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A BIT of help? The divergent effect of bilateral investment treaties on women's rights

Bimal Adhikari^a, Jeffrey King^b, and Lie Philip Santoso^c

^aNazarbayev University; ^bAmerican University of Sharjah; ^cDuke Kunshan University

ABSTRACT


What effect do bilateral investment treaties (BITs) have on women's rights? We argue that BITs have divergent effects on women's rights dependent on the type of women's rights examined. We posit that BITs have a negative effect on women's economic rights in host states because of an initial "locking in" effect, whereby states seek to become more attractive to potential bilateral partners by decreasing the quality of conditions prior to signing a BIT. Host states then become reluctant to prosecute foreign investors due to the threat of legal arbitration, which further enables foreign investors to engage in women's rights violations. In response to the possibility of unrest generated by the BITs, host states then seek to improve women's political rights, compensating women for the decreasing quality of economic rights in turn. In testing these assertions, our expectations are broadly and consistently confirmed.

Introduction

In September of 2020, the international nongovernmental organization (INGO) ActionAid submitted a review of Australia's bilateral investment treaties (BITs) to its Department of Foreign Affairs and Trade.¹ The report highlighted some of the deleterious effects that BITs, and specifically investment protection rules, had on women's rights in developing countries. According to the report, "BITs have serious implications for women's rights and development in developing countries. They limit governments' policy space and restrict opportunities for policy reform that is necessary to achieve gender equality and development objectives" (ActionAid 2020, p. 1). In fact, even if BITs do not directly address women's rights or development, this negative impact can easily be seen in the many examples taken from investor-state dispute mechanism tribunals, where it has been shown that BITs, "have had significant gendered impacts, including as a result of the reduction in public funding available for services that women disproportionately rely on" (ActionAid, 2020, p. 5). In short, this ActionAid report suggested that BITs have a major and negative impact on women and women's rights in developing nations, including by reducing funding for improving women's rights and restricting opportunities for reform as well. Besides such anecdotal evidence, there have been no systematic studies carried out on the impact of BITs on women in developing countries.

Despite the dearth of academic literature on BITs and women's rights, BITs have been a common object of study within the extant literature (Simmons, 2014). Much of the prior research

CONTACT Bimal Adhikari  bimal.adhikari@nu.edu.kz  Political Science and International Relations, Nazarbayev University, Nur-Sultan 010000, Kazakhstan.

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Data used in the study can be obtained for purposes of replication at: <https://dataverse.harvard.edu/dataverse/jhr>.

suggested that BITs have grown in popularity due to their positive effects on foreign direct investment (FDI) inflow (Neumayer & Spess, 2005; Salacuse & Sullivan, 2005), but the weight of the literature seems to suggest that BITs have minimal impact on FDI or even lead to a reduction of FDI totals within a state (Brada et al., 2021; Rose-Ackerman & Tobin, 2005; Yackee, 2008). In spite of the at-best mixed effects of FDI, developing countries consider BITs as desirable and compete among one another to enter into such agreements with developed countries in hopes of receiving greater FDI (Simmons, 2014). Although increased capital inflow might be desirable, such competition is also to blame for worsening rights in developing countries (Mosley & Uno, 2007). Bodea and Ye (2020), for example, demonstrated that host nations try to make themselves more attractive to potential BIT partners by decreasing the quality of human rights within their states in a proverbial “race to the bottom.”²

Once the BIT is agreed upon by both countries, a “locking in” effect takes place, whereby the poor conditions brought on by the race to the bottom within the host state are frozen into place and efforts to improve them become difficult. International investors, for example, now have a vested interest in maintaining the low level of rights and are armed with a variety of enforcement mechanisms provided by the BIT that can be used to prevent any attempt to improve conditions within the host state (Ye, 2020). However, only a few studies have examined the effect of BITs on human rights conditions within signatory states. Bodea and Ye (2020) focused on human rights at the aggregate domestic level, whereas Ye (2020) focused on disaggregated labor rights. Meanwhile, no studies have examined the impact of BITs on women’s economic and political rights, despite reports such as the one published by ActionAid.

We argue that BITs have a powerful effect on the rights of women in BIT signatory states, albeit dependent on the types of rights examined. We posit that BITs worsen women’s economic rights in the signatory states. This is so because as host states seek to become increasingly attractive to potential BIT partners in the race to the bottom, they reduce the quality of economic rights within the state, including those related to safety regulations, the ability to unionize, and other integral labor rights. We maintain that women and women’s economic rights are especially vulnerable to the worsening conditions caused by BITs. Peksen (2019), for example, demonstrated that although market-friendly policies, of which BITs are representative, increase the presence of women in the workforce, they also have the troubling effect of reducing women’s economic rights substantially.

Coupled with this, once the BIT is signed, umbrella clauses that are present in almost half of all BITs stipulate that these treaties lock in weak labor laws and poor working conditions (Ye, 2020). Subsequently, international investors may now act as a barrier to any attempts to improve conditions by the government, as keeping poor working conditions in place now benefits them financially. Furthermore, after the BIT is signed, multinational corporations may seek to undermine women’s economic rights at greater levels in the pursuit of increased profit, as they now have powerful mechanisms such as the International Center for Settlement of Investment Disputes (ICSID) that protect them from retaliation by the host government. Meanwhile, host states will limit their regulatory ambitions (Pelc, 2017), including efforts to improve women’s economic rights, as to do so risks being forced into expensive international arbitration that can severely harm the host state’s reputation in the future (Allee & Peinhardt, 2011).

We further argue that entering the BIT may increase the likelihood of political unrest within the host state, especially with women, which may force the host state to address grievances by providing compensatory improvements in political rights instead. Bodea and Ye (2020) suggested that the process of entering a BIT provides a breeding ground for grievances against the government, which increases the likelihood of outright protest. Women, facing a decrease in economic rights, are no exception to this phenomenon, as they are more likely to protest in the face of grievances of this sort (Murdie & Peksen, 2015).

Despite the growing presence of grievances and the increasing threat of women engaging in contentious politics, the locking in effect means that the government may be either unwilling or unable to address the economic rights grievances. This is so because attempts to reform labor laws may go against the terms of the treaty and could open up the state to the threat of international arbitration (Allee & Peinhardt, 2011). This leads governments to provide compensatory measures elsewhere, with host governments viewing the political rights of women as being especially appropriate for immediate compensation. This is so for two reasons. First, political rights are linked to the democratic process and may be appropriate means of mitigating the negative effects of BITs (Bodea & Ye, 2020). Second, political rights fall under the purview of the International Covenant on Civil and Political Rights (ICCPR), with the expectation that these rights can be implemented immediately through legislative means, making them appropriate for immediate compensatory measures provided to women by the host state (Whelan, 2011). In testing these assertions, we find consistent support for both of our expectations.

This article proceeds as follows: First, we outline the relevant literature on bilateral investment treaty and link it to the human rights literature. Second, we provide a theoretical story relating bilateral investment treaties to women's rights. Third, we outline our research design and analysis. Finally, we provide concluding remarks and avenues for future scholarship.

BITs and women's economic rights

There is a growing body of literature that links BITs to human rights by looking at the effect these treaties have on a wide array of rights. A number of scholars, for example, have argued for the inclusion of human rights provisions in BITs at various stages of the negotiation process as BITs have become increasingly common over time (Simma, 2011), arguing that these provisions would compel signatory states to improve human rights conditions.

Despite this desire to include human rights provisions in BITs, other scholarship has suggested that BITs can and do have negative effects on human rights conditions regardless of the inclusion of provisions promoting human rights. For instance, Segrera Ayala (2009) found that BITs act as barriers to holding states to their human rights responsibilities, as commitments to investors included in BITs clash with domestic obligations to improve human rights. This is so because states seek out BITs through a number of mechanisms (outlined below) that favor investors' rights over the human rights conditions within the state, at least partly due to willingness to engage in a race to the bottom to increase the amount of FDI received (Bodea & Ye, 2020).

Typically, host countries sign BITs to attract multinational corporations from developed states (Neumayer & Spess, 2005; Olney, 2013; Simmons, 2014; Tobin & Rose-Ackerman, 2011; Yackee, 2008).³ To attract FDI through BITs, host states often lower labor standards to heighten their comparative advantages of low-cost labor for developed country investors. Once the initial poor standards are locked in through the inclusion of umbrella clauses, the government is constrained in its ability to administer relief to those harmed by the formation of the BITs, especially in relation to economic rights. According to Ye (2020), there are a number of mechanisms common to BITs that constrain the government of the host country from addressing poor labor conditions after the BIT is formed. One—the standard of “fair and equitable treatment” in most BITs—allows for foreign investors to challenge many efforts by the government to address unfair labor practices using the vague terms “fair” and “equity” to the advantage of the developed country investors.

Investors are also able to use the many international dispute mechanisms typically attached to BITs to threaten host governments with expropriation or punishment if the agreement is violated. One common BIT mechanism that can hinder change is the ICSID mechanism. This mechanism, if included as a provision within the BIT, allows foreign investors to bypass local courts/remedies and brings governments directly to international courts for arbitration, demonstrating that the

inclusion of such mechanisms represent a loss of sovereignty and control for the host state (Allee & Peinhardt, 2010). This is true even though investors rarely win challenges using the ICSID. In fact, Pelc (2017) argued that these arbitration mechanisms are so costly for host states that they are more inclined to reduce the scope of their regulatory ambitions in the future rather than challenge investors by promoting regulatory reforms. To make matters worse, being brought before the ICSID represents a negative effect on future foreign direct investments for host states, regardless of whether the state is found to be in violation of any BIT agreement (Allee & Peinhardt, 2011). Indeed, scholarship clearly shows that these types of mechanisms act as a means of hindering host countries from improving conditions once the initial poor conditions codified in the BIT are locked in.

Women's rights—and women's economic rights, specifically—may be especially vulnerable to the worsening conditions brought on by the race to the bottom in which host states engage. Women's positions in the global economy have long been considered precarious, with inequality in access to education, resources, and political rights ever present (Benería, 1995; Detraz & Peksen, 2016). Women are also more susceptible to the negative effects of a variety of common international policies, including the lending practices of international organizations (Detraz & Peksen, 2016) and economic sanctions (Drury & Peksen, 2014). Likewise, women suffer more during economic downturns in comparison to men (Blanton et al., 2019).

Moreover, women's positions in the domestic economy are often considered as supplemental to the contributions of men (Benería, 2003). As a result, women are more likely to be employed in vulnerable sectors that are more affected by liberal economic reforms (Antonopoulos, 2009). Given this gender inequality, women often lack job security, which leads them to be more willing to accept unsafe working conditions (Detraz & Peksen, 2016). The problems generated for women have only been heightened with increased liberalization of the global economy over time (Çağatay & Erturk, 2004). Indeed, Peksen (2019) argued that market-friendly policies give women greater access to the workforce but also lead to an erosion of women's economic rights.⁴

Thus, we posit that the process by which states join BITs leads to worsening economic rights for women, given their precarious positions in the domestic economy. However, this erosion of economic rights does not stop once the BIT is signed. The signing of the BIT locks in the poor economic rights for women, hindering a host state's ability to respond. Multinational corporations, in contrast, are not so hindered, and those who choose to pursue further discriminatory practices against women—such as paying women even less or providing them with poorer working conditions—may do so with relative impunity, as the government may be afraid of negative press that is generated by possible international arbitration and also of the dispute mechanisms themselves. This leads to our first hypothesis:

Hypothesis 1: Bilateral investment treaties lead to worsening women's economic rights in host states.

BITs and women's political rights

With BITs worsening women's economic rights, women in BIT host states join a long list of victims of the liberalization that BITs represent. Scholars have long noted that the processes of economic liberalization have created winners and losers (Ehrlich, 2010; Hays et al., 2005). Losers, those who have not benefited from the process of economic liberalization historically, have been a source of instability in both the domestic and international spheres (Frieden, 2007). Ruggie (1982) argued that in the post-World War II period, Western states created a system called *embedded liberalism* that attempted to ameliorate the negative effects of liberalization by providing compensations such as unemployment insurance and social security (Ehrlich, 2010) for the losers of economic liberalism to avoid domestic instability (Mansfield & Rudra, 2021). This type of compensatory response was not limited to the West, however. Scholars have demonstrated that

various methods of compensation have been provided to those losing out on the benefits of globalization in lesser developed countries (Nooruddin & Rudra, 2014) and to domestic elites in autocratic states that are threatened by the process of liberalization (Kaire, 2019). Thus, it is common practice that states compensate the “losers” of liberalization, of which BITs represent a type, in some manner to minimize the likelihood of domestic instability.

In a similar vein, we expect that the process through which states pursue BITs may have a positive effect on the political rights of women. We anticipate that although the need to be competitive internationally may necessitate poorer economic rights for women domestically, the effect of this worsening environment may compel states to improve women’s political rights as a compensatory measure for the loss of economic rights instead. Once the BIT is entered, poor economic rights conditions provide a breeding ground for potential grievances. Bodea and Ye (2020) highlighted this link between BITs and increased grievances, arguing, “the overt favoring of foreign investors and the constraints on development policies are sources of popular grievance in host states, which can lead to outright protest or an anticipation of dissent” (pp. 959–960).

Given that previous literature has demonstrated that women respond to perceived grievances of the type generated by entering BITs, we can expect that women would engage in contentious politics against the government because of the worsening economic rights (Murdie & Peksen, 2015). We might also expect women to be more likely to engage in dissent due to what a BIT represents—a market-friendly policy. As the BIT is implemented, it should increase the presence of women within the public workforce, a net positive. However, the BIT also has the perverse effect of decreasing the economic rights of women, a net negative (Peksen, 2019). Ultimately, what the BIT might do is both increase the presence of women in the public sphere and reduce their economic rights, creating an environment that is ripe for the generation of grievances for women. Subsequently, the presence of these grievances may then increase the likelihood of women to engage in protests against the government.

Thus, in this case, by entering the BIT, the government restricts the rights of women while potentially providing them with an environment conducive for domestic mobilization. As a result of the BIT process, host governments are faced with worsening working conditions and have little recourse to reform women’s economic rights due to the locked in effect. The government may instead seek alternative means of addressing this possible growing unrest.

A limited number of studies have demonstrated that certain factors can provide a mitigating effect on the detrimental impact of BITs on aggregate economic rights. Bodea and Ye (2020), for example, argued that democratic institutions mitigate the negative effects BITs have on economic rights, suggesting that factors related to democracy could have a compensatory effect of some sort as well. This also suggests that host governments could plausibly seek to compensate women through the provision of concessions related to political rights.

We can see an example of this type of thinking by host governments when examining the Chilean government’s responses to mass protests that broke out in the country between March 2017 and October 2019. Protesters in Chile, including a large proportion of women, were responding to the poor economic conditions generated by the neoliberal economic policies that had been dictated by the 1980 Constitution, which was drafted during dictator Augusto Pinochet’s tenure. This Constitution, based on neoliberal principles, prevented government intervention in the economy and resulted in Chile having the highest post-tax income inequality rate in the OECD (Editorial Board, “Chile Learns the Price of Economic Inequality,” 2019). In response to both protests, the government of Chile, under President Sebastian Pinera, eventually offered protestors a series of political concessions.

In 2017, the Chilean Congress enacted rules that provided quotas for female candidates running for office in an attempt to assuage female protestors demanding more representation in Congress. In response to further unrest that began in October 2019—including protests by women outside Congress, where they chanted, “We are half, we want half”—the Chilean congress

enacted a law requiring that 50 percent of writers of the new constitution would be women when it was to be written in 2021 (Piscopo & Siavelis, 2020). In both instances, the Chilean government responded to unrest by offering political concessions to female protestors.

Given this, we argue that host governments consider improvements of women's political rights as an appropriate means of compensation⁵ for worsening economic rights for two reasons. First, the types of rights contained within political rights are closely linked to the democratic process, including such factors as the right to vote and allowing for greater access to government. This suggests that host states may see improvements in women's political rights as an appropriate type of compensation for the worsening economic rights caused by joining a BIT. Second, political rights may be especially appropriate as compensation because they represent rights included in the ICCPR that have the expectation of immediate obligation and implementation by the government through legislative means. This is in contrast to the much more incremental rights attached to the International Covenant on Economic, Cultural, and Social Rights (ICESCR), such as social and cultural rights, in which the expectation of rights implementation is much longer-term in comparison to political rights (Whelan, 2011). Given that host states are faced with the possibility of growing unrest, political rights are viewed as an effective means of compensation in response to the worsening of women's economic rights by the host government. This leads to our second hypothesis:

Hypothesis 2: Bilateral investment treaties lead to improving women's political rights in host states.

Research design

Dependent variables

To assess the empirical merits of our theoretical arguments, we rely primarily on data obtained from the CIRI database (Cingranelli et al., 2014). The dependent variables are women's economic rights and women's political rights, with scores ranging from 0 (systemic gender-based discriminations and major violations) to 3 (nearly all internationally recognized women's political or economic rights are codified into law and are well enforced by the government).⁶ These two variables are moderately correlated with a score of .36. Using this data, our analysis includes 120 countries for the years 1981 to 2011.

Independent variables

We use three variants of BITs to test our hypotheses. We begin the analysis with the cumulative number of BITs ratified by a country in a given year. We only consider ratified treaties because signed-but-not-ratified treaties are legally nonbinding (Boyle, 2006). In our sample time frame, the average number of ratified BITs is 11 across all countries in a particular year.⁷ Next, we test our theory on BITs with additional legal provisions. First, we test our arguments on BITs that include the umbrella clause—which prohibits host states from reforming domestic labor regulations retroactively—to determine whether this could have an adverse effect on foreign investors' investment *calculi*. About half of all BITs include this provision. Second, we consider BITs that include ICSID clauses. If included, ICSID clauses allow foreign investors to file a legal lawsuit against a host state in international courts rather than having to go through local courts in the host country to address any investor/host state disputes (Allee & Peinhardt, 2010). We expect that if a BIT contains this provision, it will lead host countries to pursue political reforms instead of economic reforms in response to unrest, as being dragged into legal lawsuits in an international court could substantially decrease a state's appeal to international investors in the future. This variable includes BITs that have ICSID as an available option.⁸

Control variables

To address potential omitted variable bias, we include a battery of relevant control variables. We primarily rely on Peksen (2019) for the source of our confounding variables in our models. We include the natural log of GDP *per capita* to account for the fact that the economic status of a state may systematically affect women's political and economic rights (Doepke et al., 2012). We also control for economic growth rate, as financial downturns are shown to undermine women's participation in the formal economic and political sectors (Blanton et al., 2019), including the annual percentage change in GDP taken from the World Development Indicators' (WDI) database (World Bank 2014). Several studies have shown that women enjoy a greater degree of economic and political rights in democracies compared to authoritarian regimes (Wang et al., 2017). As such, we control for country regime type by using Polity scores obtained from Marshall et al. (2015). The variable ranges from -10 (consolidated autocracy) to 10 (full democracy).

Next, we control for CEDAW ratification for the countries in our sample. We expect countries that have ratified this treaty to have superior economic and political rights provisions for women, in contrast to those countries that have not ratified it (Cole, 2013). Our models also include a variable that captures women's educational attainments. Studies on women's empowerment have suggested that a country with large shares of educated women tends to have relatively more secure economic and political rights (Brown, 2004). The data on female education level are obtained from UNESCO's database (2013). We also control for women's active involvements in politics by including the percentage of women parliamentarians at the national level. Higher representation of women in a legislative body is shown to have a positive impact on both the political and economic rights of women (Meyer, 2003).

We control for a country's involvement in civil wars, as prior research has suggested that women are especially vulnerable during periods of civil conflict (McKay, 1998), using PRIO's Armed Conflict Location and Event Data (ACLED) database. Next, we control for the initial values of women's economic rights and political rights, respectively, for the models, as Peksen (2019) suggested that inclusion of these variables is important to account for the historical context. Countries with long-running traditions of systemic gendered discrimination might have a poorer record of women's rights in the present day also. The models also include region dummy variables to account for region-specific effects.⁹ All time-variant explanatory variables are lagged by one year to ensure that these variables precede the outcome variables.

Model specification

To account for the possibility that countries entering into bilateral investment treaties may be nonrandom, we use a conditional mixed-process recursive estimator (CMP) model, which allows us to alleviate bias in our statistical estimates caused by selection effects. This method allows us to jointly estimate two or more equations with linkages among their error processes (Roodman, 2011) and often has been employed by scholars who are particularly concerned about endogeneity in their model specifications (e.g., Detraz & Peksen, 2016; Murdie & Peksen, 2015). In our analysis, we use a two-equation econometric model with correlated error structure in which we model the determinants of BIT in the first equation using the covariates discussed below and then estimate the determinants of women's political and economic rights separately using a BIT variable and the covariates in the second equation.¹⁰ The CMP is essentially a seemingly unrelated regression (SUR), but is flexible in that it does not require individual equations to have a continuous dependent variable. Given that our dependent variable for the first equation (BITs) is continuous and ordinal for the second equation (women's economic and political rights), using a CMP model is the most suitable model specification.

Table 1. The impact of BITs on women's economic and political rights.

	DV: Women's economic rights			DV: Women's political rights		
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
BIT-cumulative _{t-1}	-.0178*** (.00443)			.0528*** (.00361)		
BIT-umbrella _{t-1}		-.0585*** (.0125)			.152*** (.0107)	
BIT-ICSID _{t-1}			-.0252*** (.00703)			.0837*** (.00479)
GDP (log) _{t-1}	.218*** (.0329)	.214*** (.0314)	.219*** (.0340)	-.171*** (.0308)	-.143*** (.0295)	-.194*** (.0311)
GDP growth _{t-1}	-.00821* (.00398)	-.00790* (.00389)	-.00907* (.00395)	.00920* (.00368)	.0104** (.00369)	.0105** (.00364)
Polity score _{t-1}	.0136** (.00465)	.0151** (.00468)	.0180*** (.00508)	.0155** (.00474)	.0121** (.00470)	-.00118 (.00495)
CEDAW dummy _{t-1}	.0812 (.0600)	.0789 (.0587)	.0706 (.0597)	.173** (.0536)	.191*** (.0524)	.177*** (.0523)
Women edu _{t-1}	-.000910 (.00311)	-.000618 (.00308)	-.00117 (.00310)	-.00387 (.00261)	-.00341 (.00259)	-.00370 (.00263)
Civil conflict _{t-1}	-.420*** (.0580)	-.411*** (.0580)	-.426*** (.0575)	-.0533 (.0513)	-.0551 (.0509)	-.0443 (.0515)
% Women in par _{t-1}	.0223*** (.00321)	.0221*** (.00321)	.0224*** (.00321)	.0565*** (.00484)	.0564*** (.00480)	.0563*** (.00490)
Initial DV score	.423*** (.0406)	.424*** (.0400)	.427*** (.0405)	.259*** (.0320)	.245*** (.0322)	.251*** (.0318)
Region dummies		Included			Included	
	DV: BIT-cumulative	DV: BIT-umbrella	DV: BIT-ICSID	DV: BIT-cumulative	DV: BIT-umbrella	DV: BIT-ICSID
GDP (log) _{t-1}	4.282*** (.226)	1.225*** (.0781)	3.080*** (.165)	4.129*** (.221)	1.180*** (.0759)	2.982*** (.161)
ILO _{t-1}	-1.133** (.375)	-.376** (.121)	-.467* (.222)	-.825* (.327)	-.274* (.109)	-.345 (.201)
GDP growth _{t-1}	.0430 (.0316)	.00877 (.0111)	-.000286 (.0195)	.0490 (.0320)	.00979 (.0112)	.00596 (.0198)
Trade (log) _{t-1}	-2.034*** (.456)	-.545*** (.141)	-1.088** (.344)	-1.133*** (.418)	-.257* (.131)	-.502 (.301)
Polity score _{t-1}	.00437 (.0422)	.0347* (.0142)	.219*** (.0255)	-.00429 (.0423)	.0284* (.0141)	.212*** (.0252)
Ideology (left) _{t-1}	-.735 (.543)	-.669*** (.178)	-.0343 (.397)	.657 (.467)	-.0669 (.162)	.827* (.328)
Year dummies		Included			Included	
Constant	-18.84*** (2.087)	-5.236*** (.658)	-15.36*** (1.538)	-23.11*** (2.093)	-6.729*** (.699)	-18.27*** (1.528)
Observations	3,157	3,157	3,157	3156	3156	3156

Note: Robust standard errors are in parentheses. * $p \leq .10$; ** $p \leq .05$; *** $p \leq .01$.

We also include the set of control variables that have previously been used in studies that examine why countries enter BITs in the first place (e.g., Elkins et al., 2006). Prior research has suggested that countries ratify BITs to assure foreign investors that their investments will be secure in the host country, as many host countries have unstable political conditions (Jandhyala, Henisz, and Mansfield 2011). As such, we expect poorer countries to have higher levels of women's economic and political rights violations, but we also expect that these same countries might be eager to ratify BITs as well.

We also include two ILO conventions—C87 on freedom of association and C98 on collective bargaining—to capture the presence of labor rights within the host country (International Labor Organization 1948; 1949). The ratification of these conventions indicates that signatory countries are member of international treaties that stipulate freedom to form associations and have guaranteed rights for collective bargaining. We expect countries that have already ratified these treaties to face less domestic opposition to participating in BITs, as many terms of the BIT are already

covered by the ILO conventions. The values range from 0 (none) to 2 (both). We also include the rate of economic growth, as we expect countries to be more willing to enter BITs during economic hardships, as BIT ratification is believed to have a positive effect on economic conditions.

Next, we include the natural log of trade (import and export flows) as an additional control variable. Countries that trade less might have fewer BITs, as this measure is often used to gauge global economic integration of a country (Ye, 2020). Also, authoritarian countries in general have weak property rights, which may compel them to ratify BITs if they seek to attract foreign investments (Knutsen, 2012). As such, we also control for a host state's regime type using the Polity score (Marshall et al., 2014). We also include a variable to capture the ideological leaning of the host government using Beck et al.'s (2001) Database of Political Institutions. As leftist governments tend to be more opposed to market-friendly initiatives such as BITs, we expect such governments to be less likely to support the use of BITs. Finally, we include a linear time variable to account for the rising popularity of BITs over time. All time-variant variables are lagged by one year.¹¹

Analysis and results

Models 1–3 in Table 1 show the impact of BITs on a government's support for women's economic rights. Each model corresponds to the different measures of the BIT, with the upper half estimating the determinants of women's economic rights and the lower half estimating the variables that affect a country's likelihood of entering a BIT in the first place. To account for the uncertainty surrounding these estimates, we use standard errors robust to unspecified forms of heteroscedasticity, which have been shown to produce reliable estimates of parameter uncertainty (Lewis & Linzer, 2005). The results show that, after controlling for possible confounders, there are consistent negative and significant relationships between the various measures of BITs in the previous year and women's economic rights in the following year.

In contrast, we observe the opposite effect of BITs on women's political rights. Akin to Models 1–3, the upper half of Models 4–6 show the result from the models using women's political rights as the dependent variable and the various measures of BIT variables as the dependent variables in the bottom half using similar model specification as before. We find that the three measures of BITs in the prior year increase the probability of the government respecting women's political rights in the current year after controlling for various confounders. Contrary to the findings on women's economic rights, these results show that BITs improve women's political rights, lending strong support for Hypothesis 2.

With regard to the control variables, we find that a country's GDP, democracy level, number of women in Parliament, and presence of a civil war in the prior year have significant negative effects on the level of women's economic rights in the current year. Similarly, GDP, GDP growth rate, number of women in Parliament, and CEDAW ratification are significant predictors of women's political rights, with their effects in the expected positive directions. Finally, the lower half of Models 1–6 estimate the determinants of BITs. The results in both tables suggest that countries with a higher GDP and higher level of trading with other countries are more likely to enter into BITs. On the other hand, determinants that have been thought of as important predictors of countries entering BITs such as polity scores are only significant when ICSID is included in the BIT. The other determinants—such as ILO conventions and ideological orientations of the government—are not significant in predicting the likelihood of a country entering BIT.

Furthermore, we conduct several additional analyses to explore the robustness of the findings. First, we use lagged dummies of our dependent variables to control for the temporal dependence in the women's economic and political rights variables. We create dichotomous variables for each of the four categories of the women's economic and political rights variables and include them in our models in order to account for the autocorrelated categories contained in these variables

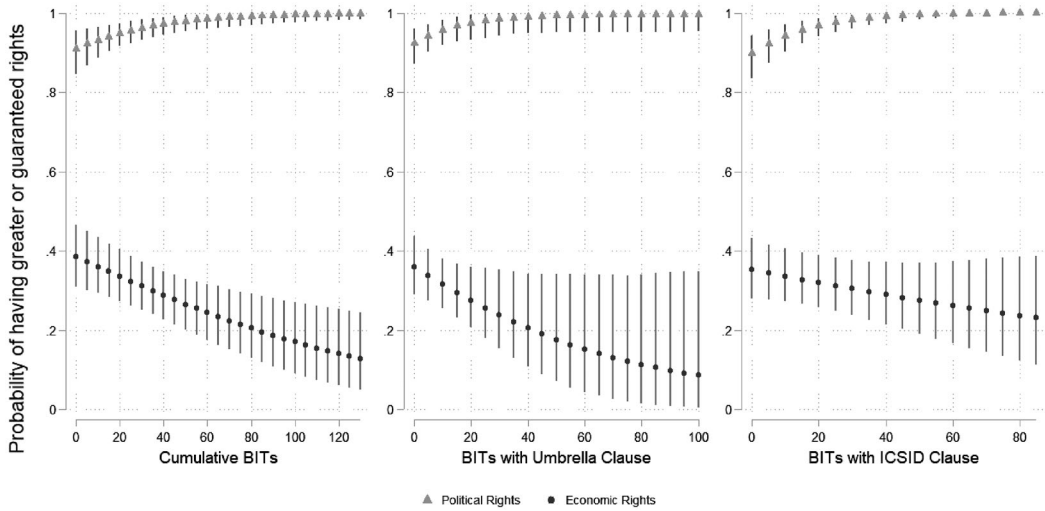


Figure 1. Substantive effects of BIT on women's political and economic rights.

(Detraz & Peksen, 2016; Drury & Peksen, 2014; Peksen, 2019).¹² Second, we check the robustness of our findings by including dominant religion and preferential trade agreements (PTAs) in our models separately. Third, we substitute both of our women's rights variables that we obtain from the CIRI database with variables from the V-Dem database that capture similar elements of the respective women's rights by calculating the average of women's freedom from forced labor variable (*v2clslavef*) and property rights for women variable (*v2clprptyw*) to create an alternate measure of women's economic rights and women's political empowerment index (*v2x_gender*) variable for women's political rights.¹³ Fourth, we investigate whether our findings remain consistent when we substitute developing countries (as defined by the IMF) to non-OECD countries during a given year. Finally, we collapsed our three measures of BITs into dichotomous variables—0 for no BITs in a country and 1 for the existence of any number of BITs within a country—to investigate whether having any level of BITs in comparison to no BITs would influence the level of women's economic and political rights within the host state. The results of all additional analyses, reported in [Supplementary Appendix 2](#), support our findings that BITs decrease women's economic rights but increase women's political rights.

Next, we compute the substantive effects of BIT on both women's economic and political rights. We run two separate probit models, each estimating women's economic and political rights, using the upper half of the first model in [Table 1](#). We focus on the change in the probability of having either greater rights—the third category (Category 2) of the women's economic and political rights variables—or guaranteed rights—the fourth category (Category 3) of the women's economic and political rights variables—when BITs in the previous year increase by one unit while holding the continuous control variables at their mean values and the categorical control variables at their modal categories.¹⁴

[Figure 1](#) shows the probability of having greater or guaranteed economic and political rights as the level of cumulative BITs, BITs with an umbrella clause, and BITs with the ICSID clause in the prior year increases by one unit. There are several important findings from this figure. First, any country at a given year has about a minimum of 90 percent probability of having greater or guaranteed women's political rights but only a maximum of 40 percent probability of having greater or guaranteed economic rights. This is consistent with the distributions of women's political and economic rights variables found in [Supplementary Figure A1](#), in which 76 percent of all the cases are in Category 2 and 3 of the women's political rights variable, whereas only 35 percent are in the same categories of the women's economic rights variable.

Table 2. Changes in the probability of having greater or guaranteed rights.

Measures of BITs	Pr (Greater or guaranteed political rights)			Pr (Greater or guaranteed economic rights)		
	Initial probability	Change in BIT	New Probability (% change)	Initial probability	Change in BIT	New probability (% change)
Cumulative BITs	91.1%	0→20	94.8% (4.1%)	38.7%	0→20	33.6% (-13.3%)
BITs with umbrella clause	92.4%	0→20	97.6% (5.7%)	35.8%	0→20	27.4% (-23.5%)
BITs with ICSID clause	90%	0→20	96.8% (7.6%)	35.3%	0→20	32.1% (-9.2%)

Second, regardless of the measure used, BITs have divergent effects on women's economic and political rights. From each of the panels shown in [Figure 1](#), an increase of BITs increases the probability of having greater or guaranteed political rights but decrease the probability of having greater or guaranteed economic rights. The effects of BITs, however, are stronger on women's economic rights than political rights, as we observed a much sharper decrease in the probability of greater or guaranteed economic rights than increase of probability in greater or guaranteed political rights when BITs (in various measures) increase.

Third, although various measures of BITs do display similar contrasting effects, the magnitude of the effects varies considerably across the different measures. Specifically, when we isolate the change in the probability of having greater or guaranteed economic rights when BITs increase from 0 to 20 (as shown in [Table 2](#)), the biggest decrease in probability is found in BITs with umbrella clauses (23.5 percent), followed by cumulative BITs (13.3 percent) and BITs with ICSID clauses (9.2 percent). As such, countries that adopt BITs with umbrella clauses are more likely to experience a decrease of women's economic rights than countries that do not adopt such policies. It is in line with our argument that once host countries are prohibited from retroactively changing labor laws that would hamper home states' profit *calculi*, they will resort to stricter enforcement of existing labor laws, which then brings forth instances of diminishing economic rights scores in host states. On the other hand, such significant divergence is not observed across the three measures of BITs when predicting the probability of having greater or guaranteed political rights. In this case, increase in the probability only ranges from 4.1 percent to 7.6 percent when these measures of BITs increase from 0 to 20.¹⁵

Conclusion

As states seek out bilateral investment treaty partners, they engage in a race to the bottom that has significant implications for women's rights. This is so because when host states pursue BITs, they decrease the quality of working conditions domestically, which are then locked in and difficult to change (Ye, 2020). However, the poor economic rights that are initially locked in may lead to growing unrest related to worsening economic rights that the government is either reluctant to or incapable of addressing. The government can instead respond to the unrest by granting compensatory measures such as improved political rights for women that may address the unrest generated by the BIT. In testing these assertions, our expectations were confirmed, with BITs decreasing women's economic rights but increasing women's political rights in contrast.

Our study has several implications for further research on human rights, broadly speaking. For instance, governments might make explicit political calculations on the quality of and type of human rights when faced with difficult circumstances. The government of a state seeking a BIT, for example, may view specific types of rights and subsequent responses as part of a tradeoff. Governments try to attract BITs by creating a favorable environment that negatively impacts

economic rights for women. The tradeoff here is that the government will increase political rights for women. In this way, one type of right worsens while another type of right increases, creating a balance of rights that essentially maintain a *status quo* within the state and calling into question the commitment governments have toward improving aggregate human rights.

Gender and regime type may also have unexplored roles in this possible tradeoff hypothesis. For example, theoretically it can be argued that compensating women for the loss of economic rights with improvements in political rights is a low-cost option for governments, especially in certain types of regimes, such as autocratic states. In autocratic regimes, improving men's political rights might lead to political crises that destabilize the state. In contrast, granting greater political rights to women does not necessarily lead to political crises. The dynamic between the genders/regime types and the erosion and improvement in rights needs to be addressed at length in future scholarship.

The process demonstrated in this article also suggests that states entering BITs are inviting potential unrest into their countries with unexplored consequences. A significant strand of literature has argued that grievances generate antigovernment mobilization, with scholars arguing that they increase the likelihood of engagement in terrorism (Piazza, 2011), civil conflict (Cederman et al., 2011), protests (Chenoweth & Ulfelder, 2017), and women's protests (Murdie & Peksen, 2015). We do not attempt to estimate the consequences of entering the BIT in the long term. However, we can speculate that the manipulation of women's rights could have some positive long-term outcomes, such as those described in the literature on the spiral model, whereby "tactical concessions" eventually lead to deep-seated human rights reforms (Murdie & Davis, 2012; Risse & Ropp, 1999). Thus, the BIT process can and does include the short-term manipulation of women's economic and political rights, but the long-term effects remain unknown, which is fertile ground for future research.

Notes

1. Bilateral investment treaties are bilateral agreements between two sovereign states that set the terms and conditions under which investments by private individuals and multinational corporations from both states operate.
2. We define the phrase "the race to the bottom" to signify the process whereby states lower labor standards, decrease regulations, and take other similar actions that decrease the quality of conditions in the states in order to attract foreign direct investment (Olney, 2013).
3. Most BITs consist of developed–developing state dyads. However, not all dyads include this. As our focus is on the total count of BITs joined by a state, we refer to states as host countries rather than as developing states.
4. For example, Peksen (2019) argued that labor market deregulation as a result of economic liberalization could increase the pay gap between genders, reduce benefits given to women, and reduce the capability of the government to implement stricter labor laws to reduce discrimination against women in the workplace.
5. It is important to note that we do not argue that women will be satisfied with this concession. Looking at the example of Chile, it is quite clear that women were not satisfied with the concessions provided by the government. Given this, we argue that host governments consider improving political rights to be an acceptable type of concession. We speculate in the conclusion that in compensating women with greater political rights, governments actually increase the likelihood of further mobilization against the government in the short- and long-term future that could lead to more deep-seated policy reforms than simple concessions.
6. Women's economic rights include equal pay for equal work, free choice of profession or employment, the right to gainful employment, equality in hiring and promotion practices, job security, nondiscrimination by employers, the right to be free from sexual harassment in the workplace, the right to work at night, the right to work in occupations classified as dangerous, and the right to work in the military and police force. Women's political rights include the right to vote, the right to run for political office, the right to hold elected and appointed government positions, the right to join political parties, and the right to petition government officials. We present the graphical depiction of these two women's rights variable in the Online Appendix, Figure A1.
7. Numbers based on Table 1, Model 1.
8. See the Online Appendix, Figure A2, for graphical representation of the three variants of BITs.

9. The regions included in the models are Asia-Pacific, Middle East-North Africa, Latin America-Caribbean, sub-Saharan Africa, former USSR-Eastern European states, and Western countries that serves as the reference category.
10. Note that the set of covariates in each of the two models are slightly different. For example, ILO, regime type, and government's ideology are included in the first equation, which has various BIT measurements as the dependent variable, but they are not included in the second model, which has women's political and economic rights as the dependent variable. Conversely, percentage of women in parliament and CEDAW dummies are included as covariates in the second model but not in the first model.
11. We present the summary statistics in [Supplementary Appendix 1](#).
12. Although simply lagging the dependent variable is usually used to control for autocorrelations, we adopt the strategy used by Detraz and Peksen (2016) in lagging the dummy categories of our dependent variable instead. This is because our dependent variables are nonlinear and do not contain enough information for lagging, which makes a simple lag in the variables less efficient in modeling their autoregressive trends.
13. It has to be acknowledged that the concepts of women's economic and political rights are multifaceted and difficult to operationalize. Although the CIRI dataset is one of the few data sources that contains relevant information about women's rights from a large number of countries over multiple time-periods, it is not without its flaw (i.e., its reliance on the reports produced by the US State Department; see Cordell et al. 2020). Despite that, we continue to rely on this dataset, as it has proven to reliably represent what the report contains and has relatively high correlation with other well-known measures of human rights such as the Political Terror Scale database (Clark & Sikkink 2013; Fariss 2014). Nonetheless, to further strengthen our confidence in the validity of the variables in CIRI dataset and to avoid the artifacts of data gathering, we use the measures of women's economic and political rights in the V-Dem database as alternative variables. Given the largely consistent results (see Table A2.5 in the [Supplementary Appendix](#)), we are confident in the validity and the reliability of the CIRI women's rights measures.
14. To conduct this analysis, we collapsed our two dependent variables into binaries, in which 0 is coded for Category 1 and Category 2, and 1 is coded for Category 2 and Category 3 of the respective variables.
15. A somewhat smaller magnitude in the increase of the probability of having greater/guaranteed women's political rights can also be attributed to an already high probability of around 90 percent of achieving such condition in the absence of any BITs.

Notes on contributors

Bimal Adhikari is an Assistant Professor in the Political Science and International Relations Department at Nazarbayev University. His research interests include international institutions, foreign policy, and human rights.

Jeffrey King is an Assistant Professor of Political Science in the Department of International Studies at American University of Sharjah. His research mainly focuses on the intersection between political economy and human rights.

Lie Philip Santoso is an Assistant Professor of Political Science at Duke Kunshan University. His research interests are comparative political behavior, gender and politics, and quantitative methodologies.

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