



Concept Note

South Centre Webinar Series on Development and COVID-19

Responsible Investment for Development and Human Rights: Assessing Different Mechanisms to face Possible Investor-State Disputes from COVID-19 Related Measures

30 July 2020 – 14h00 to 15h30 (CET)

1. Introduction

Developing and least developed countries (LDCs), particularly in Africa, are especially vulnerable to the unfolding effects of the COVID-19 pandemic. According to UNCTAD, foreign direct investment flows will drop drastically up to 40% during 2020-2021.¹ A number of developed and developing countries, including LDCs, have introduced a number of measures aimed at limiting the effects of the pandemic, protecting domestic industries for strategic sectors (e.g. health industry, energy sector, telecommunication, food production, etc.), and safeguarding the real economy, particularly by offering bonds or bailouts for companies and the public in general.

Law firms and risk managers are already advising foreign investors about the possibility of initiating investor-State dispute settlement (ISDS) claims against host States on the grounds of the alleged breach of their investors' rights, based on provisions such as : (i) full protection and security; (ii) fair and equitable treatment; (iii) national treatment and most-favoured nation treatment; and (iv) unlawful expropriation.²

On the other hand, international conferences and webinars are being held with the objective of informing possible claimants on how State responses to COVID-19 could violate treaty obligations under international investment agreement provisions, thereby giving rise to possible ISDS claims.³

2. Objectives

The webinar is designed as an open space to foster dialogue and share views among developing countries and other strategic partners for identifying and assessing the different mechanisms for States to face these challenges at the multilateral, regional and domestic level. With several calls being made for establishing a multilateral ISDS moratorium during the COVID-19 crisis and response⁴, the webinar will consider these options and other possible regional and domestic responses based on the principles of dispute prevention.

¹ UNCTAD, Investment Policy Monitor, Issue 23 (April 2020) in https://unctad.org/en/PublicationsLibrary/diaepcbinf2020d1_en.pdf

² Vasuda Sinha, Ashley Jones and Keteban Betanelli, "International arbitration in the time of COVID-19: a rapidly changing environment", in International Arbitration: Illuminating the top trends in 2020., Freshfields Bruckhaus Deringer (2020)

³ See: Corporations prepare to sue over action to save lives as pandemic reveals trade flaws (April 2020) in <https://micky.com.au/corporations-prepare-to-sue-over-action-to-save-lives-as-pandemic-reveals-trade-flaws/>

⁴ See: Call for ISDS Moratorium During COVID-19 Crisis and Response in <http://ccsi.columbia.edu/2020/05/05/isds-moratorium-during-covid-19/>

This webinar is part of a webinar series being organized by the South Centre with the objective of gathering experts, policy-makers, government officials, practitioners and other stakeholders to discuss the different measures adopted by States to tackle the different challenges raised by the COVID-19 pandemic in their efforts to achieve and sustain the progress towards sustainable development in developing countries.

3. Format of Webinar

The webinar will be held on Zoom communication platform. The event will be organized as a panel discussion followed up with a Q&A session. Preliminary questions or commentaries for panellists are welcomed to inform the discussion.

Date: 30 July 2020

Time: 14h00 – 15h30 CET

Registration: https://zoom.us/webinar/register/WN_JqPBUq9DQQQtym-cz2e7ig

4. Speakers

Welcoming Remarks: Prof. Carlos Correa, Executive Director, South Centre

Kick-off Speaker: Prof. Muthucumaraswamy Sornarajah, Emeritus Professor, National University of Singapore

Panellists:

Dr Chantal Ononaiwu, Trade Policy & Legal Specialist, Office of Trade Negotiations (OTN), CARICOM Secretariat.

Dr Roslyn Ng'eno, Senior Investment Expert, Department of Trade and Industry, African Union Commission.

Dr Claudia Salgado Levy, National Director of International Affairs, General Attorney Office of the Republic of Ecuador.

Dr Lise Johnson, Head Investment Law and Policy, Columbia Centre for Sustainable Investment.

Moderator: Dr Mariama Williams, Coordinator, Sustainable Development, Climate Change and Gender Program, South Centre.

5. Contact Information and Registration

Please for further details and registration, please contact:

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