



# INTERNATIONAL INVESTMENT AGREEMENTS, INDUSTRIALIZATION AND THE RIGHT TO DEVELOPMENT

## POLICY BRIEF FOR INTERNATIONAL 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.



# INFORMATION ON OPTIONS AND BEST PRACTICES

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## RECOMMENDATION 1

International organisations that provide technical assistance and policy advice to States, in particular developing countries, can supply information on options and best practices to States that are negotiating or amending their international investments agreements. Such information can focus on the most suitable approaches for States to maintain their ability to pursue industrial development and sustainable development policies in the context of the right to development, particularly through performance requirements on foreign investment. In cases where States choose to limit their choice of industrial and economic policies through prohibitions on the use of performance requirements, international organisations can advise States on the amendments or stipulations they can make in their international investment agreements.

# AMENDMENT, INTERPRETATION AND EXIT OPTIONS

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## RECOMMENDATION 2

International organisations that possess expertise on investment law and international investment agreements should provide technical assistance to States on maneuvering between the options and possibilities in seeking amendments and interpretations to international investment agreement provisions, as well as on unilateral termination decisions.

# MONITORING DEVELOPMENTS

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## RECOMMENDATION 3

International organisations should monitor developments relating to 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. Currently, the United Nations Conference on Trade and Development takes the lead on such efforts through its Investment Policy Hub. Data on such developments should be organised and analysed with attention to best practices on international investment agreement amendments, interpretations and terminations by host States.

# DATA PROVISION ON FOREIGN DIRECT INVESTMENT ATTRACTION

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## RECOMMENDATION 4

International organisations can organise and present the data from studies and surveys demonstrating that the vast majority of private sector foreign direct investment does not consider international investment agreements when deciding where and how much to invest across borders, and that political risk insurance providers do not factor international investment agreements into their coverage and pricing policies in a substantive manner. A dissemination of thorough data on the lack of linkage between international investment agreements and the ability to attract increased amounts of foreign direct investment could be potentially useful for States as they weigh options and make decisions on their international investment agreements.

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