



### **WORKSHOP REPORT FORM**

Number and title of workshop

*Workshop 4.6, Shedding Light onto Investment Arbitration*

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Date and time of workshop

*Saturday, November 1, 2008, 11.00am-1.00pm*

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Moderator (Name and Institution)

*Sofia Plagakis, Center for International Environmental Law*

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Rapporteur (Name and Institution)

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Panellists (Name, institution, title)

Panelists include:

Jacob Werksman, Program Director, Institutions and Governance Program, World Resources Institute;

Nathalie Bernasconi-Osterwalder, Managing Attorney, Geneva, CIEL;

Lucinda Low, Partner, Steptoe & Johnson LLP.

### **Main Issues Covered**

The workshop, organized by the Center for International Environmental Law, explored the linkages between investment arbitration and corruption, and addressed the problems related to the lack of transparency in international investment arbitration.

The session discussed how lifting the veil of secrecy would help expose and thus fight corruption in international investment. The panellists touched on the ways to introduce transparency and, to some extent, participation, into international



investment dispute settlement.

Sofia Plagakis of CIEL provided a brief introduction regarding CIEL's project to reform international dispute settlement processes with the aim to making these more transparent, and to some extent, more participatory. She discussed how international dispute settlement has a serious democracy deficit with respect to transparency and accountability. She noted that given that bribery is a widespread phenomena in transnational investment, the need for transparency in investment disputes is particularly urgent.

Nathalie Bernasconi-Osterwalder provided a brief background of investment arbitration, and provided the linkages investment arbitration and the lack of transparency.

Lucinda Low built on Nathalie's presentation, focusing on both the substantive and procedural aspects of corruption-related cases, highlighting the complexities.

Jacob Werksman made the linkages between climate change, investment and corruption by discussing the Executive Board of the Kyoto Protocol's Clean Development Mechanism, focusing on its role in carbon-related investments.



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### **Main Outcomes**

Investment arbitration, meaning arbitrations between host states and investors should be transparent, notwithstanding the complexities relating to corruption.

The arbitration rules of the United Nations currently under revision (UNCITRAL Arbitration Rules) must be revised to make investment arbitration more transparent, while taking into account well-defined exemptions relating to commercial secrets and national security.

Investment treaties should incorporate transparency rules in order to allow for exposure of corruption in international investments.

The issue of corruption arising in the context of commercial arbitrations (between two private parties) should be further studied.

The possibility of a standing arbitral body or an appeals process for investment arbitration should be further explored, especially considering the need to address conflict of interest problems of arbitrators.

### **Main Outputs**

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**Recommendations, Follow-up Actions**



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**Workshop Highlights (including interesting quotes)**

**Signed**

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