



11th Annual Forum of Developing  
Country Investment Negotiators

February 7-9, 2018  
Nairobi, Kenya

## The Changing World of Investment Negotiations: From bilateral protection to...?

### AGENDA

<b>DAY 0</b>	<b>TUESDAY, FEBRUARY 6, 2018</b>
<b>19:30</b>	<b>Welcome reception – all participants are invited</b>
<b>DAY 1</b>	<b>WEDNESDAY, FEBRUARY 7, 2018</b>
<b>9:00</b>	<b>Registration</b>
<b>9:30</b>	<b>Opening Ceremony</b> Welcoming remarks by Kenya, South Centre and IISD <b>Moderator:</b> Mr. Moses Ikiara, Managing Director, Kenya Investment Authority, Kenya <b>Panelists:</b> <ul style="list-style-type: none"> <li>• Mr. Chris Kiptoo, Principal Secretary, State Department of Trade, Ministry of Industry, Trade and Co-operatives, Kenya</li> <li>• Mr. Vicente Yu, Deputy Executive Director, South Centre</li> <li>• Ms. Nathalie Bernasconi, Group Director, Economic Law &amp; Policy, IISD</li> <li>• H.E. Davaasuren Damdinsuren, State Secretary, Ministry of Foreign Affairs, Mongolia</li> </ul>
<b>10:00</b>	<b>Session 1: The scope of the 11th Annual Forum: New pieces to a new puzzle</b> This introductory session will describe the two following focal issues of the 11th Annual Forum that together pose the question: what is the future direction of international investment negotiations? <ul style="list-style-type: none"> <li>• From bilateralism to (inter-)regionalism and multilateralism?</li> <li>• From investment protection to full economic agreements? Investment protection, liberalization and facilitation; restricting development and industrial policy; investment in trade agreements and trade in investment agreements</li> </ul> <b>Moderator:</b> Ms. Roslyn Ng'eno, Kenya <b>Panelists:</b> <ul style="list-style-type: none"> <li>• Ms. Opeyemi Temitope Abebe, Commonwealth Secretariat</li> <li>• Ms. Nathalie Bernasconi, IISD</li> <li>• Mr. Carlos Correa, South Centre</li> </ul>
<b>11:00</b>	<b>Break</b>
<b>11:30</b>	<b>Session 2: Recent developments in international investment law and policy-making</b> Why these two focal issues now? This session will set out some of the most recent developments in the area of international investment policy-making, reform and dispute settlement, with an emphasis on the specific focal issues of this Forum. This annual update on recent developments will note: <ul style="list-style-type: none"> <li>• global efforts on reforming investment policy-making toward the Sustainable Development Goals (SDGs)</li> <li>• the growing trend to integrate trade and investment policies in mega-trade deals</li> <li>• investment negotiations in Africa (tripartite and continental free trade agreement negotiations), Asia (RCEP) and Latin America (MERCOSUR, Pacific Alliance)</li> </ul>



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	<ul style="list-style-type: none"> <li>• developments in dispute settlement reform (EU, UNASUR, UNCITRAL, ICSID)</li> </ul> <p><b>Moderator:</b> H.E. Davaasuren Damdinsuren, State Secretary, Ministry of Foreign Affairs, Mongolia</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Mr. José Henrique Vieira Martins, Brazil               <ul style="list-style-type: none"> <li>◦ investment negotiations in Latin America (MERCOSUR, UNASUR, Pacific Alliance)</li> </ul> </li> <li>• Ms. Elisabeth Tuerk, UNCTAD               <ul style="list-style-type: none"> <li>◦ global efforts on reforming investment policy-making toward the Sustainable Development Goals (SDGs)</li> <li>◦ the growing trend to integrate trade and investment policies in mega-trade deals</li> </ul> </li> <li>• Mr. Martin Kohout, UNECA               <ul style="list-style-type: none"> <li>◦ investment negotiations in Africa</li> </ul> </li> </ul>
<b>13:00</b>	<b>Lunch</b>
<b>14:00</b>	<p><b>Session 3: Drilling down on the substantive scope of agreements</b></p> <p>This session will look at the ongoing development of the content of investment treaties and their relationship to trade agreements and regional economic agreements. How is the structure of investment agreements changing? In what contexts is it changing and in what directions? What are the competing demands for change? The presentations will focus on what the issues are, what they mean and what benefits and risks they could bring. Issues may include:</p> <ul style="list-style-type: none"> <li>• Investment protection, liberalization and facilitation</li> <li>• Impacts of investment treaties on development and industrial policy, including performance requirement prohibitions and state ownership prohibitions</li> <li>• “Domestic regulations” chapters in investment treaties</li> <li>• Investor obligations</li> </ul> <p><b>Moderator:</b> Mr. Moses Ikiara, Kenya</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Mr. Aaron Cosbey, IISD               <ul style="list-style-type: none"> <li>◦ Investment liberalization and impacts on development and industrial policy</li> </ul> </li> <li>• Mr. Chanchal Sarkar, India               <ul style="list-style-type: none"> <li>◦ Investment protection and investor obligations (selected issues)</li> </ul> </li> <li>• Ms. Patience Okala, Nigeria               <ul style="list-style-type: none"> <li>◦ Investment protection and investor obligations (selected issues)</li> </ul> </li> <li>• Mr. Vicente Yu, South Centre               <ul style="list-style-type: none"> <li>◦ Investment facilitation and domestic regulations chapters</li> </ul> </li> </ul>
<b>15:30</b>	<b>Break</b>
<b>16:00</b>	<b>Break-out Session 1: What scope should there be to investment negotiations?</b>
<b>17:00</b>	<p><b>Session 4: Substantive scope and negotiating challenges: Experience sharing</b></p> <p>In this session, panelists will respond based on their own experience and challenges to the group reports from Break-out Session 1.</p> <p><b>Moderator:</b> Ms. Amira Klai, Tunisia</p> <p><b>Panelists:</b> 3 country participants respond to group reports:</p> <ul style="list-style-type: none"> <li>• Mr. Samuel Trujillo, Colombia</li> <li>• Ms. L. Erika F. Ramanarivo, Madagascar</li> <li>• H.E. Davaasuren Damdinsuren, State Secretary, Ministry of Foreign Affairs, Mongolia</li> </ul>
<b>18:00</b>	<b>End of plenary</b>



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DAY 2	THURSDAY, FEBRUARY 8, 2018
9:00	<p><b>Session 5: Drilling down on the breadth of agreements: Trade in investment agreements and investment in trade and economic partnership agreements</b></p> <p>This session will look at the ongoing development of the negotiation of trade provisions in investment agreements and investment provisions in broader trade and economic partnership agreements. Where is the demand, and why? What are the implications? What does the empirical evidence say about on the ground impacts, if anything? The presentations will again focus on what the issues are, what they mean and what benefits and risks they could bring. Issues may include:</p> <ul style="list-style-type: none"> <li>• Empirical evidence of impacts of free trade agreements</li> <li>• WTO+ elements in investment negotiations</li> <li>• Other economic elements in investment negotiations</li> <li>• Impacts on WTO dispute settlement and ISDS</li> </ul> <p><b>Moderator:</b> Ms. Suzy Nikièma, IISD</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Ms. Opeyemi Temitope Abebe, Commonwealth Secretariat               <ul style="list-style-type: none"> <li>◦ Impacts on WTO dispute settlement and ISDS</li> </ul> </li> <li>• Mr. Jonathan Bonnitcha, IISD               <ul style="list-style-type: none"> <li>◦ Empirical evidence of impacts of FTAs</li> </ul> </li> <li>• Mr. Martin Kohout, UNECA               <ul style="list-style-type: none"> <li>◦ Economic elements in investment negotiations</li> </ul> </li> <li>• Mr. Makane M. Mbengue, University of Geneva               <ul style="list-style-type: none"> <li>◦ WTO+ elements in investment negotiations</li> </ul> </li> </ul>
10:30	<b>Break</b>
11:00	<b>Break-out Session 2: What is the optimal breadth of negotiations for developing countries and why?</b>
12:00	<p><b>Session 6: The breadth of negotiations: Experience sharing</b></p> <p>In this session, panelists will respond based on their own experience and challenges to the group reports from the Break-out Session 2.</p> <p><b>Moderator:</b> Ms. Aminata Traoré, Mali</p> <p><b>Panelists:</b> 3 country participants respond to group reports:</p> <ul style="list-style-type: none"> <li>• Mr. Djamal Abdelli, Algeria</li> <li>• Mr. Ariel Martins, Argentina</li> <li>• Mr. Parvez Rifat, Pakistan</li> </ul>
13:00	<b>Lunch</b>
14:00	<p><b>Session 7: Drilling down on the special case of dispute settlement: Local, regional and multilateral designs</b></p> <p>This session will discuss the ongoing developments around the existing investor–state-based dispute settlement mechanisms. It will also explore why to focus on changing dispute settlement systems, what the relationship is between scope of treaties and dispute settlement, and what systemic issues and dynamics should be impacting dispute settlement design. The presentations will again focus on what the issues are, what they mean and what benefits and risks they could bring. Issues may include:</p> <ul style="list-style-type: none"> <li>• an international investment court (such as the EU proposal and the discussions at UNCITRAL)</li> <li>• state–state dispute settlement (emphasized in the Brazilian model, for example)</li> <li>• regional mechanisms and courts (including COMESA, SADC and UNASUR)</li> </ul>



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	<ul style="list-style-type: none"> <li>• alternative methods (such as mediation in South Africa and IISD-led discussions on a comprehensive and inclusive mechanism)</li> </ul> <p><b>Moderator:</b> Mr. Daniel Uribe, South Centre</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Mr. Luis Guillermo Vélez, Colombia               <ul style="list-style-type: none"> <li>◦ Relationship between scope of treaties and investment dispute settlement</li> <li>◦ Developing countries and multilateral design of dispute settlement (UNCITRAL)</li> </ul> </li> <li>• Ms. Nathalie Bernasconi, IISD               <ul style="list-style-type: none"> <li>◦ Reporting on what is happening at international, regional and national levels on investment dispute settlement</li> </ul> </li> <li>• Mr. Mustaqeem De Gama, South Africa               <ul style="list-style-type: none"> <li>◦ South Africa variations and options</li> </ul> </li> <li>• Mr. Joel Yaméogo, UEMOA               <ul style="list-style-type: none"> <li>◦ UEMOA variations and options</li> </ul> </li> </ul>
<b>15:30</b>	<b>Break</b>
<b>16:00</b>	<b>Break-out Session 3: What are the appropriate roles for different dispute settlement options?</b>
<b>17:00</b>	<p><b>Session 8: The design of dispute settlement: Experience sharing</b></p> <p>In this session, panelists will respond based on their own experience and challenges to the group reports from Break-out Session 3.</p> <p><b>Moderator:</b> Ms. Elyjean Portoza, Philippines</p> <p><b>Panelists:</b> 3 country participants respond to group reports:</p> <ul style="list-style-type: none"> <li>• Mr. Ernesto Rossell, Bolivia</li> <li>• Mr. Chanchal Sarkar, India</li> <li>• Ms. Therenna Barbara Reeves, Liberia</li> </ul>
<b>18:00</b>	<b>End of plenary</b>
<b>19:30</b>	<b>Dinner hosted by KenInvest</b>

<b>DAY 3</b>	<b>FRIDAY, FEBRUARY 9, 2018</b>
<b>9:00</b>	<p><b>Session 9: Bringing it all together: What should the landscape of investment negotiations be?</b></p> <p>Building on the above, this session will explore how to bring the analysis and discussion of days 1 and 2 to bear on the question of what the geographical landscape of negotiations should be. Based on the view that form should follow function, and that multilateral negotiations should only reflect a need for them to take place, not an assumption they should take place, what do we learn from this Forum? Issues may include:</p> <ul style="list-style-type: none"> <li>• How do we define the appropriate negotiating forum: by what criteria, for what purposes?</li> <li>• Can substance and dispute settlement be separated in negotiations? Can dispute settlement reform effectively proceed on its own?</li> <li>• What is the role of principles and declarations in defining the scope of negotiations, especially the South-South Principles enunciated over the past two Forums, the G77 Principles, the G20 principles, etc.?</li> <li>• What are the pros and cons of negotiating at different levels from the perspective of maximizing results, maximizing strengths, negotiating dynamics, etc.?</li> <li>• What are the impacts of choosing different forums for negotiations (WTO, UNCITRAL,</li> </ul>



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	<p>etc.)?</p> <p><b>Moderator:</b> Ms. Champika Malalgoda, Sri Lanka</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Mr. Howard Mann, IISD</li> <li>• Mr. Mustaqeem De Gama, South Africa</li> <li>• Mr. Makane M. Mbengue, University of Geneva</li> </ul>
<b>10:30</b>	<b>Break</b>
<b>11:00</b>	<b>Break-out Session 4: What should be the priorities of developing country investment negotiations?</b>
<b>12:00</b>	<p><b>Session 10: The big picture: Maximizing development benefits from investment negotiations</b></p> <p>In this session, panelists will respond based on their own experience and challenges to the group reports from Break-out Session 4.</p> <p><b>Moderator:</b> Mr. Joel Richards, CARICOM</p> <p><b>Panelists:</b> 4 country participants respond to group reports:</p> <ul style="list-style-type: none"> <li>• Mr. José Henrique Vieira Martins, Brazil</li> <li>• Ms. Naa Lamle Lindsay-Orleans, Ghana</li> <li>• Ms. Souphaphone Saignaleuth, Lao PDR</li> <li>• Mr. Hoang Xuan Hoa, Vietnam</li> </ul>
<b>13:00</b>	<b>Lunch</b>
<b>14:00</b>	<p><b>Open Discussion: What are the take-aways and next steps?</b></p> <p><b>Moderator:</b> Mr. Makane M. Mbengue, University of Geneva</p>
<b>15:30</b>	<p><b>Closing Ceremony</b></p> <ul style="list-style-type: none"> <li>• Ms. Nathalie Bernasconi, Group Director, Economic Law &amp; Policy, IISD</li> <li>• Mr. Carlos Correa, Special Advisor, South Centre</li> <li>• Ms. Betty Maina, Principal Secretary for Eastern Africa Affairs Kenya</li> </ul>
<b>16:00</b>	<b>End of plenary and closing reception</b>

<b>DAY 4</b>	<b>SATURDAY, FEBRUARY 10, 2018</b>
<b>8:00</b> <b>13:00</b>	<b>Networking trip to Nairobi National Park</b>