



## **Workshop on Investment Arbitration and Human Rights**

Investment arbitrations can have significant implications for a host of public interest issues related to human rights and sustainable development, yet the integration of relevant considerations into arbitral proceedings is both ad-hoc and contested. The varying attention given to such issues means that, in some cases, arbitral decisions may be rendered without the benefit of evidence-based approaches to the issues, and may be inconsistent with other relevant international laws.

This workshop, developed by the Columbia Center on Sustainable Investment, is geared primarily toward counsel and arbitrators participating in investment arbitrations, as well as human rights practitioners with interest in investment disputes and their impacts. Other interested stakeholders are also welcome. The workshop will provide practical information regarding common human rights issues that may be relevant in investor-State disputes, an introduction to human rights laws and frameworks and the respective obligations of investors and governments, and how such issues may be raised in the course of an arbitration.

### **8:30 – 10:00**

#### ***Human Rights Issues in Practice: Experiences to Date***

- **Lise Johnson**, Head, Investment Law and Policy, Columbia Center on Sustainable Investment
- **Andrea Saldarriaga**, Investment and Human Rights Project Lead, Laboratory for Advanced Research on the Global Economy, London School of Economics
- **M. Sornarajah**, CJ Koh Professor of Law, National University of Singapore

This session will review cases filed to date and look at:

- which human rights issues may be (or have been) implicated in investment disputes;
- how and to what extent these issues have been raised by the parties to a dispute; and
- how these issues have been treated by tribunals.

### **10:15 – 12:45**

#### ***Overview of Human Rights Frameworks***

- **Kaitlin Cordes**, Head, Investment in Land and Agriculture, Columbia Center on Sustainable Investment
- **Anthony Ewing**, Lecturer in Law, Columbia Law School; Partner, Logos Consulting Group

This session will:

- provide an overview of core human rights norms protecting civil and political rights; economic, social and cultural rights; and rights of indigenous peoples;

- outline key treaties and frameworks enshrining and advancing protection of those rights, including those relevant for investors/companies and those relevant for governments; and
- discuss different rules and theories for addressing the hierarchy and relationship among different legal orders.

### **1:00 – 2:00**

***Lunchtime Keynote: Philippe Sands***, Barrister in the Matrix Chambers, Professor of International Law at University College London; and frequent arbitrator in investor-State disputes

### **2:15 – 4:00**

***Discussion – How Can Parties More Effectively Raise Human Rights Norms and Issues in Disputes?***

- **Eric W. Bloom**, Partner, Winston & Strawn LLP
- **Renu J. Mandhane**, Director, International Human Rights Program, University of Toronto, Faculty of Law
- **Julie Maupin**, Senior Research Fellow, Max Planck Institute for Comparative Public Law and International Law
- **Rahim Moloo**, Of Counsel, Gibson, Dunn & Crutcher, LLP

Human rights norms influence expectations of citizens and communities in the host country, impose obligations on the host government and shape the conduct of responsible investors. The way tribunals treat these issues can either support, or hinder, realization of these rights. In light of those issues, this session considers the following questions:

- How might attorneys argue that human rights norms are relevant to and thus should inform investor-state arbitrations, including issues of jurisdiction, liability and damages?
- How are States' obligations to investors shaped by obligations to its citizens?
- How can human rights norms, and the rights and expectations of individuals and communities, shape investor conduct and expectations?
  - o Do investments that interfere with citizens' human rights violate the legality requirement? What impact does government approval of the investment have?
  - o Can there be "legitimate expectations" that an investment that impacts the human rights of others be maintained and operated without interference from those affected and/or the government?

### **4:15 – 5:30**

***Making the Case to Tribunals***

- **Susan L. Karamanian**, Associate Dean for International and Comparative Legal Studies, Professorial Lecturer in Law, The George Washington University
- **Lucinda Low**, Partner, Steptoe & Johnson LLP
- **Philippe Sands**, Barrister in the Matrix Chambers, Professor of International Law at University College London; and frequent arbitrator in investor-State disputes

It is one thing to make the argument; it is another to make sure that tribunals believe they have the authority to consider them, and find them compelling enough to take them into account. This session thus focuses on the role of tribunals and how to appeal to them. It considers questions such as:

- How should these issues be presented before tribunals (by parties and/or amicus curiae)?
- What are the legal grounds on which tribunals can consider issues of human rights?
- Does the Ruggie framework apply to arbitrators?
- Do tribunals have an obligation to consider impacts of their decisions on the human rights of non-parties?
- Should or must tribunals refrain from resolving certain issues or disputes when doing so has a negative impact on the human rights of individuals or communities not before the tribunal?
- What are the most common arguments against incorporating human rights considerations into arbitration decisions, and how might those be addressed?
- Under what circumstances should tribunals appoint experts to address human rights issues? How are those experts to be chosen and what are their powers?

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