



Questionnaire for Governments

Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises)

“Human Rights-compatible International Investment Agreements (IIAs)”

Introduction

The Working Group on the issue of human rights and transnational corporations and other business enterprises (“Working Group”) will present a report to the United Nations General Assembly in October 2021 on “Human Rights-compatible International Investment Agreements (IIAs)”. IIAs here means bilateral investment treaties as well as investment chapters in trade agreements negotiated at a bilateral or regional level.

The report aims to provide practical guidance to States in negotiating new IIAs or reforming old IIAs in line with the UN Guiding Principles on Business and Human Rights (UNGPs). In particular, the report will unpack Guiding principle 9, which provides that: “States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.”

The report will cover all three pillars of the UNGPs in the context of IIAs: the duty of States to preserve regulatory space while negotiating IIAs so as to strike a balance between attracting investment and promoting responsible business conduct; the responsibility of investors to respect all internationally recognized human rights; and the role of IIAs in providing access to remedy to individuals and communities affected by investment.

This report will build on work previously undertaken by the Working Group as well as other organisations such as UNCTAD, OECD and the South Centre concerning various dimensions of the interface between IIAs and human rights. It will also make connections with Working Group’s previous reports addressing issues such as human rights due diligence, policy coherence, gender dimensions, and access to remedy.

In this context, the Working Group seeks the input of all Member States to the questions below. Responses received will inform the above report of the Working Group.

Please email your response (maximum 2,000 words) to wg-business@ohchr.org by **19 March 2021**, indicating “IIAs QUESTIONNAIRE” in the subject line.

Unless indicated otherwise, all the responses received will be posted on the Working Group’s website at <https://www.ohchr.org/EN/Issues/Business/Pages/IIAs.aspx>

Questionnaire

State duty to protect human rights

1. Does your State's constitution, laws or national action plan on business and human rights require the integration of human rights provisions in IIAs concluded by your Government?
2. Are there any mechanisms or processes (e.g., inter-ministerial committee, ex ante human rights impact assessment) to assess and ensure that IIAs are compatible with international human rights obligations of your country?
3. How does your Government ensure that IIAs do not impact negatively on the realisation of other important policy objectives such as achieving gender equality, protection of the environment, mitigation of climate change and implementation of the Sustainable Development Goals?
4. How does your Government ensure that IIAs provide adequate human rights safeguards in cases where investments may take place in special economic zones or in conflict and post-conflict settings?
5. Is your Government considering to reform or replace the Investor-State Dispute Settlement (ISDS) mechanism in your old or new IIAs? If so, please provide details about the proposed alternatives.
6. Has the COVID-19 pandemic affected your Government's approach to IIAs and/or ISDS?

Investors' responsibility to respect human rights

7. Do IIAs concluded by your Government (including your Model Bilateral Investment Treaty) include human rights provisions addressed directly to investors and their investments? Are these provisions soft law recommendations or legally binding?
8. Does IIAs concluded by your Government expressly require foreign investors to comply with domestic laws relating to human rights, labour rights, and the environment?
9. Does your Government require – under IIAs or otherwise – investors to conduct human rights due diligence (HRDD) or environmental and human rights impact assessments prior to their investment? If so, what mechanisms exist to ensure that investors comply with this obligation?
10. What measures exist to ensure that HRDD or impact assessments conducted by investors are gender-responsive and involve a meaningful participation of impacted communities, particularly marginalized groups and individuals?

Access to remedy

11. Do IIAs concluded by your Government include processes or mechanisms to allow affected individuals or communities to seek remedies, in host or home countries, against investors for human rights abuses linked to investment-related projects?

12. Has your Government pursued counterclaims against investors for human rights abuses linked to their investments? If yes, please provide details.

13. Do IIAs concluded by your Government allow affected individuals or communities to file amicus briefs before ISDS or another dispute settlement process?

14. Does your Government require – under IIAs or otherwise – investors to establish, in meaningful consultation with affected communities, operational level grievance mechanisms that are effective in terms of process and remedial outcomes? If so, please provide details.

Good Practices

15. Are there any good practices regarding the integration of human rights issues in IIAs that you would like to share with the Working Group? Any other comments or suggestions are also welcome.
