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Assessing the Challenges and Prospects of Ethiopia's Ratification of the International Centre for Settlement of Investment Dispute (ICSID) Convention

A Thesis Submitted to Addis Ababa University, College of Law and Governance Studies, School of Law in Partial Fulfillment of LL.M Degree in Public International Law

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Declaration

I, Yididiya Tesfaye, hereby declare that this paper on " Assessing the Challenges and Prospects of Ethiopia's Ratification of the International Centre for Settlement of Investment Dispute (ICSID) Convention. I also declare that all sources used in this study have been duly acknowledged.

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List of Abbreviations and Acronyms

- ACB African Central Bank
- AfCFTA African Continental Free Trade Area
- AIB African Investment Bank
- AMF African Monetary Fund
- AU African Union
- BITs Bilateral Investment Treaties
- COMESA Common Market for Eastern and Southern Africa
- EIC Ethiopian Investment Commission
- EU European Union
- FDI Foreign Direct Investment
- FDRE Federal Democratic Republic of Ethiopia
- FET Fair and Equitable Treatment
- GATS General Agreement on Trade in Services
- ICSID International Centre for Settlement of Investment Disputes
- ISDS Investor-State Dispute Settlement
- MIGA Multilateral Investment Guarantee Agency
- MoFA Ministry of Foreign Affairs of FDRE
- UNCITRAL United Nations Commission on International Trade Law
- WTO World Trade Organization
- OECD Organization for Economic Co-operation and Development

Abstract

The International Centre for Settlement of Investment Disputes (ICSID) plays a vital role in addressing the growing concerns of host states and foreign investors in resolving investment-related disputes. As Ethiopia continues to attract investors from around the world, the need for reliable and effective dispute resolution mechanisms becomes increasingly critical. One such mechanism is ICSID, which offers a neutral and internationally recognized forum for investment dispute resolution. However, despite its potential advantages, Ethiopia has not yet ratified the ICSID Convention.

This study aims to assess the challenges hindering, and the prospects supporting, Ethiopia's ratification of the ICSID Convention. To achieve this objective, the researcher employed doctrinal research methodology. The analysis focused on international and domestic legal frameworks governing investment disputes, with particular attention to the ICSID Convention. Additionally, interviews were conducted with officials and experts from the Ethiopian Investment Commission (EIC), the Ministry of Foreign Affairs (MoFA), and the Ethiopian Federal High Courts.

The findings reveal that Ethiopia's reluctance to ratify the ICSID Convention is shaped by legal uncertainty, lack of institutional preparedness, and risks tied to international arbitration exposure. However, the study also identifies growing momentum for reform, driven by the need to attract quality FDI, address investor concerns, and enhance credibility through a more predictable investment dispute resolution framework.

The study concludes by recommending key government institutions particularly the MoFA, Ministry of Justice and the EIC work closely with legal and policy experts to build institutional readiness and legal clarity. Rather than pushing for ratification in isolation, Ethiopia should first strengthen the enforcement of its domestic dispute mechanisms and gradually align its dispute resolution mechanisms with international standards. This measured approach would not only protect national interests but also boost investor confidence and elevate Ethiopia's credibility on the international stage.

Keywords:

Dispute Resolution, ICSID, Investment, FDI, Ethiopia.

Chapter One

1. Introduction

1.1. Background of the study

In today's globalized world, foreign investment plays a vital role in sustaining the global economy by generating employment, advancing technological innovation, and boosting productivity in both developed and developing countries.[1] Recognizing these benefits, many developed nations have committed substantial resources to adopt outward-looking, export-oriented development strategies in an effort to restore and maintain economic stability.[2] As part of these strategies, developed countries actively encourage their domestic investors and multinational corporations to invest abroad, particularly in developing countries and, in some cases, in strategically significant developed economies.[3] These outward foreign direct investments (FDIs), while contributing to global capital flows and economic cooperation, naturally give rise to legal and commercial disputes between foreign investors and host states. Traditionally, such disputes have been addressed through the domestic legal systems of the host countries.

However, domestic regulations may not always provide sufficient guarantees for the protection of foreign investors' rights and privileges, especially when national interests, political instability, or institutional weaknesses interfere with fair adjudication.[4] In response to these concerns, a set of international standards and dispute resolution mechanisms has been developed to ensure impartiality, consistency, and predictability in the treatment of foreign investors.

An essential component of modern investment governance, particularly in developed countries, is the Investor-State Dispute Settlement (ISDS) mechanism, which is typically embedded within bilateral and multilateral investment treaties.[5] ISDS mechanisms aim to strike a balance between protecting the rights of foreign investors and preserving the host state's sovereign right to regulate in the public interest. However, despite its intended purpose, ISDS has often been a subject of

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[1]John Chukwudi Anyanwu, "*Determinants of foreign direct investment inflows to Africa, 1980-2007*.", Abidjan: African Development Bank Group, 2011.
[2]Jain, Amit Kumar, Upendra Nabh Tripathi, and Vinita Katiyar, "*An Overview on Indian Diaspora in Africa*", Educational Quest 8(1), 2017, P. 17.
[3] Ibid.
[4] John Chukwudi Anyanwu, *supra* note 1.
[5] Ibid.

controversies. Dispute resolution under ISDS faces persistent challenges, particularly due to ambiguities in policy-making, inconsistent interpretations of treaty provisions, and the inherent tension between investor protections and the regulatory autonomy of states.[6] In response to the growing need for a structured and impartial framework to resolve investment disputes, the International Centre for Settlement of Investment Disputes (ICSID) was established in 1965 as an intergovernmental institution under the auspices of the World Bank through the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Hereinafter to referred as the "ICSID Convention"). ICSID lies at the heart of the ISDS system, offering a neutral forum for arbitration between states and foreign investors.[7]

Although Ethiopia has signed the ICSID Convention in 1965 and undertaken various policy reforms as well as introduced investment laws since the early 1990s to attract foreign investment, it remains a non-contracting party to the ICSID Convention due to the lack of ratification. This decision restricts Ethiopia's access to an internationally recognized dispute resolution forum and potentially affects its ability to offer credible guarantees to foreign investors while safeguarding national legal and policy interests.[8] This situation raises a fundamental policy and legal question that deserves critical examination. Therefore, this study seeks to assess the challenges and prospects of Ethiopia's jurisdiction in relation to the ratification of the ICSID Convention. The research aims to explore whether Ethiopia can benefit from becoming a contracting state, and how such a decision might affect its legal sovereignty, investment climate, and broader economic interests with particular emphasis on the legal implication of the decision.

1.2. Statement of problem

Today, most countries recognize investment arbitration particularly through mechanisms like ICSID as a preferred method for resolving investor-state disputes. In response, many states are actively reforming their international investment agreements to align with the ICSID framework, while others either embrace or deliberately exclude it based on their strategic interests. These

[6] Razeen Sappideen, and Ling Ling He., "*Dispute resolution in investment treaties: balancing the rights of investors and host states.",* Journal of World Trade 49(1), 2015.
[7] Yarik Kryvoi, "*International centre for settlement of investment disputes (ICSID*)", 2023, PP.1-432.
[8] Endryas Tekalegn, "*Evaluating Investor-State Dispute System under Ethiopia's Bilateral Investment Treaties: Looking a Workable Roadmap*," Beijing L. Rev. 10, 2019, P.115.

diverse global developments make it increasingly important to understand the role and influence of ICSID, an institution that significantly shapes the international investment climate.[9]

Despite having signed multiple bilateral investment treaties (BITs) that reference ICSID, Ethiopia has yet to ratify the ICSID Convention. This legal gap presents a critical obstacle to the country's ability to effectively attract and retain foreign investment, as well as to provide credible, neutral avenues for dispute resolution despite the presence an ample of domestic laws protecting FDIs. Ethiopia's position raises important questions about the compatibility between its national legal system and the ICSID framework, and how this disconnect may impact its investment climate.[10] This study, therefore, seeks to examine the challenges associated with Ethiopia's non-ratification of ICSID Convention, the potential legal and institutional barriers within its jurisdiction, and the broader implications for aligning its domestic laws with international standards as well as other similar issues that remain underexplored in existing literature.

1.3. Research question

Based on the above statements of the problem, the thesis will attempt to address the following key research questions.

- What alternative dispute resolution mechanisms does Ethiopia currently use for investment disputes, and how do they compare to ICSID arbitration in terms of efficiency and enforceability?
- What are the key legal and institutional challenges that have prevented Ethiopia from ratifying the ICSID Convention?
- How does the absence of ICSID Convention ratification impact foreign direct investment (FDI) inflows and investor confidence in Ethiopia?
- What are the potential prospects and the legal and administrative benefits for Ethiopia if it ratifies the ICSID Convention?

1.4. Objective of the Study

The general objective of the study is to assess the challenge and prospect for Ethiopia ratifying the ICSID Convention. The specific objectives of the study are.

- Identify the alternative dispute resolution mechanisms that Ethiopia currently uses for

[9] Yarik Kryvoi, *supra* note 7.
[10] Ibid.

investment disputes and compare their efficiency and enforceability to ICSID Convention.

- Examine the key legal and institutional challenges that have prevented Ethiopia from ratifying the ICSID Convention.
- Scrutinize the impact on FDIs inflows and investor confidence in Ethiopia with the absence of ICSID Convention ratification.
- Assess the potential legal and administrative benefits and challenges for Ethiopia if it ratifies the ICSID Convention.

1.5. Research Methods

1.5.1. Research Methodology

This thesis adopts a doctrinal legal research approach, which is expository in nature and focuses on analyzing the challenges and prospects of Ethiopia's ratification of the ICSID Convention. As noted by Wondimagegn, doctrinal legal research, often referred to as "research in law", is the traditional and foundational method of legal inquiry.[11] It primarily involves analyzing legal rules and principles with the objective of assisting legal practitioners in resolving legal problems, guiding judges and decision-makers in adjudication, and advising policymakers on potential legal reforms.[12] Accordingly, this study employs doctrinal, theoretical, and reform-oriented legal research methods. It utilizes key tools such as legal analysis, legal synthesis, methods of legal interpretation, and legal reasoning to provide a comprehensive understanding of the research questions.

1.5.2. Methods of Data Collection

To complement the doctrinal legal research, the researcher conducted semi-structured interviews with key officials from selected government institutions, namely the Ministry of Foreign Affairs (MoFA), the Ethiopian Investment Commission (EIC), and the Federal Democratic Republic of Ethiopia (FDRE) Federal High Court (FHC).

The purpose of these interviews was to obtain practical insights into Ethiopia's investment strategies, dispute resolution practices, and the potential legal implications, challenges, and prospects that may arise if Ethiopia proceeds to ratify the ICSID Convention. Each institution was

[11] Wondemagegn Tadesse, "*Legal Research Tools and Methods in Ethiopia*", Published in Journal of Ethiopian Law, Vol. XXV No. 2, September 2012, P. 7-8
[12] Ibid.

selected based on its mandate and relevance to the subject matter: MoFA for foreign policy and treaty considerations, EIC for investment policy and promotion, and FHC for judicial perspectives on international dispute settlement and compatibility with domestic law.

1.5.3. Sources of Data

This study utilizes both primary and secondary data sources to effectively address the stated research objectives. Primary data was collected through an examination of the legal and policy frameworks of the EIC and other relevant government institutions. In addition, structured interviews were conducted with key informants, including one official from the MoFA, two from the EIC, and two from the FHC. These interviews provided practical insights into the legal and institutional considerations surrounding Ethiopia's potential ratification of the ICSID Convention. Secondary data was gathered from a wide range of sources, including books, journal articles, academic theses, newspapers, and reports from governmental and non-governmental organizations. These materials were comprehensively reviewed and analyzed to support the doctrinal and reform-oriented nature of the research.

1.6. Scope of the study

The primary objective of the study focuses on assessing the challenge and prospect of Ethiopia in ratifying the ICSID. It incorporated the treaties and conventions that provide context to ICSID from the context of Ethiopia. Hence, the study does not cover other types of treaties that do not have a relationship with the issue under study. Accordingly, the study examines Ethiopia's investment-related legal and policy frameworks, as well as its engagement with international agreements that provide a foundation or reference to ICSID. It does not extend to other international treaties or conventions that are unrelated to the settlement of investment disputes or that fall outside the specific scope of ICSID Convention ratification.

1.7. Significance of the study

This study provides valuable insights into the legal and institutional dimensions of the ICSID Convention and its relevance to Ethiopia. By analyzing the challenges and prospects of ICSID Convention ratification, the study contributes to a deeper understanding of how Ethiopia can strengthen its legal framework for managing international investment disputes. Moreover, the findings of this research may assist policymakers and legal practitioners in designing more

effective mechanisms for investor protection, thereby contributing to legal reform and institutional development. The study also proposes alternative strategies for mitigating legal and investment-related risks, which could help enhance Ethiopia's credibility and attractiveness as a destination for FDIs.

1.8. Structure of the paper

This thesis is organized into five chapters. Chapter One provides a general introduction, including the background of the study, statement of the problem, objectives, research questions, methodology, scope, and significance. Chapter Two presents an overview of the international legal framework for investment dispute resolution mechanisms and the ICSID legal and institutional framework and outlines the foundation that guides the analysis. Chapter Three examines Ethiopia's legal and institutional framework for FDIs and its Dispute Resolution Mechanisms. Chapter Four analyzes the data collected through doctrinal methods and interviews, presenting the key findings in relation to the research objectives. Finally, Chapter Five concludes the thesis with a summary of the main findings and offers recommendations for legal and policy reform.

Chapter Two

2. The International Legal Framework for Investment Dispute Resolution Mechanisms and the ICSID Legal and Institutional Framework

2.1. Overview of International Investment Disputes

In the modern global economy, international investment plays a vital role in facilitating cross-border economic development and cooperation.[13] Disputes are almost inevitable across various stages of FDI from market entry and operational implementation to project exit or termination. These conflicts may arise over issues such as regulatory changes, expropriation, breaches of contract, discriminatory treatment, or unfair administrative practices.[14]

Historically, foreign investors had limited options when disputes emerged. They were often compelled to rely on the host state's domestic courts, which raised concerns over impartiality, jurisdictional bias, or lack of technical expertise in transnational investment matters. Alternatively, they had to appeal to their home governments to engage in diplomatic protection or political intervention, which was unpredictable and lacked legal certainty.[15] To address these structural challenges and reduce risks to investors, the international community gradually established investor-state dispute settlement (ISDS) mechanisms that provide neutral, third-party arbitration outside domestic legal systems. Among these, the International Centre for Settlement of Investment Disputes (ICSID), established in 1965 through the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) under the auspices of the World Bank, emerged as the leading institution.[16]

ICSID offers a depoliticized, rules-based forum for resolving disputes based on the consent of the parties, particularly where states have entered into bilateral or multilateral treaties that reference ICSID arbitration. Beyond its own framework, ICSID also provides administrative and procedural support in arbitrations conducted under other rules such as those of the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), and the

[13] Rahmonov, J., *"Investor-State Dispute Settlement in International Public Law: A Critical Assessment and Future Directions*", Tamaddun Nuri Jurnali, *9*(60), 2024, pp.430-432.
[14] Yarik Kryvoi, *supra* note 7.
[15] Ibid.
[16] Ibid.

Permanent Court of Arbitration (PCA).[17] Its central role reflects the broader international commitment to fostering a predictable, impartial, and enforceable investment dispute resolution system, which is essential to protecting foreign investment and maintaining investor confidence.[18]

2.2. Core International Legal Principles Governing Foreign Direct Investment

2.2.1. Fair and Equitable Treatment (FET)

Fair and Equitable Treatment (FET) has emerged as one of the most fundamental principles of international investment law, serving as a cornerstone for the protection of foreign investors. As a non-contingent standard, FET guarantees a minimum level of treatment independent of how a host state treats its own nationals, thereby offering a crucial layer of legal security to investors operating in foreign jurisdictions. [19] The principle is now a central component of nearly all modern bilateral and multilateral investment treaties and is frequently invoked in investor-state arbitration.[20]

Indeed, FET has become the most litigated standard in international investment disputes.[21] However, despite its prominence, arbitral tribunals have interpreted the scope and application of FET inconsistently, resulting in a fragmented body of jurisprudence. This lack of uniformity has led to unpredictable outcomes, undermining legal certainty and raising concerns about the equitable administration of justice in investment arbitration.[22]

2.2.2. Umbrella Clause

The umbrella clause, commonly found in many bilateral investment treaties,[23] obliges host states to honor commitments made to foreign investors, including contractual undertakings.[24] It effectively elevates state-investor agreements to the level of treaty obligations, thereby offering an added layer of legal protection. While traditionally seen as a safeguard against arbitrary state

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[17] *See more* ICSID, The ICSID Caseload Statistics Issue 2012-2, P.9.
[18] Yarik Kryvoi, *supra* note 7.
[19] See UNCTAD, *World Investment Report* (United Nations, 2013) 101.
[20] Jus Mundi, "Fair and Equitable Treatment, Full Protection and Security, and War Clauses" https://jusmundi.com/fr/document/publication/en-fair-and-equitable-treatment-full-protection-and-security-and-war-clauses "accessed 20 February 2025".
[21] Schreuer, C., "*Fair and equitable treatment in arbitral practice*", The Journal of World Investment & Trade, 6(3), 2005, pp.vii-386.
[22] Perera, S.M., "*Equity-based decision-making and the fair and equitable treatment standard: lessons from the Argentine investment disputes–part I*.", The Journal of World Investment & Trade, *13*(2), 2012, pp.210-255.
[23] Douglas, Z., "*The Umbrella Clause Revisited*", ICSID Review Foreign Investment Law Journal, *38*(2), 2023 pp.472-483.
[24] Sinclair, A., "*Umbrella Clause in International Investment Law"* (pp. 887-958). February 2015.

interference, recent investment treaty reforms have questioned its scope, viewing it as a potential constraint on the state's sovereign right to regulate.[25]

As a result, many modern treaties have either omitted or limited the clause, reflecting a broader shift toward balancing investor protection with regulatory autonomy.[26] Similarly, other investor protection tools like war clauses (or compensation-for-losses clauses) have seen limited invocation, as they apply only in exceptional situations such as war or civil unrest.[27]

2.2.3. Non-Discrimination Principles

Non-discrimination is a foundational principle in international trade and investment law, ensuring that foreign investors are treated equally without unjustified distinctions.[28] The usage of the principle in investment treaties provides for equal treatment of foreign investors in the realm of international investment.[29] In investment treaties, this principle is embodied through the Most-Favored Nation (MFN) and National Treatment (NT) obligations.[30]

MFN requires a state to treat investors from one treaty partner no less favorably than those from any other, while NT ensures foreign investors receive treatment no less favorable than that accorded to domestic investors in like circumstances.[31] Although widely adopted, the interpretation of "like circumstances" or "less favorable treatment" varies across cases, often hinging on the regulatory intent of the host state. This makes the application of the non-discrimination standard both crucial and complex in investor-state arbitration.[32]

2.2.4. Other Core Principles of Investment Protection

In addition to fair and equitable treatment, non-discrimination, and umbrella clauses, international investment law is built upon several other foundational principles that aim to balance investor

[25] Douglas, Z., *Supra* note 23.
[26] Carroll, L., "*What Place Does an Umbrella Clause Have in the New Generation of Bilateral Investment Treaties?*" 2023, Journal of International Arbitration, *40*(2).
[27] Jus Mundi, *supra* note 20.
[28] Nhara, Y.S.K., "*The principle of non-discrimination: the protection of foreign investors under the Protection of Investment Act*", 2016, Doctoral dissertation, North-West University (South Africa), Potchefstroom Campus.
[29] Risvas, M., *"Non-discrimination and the Protection of Foreign Investments in the Context of an Armed Conflict",* 2019, International Investment Law and the Law of Armed Conflict, pp.199-215.
[30] Nhara, Y.S.K., *supra* note 28.
[31] Mitchell, A.D., Heaton, D. and Henckels, C., "*Non-discrimination and the role of regulatory purpose in international trade and investment law*." 2016, Edward Elgar Publishing.
[32] Mitchell, et al *supra* note 31.

protection with state sovereignty. These principles include Full Protection and Security (FPS), Expropriation, and the Right to Regulate.

- **Full Protection and Security (FPS)** requires host states to ensure the physical and legal safety of foreign investments within their territory. Traditionally understood in the context of protecting against physical harm, modern interpretations have extended FPS to include legal certainty and regulatory stability. However, the scope of this obligation remains context-specific and is interpreted with caution to avoid undermining a state's legitimate public policy objectives.
- **Protection against Expropriation**, particularly unlawful or uncompensated expropriation, is another essential safeguard. While international law recognizes a state's sovereign right to expropriate property for public purposes, such actions must be conducted in a non-discriminatory manner, follow due process, and be accompanied by prompt, adequate, and effective compensation. Disputes often arise over what constitutes indirect expropriation, where measures may not directly seize assets but substantially deprive the investor of the value or control of the investment.
- Finally, **the Right to Regulate** has become increasingly emphasized in modern treaties. This principle affirms that states retain the authority to implement laws and policies in the public interest such as environmental protection, public health, or national security even if these measures impact foreign investments. Recent investment agreements explicitly acknowledge this right to avoid overreach by arbitral tribunals and to preserve policy space for governments.

Together, these principles reflect the evolving nature of international investment law, which seeks to ensure investor protection while respecting the regulatory autonomy of sovereign states.

2.3. Recognized International Mechanisms for the Settlement of Investment Disputes

The protection of foreign investments, grounded in core principles such as fair and equitable treatment, non-discrimination, and respect for investor rights, requires effective dispute resolution frameworks. As disputes inevitably arise in the course of investment activities, international mechanisms have been developed to resolve them in a manner that balances investor protection with state sovereignty. These mechanisms range from arbitration-based Investor-State Dispute Settlement (ISDS) systems to treaty-based and institutional approaches like investment

ombudsman and dispute prevention mechanisms. Together, they play a central role in enforcing investment protections and shaping the broader international investment landscape.

2.3.1. Investor-State Dispute Settlement (ISDS)

ISDS is a key mechanism in international investment law that enables foreign investors to initiate legal claims directly against host states, typically through international arbitration rather than domestic courts.[33] It is designed to provide a neutral forum to resolve disputes that may arise from state conduct affecting foreign investments, thereby balancing investor protection with the sovereign regulatory authority of states.[34]

ISDS mechanisms are most commonly embedded in Bilateral Investment Treaties (BITs), Free Trade Agreements (FTAs), and multilateral instruments, allowing investors to seek compensation for state actions perceived as violations of treaty obligations such as expropriation, denial of fair and equitable treatment, or discriminatory conduct. Despite its importance, ISDS has become one of the most controversial aspects of international investment law. Critics argue that it disproportionately favors investors, limits states' ability to regulate in the public interest, and lacks transparency and consistency. Notably, legal challenges have been raised before several constitutional courts, including the German Federal Constitutional Court and the European Court of Justice, in relation to the ratification of investment agreements like the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union. These cases reflect growing concern about the democratic legitimacy and regulatory implications of ISDS. [35]

Moreover, the increasing use of ISDS to challenge domestic regulatory measures especially in sectors such as environmental protection, public health, and taxation has prompted widespread calls for reform. In response, various models of dispute resolution, including permanent investment courts and appellate mechanisms, have been proposed to enhance fairness, consistency, and accountability within the ISDS system.[36]

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[33] Rahmonov, J., *supra* note 13.
[34]Salman, M., *"Navigating investor-state dispute settlement: The dynamics between investment protection and sovereign control*." China and WTO Review, *10*(1), 2024, pp.1-14.
[35]Ibid.
[36] Preston, B.J. and Butler, K., *"Investor–state dispute settlement in natural resources, energy and environmental cases."*, Journal of Energy & Natural Resources Law, *42*(4), 2024, pp.453-484.

2.3.2. Investment Ombudsman Mechanism

The investment ombudsman mechanism serves as a decentralized and cost and time-efficient avenue to resolve disputes before they escalate into investment arbitration.[37] For instance, the European Investment Bank's Complaint Mechanism reviews grievances linked to environmental and social impacts of financed projects,[38] while the Office of the Ombudsman of the Philippines protects rights tied to both individuals and businesses, recognizing their essential role in national economic development.[39] As an alternative to formal ISDS, such mechanisms offer accessibility and flexibility, though concerns remain over their long-term legal coherence and vulnerability to special interests.[40]

2.3.3. Dispute Prevention Mechanisms

Dispute prevention mechanisms are embedded within domestic legal frameworks to reduce the risk of formal investor-state disputes.[41] They align with key investment protection principles such as fair and equitable treatment and the duty of cooperation by addressing investor concerns early and constructively. These mechanisms gained prominence as countries adopted pro-investment policies, including bilateral investment treaties and free trade agreements in the 1990s.[42] As FDI inflows increased, so did the risk of ISDS claims, prompting the creation of frameworks like the Coordination and Response System for International Investment Disputes in the early 2000s.[43] Such institutional tools proactively manage disagreements, preserve investor confidence, and prevent unnecessary arbitration, which safeguards both the investment climate and long-term state-investor relationships.[44]

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[37] Yu, C., "*Towards a three-tiered ombuds system for investment dispute prevention: principles and challenges*", Asia Pacific Law Review, *30*(2), 2022, pp.401-423.
[38] Kula, A., "*The European Investment Bank Complaints Mechanism: Its Potential and Limitations*.", The Journal of World Investment & Trade, 24(6), 2023, pp.907-946.
[39] Santiago III, E., "*Human Rights, Business and the Investment Ombudsman of the Philippines*", Journal of Leadership, Accountability & Ethics, 21(2), 2024.
[40] Dothan, S. and Lam, J., "*A Paradigm Shift? Arbitration and Court-Like Mechanisms in Investors' Disputes*" Permanent Investment Courts: The European Experiment, pp.1-25, 2020.
[41] Sattorova, M., "*Dispute Prevention Mechanisms as Legal Enclaves*", 2024.
[42] Llerena, R.A., "*Investor-State Dispute Prevention Institutions in Latin America – The Case of Peru*." 2024.
[43] Ibid.
[44] Kher, P., "*Investment Retention Mechanisms: Rationale and Implementation Experience.*", 2024, Cambridge University Press. Available at: https://doi.org/10.1017/aju.2024.42 [Accessed 20 February 2025].

2.3.4. Dispute Resolution Mechanisms in Bilateral and Multilateral Investment Treaties

Bilateral Investment Treaties (BITs) have, since the late 1980s, served as core instruments for promoting and protecting foreign investments.[45] They offer legal safeguards against arbitrary state actions and discriminatory regulations, thereby encouraging investor confidence and cross-border economic cooperation.[46] BITs typically reflect the economic development levels and priorities of the contracting states, fostering mutually beneficial investment relationships.[47]

Multilateral agreements (MAs), in contrast, provide broader frameworks involving multiple countries with the aim of liberalizing investment regimes and ensuring balanced market access.[48] These agreements often include lists of covered sectors, dispute settlement provisions, and safeguard mechanisms.[49] A key example is the OECD-led negotiation of the Multilateral Agreement on Investment (MAI) in 1995, which sought to establish uniform rules on investor protection, liberalization commitments, and dispute resolution procedures. Such treaties play a vital role in harmonizing international investment standards and minimizing conflicts between states and investors.[50]

2.4. Overview and Strategic Implications of ICSID Membership

2.4.1. Historical Background and Institutional Evolution of ICSID

The ICSID was established in 1965 under the auspices of the World Bank, following approval by its Executive Directors and submission of the Convention for signature and ratification on March 18, 1965.[51] The ICSID Convention formally known as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was created to promote international investment by providing a neutral, rules-based forum for resolving disputes between foreign investors and host states.

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[45] Barceló, C., *"Housing tenure and labour mobility: A comparison across European countries",* Banco de Espana Research Paper No. WP-0603, CEMFI Working Paper, (0302), 2006.
[46] Hamilton, C.A. and Rochwerger, P.I., *"Trade and Investment: Foreign Direct Investment Through Bilateral and Multilateral Treaties.".* NY Int'l L. Rev., *18*, 2005, p.1.
[47] Rao, S., *"Bilateral investment protection agreements: A legal framework for the protection of foreign investments"*, Commonwealth Law Bulletin, *26*(1), 2000. pp.623-630.
[48] Kelley, G., *"Multilateral Investment Treaties: A Balanced Approach to Multinational Corporations",* Colum. J. Transnat'l L., 39, 2000, p.483.
[49] Sacerdoti, G., "*Bilateral treaties and multilateral instruments on investment protection"* (Vol. 269) 1997, Nijhoff.
[50] OECD, "*A Multilateral Agreement on Investment: Report by the Committee on Capital Movements and Invisible Transactions (CMIT)*", 25 May 1995.
[51] ICSID, "*ICSID Convention, Regulations and Rules*" 1818 H Street, N.W. Washington, D.C. 20433, U.S.A., ICSID/15, April 2006.

Over time, ICSID has grown into the principal global institution for investor-state dispute resolution. By April 2006, 143 countries had ratified the Convention, with 88 Contracting States actively participating.[52] Today, ICSID serves as an impartial and specialized international forum that administers arbitration and conciliation proceedings, subject to the consent of both parties.[53] Its procedures are designed to offer a depoliticized and efficient mechanism to resolve investment-related disputes, thereby reinforcing investor confidence in international legal protections.[54]

2.4.2. Institutional and Legal Framework of ICSID

The legal architecture of ICSID is primarily grounded in the ICSID Convention, which forms the foundational treaty governing its structure, jurisdiction, and procedural framework. Adopted in 1965, the Convention outlines the institution's mandate to provide arbitration and conciliation facilities for resolving investment disputes between contracting states and foreign investors.[55] The Centre operates as an autonomous international institution, although it is formally affiliated with the World Bank Group. This affiliation enhances its credibility and ensures institutional support without compromising its neutrality.[56] ICSID has its own Secretariat, Administrative Council, and panels of arbitrators and conciliators. The Administrative Council, composed of one representative from each contracting state, adopts rules and regulations and approves the Centre's budget.[57]

ICSID's jurisdiction is based on the consent of both the investor and the host state. This consent is typically embedded in bilateral investment treaties (BITs), free trade agreements (FTAs), national investment laws, or directly in investment contracts. Once consent is given, it becomes binding and irrevocable under Article 25 of the Convention.[58] The procedural framework of ICSID is governed by the ICSID Arbitration Rules and Conciliation Rules, which have been revised over time to enhance transparency, efficiency, and inclusiveness. Notably, the most recent amendment in 2022 introduced major reforms related to third-party participation, publication of awards, and expedited procedures.

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[52] Ibid

[53] International Bank for Reconstruction and Development, "*Report of the Executive Directors on the Convention on the settlement of investment disputes between states and national of other states"*, march 18, 1965.

[54] See List of Contracting States and Signatories of the Convention on Tupman, W.M., 1986. Case studies in the jurisdiction of the International Centre for Settlement of Investment Disputes. *International & Comparative Law Quarterly*, *35*(4), pp.813-838.

[55] The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, (ICSID Convention), 1965.

[56] Schreuer et al., *"The ICSID Convention: A Commentary*," 2009.

[57] Ibid.

[58] See Article 25 of the ICSID Convention, 1965.

A distinguishing feature of ICSID arbitration is the enforcement mechanism provided under Article 54 of the Convention, which obliges contracting states to recognize and enforce ICSID awards as if they were final judgments of their own courts. This enforcement regime provides a strong layer of protection for investors, distinguishing ICSID from other arbitral institutions operating under the New York Convention.[59] Overall, the legal and institutional framework of ICSID is designed to balance the interests of host states and foreign investors by offering a neutral, rules-based dispute resolution framework grounded in international law and backed by robust enforcement provisions.

2.4.3. Challenges and Concerns of Ratifying the ICSID Convention

While the ICSID Convention is widely regarded as a key instrument for enhancing investor confidence and facilitating FDIs, not all states view accession to the Convention as uniformly beneficial. For many developing countries, particularly those with historical concerns over external influence and judicial autonomy, joining ICSID raises critical questions. These include issues of legal compatibility, enforcement burdens, financial implications, and perhaps most significantly concerns over national sovereignty. The following section explores these major challenges that can deter states from becoming contracting parties to the ICSID Convention.

2.4.3.1. Sovereignty Concerns

One of the principal challenges states face in joining the ICSID Convention lies in its perceived impact on national sovereignty. Although the Convention seeks to balance investor protection with respect for state sovereignty, partly through mechanisms such as sovereign immunity,[60] it also imposes significant obligations that can be viewed as limiting a state's judicial autonomy. Hence, there are potential challenges and criticisms surrounding the ICSID Convention, including concerns about its impact on state sovereignty and its potential to favor investors over states.[61]

For instance, Article 53 of the Convention stipulates that ICSID awards are binding on all parties and are not subject to appeal or other remedies outside those provided within the Convention itself.[62] Article 54 further mandates that contracting states must recognize ICSID awards as binding and enforce them as if they were final judgments of their own courts. These provisions have raised

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[59] UNCTAD, "*Investor–State Dispute Settlement: Review of Developments"*, 2019.
[60] M Muriithi, P., "*Reconciling States Quest to Uphold Their Sovereignty through the Doctrine of Sovereign Immunity and the Need for Effective Settlement of Investor State Disputes under the ICSID Convention*", Alternative Dispute Resolution Journal, 7(2), 2019.
[61] Mrisho, M.I., Dung, T.T.K., Ghani, H.U. and Kipanga, K.B., *"Investor-State Dispute Settlement and the Application of the Rule of Law under the ICSID Convention". US-China L. Rev.*, *20*, 2023, p.297.
[62] Vincentelli, I.A., "*The uncertain future of ICSID in Latin America*," Law & Bus. Rev. Am., 16, 2010, p.409.

concerns in several countries that ICSID arbitration may override domestic legal processes and limit the role of national courts in matters involving public interest. [63] In response to such concerns, some states, particularly in Latin America, have taken steps to distance themselves from the ICSID system. For example, countries like Bolivia, Ecuador, and Venezuela have denounced the ICSID Convention and advocated for the establishment of regional mechanisms for resolving investment disputes.[64] These moves reflect broader dissatisfaction with what is perceived as a system that disproportionately favors investors at the expense of national regulatory authority.

2.4.3.2. Legal Compatibility and Enforcement Challenges

The ICSID Convention establishes a robust and internationally respected framework for recognizing and enforcing arbitral awards, practiced across more than 160 jurisdictions. Nevertheless, this system faces increasing scrutiny, particularly regarding the enforcement of ICSID awards by domestic courts. One major concern lies in the perceived incompatibility between the Convention's enforcement requirements and national legal systems.[65]

Article 54(1) of the ICSID Convention stipulates *"Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State*."[66] This provision obliges states to enforce arbitral awards as if they were domestic court judgments. However, ambiguities in the terminology particularly around words such as "recognition, enforcement, and execution" raise interpretive challenges and trigger legal debates, especially in jurisdictions with differing legal traditions.[67]

Another layer of complexity arises when enforcement is linked to the parties' consent. Although the Convention allows for the enforcement of settlement agreements endorsed by the tribunal, the practical enforceability often depends on the applicable domestic law. In situations where one party fails to comply, enforcement may devolve into further litigation or arbitration ironically contradicting the Convention's goal of efficient dispute resolution.[68] As a result, some countries

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[63] M Muriithi, P, *supra* note 60.
[64] Vincentelli, ***supra*** note 62**.**
[65] Bungenberg, M., Alvarado-Garzón, A.E. and Böhme, B., *"Recognition and enforcement of ICSID convention awards"*, The Award in International Investment Arbitration, 2024, P.1.
[66] ICSID Convention, *supra* note 55.
[67] Bungenberg, *supra* note 65.
[68] Yarik Kryvoi and Dmitry Davydenko, *"Consent Awards in International Arbitration: From Settlement to Enforcement"*, 40 *Brook J Intl L* 827, 2015.

perceive the ICSID enforcement framework as rigid or overly favorable to investors, and view it as a potential source of prolonged legal entanglements rather than an efficient resolution mechanism.[69] These concerns pose a real challenge in persuading countries to ratify the Convention and fully adopt its procedures.[70]

2.4.3.3. Financial and Legal Costs of ICSID Arbitration

One of the significant challenges discouraging countries from ratifying the ICSID Convention is the potentially high financial and legal costs associated with ICSID arbitration proceedings. Unlike commercial arbitration, ICSID and other investment tribunals lack uniformity in how costs are allocated between disputing parties. While ICSID tribunals typically consider factors such as the relative success of each party, their conduct during proceedings, and the complexity or novelty of the legal issues, the absence of a consistent standard introduces unpredictability for states engaging in arbitration. In contrast to institutions like UNCITRAL, ICSID does not allow for pre-screening to exclude unmeritorious claims leaving tribunals with the burden of filtering baseless or abusive filings.[71] In such cases, cost awards become the primary mechanism for sanctioning frivolous claims. However, questions remain about whether parties should be required to provide security for costs, which is a preventive financial measure rarely used in ICSID arbitrations.[72]

Recent trends show tribunals are increasingly scrutinizing issues such as fraud and abuse of process, especially where jurisdiction is contested. Yet enforcement complications persist. For example, Argentina delayed compensating ICSID award beneficiaries for six years, conditioning payment on local enforcement procedures. Only after a 2013 settlement agreement did the matter resolve. This case illustrates how the financial burden and enforcement uncertainty can deter states from complying with or embracing the ICSID system altogether.[73] Overall, the high and unpredictable costs both in terms of legal fees and enforcement risks can be a strong disincentive for developing countries concerned about limited resources and exposure to protracted litigation.

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[69] Stephen Schwebel, "*Is Mediation of Foreign Investment Disputes Plausible*?" 22(2) ICSID Rev. 237 (2007).
[70]Christine Sim, "Ideas for ICSID Amendments", 2017. https://icsid.worldbank.org/en/amendments/Documents/6.%20Christine%20Sim.pdf (accessed 1 January 2025)
[71]Bondar, K., *"Allocation of costs in investor-state and commercial arbitration: towards a harmonized approach*", Arbitration International, *32*(1), 2016, pp.45-58.
[72] Webster, T.H., *"Efficiency in investment arbitration: recent decisions on preliminary and costs issues", Arbitration International*, *25*(4), 2009, pp.469-514.
[73] Hirsch, M., "*Explaining Compliance and Non-Compliance with ICSID Awards: The Argentine Case Study and a Multiple Theoretical Approach*", Journal of International Economic Law, *19*(3), 2016, pp.681-706.

2.4.4. Prospects of Ratifying the ICSID Convention

Despite the challenges and criticisms, ratifying the ICSID Convention presents notable opportunities for countries aiming to strengthen their legal infrastructure for foreign investment. In a globalized economy where investment flows are increasingly influenced by legal predictability and institutional trust, ICSID membership is often seen as a signal of a country's commitment to protecting investor rights under international standards. For developing economies, in particular, accession to the ICSID Convention may enhance their credibility, boost investor confidence, and facilitate integration into the global investment system.

2.4.4.1. Enhancing the Domestic Investment Climate

FDI has significantly expanded throughout the twentieth century, playing a pivotal role in driving globalization. There are near-universal agreement that cross-border investment flows bring substantial advantages to host states, particularly by enhancing competition, improving market access, and increasing the volume and sophistication of international trade.[74] These inflows also contribute to long-term economic efficiency and institutional development.

Recognizing these benefits, global institutions such as the World Bank and UNCTAD have actively supported efforts to create favorable investment climates, especially in developing countries. The World Bank's annual Doing Business reports, for instance, offer benchmarks and policy guidance aimed at enhancing the legal and regulatory frameworks necessary for attracting foreign investment.[75]

Additionally, international legal developments particularly within the European Union reflect a broader move toward institutionalizing investor protection. This includes initiatives like the EU's promotion of a Multilateral Investment Court to supplement or replace investor-state arbitration systems, ensuring greater legitimacy and direct access for non-state actors in investment disputes.[76] Within this context, the ICSID Convention continues to serve as a key pillar for modern investment protection regimes. By providing an impartial and structured forum for dispute resolution, ICSID strengthens investor confidence and reduces geopolitical tension that could otherwise arise from unresolved investment disputes.[77] Ratifying the Convention, therefore, represents a strategic

[74] Yarik Kryvoi, *supra* note 7.
[75] Ibid.
[76] Reinisch, A., *"Protecting Individuals in International Investment Law: Plans for an Investment Court in the Past and Today*", in Der Schutz des Individuums durch das Recht, 2023. (pp. 671-683).
[77] Paparinskis, M., "*Investment arbitration and the law of countermeasures*", British year book of international law, *79*(1), 2008, pp.264-352.

opportunity for states to modernize their legal environment and enhance their attractiveness as investment destinations.

2.4.4.2. Strengthening the Legal and Treaty Framework

International investment treaties are designed to encourage and facilitate the flow of foreign investments by offering investors legal certainty and protection. One of the central concerns for foreign investors is the risk of encountering inefficient or biased domestic judicial systems.[78] As a result, many investors prefer having access to neutral international arbitration mechanisms to resolve disputes.

ICSID plays a vital role in addressing this concern by offering a trusted and structured platform for resolving disputes between investors and host states. Its relevance is further amplified by its close link to BITs, which often include provisions that explicitly refer disputes to ICSID arbitration. The existence of ICSID thus reinforces the effectiveness of BITs and enhances investor confidence, which can in turn boost FDI inflows.[79]

Furthermore, ICSID supports the broader international principle that investors also bear a responsibility to operate fairly and competitively, contributing to a healthy investment environment. While some critiques have emerged regarding the effectiveness of BITs in resolving ongoing disputes,[80] the reality remains that most modern investment treaties continue to include arbitration clauses making ICSID a central institution in the global legal framework for investment protection.[81] By ratifying the ICSID Convention, a country strengthens its legal and treaty architecture, signaling to international investors a commitment to rule-based dispute resolution and adherence to global investment standards.[82]

2.4.4.3. Promoting Global and Regional Investment Cooperation

In today's interconnected global economy, regional and multilateral investment cooperation plays a vital role in shaping investment flows and dispute resolution mechanisms. The dynamics of international investment networks including their relationships with BITs vary based on factors

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[78] Yarik Kryvoi, *supra* note 7.
[79] Gayo, S., "*The Use of Mediation as an Alternative Dispute Resolution in The Settlement of Investment Disputes",* International Asia of Law and Money Laundering *(IAML)*, *3*(1), 2024, pp.1-9.
[80] Frenkel, M. and Walter, B., *"Do bilateral investment treaties attract foreign direct investment? The role of international dispute settlement provisions"*, The World Economy, 42(5), 2019.
[81] Ibid.
[82] Dimsey, M., "*The resolution of international investment disputes: challenges and solutions* (Vol. 1)", Eleven International Publishing. 2008.

such as a country's size, openness to trade, institutional capacity, and workforce skill levels. These variables influence how states engage with FDI partners and benefit economically from such engagements.[83]

As global and regional investment integration deepens, countries increasingly enter into multilateral investment treaties and economic blocs that impact the volume and nature of investment disputes.[84] Agreements such as the North American Free Trade Agreement (NAFTA), and the emerging influence of global alliances like BRICS (Brazil, Russia, India, China, and South Africa), highlight the importance of having coherent, trusted mechanisms for managing cross-border investment relationships.[85] Similarly, the European Union's (EU) agreements include robust provisions for the settlement of investment disputes, reinforcing investor protection across member and partner states.[86]

ICSID, in this evolving context, serves as a foundational institution supporting these regional and global investment arrangements. By offering a consistent and credible forum for dispute resolution, it complements international economic cooperation frameworks and promotes predictable legal environments ultimately facilitating sustainable global investment partnerships.

2.4.4.4. Access to Efficient and Neutral Dispute Settlement

One of the most compelling advantages of ratifying the ICSID Convention is the access it offers to a neutral, independent, and efficient dispute settlement forum. For many developing countries, concerns about bias, inefficiency, and capacity limitations in domestic courts can create significant barriers to attracting high-quality FDI. ICSID provides a specialized international mechanism designed to resolve investment disputes in a depoliticized and procedurally sound environment thereby enhancing investor confidence and minimizing the risk of politicized outcomes.[87]

Unlike domestic courts or ad hoc arbitration forums, ICSID operates under a standardized set of rules and procedures, offering consistency, transparency, and finality. Its decisions are binding and

[83] Bolívar, L.M., Casanueva, C. and Castro, I., "*Global foreign direct investment: A network perspective*", International Business Review, *28*(4), 2019, pp. 696-712.
[84] *See more* Railroad Development Corp. (RDC) v. Guatemala (ICSID Case No. ARB/07/23), Award of 29 June 2012.
[85] Fatima, N., "*Future of Dispute Resolution and Investment in BRICS*", Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR, *4*(8), 2022, pp.187-209.
[86] Christopher Vajda, *"The EU and Beyond: Dispute Resolution in International Economic Agreements",* European Journal of International Law, Volume 29, Issue 1, February 2018, pp.205–224.
[87] Schreuer et al., *Supra* note 56.

enforceable in all contracting states without the need for recognition or enforcement proceedings under domestic law, thanks to the Convention's unique structure under Articles 53 and 54. This procedural advantage eliminates the complexities and uncertainties associated with recognition and enforcement of awards, as typically required under the New York Convention for non-ICSID arbitrations.[88] Moreover, ICSID arbitration reduces the risk of diplomatic intervention or political pressure from the investor's home state, preserving the autonomy and dignity of the host state while safeguarding the legitimate rights of investors. This neutrality is especially critical in disputes involving sensitive sectors or strategic investments. The presence of such a mechanism can send a powerful signal to international investors that a country is committed to upholding the rule of law, thereby improving its overall investment climate and legal credibility.[89]

In a global investment landscape where legal certainty, time efficiency, and impartial adjudication are indispensable, ICSID stands out as a forum of choice. Its established jurisprudence, expert panels, and institutional backing by the World Bank Group further solidify its value as a trusted mechanism for the resolution of cross-border investment disputes.

All in all, ratifying the ICSID Convention offers a strategic pathway for states seeking to strengthen investor protection, enhance legal credibility, and integrate more deeply into the global investment system. While challenges exist, the long-term benefits of access to a neutral, credible, and enforceable dispute resolution system outweigh the reservations. As global investment competition intensifies, ICSID ratification can become a symbol of legal modernization and economic openness. For emerging economies, particularly, this step may be instrumental in creating sustainable FDI flows. Embracing ICSID is not just about dispute resolution, it is a statement of global economic readiness.

[88] Ibid.
[89] UNCTAD, "*World Investment Report"*, 2023.

Chapter Three

3. Ethiopia's Legal and Institutional Framework for Foreign Direct Investment and Its Dispute Resolution Mechanisms

3.1. Introduction

FDI is widely recognized as a driver of economic development, job creation, and technology transfer, especially in emerging economies.[90] In recent years, Ethiopia has made commendable efforts to attract FDI by reforming its legal and policy environment. However, investor confidence hinges not only on liberal market access but also on the availability of transparent, predictable, and enforceable legal protections particularly in resolving disputes.[91]This chapter critically examines Ethiopia's current legal and institutional framework governing FDI and investor-state dispute resolution. It assesses whether domestic laws and institutions provide adequate safeguards and enforcement mechanisms for foreign investors. This analysis serves as a foundation for evaluating the potential role of ICSID ratification in filling legal and institutional gaps.

Globally, effective dispute resolution frameworks are considered essential for reducing investment risk and ensuring rule of law in investor-state relations.[92] While Ethiopia has introduced several legal instruments including the Investment Proclamation No. 1180/2020 and the Revised Commercial Code, its continued absence from ICSID membership remains a concern for international investors seeking neutral and binding dispute resolution.

Accordingly, this chapter is organized as follows: Section 3.2 reviews Ethiopia's key investment-related laws and policies; Section 3.3 outlines the institutions responsible for investment administration and dispute resolution; Section 3.4 evaluates available judicial and arbitral mechanisms for resolving investment disputes; and Section 3.5 analyzes the gaps of the existing FDI related dispute resolution mechanisms of Ethiopia.

3.2. The Legal Framework Governing FDIs in Ethiopia

A coherent and predictable legal framework is vital for attracting and sustaining FDIs. In Ethiopia, the legal regime governing FDI has evolved over the years to align with the country's broader economic liberalization policies and to accommodate international investment standards. The legal framework is primarily built upon the Investment Proclamation No. 1180/2020, and the

[90] UNCTAD, "*World Investment Report: Reforming International Investment Governance*", Geneva: United Nations, 2015.
[91] UNCTAD, "*Investment Policy Framework for Sustainable Development*" Geneva: United Nations, 2020.
[92] Muchlinski, P., "*Multinational Enterprises and the Law (2nd ed.)*." Oxford University Press, 2007.

accompanying Investment Regulation No. 474/2020 and the Investment Incentives Regulation No. 517/2022 as well as other related legislation. Together, these instruments govern matters related to the admission, registration, protection, and operation of foreign investments in Ethiopia.[93]

In addition to the investment laws, several sector-specific proclamations and regulations influence the FDI legal framework, including laws governing taxation, landholding, customs duties, labor, and intellectual property rights. These laws are complemented by Ethiopia's bilateral investment treaties (BITs) and regional agreements, which offer additional layers of investor protection, especially on matters of dispute settlement, expropriation, and guarantees of fair and equitable treatment. The next section of this thesis assesses the key legal laws governing FDIs in Ethiopia.

3.2.1. Investment Proclamation No. 1180/2020

The Ethiopian Investment Proclamation No. 1180/2020 (the Investment Proclamation), which came into force in 2020, serves as the principal legal framework governing FDI in the country. Enacted as part of the government's broader economic reform agenda, the proclamation aims to promote sustainable economic growth, increase private sector participation across all sectors, and ultimately improve the standard of living for the Ethiopian people.[94] At the heart of the proclamation is the recognition that FDI plays a crucial role in achieving long-term development goals. Article 5 of the proclamation explicitly outlines the objectives of the investment policy: to enhance the competitiveness of Ethiopia's economy, create meaningful employment opportunities, transfer knowledge, skills, and technology, and expand foreign exchange earnings by encouraging local production of import substitutes.[95]

The proclamation introduces a more liberalized approach to entry and operation of foreign investors. It opens various sectors previously restricted to domestic investors and introduces a "negative listing" approach, whereby all areas are open to foreign investors unless specifically restricted. Investors are required to obtain an investment permit from the Ethiopian Investment Commission (EIC) and are entitled to guarantees such as protection from expropriation, access to land leases, and the ability to freely remit profits and dividends abroad, subject to compliance with National Bank of Ethiopia regulations. This strengthens inter-sectoral and foreign-domestic

[93] Ethiopian Investment Commission, "*An Investment Guide to Ethiopia"*, 2021, p.53.
[94] Federal Democratic Republic of Ethiopia, Investment Proclamation No. 1180/2020, Federal Negarit Gazette. 2 April 2020; 26th Year, No. 28, Addis Ababa.
[95] Ibid. Article 5.

investment linkages and encourages socially and environmentally responsible investments. The objective is to increase foreign exchange earnings, save foreign exchange, and foster an integrated economy.[96] Furthermore, the proclamation aims to foster inter-sectoral linkages and encourage responsible investment by including environmental and social considerations. It also facilitates exit options for foreign investors by ensuring the right to repatriate capital and profits, as well as the ability to sell or transfer investments subject to regulatory procedures.

In essence, the proclamation represents a shift toward a more open and predictable investment environment, aligning Ethiopia's legal framework with global FDI standards while addressing domestic economic priorities.

3.2.2. Investment Regulation No. 474/2020

The regulation plays a pivotal role in balancing the dual objectives of attracting FDIs and promoting sustainable national development.[97] It does so by ensuring fair and equitable treatment of investors, while aligning investment activities with Ethiopia's developmental, environmental, and social priorities.[98] Key elements addressed under the regulation include specific investor admission requirements, sectoral eligibility, guarantees and protections, and procedures for the free transfer of funds in accordance with foreign exchange regulations.[99] Crucially, the regulation outlines the detailed structure of the investment permit system, specifying sectors open to foreign investment and areas reserved for joint ventures or domestic participation. It thereby ensures clarity and predictability for foreign investors, particularly in sectors of national interest such as telecoms, finance, and logistics.[100]

3.2.3. Investment Incentive Regulation No. 517/2022

To complement the objectives and provisions of the Investment Proclamation, the Ethiopian government enacted the Investment Incentive Regulation No. 517/2022, which came into effect following its adoption by the Council of Ministers in 2022. This regulation plays a pivotal role in

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[96] Ibid.
[97] Federal Democratic Republic of Ethiopia, Investment Regulation No. 474/2020, Federal Negarit Gazette. 2 September 2020; 26th Year, No. 78, Addis Ababa.
[98] Djigsa, W.K., 2017, "*The adequacy of Ethiopia's bilateral investment treaties in protecting the environment: race to the bottom*.", Haramaya Law Review, 6, pp.67-90.
[99] The Regulation, *supra* note 97.
[100] Seifu, G., *"Regulatory Space in the Treatment of Foreign Investment in Ethiopian Investment Laws"*, The Journal of World Investment & Trade, *9*(5), 2008, pp.405-426.

shaping Ethiopia's investment climate by outlining targeted incentive schemes for both foreign and domestic investors. The regulation is designed to encourage investment in priority sectors aligned with national development goals. It sets out a framework for providing tax incentives, customs duty exemptions, and facilitated other privileges, particularly for investors contributing to infrastructure development, manufacturing, agro-processing, and export-oriented industries. The regulation specifically provides that investors who engage in infrastructure development projects listed in a directive by the Ministry of Finance, in consultation with other stakeholders, are eligible for defined incentives.[101]

Moreover, the regulation works in tandem with sector-specific directives issued by relevant ministries, allowing a degree of flexibility in addressing the evolving investment landscape. This institutional coordination helps ensure that the incentive regime is responsive to national priorities while maintaining a competitive edge in the regional investment environment.[102] Ultimately, Regulation No. 517/2022 sends a clear message that Ethiopia is not only open for business but also strategically aligning incentives to promote inclusive and sustainable economic growth.

3.2.4. Complementary Legal Instruments Impacting FDIs

Beyond the core legal framework established by the Investment Proclamation and its accompanying regulations, several additional laws and directives regulate the entry, operation, and exit of FDIs in Ethiopia. These instruments, although not part of the foundational investment regime, play a significant role in shaping the investment environment by governing critical issues such as land use, administrative transparency, foreign exchange, taxation, and sector-specific operations.

- Directives Issued by the Ethiopian Investment Board and the EIC: These directives provide practical guidance on the interpretation and implementation of investment laws, including sector eligibility, licensing procedures, and investment approvals. The EIC also issues investor handbooks and sectoral guidelines to facilitate compliance and transparency.[103]
- Expropriation of Land holdings for Public Purposes, Payments of. Compensation and Resettlement of Displaced People Proclamation No. 1161/2019 and its amendment: This

[101] Federal Democratic Republic of Ethiopia, Council of Ministers Investment Incentive Regulation No. 517/2022, Federal Negarit Gazette (2022).
[102] UNCTAD, "*Investment Policy Review: Ethiopia*", United Nations Conference on Trade and Development, Geneva, 2020, available at: https://unctad.org/webflyer/investment-policy-review-ethiopia.
[103] Ethiopian Investment Commission, "*Investment Guidelines and Procedures*", 2023, available at: https://www.investethiopia.gov.et

proclamation governs the conditions under which the government may expropriate land for public purposes and ensures that displaced individuals or entities receive fair and timely compensation. For foreign investors, it offers certain predictability regarding land use and legal protections.[104]

- Administrative Procedure Proclamation No. 1183/2020: This law standardizes decision-making by administrative agencies, including the EIC, by requiring fairness, transparency, and accountability. It ensures that investors have legal recourse in the event of procedural irregularities or denial of licenses.[105]
- Foreign Exchange Regulations and National Bank of Ethiopia (NBE) Directives: Foreign exchange controls, governed by the NBE, regulate capital repatriation, loan registration, currency conversion, and export proceeds. These instruments are essential to investors concerned with financial predictability and currency-related risks.[106]
- Tax and Customs Laws: The Ministry of Finance, Ministry of Revenues and Customs Commission administers laws related to income tax, value-added tax, customs duties, and tax incentives. These laws directly affect cost structures and profitability for investors.
- Laws under the Ministry of Trade and Regional Integration: MoTRI oversees laws related to business registration, trade licensing, competition, consumer protection, and market regulation. These laws help define operational rules and compliance obligations across various sectors.

Collectively, these legal instruments complement Ethiopia's investment regime by establishing institutional checks, ensuring investor protection, and aligning regulatory objectives with the country's development and economic policies.

[104] Expropriation of Land for Public Purposes and Payment of Compensation, Proclamation No. 1161/2019, Federal Negarit Gazette, Year 25, No. 54.
[105] Administrative Procedure Proclamation No. 1183/2020, Federal Negarit Gazette, Year 26, No. 23.
[106] National Bank of Ethiopia, Directive No. FXD/79/2021, Repatriation and Retention of Foreign Currency Earnings, available at: https://www.nbe.gov.et

3.3. Institutional Framework for the Governance and Administration of FDIs in Ethiopia

The administration of FDIs in Ethiopia is supported by a range of institutions with distinct but complementary mandates. These bodies are responsible for regulating entry, facilitating investment operations, ensuring compliance, and safeguarding investor rights across various stages of investment. At the center is the EIC and EIB, supported by institutions such as NBE, the Ministry of Finance, and the MoTRI, among others. Sector-specific regulators and regional investment bureaus also play important roles, particularly where decentralization and sectoral oversight intersect with FDI matters.

This section briefly outlines the mandates and functions of only core institutions to provide a clearer picture of Ethiopia's institutional readiness to administer and support FDIs.

3.3.1. Ethiopian Investment Commission

The EIC is an autonomous government organ re-established under the Investment Proclamation to oversee and coordinate investment activities in Ethiopia, particularly with a focus on FDIs.[107] Its core mandate includes promoting Ethiopia as an investment destination, facilitating the entry and establishment of investors, and serving as a principal regulatory body in investment-related matters.[108] The EIC plays a critical role in enhancing the country's investment climate by initiating pro-business policy reforms, simplifying regulatory procedures, and providing one-stop-shop services to investors.[109]

It administers investment licensing, provides post-establishment support, and works to resolve grievances that may arise during investment operations. In addition, the EIC implements the "negative list" approach defining sectors closed to foreign investors to provide transparency and improve predictability in the investment regime. It also advocates for responsible investment by encouraging compliance with environmental and social standards and aligning private investment with Ethiopia's development priorities. [110]

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[107] Ethiopian Investment Commission, *"Who We Are"* (Ethiopian Investment Commission) https://investethiopia.gov.et/about-eic/who-we-are/#how-we-help-investors accessed 6 March 2025.
[108] Geddafa, T., "*Trends and determinants of domestic private investment in Ethiopia: Time series analysis*" *Cogent Engineering*, *10*(2), 2023, p.293.
[109] Ethiopian Investment Commission, 'Home' (Ethiopian Investment Commission) https://investethiopia.gov.et/ accessed 6 March 2025.
[110] Alemayehu Hagos, B., "*Major features of Ethiopia's new investment law: an appraisal of their policy implications*", Transnational Corporations Journal, *29*(1) 2022.

3.3.2. Ethiopian Investment Board

The EIB is a high-level policy-making body established under Article 30 of the Investment Proclamation.[111] Chaired by the Prime Minister, the EIB is tasked with providing strategic guidance and oversight for the country's investment policy and administration. It is composed of key government officials and ministers whose sectors are directly linked to economic development and investment matters. The primary mandate of the EIB is to ensure the alignment of investment policy with national development priorities. It is empowered to issue directives that guide the implementation of the Investment Proclamation and to approve the list of areas reserved for joint investment with the government or for domestic investors only.[112] The EIB also has the authority to review and resolve major policy-level investment disputes and facilitate inter-agency coordination in matters affecting investment. By setting Ethiopia's overall investment direction and addressing systemic challenges, the EIB plays a vital role in enhancing the predictability, transparency, and investor confidence in the legal and institutional framework governing FDIs.

3.3.3. Other Key Institutions in Ethiopia's FDI Regulatory Framework

In addition to the EIC and EIB, several other institutions play critical roles in regulating and facilitating FDIs in Ethiopia. The Industrial Parks Development Corporation (IPDC) oversees the development and management of industrial parks, particularly for export-oriented manufacturing sectors.[113] The MoTRI regulates business licensing, trade registration, and import-export requirements. The Ministry of Revenues (MoR) is responsible for tax administration, including assessment, collection, and auditing functions for investors. The Ethiopian Customs Commission manages customs procedures and facilitates the clearance of imported and exported goods related to investment projects. The Ministry of Finance (MoF) is involved in fiscal policy, granting investment incentives, and negotiating investment treaties. The NBE regulates foreign exchange, capital repatriation, and banking operations involving foreign investors. Other investment organs established by the Investment Proclamation, which are the Federal Government and Regional State Administrations Investment Council and Investment Administration Organs established pursuant to Regional Laws play an important role in FDI matters. Together, these institution and other relevant regulatory bodies contribute to shaping a coherent investment ecosystem by regulating

[111] The Investment Proclamation, supra note 94, Article 30.
[112] Id, See Article 31.
[113] Industrial Parks Proclamation No. 886/2015, Federal Negarit Gazette, 21st Year No. 59, Art. 5.

licensing, taxation, customs, and financial operations essential to foreign investment activities in the country.

3.4. Mechanisms for Settling FDI Disputes in Ethiopia: Legal and Practical Analysis

The resolution of investment-related disputes is a cornerstone of any functional legal framework governing FDIs. In Ethiopia, the mechanisms available for resolving FDI-related disputes are structured across administrative, alternative, judicial, and treaty-based layers. This multi-tiered approach aims to address disputes effectively and foster investor confidence by offering procedural flexibility, legal certainty, and institutional accountability.

The Investment Proclamation lays the groundwork for handling investor grievances and provides for recourse to the appropriate forums depending on the nature of the dispute. These include resolution by the EIC or the EIB for administrative matters, arbitration and other forms of alternative dispute resolution (ADR).[114] There are also other conventional mechanisms of resolving FDI related disputes such as domestic courts for judicial claims, and treaty-based mechanisms for disputes arising under BITs or multilateral frameworks. Despite the availability of these mechanisms, practical gaps persist. These include institutional delays, lack of capacity in specialized dispute resolution, and uncertainty surrounding the enforcement of arbitral awards, particularly in relation to public policy considerations under Ethiopian law. These challenges underscore the need to assess the efficiency, accessibility, and consistency of Ethiopia's dispute resolution regime for FDI.

3.4.1. Administrative Mechanisms for FDI Dispute Resolution

Ethiopia's legal framework provides for multiple administrative avenues to resolve investment-related disputes involving foreign investors. These mechanisms are primarily established in the Investment Proclamation, but also extend to other sector-specific and administrative laws, reflecting a decentralized and multi-layered dispute resolution structure. The Proclamation outlines a progressive system for handling grievances involving foreign investors and government authorities. Article 25 of the Proclamation grants any investor the right to submit complaints regarding their investment to the appropriate investment organ. It further emphasizes that such

[114] Investment Proclamation, *supra* note 94, Article 25 & the following Articles.

complaints must be addressed using "speedy, equitable and efficient" procedures, ensuring fair administrative redress for investors experiencing dissatisfaction with regulatory decisions. [115]

If the grievance concerns a final administrative decision of the EIC, Article 26 allows the aggrieved investor to escalate the matter to the EIB. Likewise, if the dispute arises from decisions made by other federal executive bodies that significantly affect an investment, Article 27 empowers the investor to file a complaint through the EIC, ensuring a coordinated institutional mechanism for investment oversight. Furthermore, Article 28 of the Proclamation provides an overarching guarantee of access to justice, allowing any investor to seek dispute resolution through consultation or negotiation and, where necessary, through competent bodies with judicial authority.

In addition to these investment-specific ways, Ethiopia's broader legal system recognizes administrative redress mechanisms under other legal regimes depending on the nature of the dispute. Tax-related disputes are handled through internal review and appeal processes under tax laws and regulations, often beginning at the MoR.[116] Disputes involving administrative decisions more generally may be pursued under the Administrative Procedure Proclamation No. 1183/2020, which codifies the right to fair administrative procedures and appeal mechanisms.[117] Similarly, land-related disputes, including expropriation and compensation issues, are governed by Proclamation No. 1161/2019 and subsidiary legislation, which outline grievance procedures before administrative and judicial forums.[118]

In summary, Ethiopia's administrative dispute resolution system for FDIs is both sector-specific and general, providing protections for investors. However, the dispersion of relevant procedures across various laws may present procedural fragmentation, making coordinated reform an area worth considering.

3.4.2. Alternative Dispute Resolution (ADR) Mechanism

The Investment Proclamation provides ADR mechanism for resolving investor-state disputes, emphasizing consultation and arbitration as effective means of resolving conflicts. According to Article 28 of the Proclamation, in the event of a dispute between an investor and the government,

[115] Ibid.
[116] See the Tax Administration Proclamation No. 983/2016, Federal Negarit Gazette, 22nd Year No. 103.
[117] See Administrative Procedure Proclamation, *supra* note 105.
[118] See the Expropriation Proclamation, *supra* note 104.

both parties are encouraged to first seek resolution through consultation or negotiation. This approach aims to provide a diplomatic and non-confrontational resolution to disputes, fostering an environment conducive to investment continuity.

In cases where consultation fails, the Proclamation allows for the possibility of arbitration. This mechanism offers investors the option of resolving their disputes through impartial third-party arbitration, thereby ensuring that conflicts are resolved in a manner that is fair, transparent, and aligned with international standards. Article 28 of the Proclamation reflects Ethiopia's commitment to creating a conducive environment for FDI by offering accessible and efficient dispute resolution mechanisms that mitigate risks for investors.

3.4.3. Judicial Mechanisms for Resolving FDI Disputes

In Ethiopia, FDI-related disputes may also be resolved through the country's regular courts, as provided under the Constitution and the Investment Proclamation. Article 37 of the FDRE Constitution guarantees the right of access to the courts for any individual or entity seeking to resolve a legal dispute, including investors.[119] This constitutional provision ensures that investors have the ability to seek judicial remedy in cases of conflict with the government or other parties, contributing to a fair and transparent legal environment for FDI.

Additionally, Article 28 of the Proclamation supports the judicial route for resolving disputes between investors and the government. The Proclamation ensures that if other means of dispute resolution such as consultation or arbitration fail, investors have access to judicial mechanisms, including the courts, to adjudicate their claims. This provision reflects Ethiopia's commitment to upholding the rule of law in FDI matters, ensuring that investors can rely on the judicial system to resolve disputes.

3.4.4. Treaty-Based Dispute Resolution Mechanisms

In addition to domestic remedies, foreign investors in Ethiopia may also rely on treaty-based dispute settlement mechanisms grounded in Ethiopia's international investment agreements. Ethiopia has signed over 30 Bilateral Investment Treaties (BITs) with a range of countries across Europe, Asia, and Africa. These treaties typically include investor-state dispute settlement (ISDS)

[119] Federal Democratic Republic of Ethiopia (FDRE) Constitution 1995, Article 37.

provisions, allowing foreign investors to bring claims directly against the Ethiopian government before international arbitration forums in the event of disputes concerning expropriation, fair and equitable treatment, or other breaches of treaty obligations.[120]

While many countries channel such disputes through the ICSID, Ethiopia has notably not acceded to the ICSID Convention.[121] Instead, Ethiopia's BITs often provide for arbitration under alternative frameworks, such as the UNCITRAL Arbitration Rules or the rules of PCA.[122] In practice, this means that foreign investors may bypass domestic courts and administrative processes altogether and pursue neutral, international fora, provided the dispute falls within the scope of a valid treaty and arbitration clause.[123] The presence of such mechanisms is intended to enhance the legal security and predictability of Ethiopia's investment environment, aligning with international standards and reinforcing the protections afforded to investors under national laws, such as the Investment Proclamation.[124]

3.5. Limitations of the Existing FDI Dispute Resolution Framework of Ethiopia

Despite the comprehensive legal framework introduced under the Investment Proclamation and other laws, the practical effectiveness of Ethiopia's domestic FDI dispute resolution mechanisms as discussed above remains questionable. Following the enactment of the Proclamation, the country experienced a series of significant socio-political disruptions that severely impacted investors' confidence. The outbreak of civil unrest in the Oromia region and the war in Tigray beginning in November 2020, along with subsequent instability in the Amhara region and uncertainty in other parts of the country, caused substantial damage to both physical assets and operational continuity of many FDIs projects.[125] Foreign-owned businesses, including industrial park tenants in places like Kombolcha, Hawassa, places surrounding Addis Ababa, Mekele and other areas of the country, reported substantial losses due to direct damage or forced suspension of operations during the conflict periods.[126] Companies operating in agriculture and infrastructure development have

[120] UNCTAD, "*International Investment Agreements Navigator – Ethiopia*," available at: https://investmentpolicy.unctad.org (accessed April 2025).
[121] ICSID, "*List of Contracting States and Other Signatories*," available at: https://icsid.worldbank.org (accessed April 2025).
[122] Endryas Tekalegn, *supra* note 8. p.115.
[123] Schreuer, C., "*Investment protection and international relations*", The law of international relations, 2007, pp.345-358.
[124]Endryas Tekalegn, *supra* note 8, o. 155.
[125] Reuters. "*Foreign investors hit as Ethiopia's war reaches industrial heartlands,"* November 2021.
[126] Ibid.

publicly raised grievances over disruptions and asset destruction with little to no government compensation.[127]

According to an interview conducted with an investment expert at the EIC, many affected investors initially filed complaints, often expecting the Commission to mediate or provide a remedy. However, only a few pursued the matter beyond the administrative complaint stage, largely due to a perceived lack of response, slow processing, and political sensitivity of the issues.[128] The expert admitted that even when investors invoked their rights under Articles 25–28 of the Proclamation, the government's follow-through was inconsistent. In some cases, internal bureaucratic delays and the absence of a clear institutional accountability mechanism prevented effective redress.[129]

This lack of follow-through has prompted some investors to bypass domestic mechanisms altogether. In line with the interview with Dawit Feleke who is a Private Sector Engagement and Investment Promotion Advisor at EIC, a small number of investors have actually sought arbitration under BITs, resorting to institutions such as ICSID even though Ethiopia is not a contracting state to the ICSID Convention itself.[130] From these, we can understand that investors have instead leveraged alternative arbitration venues under treaty clauses. The government's repeated failures to act in line with its commitments under BITs and domestic law not only question the operational integrity of its dispute resolution system but also jeopardize Ethiopia's credibility as an investment destination.

In conclusion, there exists a notable gap between the legal guarantees under Ethiopia's investment laws and the actual experience of investors facing harm. The inability or unwillingness of executive bodies to act decisively, despite clear obligations under the law, has undermined investor confidence and raised serious concerns about the enforceability of investor protections. Without institutional reform, accountability mechanisms, and a demonstrated political will to uphold the rule of law, Ethiopia's domestic FDI dispute resolution framework risks becoming increasingly irrelevant in the eyes of foreign investors.

[127] Ibid.
[128] Interview with EIC investment expert, conducted by the author, April 2025
[129] Ibid
[130] Interview with Dawit Feleke, a Private Sector Engagement and Investment Promotion Advisor at EIC, April 2025.

Chapter Four

4. Assessment of the Challenges and Prospects of Ethiopia's Ratification of the ICSID Convention

4.1. Introduction

Ethiopia was among the earliest countries to sign ICSID Convention in 1965.[131] However, despite being a signatory for nearly six decades, Ethiopia has not ratified the Convention to date and therefore remains outside the ICSID system as a legal member.[132] Notwithstanding its non-membership status, Ethiopia has routinely accepted the possibility of applicability of the ICSID Convention through the numerous BITs it has concluded with other countries over the years.[133] As confirmed by Mr. Dawit Feleke, Ethiopia has entered into more than 30 BITs, many of which explicitly reference the ICSID Convention as a dispute resolution forum.[134] According to Mr. Dawit, this practice indicates that although Ethiopia is not a formal member, it has, in practice, subjected itself to ICSID's jurisdiction by way of treaty-based consent.[135]

However, the absence of ratification poses structural and strategic limitations. In particular, Ethiopia's continued non-membership to ICSID and other similar mechanisms has reportedly deterred large-scale investors, who often prioritize a host country's membership in international dispute resolution frameworks such as ICSID when making FDI decisions.[136] The lack of confidence in Ethiopia's domestic dispute resolution system, already addressed by issues discussed in Chapter 3.5, has only deepened the demand for credible international dispute resolution alternatives. While some investors have managed to invoke ICSID arbitration via BIT clauses, this pathway is not without procedural and legal uncertainty. The gap between treaty-based ICSID consent and formal ICSID membership leaves Ethiopia exposed to reputational risks while also undermining the clarity of enforcement, recognition, and procedural participation in ICSID proceedings. In light of recent incidents where investor rights were compromised due to civil unrest, expropriation, and administrative silence, the case for reconsidering ICSID ratification is

[131] ICSID, *supra* note 121.
[132] Ibid.
[133] UNCTAD, *supra* note 120.
[134] Interview with Dawit Feleke, *supra* note 121.
[135] Ibid.
[136] Ibid.

becoming more urgent.[137]An impartial, rule-based international mechanism is increasingly seen as necessary, not only to restore investor trust, but also to provide Ethiopia with a platform for balanced dispute resolution that does not compromise national interests.

Accordingly, this chapter aims to critically assess the challenges and prospects of Ethiopia's ratification of the ICSID Convention. It explores the key legal, and institutional barriers to ratification, examines the strategic value such a move could bring to Ethiopia's investment climate, and reflects on the broader legal risks and benefits of becoming a full member of the ICSID system.

4.2. Key Potential Challenges to ICSID Ratification

4.2.1. Concerns of Sovereignty and Jurisdiction

One of the primary challenges Ethiopia faces in ratifying the ICSID Convention relates to concerns over national sovereignty and judicial independence. International investment arbitration tribunals, including those under ICSID, often rely on national courts for the recognition and enforcement of arbitral awards. While this cooperation is crucial for enforceability, it may be perceived as limiting the sovereignty of a host state's judiciary, especially where domestic courts are reluctant to cede authority to international mechanisms.[138] The ICSID Convention imposes a clear obligation on member states to recognize and enforce awards. Article 53 of the Convention stipulates that "*the award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention*."[139]

This finality of awards has raised concern among policymakers and legal experts about the Convention's potential to constrain a country's ability to safeguard its national interests through its own legal and policy frameworks. According to legal experts interviewed for this paper, the use of terms such as "recognition" and "enforcement" within the ICSID framework is not fully defined in a way that safeguards domestic discretion.[140] This ambiguity, they argue, might create uncertainty over the extent to which Ethiopia can preserve its policy space in sensitive investment matters.

Further concern arises from Ethiopia's long-standing preference to resolve investment disputes through domestic courts and BITs based arrangements. According to a key expert at the MoFA,

[137] See Chapter 3.5 on limitations of the existing FDI dispute resolution framework of Ethiopia.
[138] Guglya, L., "*International Review of Decisions Concerning Recognition and Enforcement of Foreign Arbitral Award: A Threat to the Sovereignty of the States or an Overestimated Hazard*," 2011, pp.93-121.
[139] The ICSID Convention, supra note 55, Article 53.
[140] Interview with Informant No.3, legal expert at Ethiopian Federal Courts, in Addis Ababa, January 5, 2025.

Ethiopia has consistently prioritized bilateral frameworks and internal dispute resolution processes over multilateral forums like ICSID, partly out of caution that submission to international arbitration may erode national autonomy.[141] Studies on bilateral investment treaties and international arbitration similarly caution that such mechanisms can provoke domestic political backlash, especially when citizens perceive arbitral tribunals as favoring foreign investors over local interests. These perceptions can undermine democratic legitimacy and lead to accusations that the state is sacrificing sovereignty.[142] Moreover, by ratifying investment treaties that grant expansive investor rights, states may inadvertently restrict their ability to enact necessary legislative and administrative measures aimed at protecting the public interest.[143]

4.2.2. Financial and Legal Risks

Another major concern deterring Ethiopia from ratifying the ICSID Convention lies in the significant financial and legal burdens associated with international investment arbitration. Investment treaty arbitration proceedings are often complex and expensive, with total costs frequently reaching tens of millions of U.S. dollars. In some recent ICSID cases, for instance, claimants have requested reimbursement of costs exceeding USD 24 million, while respondents have claimed over USD 35 million in legal and tribunal-related expenses.[144]

Under Article 48 of the ICSID Convention, the tribunal determines the allocation of arbitration costs based on party consent and a majority decision of tribunal members.[145] While this offers some flexibility, member states often bear substantial financial risks. These include not only the possibility of high compensation awards but also the obligation to cover legal representation and arbitration fees and costs that may, in some cases, exceed the actual amount in dispute.[146] This issue is particularly severe for developing countries like Ethiopia. According to key informant interviews, the high cost of ICSID proceedings, especially when compared to domestic legal remedies or regional alternatives, poses a real challenge to ratification.[147] The disparity in economic

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[141] Interview with Informant No.5, government official at Minister of Foreign Affairs, in Addis Ababa, on February 02, 2025.
[142] Yackee, J.W., "*Sacrificing sovereignty: Bilateral investment treaties, international arbitration, and the quest for capital*", The University of North Carolina at Chapel Hill, 2007.
[143] Poulsen, L.N.S., "*Sacrificing sovereignty by chance: investment treaties, developing countries, and bounded rationality",* Doctoral dissertation, London School of Economics and Political Science), 2011.
[144] Gotanda, J.Y., "*Consistently Inconsistent: The Need for Predictability in Awarding Costs and Fees in Investment Treaty Arbitrations*" *ICSID review*, *28*(2), 2013, pp.420-437.
[145] The ICSID Convention, *supra* note 55. Article 48.
[146] Gotanda, *supra* note 144.
[147] Interview with Informant No.1, official at Ethiopian Investment Commission (EIC), in Addis Ababa, on January 02, 2025.

development between disputing parties, often least developed states on one side and well-resourced multinational investors on the other, can twist the process in favor of those with greater financial and legal leverage.

Scholarly studies have also underscored the risks posed by such imbalances. It has been argued that unless ICSID and similar forums adopt procedural mechanisms that better accommodate the capacity of least developed countries, these states may face disproportionate hardship in investor-state arbitration.[148] In light of this, Ethiopia is encouraged to carefully weigh the financial sustainability of ICSID membership and to consider the financial implication considering the country's development context.[149]

4.2.3. Gaps in Legal and Institutional Capacity

While international arbitration has a long history, tracing its origins to medieval diplomatic practices and state-to-state claims commissions, it has significantly evolved to address the complexity of modern international investment disputes.[150] Today, mechanisms like ICSID and BITs form a central part of the international legal framework that governs FDIs. Despite being an early signatory of the ICSID Convention and a party to over 30 BITs, Ethiopia's legal and institutional preparedness remains limited. Many of the country's existing BITs are outdated and not aligned with the evolving standards of international investment law.[151]

Moreover, as highlighted during a key informant interview, the ICSID system demands a high level of legal sophistication and institutional readiness.[152] Arbitration awards under ICSID are binding and enforceable on contracting states, which necessitates that domestic laws and institutions are capable of implementing such decisions without conflict or delay. Without a harmonized legal approach and adequately trained negotiators and officials, Ethiopia risks exposing itself to unintended liabilities and challenges in implementation. The country's limited institutional infrastructure both in terms of legal expertise and administrative readiness has been cited as a significant challenge in integrating international arbitration into the domestic framework.[153] For

[148] Endryas Tekalegn, *supra* note 8.
[149] Interview with Dawit Feleke, *supra* note 121.
[150] Andrew Newcombe and Lluis Paradell, "*Historical Development of Investment Treaty Law in Law and Practice of Investment Treaties: Standards of Treatment"*, Kluwer Law International, 2009.
[151] Abate, A., "*Ethiopia's Bilateral Investment Treaties and Environmental Protection; The Need of Re-Negotiation for Corporate Responsibility*". Global Jurist, 21(2), 2021, pp.341-364.
[152] Interview with Informant No.4, legal expert at Ethiopian Federal Courts, in Addis Ababa, on January 15, 2025.
[153] Endryas Tekalegn, *supra* note 8.

Ethiopia to fully benefit from ICSID membership, there is a need for capacity building, treaty modernization, and institutional strengthening to ensure smooth interaction between international obligations and domestic law.

4.2.4. Political Reluctance and Absence of Stakeholder Initiatives

Despite Ethiopia's active engagement in various international economic frameworks such as the African Continental Free Trade Area (AfCFTA) and BITs, the government has demonstrated noticeable reluctance toward initiating discussions on the ratification of the ICSID Convention. In an interview with Dawit Feleke, it was confirmed that no formal government initiative has been launched to begin stakeholder engagement or policy dialogue concerning the ICSID Convention.[154] This political hesitation has translated into institutional inactivity, where neither the Ministry of Justice, the EIC, nor other relevant government bodies have officially raised the issue for inter-agency deliberation or public discourse. As a result, there is an obvious lack of empirical assessment or national consultation regarding the potential benefits and risks of ratifying the Convention. Ethiopia's government silence on ICSID, in contrast, reflects a missed opportunity to construct a policy position grounded in public debate and comparative analysis.

4.3. Prospective Benefits of Ratifying the ICSID Convention in Ethiopia

4.3.1. Remedying Gaps in the Domestic Framework

Ethiopia's domestic legal and institutional frameworks for FDI continue to face critical shortcomings that undermine investors' confidence. As discussed earlier in Chapter 3, some of the chronic challenges include lack of institutional independence, lack of enforcement of investment guarantees, and limited recourse for foreign investors in the event of expropriation or disputes with the host government. These gaps will make it difficult for Ethiopia to effectively compete with other countries that offer more reliable and investor-friendly dispute resolution mechanisms.

While many developing countries have, over the last decade, adopted domestic investment laws to offer greater protection to foreign investors, these laws often mirror the objectives of international investment treaties mainly to promote and secure foreign investment by providing predictable legal environments and enforceable rights.[155] In practice, however, domestic legal systems in developing countries frequently fall short in offering swift, impartial, and enforceable remedies in investor-

[154] Interview with Dawit Feleke, *supra* note 121.
[155] Potestà, M., *"The interpretation of consent to ICSID arbitration contained in domestic investment laws"*, Arbitration International, 27(2), 2011, pp.149-170.

state disputes. For this reason, investors often prefer having recourse to international arbitration mechanisms such as the ICSID.[156]

In Ethiopia's case, although the country has enacted modern investment laws and signed over 30 BITs,[157] access to international arbitration, particularly ICSID, has been indirect and inconsistent.[158] Ethiopia's domestic legal and institutional capacity has not been fully developed to provide a credible and autonomous alternative to ICSID arbitration, nor has it fully utilized the potential of existing legal tools to inspire investor trust.[159] Moreover, as several legal experts, including those interviewed during the course of this study, have pointed out, the existing domestic investment frameworks remain fragmented, and in urgent need of reform.[160]

The ratification of the ICSID Convention would offer Ethiopia a valuable opportunity to remedy these deficiencies. First, it would provide an internationally recognized dispute resolution alternative that could function alongside and in support of domestic legal institutions. Second, it would encourage the modernization and harmonization of Ethiopia's investment-related legal framework, including amendments to procedural rules and judicial training. Third, the presence of ICSID as a legal option would serve as a trust-enhancing mechanism for international investors who are otherwise reluctant to rely solely on domestic dispute settlement platforms. By aligning its legal framework with globally accepted standards and creating access to neutral arbitration, Ethiopia would be able to present ICSID not only as a valid alternative to its current system but also as a catalyst for broader institutional and legal reforms.

4.3.2. Enhancing Investor Trust and Reputational Standing

Ethiopia's recent history of political instability, civil unrest, and armed conflicts has resulted in widespread damage to business operations and destruction of investment properties, particularly in regions with high levels of FDIs. As highlighted in Chapter 3, these disruptions have caused substantial financial losses to both domestic and foreign investors and severely undermined investor confidence in Ethiopia's capacity to protect investments.[161] The government's limited ability to compensate affected investors and the absence of swift dispute resolution mechanisms

[156] Ibid.
[157] UNCTAD Investment Policy Hub, *"Ethiopia – Bilateral Investment Treaties (BITs)*," (accessed April 2025).
[158] Interview with Dawit Feleke, *supra* note 121.
[159] Wakgari Kebeta., "*Revisiting Ethiopia's Approach to International Arbitration: Latest Trends and Future Prospects.*", 2023 JL Pol'y & Globalization, 137, p.1.
[160] Interview with Dawit Feleke, *supra* note 121.
[161] See Chapter 3.5 of this paper above, Limitations of the Existing FDI Dispute Resolution Framework of Ethiopia.

have further compounded reputational damage.[162] This situation will create doubt on Ethiopia's credibility as a safe and reliable destination for foreign investment.

In the absence of effective and impartial legal redress mechanisms at the domestic level, investors increasingly look for host countries that offer access to neutral and internationally recognized arbitration frameworks. ICSID, as the leading global institution for investor-state arbitration, offers a legally binding and depoliticized forum that can significantly enhance a host state's attractiveness to investors.[163] Ratifying the ICSID Convention would thus serve as a clear signal of Ethiopia's commitment to international legal standards and investor protection norms, helping to rebuild its reputation as a credible investment destination.

The reputational benefits of ICSID ratification have more benefits. Countries that are party to ICSID tend to rank higher in investment climate indices, as the presence of binding arbitration remedies reduces the perceived risk of political interference or judicial bias in dispute resolution.[164] For Ethiopia, which is currently striving to attract both new FDI and re-engage investors whose confidence has been shaken in recent years, this step would demonstrate seriousness in addressing investor concerns and closing institutional gaps that have historically hindered investment. Moreover, key informant interviews conducted for this study confirm that international investors and legal practitioners alike view ICSID membership as a vital component of modern investment governance.[165]The absence of this membership, coupled with weak domestic remedies, sends a discouraging message about the reliability of Ethiopia's investment protections especially in the wake of recent instability. Ratifying the Convention would therefore not only strengthen Ethiopia's legal framework but also signal a broader political will to restore and sustain investor trust.

4.3.3. Strengthening Ethiopia's Position in Bilateral and Multilateral Settings

Ethiopia's growing engagement in the global investment landscape requires a more strategic alignment of its legal and policy frameworks with international standards. According to a key informant from the MoRs, Ethiopia's ratification of the ICSID Convention would strengthen its credibility and negotiating power in bilateral and multilateral investment dialogues.[166]It would

[162] Interview with Dawit Feleke, *supra* note 121.
[163] Interview with Informant No.5, government official at Minister of Foreign Affairs, in Addis Ababa, on February 02, 2025.
[164] UNCTAD, "*World Investment Report 2022: International Tax Reforms and Sustainable Investment*", p. 87.
[165] Interview with Informant No. 5, *supra* note 163.
[166] Ibid.

signal the country's commitment to rule-based dispute resolution mechanisms and international norms, thereby improving Ethiopia's standing in trade and investment negotiations, particularly within AfCFTA and other regional integration efforts. Ratification would also promote trust and cooperation with global partners, enhancing Ethiopia's diplomatic profile and influence in shaping international investment governance.

4.3.4. Attracting Quality FDIs and Harmonizing Legal Protections

Ratifying the ICSID Convention offers Ethiopia a unique opportunity to attract credible, large-scale FDIs by mitigating one of the most pressing investor concerns: legal uncertainty. Currently, Ethiopia's BITs vary in scope and standards of protection, creating fragmented and inconsistent obligations that may deter sophisticated investors seeking predictability and robust dispute resolution mechanisms.[167]

The ICSID framework offers a uniform and internationally accepted dispute resolution platform, which consolidates legal protections and eliminates the inconsistencies spread across Ethiopia's multiple BITs. This not only simplifies the legal framework for investors but also demonstrates the country's commitment to upholding international standards. As Dawit Feleke emphasized, genuine and capital-intensive investors prioritize legal stability and enforceability, and the absence of an ICSID commitment may signal elevated risk.[168] Ratification would thus serve as a signal of confidence and reliability, encouraging inflows of high-quality investment aligned with Ethiopia's long-term development goals.

[167] Interview with Dawit Feleke, supra note 121.
[168] Ibid.

4.4. Analyzing the Challenges and Prospecting benefits of ICSID Convention Ratification

Reflecting on the complex terrain of Ethiopia's potential ratification of the ICSID Convention, one thing becomes clear: the issue is not merely legal or technical, it's deeply strategic. The challenges and opportunities explored in this chapter brought to light a fascinating yet uneasy tension. On one hand, there are the practical concerns of financial risks, institutional gaps, and political reluctance. On the other, there's an undeniable possibility that Ethiopia could reposition itself in the global investment framework through a carefully considered ratification of ICSID.

Writing this chapter felt like wondering between caution and optimism. The discussions around Ethiopia's domestic legal framework revealed just how much modernization is needed, especially when the world's legal and economic systems are rapidly evolving. The domestic investment mechanisms although improving still struggle to inspire full confidence, especially in light of recent incidents of political instability and investor asset destruction. These issues have taken a ring on Ethiopia's image, shaking investor trust in ways that cannot be ignored.

Yet, what stood out to me most while writing this chapter was the potential that lies beneath the surface. The ICSID Convention is not a magic wand, but it does offer something Ethiopia urgently needs: a coherent, dependable, and internationally trusted dispute resolution mechanism. If aligned properly, ICSID could help close gaps in the domestic legal architecture, harmonize the scattered standards across Ethiopia's BITs, and send a strong message to the international community that Ethiopia is open and serious about securing and protecting investment. Admittedly, the lack of stakeholder initiative and government engagement on this matter is concerning. But perhaps that's exactly why this conversation needs to happen now. As Ethiopia pushes forward with economic reforms and regional integration efforts, ratifying ICSID could mark a pivotal step toward attracting not just more investment, but better investment, which are genuine, large-scale, and aligned with national development priorities.

Chapter Five

5.Conclusion and Recommendations

5.1. Conclusion

At its inception, this thesis was missioned to explore and provide analytical answers to four central research questions concerning Ethiopia's non-ratification of the ICSID Convention and its implications for FDIs. Each of these questions has been examined with critical reflection, guided by doctrinal analysis, key informant insights, and practical case considerations. The findings are summarized below.

First, the study examined the current alternative dispute resolution mechanisms Ethiopia uses for investment related disputes and compared them with the ICSID arbitration system. The conclusion reached is that Ethiopia's domestic frameworks, while evolving, remain insufficiently robust in offering neutral, enforceable, and investor-trusted mechanisms. Unlike ICSID, domestic institutions lack global enforceability and face limitations in independence, procedural consistency, and technical capacity, which deter high-stakes investors.

Second, the thesis explored the legal and institutional reasons behind Ethiopia's hesitation to ratify the ICSID Convention. The findings show that this reluctance stems from a mixture of structural weaknesses in legal preparedness, political disinterest, and economic apprehensions surrounding arbitration costs and state exposure.

Third, the absence of ICSID ratification was found to have a significant bearing on FDI inflows and investor confidence. Recent incidents of political unrest and asset destruction have already strained Ethiopia's credibility among investors. The lack of a globally recognized dispute resolution system like ICSID further amplifies perceived risk, undermines reputational standing, and limits Ethiopia's appeal for high-value, long-term investments.

Finally, the study identified multiple legal and strategic benefits should Ethiopia ratify the ICSID Convention. Ratification would not only signal a clear commitment to investor protection and the rule of law but would also strengthen Ethiopia's negotiating stance in bilateral and multilateral platforms. It would allow Ethiopia to fill critical gaps in its investment framework, enhance dispute resolution credibility, and create the certainty necessary to attract genuine, large-scale investors.

In sum, while challenges exist, the potential benefits of ICSID ratification outweigh the risk provided that it is approached with legal preparedness, stakeholder coordination, and political will. This conclusion lays a clear groundwork for recommendations, which follow in the next section.

5.2. Recommendation

Based on the findings, this thesis recommends that Ethiopia take a thoughtful and careful step-by-step approach toward ratifying the ICSID Convention that aligns with the country's development priorities and the realities of its institutional framework.

1. Ethiopia must initiate an inclusive dialogue involving the Ministry of Justice, Ministry of Foreign Affairs, Ethiopian Investment Commission, and other stakeholders including the academia to assess the implications of ICSID Convention ratification in a holistic manner. A structured technical task force should be formed to study institutional readiness, propose legal reforms, and lead the ratification process. This would ensure that the decision is grounded in a comprehensive understanding of risks and benefits rather than political caution alone.
2. Rather than immediately reforming substantive investment laws, the government should prioritize strengthening the enforcement and practical functionality of current domestic dispute resolution mechanisms. Until Ethiopia accedes to alternative international platforms, dependable local processes will help build trust with investors and ensure that Ethiopia maintains control over investment related disputes.
3. The government should prioritize addressing concerns and complaints raised by foreign investors, especially those related to damages and losses resulting from instability. Such incidents not only erode investor confidence but also harm Ethiopia's international reputation. Offering fair and timely redress to affected investors is essential to restore credibility and demonstrate the country's commitment to protecting foreign investments.
4. Rather than relying solely on general domestic tribunals, which may lack the expertise to fully grasp the national and international implications of certain disputes, the government should consider setting up a specialized dispute resolution mechanism. This is particularly crucial for sensitive matters such as tax related disputes and cases involving expropriation, where clarity, predictability, and technical competence are critical for investor trust and legal certainty.

5. Ratification of the ICSID Convention should not be pursued in isolation. It must be accompanied by a deep understanding of the Convention's implications both legally and institutionally. The government must assess its capacity to manage binding international obligations and integrate those with domestic procedures to avoid future legal liabilities or inconsistencies.

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Annex

I-Semi-Structured Interview for FDRE Ministry of Foreign Affairs (MoFA)

1. Introduce yourself and your position in your organization.
2. How has it been Ethiopia maintained its national interest in its relationship with other countries of the world?
3. How does the MoFA conceptualize the foreign direct investment? What are the core principles guiding the Ministry's approach to investment perspective?
4. What existing institutional frameworks address the investment disputes with foreign investors?
5. Have any experiences from other countries been considered in the design of Ethiopian investment landscape?
6. What challenges may the country face if it ratifies the ICSID convention? Does your office have a plan to ratify it and the proposed preventive mechanism of its adverse implications?
7. What possible prospects does the country have if she ratifies the ICSID? Does it benefit the country, and how or why not?
8. In what ways does the ministry actively engage with international organizations, states and foreign investors to ensure coordination in attracting foreign direct investment?
9. How does the ministry ensure that the challenges if Ethiopia ratifies the ISCID convention as a part to resolve its investment dispute with foreign investors'?

I. Semi-Structured Interview for the Ethiopian Investment Commission (EIC)

1. Introduce yourself and your position in your organization.
2. What is your organization's perspective on the current investment legal framework for in resolving investment disputes?
3. How has Ethiopia resolved investment disputes that arise between the country and foreign investors?
4. What are the multilateral and bilateral investment treaties and agreements that Ethiopia currently uses for investment dispute settlement? What is their efficiency and enforceability in comparison with the ICSID arbitration?
5. What are the alternative dispute resolution mechanisms that Ethiopia currently uses for investment dispute settlement? What is their efficiency and enforceability in comparison with the ICSID arbitration?

6. What are the key legal and institutional challenges that have prevented Ethiopia from ratifying the ICSID Convention?
7. What are the impacts of foreign direct investment (FDI) inflows and investor confidence in Ethiopia with the absence of ICSID ratification?
8. What are the potential legal and administrative benefits and challenges for Ethiopia if it ratifies the ICSID Convention?
9. What and how do you envision the ICSID's convention contributing to the investment dispute settlement of the country?

II. Semi-Structured Interview for FDRE Federal High Court

1. Introduce yourself and your position in your organization.
2. What role does your organization play in the investment dispute settlement, specifically in providing expertise services in this respect?
3. How was your organization involved in drafting the bilateral and multilateral agreements and treaties that Ethiopia was involved in?
4. What is the legal implications for Ethiopia ratifying the ICSID?
5. What legal challenges do you anticipate or face if Ethiopia ratifies the ICSID convention, and what solutions are there to overcome the challenges?
6. What potential prospects does Ethiopia have to ratify the ICSID convention?
7. What are the alternative dispute resolution mechanisms that Ethiopia currently uses for investment dispute settlement? What is their efficiency and enforceability in comparison with the ICSID arbitration?
8. What are the multilateral and bilateral investment treaties and agreements that Ethiopia currently uses for investment dispute settlement? What is their efficiency and enforceability in comparison with the ICSID arbitration?
9. What do you suggest for the future for improvement of the national legal system to govern the investment related dispute settlement?