



International Investment Agreements Impacts on Women's Rights

QUICK FACTS

- The COVID-19 pandemic has pushed 96 million people into extreme poverty in 2021, half of whom are women.
- Globally the proportion of women above retirement age receiving a pension is on average 10.6% lower than that of men. Only 41.1% of mothers receive maternity benefits, while 83 million new mothers remain uncovered.
- Many outstanding Investor-state Dispute Settlement cases under free-trade agreements and Bilateral Investment Treaties involve natural resources such as land, which women across developing countries traditionally depend on.
- In export processing zones, over 3/4 of the workforce are female.
- In developing countries, small and medium enterprises (SMEs) contribute to 70% of employment, and over 60% of Gross Domestic Product (GDP). In Africa, most SMEs are owned by women.



Women benefit less than men from trade liberalisation, but they bear a much higher share of the adverse impacts due to their unequal access to resources and power.

Addressing obstacles to development posed by international investment agreements is key to achieving the right to development and the 2030 Agenda, including SDG 5 on gender

Economic growth, and inclusive and sustainable development cannot be achieved without realizing gender equality and women's rights. Globalisation through increased trade and investment has been associated with a rise in employment and entrepreneurial opportunities. However, in some cases, it has exacerbated existing gender inequalities and worsened women's economic and social status. This is because international investment agreements and bilateral treaties often do not factor in their gendered effects, particularly on women facing intersecting forms of discrimination as a distinct and often disadvantaged group. To date there are over 2844 bilateral treaties in existence worldwide and few address gender substantively.

Foreign investment has historically created positive employment impacts for women in the developing world, particularly in special export processing zones where garments, footwear and other consumer durables are manufactured for exports within a global value chain and production network. However, such positive impacts often fell short of realising women's equal enjoyment of human rights, and kept women at the bottom of the hierarchy of economic value. The vast majority of the workforce in factories are women with little bargaining power. The system often exploits women's labour, taking advantage of abusive working conditions, precarity of jobs, low wages, wide gender pay gaps and low prospects for career development. Some investors seek to invest in places where labour protections are weak, thereby allowing the employer to make quick and arbitrary, short-term adjustments to labour supply in response to sudden changes in demand. Investors use the lack of rights protection to shift most of the burden for changes in demand upon the workforce by cutting individuals or hours due to competitive pressures. In addition, women workers' rights are routinely denied through strategies such as extensions of working hours without a proportionate increase in wages. Therefore, the increase of foreign investment in developing countries may not always improve the rights of women because of the violations of workers' rights.

Small and medium enterprises (SMEs) with female ownership represent 31 to 38% of formal SMEs in middle-income developing countries. Supporting this sector is crucial for advancing gender equality and women's right to a dignified livelihood and economic autonomy. Typically, investment agreements include a clause which forbids the government from demanding companies to favour local content and local processing. This is despite the fact that it would allow SMEs to sell their products to foreign firms and to integrate into a production process of greater scale.

On average, over 80% of SMEs in developing countries are concentrated in local businesses, whereas only 19% focus on exports. Favoring local content and local processing would create positive spillovers between SMEs across various sectors through the opportunity to act within a production process involving foreign investors. Another challenging investor protection clause for SMEs is the national treatment clause that requires equal treatment for foreign and domestic businesses. This undermines states ability to create greater inclusion in economic activity as some investors will challenge this state activity as violating the investment treaties, thereby affecting individuals in precarious situations, many of whom are women. Unable to compete with foreign firms that have far greater capacity, finances, technology and innovation, markets and production scale, local SMEs are disenfranchised. The temporary strategic assistance they require from States in their infant stages is no longer possible.

Investor protections also restrict the ability of developing countries to put in place policies to support the industrialisation of their economies. Industrialisation could contribute to job creation and poverty eradication while also providing opportunities for social inclusion and equality between men and women. It drives an increase of value addition and enhances the application of science, technology and innovation, therefore encouraging greater investment in skills and education, and thus providing the resources to meet broader, inclusive and sustainable development objectives. Restrictions on industrial policies adversely impact gender equality and women's rights, especially their economic and social rights.

Finally, investment treaties also affect women's rights through investor-state dispute settlement (ISDS), which undermines state efforts to conform to human rights obligations like the [right to a healthy environment](#). Public health and environment regulations, areas to which women's health, safety, livelihoods and wellbeing are critically connected, are often brought under legal arbitration. For example, in the case of *Renco vs. Peru*, the lead and zinc smelter operation of Renco Group Inc's in Peru resulted in the lead poisoning of 162 La Oroyan werty individuals. The Peruvian government took measures against the company. However, in return, in 2011 Renco sued Peru for \$800 million under the US-Peru Free Trade Agreement. In the context of the importance of cross-border investment in a globalised economy, States should put in place economic diversification and sustainable industrial policies in order to address the challenge of gender discrimination in many export sectors.

Policy Recommendations

The [Declaration on the Right to Development](#) and the [Addis Ababa Action Agenda](#) provide grounds upon which international investment agreements should be reformed to recalibrate their impact on the ability of States to conform and enforce laws and policies that uphold all human rights, including women's rights. This would help ensure the vision of the 2030 Agenda of international trade becoming an engine for inclusive economic growth and poverty reduction. Specific recommendations include:

Parties should conduct human rights impact assessments of trade and investment agreements with a focus on gender. Countries should ensure provisions to amend international investment agreements and options on performance requirements. Investors should cooperate in the assessment process by supplying information and data as needed, they should also collect information and best practices on existing options, amendments, interpretation and exit options in international investment agreements. International organisations should provide data on foreign direct investment attraction; States should be engaged first before the start of an investor-state dispute settlement process. All stakeholders should consider the inclusion of women's rights in international investment agreements; civil society should build internal capacity and carry out advocacy with States on the links between investor protection measures in international investment agreements and women's rights and gender equality. All stakeholders should pay particular attention to the negative impacts of the investments on women's lives and livelihoods, and violations of their rights.



The investor protection clauses included in international investment agreements and treaties are problematic because they often and significantly limit the policy space for governments to put in place measures to promote women's rights. When the State cannot perform its responsibility - through policy work - to protect its citizens, ensuring that women have an active role in the development process becomes a pipe dream.



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