

## What is needed to reform International Investment Agreements

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Let me start by reiterating that a systematic reform of the global investment regime with the aim to maximize sustainable development benefits of foreign investments requires the support and the active engagement of civil society.

However, while in some countries we see more openness to discuss a reform of International Investment Agreements (IIA's), in general the national and regional processes of IIA reform are still opaque. This way, governments risk that their reform efforts might not address the concerns that need to be resolved to ensure the required public support.

Provisions of existing IIA's create a risk that investors challenge core domestic policy decisions, but at the same time these IIA's have shown to be insufficient to attract the sustainable investment hoped for. The current IIA's are therefore in a severe legitimacy crisis.

That has led to several reform efforts such as:


- Efforts to improve institutional safeguards for the independence of arbitrators, reaching from a code of conduct for arbitrators to the EU's proposal for a Multilateral Investment Court that intends to provide security of tenure;
- Reforms that try to limit the interpretatory power given to arbitrators;
- And the general aim to ensure that IIA's do not affect the ability of states to pursue public policy objectives.

While the merits of such reform efforts are duly recognized, it is important to recall that all these efforts do not address two well-known key concerns that are seen to be at the heart of the problem.

First, there is the one sided focus on investor rights in IIA's. And second, the possibility of investors to bypass national courts. In our view, reformed IIA's will fail to get the required public support if these two problems are not adequately addressed.

The question what criteria have to be met by investors and their investment so that they contribute to sustainable development should be at the center of any sustainable development oriented IIA reform.

While TTIP has helped to rise public awareness in Europe about the problem of ISDS, current reform efforts are falling far short of what is needed. It should be noted that all International Investment Agreements exclusively focus on investors' rights and do not address any disputes that might be caused by the infringement on the rights of other stakeholders (like local communities) caused by the investment or investor. Also, we witness the persistent problem that promises made by investors to local communities, such as to provide access to drinking water, healthcare or school education, are not kept. These promises are frequently made to silence local opposition to an investment and to ensure the consent of local right holders at a relevant time of national decision making in the host country.



In our view any investment agreements should include effective protections of human rights, the environment and labour rights. These protections should include effective remedies for people whose rights are harmed by investors or their investments, including the access of victims to the courts of the home states of the investors, in order to file claims for these harms.

However, we foresee that it will be a difficult task to develop a new model text for IIA's. Furthermore we are very concerned in how far any good model text can be maintained in the individual treaty negotiation processes.

We therefore urge governments to reconsider the utility and necessity to include investment protection in IIA's, and to abstain from granting additional remedies for enforcement to foreign investors that go beyond those in national courts. Instead we would like to encourage governments to follow the example of countries like South Africa by terminating existing investment treaties and improving national laws and legal systems on investment where needed.



*This is the extended version of the speech of Burghard Ilge at the High-level plenary session on IIA reform: Taking stock and moving forward, Annual High-level IIA Conference UNCTAD 9-11 October 2017, Geneva*