



INTERNATIONAL INVESTMENT AGREEMENTS, INDUSTRIALIZATION AND THE RIGHT TO DEVELOPMENT

POLICY BRIEF FOR PRIVATE SECTOR

The principles and elements of the Declaration on the Right to Development (DRTD) mandate national and international development policies to create an enabling environment for development, thus making it an effective human rights tool to address obstacles posed by international investment agreements. Five key articles have particular bearing on investment protection provisions within international investment agreements: Article 2.3 on the right and duty of States to formulate appropriate national development policies; Article 3.1 on the primary responsibility of States to create national and international conditions favourable to the realization of the right to development; Article 3.3 calling on States to cooperate with each other to ensure development and eliminate obstacles to development, based on principles of human rights, sovereign equality, interdependence and mutual interest; Article 4.2 on the importance of sustained action to promote more rapid development of developing countries by providing them with appropriate means and facilities to foster comprehensive development; and, Article 8.1 highlights the need for economic and social reforms to address all social injustices and equality of opportunity for all people, particularly ensuring an active role for women in the development process.

Agenda 2030 also bears direct relevance to the challenges international investment agreements place on industrial development and economic growth. SDG 9 is focused on achieving inclusive and sustainable industrialization, in part by raising industry's share of employment and gross domestic product (GDP) by 2030 and to double their share in Least Developed Countries (LDCs). SDG 8 promotes sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. SDG 17 on the means of implementation underscores in target 17.15 the respect States should have for each other's national policy space and leadership to implement policies for poverty eradication and sustainable development. Industrial policy is a potent example of a means of implementation, in that it refers to state-led efforts to direct the economy's production structure towards sectors that are expected to offer growth, employment, productivity and development opportunities. The integral link between industrialisation and development is reaffirmed by various UN processes beyond the SDGs in the Post-2015 Development Agenda, such as the Fourth UN Conference on the LDCs in the 2011 Istanbul Programme of Action and the General Conference of the United Nations Industrial Development Organization (UNIDO) in the 2013 Lima Declaration.

Within the context of a State's right to development, in order to facilitate national industrial development with a view to achieving sustainable development under the 2030 Agenda, there are specific steps that can be considered and taken by four categories of key stakeholders - States, international organisations, the private sector and civil society. Reassessment and reformulation of investor protection measures are imperative to any effort to reform international investment agreements. Such initiatives are already taking place within UNCTAD as well as policy discussions at regional and national levels. A key priority in such a reassessment of investor protections is ensuring the State's ability to regulate in the interest of human rights, environmental regulations and legislation necessary for sustainable development.



ENGAGE WITH STATES BEFORE STARTING AN INVESTOR-STATE DISPUTE SETTLEMENT

RECOMMENDATION 1

Before submitting a dispute with a host State to binding private international arbitration in an investor-state dispute settlement process over perceived limitations to a private sector entity's investment, the private sector, or investor, may first engage in bilateral discussions with the State. The discussions can be carried out with an openness by the private sector entity to at least consider the host State's rationale and explanation for the issue in dispute. The eventual goal is for the investor to consider exemptions for a State's human rights, public interest and environmental legislation and regulations from being grounds for an investor-state dispute settlement process.

INCLUDE HUMAN RIGHTS IMPACT ASSESSMENT AND WOMEN'S RIGHTS IN INTERNATIONAL INVESTMENT AGREEMENTS

RECOMMENDATION 2

The private sector entity, or investor, should be willing to consider the inclusion of language that abides by women's rights legislation in the host State as well as ex-ante and ex-post human rights impact assessment in the international investment agreement. This includes women's rights language pertaining to women workers' rights in export processing zones and extractive sector labour, as well as impacts of the investment activities on women and girls in the host State. On human rights impact assessments, investors should cooperate in the assessment process by supplying information and data as needed.

IDENTIFYING WHAT IS NOT WORKING IN INTERNATIONAL INVESTMENT AGREEMENTS

RECOMMENDATION 3

Investors should participate in bilateral discussions with State parties on amendments, interpretation or international investment agreements termination decisions in order to specifically identify what is not working in the international investment agreement text. Identifying what is not working within the international investment agreements measures and provisions may provide clarity on how to effectively reform international investment agreements in a mutually beneficial manner.

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