



**AFRICAN INSTITUTE OF INTERNATIONAL LAW
INSTITUT AFRICAIN DE DROIT INTERNATIONAL**

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**CURRENT TRENDS IN BILATERAL INVESTMENT TREATIES, INVESTMENT
CODES AND ARBITRATION IN AFRICA
ARUSHA, TANZANIA
14 to 18 December 2020**

Concept Note

The African Institute of International Law (AIIL) is organizing an international seminar on: Current Trends in Bilateral Investment Treaties, Investment Codes and Arbitration in Africa.

1. Context and Justification

Bilateral investment treaties (BITs) bind investors and the foreign countries in which they invest. They have become the preferred means of governing relations between host governments and foreign investors, since BITs are international agreements establishing the terms and conditions for private investment by nationals and companies of one state in another state.

The peculiarity of many BITs is that they allow for an alternative dispute resolution mechanism, whereby an investor whose rights under the BIT have been violated could resort to international arbitration, rather than sue the host State before its own courts.

Chosen for its confidentiality and criticized for its opacity, arbitration as a means of resolving investment disputes between investors and states continues to fuel the debate.

As the International Center for the Settlement of Investment Disputes (ICSID) celebrates the fifty fourth anniversary of the entry into force of the Washington Convention of March 18, 1965, which took place on October 14, 1966, it seems important to better understand this dispute resolution tool and to identify differences with commercial arbitration. It also seems appropriate to master the machinery of the United Nations Commission on International Trade Law on transparency in investor-state arbitration based on treaties.

Indeed, most dispute settlement clauses in BITs provide for ICSID arbitration, either exclusively or as an available alternative. ICSID is a forum that resolves foreign investment disputes, defined as disputes between an investor of a country and a government that is not his, based on an

investment in the host country. As a result, the increase in BITs has resulted in a sharp rise in ICSID arbitrations.

In Africa, many view BITs as unilaterally in favor of investors, and as a tool that impedes state powers to enact strong social and environmental policies. Many countries on this continent are rethinking their foreign investment regulations to ensure that they benefit their people. Some have already adopted new laws that profoundly change the regulatory landscape for natural resources.

These countries have the political and legal objectives of promoting sustainable investment for the benefit of local populations. We are therefore in a transition to more sustainable policies. How long will it take? In any case this move requires the development and consideration of a range of factors, including, for example, the assessment of the manufacturing capabilities of these countries.

We are unquestionably at the heart of a complex and politically sensitive reform process that is reviving the eternal question of natural resources. In the era of BITs, what will be its impact on the aspirations of African countries for regulatory reform, and how can governments best ensure that their BIT networks do not hinder these much needed reforms? This seminar will discuss these issues with the aim of opening a platform for participants to exchange ideas on how to rethink the BIT regimes of their states, particularly in the context of their effects on the States' regulatory space.

2. Objectives

The overall objective of this training session is to provide a platform for participants to exchange ideas on how to rethink the BIT regimes of their states, particularly in the context of their effects on the States' regulatory space. In order to understand what went wrong in Africa, particular focus will be on the drafting, negotiation and interpretation of bilateral investment treaties. The participants will also be taught how to resolve and assist external counsel in resolving disputes arising from these agreements, including the valuation of damages and the enforcement of arbitral awards. The training will provide participants with the basics of investment treaties and customary law, contracts and regulation and advanced instruction on how and when investors are likely to initiate arbitration proceedings against nations that violate investment agreements. In doing so, this training session will:

1. Provide a systematic treatment of the main economic and legal questions related to foreign investment in general, and specifically in Africa.
2. Focus on the practice of States generally, and African States more specifically, in drafting and negotiating investment-related instruments (investment treaties and investment contracts) and in managing and adjudicating investment-related disputes;
3. Pay particular attention to the implications of often far-reaching yet controversial provisions which are commonly found in investment treaties (such as umbrella or most favoured nation treatment clauses), or in investment contracts (such as stabilization, arbitration or renegotiating clauses).

4. Instruct participants on how and when to initiate arbitration proceedings in the event of a breach of these agreements and the assessment of the resulting damage.

3. Funding

The training program is funded by a generous voluntary contribution provided by the Dutch Government, the African Legal Support Facility, the African Export Import Bank (Afreximbank) and the Grotius Centre for International Legal Studies, thereby making a significant contribution on sustainable development in Africa.

4. Content

The training program will focus on the following modules:

- Introduction and General Principles of Foreign Investment
- The Current Regulation and Legal Framework of Foreign Investment
- Investment Agreements
- Investment Contracts
- Foreign Investment in the Extractive Industries Sector in Africa
- Investment Arbitration
- Developments in the Tanzania legal system
- A case study of Dutch model BIT, its novelties as well as the recent Dutch negotiation experiences with other African countries.
- Africa and the way forward

The five (5) day training workshop will comprise, besides the above mentioned modules, an opening address, an expectations session, presentation of papers and break-up into discussion roundtables and presentation of working group reports. Participants at the round table discussion and exercises would be taught how to use the common standards on trade and investment agreement to solve complex commercial transactions. The goal is to enable the participants to learn the art of creating a harmonious business and investment climate crucial for stimulating economic activity through bilateral investment treaties. At the end of the training participants would be able to protect and promote the economic and financial interests of their countries and secure the growth and development of their economies and utilizing BITs in the efforts to alleviate poverty among their populations.

5. Intended audience

The training is designed for lawyers and government officials working in the field of international trade and investment law, particularly those in the Ministries of Finance, Trade and Investment, and Foreign Affairs and those engaged in multilateral and bilateral negotiations. Other officials and policymakers, members of the legal profession, private legal practitioners, lawyers in the Attorney Generals Chambers, staff of legal departments in public and private corporations, legal secretaries, legal advisers, and arbitrators in the public and private sectors, legal scholars, practitioners, judges, and prosecutors.

6. Methodology and training material

The training will be conducted in the form of interactive seminars and discussions to allow a maximum exchange of views. A comprehensive set of training materials will be provided for each participant at the beginning of the training course. Certificates will be awarded to those participants who will have completed the training program in its entirety.

7. Selection process

When selecting participants, due consideration will be given to the candidates' qualifications, the scope of their professional duties, the relevance of the training to their professional duties as well as geographic and gender balance of the participants. Applications from female candidates are encouraged. Applicants are requested to submit their Curriculum Vitae, copies of academic certificates, a motivation letter and two Reference Letters one of which is from the current employer.

Applications for admission should be submitted to: programs@aiil-iaadi.org no later than 14 April 2020. Please specify in the subject of the email: Training on the Current Trends in Bilateral Investment Treaties, Investment Codes and Arbitration in Africa. Incomplete applications, applications received after the deadline and applications from former participants will not be considered.

8. Course language

The academy will be conducted in English. Fluency in spoken and written English is required. Applicants whose mother tongue or language of instruction is not English are required to submit proof of their language abilities.

9. About the African Institute of International Law

The AAIL is an independent educational and research institute dedicated to teaching, dissemination and advanced research in international law, African Union law and African regional organizations law. The AAIL was created by the African Foundation for International Law in close collaboration with the Government of the United Republic of Tanzania, endorsed by the Assembly of Heads of State and Government of the African Union and welcomed by the United Nations General Assembly, for the purpose of advancing, through sustainable capacity building in the field of international law and African Union law, the rule of law, legal predictability and certainty and more stable and rule-based intergovernmental relations within the African continent and with the outside world. As an international organization with a Pan-African scope, its objectives include: (a) to provide training courses and research programs for academics and government officials on various aspects of international law and African Union law; (b) to enhance the teaching and research capacities of associated African law faculties in international law and African Union law; (c) to enhance the knowledge and practical skills of government officials in international law and African Union law, (d) to contribute to more stable, rule based inter-governmental relations within the continent by creating a wide pool of legal skills in the field of international law, African Union law and African regional organizations law;

(e) to promote scholarly publications and research of international law and African Union law and to promote the dissemination of such publications; and (f) to establish fellowships for African lawyers. In addition to its own training and research activities, the Institute engages in capacity-building of a network of associated faculties of law in selected African universities. The Institute also serves as a think tank on international legal issues for African States, regional organizations and the African Union in their pursuit of closer economic and political integration and in the peaceful settlement of disputes. AIIL's work is increasingly relevant to other stake holders engaged in the promotion of International Criminal Justice. AIIL is based in Arusha, United Republic of Tanzania.

10. Venue

The training program will be held over five days at the Arusha International Conference Center, East Africa Road, Arusha, Tanzania, Monday 14 to Friday 18 June 2020.

11. Contact

For more enquiries and confirmations, kindly contact: **Ms. Irene Alexander**, Program Officer, Email: programs@aiil-iadi.org, Tel: +255 710 732 590.

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