RCEP Regional Comprehensive Economic Partnership

Robbing Communities to Extract Profit

Sixteen countries of the Asia Pacific region are negotiating a dangerous trade agreement designed to give multinational corporations unprecedented power and rights over resources, wealth and policy making. The Regional Comprehensive Economic Partnership is a trade agreement between big corporations, ASEAN and its 6 major trading partners from the Asia Pacific region. In its current composition, the RCEP covers more than 50% of the world's population and 29% of the global GDP.

Countries Part of RCEP (and their GDP in US$)

- Australia (1.205 Trillion)
- Brunei (11 Billion)
- Cambodia (20 Billion)
- China (11.199 Trillion)
- Indonesia (932 Billion)
- India (2.263 Trillion)
- Japan (4.939 Trillion)
- Laos (15 Billion)
- Malaysia (296 Billion)
- Myanmar (67 Billion)
- New Zealand (185 Billion)
- Philippines (304.9 Billion)
- Singapore (296.9 Billion)
- South Korea (1.411 Trillion)
- Thailand (406.8 Billion)
- Vietnam (202 Billion)
- And more soon...

RCEP covers

50% of the world's population

29% of global GDP

Multinationals from RCEP Countries that have Used ISDS:

Japan - JGC

South Korea- Samsung

Malaysia - Telekom

Singapore - CEMEX

Australia - Churchill Mining

What will the RCEP Cover?

Although the RCEP is being secretly negotiated, we know what chapters are being proposed and some of the draft content has been leaked. 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 agreement goes far beyond trade and gives wealthy countries and large corporations the authority to reach across borders to impose constraints on a vast array of domestic policies.

In a world where inequality is on the rise and climate change is threatening our existence and these trade agreements will hinder poor and developing countries from pursuing and protecting their interests and sovereignty.

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

The New Age of Corporate Power

Rolling Out the Red Carpet for Corporations

To date, no text has been made available to members of the public, parliamentarians, civil society or media. However, corporations and business lobbyist such as East Asia Business Council (EABC) and Asian Trade Centre (ATC) have had access to the negotiations, carrying out briefings and workshops for government negotiators. EABC is a network of business chambers and trade associations from ASEAN countries, Japan, South Korea and China, while ATC's funders include some of the largest multinational corporations in the world, such as Rio Tinto, Google and HP.

ISDS - Secret Playground for Corporations to Sue Government

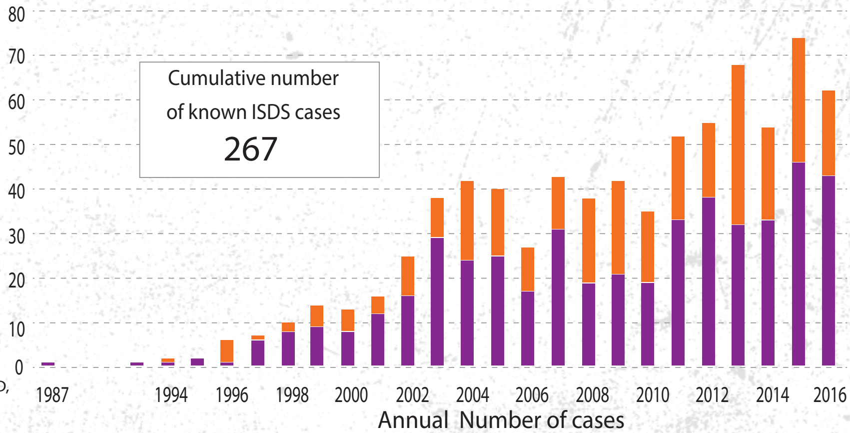
A leaked RCEP Investment chapter contains clauses known as the 'investor state dispute settlement' (ISDS) mechanism. ISDS is a legacy of colonialism. First introduced in the late 1950s it appeared in many treaties between former colonial governments and newly independent governments to prevent nationalization of their multinational corporations' physical property following independence. ISDS 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 profit. Recent lists of known ISDS cases shows that corporations have used ISDS to avoid paying their taxes, undermined policies made in public interests, punish governments that limit intellectual property rights or reverse privatization. Consumer laws, environmental protection laws and climate policies, labour laws, public health laws, or food labeling laws can all potentially be regarded as infringing on 'investor rights'.

Trends in known treaty-based ISDS cases
1987-2016

ICSID Non-ICSID

Note: Information has been compiled on the basis of public sources, including specialized reporting services. UNCTAD's statistics do not cover investor-State cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signalled its intention to submit a claim to ISDS but has no commenced the arbitration. Annual and cumulative case numbers are continuously adjusted as a result of verification and may not match case numbers reported in previous years

Source: ©UNCTAD,



The majority of cases are initiated by corporations from developed countries against developing countries. 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. Arbitration costs average over US$ 8 million per dispute, exceeding US$ 50 million in some. There is no obligation to publish decisions or allow observers, nor is there any appeal mechanism. ISDS allows investors to sue States but not vice versa. UN experts have noted that ISDS cases have had a 'chilling effect' on governments.

Peru revoked the operating license of mining company, Doe Run for failing to meet environmental protection standards at its metal smelting plant which led to one of the most polluted places in the world. Levels of lead, cadmium and arsenic in the blood of children living there were dangerously high. The company sued for US$ 800 million.

THE DOE RUN COMPANY

The government of Philippines has reportedly spent US$ 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. The legal fees alone could cover salaries of 12,500 teachers for one year, the vaccination of 3.8 million children against diseases such as tuberculosis, diphtheria, tetanus and polio, or the construction of 2 new airports.

Fraport

Vodafone took over much of India's telecommunications using a number of offshore holdings and is suing India using ISDS twice, to avoid paying the capital gains tax bill it was presented with. If successful it will deny Indian billions in revenue.

The city of Buenos Aires cancelled a contract with energy and water giant Suez due to repeated service failures, including providing water with excessive levels of nitrate. The government of Argentina was sued and had to pay US$ 383 million. In its ruling, the World Bank's International Center for Settlement of Investment Disputes said that rejected the notion that the human right to water should be given priority over investor interests.

suez

Bad for All, **Horrendous for Women**

Land and Resources - Women make up the majority of subsistence farmers but are continually denied control and access over land and resources. The 'National Treatment' provisions proposed in RCEP requires governments to treat foreign investors from other RCEP countries in the same way as they treat locals. Most RCEP countries currently have restrictions on foreigners buying land and this could effectively disappear. Small land holdings can be easily purchased and land where farmers do not have tenure documentation can be easily sold. Women who are majority small scale, subsistence farmers will not be able to compete with huge agro-business monopolies. While most jobs in agro-business monopoly farms are given to men, particularly if they are mechanised. In addition the removal of tariffs on imports could flood a country with cheaper food subsidised in other countries. The RCEP will go beyond the requirements of the World Trade Organisation's (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and award more protections to corporations and make countries sign a seed convention that prohibits seed sharing amongst farmers. Women depend on sharing seeds and other inputs with each other and will be forced off their farms.

Threats to Public Services - Women rely more heavily than men on public services and safety nets. Any reduction in public goods and services impact more heavily on women. The RCEP will have a negative impact on public services in developing countries in several ways. First, the reduction of tariffs denies government an important percentage of revenue while the exorbitant cost of ISDS cases can take up a sizable chunk of public expenditure. Second, the RCEP could insist that foreign corporations be able to compete for public services where any component of that service is provided by the private sector, and this can impact almost every sector. Third, the ISDS mechanism discourages governments from extricating themselves from public private partnerships that are failing to deliver as governments risk being sued when they do - essentially making privatization irreversible. Finally, any regulations imposed on foreign corporations to increase public access or benefit (whether it be for the environment, public benefit or targeted to particular groups such as women), may be deemed illegal and governments cannot introduce new regulations.

Driving down labor rights – A race to the bottom with women at the bottom. The RCEP promotes labor competition and women's low wages as a competitive advantage to attract investors. 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. Women comprise an increasing percentage of workers in export industries and most women already work in the informal or unregulated sector. They are most likely to experience the downward pressure on wages, conditions and rights. ISDS has also been utilized to challenge increases in wages and conditions. French utility company, Veolia, sued Egypt for increasing minimum wages in the country.

Threats to Women's Right to Health – 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 the 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 proposed TRIPS Plus provisions in 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. Research patent term extensions in Thailand alone could create additional costs of US$ 822.1 million over 5 years or more than US$ 6 billion over 20 years.

Preventing Affirmative Action - Governments are required to use affirmative action or 'temporary special measures' to eliminate discrimination against women. But the RCEP could prevent governments from meeting their obligations to women. South Africa was sued through ISDS by a group of Italian companies after the government introduced its Black Economic Empowerment laws to remedy the impact of apartheid. The government subsequently reduced the legislated entitlements of Black South Africans to resource ownership.

Another threat comes from the agreement to negotiate a chapter on 'Government Procurement'. That chapter could mean that all government procurements, apart from defence, must treat foreign investors equally and are therefore prevented from preferencing local industries. Currently some local, provincial or state governments choose to purchase from women's collectives as a way of expanding their economic activity. This could be prohibited. Similarly, a number of governments have introduced lower land taxes or registration fees when women are registered as land holders or co-owners. The 'National Treatment' provisions will prohibit such incentives unless they are also extended to foreign investors.

Is this about ASEAN Centrality?

Proponents of RCEP argue that it will promote ASEAN's power and safeguard ASEAN "centrality" amidst a changing trade and investments landscape. But what does ASEAN centrality mean? ASEAN members states maintains a commitment to the principles of non-intervention and state sovereignty. This commitment to sovereignty appears to apply only to the right to commit state human rights violations and violate democratic principles without accountability. Foreign investors do not have to respect the sovereign right of governments to make laws. The very purpose of RCEP is to ensure states do not erode the neo-liberal consensus, now or in the future. ASEAN member states are unable to act collectively to protect migrants or workers rights, the environment or address cross border tax evasion. Richer ASEAN member states and free trade partners such as Japan, South Korea, Australia and New Zealand see the RCEP as a means by which their corporate investors can expand their own market access. RCEP requires developing and least developed countries to sign away the exceptions allowed under WTO rules for least developing countries, potentially adversely affecting their capacity to regulate in the interests of their own national development.

Join People's Resistance against a Common Crisis

The recent demise of the Trans Pacific Partnership (TPP) is the result of social justice movements calling for the end of neoliberalism around the world. People's movements are fertile; national and regional civil societies and movements from across the region are now 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.

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

The Asia Pacific Forum on Women, Law and Development is the region's leading network of feminist organisations and women. For 31 years we have been carrying out advocacy, activism and movement buildng to advance women's human rights and development justice.