

# 2018 Survey on Developing Country Investment Treaty Negotiations



This survey was produced at the suggestion of participants at the 11th Annual Forum of Developing Country Investment Negotiators. It was conducted online in English, French and Spanish between March and May 2018.

A total of 72 respondents from 54 countries participated. The invitation was shared with

members of the Investment Policy Network (IPN), a closed group with the aim of facilitating discussion among officials from developing country governments and regional organizations involved in investment policy development and treaty disputes. Lawyers and industry representatives are not permitted to join.

Respondents were informed that results may be aggregated, published anonymously and shared with forum participants and members of IPN. Please note that some of the responses have been lightly edited or condensed for clarity.

Out of 54 countries:

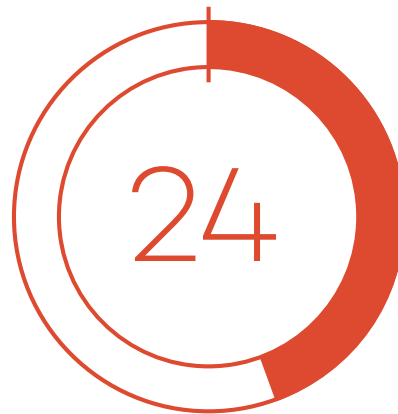


are renegotiating or terminating any existing investment treaties.

“ The BITs that we signed were using the so-called traditional BIT model, which is now risky and has so many loopholes for litigation.

“ To align the old treaties with current domestic laws.

“ We are renegotiating our treaties as they reach their first 10 years of being in effect with the purpose of modernizing them, so they better reflect our new model.



have been subject to a treaty-based investment dispute, impacting a government's approach to investment treaties.

“ It led to the denunciation of all BITs signed by the country.

“ The Government has taken a cautious approach since 2009.

“ It was decided not to negotiate any more BITs at the beginning of the 2000s and not to ratify those that had not entered into force.



have been threatened with arbitration by a foreign investor in relation to a government measure. Consequences of the threats had various impacts.

“ There are cases in international courts because some foreign investors want compensation for projects that have been halted because of the revolution in my country.

“ One investor pointed out that it would go to arbitration if a regional government did not withdraw the claim it had filed for the purpose of nullifying certain permits granted to the investor.

“ Recently, [the country] unilaterally suspended or terminated [a] contract.



**Nairobi, Kenya**  
location of the 11th Annual Forum of Developing Country Investment Negotiators



**Cartagena, Colombia**  
location of the 12th Annual Forum of Developing Country Investment Negotiators

Every country had varying responses when it came to the last time they had adopted or revised their model investment treaty.

“ We use the SADC model developed about 5 to 6 years ago.

“ It was developed with the help of IISD and revised two months ago.

“ Model adopted in 2007, but never implemented and under review.

“ It has been in place for over two decades.

## 41 of 54

countries have political leaders who are aware of the potential implications of investment treaties and chapters in FTAs.

## 22 of 54

countries have a model investment treaty.

## 4 of 54

countries have Parliaments providing guidance for ongoing or future investment negotiations.

## 41 of 54

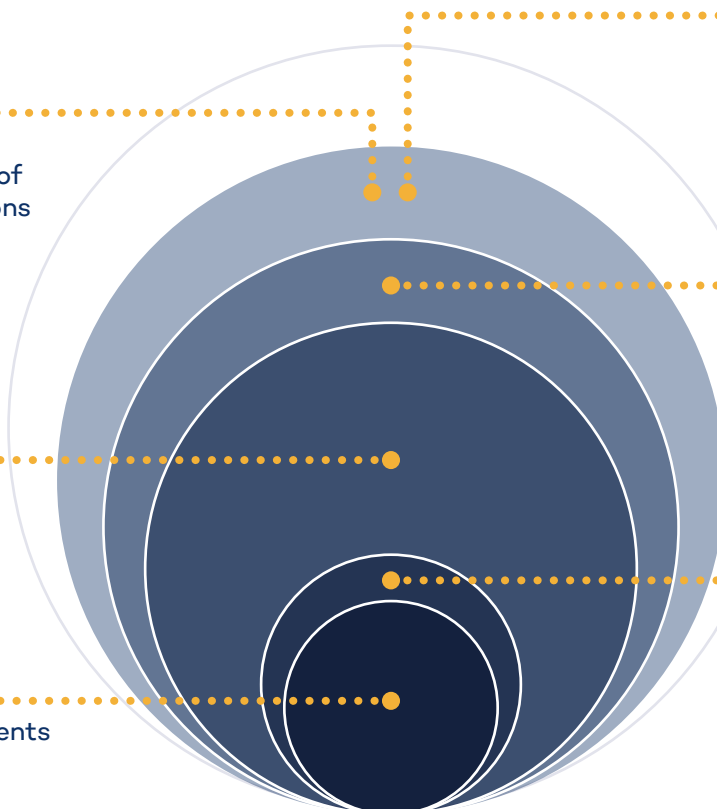
countries have political leaders who are aware of or involved in the process for treaty negotiations.

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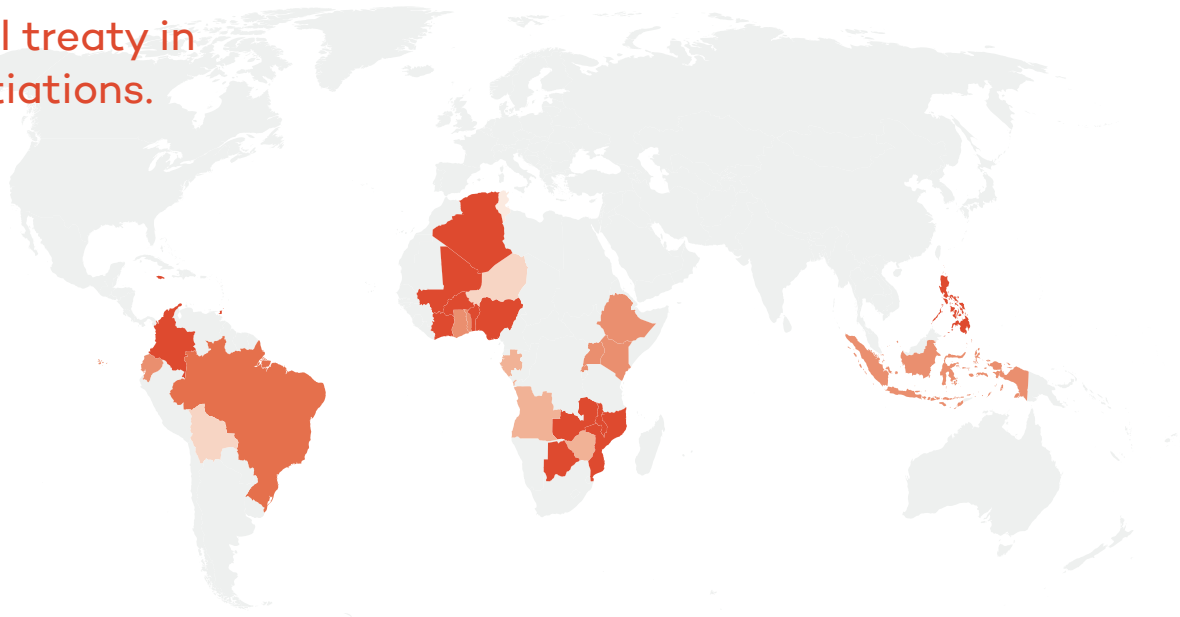
countries have a formal coordination mechanism on the negotiation of investment treaties or chapters.

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countries have Parliament involved in some way in the elaboration of their model investment treaty.



Countries can't always use their model treaty in negotiations.



ALWAYS

REGULARLY

SOMETIMES

RARELY

NEVER

But countries still see success in integrating the most important elements of their model in concluded treaties or chapters.



The Annual Forum is the only global platform for government officials exclusively from developing and emerging economies to share experiences and lessons learned from investment negotiations.

It is a community of government officials determined to work toward systemic reform and to safeguard the best interests of their developing nations.

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Full survey results can be found at [bit.ly/iisd-survey](https://bit.ly/iisd-survey)

For more information, contact the IISD Investment for Sustainable Development Program at [investmentlaw@iisd.org](mailto:investmentlaw@iisd.org)