

More Than 300 Civil Society Organizations From 73 Countries Urge Fundamental Reform at UNCITRAL's Investor-State Dispute Settlement Discussions

30 October 2018

Dear UNCITRAL Member States:

As representatives of civil society organizations across the globe, we reiterate our unequivocal opposition to the investor-state dispute settlement (ISDS) regime and the far-reaching rights for foreign investors enshrined in trade and investment treaties. ISDS and the investment treaty regime empower one class of interests – multinational corporations and investors – to sue governments outside of domestic court systems for unlimited amounts of compensation, including for the loss of expected future profits. A vast array of domestic laws, court rulings, regulations, and other government actions are subject to such attack, including non-discriminatory policies enacted in order to promote public welfare.

In recent years, this once-obscure feature of the international trade and investment regime has drawn increasing criticism: A growing chorus of government officials from across the political spectrum, small businesses, academics, jurists, civil society organizations and trade unions around the world have publicly proclaimed opposition to ISDS and urged governments to exit from the regime. As the number of ISDS cases filed each year has exploded, and corporations have won billions in attacks on a stunning array of policies that promote the general welfare, some governments have begun to terminate treaties that include ISDS and reject new trade and investment agreements that grant foreign investors excessive rights and access to ISDS.

In the context of this deserved global backlash against ISDS, the United Nations Commission on International Trade Law (UNCITRAL) – a UN body that has historically dealt with international commercial issues and is heavily dominated by the arbitration industry – launched Working Group III to “identify and consider concerns regarding ISDS; consider whether reform was desirable in light of any identified concerns; and, if the Working Group were to conclude that reform was desirable, develop any relevant solutions to be recommended to the Commission.” We commend the UNCITRAL member governments for recognizing that the current ISDS regime is politically and economically untenable.

After two meetings of the UNCITRAL Working Group III process, however, it has become clear that the scope of the discussion falls far short of addressing the fundamental flaws of an international investment regime that empowers one already-powerful class of society – foreign investors – to challenge public interest laws outside domestic courts. While we agree with many of the criticisms raised by governments in the UNCITRAL discussions related to the existing ISDS system's procedural flaws – including the high costs to governments and lack of transparency of the proceedings, the lack of coherence of awards, the inability to review the merits of even manifestly flawed awards, the highly problematic appointment process, the lack of ethical requirements of arbitrators, and the perverse effects of third-party funding of arbitration – these represent only a small subset of the many flaws and dangers of ISDS and the investment treaty regime.

Unless this regime is considered in its entirety, including whether it achieves its purported aims, and unless the far-reaching substantive corporate rights in the underlying treaties are eliminated, the UNCITRAL Working Group III process will not result in any meaningful change.

We specifically reject attempts by the European Union to push a “multilateral investment court” project as a “solution” in the UNCITRAL Working Group III process. This EU proposal would not only fail to address most of the fundamental flaws of ISDS and the current investment treaty regime, but seems designed to keep many of ISDS’s most damaging features (and flaws) intact. The EU’s proposed procedural changes would not limit the extraordinary substantive rights granted solely to foreign investors that extend beyond relevant domestic laws. And, most fundamentally, the EU proposal would continue to allow foreign investors to challenge non-discriminatory policies, including those that safeguard health, preserve the environment, and promote labour standards, outside countries’ domestic courts. Such a “multilateral investment court” would effectively lock in the investment treaty regime at a time when governments are wisely considering withdrawing from it altogether.

Instead of focusing on procedural tweaks on the margins of the ISDS system, governments in UNCITRAL should put their efforts into discussing on how to move away from the current investment treaty system altogether. Thus, a more constructive focus for UNCITRAL would be to concentrate on the structural problems of the investment treaty regime and to facilitate a discussion on termination or wholesale replacement of existing agreements without countries being bound to the extended “survival” clauses.

We call on our governments to refrain from signing any new trade and investment pacts that include these extraordinary rights for foreign investors, to terminate existing ISDS-enforced treaties, and to use the UNCITRAL process to address the fundamental problems of the current system. This means that governments must reject the EU’s “multilateral investment court” proposal, establishment of an appellate mechanism, or any other attempts to institutionalise or further entrench the investment arbitration regime.

Sincerely,

Global Organizations:

1. Public Services International

2. International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

3. Friends of the Earth International

4. Greenpeace International

5. International Transport Workers’ Federation

6. ActionAid

7. Association for Women's Rights in Development (AWID)

8. SumOfUs

9. Transnational Institute (TNI)

10. Society for International Development (SID)

11. The Grail International Network for Global Justice Overcoming Poverty

12. International Accountability Project

13. CIDSE

14. GRAIN

15. Africa Europe Faith & Justice Network

16. People's Health Movement

17. Bilaterals.org

18. Global Initiative for Economic, Social and Cultural Rights

19. Compassion in World Farming

20. Health GAP (Global Access Project)

Regional Organizations:

21. Arab NGO Network for Development Arab Region

22. Focus on the Global South Asia

23. Building and Wood-Workers' Internat'l Asia-Pacific Regional Office Asia-Pacific

24. Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI) Uganda East Africa

25. ClientEarth Europe

26. Corporate Europe Observatory Europe

27. Eurogroup for Animals Europe

28. European Federation of Public Service Unions (EPSU) Europe

29. Friends of the Earth Europe Europe

30. Global Social Justice Europe

31. Transport & Environment Europe

32. We Move Europe (WeMove.EU) Europe

33. Women In Development Europe+ (WIDE+) Europe

34. Seattle to Brussels Network Europe

35. Compassion in World Farming Europe

36. ATALC- Amigos de la Tierra América Latina y Caribe Latin America and Caribbean

37. ALTSEAN-Burma Southeast Asia

38. Asociación Americana de Juristas (AAJ) The Americas

Country and Local Organizations:

39. Acción por la Biodiversidad Argentina

40. Amigos de la Tierra Argentina Argentina

41. Asamblea Argentina Mejor sin TLC Argentina

42. ATTAC Argentina Argentina

43. CANPo (Corriente Agraria Nacional y Popular) Argentina

44. Confederación de Trabajadores Municipales (CTM) Argentina

45. CTA Autónoma Capital Regional Centro Argentina

46. Diálogo 2000 Argentina

47. ECOS de Saladillo Argentina

48. Foro Ciudadano de Participación por la Justicia y los Derechos Humanos Argentina

49. Observatorio de la Riqueza Padre Arrospe Argentina

50. Отраслевой Республиканский Союз профессиональных организаций работников здравоохранения Армении Armenia

51. Australian Catholic Social Justice Council Australia

52. Australian Council of Trade Unions Australia

53.	Australian Institute of Ecological Agriculture	Australia
54.	Australian Services Union	Australia
55.	AFTINET (Australian Fair Trade and Investment Network)	Australia
56.	Community and Public Sector Union State Public Services Federation	Australia
57.	Conservation Council of South Australia	Australia
58.	Environment East Gippsland Inc	Australia
59.	Friends of the Earth Australia	Australia
60.	Gene Ethics	Australia
61.	GM Free Margaret River	Australia
62.	Householders' Options to Protect the Environment (HOPE) Inc.	Australia
63.	Jubilee Australia Research Centre	Australia
64.	MADGE Australia	Australia
65.	Margaret River Regional Environment Centre	Australia
66.	National Toxics Network	Australia
67.	Organic Agriculture Association	Australia
68.	Pesticide Action Group of Western Australia	Australia
69.	Soil & Health Inc NZ	Australia
70.	Sustainable Agriculture & Communities Alliance	Australia
71.	#aufstehn	Austria
72.	Attac Austria	Austria
73.	Evangelischer Arbeitskreis für Weltmission Salzburg (EAWM Sazburg)	Austria
74.	Grüne Bildungswerkstatt NÖ	Austria
75.	Informationsgruppe Lateinamerika (IGLA)	Austria
76.	Künstlerhaus, Assoziation of Austrian Artists	Austria
77.	NeSoVe / Network Social Responsibility	Austria
78.	ÖBV-Via Campesina Austria	Austria
79.	Südwind	Austria
80.	transform!at	Austria
81.	younion _ Die Daseinsgewerkschaft	Austria
82.	Plattform Anders Handeln	Austria
83.	BPUBJSKU	Bangladesh
84.	Alliance nationale des Mutualités chrétiennes	Belgium
85.	CGSP/ ALR	Belgium
86.	CGSP/Parastataux	Belgium
87.	CNCD-11.11.11	Belgium
88.	Commission Justice et Paix	Belgium
89.	Entraide et Fraternité	Belgium

90. The Democracy Center	Bolivia
91. Centar za životnu sredinu/ Friends of the Earth Bosnia and Herzegovina	Bosnia and Herzegovina
92. Central Única dos Trabalhadores - Amapá	Brazil
93. CONDSEF/FENADSEF	Brazil
94. Confederacion Nacional de Los Trabajadores en la Seguridad Social de La Central única de los Trabajadores	Brazil
95. Contracs-CUT	Brazil
96. Federação dos Sindicatos dos Servidores Públicos no Estado de São (FESSP-ESP)	Brazil
97. Federação dos Trabalhadores Municipais de Santa Catarina	Brazil
98. Federação dos Trabs da Adm e do Serviço Publico Municipal no Estado de São Paulo	Brazil
99. Instituto EQUIT	Brazil
100. Núcleo Amigos da Terra Brasil	Brazil
101. REBRIP - Brazilian Network for People's Integration	Brazil
102. Sindicato dos Enfermeiros do Estado de São Paulo	Brazil
103. SINDSAÚDE/SP	Brazil
104. Sindsep-SP - Sindicato dos Trabalhadores na Administração Pública e Autarquias do Municipio de Sao Paulo	Brazil
105. SINPSI-Sindicato dos Psicólogos de São Paulo	Brazil
106. FEDERATION OF TRADE UNIONS _ HEALTH SERVICES _ CITUB	Bulgaria
107. Za Zemiata, Friends of the Earth Bulgaria	Bulgaria
108. EBENEZER	Burundi
109. Social Action for Community and Development	Cambodia
110. Fédération des Syndicats des Employés de la Santé, Pharmacies et Assimilés du Cameroun (FSESPAC)	Cameroon
111. Association québécoise pour la taxation des transactions financières et pour l'action citoyenne (ATTAC-Québec)	Canada (Québec)
112. Canadian HIV/AIDS Legal Network	Canada
113. Canadian Union of Public Employees (CUPE)	Canada
114. Centrale des syndicats démocratiques (CSD)	Canada
115. Centrale des syndicats du Québec (CSQ)	Canada (Québec)
116. Common Frontiers	Canada
117. Council of Canadians	Canada
118. Council of Canadians Northumberland Chapter trade group	Canada
119. Felician Sisters	Canada
120. Inter Pares	Canada
121. MiningWatch Canada	Canada
122. National Union of Public and General Employees (NUPGE)	Canada

123. OpenMedia	Canada
124. Public Service Alliance of Canada	Canada
125. Réseau québécois sur l'intégration continentale	Canada (Québec)
126. Centro Ecuménico Diego de Medellín	Chile
127. Comunidad Ecuménica Martin Luther King	Chile
128. ONG WE KIMUN	Chile
129. Plataforma Chile Mejor sin TLC	Chile
130. CENSAT	Colombia
131. Friends of the Earth Cyprus	Cyprus
132. NaZemi	Czech Republic
133. Action Paysanne Contre la Faim	Democratic Republic of the Congo
134. Conseil Régional des Organisations Non Gouvernementales de Développement	Democratic Republic of the Congo
135. Colombia Solidaritet	Denmark
136. KULU - Women and Development (KULU)	Denmark
137. NOAH Friends of the Earth Denmark	Denmark
138. Transform!Danmark	Denmark
139. APROGLOBO	Dominican Republic
140. Sindicato Nacional de Trabajadores de Enfermería, SINATRAE	Dominican Republic
141. Egyptian Association for Community Participation Enhancement	Egypt
142. CESTA Amigos de la Tierra	El Salvador
143. New Wind Association	Finland
144. Amis de la Terre	France
145. CCFD-Terre Solidaire	France
146. Institut Veblen	France
147. Sherpa	France
148. Public Service, Municipal and Bank Workers Trade Union	Georgia
149. BUND (Friends of the Earth Germany)	Germany
150. Forschungs- und Dokumentationszentrum Chile-Lateinamerika e.V.	Germany
151. Mehr Demokratie e.V.	Germany
152. Netzwerk Gerechter Welthandel	Germany
153. PowerShift e.V.	Germany
154. Stiftung Asienhaus	Germany
155. ver.di	Germany
156. WEED - World Economy, Ecology & Development	Germany
157. Ghana Registered Nurses and Midwives Association	Ghana
158. Φίλοι της Φύσης / Naturefriends	Greece

159. Internet Society Haiti Chapter	Haiti
160. Foro Dakar Honduras	Honduras
161. Diverziti Association	Hungary
162. Fenntarthatóság Felé Egyesület / Towards Sustainability Association	Hungary
163. Magyar Természetvédők Szövetsége / Friends of the Earth Hungary	Hungary
164. Védegylet Egyesület	Hungary
165. Initiative for Health & Equity in Society	India
166. IT for Change	India
167. LOCOST	India
168. Madhyam	India
169. Rajasthan Vidhyut Prasaran Mazdoor Congres (INTUC)	India
170. Society for Rural Education and Development	India
171. Indonesia for Global Justice	Indonesia
172. WALHI-Friends of the Earth Indonesia	Indonesia
173. Action from Ireland (Afri)	Ireland
174. Connect trade union	Ireland
175. Latin America Solidarity Centre (LASC)	Ireland
176. People's Movement	Ireland
177. Social Justice Ireland	Ireland
178. Stop CETA Alliance Ireland	Ireland
179. zero waste alliance ireland	Ireland
180. Irish Cattle and Sheep Farmers Association	Ireland
181. Fairwatch	Italy
182. All-Japan farmers' association	Japan
183. Food Policy Center Vision21	Japan
184. Forum for Peace,Human Rights and Environment	Japan
185. Mamademo	Japan
186. National Alliance of CSO's, Trade Unions, Farmer's Unions and Cooperatives for Joint Action Opposing to EPAs Modeled after TPP	Japan
187. Pacific Asia Resource Center (PARC)	Japan
188. People's Action against TPP	Japan
189. Jamaa Resource Initiatives	Kenya
190. Kenya Small Farmers Forum (KESFF)	Kenya
191. Natural Resources Alliance of Kenya	Kenya
192. The Inter-Religious Council Of Kenya (IRCK)	Kenya
193. The Kenya National Union of Nurses	Kenya
194. Union of Kenya Civil Servants	Kenya

195. Policy Analysis and Research Institute of Lesotho (PARIL)	Lesotho
196. Rural women's assembly	Lesotho
197. National Health Workers' Union of Liberia (NAHWUL)	Liberia
198. Trade union of defence and security - SOB	Macedonia
199. Consumers' Association of Penang	Malaysia
200. Sahabat Alam Malaysia (Friends of the Earth Malaysia)	Malaysia
201. Federation des syndicats du secteur publis du Mali	Mali
202. Reseau Mauritanien pour l'Action Sociale RMAS	Mauritania
203. Rodrigues Government Employees Association	Mauritius
204. Asamblea Nacional de Afectados Ambientales (ANAA)	Mexico
205. Central de Organizaciones Campesinas y Populares	Mexico
206. Centro de Derechos Humanos "Fray Francisco de Vitoria O.P.", A.C.	Mexico
207. Centro de Estudios para el Cambio en el Campo Mexicano	Mexico
208. Centro de Promoción y Educación Profesional Vasco de Quiroga	Mexico
209. Otros Mundos-Amigos de la Tierra Mexico	Mexico
210. Proyecto sobre Organización, Desarrollo, Educación e Investigación (PODER)	Mexico
211. Red Mexicana de Acción frente al Libre Comercio (RMALC)	Mexico
212. Centre for Human Rights and Development	Mongolia
213. Environmental and Human Health Aoteroaoa	New Zealand
214. Fancrest Estate	New Zealand
215. Gaia Trees	New Zealand
216. GE Free NZ Tai Tokerau	New Zealand
217. Hauraki Flooring Ltd.	New Zealand
218. It's Our Future	New Zealand
219. Murphy Pittman Enterprises	New Zealand
220. New Plymouth TPPA Action Group	New Zealand
221. New Zealand Public Service Association Te Pukenga Here Tikanga Mahi	New Zealand
222. Social Credit	New Zealand
223. Solutions Consultancy Ltd	New Zealand
224. The Awareness Party	New Zealand
225. TPP Free Wellington	New Zealand
226. NZ Council of Trade Unions Te Kauae Kaimahi	New Zealand
227. Campaign Against Foreign Control of Aotearoa (CAFCA)	New Zealand (Aotearoa)
228. Community Outreach for Development and Welfare Advocacy (CODWA)	Nigeria
229. Attac Norge	Norway
230. Federación Nacional de Asociaciones y Organizaciones de Empleados Públicos (FENASEP)	Panama

231. Dr Haider Abdel Shafi center for Culture & Development	Palestine
232. General Union of Health Service Workers (GUHSW)	Palestine
233. Social & Economic Policies Monitor (Al Marsad)	Palestine
234. Palestinian non governmental organizations network	Palestine
235. Red Peruana por una Globalización con Equidad (RedGE)	Peru
236. Alliance of Filipino Workers	Philippines
237. Freedom from Debt Coalition	Philippines
238. Indigenous Peoples International Centre for Policy Research and Education	Philippines
239. Trade Justice Pilipinas	Philippines
240. Alyansa Tigil Mina	Philippines
241. Sentro ng mga Nagkakaisa at Progresibong Manggagawa	Philippines
242. Institute of Global Responsibility	Poland
243. TROCA- Plataforma por um Comércio Internacional Justo	Portugal
244. ZERO - Association for the Sustainability of the Earth System	Portugal
245. Declic	Romania
246. MiningWatch	Romania
247. Lumiere Synergie pour le Developpement	Senegal
248. Syndicat Autonome des Travailleurs de la Sénégalaise des Eaux	Senegal
249. Syndicat National des Personnels Civils des Armées et Services de Sécurité Publics Privés et Assimilés (SYNPAS)	Senegal
250. Trade Union of Health and Social Care Workers NEZAVISNOST	Serbia
251. NPSWU	South Africa
252. South African Municipal Workers' Union	South Africa
253. Knowledge Commune	South Korea
254. Korean Pharmacists for Democratic Society	South Korea
255. MINBYUN-Lawyers for a Democratic Society International Trade Committee	South Korea
256. Alternativa3	Spain
257. Asociación Dignitat i Solidaritat - ADIS	Spain (Majorca)
258. ATTAC ESPAÑA	Spain
259. CCOO de Construcción y Servicios	Spain
260. CEDSALA	Spain (Pais Valencià)
261. Confederación Intersindical	Spain
262. Coordinadora Ecologista de Asturias	Spain (Asturias)
263. Coordinadora Estatal de Comercio Justo	Spain
264. Debt Observatory in Globalisation	Spain
265. ECOAR))) GLOBAL	Spain
266. Ecologistas en Acción	Spain

267. ELA (Euskal Sindikatua)	Spain (Basque Country)
268. ENTREPUEBLOS/ENTREPOBLES/ENTREPOBOS/HERRIARTE	Spain
269. Eticambio	Spain
270. Federación de Sanidad y Sectores Sociosanitarios (FSS-CCOO)	Spain
271. FeSP-UGT	Spain
272. Herver Trading SL	Spain
273. Ingeniería Sin Fronteras / Engineering Without Borders	Spain
274. Intersindical Valenciana	Spain (País València)
275. Izquierda Unida	Spain
276. La Tenda De Tot El Món	Spain
277. Mujeres de Negro contra la guerra	Spain (Andalucia)
278. OMAL - Paz con Dignidad	Spain (Estado Español)
279. Ong AFRICANDO	Spain (Gran Canaria)
280. Pica Pica HackLab	Spain (Asturias)
281. Plataforma “Asturias No a los Tratados de Libre Comercio”	Spain (Asturias)
282. Plataforma Auditoria Ciudadana de la Deuda _Sevilla	Spain (Andalucia)
283. Plataforma Cantabria por lo Público y Contra los Recortes	Spain (Cantabria)
284. Gender Studies Centre	Sudan
285. Friends of the Earth Sweden / Jordens Vänner	Sweden
286. Association for Proper Internet Governance	Switzerland
287. Mazingira Network - Tanzania (MANET)	Tanzania
288. Both ENDS	The Netherlands
289. FNV	The Netherlands
290. Milieudefensie	The Netherlands
291. Ondernemers van Nu	The Netherlands
292. Platform Aarde Boer Consument	The Netherlands
293. Platform Duurzame en Solidaire Economie	The Netherlands
294. SOMO	The Netherlands
295. Women's International League for Peace and Freedom Dutch section	The Netherlands
296. Forum Tunisien pour les Droits Economiques et Sociaux (FTDES)	Tunisia
297. Buliisa Initiative for Rural Development Organisation (BIRUDO)	Uganda
298. Community resources devt initiative kibaale	Uganda
299. The Uganda Association of Women Lawyers, FIDA Uganda	Uganda
300. Action Aid Uganda	Uganda
301. Fresh Eyes - People to People Travel cic	United Kingdom
302. Friends of the Earth EWNi	United Kingdom
303. Global Justice Now	United Kingdom

304. GMB Trade Union	United Kingdom
305. Traidcraft Exchange	United Kingdom
306. UNISON	United Kingdom
307. Unite the Union	United Kingdom
308. War on Want	United Kingdom
309. Action on Smoking and Health	United States of America
310. AFL-CIO	United States of America
311. Agricultural Missions Inc	United States of America
312. Alliance for Global Justice	United States of America
313. Amazon Watch	United States of America
314. Center for Constitutional Rights	United States of America
315. Center for International Environmental Law	United States of America
316. Citizens Trade Campaign	United States of America
317. Committee in Solidarity with the People of El Salvador (CISPES)	United States of America
318. Consumer Federation of America	United States of America
319. Earthworks	United States of America
320. Franciscan Action Network	United States of America
321. Institute for Agriculture and Trade Policy	United States of America
322. Institute for Policy Studies, Global Economy Project	United States of America
323. International Campaign for the Rohingya	United States of America
324. International Center for Technology Assessment	United States of America
325. International Corporate Accountability Roundtable	United States of America
326. Knowledge Ecology International	United States of America
327. Maryknoll Office for Global Concerns	United States of America
328. People Demanding Action	United States of America
329. Public Citizen	United States of America
330. Sierra Club	United States of America
331. The Jus Semper Global Alliance	United States of America
332. REDES-Amigos de la Tierra Uruguay	Uruguay
333. Vanuatu National Workers Union	Vanuatu