

**Intervention by ClientEarth
UNCITRAL Working Group III Discussions on ISDS Reform
4 April, 2019 in New York**

Joint Statement by SOMO, ITUC, Friends of the Earth Europe, Public Citizen, ClientEarth

Thank you, Chair. As this is the first time I am speaking on behalf of my organization, I would first like to thank the Secretariat for giving me the opportunity to participate in the deliberations of this working group.

In order to contribute to the debate in a positive and constructive way, without disrupting or delaying the discussions, I will try to be brief and will speak on behalf of the following organizations: SOMO, ITUC, Friends of the Earth Europe, Public Citizen, and ClientEarth.

We have so far been relatively quiet, given the limited value that we could have contributed to organizational matters. However, as we are getting closer to the end of the day, it seems that the moment is opportune to speak.

While there were concerns about the distinction between incremental and systemic approaches, it seems now that the term "structural" has been substituted to the term "systemic". A structural reform is however quite different, and this makes it even more clear that it only concerns appeal mechanisms, in particular the MIC, and excludes a range of factors that would not be considered as incremental.

Not only was the scope of the discussions limited from the beginning to the possibility of reforming procedural aspects of the ISDS mechanism, it seems that the scope of discussions has further shrunk around certain specific procedural aspects.

We believe that the only way to address the deep problems of the current system is through a real "systemic" reform. The achievement of such systemic reform requires a comprehensive, holistic approach, through which the fundamental problems of the system will be addressed.

In other words, the approach chosen to develop solutions should not be limited to improving or replacing certain procedural aspects (either incrementally or structurally), without getting at the heart of the problems. The approach chosen should instead ensure that sufficient space is dedicated for the development of solutions that will effectively and credibly address important concerns that have been neglected so far in the discussions. These concerns have triggered the urgent need for reforms and should not be ignored. They include the asymmetry of the system, the relationships of ISDS with national courts, as well as the regulatory chill.

If the goal is to provide a durable solution to a system that Member States have recognised as flawed, then these concerns should be given priority as well as the necessary space to solve them as part of any agenda that is inclusive, balanced, forward-looking, and likely to produce material results on the short term.

Chair, we would like to draw the attention of the members of the Working Group to a recent open letter, drafted and signed by 65 leading scholars in the field of international economic law, that calls on members of the Working Group to include this asymmetric structure of ISDS as a concern to be addressed in the current reform efforts.

We would urge the members of the Working Group to engage seriously with the concerns raised by these academics related to the asymmetric nature of ISDS, and not shy away from the much-needed holistic review of the system.