

## Human Rights-Compatible International Investment Agreements

*Virtual Consultation for Central and Eastern Europe and the Central Asia region*

21 April 2021, 12 noon – 3 pm CET (online - Zoom)

### Background

The United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (“the Working Group”) will present a report to the UN General Assembly in October 2021 to provide practical guidance for States on negotiating human rights-compatible international investment agreements (IIAs) in line with the UN Guiding Principles on Business and Human Rights (UNGPs). The report will cover all three pillars of the UNGPs: the duty of states to preserve regulatory space while negotiating IIAs so as to strike a balance between attracting investment and promoting responsible business conduct; the responsibility of investors to respect all internationally recognized human rights; and the role of IIAs in providing access to remedy to individuals and communities affected by investment-related projects.

In order to inform the drafting of the report, the Working Group is convening several virtual consultations to seek input from a range of stakeholders on how to align IIAs with States’ international human rights obligations. To complement these regional consultations, the UN Working Group has also issued an [open call](#) to collect input from States and other stakeholders. All relevant information, including on consultations held so far as well as the call for written input is available at the dedicated UN Working Group’s website <https://www.ohchr.org/EN/Issues/Business/Pages/IIAs.aspx>

This regional consultation – focused on Central and Eastern Europe and Central Asia (CEE and CA) region - is convened by the UN Working Group and co-organized by the [Polish Institute for Human Rights and Business](#) and [Yaroslav Mudryi National Law University](#). It will be held virtually under the Chatham House Rule.

### The Subject and Purpose

International Investment Agreements (IIAs)<sup>1</sup> are deployed by States as one of the tools to create an investment-friendly environment. To protect the legitimate interests of investors, they impose conditions and standards on a host State’s ability to regulate.

At the same time, IIAs should not prevent host States from protecting and promoting human rights within their territories. Principle 9 of the UN Guiding Principles on Business and Human Rights (UNGPs) reminds States to “maintain adequate domestic policy space to meet their

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<sup>1</sup> IIAs here refer to bilateral investment treaties as well as investment chapters in trade agreements negotiated at a bilateral or regional level.

human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.”

However, IIAs can have a chilling effect on States’ ability to effectively regulate the conduct of investors and ensure that they respect human rights, as well as on States’ ability to hold companies accountable for human rights abuses. This effect is especially seen when local authorities in host States do not have the proper measures, processes and resources in place to ensure that human rights policies and reforms can be pursued in accordance with the principles of good governance, transparency, meaningful participation of all stakeholders and legitimacy stemming from stakeholders’ engagement and support.

As a result, host States may achieve higher development level thanks to – *inter alia* – the investment treaties that attract business investment. However, IIAs may also not only fail to promote further sustainable development, but even contribute to reinforce various development deficiencies and injustices in that host State.

The purpose of the consultation is to identify areas in which these negative effects can be identified and to discuss possible solutions – both substantive (e.g. possible revisions of IIAs or their abandonment in favour of a whole new regime) and procedural (e.g. possible revisions of the ISDS mechanisms).

### **The format and objectives of the consultation**

The consultation will provide an opportunity for stakeholders to discuss issues at the nexus of IIAs and HR. It will be divided into two parts:

#### **I. Mapping IIAs & HR landscape in CEE and CA**

The first part of the meeting will map the current situation in the region and will provide space to share concrete examples of how IIAs regimes and ISDS decisions had negative impact on human rights and sustainable developments. This will include examples of how potential liability under IIAs have prevented or hampered business and human rights policies and reforms in the region and cases where individuals and communities affected by investment-related human rights abuses were not provided access to remedy.

#### **II. Identifying solutions:**

The second part will provide space to discuss possible substantive and procedural solutions to mitigate IIAs’ negative effects identified in the first part of the meeting. This will include options to reform existing IIAs, as well as elements necessary in IIAs to preserve regulatory space of States to meet their obligations under international human rights law.

Each of the two segments will consist of a moderated discussion between the experts from various countries, law and policy makers (from governments, civil society organizations and other non-governmental organizations from the region) with experience in addressing the limitations stemming from IIAs, as well scholars and practitioners conducting investor-state disputes on behalf of host States from the region.

The summary report of the discussions with conclusions and recommendations will be provided to the Working Group and will be posted on the Working Group’s website in due course.

### **Practical information**

The consultation will take place virtually on Zoom. A Zoom link will be sent to the registered participants in due course.

Simultaneous translation English – Russian will be provided upon demand thanks to support provided by the Wardyński & Partners law firm.

For any further information about the Working Group's project on human rights-compatible IIAs or should you wish to join the project's Google group, please contact the Secretariat of the Working Group at [wg-business@ohchr.org](mailto:wg-business@ohchr.org) (indicating "IIAs and HRs" in the email subject).

## **Registration**

To register your interest in participating in the consultations please fill in the registration form in English or Russian by April 12th. Link: <https://forms.gle/yzAZ8uumxucGp7UU7>

Organizers will endeavour to enable participation by all interested stakeholders. However, given the platform limitations, organizers reserve the right to admit only selected participants based on criteria to ensure geographic, gender and stakeholders representation. All who registered their interest will receive information by email. Admitted participants will receive a confirmation email by April 14<sup>th</sup>.

Inquiries specific to the CEE & CA consultation should be directed to:

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