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ISDS as an Instrument for Investment Promotion and Facilitation

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Introduction

As a form of investment, foreign direct investment (FDI) is considered to be an important component of every economy's domestic business environment. Economies today are generally very welcoming to many forms of business partnership with their foreign counterparts. FDI is posited to bring significant economic benefits in the form of investment flows, business creation, entrepreneurial talents and technological transfer. However, some have pointed out the drawbacks of FDI, including bringing tougher competition to domestic enterprises, labor issues, preferential treatments over domestic businesses and lack of regulatory control. As the United Nations Conference on Trade and Development (UNCTAD) notes, achieving the potential benefits and avoiding the potential pitfalls of FDI, especially when seen through the broader lens of sustainable development, should no longer be assumed to happen. Rather, governments are increasingly turning to sound domestic laws and regulations to support maximum benefits and minimize harmful outcomes from FDI (UNCTAD 2015).

APEC pursues regional economic integration among its members through facilitating stronger trade and investment linkages and networks. In the area of investment, APEC has developed the 1994 APEC Non-Binding Investment Principles (NBIP) and the 2009 APEC Investment Facilitation Action Plan (IFAP), to cite two examples.

The NBIP provides a common basis for international commitments in investment. It covers key elements of international investment agreements (IIAs) such as most-favored nation (MFN); national treatment; prohibition of performance requirements; removal of barriers to capital exports; expropriation and compensation; repatriation and convertibility; settlement of disputes; and transparency. In addition, the NBIP provides non-binding principles regarding conduct in, and physical entry to, host economies, in areas such as health, safety and environment, entry of personnel, and investor behavior.

The IFAP includes a comprehensive menu of prescribed actions derived from eight principles that address issues of transparency, simplicity and predictability that enable investment to flow efficiently to fund productive business activities (APEC 2008).

Investment protection is among the principles included under the NBIP and IFAP. The IFAP's second principle covers protection of investments, including actions to provide well-performing court systems, to encourage the development of effective, reasonable-cost mechanisms for resolving disputes, and to provide a mechanism for the enforcement of arbitral awards.

This policy brief will discuss investor–state dispute settlement (ISDS) as an instrument of investment protection and promotion, the current ISDS reform process and the way forward.

Investment treaties and ISDS

Both the NBIP and IFAP include references to international arbitration as well as domestic judicial and other dispute settlement processes as part of a broad approach to resolving investment-related disputes. The international arbitration component is often referred to today as ISDS.

IIAs, including bilateral investment treaties (BITs) between two economies, regional investment treaties, and investment chapters in broader trade and economic agreements, are the major vehicles for introducing ISDS processes. Investment contracts between governments and foreign investors are a further vehicle for introducing ISDS. In some cases, governments also allow for ISDS in their domestic laws.

BITs and IIAs serve the purpose of promoting and protecting foreign investment by providing more assurance and, in principle, reduced risks for investors. In the words of one summary, 'a BIT could be a commitment device to overcome dynamic inconsistency problems' (Hallward-Driemeier 2003). IIAs are often said to have the following broad objectives: (1) promote foreign investment flows; (2) depoliticize disputes between foreign investors and economies; (3) promote the rule of law; and (4) provide compensation for certain harms or damages to investors (Johnson et al. 2017).

Montt (2009) argues that the text in the BITs are written using broad and open-ended terms, particularly on substantive provisions such as expropriation and fair and equitable treatment. This is certainly true of so-called first- and second-generation IIAs, but is increasingly less so as third- and fourth-generation treaties include significantly more refinement to the treaty language. Thus, while earlier generations reflected a fair bit of consistency in the range of key substantive rights for investors, today the contents may vary significantly both in what is in an article, and in the articles that are included. A traditional typology might have included (IISD 2012; Moses 2008):

- Fair and equitable treatment
- Compensation in the case of direct or indirect expropriation
- National treatment, or treatment no less favorable than that given to domestic investors
- MFN treatment, or treatment no less favorable than that given to investors from third economies
- Free transfer of capital
- Legal or contractual obligations the government may have to the investor
- A defined right to bring arbitration claims against host governments.

To protect the investor rights specified above, most IIAs include a special provision known as the ISDS clause. The main purpose of ISDS clauses is to provide a remedy to foreign investors for alleged breaches of their legal protection in the treaty (or contract when that is the case) that is independent of local courts.

It is important to separate the legal protection clauses and ISDS clauses. Some treaties may contain substantive clauses, but no ISDS provisions; this is now, for example, the negotiating instructions for the new Asia-Pacific based Regional Comprehensive Economic Partnership, or RCEP (Yunus 2019). Other treaties may exclude some of their substantive clauses from the scope of ISDS. Indeed, as the reform of early generation IIAs takes hold, there are multiple variations as to what is covered by the two types of clauses. It is the combination of these provisions that sets the scope of actual coverage of the protections and the remedies to enforce them.

When ISDS is included in IIAs, there are two broad approaches to doing so. The initial generations were largely 'minimalist', with few procedural specifications, leaving most procedural matters to the applicable arbitration rules and the arbitrators' discretion. The more modern 'detailed' approach features a more sophisticated procedural regulation that adds to or modifies the applicable arbitration rules to set out clearer conditions for investors' access to ISDS and limitations on such access, and specifies which treaty provisions are covered. The choices made by negotiating parties may leave some elements to be addressed by the treaty parties themselves, and could reduce the protective coverage of a treaty in some cases, but such choices are becoming increasingly common (UNCTAD 2014; 2019b).

Global trends

In recent years, the domestic regulatory environment globally has been overwhelmingly friendly to FDI, with some 80 percent of the changes in domestic investment policies from 2000 to 2013 involving liberalization or promotion of foreign investment (UNCTAD 2014, 106). However, at the same time, there have been more efforts by host economies to regulate the conditions for admission and operation of FDI, as governments move away from assuming that FDI has net benefits, and toward putting in place legislation that seeks to ensure this result. This has included many new environmental measures, as well as tax, community protection, employment and other measures aimed at ensuring equitable distribution of the benefits of FDI.

These measures, or other public policy measures taken by governments, have led to over 980 known ISDS cases since the first one in 1987. Most of these cases have occurred under older style first- and second-generation treaties rather than the newer generation, more refined treaty text (Ciocchini and Khoury 2018). There is no data available as to how many have been filed under investment contracts with ISDS provisions, as most of these take place with no public knowledge. The first ISDS case was filed only in 1987 and fewer than 50 cases had been filed before the year 2000, hinting that the increase in cases is a recent phenomenon (UNCTAD 2018b). One possible reason is the proliferation of investment agreements, currently reaching almost 3,000 BITs, with approximately 96 percent of the 2,352 BITs currently in force still including ISDS provisions (UNCTAD n.d.; Jones 2019). In 2015, the number of ISDS cases being initiated reached a high of 83 cases, and governments in all parts of the world are being named as defendants in such actions. Increased awareness of the availability of ISDS procedures has most certainly led to greater use of the mechanism.

This growing global trend related to investor–state disputes increases a government's exposure (in terms of its public finance obligation) and is becoming a serious concern. ISDS claims could be triggered by a variety of policy measures, which raises the costs of regulation for governments (Wellhausen 2015). The International Institute for

Sustainable Development (IISD) notes that until the late 1990s, the protection provisions under investment treaties were seldom invoked by investors; but in the last few decades, investors have increasingly used the investor–state arbitration process included in those treaties, arguing for violations of fair and equitable treatment, expropriation and national treatment obligations, for instance (Bernasconi-Osterwalder et al. 2012).

The proliferation of ISDS cases is understood to have raised some unwanted side-effects in the form of expansive, and sometimes contradictory, interpretations of the investment treaties, interpretations that have often shrunk the regulatory and policy space of the government. As a result, there has been a recent trend to review and recalibrate IIA and ISDS norms in order to strike the right balance between adequate protection for foreign investors and the host economy's need to maintain sufficient regulatory space in crafting public policy (Yeo and Menon 2016). In the APEC region, no less than eight economies have either announced their intention to reduce or eliminate their exposure to ISDS in the last two to three years, including Korea as this paper was being finalized, or to sign IIAs that in fact reduce or eliminate this exposure. The recent 2019 Australia–Indonesia Comprehensive Economic Partnership Agreement (CEPA) agreement prohibits claims being brought under ISDS that relate to public health measures, as well as those that involve investments 'established through illegal conduct', though this excludes investments 'established through minor or technical breaches of law' (IISD 2019a). As noted above, the RCEP, a treaty negotiation involving 12 APEC economies, is now proceeding with a commitment to not include ISDS provisions (Yunus 2019).

Within UNCTAD, there has been a series of IIA reform assessments and proposals. The UN Commission on International Trade Law (UNCITRAL) and the International Centre for Settlement of Investment Disputes (ICSID) are both looking at reform, in various degrees, of ISDS rules and processes. In short, ISDS reform is in full swing, and the final results are far from clear.

The core function of ISDS: protecting and promoting investments

Tietje and Baetens (2014) point out the importance of looking back at the original intention of ISDS, which is to give assurance to (foreign) investors that their investment would receive the same level of protection given to other (domestic) investors, in a reciprocal manner. Tietje and Baetens (2014, 22) argue that 'the real innovation of BITs was the creation of procedural rights giving investors a mechanism to directly enforce substantive rights … such that it provides a reliable forum for investors to enforce specific protection articulated in a treaty' (or investment contract). ISDS functions as an enforcement mechanism for obligations under investment treaties. While ISDS was not included in early treaties, it has become ubiquitous since the early 1990s.

Guzman (1998) also argues that BITs increase the efficiency and reduce the cost of foreign investment by establishing binding and enforceable contracts, and developing economies join these BITs to gain an advantage in the competition for investment. While Montt (2009) emphasizes the network effects of BITs, whereby as 'more firms … adopt the same charter term, the more the term will be litigated, and therefore, the more future judicial interpretations will be provided'; such that 'there are economies of scale to having a global regime of treaties worded using closely similar substantive terms, particularly when those terms are as open-ended as the ones contained in BITs'. To date, however, this hypothesis remains disputable. For each major issue, arbitral tribunals remain unable to coalesce around any one interpretation. Two, three or even four different approaches to similar language are being seen in arbitral awards.

Other recent studies, such as Chen (2017), seem to suggest that the way that IIAs are currently designed does not provide a good substitute for the quality of domestic institutions, nor are they effective in generating reform; instead host economies should pursue other options such as creating a foreign investment ombudsman that could prevent specific disputes, and fostering broader institutional reform, building from specific complaints as the impetus for reform conversations. These debates remain alive.

At the same time, Bhagwat et al. (2017), focusing on cross-border mergers, has found BITs to have a large, positive effect due to the positive signaling effect of the level of property rights protection. The probability of a cross-border merger increased from 2.22 percent before a treaty is signed to 5.21 percent after the signing. By having their rights protected under the treaty and with access to an international tribunal, one may argue that investors will feel more confident in making investment decisions, particularly those involving large amounts of capital with long-run implications (Eberhard 2015). Egger and Merlo (2012) have shown that for German multinationals, BITs increase both the number of multinational firms and the number of plants per firm. Oldenski (2015) has found that BITs do have a positive effect in increasing FDI particularly when they can substitute for or complement weak domestic legal and regulatory institutions in the host economy. More specifically, Kim (2006) has found that, on average, a BIT can raise FDI by around 2.3 percent.

On the other hand, South Africa's withdrawal from its BIT with Germany has not led to any changes in investment levels by German firms into South Africa. Further, when measuring regulatory stringency by the presence of ISDS provisions, Berger et al. (2010) show that more stringent BITs may not necessarily result in more FDI inflows. As such, in the area of investment promotion, existing literature has failed to reach a consensus regarding the merit of BITs and ISDS in encouraging FDI flows.

Indeed, other considerations and factors may have a higher priority in the minds of investors. These factors may include market size and growth, the availability of natural resources and the quality of hard and soft infrastructure (Johnson et al. 2018). Also, investors may have been more restricted by other more significant FDI barriers such as restrictions on the legal form of the foreign entity, compulsory joint ventures with domestic investors, and restrictions on imports of labor, capital and raw materials (Hardin and Holmes 1997).

Even if BITs (and ISDS) are able to attract more inward FDI or encourage more outward FDI, the ultimate domestic impact of these FDI flows would depend on not just the quantity but also the quality of the investment itself, in yielding economic benefit, employment generation, and innovation, as well as improving sustainability and inclusiveness of economic development. Measures designed to improve these types of 'sustainability characteristics' of investment are often on the frontline of ISDS disputes (Sauvant and Mann, 2017).

On the host economy side, the rapid increase in ISDS claims creates the risk of a shrinking domestic policy space, affecting the autonomy of public governance and policy. UNCTAD (2014), acknowledging that most disputes in ISDS also involve issues of public policy such as environmental protection, public health or other issues of public governance, ponders 'whether three individuals, appointed on an ad hoc basis, have sufficient legitimacy to assess the validity of governments' acts, particularly if the dispute involves sensitive public policy issues'. Indeed, one of the key concerns about ISDS is that it is based on a model of international commercial arbitration that relies on ad hoc tribunals of party-appointed arbitrators to resolve one-off disputes. These tribunals interpret often vague treaty rules, adding to the uncertainty of the system's outcomes; decisions are seen as conflicting and lacking coherence (Puig and Shaffer 2018). Additionally, Puig and Shaffer (2018, 364) note that developing economies 'signed these (investment) treaties in the hope of attracting investment and to reduce outside political interference, but often with limited information regarding their implications'. Moreover, a change in government may cause a change in priorities and shifts in the development paradigm that could bring significant changes in regulatory regimes that may trigger disputes, particularly if the regulatory changes have financial implications.

Several key concerns related to ISDS that challenge some of the key assumptions behind the growth of ISDS clauses are highlighted below:

- In terms of time, ISDS cases involve a long duration for arbitration. Most cases take several years to conclude, thus challenging the notion that arbitration is necessarily faster than court proceedings.
- Enforcement of arbitration awards may take several additional years.
- Governments may face reputational costs as a result of ISDS claims, even when the claim involves legitimate public regulations. A study noted that the act of filing an ISDS claim against an economy is connected with reduced inward FDI flows, and when the economy loses an ISDS case, inward FDI flows deteriorate (Johnson et. al. 2018).
- Inconsistencies are also among the key concerns noted about ISDS (Wells 2010). The inconsistencies could be attributed to three factors: (1) lack of binding precedents; (2) lack of an appellate mechanism; and (3) lack of transparency.

All these challenge the assumption that ISDS provides a clear 'rule of law' approach to FDI dispute settlement (Yu 2017).

Reforming ISDS

There are currently efforts to reform the ISDS system in order to address concerns, including the key concerns highlighted above; to make the system more consistent, fair and balanced for both the host governments and investors, reduce the costs, and address third-party funding issues. Roberts (2018) divides the ISDS reform options into three categories:

- *Incrementalists* apply modest ISDS reforms that would redress specific concerns. This has the benefit of being the status quo option but with perhaps fewer strong supporters.

- *Systemic reformers* prefer more significant and systemic reforms that may involve replacing investor–state arbitration with a multilateral investment court and an appellate body. This middle-ground option would need to gather supporters and build an international coalition.

- *Paradigm shifters* discard the existing ISDS system, replacing it with alternatives such as domestic courts, ombudsmen and state-to-state arbitration. This option would require a greater appetite for reform than the systemic reformers because of the higher degree of change.

Several options to reform ISDS are discussed in more detail below as examples (Yeo and Menon 2016 and UNCITRAL 2018):

- *Limiting investor access to ISDS*: As ISDS clauses in the past were seen to be broad and to create uncertainty to the host governments, imposing substantive and procedural limitations is expected to reduce those risks and to create a more independent domestic policy space. Substantive limitations could take the form of having a narrower definition of investment so as to reduce the possible number of ISDS cases. Imposing procedural limitations could be achieved by introducing separate consent requirements before an investor can bring a matter to international arbitration. This veers away from the most extreme version of the traditional approach where an investor may bring any dispute against the host economy to international arbitration without requiring further consent from the host economy (Jailani 2016). At present, there are many agreements that have much more restricted access to ISDS.

- *Promoting negotiation and alternative dispute resolution* (such as mediation and conciliation): As UNCTAD (2010, 23) notes: 'For Alternative Dispute Resolution (ADR) to be successful, the active participation of the investor and the government parties to a dispute is required, with different degrees of involvement, throughout the ADR process'. ADR is seen as a faster and less costly settlement, which includes the possibility of striking deals between the investor and the government, which leads to a solution that comprehensively solves the problem rather than being limited to the payment of compensation (UNCTAD 2010, 33–4). Meanwhile, its main disadvantages could be summarized into two: (1) ADR is non-binding and lacks an enforcement mechanism; and (2) ADR has limited applicability to certain types of investment disputes.

- *Preventing disputes*: Joubin-Bret (2017) argues that preventing disputes is actually an excellent tool to improve the investment climate and is part of investment promotion policies using the principle of good global governance. Dispute Prevention Policies (DPPs) are increasingly being used by many economies as part of the implementation of their international investment regime. A few examples include the Ombudsman of the Investment Promotion Agency (KOTRA) in Korea and the Dispute Management Mechanism of SICRECI in Peru.

Table 1. Limited recourse or modified access to ISDS between certain parties to the CPTPP

Bilateral relationship	No recourse to ISDS	Case-by-case consent for ISDS required	Access to ISDS under overlapping IIAs
Australia–New Zealand	X		No
Brunei Darussalam–New Zealand		X	Yes, ASEAN–Australia–New Zealand FTA (2009)
Malaysia–New Zealand		X	Yes, Malaysia–New Zealand FTA (2009), ASEAN–Australia–New Zealand FTA (2009)
New Zealand–Peru	X		No
New Zealand–Viet Nam		X	Yes, ASEAN–Australia–New Zealand FTA (2009)

Source: UNCTAD (2019a).

To provide an additional example, under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), access to ISDS between parties to the agreement includes certain limitations as shown in Table 1, whereby certain CPTPP parties use bilateral side letters to opt out or modify access to ISDS.

A recent report from IISD (2019b) puts forward the pros and cons for several potential outcomes from the UNCITRAL Working Group III on ISDS reform. The middle-ground outcome, the more likely outcome, would be to have procedural improvements in investor–state arbitration whereby economies agree on adopting a set of changes that would apply to how investor–state arbitration operates in practice. The appendix of the IISD report lays out the pros and cons of the middle-ground outcome, some of which are shown in Table 2.

Table 2. Pros and cons of having procedural improvements in investor–state arbitration

Pros	Cons
• Serves as a more realistic, plausible and acceptable option in the short term • Keeps the discussion on the global agenda • May be better than no reform, if the procedural improvements include, among other things, quality and impartiality of arbitrators, efficiency of the process, transparency of proceedings, costs, third-party funding, etc.	• Legitimizes, strengthens or locks in ISDS as the most readily available option • Impedes more serious, bolder reforms • Involves technical, detailed discussions that take attention away from discussions on objectives and policy goals • Distracts from other potential solutions • Continues with private adjudication that involves arbitrators and practitioners who are often seen as too close to investors' interests • Keeps the ISDS industry, including law firms, third party funders, etc. going • Harms prospects for domestic court reforms and improvements, while limiting the power of domestic courts

Source: IISD (2019b, 28).

In a broader context, Puig and Shaffer (2018) argue that successful investment policy reforms should address complementarity between domestic and international institutions. This would depend on the quality of the domestic jurisdiction, premised on the ultimate objective of any law, which is to uphold the rule of law and not deny justice to those seeking it.

Based on the Rule of Law Index 2019 by the World Justice Project (WJP), the APEC average score (covering 18 APEC economies) for the overall Rule of Law Index is 0.63, which is above the global average of 0.56. Half of the 18 APEC economies have scores below the global average. Among APEC economies, the highest score is 0.81 and the lowest score is 0.45. In comparison, the highest score among all economies is 0.90 and the lowest score is 0.28 (Appendix A).

Among the eight pillars of the Rule of Law Index, APEC performance is highest on Order and Security (Factor 5), with a score of 0.77. This is followed by Regulatory Enforcement (Factor 6), with a score of 0.64. Of specific interest on the topic of investment protection is sub-factor 6.5 ('The government does not expropriate without lawful process and adequate compensation') and sub-factor 7.7 ('Alternative dispute resolution mechanisms are accessible, impartial, and effective'). APEC average scores for these two items are 0.64 and 0.70, respectively. These are higher than the global averages at 0.57 and 0.66, respectively.

Whatever the outcome from ISDS reform, domestic rule of law will always remain important for investors and the broader investment climate. Thus, ISDS reforms should consider the best solutions to be those that will also strengthen and complement the domestic rule of law.[1]

Possible way forward

St. John and Chernykh (2018) argue that international courts could be influential agents of legal development as they could use their legal discretion to advocate that policy go in a certain direction through their decisions. The same could be said of ISDS, considering the idea that the content and form of foreign investment protection law cannot be separated from an economy's socio-political context (Miles 2013, 20). Thus, ISDS reform could have an influential impact on investment protection and facilitation in the wider context of the policy arena. The outcome of the ISDS reform process, often portrayed as a balancing act between 'private sector rights' and 'public sector obligations' (Ciocchini and Khoury 2018), will affect at least two important dynamics: (1) impact on government policy space and domestic regulations; and (2) domestic judicial reform.

ISDS clauses were originally seen as both an investment protection and investment promotion measure, to provide assurance to foreign investors that their rights would receive adequate legal protection by providing access to international arbitration should investors have doubts about the domestic legal system. But the fact that some

[1] See also Tobin and Rose-Ackerman (2010) in Chen (2017).

economies are abandoning the ISDS clause altogether may lead to speculation that the sovereignty costs of signing BITs could be much lower if treaties do not provide investor–state arbitration.[2] Aisbett et al. (2016) has found that while BITs stimulate bilateral FDI flows from partner economies, this relationship fails once a claim has been put forward. Once a claim is made, entry into force of new BITs no longer brings increased FDI flows.

As economies develop, the quality of their society and institutions also improves, and there is a trend toward greater awareness of the environment, health and sustainability issues, among others. Governments, as policymakers and regulators, need to address these public concerns in their respective domestic policies, including policies that govern investor conduct and responsibilities for existing and new investments. Indeed, the extent to which investor obligations might be considered is perhaps largely at the discretion of any given tribunal. As such, Büthe and Milner (2009, 214) argue that BITs 'may bite' if they restrict the ability of governments to adapt their policies to their development needs.[3] Dagbanja (2017) even further argues that if a foreign investment does not provide any development benefit, perhaps it should not be entitled to any protection under an IIA.

Based on an UNCTAD (2018a) report on the outcomes of ISDS cases, the substantive issues being brought forward by claimants include government regulatory changes or modifications that resulted in tariff and financial incentive implications. Firms claimed that regulatory changes in the energy, transportation, telecommunications, pharmaceutical and water sectors affected their profitability and breached their respective international investment treaties. In addition, a few cases involved expropriation of investments.

In the context of growing regional investment initiatives and global value chains, patterns of FDI will shape global trade flows and economic growth quality at the domestic level with impacts on sustainable development, employment generation and technology transfer. The innovative and 'disruption' effect of e-commerce may further escalate the process, requiring host economies to carefully think about the kind of investment regime that they would like to foster in the coming years. Matching ISDS reform to new business realities as well as to the need for investment to respond domestically and internationally to climate change and other sustainability requirements, will be an important part of the reform process; and the design of new IIAs may reflect this.

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[2] See also Montt (2009, 117).

[3] Using the argument originally put forward by Hallward-Driemeier (2003).

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Appendix A

World Justice Project (WJP) Rule of Law Index 2019	Global Average	APEC Average
Overall Score	0.56	0.63
Factor 1: Constraints on Government Powers	0.55	0.62
1.1 Government powers are effectively limited by the legislature	0.59	0.63
1.2 Government powers are effectively limited by the judiciary	0.54	0.61
1.3 Government powers are effectively limited by independent auditing and review	0.53	0.62
1.4 Government officials are sanctioned for misconduct	0.48	0.60
1.5 Government powers are subject to non-governmental checks	0.57	0.60
1.6 Transition of power is subject to the law	0.62	0.67
Factor 2: Absence of Corruption	0.52	0.62
2.1 Government officials in the executive branch do not use public office for private gain	0.51	0.62
2.2 Government officials in the judicial branch do not use public office for private gain	0.61	0.70
2.3 Government officials in the police and the military do not use public office for private gain	0.60	0.69
2.4 Government officials in the legislative branch do not use public office for private gain	0.36	0.47
Factor 3: Open Government	0.52	0.62
3.1. Publicized laws and government data	0.44	0.62
3.2 Right to information	0.51	0.60
3.3 Civic participation	0.57	0.60
3.4 Complaint mechanisms	0.58	0.66
Factor 4: Fundamental Rights	0.58	0.61
4.1 Equal treatment and absence of discrimination	0.59	0.59
4.2 The right to life and security of the person is effectively guaranteed	0.60	0.67
4.3 Due process of the law and rights of the accused	0.51	0.58
4.4 Freedom of opinion and expression is effectively guaranteed	0.57	0.60
4.5 Freedom of belief and religion is effectively guaranteed	0.65	0.65
4.6 Freedom from arbitrary interference with privacy is effectively guaranteed	0.49	0.59
4.7 Freedom of assembly and association is effectively guaranteed	0.62	0.62
4.8 Fundamental labor rights are effectively guaranteed	0.59	0.61
Factor 5: Order and Security	0.72	0.77
5.1 Crime is effectively controlled	0.75	0.81
5.2 Civil conflict is effectively limited	0.92	0.93
5.3 People do not resort to violence to redress personal grievances	0.48	0.58
Factor 6: Regulatory Enforcement	0.54	0.64
6.1 Government regulations are effectively enforced	0.53	0.61
6.2 Government regulations are applied and enforced without improper influence	0.63	0.74
6.3 Administrative proceedings are conducted without unreasonable delay	0.50	0.61
6.4 Due process is respected in administrative proceedings	0.48	0.59
6.5 The government does not expropriate without lawful process and adequate compensation	0.57	0.64
Factor 7: Civil Justice	0.55	0.61
7.1 People can access and afford civil justice	0.56	0.58
7.2 Civil justice is free of discrimination	0.56	0.56
7.3 Civil justice is free of corruption	0.56	0.66
7.4 Civil justice is free of improper government influence	0.52	0.59
7.5 Civil justice is not subject to unreasonable delay	0.46	0.58
7.6. Civil justice is effectively enforced	0.53	0.61
7.7 Alternative dispute resolution mechanisms are accessible, impartial, and effective	0.66	0.70
Factor 8: Criminal Justice	0.48	0.55
8.1 Criminal investigation system is effective	0.42	0.52
8.2 Criminal adjudication system is timely and effective	0.48	0.56
8.3 Correctional system is effective in reducing criminal behavior	0.40	0.49
8.4 Criminal system is impartial	0.48	0.49
8.5 Criminal system is free of corruption	0.56	0.65
8.6 Criminal system is free of improper government influence	0.48	0.55
8.7. Due process of the law and rights of the accused	0.51	0.58

Source: World Justice Project Rule of Law Index 2019, https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019, calculated by author.

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