

**Business and Human Rights Clinic
Fall 2016, Spring 2017**

Investment Chain Analysis and Human Rights Advocacy

Class meeting time: Fridays 11 am – 1:50 pm

Jointly sponsored by:

School of International and Public Affairs
Institute for the Study of Human Rights
Columbia University

Faculty: Joanne Bauer, Adjunct Professor, SIPA, jjb71@columbia.edu

About the Business and Human Rights Clinic

Since the 1990s, the subject of business and human rights has evolved from a critique of “corporate social responsibility,” to a movement and a field of study. As the field has grown, so too has the demand for professionals with a sophisticated understanding of why corporations violate human rights and the steps that corporations, governments, and civil society need to take to prevent violations - or remedy abuses when they occur.

The Business and Human Rights Clinic is a year-long class offered in the fall and spring that provides a space for students to deepen their knowledge and experience of business and human rights. Combining seminars, guest lectures, group work, and site visits, it is an interdisciplinary space for testing innovative models of business and human rights work, carried out in partnership with NGOs and other business and human rights practitioners.

Continuing the work started in 2015-2016, the inaugural Clinic year, our subject for 2016-2017 is investment chain mapping (ICM). Described in detail below, ICM is a cutting edge, highly technical skill taught nowhere else and with strong career potential. Through direct contact with the Client, Inclusive Development International (IDI), and its international and local partners, and through possible site visits, the Clinic provides a unique opportunity for students to help IDI pioneer and then put into practice an innovative and timely advocacy approach to holding transnational corporations and development finance institutions accountable for human rights harms. This expertise will position students strongly to become leaders in the field. In future years, the Clinic will continue to engage in projects at the cutting edge of the evolving business and human rights field, as it aims to establish successful long-term relationships with clients.

In addition to weekly class sessions, beginning in mid-October Clinic students will work in small 2-3 person teams on Clinic mapping work. This work is designed to enable students, supported by the Clinic professor and client, to produce research with broader applicability to the business and human rights field – specifically, Investment Chain Mapping and Human Rights Advocacy. In addition, the Clinic will undertake a year-long research project on financial actors and pressure points. This project, which will result in a publication, will support the ICM work of the client and the Clinic. Through active participation and leadership on these Clinic projects, students collaboratively implement, test, and reflect upon the trainings of the seminar sessions. Students are expected to contribute to institutionalizing lessons learned for future Clinic students and will complete an interim and a final report that reflects this objective.

The Clinic is taught by Joanne Bauer, Adjunct Professor, SIPA. Since 2009, Professor Bauer has taught U6041, Corporations and Human Rights, and has served as Faculty Advisor to business and human rights Capstones in 2013 and 2015. She is also Senior Researcher with the Business and Human Rights Program at the Institute for the Study of Human Rights (ISHR), and taught Human Rights and Business in ISHR's Human Rights Certificate Program from 2008 - 2015. She is also a Senior Fellow at Melbourne University School of Law. The Business and Human Rights Clinic builds on the introduction to the subject offered through the SIPA course "Corporations and Human Rights" (U6041).

2016-2017 Clinic Projects:

Investment Chain Mapping and Human Rights Advocacy

Every year more than 15 million people are forcibly displaced from their land, housing and natural resources in the name of development. To meet global demand, the international financial system is fueling this crisis with its relentless pursuit of natural resources and investment markets, and in so doing capitalize on weak governance structures that deny people their human rights to water, housing and freedom from forcible displacement. The recent dramatic shift from public to private financing for development, and the rise of China as a dominant financier, has compounded the problem. As global capital becomes more interconnected, decisions made in boardrooms in New York, London and Beijing are increasingly harming vulnerable communities in the Global South.

Behind many harmful land deals is an invisible web of actors including transnational corporations and their subsidiaries, commodity traders, retailers, private equity and debt investors, and development finance institutions. These actors are typically bound by rules that require them to do no harm and respect human rights and the environment. Others are global brands that are highly susceptible to negative publicity. Yet because of the opaque nature of these investments, communities often don't know who is backing harmful projects. As such, they are unable to devise successful strategies to defend their rights.

For the second consecutive year, the Clinic will partner with IDI an international NGO based in the United States that specializes in land and natural resource rights, and works to make the international economic system more just and inclusive. IDI supports and builds the capacity of local organizations and affected communities to defend their land and human rights in the face of harmful investment, trade and development. Through research, casework and policy advocacy, IDI works to strengthen the human rights regulation and accountability of corporations, financial institutions and development agencies. For more information on IDI, see: <http://www.inclusivedevelopment.net/>

The core of IDI's strategy is the "Follow the Money (FtM) Initiative". Through this initiative, upon request from grassroots advocates, IDI mines licensed financial databases and various open data sources to obtain critical investment chain information about agricultural, mining and infrastructure projects that threaten the land and resource rights of local communities. IDI uses this information to systematically map the investors and buyers behind the projects, analyze

pressure points and support requesters to develop sophisticated advocacy strategies to hold land grabbers to account.¹

The 2016-2017 Clinic will help to implement and further develop the FtM Initiative. Working alongside IDI, the Clinic will conduct research based primarily upon requests from communities and local advocates to uncover information about the complex web of investors behind development projects that are harming them or threaten to harm them. As part of this ICM work, students will identify key pressure points and work with IDI to develop possible advocacy strategies that can be used by affected communities. For cases that offer the potential for redress, participants will work with IDI to alert affected communities and provide advice on pursuing remedies. In doing so, Clinic students will support communities and NGOs in the Global South to hold development finance institutions, other investors, and companies accountable for the human rights impacts of their investment and procurement decisions.

IDI will train Clinic students in ICM, drawing upon their experience this year and the supporting work of the 2015-2016 Clinic. After becoming familiar with the methodology and the available databases, starting in October, working in teams of two or three students will take on specific assignments related to actual community requests, and begin to help advancing the methodology for investment chain mapping, pressure point analysis, and advocacy.

Because this is real-world advocacy, and community needs for this information are urgent and cannot be known in advance, the Clinic will need to be highly flexible and respond to IDI's research requests on an "as needed" basis. IDI may also request that students conduct investment chain mapping work to support its policy advocacy work directed at international financial institutions (IFIs).

Clinic Assignments

1. *ICM Project Work*: As students acquire the mapping and pressure point analysis skills and begin work on their cases, the project work will evolve. Some student teams will extend their research and analysis to working with IDI to help communities with strategy. Other teams, whose cases do not end up leading to advocacy work, may either move to other cases or get involved in one of a number of projects.
2. *Research Project and Publication*: To support the knowledge base of both IDI and the Clinic and improve advocacy strategies designed around ICMs, in the course of the year Clinic members will also undertake a research project, with the following two dimensions:
 - a. Research the policies, practices, attitudes and financial calculi of key financial actors regarding the human rights, social and environmental impacts of their investments. This will include desk work and interviews with traditional investors, as well as pension funds, and ethical investors, which can then be compared with NGO experiences of those actors (e.g., BankTrack, SumOfUs, As You Sow, Asset Owners Disclosure Project, FairPensions).
 - b. Research the effectiveness of key pressure points (e.g. key stock exchanges) – in particular their evolving safeguard policies and accountability mechanisms.

¹ For a five-minute video on investment chain mapping and pressure point identification in the agricultural sector, see: <https://www.youtube.com/watch?v=FK15DHzfDmc>

This will include desk research as well as interviews with representatives of the target institutions themselves and with NGOs that have used the given pressure point.

This project will result in a research report that will be published by SIPA or jointly by SIPA and IDI, and disseminated to the wider corporate accountability community.

To remain responsive to community needs, usually ICM research work will take precedence over these supporting research projects.

3. *Interim Report and Final Report:* In addition to assigned project work, Clinic students will be responsible for delivering an interim and year-end analysis of the work in the form of two reports to which all Clinic students must contribute. The report should be self-reflective about the year's work and provide guidance for the Client's future work and the work of future Clinics. The reports are therefore geared for internal consumption and will not be made public in their entirety.²

Clinic Student Team

Eight to ten students will form the Clinic team.

Students are required to enroll for both fall and spring semesters. SIPA and MA students will receive 3 credits per semester. Students may also be asked to devote time during their winter and spring breaks to Clinic work. Students who leave the Clinic after the first semester will not be entitled to a letter grade; instead they will receive a pass/fail grade.

While there are no pre-requisites for the Clinic, students who have taken Corporations and Human Rights (U6041) or Human Rights Skills and Advocacy (U8180), or are taking these courses concurrently with the Clinic or have advocacy experience will be at an advantage. The following skills and experiences are also desired:

- Professional experience and/or coursework in human rights, business and human rights, and/or finance.
- Experience developing research questionnaires and methodology design, conducting interviews and analyzing interview data (mainly qualitative).
- Willingness to learn about and investigate corporate structures and financial relationships and how these can be used in effective human rights advocacy.
- Languages: Proficiency in French, Spanish, Chinese, Vietnamese or other languages is desirable.
- Strong analytical, research and writing skills and willingness to communicate frequently (at least weekly) with IDI regarding research progress and direction.

For SIPA students:

- The Clinic seeks students particularly from the **Human Rights and Humanitarian Affairs, International Finance and Economic Policy**, and **Energy and Environment** concentrations.

² Parts of the report may be made public, in consultation with IDI. Writing blogposts, approved by IDI, based on the work is another option for publication.

- The Clinic is geared to second year students; only in exceptional cases where students have substantial experience in one or more aspects of the project, will first year students be invited to apply.
- The Clinic will satisfy the SIPA graduation requirement of a Capstone. Because of the high intensity and level of commitment expected of Clinic and Capstone students, students enrolled in the Clinic are not permitted to also enroll in a Capstone.

Time commitment

The time commitment varies over the course of the academic year. On average, students will be expected to devote 8-10 hours per week to the Clinic for the fall semester, including class time. During the spring semester, students will be expected to devote a minimum of 10 hours to the Clinic *in addition to* class time. This time commitment aligns with SIPA Capstone expectations.

Structure and Timeline

Clinic sessions will last two-to-three hours and combine seminar-style discussion of the day's topic with project management and communication, and problem-solving and discussion of team projects.

Students are expected to have read the assigned readings before each class and come prepared to participate actively. Seminar readings are drawn from a variety of sources and disciplines, and readings are accompanied by Guiding Questions and written assignments, to facilitate focused preparation for class.

Student Assessment

Students will receive a letter grade at the end of each semester. The grading rubric is as follows:

- Quality of participation in class, including evidence of preparation (20%)
- Overall professionalism, including timeliness, ability to work with clinic peers, ethics, engagement with the client, etc. (20%)
- Quality of written work and briefings to client (60%)

I will hold individual conferences with students once per semester. Sign-up sheets for time slots will be available the week prior. The Course Outline, below, indicates the dates for mid-semester and end-semester conferences.

Applying to the Clinic

Admission to the Clinic is by application. Because the course involves substantial training of in the fall for projects that are carried out mostly during the spring semester, students are required to commit to the Clinic for both the Fall and Spring semesters.

Interested students must submit to Prof. Bauer a resume/cv and a personal statement of no more than 1000 words on the following:

- (1) A brief description of your past exposure to, or work in, human rights and/or finance.
- (2) Your hopes and expectations for the Clinic, and how this relates to your future career goals;
- (3) The specific skills and experiences you aim to develop or obtain during the Clinic;
- (4) Any difficulties you foresee in having your expectations met and skills obtained, and how you could address those difficulties;
- (5) What you bring to the Clinic, and how you plan to contribute to a collaborative and productive working environment.
- (6) Your assessment of your writing skills. Include answers to the following questions: Have you received recognition for your writing? Do you enjoy writing?

Students will be admitted to the Clinic on a rolling basis. The first day of class, September 9, will be an opportunity to learn more about the Clinic. Applications are due by no later than 12 pm on Monday, September 12. Final notifications will be made on Tuesday, September 13.

Is the Clinic Right for You? Benefits of the Clinic

The 2015-2016 Clinic identified the value of the Clinic for students with expertise in human rights, international finance, energy and extractives, and law. According to the Clinic's final report³:

The Clinic is a laboratory for testing innovative methodologies to strengthen accountability of corporations and financial institutions. The methodology provides an opportunity to utilize Columbia's resources to tangibly add value to communities whose rights are being infringed upon. The diversity of the members of the Clinic, which is open to all SIPA concentrations, to the Human Rights Studies Masters Program and LLM students of Columbia School, enhances the experience of individual members. Student teaching sessions on topics pertinent to the Clinic, discussion and exchanges amongst members on assigned cases, and peer reviewing each other's reports, proffer abundant opportunities for members of the Clinic to take advantage of the expertise within the Clinic.

For students in the more academically-oriented MA in Human Rights Studies program, this course provides a much needed connection with the practical application of human rights concepts. Additionally, the opportunity to work directly with a client, as well as contribute to work that is directly relevant to the field, is unique for the program, and helps provide a more holistic understanding of human rights practice.

For SIPA students, the one-year duration of the Clinic allows its members to probe deeper into the work and to develop both soft and hard skills that are not typically offered

³ The Interim and Final Reports of the 2015-2016 will be shared with students upon their selection for the 2016-2017 Clinic.

by Capstone projects. The combination of seminar learning and experience, as well as having different student groups working on a series of small projects that form parts of a bigger theme and sharing their respective work, makes the Clinic distinctive.

- For those interested in human rights, the Clinic offers training in a unique approach to advocacy, one that equips communities with new tools and strategies to defend their rights. The Clinic widens one's perspective of how to engage actors beyond just naming and shaming, or divestment, and enhances understanding of various business and human rights standards and institutions.
- For those interested in finance, the Clinic offers a method for understanding responsible investment and the importance of human rights due diligence. The Clinic work reveals how investors can, often unwittingly, become linked to rights violations and how best to address these connections (i.e. through engagement or divestment) when they are revealed. Apart from the due diligence aspect of working in finance or investment, understanding the liability shouldered by a company investing in financial intermediaries and large development projects is important for those who are interested in promoting ethical investments or mitigate risk.
- For those interested in energy and extractives, the Clinic provides an understanding of the role financing plays in developing a large-scale energy or extractive project. The Clinic addresses risk identification and project viability and exposes the types of human rights issues that can occur when environmental and social risks are not addressed properly. It helps those with an interest in the industry to appreciate the role that positive engagement with communities and states can play in reducing risks.”

For law (LLM) students, the Clinic provides the opportunity for law students with a public interest background to address human rights issues through both legal and non-legal institutions. It exposes lawyers who have practiced corporate law to the human rights implications of large-scale commercial transactions and complex project finance, and instills a sense of the importance of human rights due diligence in providing transactional advice to corporate clients.

One Clinic member summed up their experience as follows:

“The Clinic has completely shaped my experience for my degree. Since my program is so academically oriented, producing real work and real results for people in need brought what I was studying into the realm of the real world. In addition to skills such as coordination, teamwork, and professionalism, I have also learned a lot from interacting with peers from many different areas of expertise, and in conducting the ICM itself. This was my first introduction to the world of business, and I believe that I have got a much better understanding and grasp of not only violations, but also about how different initiatives are working to hold the corporate world more accountable.”

Course outline

The following is an outline of meeting dates and seminar topics. Since the top priority for the Clinic is responding to ICM needs from IDI, sessions are subject to change should there be a need to devote more class time to ICM work.

In the fall semester, class sessions will combine lecture and discussion on the context for the Clinic work with learning, practice, and supervision on the fundamentals of investment chain mapping. We will also design and start the financial actor and pressure point research to support ICM.

During the spring semester, the Clinic will delve deeper into the case work, and the pertinent topics surrounding it, as we support the cases with the strongest demand from communities. For some cases this may mean extending the cases from the fall into advocacy. Students can also expect to undertake new cases where community demand for ICM is strong. The financial actor/pressure point research will be completed, and the report will be drafted and finalized. For the spring semester, Clinic students will have an opportunity to contribute to the course outline, by suggesting topics and guests for weeks that are still undetermined.

In addition to the seminar subject, each session will also include a discussion of issues coming up in ICM work, Clinic management and planning, and time permitting, group work.

Some sessions will also include a guest speaker. Clinic students are invited to participate in identifying speakers, inviting speakers, preparing the Clinic for a speaker, and moderating discussions with a speaker.

Note: The readings for which there are no hyperlinks can be found on the Courseworks page under "Files & Resources".

Fall 2016

Sept 9: Introduction to the Clinic

This class will introduce the Clinic topic, procedures and goals, and outline the work and expectations. To prepare for this class, read the following IDI publication, which provides a step-by-step of ICM, and come prepared with questions about the process. Students for the 2015-2016 Clinic will be on hand to also field questions.

Reading

Blackmore E., Bugalski N., Pred D. (2015) *Following the Money: An advocate's guide to securing accountability in agricultural investments*. IIED, London.
<http://www.inclusivedevelopment.net/new-idi-resource-following-the-money-an-advocates-guide-to-securing-accountability-in-agricultural-investments/>

Sept 16: **Introduction to the Clinic: Teambuilding and Understanding Business and Human Rights Standards**

We will spend the first half of this class, our first as a Clinic Team, getting to know each member and what they bring to the Clinic through a teambuilding exercise. Students will also be introduced to Clinic roles. During the second half of class we will introduce the idea of human rights and examine business and human rights standards, in particular the UN Guiding Principles on Business and Human Rights.

Guests: Fadi Dahger of Lehman Library and Chubing Hong of the Business School library will come to class to introduce themselves and provide an overview of Columbia's available resources.

Reading

Joanne Bauer, "The Problem with Corporate Social Responsibility," *Open Democracy*, December 17, 2014 <https://www.opendemocracy.net/joanne-bauer/problem-with-corporate-social-responsibility>

Chris Jochnick, "Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights," 21 *Human Rights Quarterly* (1999) pp 56-79. (Available in Files & Resources)

Chris Jochnick, "Challenging Corporate Power through Human Rights," (2014) pp 1-8 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2501084

Skim OHCHR, IBLF, UN Global Compact & Castan Centre for Human Rights Law at Faculty of Law, Monash University, "Human Rights Translated: A Business Reference Guide" http://human-rights.unglobalcompact.org/doc/human_rights_translated.pdf

Skim and bring to class:

UN Guiding Principles on Business and Human Rights,
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Sept 23 **Multilateral Development Banks and Human Rights Obligations**

This class will introduce multilateral development banks (MDB), their human rights obligations, legal immunity and the types of projects they finance that impact land rights. The class will also introduce safeguard policies and standards as part of the range of accountability mechanisms available to groups harmed by MDB investments.

Guest speaker: Lalanath da Silva of the Compliance Review Panel of the Asian Development Bank

Reading:

Eisuke Suzuki and Suresh Nanwani, "Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks," *Michigan Journal of International Law*, Vol 27, pp 177-225 (Files & Resources)

Suresh Nanwani, "Directions in Reshaping Accountability Mechanisms in Multilateral Development Banks and Other Organizations," (2014) 5/2 *Global Policy*, pp 242-251. (Files & Resources)

"The Future Development Finance and Accountability Landscape" workshop report, 2016:

http://www.humanrightscolumbia.org/sites/default/files/pdf/bhr_future_development_finance_accountability_landscape.pdf Pay particular attention to what the report says about the role of MDBs.

Asian Development Bank Compliance Review Panel website:

<https://lnadbg4.adb.org/dir0035p.nsf/alldocs/BDAO-7XG526?OpenDocument&expandable=0> Read all sections of "About the Compliance Review Panel" and skim one or two reports under "Compliance Review"

Skim: International Finance Corporation: Performance Standards, http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes

Skim: NGO Forum on ADB: <http://www.forum-adb.org/home>

Optional: D.D. Bradlow and A. Naudé Fourie, "The Operational Policies of the World Bank and the International Finance Corporation: Creating Law-Making and Law-Governed Institutions," (2014) 10 *International Organizations Law Review*, pp 3-80 (Files & Resources)

Sept 30 Introduction to IDI and Investment Chain Mapping

David Pred and Dustin Roasa of IDI will visit the Clinic to introduce the work of IDI and describe the work agenda for the Clinic this year. Students will have the opportunity to ask questions about IDI and its advocacy approach and learn about a selection of its ongoing case work. Discussion will also include issues of security – for the communities, IDI, and the Clinic – the need for confidentiality, and discuss what information can and cannot be communicated outside of the Clinic.

This session will include a hands on training on investment chain mapping using data bases. All students should bring laptops to this class. (Note: Because ThomsonOne can only be accessed via a PC, students who use Mac computers should install Citrix so that they can access this database that way.)

Students will receive a work assignment from IDI at the end of class, which will be due the following week.

Reading

Review *Following the Money* the first three chapters:
<https://www.followingthemoney.org/>

Review Section 2 of the 2015-2016 Clinic Final Report

Read the MSPP Memo (Files & Resources)

Oct 7 **Due Diligence in the Financial Sector**

Our seminar topic is the OECD's guidance on the application of the OECD Guidelines for Multinational Enterprises to the financial sector and its implications for our work.

Reading:

OECD, "Due Diligence in the Financial Sector: Adverse Impacts Directly Linked to Financial Sector Operations, Products or Services by a Business Relationship," Global Forum on Responsible Business Conduct, June 2014:

<https://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-1.pdf>

BSR, What the OECD Guidelines mean for investors: Interview with Roel Nieuwenkamp, Dec 2014: <http://www.bsr.org/en/our-insights/blog-view/what-the-oecd-guidelines-mean-for-investors>

Click on the hyperlink "How NGOs pressured investors" in the above article or click here: <http://www.wwf.org.uk/?6030>

Optional

Margaret Wachenfeld, "Recent Decisions Clarify Investor Responsibility to Address Human Rights Concerns," Responsible Investor, Oct 2013 https://www.responsible-investor.com/home/article/ncp_decision_analysis/

Oct 14 **Development Finance Actors: Who they are and how human rights figures in**

With this class we will begin to explore the development finance actors and the considerations that drive their decisions. During the second half of class we will have two guest speakers from the financial world. They will help us begin to address some of the questions, below.

Guest speakers: [Joel Moser](#), CEO, AQM Capital; [Delilah Rothenberg](#), Managing Director, Development Capital Strategies

Questions:

- In the face of enormous demand for investment in infrastructure and a focus on the role of private capital in meeting it, who are or might be the most important source of it?
- What are the principal considerations of financial risk and reward that would determine whether, the extent to which, and the ways in which they would make investments?

- What are the primary ways in which infrastructure, large-scale agriculture and extractive projects is or might be financed in part or whole by means of private capital?
- In what ways are others – for example, governments and development finance institutions – a necessary condition for such private investment? What role – e.g. through co-investment, loans, grants, guarantees, etc.- must they play?
- What are the nominally non-financial considerations (environmental, social, human rights) that bear in important ways upon the decision to make such investments? How and why do such considerations come into play?
- What policies, rules, standards, etc. are seen as important or relevant to a taking them into account?
- In what ways are various investors equipped to do so -- in terms of staffing, resources, assignment of responsibility and accountability, etc.?
- In what ways have investors engaged stakeholders for whom those environmental, social, and human rights issues are a concern?
- In what ways has that engagement been productive or useful?
- What forms or means of engagement might be more productive or useful?

Reading:

OECD Guidelines for Multinational Enterprises, “DRAFT Responsible business conduct for institutional investors: Key considerations for institutional investors in carrying out due diligence under the OECD Guidelines for Multinational Enterprises,” September 2016. (Files & Resources) Note: The publication is confidential and should not be shared beyond the Clinic.

Review: “The Future Development Finance and Accountability Landscape Workshop Report,” Columbia University, April 21-22, 2016

Oct 21 Student-Led Session, Peer-Learning

Students will select a pressure point mechanism from the sign-up sheet on the Google Drive, research that mechanism, and prepare a 10- minute presentation to present to the group. In addition, students will use the time for group troubleshooting of their ICM projects, and for addressing any administrative issues that have arisen. The presentation of the financial actors project framework to IDI, originally scheduled for today, has been postponed until after November 18 when the first ICM memos are due to IDI.

Oct 28 Development–Induced Displacement: Land, Housing, and Natural Resource Tenure Rights

POSTPONED – We will postpone this discussion in order to catch up on work and plan for the rest of the semester. Students should use the time to make strong progress on their ICM work.

This class will explore the issue of development-induced displacement, the current legal and normative standards around land, housing and natural resource rights, the exercise of eminent domain powers, “willing buyer willing seller” (voluntary) land transactions, the situation of “squatters” and the process and impacts of resettlement. We will examine case studies of best and worst policies and practices in relation to land rights.

Reading

Saturnino M. Borrás, Jr. & Jennifer C. Franco (2010). “From Threat to Opportunity? Problems with the idea of a “Code of Conduct” for Land-grabbing,” *Yale Human Rights & Development*, Vol. 13, pp. 507-523.

https://www.tni.org/files/Yale%20April%202010%20Borrás_Franco%20CoC%20paper.pdf

Michael Cernea, “Reforming the Foundations of Involuntary Resettlement,” in Michael Cernea and Hari Mohan Mathur, eds, *Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit-Sharing*, New York: Oxford University Press, pp1-10. (Available on e-reserves)

Skim the following standards

Principles for Responsible Investment in Agriculture and Food Systems, adopted 2014 by the Committee on World Food Security. <http://www.fao.org/3/a-au866e.pdf>

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

UN CESCR General Comment 7: Forced Evictions and the Right to Adequate Housing (1997): <https://www1.umn.edu/humanrts/gencomm/escgencom7.htm>

IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement
http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES

Nov 4: MDBs and Financial Intermediaries

This class will explore the issue of MDBs financing through financial intermediaries, in particular the debates within the IFC. These debates center around the IFC’s policy decision to channel over 70 percent of its financing through financial intermediaries, without an effective way of ensuring that these intermediaries and sub clients are respecting the IFC’s Performance Standards. This issue has been pushed by the policy advocacy work of IDI and its NGO counterparts, work that the 2015-2016 Clinic also supported through its research.

During the second part of class we will begin to discuss plans for the Financial Actors research project.

Reading:

Kate Geary. *The Suffering of Others: The human cost of the International Finance Corporation's lending through financial intermediaries*, Oxfam
<https://www.oxfam.org/en/research/suffering-others>

IFC response to The Suffering of Others
http://www.ifc.org/wps/wcm/connect/1259050048004ba99154f5299ede9589/IFC_response_toCSO_report_on_FIs.pdf?MOD=AJPERES

International Finance Corporation, Interpretation Note on Financial Intermediaries, January 1, 2012
http://www.ifc.org/wps/wcm/connect/38d1a68049ddf966af3cbfda80c2ddf3/Interpretation_Note_FIs_2012.pdf?MOD=AJPERES

Office of the Compliance Advisor Ombudsman (CAO), "CAO Audit of a Sample of IFC Investments," Oct 10, 2012 http://www.cao-ombudsman.org/documents/Audit_Report_C-I-R9-Y10-135.pdf

IFC Action Plan: <http://www.cao-ombudsman.org/documents/IFCpresentationforCODE-ESRMforFIs-final.pdf>

Monitoring of IFC's Response to: CAO Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries. Second Monitoring Report http://www.cao-ombudsman.org/newsroom/documents/documents/CAOMonitoringReportC_I_R9_Y10_F135_October132015.pdf

Nov 11: **Chinese Financial Actors -POSTPONED**

This session will explore the rising role of Chinese development finance actors and companies. It is highly likely that in at least one of the Clinic cases, a Chinese actor will be a pivotal player along the investment chain. We will examine the emerging environmental and social standards of these actors and the nature of advocacy strategies that may be successful in influencing them.

Guests: Curtis Milhaupt, Parker Professor of Comparative and Corporate Law, Columbia Law School and Mark Grimsditch, IDI's Mekong Coordinator, (via Skype).

Readings

IDI, *Making Inroads: Chinese Infrastructure Investment in ASEAN and Beyond*
<http://www.inclusivedevelopment.net/wp-content/uploads/2016/08/Making-Inroads-China-Infrastructure-Finance.pdf>

Li-Wen Lin and Curtis Milhaupt. "We are the (National) Champions: Understanding the Mechanisms of State Capitalism in China," *Columbia Law and Economics Working Paper*, No. 409, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1952623

Nancy Alexander and Francis Kornegay, "New Battlegrounds in Development Finance," *Project Syndicate*, October 15, 2014 <https://www.project-syndicate.org/commentary/infrastructure-financing-and-emerging-economies-by-nancy-alexander-and-francis-a--kornegay-2014-10>

Optional:

Lowell Chow, "Signs human rights are moving slowly up the agenda in corporate China," *The Guardian*, September 17, 2014, <http://www.theguardian.com/sustainable-business/2014/sep/17/human-rights-china-corporate-responsibility-taiwan-hong-kong>

Lowell Chow and Annabel Short, "China: Intense scrutiny on AIIB should spur it to fulfil its social and environmental mission" *South China Morning Post*, July 27, 2015 <http://www.scmp.com/comment/insight-opinion/article/1843470/intense-scrutiny-aiib-should-spur-it-fulfil-its-social-and>

Ma Jun and Simon Zadek, "Greening China's Financial System" *Project Syndicate*, May 11, 2015. <http://www.project-syndicate.org/commentary/china-sustainable-development-finance-by-ma-jun-and-simon-zadek-2015-05>

"China's Mining Industry at Home and Overseas: Development, Impacts and Regulation," Greenovation Hub, 2014, Chaps 3-5: http://www.ghub.org/cfc_en/wp-content/uploads/sites/2/2014/11/China-Mining-at-Home-and-Overseas_Main-report2_EN.pdf

Nov 18: **Working Session**

This session is set aside for financial actors research and workshopping the investment chain research. Students may choose to use the session as a time for interviews with financial actors or other stakeholders.

Nov 25 **Thanksgiving Break**, no class

Mid-year Assessments – Nov 28-29

Clinic students meet individually with me to discuss class performance on Monday and Tuesday November 28 and 29. Sign-up sheet for afternoon meeting times will be provided the week before.

Dec 2: **Pressure Point Analysis/ Working Session**

During this session we will complete the pressure point presentations, and workshop issues that students are encountering in their projects.

Dec 9: **Working Session**

This session is set aside for financial actors research and workshopping the investment chain research. Students may choose to use the session as a time for interviews with financial actors

or other stakeholders. We will also use this time to reflect on the work of the Clinic and the learning we can contribute to the development of follow the money practice.

Dec 16: **All Fall projects due.**

******Optional Winter Break Travel******

IDI and its partners will hold a Reflection Workshop in Cambodia in January. The Workshop will assess how communities have used the information that IDI provided in 2016, and how FtM can better serve communities. Two to four students may be invited to present to the workshop.

Students may instead request to be part of a team that will travel during spring break. (See below for that travel option.) Every effort will be made to enable students to participate in their trip of choice, although final determination will be based on the needs of the projects. Students who did not wish to travel are not required to so.

Spring 2017

Written work will include:

- Investment chain mapping memos
- Financial Actors report (First draft due to Joanne April 25, Final draft due May 13)
- Individual research, as assigned

Other Clinic Student work:

- Organize seminar sessions
- Moderate seminar sessions
- Lead seminar discussions
- Organize panel presentation to the Columbia Community
- Participate in panel presentation to the Columbia Community
- Write short articles for Columbia websites/newsletters

Noteworthy dates (excluding ICM dates and website due dates):

- March 10: No seminar. Students not travelling meet to work on projects.
- Mar 13-17: Spring break
- April 12, 2-4:30 pm, IAB 1512: Panel presentation to the Columbia community
- Apr 25: First draft of final report due
- May 12: Final draft of final report due
- May 15-16: Individual meetings; Clinic check out

Note: With respect to the Financial Actors Project report, the intention is to have a publishable manuscript completed, including layout and design, by graduation. If that goal is not met, while students will be entitled to graduate assuming all other course requirements are met, students will be expected to work on the report until it is completed. Determination of “publishable” and “completed” will be made by Professor Bauer.

Weekly schedule

The session topics for the Spring may be adjusted in the Fall, as the knowledge gaps and learning needs for the work arise. Students are encouraged to play a role in shaping the agenda. In addition to the weekly class on Fridays, students are expected to meet one day per week for at least an hour without the Clinic professor at a day and time that fits with all student schedules.

Jan 20 **Debrief from the Break/Planning for the Semester**

Jan 27 **Socially Responsible Investing**

This session will focus on the fields of impact and socially responsible investing and the role they can play in mainstreaming respect for human rights in finance.

Feb 3 **Group work and Feedback from IDI**

Dustin Roasa will join the Clinic via video conference to provide feedback on the first round of memos and the Financial Actors Project plan.

Feb 10: **MDBs and Financial Intermediaries**

This class will explore the issue of MDBs financing through financial intermediaries, in particularly the debates within the IFC. These debates center around the IFC's policy decision to channel over 70 percent of its financing through financial intermediaries, without an effective way of ensuring that these intermediaries and sub clients are respecting the IFC's Performance Standards. This issue has been pushed by the policy advocacy work of IDI and its NGO counterparts, work that the 2015-2016 Clinic also supported through its research. (Note: These readings and this class were originally scheduled for Nov 4.)

During the second half of class we will workshop our investment chain projects, and plan next steps for the Financial Actors Project

Reading:

Kate Geary. *The Suffering of Others: The human cost of the International Finance Corporation's lending through financial intermediaries*, Oxfam
<https://www.oxfam.org/en/research/suffering-others>

IFC response to The Suffering of Others
http://www.ifc.org/wps/wcm/connect/1259050048004ba99154f5299ede9589/IFC_response_toCSO_report_on_FIs.pdf?MOD=AJPERES

International Finance Corporation, Interpretation Note on Financial Intermediaries, January 1, 2012
http://www.ifc.org/wps/wcm/connect/38d1a68049ddf966af3cbfda80c2ddf3/Interpretation_Note_FIs_2012.pdf?MOD=AJPERES

Office of the Compliance Advisor Ombudsman (CAO), "CAO Audit of a Sample of IFC Investments," Oct 10, 2012 http://www.cao-ombudsman.org/documents/Audit_Report_C-I-R9-Y10-135.pdf

IFC Action Plan: <http://www.cao-ombudsman.org/documents/IFCpresentationforCODE-ESRMforFIs-final.pdf>

Monitoring of IFC's Response to: CAO Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries. Second Monitoring Report http://www.cao-ombudsman.org/newsroom/documents/documents/CAOMonitoringReportC_I_R9_Y10_F135_October132015.pdf

For the ICM discussion, review the following documents in the Google Drive:

- Ban Chaung external memo
- Mega First external memo (2015-2016 Clinic)
- Supply chain section of the 2015-2016 Final Report

Also review these recent reports of IDI:

- <http://www.inclusivedevelopment.net/wp-content/uploads/2016/09/Outsourcing-Developmnet-Introduction.pdf>
- <http://www.inclusivedevelopment.net/wp-content/uploads/2016/09/bn-ifc-owning-outcomes-031016-en.pdf>
- <http://www.inclusivedevelopment.net/wp-content/uploads/2016/12/Outsourcing-Development-India.pdf>

Feb 17 **Development Finance and Corporate Accountability II**

This class will explore development finance and corporate accountability in more detail, with students now able to bring their own experiences to the discussion. The class will allow students to step back from their cases and discuss the ethical and legal responsibilities of these transnational actors, considering the implications of their decisions and actions on vulnerable communities in developing countries. We will look more closely at the human rights framework vis-a-vis business and institutions such as the World Bank.

Reading:

“Glass Half Full: The State of Accountability in Development Finance,” Jan 2016, pp 17-77, and Annex 12 on the CAO. This just-released report was spearheaded by SOMO and co-authored by SOMO, IDI, Accountability Counsel, Natural Justice, and others. <http://www.inclusivedevelopment.net/wp-content/uploads/2016/01/GlassHalfFull.pdf>

What is Remedy for Corporate Human Rights Abuses? Listening to Community Voices: A Field Report,” Dec 2015. This is the report of a 2015 SIPA Capstone <http://accessfacility.org/Columbia-University-Student-Case-Story>

Larry Beeferman and Allan Wain, *Infrastructure: Doing What Matters*, July 2016. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2714343

Feb 24 **Drafting a Complaint**

This class will study various complaints drafted and submitted to IFIs in order to understand how to prepare a strong complaint. David and Natalie will participate in this discussion

Assignment: Students will work on a draft complaint, likely to the IFC. The case will be assigned during class and is due on February 26.

Reading:

IDI HAGL complaint to the CAO <http://www.inclusivedevelopment.net/wp-content/uploads/2014/02/Complaint-to-CAO-re-Dragon-Capital-HAGL-.pdf>

Mar 3 **Chinese Financial Actors**

This session we will explore the rising role of Chinese development finance actors and companies. It is highly likely that in at least one of the Clinic cases, a Chinese actor will be a pivotal player along the investment chain. We will examine the emerging environmental and social standards of these actors and the nature of advocacy strategies that may be successful in influencing them. For the remainder of the session, we will discuss the financial actors project and other aspects of investment chain mapping.

Reading

IDI, *Safeguarding People and the Environment in Chinese Investments: A Guide for Community Advocates*. (See Files & Resources tab on Courseworks site)

Optional:

IDI, *Making Inroads: Chinese Infrastructure Investment in ASEAN and Beyond*
<http://www.inclusivedevelopment.net/wp-content/uploads/2016/08/Making-Inroads-China-Infrastructure-Finance.pdf>

Li-Wen Lin and Curtis Milhaupt. "We are the (National) Champions: Understanding the Mechanisms of State Capitalism in China," *Columbia Law and Economics Working Paper*, No. 409, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1952623

Nancy Alexander and Francis Kornegay, "New Battlegrounds in Development Finance," *Project Syndicate*, October 15, 2014 <https://www.project-syndicate.org/commentary/infrastructure-financing-and-emerging-economies-by-nancy-alexander-and-francis-a-kornegay-2014-10>

Lowell Chow, "Signs human rights are moving slowly up the agenda in corporate China," *The Guardian*, September 17, 2014, <http://www.theguardian.com/sustainable-business/2014/sep/17/human-rights-china-corporate-responsibility-taiwan-hong-kong>

Lowell Chow and Annabel Short, "China: Intense scrutiny on AIIB should spur it to fulfil its social and environmental mission" *South China Morning Post*, July 27, 2015 <http://www.scmp.com/comment/insight-opinion/article/1843470/intense-scrutiny-aiib-should-spur-it-fulfil-its-social-and>

Ma Jun and Simon Zadek, "Greening China's Financial System" *Project Syndicate*, May 11, 2015. <http://www.project-syndicate.org/commentary/china-sustainable-development-finance-by-ma-jun-and-simon-zadek-2015-05>

"China's Mining Industry at Home and Overseas: Development, Impacts and Regulation," Greenovation Hub, 2014, Chaps 3-5: http://www.ghub.org/cfc_en/wp-content/uploads/sites/2/2014/11/China-Mining-at-Home-and-Overseas_Main-report2_EN.pdf

Mar 10 No Class

Due to travel for spring break there will be no formal seminar. Students not traveling are encouraged to use the seminar room to work on projects.

*****March 13-17 Spring break*****

Mar 24 Advocacy Strategies

This class will explore complementary advocacy strategies, such as media, consumer and shareholder advocacy. The first part of class will be dedicated to group discussion and support on ongoing investment chain mapping cases as well as planning for the presentation on April 7.

Reading:

Chris Jochnick, "Attack Equivocate Engage: How Big Food Responds to a Tough New Campaign" <https://oxfamblogs.org/fp2p/attack-equivocate-engage-how-big-food-responds-to-a-tough-new-campaign/>

Erinch Sahan "Behind the Brands: Progress One Year On" (Feb 2013) <http://policy-practice.oxfam.org.uk/blog/2014/02/behind-the-brands-what-progress-is-there-one-year-on>

Become familiar with the campaign: <https://www.oxfam.org/en/campaigns/behind-brands>

Joanne Bauer, "The Coalition of Immokalee Workers and the Campaign for Fair Food: The Evolution of a Business and Human Rights Campaign," in Dorothee Baumann-Pauly and Justine Nolan, eds, *Business and Human Rights: From Principles to Practice*, Routledge, forthcoming. (See Readings folder in "Files & Resources")

Mar 31 Other uses of ICM

During this session we will invite other members of the Columbia community to discuss other or similar uses of ICM methodology

April 7 Group Work

April 6 Presentation to the Columbia Community

2:30- 4:00 pm Rm 1512 IAB

April 15 Litigation and Causes of Action

The first half of class will explore possible causes of action for litigation and how this might fit into an advocacy strategy should that fallback be necessary. During the second half of class, students will workshop their projects.

April 21 Group Work

April 29 Clinic Debrief

This class will be devoted in part to a reflection on the Clinic, and lessons learned in terms of both the subject matter (ICM) and the management of the Clinic.

May 12 Final date for all outstanding ICM and research work to be submitted to IDI and SIPA.

May 8-9 **Individual check out meetings** with Clinic students. Clinic check out.

Appendix 1: Clinic Projects

All students will undertake the following assignment at the start of and possibly for the duration of the Clinic:

- Class 3 (Sept 25): **Corporate Human Rights Responsibilities**
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- *Class Description*
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- During this class we will introduce human rights standards for business, with special attention to the UN Guiding Principles on Business and Human Rights which was unanimously endorsed by the UN Human Rights Council in 2011 and serves as the most authoritative standard. We will consider the relationship between the UNGPs and other standards, including the IFC performance standards, with an eye towards understanding the potential for making these standards binding on companies.
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- *Readings*
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- “The Corporate Responsibility to Respect: An Interpretive Guide” Office of High Commissioner for Human Rights
- http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf
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- *Optional*
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- David Kinley and Sarah Joseph, “Multinational Corporations and Human Rights: Questions about their Relationship,” 2002. Available in “Readings” file in “Files & Resources”.
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- Joanne Bauer, “The Problem with Corporate Social Responsibility,” *Open Democracy*, December 17, 2014: <https://www.opendemocracy.net/joanne-bauer/problem-with-corporate-social-responsibility>
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- John Ruggie, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/2006/97 (2006). Read paragraphs 9-30: <http://www1.umn.edu/humanrts/business/RuggieReport2006.html>
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- Also available in the “Readings” folder under “Files and Resources”. It’s fine to skim this for today, as we will be returning to it in future weeks.
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- David Kinley, “Making Power Responsible: Regulating the Relationship Between Corporations and Human Rights,” Submission to the Joint Committee on Human Rights: Call for Evidence, 6 March 2009 <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/5/5we23.htm>
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- Skim OHCHR, IBLF, UN Global Compact & Castan Centre for Human Rights Law at Faculty of Law, Monash University, “Human Rights Translated: A Business Reference Guide” http://human-rights.unglobalcompact.org/doc/human_rights_translated.pdf
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- Narmada Valley Dam memo, Emily Goldman for IDI. This is a sample memo of the kind of work we will be doing to start. (Files & Resources, Courseworks) *Note: This publication is for the Clinic use only and should not be shared outside the Clinic.*
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- Dustin Roasa, IFC Financial Intermediary Investments Research: Connecting the Dots Between the IFC and Land Grabs, Phase 1 (Files & Resources, Courseworks) *Note: This publication is for the Clinic use only and should not be shared outside the Clinic.*
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- Class 6 (Oct 16) **Working Session**
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- During this session we will meet with Fadi Dagher of Lehman Library and Kathleen Dryer of the Watson Library of Business and Economics, who will make explain the relevant available resources at Columbia for investment chain mapping. Students will report out on project work, and plan for the first report out to IDI scheduled for the next session.
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- Systematically identify links between target financial institutions, such as the International Finance Corporation, the Asian Development Bank, an Equator Bank and a pension fund that claims to adhere to strong environmental and social standards, and projects on the ground that are known to have violated or threaten community land rights. When these linkages are identified, conduct further research on the facts of each case and conduct a pressure point analysis. Work with IDI to alert affected communities about the information and provide advice on the opportunities presented for pursuing remedies.

Depending on the direction the cases take, the interests of the students, and the needs of IDI, student teams may be assigned to one of the following projects in addition to or in place of investment chain mapping work (as described above):

- Based on the experience conducting investment chain mapping and pressure point analysis prepare a guide for internal IDI and clinic use on how to conduct such research and analysis and a template for presenting the information to affected communities and local NGOs in an accessible form.
- Draft the Pathways to Justice website text by adapting IDI’s Guide, *Following the Money: An advocate’s guide to securing accountability in agricultural investments*. The text should be expanded to apply to other sectors, including extractives, hydropower, and other large-scale infrastructure and adapted for web application.
- Research and prepare a guide for internal use by IDI and other clinic students on the range of databases and other sources of information that can be used to conduct global investment chain mapping, including parent companies, investors and financiers

(“upstream” actors) and buyers such as traders, retailers and processors (“downstream” actors).

- Research and prepare memo for internal use by IDI on possible pressure points and strategies for influencing Chinese overseas investment (specifics to be determined). For example, conduct mapping of Chinese state owned enterprises that have listed subsidiaries in Hong Kong (and possibly Shanghai). Assess whether these subsidiaries are being used for outbound investment, and who has shares in them. Assess whether this generates leverage points for cases.
- For LLM students: Research and prepare memo for internal use by IDI on possible causes of action in 3-4 jurisdictions (to be determined) for taking legal action in theoretical cases against:
 - Equator Principle banks that are exposed to companies that have profited from land dispossession leading to material losses suffered by affected communities.
 - Buyers of commodities from companies that have cultivated the product on land taken involuntarily from communities in violation of local and /or customary laws.