

# 7th Annual Forum of Developing Country Investment Negotiators



Jakarta, Indonesia | 4-6 November 2013

## Investment Treaties and Investor-State Dispute Settlement: Reform or Reject?

### PROGRAM

#### DAY 1 – Monday, 4 November 2013

9:00	<b>Registration</b>
9:30	<b>Opening Ceremony</b> <ul style="list-style-type: none"> <li>• <b>Nathalie Bernasconi-Osterwalder</b>, Program Leader and Senior International Lawyer, Investment and Sustainable Development Program, IISD</li> <li>• <b>Martin Khor</b>, Executive Director, South Centre</li> <li>• <b>H.E. Ms. Linggawaty Hakim</b>, Director General, Ministry of Foreign Affairs, Government of Indonesia</li> </ul>
10:15	<i>Break</i>
10:30	<b>Session 1:</b> <b>Placing Investor-State Arbitration in the Overall Context of International Investment Law and Policy</b> <ul style="list-style-type: none"> <li>- Origins of investor-state arbitrations</li> <li>- Raison d'être of investment treaties and the lack of conclusive evidence that investment treaties promote FDI</li> <li>- Arbitration under treaties, contracts, and domestic law</li> <li>- Commercial arbitration V investor-state arbitration</li> <li>- What are the benefits of investor-state arbitration, under what terms?</li> </ul> <b>Chair:</b> <ul style="list-style-type: none"> <li>• <b>Martin Khor</b>, Executive Director, South Centre</li> </ul> <b>Speakers:</b> <ul style="list-style-type: none"> <li>• <b>M. Sornarajah</b>, CJ Koh Professor of Law, National University of Singapore</li> <li>• <b>Lauge Poulsen</b>, Research Fellow Nuffield College, University of Oxford; Senior Research Fellow, University of London, SOAS</li> </ul> <b>Commentator:</b> <ul style="list-style-type: none"> <li>• <b>Xavier Carim</b>, Deputy Director General, International Trade and Economic Development, South Africa</li> </ul>
11:45	<b>Session 2:</b> <b>Developments and Trends in Investor-State Arbitration</b> <ul style="list-style-type: none"> <li>• Development and trends in substantive treaty content: definition of investment, FET, expropriation, MFN and national treatment, umbrella clause, etc</li> <li>• Standard of review of sovereign measures and the expansion of jurisdiction</li> </ul> <b>Chair:</b> <ul style="list-style-type: none"> <li>• <b>Amina Ousmoi</b>, Head of Relations with Northern, Central and Eastern European countries, Department of the Treasury and External Finance, Ministry of Economy and Finance, Morocco</li> </ul>

# 7th Annual Forum of Developing Country Investment Negotiators



**Jakarta, Indonesia | 4-6 November 2013**

	<p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• <b>Elisabeth Tuerk</b>, Officer in Charge, International Investment Agreements Section, Division on Investment and Enterprise, UNCTAD</li> <li>• <b>Sanya Reid Smith</b>, Senior Researcher, South Centre</li> <li>• <b>Gus Van Harten</b>, Associate Professor, Osgoode Hall Law School</li> </ul>
13:00	Lunch
14:00	<p><b>Break-out discussion 1:</b></p> <ul style="list-style-type: none"> <li>- What challenges are countries facing in light of the increase in investment arbitration?</li> <li>- What aspects of investment arbitration are perceived as particularly troublesome?</li> <li>- What types of responses are available?</li> </ul> <p>A list of challenges will be compiled to inform Session 3.</p> <p><b>Chair:</b></p> <ul style="list-style-type: none"> <li>• <b>Manuel Montes</b>, Senior Advisor on Finance and Development, South Centre</li> </ul>
15:30	Break
16:00	<p><b>Session 3:</b> <b>Identifying the Critical Issues in the Current Investor-State Dispute Settlement Model (1)</b></p> <ul style="list-style-type: none"> <li>• Specific issues addressed in investment treaties, e.g.: <ul style="list-style-type: none"> <li>○ Pre-conditions to consent, role of domestic courts, exhaustion of local remedies</li> <li>○ Survival clause in case of termination</li> <li>○ Relationship of investor-state arbitration to mediation, state-state dispute settlement, etc.</li> <li>○ Scope of investor-state dispute settlement</li> </ul> </li> </ul> <p><b>Chair:</b></p> <ul style="list-style-type: none"> <li>• <b>Abdul Kadir Jailani</b>, Director of Treaties and Economic, Social and Cultural Affairs, Ministry of Foreign Affairs, Indonesia</li> </ul> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• <b>Nathalie Bernasconi-Osterwalder</b>, Program Leader and Senior International Lawyer, Investment and Sustainable Development Program, IISD</li> <li>• <b>Xavier Carim</b>, Deputy Director General, International Trade and Economic Development, South Africa</li> <li>• <b>Cliff Manjiao Chi</b>, Associate Professor, Law School, Xiamen University, China</li> </ul> <p><b>Commentators:</b></p> <ul style="list-style-type: none"> <li>• <b>Chantal Ononaiwu</b>, Trade Policy and Legal Specialist, CARICOM Secretariat</li> </ul>
17:30	End of Day
18:30	Welcome Reception by the Government of Indonesia

# 7th Annual Forum of Developing Country Investment Negotiators



Jakarta, Indonesia | 4-6 November 2013

DAY 2 – Tuesday, 5 November 2012

9:00	<p><b>Session 4:</b> <b>Identifying the Critical Issues in the Current Investor-State Dispute Settlement Model (2)</b></p> <ul style="list-style-type: none"><li>- Systemic issues, e.g.:<ul style="list-style-type: none"><li>• Arbitrator independence</li><li>• Standards of review and accountability of arbitrator decisions, conflicting decisions, errors of law in decisions, etc.</li><li>• Insufficient transparency</li></ul></li> <li>- Institutional issues and deficiencies, e.g.<ul style="list-style-type: none"><li>• Lack of appeals process or judicial framework</li><li>• No institutional mechanisms to address problems arising from the settlement of disputes</li><li>• No linkages with policy development for evolution of regime</li><li>• No longer term regime development processes</li></ul></li></ul> <p><b>Chair:</b></p> <ul style="list-style-type: none"><li>• <b>Ciata Bishop</b>, Executive Director, National Investment Commission, Liberia</li></ul> <p><b>Speakers:</b></p> <ul style="list-style-type: none"><li>• <b>Howard Mann</b>, Associate &amp; Senior International Law Advisor, Investment and Sustainable Development Program, IISD</li><li>• <b>Veniana Qalo</b>, Economic advisor, Economic Affairs Division, Commonwealth Secretariat</li></ul> <p><b>Commentator:</b></p> <ul style="list-style-type: none"><li>• <b>Edwini Kessie</b>, Chief Trade Adviser, Office of the Chief Trade Adviser for Forum Island Countries (OCTAPIC)</li></ul>
10:30	Break
11:00	<p><b>Session 5 (interactive):</b> <b>Dealing with the Challenges: What steps are States taking to address Investor-State arbitration issues today?</b></p> <ul style="list-style-type: none"><li>- In this session, a panel of states will share their experience on how they are dealing with challenges posed by investor-state dispute settlement. What has worked and what has not.</li></ul> <p><b>Chair:</b></p> <ul style="list-style-type: none"><li>• <b>Howard Mann</b>, Associate &amp; Senior International Law Advisor, Investment and Sustainable Development Program, IISD</li></ul> <p><b>Speakers:</b></p> <ul style="list-style-type: none"><li>• <b>Andrés Arauz</b>, Deputy Secretary General, Department of Planning and Development, Ecuador</li><li>• <b>Manelyn E. Caturla</b>, State Solicitor II, Office of the Solicitor General, Philippines (TBC)</li><li>• <b>Ricardo Ampuero</b>, Special Commission on International Investment Disputes, Ministry of Economy and Finance, Peru</li><li>• <b>Federico Lavopa</b>, Coordinator, Centro de Economía Internacional, Ministry of Foreign Affairs, Argentina</li><li>• <b>Peter Baghume</b>, Principal Economist, Ministry of East African Cooperation, Tanzania</li></ul>

# 7th Annual Forum of Developing Country Investment Negotiators



**Jakarta, Indonesia | 4-6 November 2013**

12:30	Lunch
14:00	<p><b>Session 6: Defining and Refining Alternatives and Options for Reform</b></p> <p>This extended afternoon session will examine in detail options for reform of the investor-state system and alternatives to investor-state arbitration, including the legal issues and processes relating to these options. It will include options raised throughout the preceding sessions, as well as several already in the public debate.</p> <p>Alternatives to current investor-state arbitration model</p> <ul style="list-style-type: none"> <li>• No investor-state</li> <li>• National dispute settlement</li> <li>• Regional dispute settlement (investor-state or state-state)</li> <li>• Alternative dispute resolution</li> <li>• Appeals facility</li> <li>• Standing international investment court</li> </ul> <p>Reform of various aspects of the current system:</p> <ul style="list-style-type: none"> <li>• Specific</li> <li>• Systemic</li> <li>• Institutional</li> </ul> <p>UNCTAD to present 'Reform of Investor-State Dispute Settlement: In Search of a Roadmap'</p> <p><b>Chair:</b></p> <ul style="list-style-type: none"> <li>• <b>Nathalie Bernasconi-Osterwalder</b>, Program Leader and Senior International Lawyer, Investment and Sustainable Development Program, IISD</li> </ul> <p><b>Speakers:</b></p> <ul style="list-style-type: none"> <li>• <b>Elisabeth Tuerk</b>, Officer in Charge, International Investment Agreements Section, Division on Investment and Enterprise, UNCTAD</li> <li>• <b>Chantal Ononaiwu</b>, Trade Policy and Legal Specialist, CARICOM</li> <li>• <b>Andrés Arauz</b>, Deputy Secretary General, Department of Planning and Development, Ecuador</li> <li>• <b>Federico Lavopa</b>, Coordinator, Centro de Economía Internacional, Ministry of Foreign Affairs, Argentina</li> <li>• <b>Gus Van Harten</b>, Associate Professor, Osgoode Hall Law School</li> <li>• <b>Erivaldo Gomes</b>, General Coordinator for Trade Policy, Ministry of Finance, Brazil</li> </ul> <p><b>Commentators:</b></p> <ul style="list-style-type: none"> <li>• <b>M. Sornarajah</b>, CJ Koh Professor of Law, National University of Singapore</li> </ul>
15:30	Break
16:00	<p><b>Session 6 (cont.): Defining and Refining Alternatives and Options for Reform</b></p>
17:30	End of Day

# 7th Annual Forum of Developing Country Investment Negotiators

Jakarta, Indonesia | 4-6 November 2013

## DAY 3 – Wednesday, 6 November 2012

9:00	<p><b>Review and Setting the Stage</b> Building on the discussions over the past days, this session will set the stage for the break-out sessions and the discussion on recommendations.</p>
10:00	<p><b>Break-out discussion 2:</b></p> <ul style="list-style-type: none"> <li>• How can states be most effective in dealing with challenges relating to investor-state dispute settlement? Collectively, regionally, bilaterally, unilaterally?</li> <li>• This is a synthesis session for defining the issues and appropriate reform options, processes and alternatives available to address:</li> <li>• Specific issues arising under existing treaties</li> <li>• Systemic challenges</li> <li>• The lack of institutional structures</li> </ul> <p><b>Chair:</b></p> <ul style="list-style-type: none"> <li>• <b>Kinda Mohamadieh</b>, Senior Researcher, South Centre</li> </ul>
10:30	<i>Break: coffee to be served during breakout session</i>
11:30	<b>Breakout group reports and recommendations</b>
12:30	<i>Lunch</i>
14:00	<p><b>Session 7:</b> <b>The Way Ahead for Developing Countries: Recommendations for next steps</b></p> <ul style="list-style-type: none"> <li>• Discussion on a common position for responding to issues</li> <li>• Interpretation of provisions; re-negotiation or termination of investment treaties; establishing national, regional and other international frameworks</li> </ul> <p><b>Chair:</b></p> <ul style="list-style-type: none"> <li>• <b>Veniana Qalo</b>, Economic Advisor, Economic Affairs Division, Commonwealth Secretariat</li> </ul> <p><b>Commentator:</b></p> <ul style="list-style-type: none"> <li>• <b>Howard Mann</b>, Associate &amp; Senior International Law Advisor, Investment and Sustainable Development Program, IISD</li> </ul>
16:00	<p><b>Closing Ceremony</b></p> <ul style="list-style-type: none"> <li>• Government of Indonesia</li> <li>• International Institute for Sustainable Development</li> <li>• The South Centre</li> </ul>
16:30	<b>Closing Reception</b>