

Faculti Summary

<https://staging.faculti.net/constitutional-acquisition-and-regulation-of-property/>

This video outlines research focused on the relationship between international economic treaties, national constitutions, and the regulatory authority of states, particularly in the context of investment treaties. The speaker investigates how national constitutions limit states' abilities to enter into investment treaties and regulate for public interests.

Investment treaties, especially since 1987, have allowed foreign investors to challenge state regulations that affect their investments, often undermining public health and other objectives. The research notes the proliferation of investor-state dispute cases, with numerous claims brought against states regarding regulations perceived as detrimental to foreign investments.

The speaker discusses reforms in investment treaties that aim to balance the regulatory authority of states while still providing protections for foreign investors. These reforms often include clauses meant to exempt states from liability for indirect expropriation but struggle to reconcile conflicts between investor protections and national laws. The speaker argues that provisions concerning indirect expropriation are unconstitutional in various African countries, as such constitutions typically recognize only direct expropriation, lack compensation rights for indirect effects, and prefer national judicial resolution over international arbitration.

The conclusion emphasizes that the current reforms in investment treaties do not adequately preserve states' regulatory autonomy. States should refrain from entering treaties that impose indirect expropriation clauses that could conflict with national regulations aimed at legitimate public interests. This video highlights the necessity for a reconciliation between investment treaty obligations and national constitutional authority to regulate property rights effectively.