5 Investment treaty policy and dispute settlement

The eight MENA economies covered in this report have entered into a significant number of international investment agreements and experienced a rise in investor-state investment dispute cases in the last decade. This chapter takes stock of these developments. It highlights the need to consider and engage in reforms with a focus on the revision of investment treaty policy, clarifications of legal provisions and implementation of dispute avoidance measures and mechanisms.

Summary and policy considerations

The eight MENA economies covered in this report (MENA focus economies) have concluded a significant number of international investment agreements (IIAs). Based on publicly-available information, these economies have concluded at least 420 bilateral investment treaties (BITs), out of which 309 are understood to have entered into force (which represents around 13 % of the total BITs that are understood to have entered into force worldwide), two main regional investment agreements (the Arab Investment Agreement between members of the Arab League and the Investment Agreement of the Organization of Islamic Cooperation), as well as several trade and investment agreements and other international investment-related agreements. Many of these agreements show features of the so-called first-generation treaties and include relatively vague substantive provisions, with lack of clarity that could be broadly interpreted by arbitral tribunals. A global trend towards revision of investment treaty policy and practice is reflected in the approaches of some of the MENA focus economies, but reforms need to be further encouraged to ensure an appropriate balance between investment protection and the state's right to regulate.

The number of investor-State dispute settlement (ISDS) cases in the region rose sharply in the last decade. The total number of known treaty-based ISDS cases against MENA focus economies reached 84 (8.2 % of the world total) and the majority were initiated in the last decade. ISDS mechanisms protect states and investors against misbehaviours, but raise concerns at the global level given the rise in cases, their impact, costs, complexity, transparency and legitimacy. These developments have triggered reforms at the international and national levels in many countries. MENA focus economies are encouraged to engage continually with international policy debates regarding the outcomes of ISDS cases and reflect on measures to limit their exposure to and avoid investment disputes.

The social and political upheavals in many MENA countries beginning in 2011 indicate some correlation between political and economic crises and the increased use of ISDS mechanisms by investors in some of the MENA focus economies. While it may be too soon to identify a similar link between investment disputes and the Covid-19 crisis, MENA governments need to remain vigilant, build awareness and understanding, and take proactive approaches to dispute prevention and management. There are already relevant dispute prevention mechanisms in place in some of the focus economies and the crisis units established in some investment promotion agencies (IPAs) as a response to the Covid-19 pandemic also play a preventive role. This trend should be further encouraged based on existing good practices to accelerate effective implementation.

Policy considerations

- Revise investment treaty policy and practice: evaluate the treaty network, assess the costs and benefits of key provisions and their potential impact, and where appropriate, consider ways to update key provisions to bring them in line with current priorities add further clarifications and ensure a better balance between investor protection and the government's right to regulate. Depending on the context and treaty language, it may be possible to achieve these goals through joint interpretations agreed with treaty partners. In other cases, treaty amendments may be required. Replacement of older investment treaties by consent may also be appropriate in some cases.
- Participate in multilateral and regional discussions on investment agreements and dispute mechanisms to build awareness on the issues at stake, avoid inconsistencies with the bilateral treaty network, ensure coherence (including with investment laws and contracts), and develop reforms that respond to governments' intent while continuing to protect investors. To that end, engage with treaty partners and relevant regional organisations' secretariats, follow-up on on-

going discussions in international fora (OECD, UNCITRAL and ICSID) and engage actively in shaping the design of future treaties under negotiation, such as the Investment Protocol of the African Continental Free Trade Area.

- Consider reforms that would limit exposure to investment arbitration claims, in particular in times of crisis, with clarified legal provisions to improve consistency in interpretations by arbitral tribunals, but also through dispute prevention and management mechanisms. To that end, build on the measures taken by MENA IPAs in response to the Covid-19 crisis to enhance communication with investors and identify potential issues, and reinforce governmental co-ordination and mechanisms to prevent and manage potential disputes.

MENA economies have concluded a significant number of international investment agreements

Content and purpose of investment agreements

Like many countries around the world, the MENA focus economies have taken on international obligations to grant foreign investors specific treatment in a significant number of international investment agreements (referred to as investment treaties or IIAs). These obligations in bilateral investment treaties (BITs), regional investment agreements or investment chapters of trade and investment agreements grant certain protections to covered investors in addition to and independently from protections afforded by domestic law. Domestic investors are generally not covered by these treaties.

Investment treaties typically contain substantive protections for covered investments against expropriation or discrimination. Provisions requiring “fair and equitable treatment” (FET) are also common and have given rise to widely varying interpretations. While there are some significant recent exceptions, investment treaties also generally give covered investors access to investor-state dispute settlement (ISDS) mechanisms that allow them access to international arbitration to seek monetary compensation in cases where they claim that the host country has infringed on these provisions. While domestic law does not typically provide compensation beyond narrowly-defined situations, such as cases of expropriation, compensation has been a common remedy for investors in ISDS cases.

Investment protection provided under investment treaties can play an important role in fostering a healthy regulatory climate for investment. Expropriation or discrimination by governments does occur. Government acceptance of legitimate constraints on policies can provide investors with greater certainty and predictability, lowering unwarranted risk and the cost of capital. Domestic judicial and administrative systems provide investors with one option for protecting themselves. Access to international arbitration under investment treaties gives substantial additional leverage to covered foreign investors in their dealings with host governments.

Investment treaties are frequently promoted as a method of attracting FDI and this is a goal for many governments. Despite many studies, however, it remains difficult to establish strong evidence of impact in this regard (Pohl, 2018[1]). Some studies suggest that treaties or instruments that reduce barriers and restrictions to foreign investment have more impact on FDI flows than BITs focused only on post-establishment protection (Mistura and Roulet, 2019[2]). These assumptions continue to be investigated by a growing strand of empirical literature on the purposes of investment treaties and how well they are being achieved.

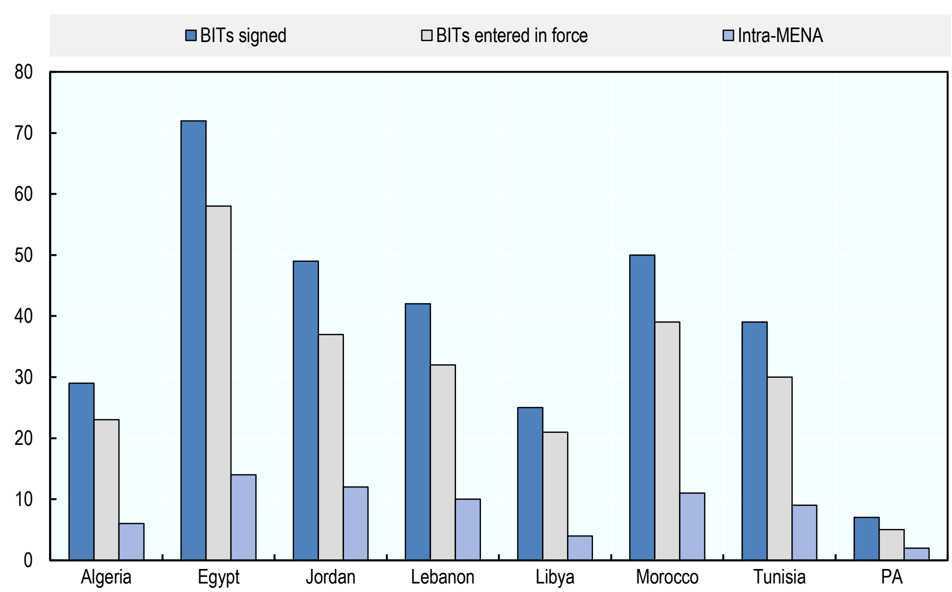
Bilateral Investment Treaties (BITs)

MENA governments have been active signatories of bilateral investment treaties (BITs). Based on publicly-available information, the MENA focus economies have concluded 420 BITs as of September 2020, out of which 309 are understood to have entered into force (Figure 5.1).[1] This represents 13.1 % of the total BITs entered into force worldwide (2,340). It is noteworthy that a third of these MENA BITs (over 100 treaties in total) have not entered into force, i.e. they have only been signed but not ratified and hence do not have legal value. Some BITs were also terminated, while others were renegotiated.

Worldwide, Egypt is the fifth most active signatory of BITs, after Germany (129), China (125), Switzerland (112), Turkey (109) and equally with the United Kingdom (100). While Egypt has not signed BITs since 2014, Morocco continues to be active, having signed its 72nd BITs with Japan in January 2020.

The number of BITs concluded by the MENA focus economies has increased in 1990s and subsequently slowed down. The slowing and recent reversal in the number of existing investment treaty relationships in force is a broad phenomenon reflecting the policies of many governments. As for other governments, this may reflect experiences in the MENA focus economies as respondents in ISDS claims. These economies mostly signed BITs with OECD countries and the rest of the world, proportionally more than with the other countries of the MENA region. The signature of the Abraham Accords in September 2020 might open the way to BITs negotiations with Israel, which agreed to sign the first Arab-Israeli BIT with UAE.

Figure 5.1. BITs concluded by MENA focus economies, including intra-MENA BITs (as of July 2020)



Source: UNCTAD Investment Policy Hub / MENA-OECD Competitiveness Programme, 2020.

MENA focus economies also entered into **bilateral economic agreements** which contain investment-related provisions, usually focusing on investment promotion and/or trade in services, but not the full set of investment protection provisions that are commonly found BITs:

- All MENA focus economies (except Libya and PA) have entered into **Association Agreements with the European Union**, which do not include specific investment provisions. Following the 2011 events in the region, and with a view to support the associated democratic and economic transitions, the European Commission has established a mandate to negotiate agreements establishing a Deep and Comprehensive Free Trade Area (DCFTA) with Morocco and Tunisia.

Expected to promote a progressive economic integration of these countries with the EU, these agreements should cover a full range of regulatory areas of mutual interest and, for the first time in EU agreements, investment market access. However, negotiations have stalled for the last few years, only a few rounds took place without concrete developments. Beside political and technical hurdles, there is an overall resistance from civil society and the business sector, as well as a lack of political backing.

- Several **free trade agreements** (FTAs) were signed by MENA governments, but only the FTA between Morocco and the United States contains a dedicated chapter on investment with core protection provisions. Egypt, Jordan, Lebanon, Morocco and Tunisia concluded FTAs with the European Free Trade Association (EFTA: Switzerland, Norway, Iceland and Liechtenstein). Turkey signed FTAs with Egypt, Morocco and Tunisia – the FTA with Jordan was terminated. Jordan also entered into FTAs with Singapore and the US.
- The United States signed **Trade and Investment Framework Agreements** (TIFA) with countries with which they do not have a FTA (Algeria, Egypt, Lebanon and Libya). However, they have not entered into force and only aim at promoting investment.
- Following Brexit and the Withdrawal Agreement with the EU, the United Kingdom concluded **continuity agreements** to maintain trade relationships – though without investment protection provisions – after 31 December 2020. Jordan, Morocco, PA and Tunisia entered into these agreements as of February 2020, the agreement with Egypt will come into effect on 31 December 2020 and Algeria engaged into negotiations (UNCTAD, 2020[3]).

Regional investment agreements

The MENA focus economies have also entered into regional investment agreements.

In 1980, the Unified Agreement for the Investment of Arab Capital in the Arab States (**Arab Investment Agreement** – AIA) was signed by the members of the League of Arab States. It entered into force in 1981 and was amended in 2013 – though the amendment was ratified by only a small number of countries.

In 1981, the member states of the Organization of Islamic Cooperation adopted the Agreement on Promotion and Protection and Guarantee of Investments (the **OIC Investment Agreement**). Effective since 1988, it has been ratified by 29 out of 36 member states to date.

Both of these agreements contain similar features to many older investment treaties. They include several investment protection provisions such as the prohibition of unlawful direct and indirect expropriation, protection and security, and most favoured nation (MFN) treatment, which requires governments to treat covered foreign investors not less favourably than investors from other countries. However, contrary to many investment treaties, these agreements do not contain provisions on fair and equitable treatment or provisions stating that foreign investors shall be treated no less favourably than domestic investors. They contain investor-state dispute settlement provisions which, until relatively recently, have not been frequently used. When interpreted by arbitral tribunal, some provisions of these agreements may prove to be problematic. Both have been the subject of reform discussions among their members. Reform efforts under the AIA were not consensual as many countries have not ratified the 2013 amendments. A draft investment protocol for the OIC Investment Dispute Settlement Organ is currently under discussion (see below).

Other regional economic integration initiatives, not involving all of the MENA focus economies, address some investment matters but do not contain core investment protections or ISDS. Libya and Egypt are members of the Common Market for Eastern and Southern Africa and entered into the COMESA Common Investment Area in 2007. The COMESA Regional Investment Agency is hosted by the General Authority for Investment of Egypt (GAFI). Algeria, Libya, Morocco and Tunisia signed the Arab Maghreb Union Investment Agreement in 1990, which did not enter into force mainly for political reasons.

Jordan, together with Yemen, are the only countries from the entire MENA region which have ratified the **Energy Charter Treaty (ECT)**. The ECT is a multilateral and sectoral trade and investment agreement under which 53 member states provide certain guarantees for investors in the energy sector. The ECT members are currently negotiating potential amendments to the ECT aimed at “modernising” the existing treaty. These discussions are potentially very significant for Jordan and Yemen.

Another ambitious initiative is the **African Continental Free Trade Area** (AfCFTA). While the agreement primarily concerns trade matters, the negotiation of an investment protocol is planned. Algeria, Egypt, Libya, Morocco and Tunisia have signed the AfCFTA, but only Egypt and Morocco have ratified it. The agreement, which entered into force in May 2019, could be an opportunity for the MENA region to promote more trade and investment with the rest of Africa. However, its implementation is likely to experience delays due to the Covid-19 crisis (FAO, 2020[4]). Trading rules in goods and services, originally scheduled for July 2020, are currently postponed (Signé and van der Ven, 2020[5]). Negotiations on the protocols on investment, competition and intellectual property rights, originally expected to be completed in December 2020, may also suffer delays. The investment protocol aims at promoting, protecting and facilitating sustainable investment and ultimately building regional value chains that will boost intra-African investment.

Other international investment-related agreements

The MENA focus economies are part of international investment-related agreements, which deal with investment dispute settlement, investment insurance and trade.

All of the economies, except Libya, are parties to the International Centre for Settlement of Investment Disputes (**ICSID**) Convention. Morocco and Tunisia were among the first signatories in 1965. ICSID provides facilities for conciliation and arbitration of international investment disputes and has administered a vast majority of known international investment cases. The MENA focus economies, excluding Libya, also ratified the 1958 **New York Convention** on the Recognition and Enforcement of Foreign Arbitral Awards, which is one of the key instruments in international arbitration.[2]

The MENA focus economies are members of the Multilateral Investment Guarantee Agency (**MIGA**), which promote cross-border investment by providing guarantees (political risk insurance and credit enhancement) to investors and lenders.

Egypt, Jordan, Morocco and Tunisia are members of the World Trade Organization (**WTO**) and therefore have to abide by some investment-related obligations. Algeria, Lebanon and Libya are only observers.[3] The WTO agreement includes provisions pertaining to investment. The General Agreement on Trade in Services (GATS) recognises that foreign investment is a mode of trade through the supply of services by a foreign company setting up operations in a host country. The agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) extends to foreign services companies protection for patents, copyrights and trademarks. The agreement on Trade-Related Investment Measures (TRIMs) aims to facilitate foreign investment by prohibiting trade-related investment measures, such as local content requirements. The WTO is also holding Structured Discussions with the aim of developing a multilateral framework on investment facilitation.

It is noteworthy that four MENA countries have adhered to the **OECD Declaration on international investment and multinational enterprises**, i.e., Egypt (2007), Morocco (2009), Tunisia (2012) and Jordan (2013) (see Chapters 4 and 10 for more on the Declaration).

Towards investment treaty reforms

The majority of investment treaties concluded by the MENA focus economies show features associated with the so-called first-generation treaties concluded in great number in the 1990s and early 2000s. They generally include relatively vague substantive provisions, with lack of clarity that could be broadly interpreted by arbitral tribunals, as well as with limited guidance for arbitration proceedings. Many countries, including the focus economies (in particular Morocco), are revising their investment treaty policy and practice. Besides more precise definitions and scope of protection standards and obligations, recent BITs tend to reflect closer government scrutiny of the balance between investor protection and the government's right to regulate.

In this context, the MENA focus economies are encouraged to evaluate, individually and collectively, and where appropriate update their BIT model and existing investment treaties to bring them in line with current priorities. Policy makers should assess the costs and benefits of the design of key provisions in older investment treaties and their potential impact on foreign and domestic investors, together with legitimate regulatory interests and potential exposure to ISDS claims and damages. This may be particularly relevant in the context of the Covid-19 crisis (see below) and an opportunity to address investor responsibilities (see Chapter 10 for more on responsible business conduct). Depending on the context and treaty language, it may be possible to clarify the meaning of older investment treaties through joint interpretations agreed with treaty partners. In other cases, treaty amendments may be required. Replacement of older investment treaties by consent in the context of new treaty negotiations with the same partners may also be appropriate in some cases (Box 5.1).

Box 5.1. Recent developments in investment treaty policies and ISDS

Many governments have substantially revised their investment treaty policy in recent years.

- The European Union's rejection of investor-state arbitration has transformed EU investment policy, which continues to evolve under increasing public and academic questioning, and growing constraints imposed by EU law. EU member states concluded an agreement in May 2020 to terminate all intra-EU BITs (over 150 treaties in total); the agreement came into force for some member states in August 2020.
- Long-standing supporters of investment treaties like the United States have recently expressed fundamental doubts about treaty-based investor protection and have exited or sharply narrowed the substantive provisions and scope of ISDS, notably in the United States-Mexico-Canada Agreement (USMCA) with Canada and Mexico that entered into force in July 2020.
- Chinese investment treaty policy is still in flux, with pressures to strengthen covered investor protection in the context of growing outward investment accompanied by concerns about the reputation of Chinese business abroad and the possible exposure to claims which have remained minor to date.
- The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) reflects the expansion of an updated North America Free Trade Agreement (NAFTA)-inspired investment treaty model to a broader range of eleven countries including relations between advanced economies. As of September 2020, the CPTPP is in force between Australia, Canada, Japan, Mexico, New Zealand, Singapore and Viet Nam.
- Major G20 capital importers like India, Indonesia and South Africa, as well as other countries like Bolivia, Ecuador, Namibia, Tanzania and Venezuela, have all rejected and exited first generation investment treaties with some exiting the system more broadly. Bolivia, Ecuador and Venezuela have withdrawn from the ICSID Convention, a key part of the institutional framework for many ISDS disputes. Brazil has developed a new model for investment treaties focused on investment facilitation and using state-to-state dispute settlement without ISDS.
- Multilateral reform of ISDS is now underway. Following inter-governmental debate, the UNCITRAL Commission entrusted its Working Group III in July 2017 with a broad mandate to work on possible reforms for ISDS. The 60 government members of UNCITRAL as well as many

government observers have found by consensus that reforms should be developed to address concerns raised with eleven different issues relating to ISDS.

- Parties to the Energy Charter Treaty (ECT), a multilateral trade and investment agreement between more than 50 governments addressing the energy sector, are negotiating possible amendments aimed at “modernising” the existing treaty. These negotiations are potentially very significant as the ECT is the most frequently-invoked investment treaty in ISDS cases: investors have filed more than 130 known ISDS cases under the ECT since the first such claim was filed in 2001. Formal negotiations in the ECT modernisation process began in November 2019. An approved list of topics for discussion includes all core investment protections and ISDS provisions. The Energy Charter Secretariat published a set of policy options identified by the ECT members on the various topics in October 2019; the EU published a detailed set of proposals separately in May 2020.

ISDS cases in the region raised in the last decade

Bilateral and regional investment agreements usually contain investor-state dispute settlement (ISDS) provisions allowing a covered foreign investor to bring a claim against a host country and seek monetary compensation for breaches of the agreement’s provisions, in addition or as an alternative to domestic remedies.

ISDS mechanisms are included in the majority of investment treaties signed by the MENA focus economies. Investor-state arbitration involves arbitration tribunals selected on a case-by-case basis to adjudicate disputes in an approach derived from international commercial arbitration. Like many other first generation treaties, most the focus economies’ treaties regulate ISDS very lightly leaving substantial decisional power to arbitrators, or to claimants and their counsel. For example, they usually do not contain clear scope and time limits for covered investor claims (so-called cooling-off periods allowing for amicable settlement); are not all consistent in terms of alternative dispute resolution, recourse to local tribunals and international arbitration; may not express references to the governing law in ISDS cases; give claimants and their counsel substantial power over key procedural issues, including the identity of the appointing authority; and do not address transparency in ISDS.

The main standards that are evoked in treaty claims relate to non-discrimination: fair and equitable treatment (FET) and indirect expropriation – most used legal grounds used – but also full protection and security for investors and their investment, and national treatment. However, these are subject to various approaches in treaties and interpretation by arbitral tribunals. Imprecise and inconsistent provisions, as seen as in many treaties, have impact on governments’ legal responsibilities and defence in investor treaty-based claims.

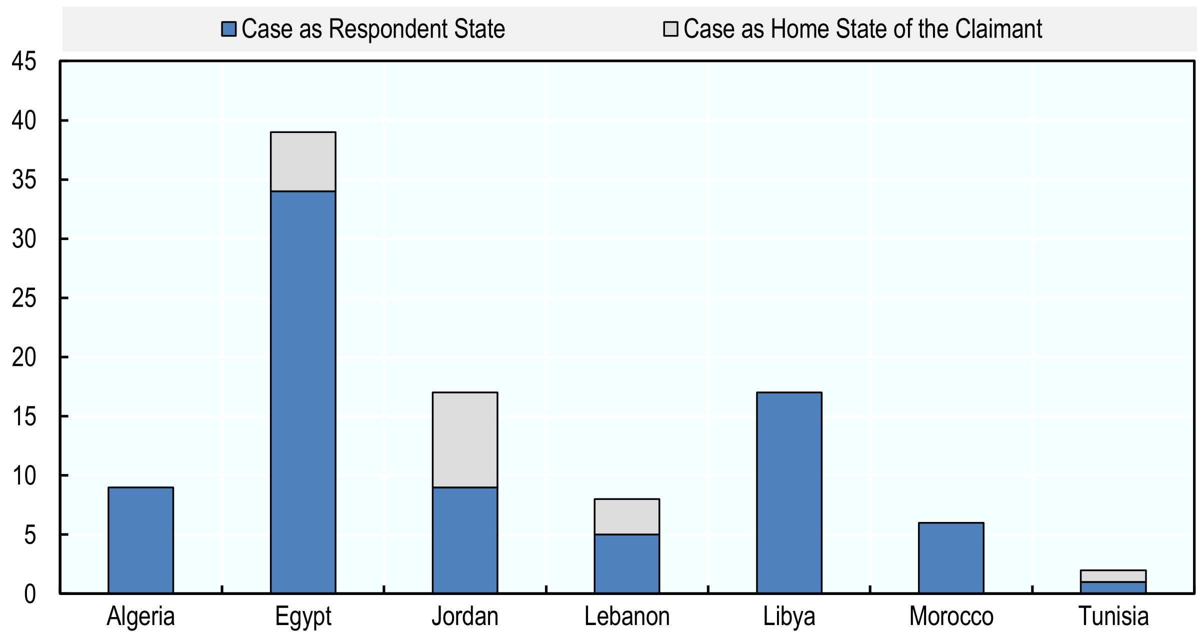
While substantive reforms of IIAs and ISDS mechanisms are discussed in international fora, some states are beginning to circumscribe the limits of ISDS mechanisms, while others propose to reject ISDS mechanisms in favour of alternative approaches.

Analysis of cases

The increase of international investment agreements has occurred parallel to a rise in investor-state dispute settlement cases based on these treaties, raising a number of concerns. MENA economies, active IIA signatories, has been involved in numerous cases, in particular over the last decade (Figure 5.2). Egypt is the fifth most frequent respondent state for known ISDS claims worldwide with 37 cases. The total number of known treaty-based ISDS cases initiated against the MENA focus economies reached 84 as of

1st January 2020, 8.2% of the total number worldwide (1,023 cases).[4] The majority (60 cases) were initiated in the last decade.

Figure 5.2. Number of known cases involving MENA focus countries as respondent to the dispute or as home state of investor

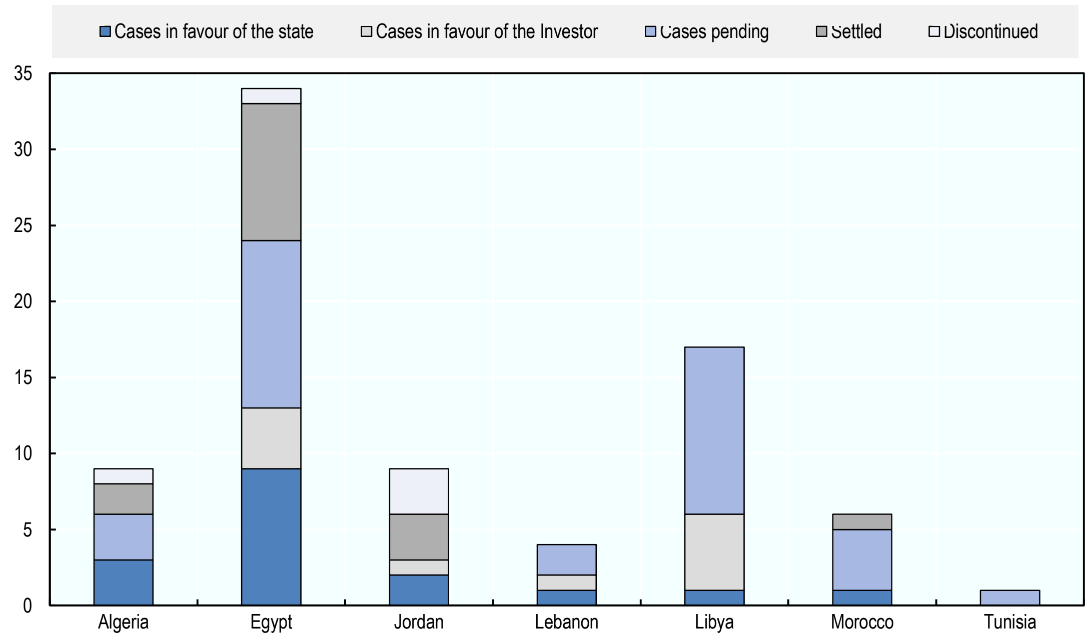


Source: UNCTAD Investment Policy Hub (2020).

In terms of **outcomes of the proceedings**, the region follows global trends in which most cases are rendered in favour of the state: 37% of all concluded cases were decided in favour of the state, 29% were decided in favour of the investor with monetary compensation awarded, and 21% were settled before arbitration proceedings (Figure 5.3).[5] Among the recent cases brought by investors against MENA countries, some have been dismissed on jurisdictional grounds (e.g. *National Gas v. Egypt*[6]), or resulted in liability decisions in favour of the state (e.g. *Veolia v. Egypt*[7]*)*.

In terms of arbitration **fora**, various fora have been used including under the OIC Agreement and the Arab Investment Court. Since the first case initiated under the OIC investment agreement in 2011 (Saudi investor Al-Warraq against Indonesia[8]), more than ten other arbitrations were initiated under this Agreement (Hamida, 2013[6]).[9] Similarly, the Arab Investment Court (AIC), established under the Arab League Investment Agreement, have jurisdiction to settle investment disputes, though it has not been operational for almost 20 years. Since the first AIC case (*Tanmiah v. Tunisia*, decision rendered in 2004), there have been six cases at least in which the Arab Investment Court (AIC) or a tribunal appointed under the Arab Investment Agreement has rendered a decision (Hamida, 2006[7]) (Blanke, 2018[8]). It is noteworthy that publicly available information on these cases and arbitration fora is limited.

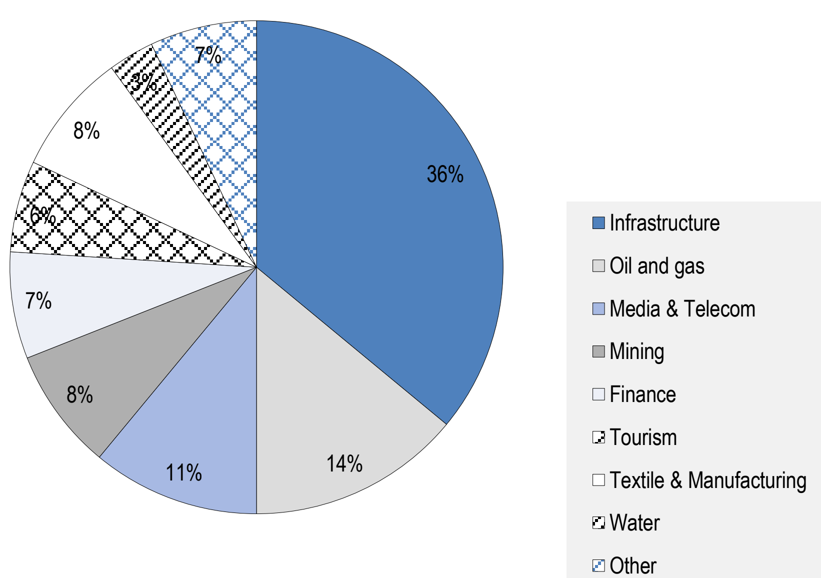
Figure 5.3. Status of the known cases involving MENA focus countries



Source: UNCTAD Investment Policy Hub (2020).

In term of **distribution of the cases by economic sectors** to which the investment at issue belongs, half of the known MENA cases concerns, not surprisingly, infrastructure and construction, and oil and gas (Figure 5.4).

Figure 5.4. ISDS cases in the MENA focus countries by economic sectors



Source: UNCTAD Investment Policy Hub (2020).

ISDS raises concerns and triggers reforms, including in the region

ISDS mechanisms are giving rise to concerns due to:

- The increasing use of investor-State arbitration (more than 1,000 known cases, though the growth has been slowing since 2015) and the growing public attention on cases and related impact of investment treaties (Gaukrodger and Gordon, 2012[9]);
- Consequently, the potential impact on a country's reputation as an investment location and the challenge for states to protect investment on the one hand and to respect the legitimate right of governments to regulate for the public interest (Gaukrodger, 2017[10]);
- The financial costs involved in some arbitration awards (e.g. the amount awarded in the *Unión Fenosa v. Egypt* case reached more than USD 2 billion in favour of the investor, and in the *Olin v. Libya*, 18 million). See Boxes 5.3 and 5.4, below, for more information;
- The high costs involved in conducting procedures comprising legal counsel and tribunal costs (evaluated on an average per-case basis at USD 10 million in 2014) (Pohl, 2018[1]);
- The legitimacy, consistency and transparency of the system (e.g. impartiality of arbitrators, lack of appeal mechanism, third-party funding, secrecy of disputes and the proceedings, access to documents, public hearings, counterclaims, enforcement and execution of ISDS awards);
- The increasing technical complexity of ISDS and the capability of developing countries to prepare their defence and manage investment disputes;
- The interactions between international investment agreements, domestic investment laws and investment contracts (Box 5.2).

Box 5.2. Interactions between investment treaties, domestic law and contracts

An additional complexity of ISDS mechanisms in investment treaties is the existence of dispute settlement provisions in the national investment laws and investment contracts signed between a foreign investor and the host state. Most of these laws in the MENA focus economies refer to international investment agreements. Interactions between laws and IIAs should be taken into consideration when considering the scope of possible reforms. Policy-makers should seek to ensure coherence between these mechanisms and avoid inconsistencies.

Below is a succinct presentation of the dispute resolutions provisions in the **investment laws** of the MENA focus economies (Chapter 3).

- In their investment-related laws, **Algeria** and **Libya** settle dispute through the competent domestic courts with the exception of the matters regulated under international agreements (or contractual obligation in the case of Algeria). The reform that took place in Algeria in June 2020 does not tackle ISDS, but the repeal of the 51/49 rule for non-strategic sectors.
- The Lebanese investment law only refers to disputes between the Investment Development Authority of **Lebanon** (IDAL) and the investor resulting from the "incentive package deal contract" and provides for amicable settlement and arbitration.
- The 1995 Investment Charter of **Morocco** only mentions dispute settlement in the context of contracts for particularly large or important investment projects. The on-going revision of the Charter, actually in force for only tem years, may provide for extended and more detailed provisions.
- The investment law of **Tunisia** recommends the settlement of disputes through conciliation offering arbitration to foreign investors based on investment agreements.

- The 2014 **Jordan** Investment Law gives national and foreign investors' access to arbitration in accordance with its arbitration law, and opens the possibility for foreign investors to bring investment disputes before international arbitration by mutual agreement with the state.
- **Egypt** has detailed ISDS provisions following the revisions of the 1997 Investment Law in 2015 and 2017. In response to Egypt's increasing exposure to investor-state arbitration, a new dedicated chapter established three out-of-court committees to favour the amicable settlement of disputes between private investors and public institutions. However, "despite the creation of new dispute settlement bodies, the current institutional setting for the resolution of investor-state disputes appears overly complex and might therefore not serve its purpose in the most efficient way" (OECD, 2020[11]).

Investors can sometimes also recourse to investor-state arbitration through **investment contracts** rather than through an investment law or agreement. Investment contracts are not generally regulated in the investment laws of the MENA countries, except in the context of granting incentives in the case of Lebanon, Jordan and Morocco. These contracts can be particularly problematic as they are not generally available to the public; their content is unknown; and they can be inconsistent with bilateral investment treaties. Furthermore, they are often negotiated under pressure in the midst of obtaining a particularly large-scale investment project, and/or those investments done in sectors of the economy that are of certain interest to the host state.

The interlinkages between international agreements, laws and contracts related to foreign investment needs to be cautiously monitored by MENA focus economies and dealt with in a coherent and inter-institutional manner. The umbrella provisions in many treaties and the treaty-shopping practice of investors create risks for states to properly manage investment disputes and defend their rights in arbitration.

The international community, and in particular international organisations (UNCITRAL, ICSID, OECD, UNCTAD, EU), engaged into discussions on reforms of the ISDS mechanism and subsequently the IIAs system. The aim is to increase transparency, promote judicial economy, foster sound and consistent results, and create predictability for states involved (Box 5.1).

Some governments in the MENA region are engaging in ISDS reforms. Two examples can be cited.

Morocco reviewed its model BIT (published in December 2019). The new model BIT contains some reform elements that reflect trends in other IIAs.[10] Regarding ISDS provisions, the model limits the scope of the disputes, provides time limit to submit a claim, allows state counterclaims in case the investor has not complied with its obligations (e.g. related to corruption) and requires the exhaustion of local remedies before initiating an arbitration. The BIT with Nigeria ratified in 2017 introduces dispute prevention provisions (see below), while the BIT with Brazil, signed in 2019, does not contain ISDS provisions in line with the Brazilian policy. Similarly, many countries, including Egypt, are starting to exclude or significantly limit the scope of ISDS.

The OIC drafted a protocol for the establishment of a permanent **OIC Investment Dispute Organ** to be adopted by members, as revealed by non-governmental sources end 2019. The 1981 OIC Investment Agreement provided for *ad hoc* investor-state arbitration (Article 17) until the creation of such an organ. As mentioned above, several investors initiated arbitration under this Agreement. However, in some cases, respondent states refused to appoint arbitrators and the OIC Secretary General refrained from constituting the arbitral tribunal "because of the lack of time limits for appointment and supposed political pressure from some OIC member states, which claimed that they had not consented to arbitration under the treaty."[11] The proposal to set up a permanent body, echoing certain developments in other regions such as the EU, will facilitate proceedings (Box 5.1). Member governments are also considering a proposal to affiliate the Organ to the Islamic Development Bank, akin to the relationship between the World Bank and ICISD. The envisaged mechanism will restrict access to OIC investment arbitration, as it requires several preliminary steps – exhaustion of local remedies in domestic courts, denial of justice claim, state-state amicable settlement process – before commencing investor-state proceedings. An appellate Committee is also foreseen. These preconditions are likely to limit the number of ISDS arbitration brought under the OIC. The rationale of the reform hence is to limit arbitration claims and to allow the OIC to exercise more control over the judicial process with a negotiation stage and a dispute resolution body with an appellate mechanism.

Possible further developments under OIC will show the extent of its members' willingness and engagement for reforms. The amendment of the Arab League Investment Agreement in 2013, together with the Statutes of the Arab Investment Court, have gone unheeded, very few members having ratified these revisions.

Box 5.3. Case study: The Al-Kharafi v. Libya case

This case study gives an example of a dispute, its context, the amounts awarded and its outcomes through annulment procedures.

In 2006, the Libyan Ministry of Tourism concluded a 90-year leasing agreement with a Kuwaiti investor for the construction and operation of a tourism complex. Without any start of the project, the Libyan Ministry of Economy cancelled the project in 2010 and terminated the agreement. The investor initiated an arbitration case in 2011 under the Arab Investment Agreement (AIA). The arbitral tribunal was constituted and Cairo was chosen as the seat of the arbitration. In its decision, the arbitral tribunal issued a final award and ordered Libya to pay the following:

- USD 5 million for losses and expenses;
- USD 30 million for moral damages;
- USD 900 million for lost future profits for 83 years, representing the length of the agreement;
- USD 1,94 million for arbitration costs;
- 4% interest on all amounts from the date of the award until full settlement.

Following the arbitral award, Libya lodged an annulment action before the Cairo Court of Appeal which dismissed Libya's claim. Subsequently the judgment was challenged before the Court of Cassation which ruled that although the AIA prohibits challenging an arbitral tribunal through domestic courts, it does not impede a party to ask for an annulment action. After a second overturn of the Court of Cassation, the case went back to the Court of Appeal to be judged on the merit.

On a new judgement in June 2020, the Court annulled the arbitration award on the basis of serious mistake of law leading to a failure in observing the rules of public policy and the notions of equity and justice. Besides and importantly, the Court disagreed with the method of calculating the damages. The Court asserted the USD 900 million compensation to be "excessively unjust" and "abusive", the arbitral tribunal having ordered to pay it for "loss profits resulting from real and certain loss opportunities" while the investor had only invested USD 5 million.

The Court held that its ability to review an arbitral award remains very limited although it may review it when the award violates the main principles of international public policy rules such as the proportionality of damages, and when the arbitrators exceed their powers with an award that is "irrational" and is a "manifest disregard of the law".

Source: https://www.italaw.com/cases/2185; Kluwer Arbitration Blog, 19 July 2020, http://arbitrationblog.kluwerarbitration.com/2020/07/19/egypt-court-annuls-award-against-libya-on-the-substantive-ground-of-fundamental-error-of-law/?doing_wp_cron=1595496916.5686450004577636718750

Periods of crisis may increase ISDS risks

Government measures taken during economic and political crises, even non-discriminatory ones in the public interest, may increase the risk of investor-state disputes. The impact on disputes of the social and political upheavals in many MENA countries starting in 2011 exemplifies this potential linkage. Some are starting to consider the possible impact of government measures taken during the Covid-19 crisis on investment treaty policy in a similar vein. While the longer term consequences of the Covid-19 crisis for investment treaty policy remain unclear, this context could incentivise governments to reflect on the balance between investor protection and governments' right to regulate, including in times of crisis, in their national and international investment framework as a means to promote consistency in interpretations of key provisions and ultimately to avoid future disputes.

Link between periods of crisis and investment disputes in the MENA region

The MENA region experienced a relatively large number of investment disputes, which increased during the past decade in countries that went through political and economic crises. Egypt was involved in 37 known cases against foreign investors, with 24 that arose after the 2011 uprisings (6 cases in 2013) (Box 5.4). Libya saw a substantial rise with 17 known cases, all except one after 2011.[12] Noteworthy is the number of confidential cases that are not publicly known, hence not recorded. Other countries have not experienced such an increase. However, in Algeria, three claims were filed in 2017-18 among a total of nine and the situation may remain uncertain in a context of social disturbances. In Lebanon, the collapse of the financial system and the inability for investors to transfer or convert funds could represent grounds for future claims.[13]

Political instability and social unrest in many MENA countries beginning in 2011 was invoked in some recent arbitration cases (Box 5.5), though not all details are known and a third of the cases that arose since 2011 are still pending. Investors have been successful in some cases in invoking the political and subsequent economic turmoil, while respondent states have also prevailed on jurisdictional and liability claims. While some investors may have brought legitimate claims linked to the 2011 political events, it appears that others may have meritless claims or attempted to use such events as a strategy to influence the possibility of settlement.[14]

Box 5.4. Overview of Egypt's ISDS cases

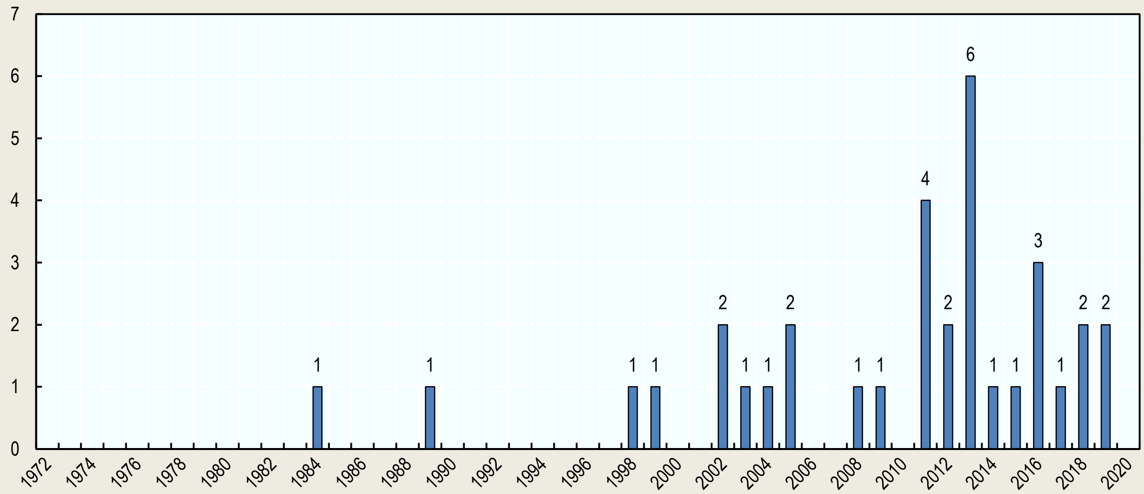
Since 2011, 22 ICSID arbitration cases have been lodged against Egypt. This represents 65% of the total cases against Egypt since it joined the Convention.

The Egyptian Investment Law previously offered a unilateral consent to ICSID jurisdiction. The number of BITs referring the ICSID Convention (Egypt signed 100 BITs) may also explain why the country faced such an amount of cases as respondent state.

The treaty most frequently invoked was the Egypt-US BIT with 6 cases, followed by the Egypt-UK BIT with five cases. The majority of the disputes involved Western European countries with 17 cases, Middle East countries with nine cases, and North America with seven cases. Most Egyptian BITs were negotiated and concluded without anticipating future implications. The most recent BITs concluded require referring disputes to domestic administrative procedures before going to arbitration. Most of the cases were based on direct or indirect expropriation (78%), a common treaty standard in Egyptian BITs. Most of the cases involved the oil and gas sector, followed by the mining and tourism sectors.

The total amount of claims registered against Egypt amounted to approximately USD 22.760 billion. The majority of the awards were rendered in favour of Egypt and some cases were settled.

Figure 5.5. Number of ICSID cases filed against Egypt since 1972



Source: OECD and Kluwer Arbitration Blog, 15 March 2020, http://arbitrationblog.kluwerarbitration.com/2020/03/15/after-48-years-at-icsid-1972-2020-an-overview-of-the-status-of-egypt-in-icsid-arbitrations/?doing_wp_cron=1593525394.4075820446014404296875

The 2011 protests, as well as the Argentinian crisis,[15] tend to show that economic and political crises can put states at risk of ISDS claims under older investment treaties – even where government measures are non-discriminatory and taken in the public interest. Investors might, in some cases, have considered ISDS as an opportunity to claim for losses, not only through arbitration, but also as means of pressure on the states to proceed to settlement, instead of engaging into costly and lengthy proceedings.

Box 5.5. Case studies on the impact of political and social instability after 2011 on international investment arbitration

The two case studies below show how respondents (in these cases, the State) use the facts of political instability and the linked events as the basis for treaty claims.

The **Unión Fenosa Gas v. Egypt** ICSID case concerns claims arising out of the alleged suspension of gas supplies by an Egyptian State-owned enterprise to a Spanish investor (liquefied natural gas plant in Damietta) in contravention of the gas purchase agreement. Egypt claimed that its prioritisation of supplying natural gas to feed domestic electricity in Egypt rather than export it as agreed with the investor, was an act of necessity aimed at maintaining Egypt's security, public order, and stability, safeguarding its essential interests, and sustaining basic services in the face of "grave and imminent peril". According to Egypt, the historic levels of violence, riots, and clashes constituted a threat to "the basic functioning of society and the maintenance of internal stability". It claimed that these events caused a "dramatic drop in the supply of natural gas both internally and for exportation" which led to repeated blackouts and more widespread violence and unrest.

However, in its 2018 award, the tribunal found missing elements to legitimise Egypt's necessity defence. The revolution began in 2011, however it was only in 2013 that Egypt evoked force majeure. In addition, the tribunal found that the events could not be the cause of curtailing gas supplies to the plant because such curtailment occurred both prior to and following the revolution. The tribunal also found that the act of the government was not the "only way" to maintain national security situation and that there was a disproportionality in the reduction of gas delivered by other users. The tribunal therefore held that the Egypt failed to prove the defence of necessity under customary international law. The case was decided in favour of the investor and the tribunal award amounted to more than USD 2 billion. Annulment proceedings are still pending.

In the **Olin Holdings Ltd. v. Libya** case administered by the International Chamber of Commerce (ICC), a Cyprus investor sought compensation for Libya's alleged expropriation of the land in which it had invested to build a dairy and juice factory. Libya argued that the harm the investor may have suffered after February 2011 was the result of the chaos arising out of the revolution and not from acts attributable to the state.

However, the tribunal was unconvinced by the Libyan state arguments. It recognised that while the events of the Libyan Revolution and civil war may have had an impact on the investment climate post-2011 and contributed to the underperformance of the investor, the events would not be sufficient to address the investor's underperformance prior to 2011. The proportionality argument was used as another competitor was able to make large profits in the same period, despite the events. The tribunal concluded that the events of the Libyan crisis "cannot be considered as an event that breaks the causal link between Libya's breaches of the BIT and Olin's underperformance after 2011". The amount of compensation for the investor as per the 2018 award, reached USD 18.2 billion (for an initial claimed amount from the investor of USD 105 million).

Source: Unión Fenosa Gas v. Egypt, https://www.italaw.com/cases/2456, Olin Holdings Ltd. v. Libya, https://www.italaw.com/cases/6667, Kluwer Arbitration Blog, 26 July 2019, http://arbitrationblog.kluwerarbitration.com/2019/07/26/impact-of-the-arab-spring-on-the-international-arbitration-landscape/

Uncertain links between the Covid-19 crisis and ISDS

The Covid-19 crisis and its economic aftermath are creating a new context with uncertain ramifications for investment treaty policies. Early suggestions by some that a wave of claims would arise from the crisis have not been borne out to date, but the longer term consequences of the crisis remain unclear.

The spread of the virus around the world is having a significant impact on foreign investors. A halt in activities, shift in production lines, confinement of employees, new export restrictions and border closures are all measures that have altered or discontinued activities of MNEs (OECD, 2020 a and b). Since the beginning of the crisis, some investors have notified governments of potential investment disputes linked to crisis measures.[16] However, no claims have yet been registered, but some claims remain confidential and mandatory notice periods in many investment treaties may not yet have elapsed, even if triggered by investors at the earliest possible occasion. Noteworthy are the calls from academia and civil society to suspend investment arbitration claims with a view to not hinder countries' recovery efforts.[17]

The Covid-19 crisis is very different from other crises. The pandemic was not caused by governments and requires emergency government policy measures that affect investors. In these extraordinary times, on one hand, investors are likely to be reluctant to bring claims in the context of a health crisis, not caused by the state, which may lead arbitrators to exercise a significant degree of deference to government measures. Public opinion is likely to be unforgiving on investors that are seen to be trying to profit from the crisis. On the other hand, the challenge for government could be the management of the crisis. The assessments of the nature and proportionality of measures taken during the crisis may constitute an uphill set of arguments for investors.

Therefore, while it is too soon to ascertain the ultimate effects of the crisis on ISDS, the possibility of litigation exists and this calls for vigilance from the MENA focus economies. Policymakers are encouraged to build awareness and understanding of the issues at stake at all level of government (ministries, agencies and local or sub-national government), follow up with foreign investors to maintain communication and identify potential issues – as most MENA IPAs are already doing – and ensure an efficient governmental co-ordination to prevent and manage potential disputes. The crisis may also represent an opportunity to test, assess and engage with the possible merits of reforms for investment treaties and the ISDS system, following the global discussions and recent countries' practices. Reform discussions may focus even more on governments' regulatory and policy space and the protection of public health, while maintaining effective investment protection provisions and minimising the risks of investor-state disputes (Gaukrodger, 2017[12]) (Gaukrodger, 2017[10]). Pursuing a regional response and making regional agreements more effective could also be further explored to ensure increasingly consistent levels of protection, rights and obligations throughout the MENA region, as done in other regions, in particular in Asia. In addition, reinforcing dispute prevention and management mechanisms should remain on the governments' agenda.

Proactive approaches to dispute prevention and management should be pursued

Alternative dispute resolution (ADR), dispute prevention policies and management mechanisms are useful means to avoid potential costly and lengthy disputes. The MENA focus economies are therefore encouraged to further develop mechanisms to prevent and achieve early settlement of investment-related disputes, as well as ensure efficient management of ISDS cases, learning from the experiences of other governments that have been frequent respondents in ISDS cases.

Dispute prevention policies

Dispute prevention policies are governmental policies and measures aimed at avoiding disputes between the foreign investor and the host state. The purpose is to address the issues encountered by the investor at an early stage, ensure compliance with clear procedures in order to retain the investment within the state and prevent any litigation. It also protects the reputation of the host state as being a safe and attractive destination to invest.

Depending on the objectives, needs and experiences of the state, dispute prevention measures generally include:

- Early detection systems to anticipate issues and communication with investors to discuss before a claim (Box 5.6);
- Training for public servants working in bodies involved in investment projects to build awareness on international obligations and potential repercussions of their actions;
- Institutional co-ordination and communication between relevant bodies;
- The creation of a dedicated institution in charge of implementing the measures and monitoring the disputes.

Many countries have implemented dispute prevention policies, including in the MENA region. Good practices should inspired the implementation of these policies. Some countries, such as Colombia and Peru, have adopted comprehensive legislative and regulatory frameworks to encourage the early detection and resolution of investment disputes (OECD, 2019[14]) (Joubin-Bret, 2015[15]). Other countries, such as Chile, have opted for an informal prevention system where sectoral agencies directly manage disputes with investors. Some governments established inter-ministerial committees to advise line agencies on investor grievances and supervise the government's defence of ISDS cases. Brazil does not include ISDS in its investment treaties but instead establishes with each treaty partner a focal point or ombudsman within each government to address investor grievances, with a Joint Committee of government representatives to oversee the administration of the agreement. This is the case of the BIT between Brazil and Morocco signed in 2019, but not yet entered into force.[18] Korea has also had a successful track-record of early dispute resolution with its Foreign Investment Ombudsman since it was established in 1999 (Nicolas, Thomsen and Bang, 2015[16]). Ukraine also set up a Business Ombudsman Council through which companies can register a complaint.

Box 5.6. Best practice measures of the World Bank Group's Systemic Investor Response Mechanism (SIRM) Protocol

- Lead agency: an administrative body responsible for co-ordinating information and leading responses to investor grievance should be established.
- Information sharing: it enables the lead agency to co-ordinate the diffusion to the relevant bodies of relevant information likely to generate political risks related conflicts, including information on the obligations provided by international investment agreements.
- Early alert mechanism: it enables the lead agency to learn about the existence of a grievance as early as possible.
- Problem solving methods: they allow the parties to seek for an invest-based solution to the conflict.
- Political decision making: a solution should receive the approval from the competent political authority, in order to guarantee that the solution would be effectively implemented.
- Enforcement of a decision: it ensures that the consensual solution agreed by the political authorities and the investor is respected by all the agencies and bodies.

Source: (World Bank, 2019[13])

Some states that have been frequent respondents in ISDS cases (e.g. Argentina, Spain, the United States, Canada and Mexico) have also developed dedicated teams of government lawyers who now exclusively handle all ISDS cases brought against their government with no reliance on external legal counsel. Despite the associated costs and co-ordination it entails, the MENA focus economies affected by a high number of disputes may consider learning from these experiences and follow the same path.

The United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention), which entered into force in September 2020 and to which only Jordan is signatory to date, could also have a pivotal role in mediated settlement of investment claims.

Dispute prevention mechanisms in the region

The MENA focus economies implemented diverse prevention mechanisms and policies and the impact of the Covid-19 crisis on investors' operations seems to have accelerated the process. Indeed, several MENA Investment Promotion Agencies (IPAs) have established crisis units in response to the pandemic and the necessary emergency measures taken by states (see Chapter 6 for more on IPAs in the region). These units provide information to investors, answer queries, collect information on foreign investors' operations, co-ordinate responses to issues face by investors, and support the implementation of solutions.[19] These units should also interact with already existing dispute resolution and prevention entities set up in some countries to anticipate potential claims.

In the wake of the political turmoil and the surge of investment disputes, **Egypt** has been proactive and has the most advanced mechanism in the region, having increasingly made available alternative dispute resolution mechanisms for resolving commercial and investment disputes. The 2015 amendment of the

Investment Law established three different committees: the Grievances Committee, the Ministerial Committee for Resolving Investment Disputes, and the Ministerial Committee for the Settlement of Investment Contracts Disputes. The 2017 Investment Law brought further clarification and emphasis on the importance of investors' access to ADR mechanisms. GAFI plays an important role in preventing disputes at an early stage, as recognised by the business community. However, the respective roles, functioning and affiliation of each body could be further clarified and communicated, as these different institutional layers could create additional complexities for investors (OECD, 2020c). Noteworthy is also the role of Egyptian State Lawsuits Authority (ESLA), which established a Foreign Disputes Department to manage the Egyptian ISDS cases, following the trend mentioned above to have a dedicated team dealing with investment disputes.

In **Algeria**, the National Agency for Investment Development (ANDI) is in charge of strategies and priorities for investments and clarifies the role of the entities intervening in the investment process. It is also in charge of the establishment of interdepartmental committee of appeal in charge of receiving and giving ruling to the investors complaints.

The **Jordan** Investment Commission (JIC) recently launched an ambitious initiative through the establishment of the Grievance Committee (Grievance Hearing Instructions No. 1 of 2020).[20] Any investor may submit a grievance application in line with the periods of amicable dispute settlement in the related investment treaty or contract. The Committee, within two days, shall determine if the application is urgent or not (for example if the grievance greatly affects the operation or productivity of the economic activity or causes the interruption of business). The Committee can dismiss or accept the grievance application. If so, it will analyse the case, hold meetings with the investor, prepare its recommendations and notify them to concerned government entity for action and the applicant. It shall also submit to the Prime Minister the grievance applications, which may be presented to the Council of Ministers. The Committee should also implement a Computerized Grievance System to facilitate procedures. This new mechanism is very relevant, though it is too early to assess its implementation and monitor its efficiency.

Another interesting initiative developed by **Morocco** is the mechanism contained in the bilateral investment treaty with Nigeria signed in 2016. It sets out an innovative pre-arbitration procedure for preventing and resolving disputes, through the creation of a Joint Committee and disputes prevention provisions. The treaty stipulates that before initiating an eventual arbitration procedure, any dispute shall be assessed through consultations and negotiations by the Joint Committee, with the participation of both the investor and host state. If the dispute cannot be resolved within six months, the investor may, after exhaustion of domestic remedies, resort to international arbitration. While joint committees exist in other agreements (e.g. in the Comprehensive Economic and Trade Agreement (CETA) signed between EU and Canada), its role in dispute prevention in the Morocco-Nigeria BIT is a novel element. It remains to be seen how the Committee will work in practice, as the treaty has not yet been ratified by Nigeria.[21]

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Notes

[1] It is difficult to be precise about the exact status of these investment treaties due to some inconsistencies in publicly available information and lack of governmental sources, especially entry into force dates. The figures shown in this chapter rely on the UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/by-economy

[2] In 2019, Jordan also signed the United Nations Convention on International Settlement Agreements Resulting from Mediation which applies to commercial dispute. None of the MENA focus countries signed the 2014 United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention). Only Iraq and Syria did in the MENA region.

[3] Negotiations for accession of these three countries are stalled. The Working Party for Algeria was established in 1987 and held its 12th meeting in 2014. The Working Party for Libya, established in 2004, never met. The Working Party for Lebanon, established in 1999, met for the 7th time in 2009.

[4] UNCTAD Investment Dispute Settlement Navigator, https://investmentpolicy.unctad.org/investment-dispute-settlement

[5] Data from the UNCTAD Investment Dispute Settlement Navigator, based on information on publicly known IIA-based international investor-State arbitration proceedings (non-exhaustive as some proceedings remain confidential), It refers to the current status of the original arbitration proceedings:
- Decided in favour of State: the tribunal dismissed the case for lack of jurisdiction or found that the respondent State has not committed any breach of the applicable IIA.
- Decided in favour of investor: the tribunal found that the respondent State committed one or more breaches of the applicable IIA and awarded monetary compensation or non-pecuniary relief to the claimant investor.
- Settled: the disputing parties settled the case and the arbitral proceedings were discontinued for that reason.

[6] https://www.italaw.com/cases/2494

[7] https://www.italaw.com/cases/2101; Kluwer Arbitration Blog, 22 January 2020, http://arbitrationblog.kluwerarbitration.com/2020/01/22/2019-in-review-a-view-from-north-africa/

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[14] Kluwer Arbitration Blog, 26 July 2019, http://arbitrationblog.kluwerarbitration.com/2019/07/26/impact-of-the-arab-spring-on-the-international-arbitration-landscape/

[15] The economic downturn in Argentina linked to emergency devaluation and privatisation measures resulted in a high increase of cases (62 known cases, most arising after the crisis).

[16] Kluwer Arbitration Blog, 30 March 2020, http://arbitrationblog.kluwerarbitration.com/2020/03/30/covid-19-and-investment-treaty-claims/?doing_wp_cron=1595244086.3971068859100341796875, 13 April 2020, http://arbitrationblog.kluwerarbitration.com/2020/04/13/pandemics-emergency-measures-and-isds/

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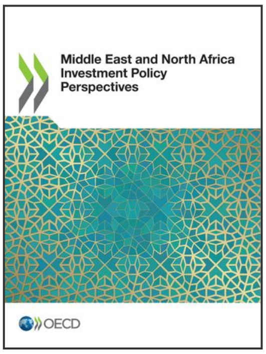
[18] BIT Brazil-Morocco, Articles 14-19, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5889/download

[19] See examples of Tunisia, Morocco, Jordan and Egypt in (OECD, 2020[17]).

[20] https://www.jic.gov.jo/en/investors-grievance-scope/

[21] Morocco-Nigeria BIT, article 26, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5409/download, Thomson Reuters, Arbitration Blog, 16 November 2017, http://arbitrationblog.practicallaw.com/the-morocco-nigeria-bit-a-new-breed-of-investment-treaty/



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