



UNCTAD High-level International Investment Agreements (IIA) Conference 2018

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Human Rights and Transnational Corporations and
Other Business Enterprises

Excellences, distinguished delegates, ladies and gentlemen,

Let me begin by thanking UNCTAD for inviting the UN Working Group on Business and Human Rights (Working Group) to speak at the High-Level International Investment Agreements Conference 2018.

In the next three minutes, I will make three points about the relevance of human rights to international investment agreements (IIAs).

My first point is that IIAs should be reoriented as a tool to achieve inclusive, humane and sustainable development. IIAs should be gender-sensitive and leave no one behind. This is only possible if States develop their national investment policies after meaningful consultation with all stakeholders, conduct an impact assessment before signing IIAs, and negotiate IIAs in a transparent manner. Moreover, in line with Principle 9 of the UN Guiding Principles on Business and Human Rights, the text of IIAs should enable States to “maintain adequate domestic policy space to meet their human rights obligations”.

Second, under the UN Guiding Principles, all investors have a responsibility to respect human rights and conduct human rights due diligence wherever they operate. Moreover, States have a non-delegable obligation to regulate both investment and investors so that development projects do not cause undue harm to human rights or the environment. IIAs should, therefore, include explicitly the human rights obligation of investors. This change would not only address the current asymmetry between the rights and obligations of investors under IIAs, but also limit a “race to the bottom” regarding human rights standards.

Third, systematic concerns about the existing state-investor dispute settlement (ISDS) process should be addressed. For example, while the ISDS mechanism offers a “fast-track” remedy for businesses to protect their investment interests, neither States nor communities affected by development projects can use the same mechanism to hold investors accountable for human rights abuses. This must change in favour of a system which strikes a fair balance between the interests of different parties.

Let me conclude by saying that States should adopt a more holistic approach towards IIAs: instead of treating them as merely an investment vehicle, IIAs should be harnessed to realize the human development potential of investment, especially for those who need it the most. You may contribute to this goal by responding to an open call issued by the UN Working Group to design a human rights-compatible IIA for discussion next month at the UN Forum on Business and Human Rights.

Thank you very much for your attention.