



INTERNATIONAL INVESTMENT AGREEMENTS, INDUSTRIALIZATION AND THE RIGHT TO DEVELOPMENT

POLICY BRIEF FOR CIVIL SOCIETY ORGANISATIONS

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.



MONITORING DEVELOPMENTS

RECOMMENDATION 1

Civil society, along with international organisations, should monitor developments on States that have terminated their international investment agreements, as well as States that have successfully pursued substantive amendments and interpretations to their international investment agreements. Data on these developments should be organised and analysed with attention to best practices on international investment agreement amendments, interpretations and terminations by host States, with particular attention to cases where industrial development and sustainable development policy choices have been made possible.

ADVOCACY AND CAPACITY BUILDING ON INDUSTRIAL DEVELOPMENT AND THE RIGHT TO DEVELOPMENT

RECOMMENDATION 2

Civil society should build internal capacity among themselves and carry out advocacy with States on how investor protection measures in IIAs constrain the policies and strategies States may need to pursue industrial development and sustainable development in line with the Sustainable Development Goals as well as the Declaration for the Right to Development.

ADVOCACY AND CAPACITY BUILDING ON WOMEN'S RIGHTS AND HUMAN RIGHTS IMPACT ASSESSMENTS

RECOMMENDATION 3

Civil society should build internal capacity among themselves and carry out advocacy with States on the links between investor protection measures in international investment agreements and women's rights and gender equality in SDG 5 on achieving gender equality and empowering all women and girls and the Declaration on the Right to Development Article 8.1 which states that effective measures should be undertaken to ensure that women have an active role in the development process. Particular attention should be placed on how small and medium enterprises are important for women's employment and livelihoods and on violations of labour rights in export processing zones where over three-quarters of the workforce are typically female. Civil society should also advocate for the inclusion of language for the conduct of ex-ante and ex-post human rights impact assessments in the international investment agreement text.

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