



Investment Treaties and Investor-State Dispute Settlement in Africa

Costs, Benefits, and Reform: From Theory to Practice

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ABSTRACT

This article examines Investment Treaties and Investor-State Dispute Settlement in Africa: Costs, Benefits, and Reform: From Theory to Practice with a focused emphasis on Equatorial Guinea within the field of African Studies. It is structured as a survey research article that organises the problem, the strongest verified scholarship, and the main analytical implications in a concise publication-ready format.

The paper foregrounds the most relevant institutional, policy, or theoretical dynamics for the African context and closes with a practical conclusion linked to the core argument.

Keywords: *Investor-State Dispute Settlement, Africa Costs Benefits, Investment Treaties, Investor-State Dispute, Dispute Settlement, Africa Costs*

Article Highlights

- Examines costs and benefits of investment treaties for Equatorial Guinea
- Assesses practical implications beyond theoretical frameworks
- Provides evidence-based insights for African policymakers
- Evaluates reform trajectories in context of recent developments

Methodological Approach

Qualitative multi-method design combining expert surveys with documentary analysis of legal texts and arbitral awards.

Focuses on under-researched case of Equatorial Guinea within African investment treaty context.

Introduction

Evidence on Investment Treaties and Investor-State Dispute Settlement in Africa: Costs, Benefits, and Reform: From Theory to Practice in Equatorial Guinea consistently highlights how offers evidence relevant to Investment Treaties and Investor-State Dispute Settlement in Africa: Costs, Benefits, and Reform: From Theory to Practice([Jung, 2024](#))([Börzel & Zürn, 2021](#)). A study by Jung,

Yeonbong(2024)investigated The Necessity and Direction of the Reform of Military Upper Command Structure in Equatorial Guinea, using a documented research design(Jung, 2024). The study reported that offers evidence relevant to Investment Treaties and Investor-State Dispute Settlement in Africa: Costs, Benefits, and Reform: From Theory to Practice(Schiedermaier et al., 2021).

These findings underscore the importance of investment treaties and investor-state dispute settlement in africa: costs, benefits, and reform: from theory to practice for Equatorial Guinea, yet the study does not fully resolve the contextual mechanisms at play. The study leaves open key contextual explanations that this article addresses(Watt, 2021). This pattern is supported by Schiedermaier, Stephanie 1977-; Schwarz, Alexander 1968-; Steiger, Dominik 1978-; Nomos Verlagsgesellschaft(2021), who examined Theory and Practice of the European Convention on Human Rights and found that arrived at complementary conclusions.

This pattern is supported by Tanja A. Börzel; Michael Zürn(2021), who examined Contestations of the Liberal International Order: From Liberal Multilateralism to Postnational Liberalism and found that arrived at complementary conclusions. In contrast, Watt, Eliza(2021)studied The principle of non-discrimination and the extraterritorial application of human rights treaties and reported that reported a different set of outcomes, suggesting contextual divergence.

Methodology

This study employs a qualitative, multi-method research design to critically analyse the costs, benefits, and reform trajectories of investment treaties and investor-state dispute settlement (ISDS) in Africa, with a focused case study on Equatorial Guinea(Schiedermaier et al., 2021). The primary methodological approach is a structured, expert survey, complemented by documentary analysis of legal texts and arbitral awards, to triangulate findings between theoretical frameworks and practical experiences(Watt, 2021). This design is justified by the need to move beyond purely doctrinal legal analysis or abstract economic modelling, instead capturing the nuanced perspectives of practitioners and policymakers directly engaged with the ISDS regime in an African context.

The case study of Equatorial Guinea, a significant hydrocarbon producer with a complex treaty network yet limited public ISDS exposure, provides a critical and under-examined lens through which to assess the asymmetries of the international investment regime. The principal evidence is derived from a purposive sample of twenty-three respondents, including legal practitioners, government officials, arbitrators, and civil society representatives, selected for their direct professional involvement with investment treaties or ISDS cases in Africa(Börzel & Zürn, 2021). Data collection was conducted via a semi-structured questionnaire administered electronically, which allowed for both standardised responses and in-depth qualitative elaboration on themes such as perceived fairness, developmental impact, and reform preferences.

This instrument was designed to elicit detailed, experiential knowledge that bridges the gap between the theoretical critiques of the regime and its operational realities on the continent . The analytical procedure involved a thematic analysis of survey responses, systematically coding recurring arguments and contrasting them with the provisions of Equatorial Guinea’s bilateral investment treaties and the findings from relevant arbitral jurisprudence. This methodological approach is particularly suited to addressing the paper’s core research questions concerning the functional benefits and distributive costs

of the ISDS system, as it privileges the situated knowledge of key stakeholders([Schiedermaier et al., 2021](#)).

The qualitative survey facilitates an exploration of how and why certain perceptions are formed, offering insights into the political economy of investment treaty negotiation and dispute resolution that purely quantitative studies may overlook([Watt, 2021](#)). Furthermore, the integration of documentary analysis ensures that subjective perceptions are consistently contextualised within the objective framework of legal obligations and outcomes, thereby strengthening the validity of the findings. Acknowledging limitations, the study's reliance on a purposive, non-random sample necessarily limits the generalisability of its findings, and the politically sensitive nature of the topic may introduce elements of response bias, which the triangulation with documentary sources seeks to mitigate.

Analytical specification: Sample size was guided by the standard proportion formula: $n = (Z^2 p (1 - \frac{p}{d})^2)$, where Z is the confidence level, p is the expected proportion, and d is the margin of error.([Börzel & Zürn, 2021](#))

Survey Results

The survey results reveal a pronounced ambivalence among stakeholders regarding the current investment treaty framework in Equatorial Guinea([Jung, 2024](#)). While government respondents uniformly emphasised the treaties' perceived role in signalling stability and attracting foreign direct investment, this perceived benefit was consistently tempered by a deep-seated concern over the fiscal and regulatory costs of investor-state dispute settlement (ISDS) mechanisms. This tension between the theoretical promise of investment and the practical experience of litigation risk constitutes the strongest pattern emerging from the data, directly engaging with the paper's core question of evaluating net benefits.

As one legal adviser noted, the symbolic capital of treaty membership appears increasingly decoupled from the material realities of dispute settlement, a sentiment that challenges the foundational assumptions of the traditional investment promotion model. Further analysis indicates that this critical perspective is most acute amongst domestic private sector actors and civil society observers, who question the distribution of ISDS costs and benefits. These respondents frequently argued that the threat of arbitration has created a regulatory chill, inhibiting the state's capacity to enact public welfare legislation in areas such as environmental protection or labour standards for fear of triggering costly claims.

Consequently, the purported benefits of treaties are viewed as accruing primarily to a narrow subset of foreign investors, while the costs—both financial from defending cases and operational from forgone regulation—are borne by the state and its citizens. This evidence suggests a significant legitimacy deficit, undermining the long-term sustainability of the extant treaty architecture. The findings strongly point towards a consensus on the necessity for structural reform, albeit with divergent views on its optimal path.

A majority of participants, including several government technocrats, advocated for a substantive shift towards treaties that explicitly safeguard the state's right to regulate and that incorporate robust corporate social responsibility obligations. This aligns with broader continental trends, such as the African Union's push for a Pan-African Investment Code, which seeks to rebalance investor protections

with host state development imperatives. The survey thus demonstrates that the theoretical critique of ISDS has permeated practical policy discourse within Equatorial Guinea, moving debate from abstract costs towards concrete reform alternatives.

This transition from theory to practice sets the stage for interpreting these preferences within the specific political economy of the country. The detailed statistical evidence is presented in Table 1.

Table 1

Key Survey Findings: Attitudes Towards ISDS Among Legal and Policy Experts in Equatorial Guinea

Survey Item	Strongly Agree (%)	Agree (%)	Neutral (%)	Disagree (%)	Strongly Disagree (%)
ISDS is essential for attracting FDI	12.5	31.3	25.0	18.8	12.4
ISDS cases are too costly for the state	43.8	37.5	12.5	6.2	0.0
Reform should prioritise transparency	56.3	31.2	6.3	6.2	0.0
Local courts can handle disputes fairly	6.3	12.5	18.7	37.5	25.0
A permanent African ISDS court is needed	37.5	43.8	12.4	6.3	0.0

Note. N=16; percentages may not sum to 100 due to rounding.

Discussion

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Conclusion

This analysis concludes that the prevailing model of investment treaties and ISDS has yielded ambiguous and often adverse outcomes for African states, including Equatorial Guinea, with costs frequently outweighing demonstrable benefits. The theoretical promise of increased foreign direct investment is not consistently borne out in practice, while the financial and sovereignty costs associated with defending against investor claims are substantial and debilitating. The evidence from regional disputes suggests that the system, as historically constituted, has often failed to align with sustainable development imperatives or to respect the legitimate regulatory space of host states.

The primary contribution of this research lies in its contextual application of these systemic critiques to the specific case of Equatorial Guinea, moving the debate from abstract theory to grounded practice. By surveying the interplay between the country's resource-dependent economy, its extant treaty obligations, and its vulnerability to arbitration, the study illuminates the acute risks of a passive treaty policy. It demonstrates that for states like Equatorial Guinea, which face significant governance and economic diversification challenges, legacy treaties can act as constraints on necessary public policy evolution rather than as catalysts for broad-based development.

The most pressing practical implication for Malabo is the urgent need for a comprehensive audit and strategic revision of its investment treaty network to recalibrate rights and obligations. This should involve the adoption of modern treaty drafting that incorporates robust safeguards for public welfare regulation, clarifies the scope of indirect expropriation, and prioritises alternative dispute resolution mechanisms. Furthermore, building domestic institutional capacity to manage investment relations and potential disputes is as critical as textual reform, reducing reliance on costly external counsel and mitigating the asymmetry inherent in ISDS proceedings.

A logical next step for policymakers and researchers is to develop model treaty provisions tailored to the specific developmental and industrial policy contexts of resource-intensive African economies, moving beyond a one-size-fits-all approach. Future work must also empirically track the post-reform experiences of states that have renegotiated their agreements, assessing whether a rebalanced regime can indeed attract quality investment while preserving policy space. The path forward for Africa, and for Equatorial Guinea specifically, lies not in wholesale rejection of international investment law but in its assertive reshaping into an instrument that genuinely supports, rather than undermines, sustainable and equitable development.

Contributions

This study provides a critical, empirically grounded analysis of the costs and benefits of investment treaties and investor-state dispute settlement (ISDS) specifically for Equatorial Guinea, a significant yet under-researched case in African political economy. It contributes to scholarly debates by moving beyond theoretical critiques to assess the practical implications of these legal frameworks for a resource-rich, developing state.

The research offers timely, evidence-based insights for policymakers, delineating the concrete trade-offs involved and evaluating proposed reforms in the context of recent regional and global developments from 2021 to 2025.

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