

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



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High-Level Preparatory Launch Event for the 14th Annual Forum of Developing Country Investment Negotiators

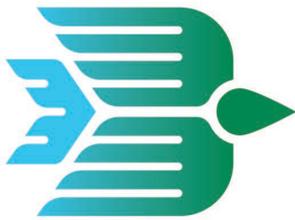
Meeting Report

Introduction

On September 14, 2021, the International Institute for Sustainable Development (IISD) and the Federal Government of Nigeria organized a High-Level Preparatory Launch Event in advance of the 14th Annual Forum of Developing Country Investment Negotiators (14th Annual Forum), to be held in early 2022 in Abuja, Nigeria. The virtual, invitation-only gathering attracted 147 participants, including 98 developing country government officials. Others in attendance included representatives of international and regional organizations (e.g., the United Nations Conference on Trade and Development [UNCTAD], the African Continental Free Trade Area [AfCFTA] Secretariat, the Caribbean Community [CARICOM], the Commonwealth Secretariat, and the South Centre). The event provided a platform for participants to share views and insights on key topics that would be further developed in the lead-up to the forum in early 2022.

Opening and Welcoming Session

Nigeria's Vice President, **His Excellency Yemi Osinbajo**, GCON, launched the event via a pre-recorded keynote address. In the message, His Excellency announced the theme of the 14th Annual Forum: "Coherence in International Investment Governance: Crafting a Holistic Approach to Investments that Work for Sustainable Development." The address contextualized the importance of investment for sustainable development—particularly in the current environment, which is rapidly changing due to the COVID-19 pandemic, climate change, and the Fourth Industrial Revolution transition. In addition, he noted that quality investments are responsible, inclusive, balanced, and sustainable. His Excellency underscored that the reform and updating of international investment agreements (IIAs) are central to these efforts and said he was pleased to note that this is a core theme of the 14th Annual Forum. He also highlighted how it was an especially opportune time for Nigeria to host the forum, given that the African continent was beginning to negotiate the AfCFTA's Investment Protocol, which will become Africa's pre-eminent IIA.



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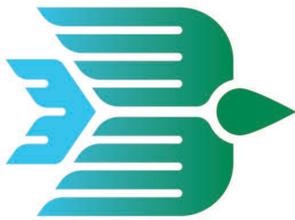
These introductory remarks were followed by a warm welcome on behalf of the Nigerian government from **Yewande Sadiku**, Executive Secretary and CEO of the Nigerian Investment Promotion Commission. She began by noting how the upcoming forum presents a unique and invaluable opportunity for developing country negotiators to engage in peer-to-peer learning, capacity development, and networking. She underscored the importance of the forum's theme and noted a need to depart from investment agreements that had not been cautiously or carefully negotiated in the past. In this regard, she said the forum would help negotiators leverage practical knowledge by learning from each other while developing new, innovative, and sustainable legal frameworks where others may not have dared. Yewande Sadiku emphasized the importance of investment reform and reiterated the need for responsible, inclusive, balanced, and sustainable investment—especially for capital-importing countries.

Following the introductory remarks, **Nathalie Bernasconi**, Executive Director, IISD Europe and Senior Director, Economic Law & Policy Program, at the International Institute for Sustainable Development (IISD), thanked the meeting host, the Federal Republic of Nigeria, as well as participants who joined from around the world. She began by reiterating how the last two decades of the investment treaty regime and investor–state arbitration had developed in parallel with—and sometimes in contradiction to—national and regional priorities and frameworks. She then noted the importance of this virtual preparatory meeting, emphasizing the value of participants having an opportunity to exchange ideas on relevant issues in the lead-up to the physical meeting in Abuja.

As a precursor to the next session, which outlined the roadmap to the 14th Annual Forum, participants had the opportunity to watch a [promotional video](#). The video highlighted the unique value of the forum and key achievements that have resulted from years of collaboration through the annual event, and anticipated ambitions for the future.

On the Road to Abuja - Introductory remarks from the hosts

In a pre-recorded video, the Honourable **Richard Adeniyi Adebayo**, Federal Minister of Industry, Trade and Investment of Nigeria, and **Yewande Sadiku** highlighted the ways in which Nigeria had prioritized coherence in its investment laws and policies to ensure sustainable development outcomes. They described the steps taken in the reform process to ensure coherence at three levels of their investment governance frameworks: investment contracts, national laws, and IIAs. They emphasized the country's ambition to attract investments that were responsible, inclusive, balanced, and sustainable (RIBS) in order to meet national development aspirations. Both speakers further examined the reforms undertaken in Nigeria to ensure coherence and noted how they had undertaken the modernization and renegotiation of old bilateral investment treaties. The development of a new model investment treaty, they explained, reflects modern best practices in investment treaty drafting. The speakers also emphasized how critical it is to engage developing



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countries in policy reforms at the international level and ensure that their voices are heard and that processes at the international level reflect their aspirations as developing and emerging economies.

Panel Discussion: What to expect at the 14th Annual Forum

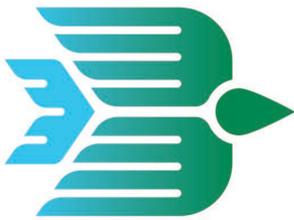
Following the preparatory event's introductory remarks, three panel discussions took place to address expectations for the 14th Annual Forum. IISD's **Suzy Nikièma**, Sustainable Investment Lead, IISD, introduced the panel discussion portion of the event by first reiterating the theme of the 14th Annual Forum and explaining why it is important and relevant. Building on the theme of the 13th Annual Forum hosted by the government of Thailand, she noted that the issue of coherence in international governance is increasingly relevant. This relevance, she noted, is due to the multiple and diverse reform processes currently underway at the national, regional, and global levels. The fast pace of change affecting these processes underscores the importance of addressing reforms and developing a roadmap at the 14th Annual Forum.

Moderated by **Sarah Brewin**, Senior Law Advisor and Advisory Services Coordinator at IISD, this segment of the virtual preparatory launch event included three panel discussions that unpacked the three thematic topics to be covered during the 14th Annual Forum. She noted that the main objectives were to unpack the central theme of coherence in investment governance in light of recent developments and give an overview of the specific topics to be discussed in detail in Abuja. Furthermore, the panel reflections would prompt and shed light on immediate actions government officials could take in anticipation of the physical forum in Nigeria.

Panel 1 | Setting the Context: Recent developments

For the first panel discussion, participants heard from a distinguished panel of speakers regarding the recent developments and trends in international investment policy. This is a regular component of each annual forum.

Hamed El Kady, Senior Investment Policy Officer in charge of the IIA workstream at UNCTAD, began by examining how the COVID-19 pandemic had affected trends in negotiation, renegotiation, and the termination of investment treaties. He noted that investment policy-making was at a critical juncture, with general mindsets shifting away from investment protection alone and toward instruments that regulate investments proactively. In his view, state efforts should focus on reforming their current stock of investment treaties. In light of the impact of the COVID-19 pandemic, he noted that the crisis has not disrupted international reform efforts but has instead allowed countries to reflect on and reform their existing treaties.



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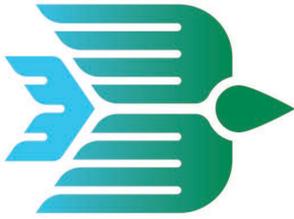
Daniel Uribe, Lead Programme Officer at the South Centre, outlined the various initiatives and processes on investment that are ongoing at the multilateral level and examined the key recent multilateral processes that developing countries need to pay attention to in the coming months. While reflecting on the various ongoing multilateral processes, he recommended that countries focus their resources on negotiations that align and are coherent with national priorities. Regarding the discussion on investment facilitation at the WTO, he cautioned that countries should carefully collaborate with each other to avoid unwanted interactions with existing international investment treaties.

Quynh Vu, Deputy Director General, Department of Legislation, Ministry of Planning and Investment, Vietnam, highlighted that the increased use of online platforms for meetings and colleague collaboration was one of the biggest changes facing investment negotiations. She noted that large global negotiations had moved to online platforms, resulting in new challenges and opportunities for developing countries. Quynh Vu noted that the biggest challenges for virtual negotiations are the lack of interpersonal contact and the need to compress negotiations into short time frames. This missing element, she said, is particularly challenging for single-issue discussions. Nevertheless, important opportunities emerging from this virtual trend, she noted, include the greater participation of developing countries in the United Nations Commission on International Trade Law (UNCITRAL) Working Group III negotiations and the inclusion of younger negotiators in multilateral processes.

Sarah Brewin noted that participants at the 14th Annual Forum would have the opportunity to discuss recent developments in investment policy-making reform and dispute settlement in the context of the COVID-19 pandemic and beyond. These topics include global FDI trends; new approaches to treaty negotiations, renegotiations and terminations; new investment treaty models; and the challenges and opportunities of virtual negotiations.

Key recommendations made by the panelists as an immediate next step to better understand and engage with the recent developments included:

- As a priority, governments should continuously address the issue of reforming their existing generation of IIAs through renegotiating or amending existing treaties, among other available options. This could be done by reimagining typical treaty provisions to align them with the chosen national development objectives.
- Governments should carefully consider the regional level when engaging in negotiating new treaties to ensure greater coherence.
- Developing country governments should foster greater collaboration among themselves to increase visibility in multilateral forums.
- Governments can leverage the opportunities presented by the new virtual environment to enhance their participation in negotiations while training new investment treaty negotiators in the specificities of virtual negotiations.



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Panel 2 | Unpacking the Theme: Coherence in investment governance policy-making

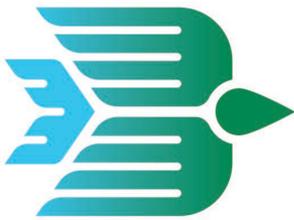
The second panel discussion delved into coherence in investment governance policy-making, a key component of the theme of the 14th Annual Forum. Participants heard from a distinguished panel of speakers on related critical issues.

Chantal Ononaiwu, Trade Policy and Legal Specialist, Office of Trade Negotiations of CARICOM, highlighted one of the current trends in the negotiation of regional and mega-regional investment instruments. She noted why this is important from a regional integration perspective and why ensuring coherence between regional and national levels is crucial for investment governance. In exploring the role that regional investment instruments play in achieving such coherence, she noted the importance of standard-setting for participating countries to avoid harmful competition when attracting investment. She stressed that such standard-setting instruments allow states to better coordinate their positions and serve as starting and reference points for harmonized negotiation positions in multilateral forums.

Roslyn Ngeno, Senior Investment Expert, AfCFTA Secretariat, examined the main opportunities and key challenges facing developing countries when working toward coherence between the national, regional, and continental levels. She explained that the AfCFTA Investment Protocol could present an opportunity to enhance coherence and foster inclusive growth. On a more general note, she encouraged countries to define and focus on their main objectives and to venture further when innovating and reimagining investment policy. By adopting a continental approach, states have an opportunity to design policies that promote, facilitate, protect, and regulate investments for sustainable development while safeguarding their right to regulate.

Makane Moïse Mbengue, Professor of International Law at the University of Geneva, spoke about the current IIA regime and noted how it could be seen as non-compatible with other branches of international law, such as human rights or environmental law. He highlighted how the existing inconsistencies are problematic for investment governance and undermined sustainable development. In exploring why, he said it is especially important for developing countries to address horizontal coherence. He noted various multilateral initiatives, including a binding instrument on business and human rights and a convention on the right to development, both currently being negotiated by the UN General Assembly Human Rights Council and the UNCTAD Policy Framework on Sustainable Development. In view of the upcoming 14th Annual Forum in Abuja, he encouraged countries to develop more effective strategies to enhance coherence in investment governance.

Sarah Brewin noted that participants at the in-person event would have the opportunity to discuss the need for and importance of coherent policy-making. At a vertical level, this entails interaction among IIAs, domestic laws, and contracts across the full life cycle of an investment—from



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



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investment screening to eventual exit. At the horizontal level, this implies the interaction of investment law with other branches of international law, ranging from human rights to environment to taxation.

Key recommendations for immediate next steps to improve the coherence of investment policies at national, regional, or international levels include:

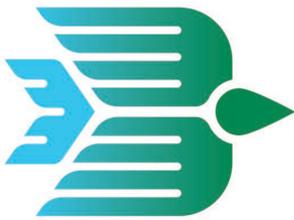
- Governments should meaningfully engage in and contribute to deliberative and consultative processes on investment governance at regional integration initiatives.
- As countries further develop their national frameworks for investment governance, they should consider how to draw on and incorporate important practices that may be applicable at the regional level.
- Governments should leverage the AfCFTA Investment Protocol and regional initiatives to address the inconsistencies of treaties at the national, regional, and continental levels.
- Governments should move from internal coordination among investment policy-makers to external, inter-sectoral coordination with other stakeholders in areas such as human rights, anti-corruption, climate, and environmental policy.

Panel 3 | Unpacking the Theme: Coherence in investment dispute settlement reforms

One of the critical and priority issues that will be discussed at the 14th Annual Forum under the topic of coherence is the issue of investment dispute settlement reform. Participants heard from the distinguished panel of speakers on related critical issues.

Ana María Ordoñez Puentes, Director, International Legal Defense Directorate of the National State Legal Defense Agency of Colombia, noted that various observers are still collecting, watching, and analyzing how COVID-19-related investor–state dispute statistics are progressing at the global level. Due to the economic impact of the crisis and the subsequent challenges resulting from resource scarcity, Colombia has adopted a new strategy to defend the investor–state dispute settlement (ISDS) claims that it is currently facing (e.g., by relying solely on internal capacities).

Naa Lamle Orleans-Lindsay, Head of Legal Division, Ghana Investment Promotion Centre, noted how developing countries have, on some occasions, adopted different—and even inconsistent—approaches to investor–state dispute mechanisms in their investment contracts, domestic laws, and investment treaties. She reflected on the main challenges this could pose in investment dispute management and resolution at the country level and noted why it is important to address coherence in this regard. In particular, she drew participants’ attention to the high costs of ISDS, the frequent imbalance of rights and obligations between investors and states, and the difficulty of developing comprehensive investment facilitation strategies at a national level in light



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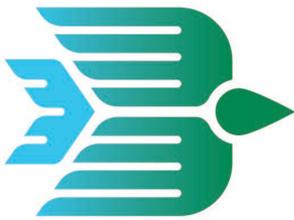
of scarce resources. In her view, heightened coherence would lead to greater transparency and predictability, reducing the number and frequency of disputes. It would also enable countries to develop medium- and long-term strategies, therefore taking a lead role in determining investment governance at the contract, treaty, and legislative levels. She expressed hope that the AfCFTA Investment Protocol would contribute to these objectives.

Opeyemi Abebe, Head of the Trade Competitiveness Section of the Commonwealth Secretariat, outlined several ongoing processes that involve the reform of ISDS at the multilateral and mega-regional levels. She listed three key processes that developing countries would need to follow closely or engage in: the current modernization of the Energy Charter Treaty (which developing countries are increasingly invited to accede to), reform of ICSID's procedural rules, and the UNCITRAL Working Group III process on ISDS reform. She noted that participating in the redesign of procedural rules is crucial for developing countries because of the likelihood of these countries facing claims based on these rules. Taking the example of the Multilateral Investment Court as proposed in UNCITRAL Working Group III, she expressed concern over countries having their disputes adjudicated in a court that they did not help design. Lastly, she cautioned that developing countries should consider the termination of intra-EU bilateral investment treaties as a helpful precedent when addressing inconsistencies between the local-, regional-, and continental-level agreements.

Patience Okala, Director, Legal Services of the Nigerian Investment Promotion Commission, spoke to the various ongoing issues and reform processes at the national, regional, and multilateral levels. She noted the key challenges that require immediate solutions and the areas that developing countries need to prioritize when working at the national, regional, or multilateral level—and why they are important. In particular, she highlighted the need to reform existing treaty texts to put greater emphasis on the prevention of disputes, the need to address the issue of excessive damages through concrete treaty text proposals at the regional level, and the need to prevent the increased use of third-party funding.

Sarah Brewin noted that participants at the 14th Annual Forum would have the opportunity to discuss recent COVID-19-related arbitration cases, as well as how ongoing processes and developments on dispute prevention and resolution can help achieve coherent outcomes that fulfil the sustainable development objectives and priorities of developing countries. Key issues include damages, dispute prevention, and what and how to prioritize in some of the multilateral processes and regional negotiations looking at ISDS reform. Participants will also share information on initiatives by countries and regional bodies to prevent or mitigate ISDS risks during the pandemic.

Key recommendations on how to prioritize and allocate resources in various reform processes so they can achieve effective results on ISDS reform despite resource scarcity include:



14th Annual Forum of Developing Country Investment Negotiators

ABUJA, NIGERIA



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- Governments should optimize resources in defence of ISDS claims, which may include enhancing internal capacity and relying more on such internal capacities.
- Governments should prioritize strategic reform processes where outcomes would have larger impacts on developing countries. In addition, they should engage and push for reforms in the right direction, given resource scarcity.
- Governments should identify and focus predominantly on strategic topics that are discussed as part of these processes and prioritize topics that would make a real difference for developing countries (e.g., excessive damages).
- Governments should involve different government agencies in these processes by integrating them into the delegations representing the participating country.
- Governments should use Regional Economic Communities (RECs) as a forum to discuss and confirm positions of engagement on ISDS reform, with the goal of concentrating resources and speaking with a common voice on ISDS reform.
- Governments should build capacity among investment treaty negotiators by leveraging the virtual format of negotiations to gather data and achieve inter-agency coherence.

Looking Forward: Preparing for the 14th Annual Forum

In the next segment of the virtual launch, **Joe Zhang**, Senior Law Advisor at IISD, provided guidance on the preparatory process in the lead-up to the 14th Annual Forum and responded to logistical queries and questions coming in from the participants. He noted that the final dates and format of the forum would be communicated in due course.

Closing Remarks

In concluding the virtual launch of the 14th Annual Forum, **Suzy Nikièma** encouraged all participants to remain engaged as they consider recommendations made during the various panel discussions and begin preparations for the in-person event. Furthermore, she suggested that negotiators continue to take incremental steps toward greater coherence in international investment regimes. Examples of such steps include developing a new model treaty, capitalizing on regional experiences and approaches, and assessing dispute resolution provisions in their laws, contracts, and treaties. She expressed the hope that the 14th Annual Forum would lead to concrete outcomes and help developing country investment negotiators move toward sustainable international investment.

In her closing remarks, **Patience Okala** thanked IISD, experts, panelists, and other participants for contributing to and participating in the preparatory launch. On behalf of the Federal Government of Nigeria, she expressed her hope that many participants at the virtual event would be able to attend the Abuja forum in person. She closed by promising a productive and hospitable environment for all attendees.