

RCEP Regional Comprehensive Economic Partnership

Robbing Communities to Extract Profit

On the heels of the recently concluded Trans Pacific Partnership Agreements, another binding, global agreement is being negotiated behind closed doors. Similar to the TPP, this trade agreement will institutionalise inequalities; it will severely curtail peoples' rights and freedoms and cement corporate rights over national public interest law and the right of governments to govern in the interests of their constituents. The obscurely named Regional Comprehensive Economic Partnership is a "free trade" agreement between big corporations, ASEAN and its 6 major trading partners from the Asia Pacific region. In the future the TPP and RCEP are likely to come together and form the economic blueprint for the "Free Trade Area of the Asian Pacific".

In its current composition, the RCEP **incorporates 50% of the world's population and 29% of the global GDP**. The agreement covers trade issues including trade in goods, services and agriculture, customs, tariffs and trade subsidies though this represents only a small portion of the agreement. The majority of the agreement however does not relate directly to trade. Instead, it gives wealthy countries and large corporations the authority to reach across borders to impose constraints on a vast array of domestic non-trade policies. These will impact among other things; the environment, agriculture, investment, telecommunications, visas, labor, and intellectual property. The extent of RCEP's coverage both in terms of the issues faced and the number of people whose lives and livelihoods will be impacted is unprecedented.

Who is Part of RCEP?

- Australia
- Brunei
- Cambodia
- China
- Indonesia
- India
- Japan
- Laos
- Malaysia
- Myanmar
- New Zealand
- Philippines
- Singapore
- South Korea
- Thailand
- Vietnam
- And more soon

RCEP covers

50% of the world's population
29% of global GDP

Whose "pivot" is Asia Pacific?

The RCEP is a China-led rival to the US-led TPP. The US has long maintained a political and economic hegemony in the Asia Pacific region and this hegemony is now being challenged with the rise of China. And while both agreements are being touted as free trade agreements, the competition between TPPA and RCEP is ultimately a battle to determine whether the US or China makes the rules in the Asia-Pacific region. Developed countries such as Japan, South Korea, Australia and New Zealand see the RCEP as a means by which their corporate investors can gain access to the Indian market, as well as gain more secure rights and protections in other ASEAN countries. In a world where inequality is on the rise not just within countries, but also between countries and global powers, these trade agreements will hinder poor and developing countries from pursuing and protecting their interests and sovereignty.

The Asia Pacific Forum on Women, Law and Development is the region's leading network of feminist organisations and women. Our 180 members represent groups of diverse women from 25 countries in the region. We have consultative status with the Economic and Social Council of the United Nations. For 25 years APWLD has been empowering women to use law as an instrument of change for equality, justice, peace and development. We use research, training, advocacy and activism to claim and strengthen women's human rights.

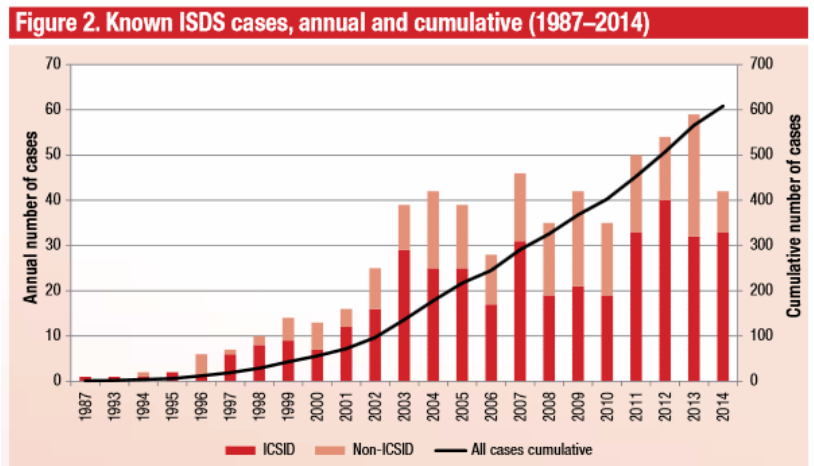


The New Age of Corporate Power

While initially it was believed that RCEP would provide a different form of investment protection clause, it appears that the current proposal is almost identical to that found in the TPP. These clauses, known as 'investor state dispute settlement' (ISDS) provide protection for corporations but not for States nor for the general population. It gives corporations the power to sue governments in secret tribunals if they pass any laws, policies, or regulations that infringe on the capacity of corporations to gain profit. They allow investors to sue States but States are unable to sue investors.

While ISDS clauses have always existed, investors' are protected in both TPP and RCEP to a far greater extent than in other previous trade agreements.

Recent trends and list of known ISDS cases shows that corporations are regularly and increasingly using ISDS to avoid paying their legitimate taxes, undermine policies made in public interests, punish governments that limit intellectual property rights, and more generally give investors the unique standing and ability to avoid and erode the democratic institutions created to make laws and resolve disputes. Consumer laws, environmental protections and climate policies, public health laws, or food labeling laws - these can all be regarded as infringing on 'investor rights'. The majority of cases consist of corporations from developed countries suing developing countries. The option to sue governments outside of domestic courts is open only to foreign corporations, so foreign corporations have greater rights and protection than either the public or local businesses. ISDS is an attack on the rights of developing countries to protect their citizens.



Source: UNCTAD, ISDS database.
Note: Preliminary data for 2014.

ISDS operates outside of domestic law and domestic courts, in secret tribunals where corporate lawyers sit as judges in one case and represent parties in the next. There is no obligation to publish decisions or allow observers, nor is there any appeal mechanism.

A group of **Italian companies** sued the **South African government** under the claim that the post-apartheid affirmative action provisions, which require black South Africans to have a 50% share hold in mineral resource companies, damaged their investments. The case was settled when the SA government agreed to reduce this requirement to 26%.



After being ordered by an Ecuadorian court to pay USD 9.5 billion for their responsibility on the pollution in the Amazon, **Chevron** subsequently used ISDS to sue **Ecuador** in order to avoid paying for the damage they inflicted.



The government of **Philippines** has reportedly spent USD 58 million on legal costs after a case was filed by **Fraport** over a contract that the Philippine government had wanted to renegotiate due to allegations of corruption.



Metalclad was awarded USD 16.7 Million after suing the government of **Mexico**. The Mexican municipal government had declined an application for a toxic waste facility because of the risk of toxic waste penetrating the soil and water supplies.

METALCLAD vs.



In a RCEP Regime. . .



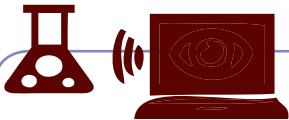
National governments would be vulnerable to claims and lawsuits from corporations for compensation when labour, environmental, health, land use and zoning laws reduce expected profits;



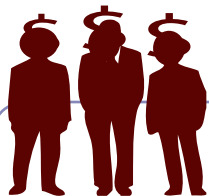
Corporations could have their own, self-regulated environmental laws that could over-ride national environmental protection laws;



Citizens of participating countries could have limited access to generic medicine for cancer, HIV/AIDS and other medical conditions. Big pharmaceutical companies could have new powers and thus extend patent monopolies, control medicine pricing and have data exclusivity on lifesaving medications;



Rules around genetically modified organisms, labeling and content might be prohibited; internet service providers could be required to regulate and scrutinise user activities; small scale data sharing would be treated and fined the same as large scale for profit copyright violations;



Banker's would be in paradise. Financial deregulation would prevail; and bans on risky financial products and services would be lifted. RCEP would prohibit proposals for global taxes on speculation as well as other initiatives that increase corporate accountability.

List of currently proposed RCEP chapters/annex:

- Rules of Origin
- Customs Procedures and Trade Facilitation
- Sanitary and Phytosanitary Measures
- Standards, Technical Regulations and Conformity Assessment Procedures
- Trade in Services
- Telecommunications
- Electronic Commerce
- Investment
- Economic and Technical Cooperation
- Intellectual Property
- Competition
- General Provisions and Exceptions
- Institutional Provisions
- Dispute Settlement
- Financial Services
- Schedules of Tariff Commitments
- Annex on Product Specific Rules
- Services and Investment Schedules

Backdoor mechanism in favour of corporations

This transnational legal regime has been crafted behind closed doors. In the past four years and to this day, no text has been made available to members of the public, parliamentarians, civil society or media. While certain corporate and business groups have had access to the negotiations alongside government officials from participating countries, ordinary citizens who have to live with the results have had no say. Vulnerable communities will be subjected to the will of corporations without being able to know what they are up against.

The little we know about the RCEP so far has come from leaked documents. RCEP was initially expected to be more favourable toward developing countries with lesser demands for regulatory harmonisation and slower reductions in trade barriers, particularly for least developed countries. It is clear from the two leaked documents however that RCEP will threaten people's access to medicine and empower corporations through investor-state dispute settlement- both of which would prove very damaging for developing countries. RCEP provides a blatant example of corporate aggression on national sovereignty, democracy and human rights.

BAD FOR ALL, HORRENDOUS FOR WOMEN

Policies of competition, privatisation, liberalisation, and deregulation have the most negative impact on the poor. Women comprise 70% of the world's poor.

Public Services - Women rely more heavily than men on public services and safety nets. Reduced public expenditure impacts most heavily on the poor - particularly poor women. The RCEP will have a negative impact on public services in developing countries in numerous ways. The reduction of tariffs denies government an important percentage of revenues. The exorbitant cost of ISDS cases takes up a sizable chunk of public expenditure. The RCEP will also encourage private sector competition and participation within the provision of public services. The privatisation of health, education, water, energy and public services have demonstrated to have the most negative impact on women. Corporations are simply not interested in providing services in poor communities without a fee, these limitations further entrench social and gender inequalities. The Philippines government reportedly spent USD 58 million on legal services for an ISDS case, money that is equivalent to the salaries of 12,500 teachers for one year, the vaccination of 3.8 million children against diseases such as TB, diphtheria, tetanus and polio, or the construction of 2 new airports.

Land and Resources- Women make up the majority of the regions subsistence farmers but are continually denied control and access over land and resources. Land grabbing, global warming and large scale development is diminishing the land available to small land farmers and causing displacements. Agreements such as RCEP will exacerbate this further by granting corporations more rights to acquire land, natural resources, and factories as well as challenge planning and environmental laws designed to curb maldevelopment. Free trade agreements pit subsistence farmers against the might of agro-business and drive farmers into cash crops. The RCEP wants governments to go beyond the requirements of the World Trade Organisation's (WTO) agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which will increase corporations monopoly over seeds and provide criminal punishment for any farmer's infringement of corporations' seeds rights.



Health Care -When healthcare is expensive, women suffer the most. Too often when families have limited funds, women's health is deemed expendable. India and China are major suppliers of generic medicine for the world's poorest. The role of Indian generic firms in substantially lowering the price of HIV medicines is well known, this however has only been possible with the use of India's intellectual property laws which balance private rights with interests of the public. The RCEP would grant pharmaceutical companies unrestrained privileges and ownership over both basic medicine and medical services. It proposes monopoly protections beyond both the obligations of existing IP agreements and IP laws of many RCEP countries. This increased restriction under RCEP will decrease access to affordable medications for many people. When a Canadian court refused to grant Eli Lilly a new patent because the drug failed to deliver the benefits promised when the patent was claimed, Eli Lilly sued the Canadian government for USD 481 Million for loss of expected future profits.



Decent Work and Living Wage-A race to the bottom with women at the bottom. The RCEP promotes labour competition but will not protect labour rights. Trade agreements such as RCEP are designed to facilitate greater market competition and the freer flow of global capital, enabling increased access to resources and cheap labour in signatory countries. RCEP will promote export oriented economies rather than promote domestically focused economies. Nearly two thirds of women in Asia Pacific work in "vulnerable employment" lacking basic security, benefits and decent working conditions. Women also comprise an increasing percentage of workers in export industries, they are most likely to experience the downward pressure on wages, conditions and rights. Italian investors brought an action against South Africa arguing that's South Africa's Black Economic Empowerment (BEE) Policy (an affirmative action policy) would expropriate investor profits. Meanwhile Egypt is facing an ISDS case for increasing minimum wage in the country. Similar arguments could be brought against countries who meet their CEDAW obligations to take 'temporary special measures' or increase minimum wages to remedy historic economic disadvantage experienced by women and other marginalised communities.

Join the People's Resistance against a Common Crisis

The hypocrisy of the global moment is staggering. As the international community commits to the implementation of the new Sustainable Development Goals (SDG's)/Agenda 2030, trade agreements such as the TPP and RCEP will perpetuate inequalities and exploitation. Unlike trade agreements, the Agenda 2030 is not going to be enforced. Whatever progress is achieved through Agenda 2030 will be undermined in the participating countries by the RCEP. What we need is a new global structure that prioritizes people over profit.

People's movements are fertile; national and regional civil societies and movements from across the region are rising against RCEP. As we face growing and deepening inequalities and an extreme environmental crisis, join us as we embark on a new path, one that the vast majority of this world wants, a path towards global equity, ecological sustainability, social justice, human rights and dignity for all. We call for an absolute end to the Regional Comprehensive Economic Partnership, and for a framework that aims to reduce inequalities of wealth, power and resources between countries, between rich and poor and between men and women- rather than increase them.

If you are interested to be part of civil society's mobilization and campaign against the RCEP, contact: diyana@apwld.org