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MEDIA RELEASE

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Asia Pacific civil society groups condemn investor rights to sue governments in RCEP as Trade Ministers meet

An unprecedented alliance of civil society groups from Australia, New Zealand, ASEAN countries, India, Japan and South Korea, today issued a call to Trade Ministers meeting in Laos to discuss the mega trade agreement involving 16 countries, known as the Regional Comprehensive Economic Partnership (RCEP).

They urged RCEP ministers not to give special rights to foreign investors to bypass national courts and sue governments for millions of dollars in unfair international tribunals, known as ISDS, modelled on similar clauses in the TPP. Their statement signed by 95 organisations from RCEP countries is attached below.

RCEP negotiations between Australia, New Zealand, India, Japan, Korea, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam have been conducted in secret since 2012, and are expected to finish in 2017.

“Foreign investors have launched ISDS cases claiming millions of dollars in compensation for Australia’s tobacco plain packaging law, for Canadian [environmental regulation of mining](#), for a Canadian court decision on [medicine patents](#), and even for a rise in the [minimum wage](#) in Egypt. Governments should have the right to regulate in the public interest without being sued by global corporations. ISDS undermines democracy and sovereignty,” Dr Patricia Ranald, Convener of the Australian Fair Trade and Investment Network said today.

“ISDS has been a major driver of community opposition to the TPP between the US, Australia and 10 Pacific rim countries, and will generate the same strong opposition to the RCEP. Community opposition to the TPP in the US is so strong that the TPP implementing legislation is not likely to be passed by the [U.S. Congress](#),” said Dr Ranald

“Two of the largest RCEP countries, India and Indonesia, are actually withdrawing from bilateral investment treaties which contain ISDS, because of ISDS claims of hundreds of millions of dollars against them. We urge the Australian government and other TPP countries like Japan and Korea not to pursue the failed TPP ISDS model in the RCEP,” said Dr Ranald.

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Civil society groups say No to investors suing States in RCEP

The Regional Comprehensive Economic Partnership (RCEP) is being negotiated in secret by 16 countries* and a leaked copy of its investment chapter includes proposals to allow foreign investors to sue governments at an international tribunal.

These investor suits can be for unlimited cash damages and compound interest. If the proposals are accepted, this investor-to-state dispute settlement (ISDS) would allow foreign investors to sue RCEP governments if they regulate in ways that disadvantages the foreign investor, eg by reducing its profits, including by introducing new laws/policies or changing their laws/policies, even if it is for public interest reasons.

Past ISDS cases have successfully challenged health, environmental, tax, financial regulation and many other laws and a losing government in one case had to pay an investor as much as US \$40 billion. This is difficult enough for any government to afford, but RCEP includes three least developed countries: Cambodia, Laos and Myanmar who would find it particularly burdensome to pay foreign investors this much.

There are 696 known ISDS cases against 107 countries and the number filed each year has been rapidly increasing (the most ever were filed in 2015). These cases **which broadly interpret investors' rights and restrict governments' ability to regulate** have caused many developed and developing country governments to rethink their support for these investment protection provisions (including ISDS) in bilateral investment treaties (BITs) and free trade agreement (FTA) investment chapters. For example, in RCEP countries alone:

- India and Indonesia are withdrawing from their BITs,
- **Singapore's Attorney General and the Chief Justice of Australia's highest court** have expressed concerns about ISDS and
- The New Zealand Chief Justice noted that human rights based determinations of domestic courts may give rise to ISDS claims.

In countries outside RCEP, there is also opposition to ISDS including:

- Other countries such as South Africa and Ecuador are withdrawing from their BITs,
- **Germany's Economic Minister opposes ISDS in Europe's FTA negotiations with the USA,**
- the Dutch, French and Austrian Parliaments oppose ISDS in their FTA negotiations with Canada and the USA and
- All US state-level parliaments oppose ISDS in any treaty.

Various United Nations (UN) human rights bodies have also stated their serious concerns about ISDS including 10 UN Special Rapporteurs/Independent Experts on **human rights who said that the ISDS cases demonstrate 'that the regulatory function of many States and their ability to legislate in the public interest have been put at risk' and governments have been chilled from regulating. They recommended that in negotiations of FTAs like RCEP, the negotiating texts are published and the negotiations are conducted transparently with the participation of stakeholders**

including civil society.

RCEP trade ministers will meet in Laos on 5 August 2016 to try and resolve some of the issues that are stuck in the negotiations.

Given this, the 95 national and regional civil society organisations listed below which cover all RCEP countries (a number of persons requested additionally to sign on as individuals) strongly urge RCEP countries to reject ISDS in the agreement.

**The RCEP countries are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Viet Nam, Australia, China, India, Japan, Korea and New Zealand*

SIGNATORIES

Organization

1. GRAIN
2. Third World Network
3. Transnational Institute (TNI)
4. World Federation of Public Health Associations
5. LDC Watch
6. Asia Pacific Forum on Women, Law & Development (APWLD)
7. Public Services International Asia & Pacific
8. Southeast Asia Tobacco Control Alliance
9. The Building and Wood Workers' International Asia-Pacific
10. Focus on the Global South

11. Australian Fair Trade and Investment Network
12. Australian Services Union
13. The Grail Global Justice Network
14. People's Health Movement Australia
15. Public Health Association of Australia
16. New South Wales Nurses & Midwives' Association
17. Cambodian Grassroots Cross-sector Network
18. SILAKA
19. Social Action for Change
20. The Messenger Band
21. Women's Network for Unity
22. Worker's Information Center
23. All India Drug Action Network
24. Alliance for Sustainable and Holistic Agriculture (ASHA)
25. Delhi Network of Positive People
26. Food Sovereignty Alliance
27. Forum Against FTAs
28. India FDI Watch
29. Indian Social Action Forum - INSAF
30. Initiative for Health & Equity in Society
31. International Treatment Preparedness Coalition (ITPC) -South Asia

32. Sunray Harvesters
33. Thanal
34. The Centre for Internet and Society
35. Toxics Watch Alliance (TWA)
36. Ahimsa Society
37. Aliansi Masyarakat Sipil Untuk Perempuan Politik (ANSIPOL)
38. Aliansi Nasional Bhineka Tunggal Ika (ANBTI)
39. Aliansi Petani Indonesia
40. Bina Desa
41. Creaa
42. Forhati Jatim
43. Himpunan Wanita Disabilitas Indonesia (HWDI)
44. IHCS (Indonesian Human Rights Committee for Social Justice)
45. Indonesia AIDS Coalition
46. Indonesia for Global Justice (IGJ)
47. Jaringan Advokasi Tambang (JATAM)
48. Koalisi Rakyat Untuk Hak Atas Air (KRuHA)
49. Konsorsium Pembaruan Agraria (KPA)
50. Maju Perempuan Indonesia (MPI)
51. Pengembangan Inisiatif dan Advokasi Rakyat (PIAR) NTT
52. Pengurus Wilayah Lembaga Kajian dan Pengembangan Sumberdaya Manusia Nahdlatul Ulama

53. Sawit Watch
54. Serikat Petani Indonesia (SPI) (LVC Indonesia)
55. Solidaritas Perempuan (Women's Solidarity for Human Rights)
56. Southeast Asia Freedom of Expression Network
57. Yogya Interfaith Forum
58. Japan Family Farmers Movement
59. Pacific Asia Resource Center (PARC)
60. Jaringan Rakyat Tertindas (JERIT)
61. Malaysian Council for Tobacco Control (MCTC)
62. Malaysian Women's Action for Tobacco Control & Health (MyWATCH)
63. Penang Research Center in Socio Economy (PReCISE)
64. Persatuan Kesedaran Komuniti Selangor (Empower Malaysia)
65. Positive Malaysian Treatment Access & Advocacy Group (MTAAG+)
66. Primary Care Doctors Organisation Malaysia (PCDOM)
67. NGO Gender Group
68. Glocal Solutions Ltd
69. Doctors for Healthy Trade
70. It's Our Future Aotearoa New Zealand
71. MANA Movement of the People
72. New Zealand Council of Trade Unions
73. New Zealand Public Service Association
74. New Zealand Tertiary Education Union
75. Ngai Tai Iwi Authority
76. Public Health Association
77. New Zealand Public Service Association
78. Alyansa Tigil Mina (Alliance Against Mining)
79. GABRIELA Alliance of Filipino Women
80. IBON Foundation
81. Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS)
82. Women's Legal and Human Rights Bureau (WLB), Inc.
83. Association of Physicians for Humanism

84. IPLeft
85. Knowledge Commune
86. Korean Federation of Medical Groups for Health Rights, KFHR
87. Korean Pharmacists for Democratic Society, KPDS
88. Trade & Democracy Institute
89. Trade Commission of MINBYUN-Lawyers for a Democratic Society
90. Assembly of the Poor
91. Foundation for Women
92. FTA Watch
93. Indigenous Women's Network of Thailand
94. Thai Poor Act
95. Vietnam Network of People living with HIV