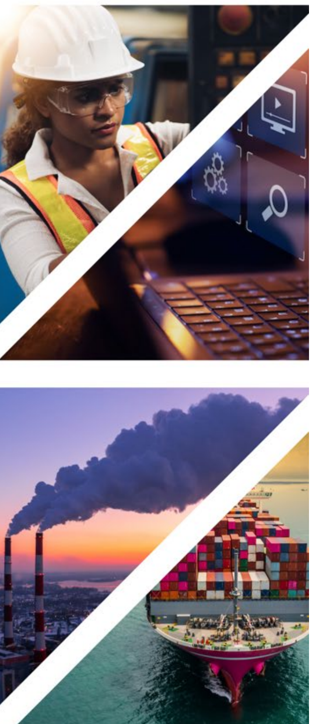
20
Years



tralac | trade law centre

Investment and Gender in the AfCFTA

Introduction

In international trade and investment, women often benefit less and face specific forms of discrimination including unequal access to resources. However, inclusive and sustainable development cannot be achieved without realising gender equality.

Governments mainly seek to attract foreign investment to realise economic benefits. Such investment can also be harnessed to maximise the benefits of gender equality in both society and the economy. For instance, foreign investment plays a critical role in enhancing gender equality through creating employment for women, expanding business opportunities for women, increasing wages and access to resources and basic services for women, and enhancing their socio-economic well-being and livelihoods, poverty alleviation and their empowerment.

Foreign investment can bring about cultural transfers or spillovers of gender norms or best-practice policies towards female employees from gender-equal countries.

Further, foreign investment brings advanced technology and know-how into the host economies with spillovers to local suppliers and workers and can help to level the playing field for all businesses including women-owned businesses.

Foreign investment, if channelled into public facilities and infrastructure, can advance women's empowerment. For example, by enhancing access to public schools, medical centres, water, energy and markets.

Foreign investors and their investments can advance gender equality, reduce discrimination and improve the welfare of women in the host economies through the implementation of corporate social responsibility or human resources programmes and labour standards. This may also include hiring female workers including senior-level staff, providing family-friendly working arrangements and lowering the gender wage gap.

Mainstreaming gender issues in investment policies, both international and domestic, is important in the realisation of gender equality and women's economic empowerment. Equally, there are multiple gains if women participate actively and meaningfully in investment policy and activities. The sustainable and inclusive development aspiration of many countries becomes a reality.

Gender-sensitive investment policies are essential to promote gender equality in national development goals and consistent with the Sustainable Development Goals (particularly Goal 5: Gender Equality).

Gender Issues in International Investment

Investment treaties have the potential to advance gender equality and improve the economic empowerment of women. However, gender issues hardly feature in investment treaties, particularly in old-generation international investment agreements. The main objective of traditional investment treaties is to promote and protect investments and investors in the territory of the host county.

Out of the approximately 3,000 existing investment treaties worldwide only a few include gender provisions. These treaties typically refer to gender issues in non-binding provisions such as the preamble and objectives.[1] Not addressing gender issues substantively in investment treaties may further entrench gender inequalities or exacerbate the disadvantages of women in the international investment ecosystem.

Gender issues in the AfCFTA Protocol on Investment

The AfCFTA Protocol on Investment (Draft Protocol) makes explicit reference to gender and/or women in the Preamble and provisions dealing with investment promotion, administrative and judicial treatment, corporate social responsibility and human resource development.

The Draft Protocol's "Preamble" recognises "the importance of encouraging investment activities that benefit economically disadvantaged areas, small and medium-sized enterprises, local communities, indigenous peoples, and underrepresented groups, **including women** and youth" (Emphasis added).

[1] See https://investmentpolicy.unctad.org/international-investment-agreements/advanced-search

The provision on "Investment Promotion" encourages State Parties "to promote and increase awareness of Africa as the preferred investment destination including … through promoting investments that ***contribute to gender equality, the empowerment of women*** and youth" (Emphasis added).

The provision regarding "Administrative and Judicial Treatment" requires each State Party to "ensure that, in administrative and judicial matters, investors and investments of another State Party are not subject to treatment which constitutes a fundamental denial of justice in criminal, civil and administrative adjudicative proceedings, an evident denial of due process, a manifest arbitrariness, ***a discrimination based on gender***, race or religious beliefs, or an abusive treatment in administrative and judicial proceedings." (Emphasis added).

The provision on "Corporate Social Responsibility" reaffirms that "investors and their investments shall endeavour to ***promote gender equality*** and inclusiveness in their activities" (Emphasis added).

Under the provision on "Human Resource Development," State Parties undertake to develop national policies to guide investors in developing the human capacity of the labour force, including for mid-level and managerial positions, including providing incentives to encourage employers to invest in training, capacity building and knowledge transfer, paying attention to the needs of women, youth and vulnerable groups.

In addition, the Draft Protocol safeguards the right of State Parties to regulate. This provides policy space for the government to put in place measures to achieve legitimate policy objectives such as, inter alia, gender equality and promoting the socio-economic well-being and livelihoods of women.

Noteworthy is that the abovementioned provisions apply to States and/or investors or in some cases, investment. This means that both States and investors or investments are recognised under the Protocol to advance gender equality or socio-economic status of women.

The effective implementation of these provisions is crucial for advancing gender equality in international investment agreements, and ensuring women have equal opportunities and dignified livelihoods within the AfCFTA.

Moreover, beyond including specific references to gender in the legal text, State Parties and investors may also implement other mechanisms within the realm of investment to advance gender equality. For example, governments and/or investors can collaborate or cooperate through the exchange of information and best practices on programmes or policies aiming to enhance gender equality and ensure equal opportunities between women and men, as well as preventing and combating discrimination on all grounds.

- - -

tralac gratefully acknowledges the support of its Development Partners