The Legal Basis of Investor-State Dispute Settlement

Axiomatically, ISDS is a consent-based dispute settlement system that depends on consent being discharged by the host States. Consent to resort to the ISDS system resolution is usually discharged by States in two main contexts, which is through IIAs or national investment laws. This means that; at both the international and domestic levels, ISDS are backed up by specific provisions entrenched in either an IIA or municipal legislation. Therefore, to resort to the ISDS system requires consent from the disputing parties, either through a pre-existing agreement or a subsequent agreement where consent has been given after the dispute has arisen.⁹⁰

⁸² The ICSID Convention entered into force on 14 October 1966, 30 days after ratification by the first 20 States. See particularly the International Centre for Settlement of Investment Disputes (ICSID), *History of the ICSID Convention* (Washington, DC: ICSID, 1970).

⁸³ Wendt, "The Evolution of Invest Investor-State Disputes Settlements in a Global Economy," *op. cit.*, p. 5.

⁸⁴ *Ibid.*

⁸⁵ ICSID, "ICSID Convention," available at <https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview> (accessed 15 July 2025).

⁸⁶ See Vandevelde, "A Brief History of International Agreements," *op. cit.*, p. 168.

⁸⁷ See Vandevelde, "A Brief History of International Agreements," *op. cit.*, p. 179.

⁸⁸ *Ibid.*

⁸⁹ See, for instance, Agreement Establishing the African Continental Free Trade Area (AfCFTA); available at https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf (accessed 16 July 2025).

⁹⁰ Nikiéma, H. S and N. Maina. "Q&A: The Risk of ISDS Claims Through National Investment Laws: Another "Damocles Sword" Hanging Over Governments' COVID-19 Related Measures?" International

Over the years, it has been argued that the disputing parties' consent does not necessarily need to be embodied in one and the same document, such as a contract;⁹¹ governments sometimes provide their direct consent to arbitration through investment treaties or national investment laws.⁹² In both scenarios, while it is deemed that the host State has offered consent to ISDS to a foreign investor through an IIA or a national investment law; the investor could then "accept" the government's offer and perfect the disputing parties' "consent to arbitration" by lodging an ISDS claim.⁹³ As such, the legal basis of ISDS is "complex and varied"⁹⁴ – it is 'spread across dispute resolution provisions contained in some 3000 investment treaties, in other international conventions (notably the ICSID Convention and the New York Convention) and arbitration rules.'⁹⁵

3.1. International Investment Agreements as the Legal Basis of Investor-State Dispute Settlement

The vast majority of contemporary IIAs contains clauses providing for consent to arbitration in case of a dispute between the host State and foreign investors. In limited instances, IIAs also do include alternative mechanisms, such as proceedings before the domestic courts of the host State, or another procedure agreed by both parties to a dispute.⁹⁶ As such, almost all IIAs have specific clauses requiring that investor-state disputes should be determined through ISDS. This was strengthened by the establishment of the International Centre for the Settlement of Investment Disputes (ICSID) in 1966 by the ICSID Convention. As a result of capital-importing countries' need for FDI beginning from the 1990s, many BITs were adopted (more than 3,000 by now), most of which containing ISDS clauses. Therefore, the legal basis of ISDS in international law is found in IIAs and the ICSID Convention.

According to the *OECD Scoping Paper*, the ISDS mechanism as established by thousands of IIAs and other international treaties with ISDS provisions, has three features that make it stand out from most of the other institutions:

Institute of Sustainable Development (IISD), September 2020; available at <https://www.iisd.org/publications/brief/risk-isds-claims-through-national-investment-laws> (accessed 11 July 2025).

⁹¹ Ibid.

⁹² See Potesta, M., "The Interpretation of Consent to ICSID Arbitration Contained in Domestic Investment Laws," *Arbitration International*, Vol. 27 No. 2, 2011; available at <https://core.ac.uk/download/pdf/85220241.pdf> (accessed 11 August 2024).

⁹³ Nikiéma and Maina. "Q&A: The Risk of ISDS Claims Through National Investment Laws: Another "Damocles Sword" Hanging Over Governments' COVID-19 Related Measures?" *op. cit.*, p. 2.

⁹⁴ See particularly Chen, X. S., "Researching Third-Party Funding in Investor-State Dispute Settlement," *GlobalLex*, March/April 2024, available at https://www.nyulawglobal.org/globalex/third-party_funding_in_vestor-state_dispute_settlement1.html (accessed 17 July 2025).

⁹⁵ Gaukrodger, D. and K. Gordon, *Investor-State Dispute Settlement: A Scoping Paper for the Investment Policy Community* (OECD Working Papers on International Investment 2012/03) (Paris: Organisation of Economic Cooperation and Development, OECD, 2013) ('*OECD Scoping Paper*'), at p. 10; available at <https://www.oecd-ilibrary.org/docserver/5k46b1r85j6f-en.pdf?expires=1723924646&id=id&accname=guest&checksum=91ACBB3C553F097F40C84318F91B70D4> (accessed 17 July 2025).

⁹⁶ European Parliament, "Investor-State Dispute Settlement (ISDS): State of Play and Prospects for Reform," *Briefing*, January 2015; available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545736/EPRS_BRI\(2015\)29545736_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545736/EPRS_BRI(2015)29545736_EN.pdf) (accessed 15 July 2025).

- First, the legal basis of ISDS is complex and varied, while many of the other dispute settlement mechanisms are anchored in well-defined treaty frameworks. ISDS' legal basis is spread across dispute resolution provisions contained in some 3000 investment treaties, in other international conventions (notably the ICSID Convention and the New York Convention) and arbitration rules. As just noted, the OECD survey of ISDS provisions shows that the overwhelming majority of bilateral investment treaties provide for ISDS, as do practically all recent treaties. The survey also documents large variations in the contents and detail of these provisions.

- Second, ISDS allows private parties to bring claims against States (subject to the diverse preconditions set out in various investment treaties) and can generate large monetary awards. Few, if any, of the other mechanisms listed in Annexe 1 enable private parties to compel States to participate in dispute resolution procedures involving monetary compensation of this magnitude.

- Third, the institutional set-up of ISDS draws heavily on that of commercial arbitration (*e.g. ad hoc*, party appointed arbitration panels, emphasis on speed and finality of findings).⁹⁷

In the ISDS system, international arbitral tribunals look first and foremost at the provisions of the relevant IIA as the basis of their jurisdiction and in deciding cases. Conversely, since IIAs almost universally place enforceable obligations only on host States, not on investors, foreign investors can generally initiate claims against the host State in the ISDS system; States cannot do so or successfully bring counterclaims. Under this ISDS arrangement, an investor may win a case 'even if it has violated domestic law or other international human rights or environmental norms in relation to its operation of the investment.'⁹⁸

3.2. National Investment Law as the Legal Basis of Investor-State Dispute Settlement

Universally, many capital-importing countries such as Tanzania have enacted national investment laws or codes. According to the United Nations Conference on Trade and Development (UNCTAD)'s database, there are currently 214 national investment laws and codes, with most of them (70) providing for domestic dispute settlement mechanisms.⁹⁹ However, more than a third (49) include provisions on international arbitration. Of these, 40 provide consent by States to international arbitration for foreign investors.¹⁰⁰

Conversely, national investment laws that contain 'unequivocal consent to arbitration provide an arbitral tribunal with jurisdiction to hear a case.'¹⁰¹ Moreover, some of these laws contain 'an array of options available to the investor, leaving the

⁹⁷ OECD Scoping Paper, *op. cit.*, p. 10.

⁹⁸ Columbia Centre on Sustainable Investment, "Primer on International Investment Treaties and Investor-State Dispute Settlement," January 2021; available at <https://ccsi.columbia.edu/content/primer-international-investment-treaties-and-investor-state-dispute-settlement> (accessed 11 July 2025).

⁹⁹ UNCTAD's Investment Policy Hub hosts the Investment Laws Navigator here: <https://investmentpolicy.unctad.org/investment-laws> (accessed 11 July 2025).

¹⁰⁰ Nikiéma and Maina. "Q&A: The Risk of ISDS Claims Through National Investment Laws: Another "Damocles Sword" Hanging Over Governments' COVID-19 Related Measures?" *op. cit.*

¹⁰¹ *Ibid.*

choice of the forum and applicable procedural rules up to them.¹⁰² In Tanzania, the legal basis of ISDS was contained in Section 33 of the repealed Tanzania Investment Act (2022),¹⁰³ Section 30(1)(c)(i) – (iv) of the repealed Export Processing Zone Act.¹⁰⁴ For Zanzibar, Currently, ISDS-related provisions are set out in Section 34 of the Zanzibar Investment Promotion and Protection Act (2018). With the enactment of the Tanzania Investment and Special Economic Zones Act¹⁰⁵ in February 2025, ISDS is not expressly but impliedly provided for in Section 40(2). As such, a foreign investor can bring Tanzania (as the host State) to the international arbitral tribunal basing on its national investment legislation¹⁰⁶ along with the relevant IIA.

It should be noted that; provisions that stipulate clear consent to international arbitration were incorporated into national investment legislation in developing countries as the result of ‘advice from specialist units in international organisations, such as the World Bank, that advocated for countries to draft their national investment laws with language similar to that contained in international investment agreements.’¹⁰⁷ A recent study has found that ‘receiving such advice on domestic law reform increased a country’s likelihood of adopting a law with international arbitration by 650%.’¹⁰⁸ Of the 65 States that received such investment law advice, 30 countries subsequently included international arbitration in their national investment law.¹⁰⁹

While some developing countries (such as Togo, Egypt, El Salvador, and Côte d’Ivoire) are now removing consent to ISDS in their most recent national investment legislation;¹¹⁰ Tanzania retained ISDS provisions in its repealed national investment legislation of 2022¹¹¹ but has not expressly adopted such retention in its 2025 national investment law.¹¹² As considered below, Tanzania has also incorporated ISDS-related provisions in the Zanzibar investment legislation¹¹³ and its export processing zone law.¹¹⁴ It should be noted that; one of the reasons for some of the developing countries moving towards removing ISDS-related provisions in their national investment legislation is due to the negative outcomes that host States have been getting in international arbitral tribunals basing on the national investment legislation. For example, the first known

¹⁰² Ibid.

¹⁰³ The Tanzania Investment Act (Cap 38 R.E. 2022) (*repealed*).

¹⁰⁴ The Export Processing Zone Act (Cap. 373 R.E. 2002) (*repealed*).

¹⁰⁵ The Tanzania Investment and Special Economic Zones Act (No. 6 of 2025).

¹⁰⁶ Notably, the first known arbitration case brought under a national investment law – known as the *Pyramid* case – was based on Egypt’s 1974 national investment code. See particularly *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3 (*‘SPP v. Egypt’*).

¹⁰⁷ Nikiéma and Maina. “Q&A: The Risk of ISDS Claims Through National Investment Laws: Another “Damocles Sword” Hanging Over Governments’ COVID-19 Related Measures?” *op. cit.*, pp. 3–4.

¹⁰⁸ Berge, T. L. and T. St. John, “Why do States Consent to Arbitration in National Investment Laws?” *Investment Treaty News*, 2020; available at <https://www.iisd.org/itn/2020/06/20/why-do-states-consent-to-arbitration-in-national-investment-laws-tarald-berge-taylor-john/> (accessed 17 July 2025).

¹⁰⁹ Ibid.

¹¹⁰ Kebe, M., *et al.*, “Ivory Coast’s New Investment Code: Focus on Issues Related to Sustainable Development and Dispute Settlement,” *Investment Treaty News*, 19 September 2019; available at <https://www.iisd.org/itn/2019/09/19/ivory-coasts-new-investment-code-focus-on-issues-related-to-sustainable-development-and-dispute-settlement-mouhamed-kebe-mahamat-atteib-mouhamoud-sangare> (accessed 17 July 2025).

¹¹¹ See particularly Section 33 of the repealed Tanzania Investment Act (2022).

¹¹² See especially Section 40(2) of the Tanzania Investment and Special Economic Zones Act (2025).

¹¹³ See especially Section 34 of the Zanzibar Investment Promotion and Protection Act (2018).

¹¹⁴ See particularly Section 30(1)(c)(i) – (iv) of the repealed Export Processing Zone Act.

arbitration case brought under a national investment law – known as the *Pyramid* case¹¹⁵ – was based on Egypt's 1974 national investment legislation.¹¹⁶

According to Egypt, the various options listed in its 1974 national investment code did not constitute consent to ISDS, and the clause required a separate implementing agreement with the investor.¹¹⁷ Furthermore, Egypt argued in the *Pyramid* case that the clause was intended only to inform potential investors that the provisions recognising ICSID-based arbitration were one of a variety of dispute settlement methods that investors might use to negotiate with Egyptian authorities in appropriate circumstances.¹¹⁸ However, the tribunal determined otherwise and proceeded to consider the merits of the case. Egypt was eventually found liable for damages to the investor. Subsequent to this decision, Egypt revised its national investment law to remove consent to international arbitration.¹¹⁹

It should be noted that; with provisions that provide state consent to international arbitration contained in national investment legislation, foreign investors can sue the host State in international arbitration for alleged domestic law violations that would normally be dealt with in domestic courts. Essentially, once a State consents to international arbitration through its national investment legislation, it eventually 'allows an international arbitration tribunal to interpret its domestic law in lieu of domestic courts.'¹²⁰ This can be noted from the tribunal's finding on Egypt's jurisdictional challenge in the *Pyramid* case. In this case, the arbitral tribunal determined that a sovereign state's interpretation of its own unilateral consent to the jurisdiction of an international tribunal is not binding on the tribunal or determinative of jurisdictional issues.¹²¹

3.2.1. ISDS Provisions in the Repealed Tanzania Investment Act (2022)

The Tanzania Investment Act (2022) retained the ISDS provisions that were contained in Section 29 of the National Investment (Promotion and Protection) Act (1990) and Section 23 of the Tanzania Investment Act (1997), all of which required disputes arising under investment arrangements regulated by these laws to first be settled by mutual negotiations aimed at reaching amicable settlement.¹²² Where amicable settlement failed, parties could resolve such disputes by any of the three mechanisms: (i)

¹¹⁵ *SPP v. Egypt, op. cit.*

¹¹⁶ The relevant ISDS clause in the Egypt investment code provided categorically that: '*Investment disputes in respect of the implementation of the provisions of this Law shall be settled in a manner to be agreed upon with the investor, or within the framework of the agreements in force between the Arab Republic of Egypt and the investor's home country, or within the framework of the Convention for the Settlement of Investment Disputes between the State and the nationals of other countries to which Egypt has adhered by virtue of Law No. 90 of 1971, where such Convention applies.*'

¹¹⁷ Nikiéma and Maina. "Q&A: The Risk of ISDS Claims Through National Investment Laws: Another "Damocles Sword" Hanging Over Governments' COVID-19 Related Measures?" *op. cit.*, p. 3.

¹¹⁸ *SPP v. Egypt*, ICSID Case No. ARB/84/3 (Decision on Jurisdiction), para. 53.

¹¹⁹ Nikiéma and Maina. "Q&A: The Risk of ISDS Claims Through National Investment Laws: Another "Damocles Sword" Hanging Over Governments' COVID-19 Related Measures?" *op. cit.*, p. 3.

¹²⁰ *Ibid.*

¹²¹ *SPP v. Egypt, op. cit.*, para. 60.

¹²² Section 23(1) of the repealed Tanzania Investment Act (1997).

through arbitration in accordance with the ICSID Arbitration Rules,¹²³ (ii) through provisions of a relevant IIA,¹²⁴ or (iii) through any other machinery for settlement of international investment disputes mutually agreed upon by the parties.¹²⁵

In particular, the repealed Tanzania Investment Act (2022) provided two levels of dispute resolution in relation to investment. As well as tasking the TIC and the National Investment Steering Committee with the function of handling complaints relating to investment,¹²⁶ this law provided an avenue for settlement of dispute through negotiations for an amicable settlement and arbitration.¹²⁷ Where a dispute concerning investment was determined by the TIC, a person who was aggrieved by a decision made by the TIC could appeal to the minister responsible for investment.¹²⁸ In addition, an investor who was aggrieved by a decision of the National Investment Steering Committee on the approval of incentives could make an application to the Committee for it to review its decision.¹²⁹

Apart from resolving investment disputes through the TIC and the National Investment Steering Committee, where a dispute arose between an investor and the TIC or the Government in respect of a business enterprise, all efforts were to 'be made to settle the dispute through negotiations for an amicable settlement.'¹³⁰ A dispute between an investor and the TIC or the Government in respect of a business enterprise, which was not settled through negotiations, could be submitted to arbitration in accordance with any of the following methods, as could be mutually agreed by the parties: (i) in accordance with arbitration laws of Tanzania;¹³¹ (ii) in accordance with the rules of procedure for arbitration of the ICSID;¹³² or (iii) within the framework of any bilateral or multilateral agreement on investment protection agreed to by the Government of Tanzania and the government of the country where the investor originates.¹³³

3.2.2. ISDS Provisions in the Zanzibar Investment Promotion and Protection Act (2018)

In addition to governing foreign investment, the Zanzibar Investment Promotion and Protection Act ('the ZIPP Act') regulates free economic zones (FEZ's).¹³⁴ Apart from providing for investors' rights, benefits, incentives and obligations; the ZIPP Act also provides for dispute settlement in relation to compensation for compulsory acquisition.¹³⁵ Like the Tanzania Investment Act (2022), the ZIPP Act requires that investment disputes should first be resolved through mutual discussions and

¹²³ Ibid, Section 23(2)(a).

¹²⁴ Ibid, Section 23(2)(b).

¹²⁵ Ibid, Section 23(2)(c).

¹²⁶ Sections 6(1)(k) and 32 of the Tanzania Investment Act (2022).

¹²⁷ Ibid, Section 33.

¹²⁸ Ibid, Section 32(1).

¹²⁹ Ibid, Section 32(2).

¹³⁰ Ibid, Section 33(1).

¹³¹ Ibid, Section 33(2)(a).

¹³² Ibid, Section 33(2)(b).

¹³³ Ibid, Section 33(2)(c).

¹³⁴ I Sections 35–40 of the ZIPP Act.

¹³⁵ Ibid, Section 34.

negotiations.¹³⁶ Where negotiation fails, investment disputes should be resolved through arbitration under the Zanzibar Arbitration Decree (1928).¹³⁷ In the alternative, investment disputes may be resolved under the IIAs frameworks for dispute resolution; or under the UNCITRAL¹³⁸ or ICSID Arbitration Rules.

3.2.3. ISDS Provisions in the Repealed Export Processing Zones Act

As considered above, before the enactment of the Tanzania Investment and Special Economic Zones Act in 2025, investment made in export processing zones (EPZ's) in Mainland Tanzania was regulated by the Export Processing Zones Act ('the EPZ Act').¹³⁹ Apart from establishing the Export Processing Zones Authority (EPZA)¹⁴⁰ for initiating, developing and managing operations of 'publicly owned export processing zones',¹⁴¹ as well as providing incentives for investments in EPZs;¹⁴² the EPZ Act also provided for ISDS. In the main, all disputes (other than those concerning labour-related issues and validity of the licences) could be settled through: (i) the arbitration rules of procedure of the ICSID in force at the time being;¹⁴³ (ii) the dispute settlement mechanisms embedded in a relevant IIA;¹⁴⁴ (iii) the rules of procedure for the settlement of disputes under the International Chamber of Commerce (ICC);¹⁴⁵ or (iv) any other international machinery for the settlement of disputes agreed upon by the parties.¹⁴⁶

It should be noted that; where a licence concerning an EPZ refers to arbitration, it constituted consent on the part of the Government and the licence holder to submit to arbitration.¹⁴⁷ An arbitral award made in this context was deemed final and binding on the Government and the licence holder. Such an arbitral award was enforceable under the New York Convention.¹⁴⁸

3.2.4 ISDS Provisions in the Tanzania Investment and Special Economic Zones Act (2025)

As considered above, the Tanzania Investment and Special Economic Zones Act (2025) has repealed three investment-related laws – the Tanzania Investment Act (2022),¹⁴⁹ the Export Processing Zones Act (2002)¹⁵⁰ and the Special Economic Zones Act (2006).¹⁵¹ Apart from consolidating the investment regime and establishing the

¹³⁶ Ibid, Section 34(1).

¹³⁷ The Zanzibar Arbitration Decree (Cap. 25). See particularly Section 34(2)(a) of the ZIPPA.

¹³⁸ United Nations Commission on International Trade Law (UNCITRAL).

¹³⁹ The Export Processing Zones Act (Cap. 373 R.E. 2002).

¹⁴⁰ Section 12 of the Export Processing Zones Act (Cap. 373).

¹⁴¹ Ibid, Section 13(1).

¹⁴² Ibid, Sections 21-24.

¹⁴³ Ibid, Section 30(1)(c)(i).

¹⁴⁴ Ibid, Section 30(1)(c)(ii).

¹⁴⁵ Ibid, Section 30(1)(c)(iii).

¹⁴⁶ Ibid, Section 30(1)(c)(iv).

¹⁴⁷ Ibid, Section 30(2).

¹⁴⁸ The Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York, 1958).

¹⁴⁹ The Tanzania Investment Act (No. 10 of 2022).

¹⁵⁰ The Export Processing Zones Act (No. 11 of 2002).

¹⁵¹ The Special Economic Zones Act (No. 2 of 2006).

Tanzania Investment and Special Economic Zones Authority (TISEZA), this law has, to some extent, retained some provisions relating to dispute resolution in relation to investment. However, unlike the repealed laws, the Tanzania Investment and Special Economic Zones Act (2025) has not expressly recognised ISDS provisions that were clearly stipulated in Section 33 of the Tanzania Investment Act (2022) and Section 30(1)(c)(i) – (IV) and (2) of the EPZ Act.

Like the repealed Tanzania Investment Act (2022), the Tanzania Investment and Special Economic Zones Act (2025) creates a threefold dispute settlement mechanism. The first one involves the redress of complaints submitted by investors to TISEZA¹⁵² whose decisions are appealable to the minister responsible for investment.¹⁵³ The second type of dispute resolution of the current investment legislation requires disputes concerning being resolved through negotiations.¹⁵⁴ Where negotiations fail, such a dispute may be referred to a forum of dispute settlement that has been agreed between the parties;¹⁵⁵ or where such a forum is not agreed, a dispute may be determined by a court of competent jurisdiction.¹⁵⁶

3.3. ISDS Mechanisms and Institutions

Over the years, the ISDS system has created several mechanisms and institutions through which investor-state disputes are resolved. While investor-state arbitration is the most preferred mechanism for resolving investor-state disputes,¹⁵⁷ mediation and reconciliation are also dispute resolution mechanisms available for choice by the parties. In terms of ISDS institutions, the ICSID is the most preferred ISDS institution, which is also complemented by other international arbitral institutions, as considered below.

4. Global ISDS Institutions

Since the adoption of the ICSID Convention in 1965, it has formed the bedrock for the legal basis of the ISDS system. Ever since, most ISDS arbitration cases have been resolved by the International Centre for Settlement of Investment Disputes (ICSID) through the ICSID Convention and its Additional Facility.¹⁵⁸ This is so principally because almost all IIAs with ISDS provisions do normally identify the ICSID as an institution and its mechanism through which ISDS is to be carried out. Moreover, national investment-related laws identify the ICSID as the dispute settlement institution.¹⁵⁹ They also identify the ICSID Conciliation and Arbitration Rules as procedural laws governing ISDS.

¹⁵² Section 38 of the Tanzania Investment and Special Economic Zones Act (2025).

¹⁵³ *Ibid*, Section 39.

¹⁵⁴ *Ibid*, Section 40(1).

¹⁵⁵ *Ibid*, Section 40(2).

¹⁵⁶ *Ibid*, Section 40(3).

¹⁵⁷ See, for instance, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24 (Award, dated 27 August 2008) (*‘Plama v. Bulgaria’*).

¹⁵⁸ European Parliament, “Investor-State Dispute Settlement (ISDS): State of Play and Prospects for Reform,” *op. cit.*, p. 3.

¹⁵⁹ See, for example, Section 33 of the Tanzania Investment Act (2022).

However, there are other major international dispute institutions that are also chosen by the parties to IIAs to resolve investment disputes in that ‘many BITs leave to the parties the choice between the ICSID and other types of arbitration.’¹⁶⁰ Apart from the ICSID, some of the leading global arbitration institutions that administer most of the investor-state disputes include the Permanent Court of Arbitration (PCA), the International Chamber of Commerce (ICC)’s International Court of Arbitration (ICA); and the London Court of International Arbitration (LCIA). In addition, the UNCITRAL Arbitration Rules provide ‘the second most used system’¹⁶¹ through their *ad hoc* arbitration avenue. A few ISDS cases are also handled by the PCA in The Hague, the LCIA, and by international chambers of commerce and regional arbitration centres.¹⁶²

It should be noted that; since the UNCITRAL mandated its Working Group III with the topic of “Investor-State Dispute Settlement Reform” in 2017, there has been a growing debate on reforming the institutional set up of the ISDS system. Some commentators have been calling for the institutionalisation of the ISDS system.¹⁶³ In that sense, institutionalisation describes a broad spectrum of possibilities, ranging from an independent body (*e.g.*, establishing an international court or tribunal), which fulfils all court functions through its own staff, to a body that ‘forms part of an existing institution, and relies on the services of that institution for its operation.’¹⁶⁴ Indeed, there had been examples of the latter type of body – *e.g.*, the standing arbitral tribunal of the Bank for International Settlements, which was constituted in the 1930s, and the Eritrea-Ethiopia Claims Commission, which over almost a decade issued a series of 17 awards.¹⁶⁵

The call for reforming the ISDS system has mainly been triggered by the systemic challenges that currently constrain the functioning of this system, which are canvassed in Chapter Nine below. Said the challenge includes a lack of transparency within the ISDS system; inconsistency and unpredictability of decisions of arbitral tribunals operating under the ISDS; lack of public accountability, standard judicial ethics rules, and appeals processes; interference with decisions of national courts; and the unfair practice of “national shopping”. Other challenges include the contention that most-favoured-nation (MFN) provisions create the possibility that foreign investors can claim greater rights than are provided; lack of independence and impartiality; the ‘chilling effect’ on state legislative and regulatory powers; and high costs associated with arbitration conducted under the ISDS.

¹⁶⁰ European Parliament, “Investor-State Dispute Settlement (ISDS): State of Play and Prospects for Reform,” *op. cit.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.* See also Dolzer, R., and C. Schreuer, *Principles of International Investment Law* (Oxford: Oxford University Press, 2012), pp. 239–241.

¹⁶³ See, for example, Gathii, J. T. and O. H. Mbori, “Reform and Retrenchment in International Investment Law: Introduction to a Special Issue,” *Journal of World Investment & Trade*, Vol. 24, 2023, pp. 535–563.

¹⁶⁴ Permanent Court of Arbitration (PCA), “Building Blocks for a New ISDS System: Technical Challenges and Solutions”, a side event for delegates of the UNCITRAL Working Group III organized by the PCA and held at the United Nations in New York on 3 April 2019 to explore legal and institutional challenges that would arise in the creation of a new ISDS mechanism; available at <https://pca-cpa.org/isds/> (accessed 15 July 2025).

¹⁶⁵ *Ibid.*

5. Global ISDS Mechanisms

As noted above, the ISDS system operates through various institutions and mechanisms. In terms of mechanisms, ISDS is carried out through both amicable or consensual and non-amicable or non-consensual alternative dispute resolution mechanisms. In particular, amicable or consensual ISDS mechanisms are negotiation, conciliation¹⁶⁶ and mediation.¹⁶⁷ On their part, non-amicable ISDS mechanisms are adjudication (in respect of construction disputes) and arbitration.¹⁶⁸

While amicable or consensual means of dispute resolution under the ISDS arrangement include negotiation, mediation and reconciliation; non-consensual means of dispute resolution are basically adjudication (applicable in construction dispute resolution) and arbitration. However, arbitration remains the most preferred mechanism for resolving investment disputes¹⁶⁹ because of its many advantages, particularly its *finality*, *bindingness* and universal *enforceability* characteristics.

¹⁶⁶ The framework for the conduct of a conciliation proceeding is set out in the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ('the ICSID Convention'). While the main procedural provisions are contained in Chapters III and V-VII of the Convention, the conditions for the ICSID Convention-based conciliation are contained in Chapter II. Whereas Article 28 of the Convention applies to the initiation of conciliation proceedings before the ICSID, the ICSID Institution Rules (adopted by the Administrative Council of the Centre pursuant to Article 6-1--b-of the ICSID Convention) elaborate on how to institute conciliation proceedings under the Convention, including the form and contents of the Request for Conciliation. They apply to the procedural steps to be undertaken between filing a Request for Conciliation and dispatch of the Notice of Registration. Where a Request for Conciliation is registered, the ICSID Conciliation Rules, which came into effect on 1 July 2022, apply to the subsequent procedural steps. Notably, the ICSID Institution Rules do not apply to the initiation of post-Award remedy proceedings, or to proceedings pursuant to the ICSID Additional Facility Rules, the ICSID Fact-Finding Rules or the ICSID Mediation Rules.

¹⁶⁷ Pursuant to the ICSID Convention, the Administrative Council of the ICSID has adopted the ICSID Mediation Rules, which came into effect on 1 July 2022, authorizing the Secretariat of ICSID to administer mediation proceedings that involve a State, State entity or regional economic integration organization (REIO) and relate to an investment. It should be noted from the outset that; the ICSID Secretariat is the only body authorized to administer mediations conducted pursuant to the ICSID Mediation Rules. The ICSID Mediation Rules are specifically designed for investment-related disputes. In contrast to conciliation and arbitration proceedings under the ICSID Convention, parties to an ICSID mediation proceeding are not required to be a Contracting State or nationals of another Contracting State. The ICSID Mediation Rules are supplemented by the ICSID Administrative and Financial Regulations. For procedural aspects of mediation conducted under the auspices of the ICSID, see ICSID, *ICSID Mediation Rules and Regulations* (ICSID: Washington, DC, 2022); and ICSID, *Background Paper on Investment Mediation* (ICSID: Washington, DC, July 2021); available at https://icsid.worldbank.org/sites/default/files/publications/Background_Paper_on_Investment_Mediation_Oct.2021.pdf (accessed 19 July 2025).

¹⁶⁸ Most ISDS claims that are referred to arbitration are conducted under the ICSID Convention and they usually involve a State that is a party to the ICSID Convention and an investor who is "a national of another Contracting Party" to the ICSID Convention (defined under Article 25-2-of the ICSID Convention). In addition, most IIAs also provide the basis for international investment arbitration in that they recognise the ICSID as an arbitral institution for disputes arising under, or connected to, them. Notably, all the 18 existing BITs involving Tanzania recognise arbitration as a dispute resolution mechanism and the ICSID as the arbitral institution thereof. As a result, most of the arbitration cases filed against Tanzania have been commenced on the basis of the ICSID Convention and the respective BITs to which Tanzania is a State party, beginning with *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No ARB/05/22 (Award, dated 24 July 2008) ('*Biwater v. Tanzania*').

¹⁶⁹ See particularly *Plama Consortium Ltd. v. Republic of Bulgaria*, ICSID Case No. ARB/03/24 (Award, dated 27 August 2008) ('*Plama v. Bulgaria*').

6. Global Statistical Overview of ISDS Arbitration Cases

As considered above, since the first BIT was concluded in 1959 between Germany and Pakistan, there has been an unprecedented increase in IIAs. According to the World Investment Report 2024 ('WIR2024'), by the end of 2023, there were 3,291 IIAs concluded by countries and international organisations – this number encompasses 2,831 BITs and 460 treaties with investment provisions (TIPs).¹⁷⁰ In 2023 alone, 12 BITs and 17 TIPs were also concluded. In addition, the WIR2024 reports that; in 2023, 15 IIAs entered into force and 4 were terminated.¹⁷¹ Notably, these IIAs 'are largely dominated by old-generation treaties, signed in the 1990s and 2000s', most of which do contain ISDS provisions.¹⁷²

The main consequence of most IIAs containing ISDS provisions is the proliferation of ISDS cases. As the WIR2024 notes, by the end of 2023, "known" ISDS cases counted at 1,332,¹⁷³ raising from 1 in 1987 when the ICSID received its first ever ISDS case. According to the UNCTAD's Investment Dispute Settlement Navigator, out of the 1,332 "known" treaty-based ISDS cases recorded by the end of 2023, 958 were concluded, 354 were pending and 20 with unknown status.¹⁷⁴ In 2023 alone, 60 ISDS cases were filed in total, with the ICSID receiving 48 cases and other arbitral institutions receiving 12 cases. Of the 60 ISDS cases lodged in 2023, 70% were brought against developing countries (including 3 least developed countries, LDCs¹⁷⁵) and 30% of ISDS cases against developed countries.¹⁷⁶ Half of these ISDS cases concerned construction, manufacturing and extractive disputes. It should be noted that the number of ISDS cases doubled in 2013 and 2023 – only 600 cases had been lodged by 2013, but by the end of 2023, the number had reached 1,332.¹⁷⁷ It should be noted, however, that; as some arbitral proceedings conducted in the ISDS system are kept confidential, the actual number of arbitration filed in previous years is likely to be higher.¹⁷⁸

Moreover, by the end of 2023, 132 countries and one economic grouping (the European Union) were 'known to have been respondents to one or more ISDS claims'.¹⁷⁹ In the 60 ISDS cases lodged in 2023, 37 countries and one economic grouping (the European Union) were respondents.¹⁸⁰ Tanzania is one of these respondents States, as considered below. In 2023, Mexico was the most frequent respondent State, with 10 known cases, followed by Honduras, with 5 cases as well as Argentina and the Bolivian Republic of Venezuela, with 3 cases each.¹⁸¹ As the WIR2024 notes, *the largest share of claims was directed at countries in Latin America and the Caribbean, with about half of the 60 cases. In regional terms, between 1987 and 2023, respondent States in Europe*

¹⁷⁰ United Nations, World Investment Report 2024 (New York/Geneva: UNCTAD, 2024), p. 21.

¹⁷¹ Ibid, p. 22.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ UNCTAD, "Investment Dispute Settlement Navigator," available at <https://investmentpolicy.unctad.org/investment-dispute-settlement> (accessed 12 July 2025).

¹⁷⁵ The WIR2024 names the 3 LDCs as Myanmar, Senegal and Tanzania). Ibid, p. 30.

¹⁷⁶ Ibid, p. 29.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid, p. 30.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

and in Latin America and the Caribbean each accounted for about 30 percent of the total 1,332 known ISDS cases.¹⁸²

Between 1987, when the ICSID received its first ISDS case and 2023, claimants mostly invoked IIAs of five countries – Germany, Spain, the Netherlands, the UK, and the US – that constituted about 45% of the 1,332 known ISDS cases. Developed-country claimants brought most – about 75% – of the 60 known cases in 2023. The highest numbers of cases were brought by claimants from the United States (13), the United Kingdom (8) and Switzerland (5).¹⁸³

Furthermore, the *WIR2024* notes that; about 70% of ISDS cases filed in 2023 were brought under BITs and TIPs concluded in the 1990s or earlier.¹⁸⁴ In combination, the NAFTA (1992)¹⁸⁵ and the USMCA (2018)¹⁸⁶ were the most frequently invoked IIAs in 2023 in that they gave rise to 11 cases based on the so-called legacy claims under the NAFTA.¹⁸⁷ Five cases were based on the ECT (1994),¹⁸⁸ followed by the Central America-Dominican Republic Free Trade Agreement (FTA, 2004) with three cases and the Association of Southeast Asian Nations-the Australia-New Zealand Free Trade Agreement (FTA, 2009) with two cases.¹⁸⁹ Notably, between 1987 and 2023, about 20% of the 1,332 known ISDS cases invoked either the ECT¹⁹⁰ (162 cases) or the NAFTA (92) cases.¹⁹¹

In terms of the outcomes of ISDS cases, the *WIR2024* notes that; in 2023 alone, ISDS-constituted arbitral tribunals rendered at least 49 known substantive decisions in investor-State disputes, 28 of which were in the public domain at the time the *WIR2024* was released.¹⁹² In particular, ten of the public decisions principally addressed jurisdictional and preliminary objections whereby, in four of them, tribunals dismissed such objections (at least in part) and proceeded with the arbitral proceedings. In six of such cases, tribunals upheld the objections and discontinued the proceedings for lack of jurisdiction or admissibility. 18 decisions were rendered on the merits, with 9 holding the State liable for the IIA breach and 9 dismissing all investor claims.¹⁹³ In addition, 6 publicly available decisions on annulment proceedings at the ICSID were rendered with the ad hoc committees rejecting all the applications for annulment.¹⁹⁴ Between 1987 and 2023, at least 958 ISDS proceedings had been concluded, leading to different results.¹⁹⁵

It should be noted that; under the ISDS mechanism, respondent states from developing countries win by a small margin. At best, they simply avoid losing and are let off with all or a part of legal fees, which is a huge sum already. States can also settle investment disputes with investors and pay a part of the demanded sum and/or withdraw

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid, p. 31.

¹⁸⁵ The North American Free Trade Agreement (1992).

¹⁸⁶ The Agreement between Canada, the United States and Mexico (2018).

¹⁸⁷ United Nations, *World Investment Report 2024*, op. cit.

¹⁸⁸ Energy Charter Treaty (1994).

¹⁸⁹ United Nations, *World Investment Report 2024*, op. cit, p. 31.

¹⁹⁰ The Energy Charter Treaty.

¹⁹¹ United Nations, *World Investment Report 2024*, op. cit, p. 31.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

the measure targeted by the respective investors. And, if the arbitrators fully accept the investor's claim, the sum the State has to pay is always huge.¹⁹⁶ There are several institutional, operational and policy implications inherent in the ISDS mechanism. Over the years, ISDS has posed major institutional challenges resulting from, among other reasons, biased international arbitral tribunals against developing countries such as Tanzania and the judicial mindset in such countries. As such, the outcomes of an ISDS process for a capital-importing State such as Tanzania affect not only national governments, but also communities as a result of the 'regulatory chill' and 'compensation chill' as well as economic and environmental impacts.

7. Tanzania's Participation in the Investor-State Dispute Settlement System

As canvassed above, since independence in 1961 and Zanzibar's Revolution in 1964, Tanzania has entered into 20 IIAs. Currently, there are 17 active IIAs after Tanzania withdrew from the 1965 Swiss-Tanzania BIT, the Netherlands-Tanzania BIT in 2019 and the Canada-Tanzania BIT in 2023. Almost all of these BITs recognise ISDS. Tanzania is also part to several MITs and TIPs that recognise ISDS as well. In addition, Tanzania has enacted in its domestic laws specific provisions that recognise ISDS and the ICSID in particular¹⁹⁷ as well as other international arbitral fora¹⁹⁸ as the dispute settlement institutions in relation to investment disputes involving a foreign investor and the Government of Tanzania or its agencies/institutions.¹⁹⁹

Since it has consented to ISDS through the said IIAs and express provisions in its national investment and related laws, Tanzania is eligible to be sued in the ISDS for a by foreign investors. As such, Tanzania has been involved in more than a dozen "known" ISDS cases, and partly won in only 2 cases: *SCB v. Tanzania*²⁰⁰ and *Biwater v. Tanzania* (2008).²⁰¹ As considered below, by 30 June 2024, there was a total of 19 "known" ISDS cases lodged against Tanzania, 13 of them were concluded and 6 cases were pending. It should be noted, however, that; as some arbitral proceedings conducted in the ISDS system are kept confidential, the actual number of arbitration cases filed against Tanzania in previous years is likely to be higher.²⁰²

¹⁹⁶ ISDS Forum, "The Basics: Frequently Asked Questions About ISDS," *op. cit.*

¹⁹⁷ See particularly Section 33 of the repealed Tanzania Investment Act (2022).

¹⁹⁸ Whereas Section 30(1)(c)(iii) of the repealed Export Processing Zone Act (Cap. 373) recognised the rules of procedure for the settlement of disputes under the International Chamber of Commerce (ICC); Section 34 of the Zanzibar Investment Promotion and Protection Act (No. 14 of 2018) recognised the settlement of investment disputes in Zanzibar under the UNCITRAL Arbitration Rules and/or ICSID Arbitration Rules. Currently, ISDS is impliedly recognised in Section 40(2) of the Tanzania Investment and Special Zones Act (2025).

¹⁹⁹ See particularly Section 40(2) of the Tanzania Investment and Special Zones Act (2025); and Section 34 of the Zanzibar Investment Promotion and Protection Act (2018). See also Section 33 of the repealed Tanzania Investment Act (2022); and Section 30(1)(c) of the repealed Export Processing Zone Act (Cap. 373).

²⁰⁰ *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12 (Award, dated 2 November 2012) ('*SCB v. Tanzania*').

²⁰¹ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22 (Award, dated 24 July 2008) ('*Biwater v. Tanzania*').

²⁰² United Nations, *World Investment Report 2024*, *op. cit.*, p. 29.

7.1. Recently Concluded “Known” ISDS Cases between Tanzania and Investors

Of the 13 concluded cases filed against Tanzania in the ISDS system by 30 June 2025, 4 cases were either settled or discontinued, while the rest were determined on the merits.²⁰³ Of the 9 cases determined on the merits, only one was determined in favour of the respondent’s State (Tanzania)²⁰⁴ and one case was decided in favour of neither party (liability found but no damages awarded).²⁰⁵

Table 1. Recently Concluded “Known” ISDS and International Investment Contract Cases between Tanzania and Investors

No	Year of Institution	Parties	Arbitration Institution	Claim in Summary & Amount Claimed	Outcome & Amounts Granted by Tribunals	Home State of Investor/ IIA
1.	2005	<i>Stirling v. Tanzania</i> ²⁰⁶	EDF Procedural Rules on Conciliation and Arbitration (1990)	The dispute between the parties arose out of a contract for the rehabilitation of a 43 km stretch of road between Dar es Salaam (Wazo Hill) and Bagamoyo, in Tanzania under Works Contract Agreement no. 10050/98/99 dated 7 May 1999.	Decided in favour of the claimant. By a Second Corrected Partial Award made on 10/12/2009, ²⁰⁷ the Tribunal awarded the Claimant the following sums: (i) TShs. 1,719,944,778 and €6,499,357.60 for prolongation costs (Claims 1 to 3 together); (ii) TShs. 41,008,001 for late instruction for Administrative Orders (Claim 5 – b); (iii) TShs. 13,339,958 and €50,409,27 for pothole repairs (Claim 6 – a); (iv) TShs. 49,017,623 ⁴ and €185,228.65 for reimbursement of original subbase (Claim 6 – b); (v) TShs. 3,347,554 and €12,649.7	UK national

²⁰³ Mashamba, J. C., *International Investment Treaties: Their Application and Implications in Tanzania* (Dar es Salaam: DRM Co. Ltd. & LexLaw Publishers, 2025).

²⁰⁴ *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12 (Award, dated 2 November 2012) (*‘SCB v. Tanzania’*).

²⁰⁵ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22 Award, dated 24 July 2008) (*‘Biwater v. Tanzania’*). Some of the recently concluded “known” ISDS cases between Tanzania and investors can be retrieved from: <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/222/tanzania-united-republic-of/respondent>.

²⁰⁶ *Stirling v. Tanzania*, *ad hoc* Arbitration under the European Development Fund (EDF) Procedural Rules on Conciliation and Arbitration (1990) (*‘Stirling v. Tanzania’*); available at <https://jsumundi.com/en/document/decision/en-stirling-civil-engineering-limited-claimant-by-substitution-for-impresa-ing-fortunato-federici-spa-v-government-of-the-united-republic-of-tanzania-final-award-costs-and-interests-thursday-10th-june-2010> (accessed 12 July 2025).

²⁰⁷ The Second Corrected Partial Award was corrected pursuant to Article 37 of the EDF Procedural Rules on Conciliation and Arbitration (1990).

					9 for reimbursement of additional traffic maintenance (Claim 7); (vi) TShs. 193,810,482 and €732,374 for unpaid VOP diesel (Claim 8); and (vii) TShs. 248,665,524 and €1,166,819 for failure to pay certified sums (Claim 9).	
2.	2005	<i>Biwater v. Tanzania</i> ²⁰⁸	ICSID	Controlling interest in local investment vehicle companies that had concluded certain agreements with a Tanzanian public corporation, the Dar es Salaam Water and Sewerage Authority, to implement a water and sewerage infrastructure project. Amount claimed by the investor: US\$ 20.00mln.	Decided in favour of neither party (liability found but no damages awarded). Amount awarded by tribunal: US\$ 0.0 mln.	Tanzania-UK BIT (1994)
3.	2001	<i>TANESCO v. IPTL</i> ²⁰⁹	ICSID	Whether the Power Purchase Agreement (PPA) was valid.	Decision in favour of Respondent.	-70% of sharers held by Malaysian nationals. —Based on the PPA and ICSID Convention.
4.	2010	<i>SCB v. TANESCO</i> ²¹⁰	ICSID	Debt indirectly owed to SCB under a loan agreement concluded by one of its subsidiaries and a company that had contracted with a State-owned enterprise for the construction and operation of an electricity generating facility; security interests granted as security for the loan; contractual rights under several project finance agreements. Amount claimed by the investor: US\$ 118.60mln.	Decision in favour of the Respondent State.	Tanzania-UK BIT (1994)

²⁰⁸ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22 Award, dated 24 July 2008) (*‘Biwater v. Tanzania’*).

²⁰⁹ *Tanzania Electric Supply Co. Ltd. v. Independent Power (Tanzania) Ltd.* (ICSID Case No. ARB/98/8) (*‘Tanesco v. IPTL’*).

²¹⁰ *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12 (Award, dated 2 November 2012) (*‘SCB v. Tanzania’*).

5.	2014	<i>SCB-HK v. Tanzania</i>	ICSID	Claims over expropriation of Escrow monies by judicial action	Decision in favour of Claimant.	Tanzania-UK BIT (1994).
6.	2017	<i>EcoDevelopment & EcoEnergy v. Tanzania</i> ²¹¹	ICSID	Investment of the alleged US\$ 52mln. in developing 20,000 hectares of land to grow sugar cane and produce ethanol. Claims arising out of the cancellation by the Government, in 2016, of the claimants' sugar cane and ethanol project on the grounds that it would have adverse impact on local wildlife.	Decided in favour of investor. Amount awarded by tribunal: US\$164.60 mln.	Sweden – Tanzania BIT (1999)
7.	2017	<i>Acacia v. Tanzania</i> ²¹²	LCIA	Claims arising from the seizure of Claimant's more than 200 containers containing copper concentrates ('makinikia') and alleged 'aggressive tax assessment' done by the Respondent on Claimants.	Settlement reached by the parties in October 2019. Amount of settlement: US\$ 300mln. ²¹³	UK
8.	2018	<i>Sunlodge s v. Tanzania</i> ²¹⁴	PCA	Ownership of the Mikindani (or Kabisela) estate used for cattle farming activities. Claims arising out of the Government's alleged seizure of the claimants' cattle farming land in order to build a cement works and a power station. Amount claimed by the investor: US\$ 34.70mln.	Decision in favour of the Claimant. Amount awarded by the tribunal: US\$ 11.30mln.	Italy-Tanzania BIT (2001)
9.	2018	<i>Symbion Power v. Tanzania</i> ²¹⁵	ICSID	Claims arising out of the alleged unilateral suspension by the state-owned Tanzania	Discontinued after settlement by the parties.	Tanzania-UK BIT (1994)

²¹¹ *EcoDevelopment in Europe AB & EcoEnergy Africa AB v. United Republic of Tanzania* (ICSID Case No.ARB/17/33) ('*EcoDevelopment & EcoEnergy v. Tanzania*').

²¹² *Acacia Mining PLC, Bulyanhulu Gold Mine Ltd. & Pangea Minerals Ltd. v. Government of Tanzania*, LCIA Case No. UN 173686 (2017) (settled) ('*Acacia v. Tanzania*').

²¹³ This amount was in relation to settlement payment in consideration for the full, final and comprehensive settlement of all existing disputes between the Government of Tanzania (GoT) and the Acacia Group, including all ISDS cases and liability to taxation and a waiver of actual or potential claims on a mutual basis.

²¹⁴ *Sunlodge Ltd. (BVI) & Sunlodge (T) Ltd. v. The United Republic of Tanzania*, PCA Case No. 2018-09 (Award, dated 20 November 2019) ('*Sunlodge v. Tanzania*').

²¹⁵ *Paul D. Hinks, Symbion Power Tanzania Ltd. & Richard N. Westbury v. United Republic of Tanzania*

				Electric Supply Company (Tanesco) in 2016 of a 15-year power purchase agreement purportedly signed in 2015 between Symbion Power Tanzania Limited and Tanesco.	Amount Awarded through settlement: US\$ 153.43mln.	
10.	2019	<i>Saab v. Tanzania</i> 216	ICSID	Claims arising from cancellation of banking business and closure of FBME Bank Limited, a commercial bank registered in Tanzania and owned by claimants.	Discontinued	Netherlands -Tanzania BIT (2001)
11.	2019	<i>Westbury v. Tanzania</i> 217	ICSID	Shareholders in Symbion Power claim, <i>inter alia</i> , unlawful expropriation of their investment in power supply in Tanzania.	Discontinued	Tanzania-UK BIT (1994)
12.	2020	<i>Winshear v. Tanzania</i> 218	ICSID	Claims arising out of the Government's cancellation of retention licences for mineral rights issued prior to the 2018 mining regulations, following amendments to the Mining Act in 2017, and the transfer of related mining rights to the government, including those held by the claimant's local subsidiary for the SMP gold project. Amount claimed by the investor: CAD 116.10mln./US\$ 83.80mln.	Amount awarded through settlement: US\$ 30.00mln.	Canada-Tanzania BIT (2013)
13.	2020	<i>Nachingwea v. Tanzania</i> 219	ICSID	Claims arising out of the Government's cancellation of retention licences held by the claimants for the Ntaka Hill Nickel Project and the	Decided in favour of investor. IIA breaches found: indirect expropriation Amount awarded by the tribunal: US\$ 76.70mln.	Tanzania-UK BIT (1994)

(ICSID Case No. ARB/19/17 (discontinued) ('*Symbion Power v. Tanzania*').

²¹⁶ *Ayoub-Farid Michel Saab v. United Republic of Tanzania*, ICSID Case No. ARB/19/8 (discontinued) ('*Saab v. Tanzania*').

²¹⁷ *Richard N. Westbury, Paul D. Hinks & Symbion Power Tanzania Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/19/17 (discontinued) ('*Westbury v. Tanzania*').

²¹⁸ *Winshear Gold Corp. v. United Republic of Tanzania*, ICSID Case No. ARB/20/25 (Award, dated 14 July 2023) (*Winshear v. Tanzania*).

²¹⁹ *Nachingwea U.K. Ltd., Ntaka Nickel Holdings Ltd. & Nachingwea Nickel Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/20/38) ('*Nachingwea & Others v. Tanzania*').

				subsequent public tender for the joint development of areas covered by these licences without offering compensation to the claimants. Amount claimed by the investor: US\$ 76.70mln.		
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Source: Mashamba, J. C., *International Investment Treaties: Their Application and Implications in Tanzania* (Dar es Salaam: DRM Co. Ltd. & LexLaw Publishers, 2025).

7.2. Pending Arbitration Cases between Tanzania and Investors

As well as the 13 concluded “known” cases processed through the ISDS system, by 30 June 2025, there were about 6 pending “known” cases involving Tanzania, as indicated in the Table below:

Table 2: Pending “Known” ISDS Cases between Tanzania and Investors

No.	Year of Institution	Parties	Arbitration Institution	Claim in Summary	Home State of Investor/BIT
1.	2017	<i>Geita Gold & Samax v. Tanzania</i> ²²⁰	<i>Ad hoc</i> arbitration under UNCITRAL Arbitration Rules (version not specified)	Claimants challenged, <i>inter alia</i> , the legality of two laws enacted in 2017 on the sovereignty of natural wealth and resources as well as on the renegotiation of unconscionable terms of investment contracts. NB: In 2019, the proceedings were suspended indefinitely.	Samax is a South African registered company.
2.	2018	<i>Arkadia v. Tanzania</i> ²²¹	PCA	Data not available	Italy-Tanzania BIT (2001)
3.	2021	<i>Montero Mining v. Tanzania</i> ²²²	ICSID	Cancellation of mining exploration rights held under retention licences. The licences were cancelled under Regulation 21 of Mining (Mineral Rights) Regulations (GN. No. 1 of 2018).	Canada-Tanzania BIT (2013)
4.	2022	<i>Schelling v. Tanzania</i> ²²³	PCA	Claims arising from an investment relating to accommodation and food service activities	Switzerland-Tanzania BIT (2004)

²²⁰ *Geita Gold Mining Ltd. & Samax Resources Ltd. v. United Republic of Tanzania*, *Ad hoc* arbitration under UNCITRAL Arbitration Rules, 2017 (*‘Geita Gold & Samax v. Tanzania’*).

²²¹ *Arkadia Ltd. v. United Republic of Tanzania*, PCA Case No. 2018-52 (*‘Arkadia v. Tanzania’*).

²²² *Montero Mining and Exploration Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/21/6 (*‘Montero Mining v. Tanzania’*).

²²³ *Dieter Emil Schelling, Flora Netiwe Schelling, Ras Bamba Hotel Ltd., Ras Bamba Sailing Club Ltd. & Oyster Camp Ltd. v. United Republic of Tanzania* (PCA Case No. 2023-13) (*‘Schelling v. Tanzania’*).

5.	2022	<i>Von Würden Petersen v. Tanzania</i> ²²⁴	PCA	Claims arising from an investment in crop and animal production, hunting and related service activities	Denmark-Tanzania BIT (1999)
6.	2023	<i>Thomson & Pennyroyal v. Tanzania</i> ²²⁵	ICSID	Claims arising from investment in a real estate project following the cancellation of the project by the Government.	Tanzania-UK BIT (1994) & Mauritius-Tanzania BIT (2009)

Source: Mashamba, J. C., *International Investment Treaties: Their Application and Implications in Tanzania* (Dar es Salaam: DRM Co. Ltd. & LexLaw Publishers, 2025).

7.3. Sessions Learnt from “Known” Cases Determined in the ISDS System Concerning Tanzania

Several lessons can be learnt from concluded “known” cases determined in the ISDS system and those based on international investment contracts involving Tanzania. Firstly, Tanzania has not undertaken a thorough participation in negotiating for the IIAs that have ISDS clauses as well as in negotiating international investment contracts. This has resulted in badly drafted provisions, particularly those relating to ISDS. Secondly, in more than a dozen ISDS cases in which Tanzania has been involved, it has won in only 2 cases: *SCB v. Tanzania*²²⁶ and *Biwater v. Tanzania* (2008).²²⁷

Thirdly, line State ministries in Tanzania have adopted subsidiary legislation²²⁸ and undertaken decisions²²⁹ that have resulted in Tanzania’s violation of its international law obligations under IIAs leading to cases being filed in the ISDS system. Fourthly, Tanzanian courts have not been sensitive to state obligations contained in IIAs resulting in high-award ISDS cases: for example, *SCB-HK v. Tanzania* (‘the *Utamwa Ruling*’); and *Tanzania v. Sunlodges*.²³⁰ Fifthly, pursuing ISDS cases requires highly specialised legal experts (both transactional and arbitration State Attorneys). Sixthly, pursuing ISDS cases is costly and requires massive state financing.

²²⁴ *Finn Von Würden Petersen v. The Government of the United Republic of Tanzania* (PCA Case No. 2023-11) (‘*Von Würden Petersen v. Tanzania*’).

²²⁵ *Brian Malcolm Thomson & Pennyroyal Ltd. v. United Republic of Tanzania* (ICSID Case No. ARB/23/26) (‘*Thomson & Pennyroyal v. Tanzania*’).

²²⁶ *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12 (Award, dated 2 November 2012) (‘*SCB v. Tanzania*’).

²²⁷ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22 (Award, dated 24 July 2008) (‘*Biwater v. Tanzania*’).

²²⁸ See, for example, the Mining (Mineral Rights) Regulations (G.N. No. 1 of 2018). Regulation 21 of this subsidiary legislation expressly provides that: ‘21.- (1) All retention licences issued prior to the date of publication of these Regulations are hereby cancelled and shall cease to have legal effect. (2) Consequent upon the cancellation of retention licences under sub-regulations (1), rights over all areas which were subject of retention licences are hereby and without further assurance reverted to the Government.’ The operation of this provision has attracted several cases – see particularly, *Winshear v. Tanzania*, *op. cit.*; *Nachingwea v. Tanzania*, *op. cit.*; and *Montero Mining v. Tanzania*, *op. cit.*

²²⁹ See, for instance, *Biwater v. Tanzania*, *op. cit.*; *SCB-HK v. Tanzania*, *op. cit.*; *EcoDevelopment & EcoEnergy v. Tanzania*, *op. cit.*; *Sunlodges v. Tanzania*, *op. cit.*; *Symbion Power v. Tanzania*, *op. cit.*; *Westbury v. Tanzania*, *op. cit.*; and *Acacia v. Tanzania*, *op. cit.*

²³⁰ *United Republic of Tanzania v. Sunlodges BVI & Sunlodges Tanzania Ltd.*, Misc. Civil Cause No. 373B/2020: High Court of Tanzania at Dar es Salaam (Unreported) (‘*Tanzania v. Sunlodges*’).

Seventhly, amidst these adverse outcomes in ISDS, Tanzania has amended its civil procedural laws²³¹ and enacted new arbitration legislation to strengthen ADR.²³² It has also enacted new laws that require disputes concerning natural wealth and resources be determined by institutions in Tanzania.²³³ These measures are sought to mitigate the adverse impacts of the ISDS system to Tanzania. Eighthly, Tanzania has initiated a move to review the existing IIAs to see how it could overcome huge losses in ISDS cases and effectively benefit from the FDI associated with the existing IIAs concerning Tanzania. Ninthly, there is no effective coordination between the Central Government and Local Government Authorities (LGAs) in the implementation of investment undertakings relating to IIAs, a situation has resulted in a violation of certain investor rights, leading to Tanzania being sued in some ISDS cases.²³⁴

8. Conclusion and the Way Forward for Tanzania's Future Participation in the ISDS System

By way of conclusion, while Tanzania is currently striving to invite more FDI to spur its national development and the well-being of its citizens, it is important that it retains its treaty commitments and continues to discharge its obligations under the existing IIAs. However, in order to avoid the challenges facing Tanzania in relation to ISDS, Tanzania has to undertake several policies, legislative, administrative and institutional reforms so as to effectively benefit from the FDI associated with the existing IIAs concerning Tanzania. Some of these reform measures are canvassed below.

Whereas IIAs serve a positive developmental goal for both the foreign investor and the host State, they also serve as a “double-edged sword”.²³⁵ This is because of the fact that; while they can be used as instruments to attract FDI²³⁶ in developing countries such as Tanzania, IIAs bring about a “regulatory chill”²³⁷ that usually constrains the host State's policy space in exercising its legitimate policy, statutory and regulatory

²³¹ See particularly Sections 10A, 22A, and 64A-64D of the Civil Procedure Code (Cap. 33 R.E. 2022).

²³² The Arbitration Act (Cap. 15 R.E. 2020).

²³³ See particularly Section 11 of the Natural Wealth and Resources (Permanent Sovereignty) Act (No. 5 of 2017). For a discussion on this issue, see particularly Longopa, E., “Re-Affirming the Permanent Sovereignty Over Natural Resources: Implications of Emerging Legislative Trends in Tanzania, *LST Law Review*, Vol. 2, Issue No. 2, July – December, 2019, pp. 47–69.

²³⁴ See, for example, *EcoDevelopment & EcoEnergy v. Tanzania*, op. cit; and *Sunlodges v. Tanzania*, op. cit.

²³⁵ Alschner, W. and E. Tuerk, “The Role of International Investment Agreements in Fostering Sustainable Development”, in Baetens, F. (ed.), *Investment Law Within International Law: Integrationist Perspectives* (2013), p. 221.

²³⁶ Egger, P. and M. Pefaffermayr, “The Impact of Bilateral Investment Treaties on Foreign Direct Investment”, in Sauvart, K. P. and L. E. Sachs (eds.), *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties, and Investment Flows* (2009), p. 254; and the United Nations, *The Role of International Investment Agreements in Attracting Foreign Direct Investment in Developing Countries* (UNCTAD Series on International Investment Policies for Development) (Geneva: UNCTAD, 2012), p. 111.

²³⁷ The “regulatory chill” refers to situations where host States ‘settle disputes with aggrieved foreign investors at the cost of enforcing their legitimate measures aimed at protecting and developing public policies.’ See particularly Malakotipour, M., “The Chilling Effect of Indirect Expropriation Clauses on Host States’ Public Policies: A Call for a Legislative Response,” *International Community Law Review*, Vol. 22 No. 2, 2020, pp. 235–270 (DOI: <https://doi.org/10.1163/18719732-12341428>).

powers.²³⁸ Such constraints are normally manifested in the constant resort by investors to ISDS based on investor protections resulting in high-cost arbitral awards, which results in a “compensation chill”.²³⁹

Consequently, the negative ramifications of IIAs on host States have resulted in a move towards the need to create a balance between investor protections and State obligations towards the investor, on the one hand, and imposing obligations on the investor towards the host State and its nationals, on the other hand.²⁴⁰ Such investor obligations are framed in the investor’s respect of human rights, labour rights, and environmental rights, as well as an observance of positive business practices, good governance, rule of law, anti-corruption and skills development as well as the transfer of technology.

In order to ensure that the balance between investor protections and obligations is effectively implemented at the domestic level, States are required to create a conducive environment for the domestic management of IIAs. Such positive and effective management of IIAs can be realised if Tanzania adopts the following policy, legislative, administrative and institutional reform measures: (i) the adoption of positive policy options that are not in conflict with the letter and spirit of the IIAs; (ii) harmonisation of the municipal legal frameworks with IIAs; (iii) strengthening domestic regulatory frameworks relating to IIAs; (iv) creating an effective coordination of the implementation of IIAs; (v) conducting monitoring and evaluation of the implementation of IIAs; (vi) undertaking regular research, skills development and training; and (vii) carrying out public awareness on IIAs.

These areas of reform have also been aligned with the ongoing reforms of the “old-generation” treaties²⁴¹ currently being steered up by the UNCTAD.²⁴² According to the UNCTAD, although reform of the existing stock of more than 2,500 old-generation treaties²⁴³ in force today has not yet taken off on a large scale, the number of known treaty-based ISDS cases continues to grow. The vast majority of these cases are based

²³⁸ Ibid.

²³⁹ While IIAs provide legal stability and predictability to foreign investors, they also adversely impact on host States’ regulatory powers to pursue public interests. As the UNCTAD admits, this ‘can place constraints on government measures’, to pursue various developmental goals. See United Nations, *International Investment Agreements Reform Accelerator* (Geneva: UNCTAD, 2020); available at https://unctad.org/system/files/official-document/diaepcbinf2020d8_en.pdf (accessed 17 July 2025).

²⁴⁰ See, for instance, Section 32 of the Tanzania Investment and Special Economic Zones Act (2025).

²⁴¹ The UCTAD defines “old-generation” treaties as those concluded between 1959 and 2011, prior to the launch of UNCTAD’s *Investment Policy Framework for Sustainable Development* in 2012 (WIR2012). Some pre-2012 treaties already contain elements of new-generation treaties. Likewise, some treaties that were negotiated and concluded after 2012 failed to incorporate reform elements. See UNCTAD, *International Investment Agreements Reform Accelerator* (Geneva: UNCTAD, 2020) (UNCTAD/DIAE/PCB/INF/2020/8), p. 2.

²⁴² In order to steer up the reform process, in 2018, the UNCTAD introduced its *Road Map for IIA Reform*, covering, in a single package, all key aspects across IIA Reform. It recommended States and actors to focus on three phases: moving to a new generation of IIAs (“Phase 1”), modernising the existing stock of IIAs (“Phase 2”) and improving investment policy coherence and synergies (“Phase 3”). In line with this approach and focusing on expediting the modernisation of the existing stock of IIAs, UNCTAD has now introduced the “IIA Reform Accelerator”. See the United Nations, *UNCTAD’s Reform Performance Package for the International Investment Regime* (Phases 1–3) (Geneva: UNCTAD, 2018).

²⁴³ According to the *World Investment Report 2024* (‘WIR2024’), by the end of 2023, there were 3,291 IIAs (2,831 BITs and 460 TIPs) globally. See United Nations, *World Investment Report 2024* (Geneva: UNCTAD, 2024), p. 21.

on old-generation treaties: all ISDS cases initiated in 2019 and 99 per cent of the total number of known cases – virtually all cases – have been filed pursuant to treaties concluded before 2012, which typically feature broad and vague formulations and include few exceptions or safeguards favourable to the host states.²⁴⁴ This gives rise to the need for Tanzania to devise policy and legislative measures that can help in accelerating the reform of old-generation treaties and thereby reduce the risk of ISDS cases against host States' measures in pursuit of legitimate public policy objectives.²⁴⁵ This is a critical complement to the efforts of reforming the ISDS system that is ongoing in the ICSID, UNICTRAL and other fora.

Therefore, reform of the existing stock of IIAs allows States to better respond to challenges in areas such as public health, economic stability, human rights, anti-corruption and the environment. Balanced treaty reform, as advocated by the UNCTAD, 'reduces the risk of expensive and lengthy ISDS proceedings that challenge legitimate government measures. At the same time, it preserves the protective value of IIAs.'²⁴⁶ The UNCTAD notes that; although reforming existing IIAs is 'a continuous process that requires sustained efforts, it is important to act now' by including current issues in the list of priorities of the post-COVID-19 crisis policy agenda.²⁴⁷

Tanzania's recent reform in its national investment legislation has, in fact, addressed some of the challenges addressed by IIAs and the ISDS threat. While the current investment law imposes both *traditional* obligations on the State to protect foreign investors,²⁴⁸ it also imposes certain obligations on the investor, including upholding the law of the land as well as conducting investment activities in a manner that protects consumers, the environment, gender equality and develops the skills of employees.²⁴⁹ Other areas of reforms canvassed above concerning the creation of a balance between investor protection and investor obligations also need to be reformed as soon as possible to ensure that Tanzania gets the requisite benefits of FDI through IIAs, while allowing investors to get the requisite profits out of their respective investments in the country.

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²⁴⁴ United Nations, *World Investment Report 2017* (Geneva: UNCTAD, 2024) ('WIR2017').

²⁴⁵ UNCTAD, *International Investment Agreements Reform Accelerator*, *op. cit.*

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ See, for example, Sections 31, 33, 34, 35, 36 and 37 of the Tanzania Investment and Special Economic Zones Act (2025).

²⁴⁹ *Ibid.*, Section 32.

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