

## **Human rights must be integrated into international investment agreements**

*Human rights NGOs urge rejection of CETA, RCEP, TPP, TTIP, EU-Vietnam FTA*

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We, the undersigned human rights, environmental and development organizations, urge all governments to place human rights at the core of international economic agreements, by integrating human rights protections into international investment and trade agreements and to ensure that these agreements do not impair governments' abilities to respect, protect and fulfill their human rights obligations. Most urgently, we call on decision-makers considering entry into bilateral or multilateral trade and investment agreements to reject agreements that do not have human rights at their centre.

International investment can be a powerful engine for economic development and, potentially, to help fulfill a wide range of economic and social rights. But the current international investment system gives rights to multinational corporations while doing nothing to protect the rights of people affected by foreign investment to access effective remedy. It does not sufficiently protect governments' space to pursue sustainable development policies from investors' challenges.

The current system creates rights for foreign companies to challenge legal and policy actions by the host governments where the companies invest, even when those state actions are taken to protect and fulfill human rights, meet vital social needs, and pursue sustainable development objectives such as reducing inequality (e.g.: environmental and health regulations; protections of land and labour rights; access to water). This system has allowed companies to oppose, seek exemptions from, or be compensated for the cost of compliance with a range of human rights protections through multilateral and bilateral treaties, and agreements that host governments have entered into directly with foreign firms. Entering into agreements that constrain their ability to protect and fulfil human rights can create pressure on governments to ignore their obligations to protect human rights under international treaties.

Since States are bound by these pre-existing treaty obligations, they are prohibited from concluding any agreements that would impose on them inconsistent obligations constraining their ability to respect, protect and fulfill human rights. The [UN Guiding Principles on Business and Human Rights](#) also make clear that governments must not enter into trade and investment agreements that constrain their ability to meet human rights duties. The EU in particular is required to respect its Charter of Fundamental Rights. Article 21 of the Treaty on European Union obliges the EU to define and pursue policies and actions that consolidate and support the rule of law and human rights in its external relations. In negotiating investment agreements, the EU must therefore respect human rights and design these agreements in a way that consolidates human rights, and does not make their realization more difficult in the EU and partner countries.

A number of recent cases ([OceanaGold and El Salvador](#); [Philip Morris and Uruguay](#)) have rejected the foreign investors' claims. Yet even defending cases that are ultimately found meritless wrongly diverts significant state funds from public goods and services to pay for legal and arbitration costs. The threat of these challenges has had a chilling effect on governments considering new actions to pursue legitimate policy goals. Although some recently proposed agreements include language acknowledging the need to safeguard governments' ability to pursue these core policy aims, these new provisions have, at best, weak implementation measures, compared to the protections provided to investors.

To avoid entering into agreements that would compromise governments' human rights obligations with regard to international investment:

1. Independent human rights impact and/or risk assessments should be carried out and published, with public participation, on all prospective international investment agreements, to identify, understand, assess, and address their full effects on human rights, with a particular focus on vulnerable and marginalized groups.
2. Any protections that are provided for investors should not impede governments' policy space to legislate, regulate and reach court decisions to protect and fulfill human rights, including:
  - right to health including access to essential medicines
  - right to a safe and healthy environment
  - rights to development and to an adequate standard of living
  - rights to water, sanitation and food
  - indigenous peoples' rights
  - core labour rights
3. Investment agreements should include effective protections for 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 ability of victims to bring claims for these harms in the courts of the home States of the investors.

These three points are not exhaustive of the human rights concerns raised by existing or proposed investment agreements, but these are essential initial requirements for such agreements to respect human rights.

The analyses of experts, such as Alfred de Zayas, the Independent Expert on the promotion of a democratic and equitable international order, and Victoria Tauli-Corpuz, the UN Special Rapporteur on the rights of indigenous peoples, lead to the conclusion that the following proposed international trade agreements, in their current forms, do not meet these three core requirements:

- **Comprehensive Economic and Trade Agreement** (EU-Canada)
- **Regional Comprehensive Economic Partnership** (ASEAN & other Asia and Pacific countries)
- **Transatlantic Trade and Investment Partnership** (EU-USA)
- **Trans-Pacific Partnership** (12 signatories in Pacific Rim region)
- **EU-Vietnam Free Trade Agreement**

They raise serious concerns about how they might enable companies to undermine human rights, and they create no enforceable human rights standards for foreign investments. **We therefore urge decision-makers in the EU and in the countries concerned to oppose these proposed agreements in their current form.**

We likewise will urge rejection of other proposed agreements, such as the proposed "upgrade" to the Free Trade Agreement between Mexico and EU and the proposed EU-Myanmar investment protection agreement, if these agreements do not respect and protect human rights, including by meeting the three criteria above.

Signed by (in alphabetical order):

Business & Human Rights Resource Centre

Center for International Environmental Law

Centre for Human Rights in Practice, University of Warwick (UK)

European Coalition for Corporate Justice

FIDH (International Federation for Human Rights)

International Corporate Accountability Roundtable

Institute for Policy Studies, Global Economy Project

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SOMO (Centre for Research on Multinational Corporations)

UN Independent Expert on the promotion of a democratic and equitable international order Alfred de Zayas