

Civil society groups say there is now even more reason to keep ISDS out of the RCEP

We, the undersigned civil society organisations from the 15 member countries* of the Regional Comprehensive Economic Partnership (RCEP), call upon RCEP governments to continue to exclude Investor-State Dispute Settlement (ISDS) from the RCEP.

After strong civil society opposition and much public debate, governments agreed to [exclude](#) ISDS from the RCEP, which came into force for all members by June 2023. However, there was a commitment to “enter into discussions” of ISDS within two years of RCEP’s entry into force. There is no timetable and no obligation to conclude discussions, and any decision would require consensus from all governments. We understand that such discussions may commence soon.

During the negotiations for the RCEP in August 2016, 94 civil society organisations wrote an [open letter](#) to RCEP governments urging them to exclude ISDS from the agreement. The letter explained that ISDS is a fundamentally unbalanced system that enables foreign investors to claim millions or even billions in compensation from governments if they can convince an international tribunal that a change in law or policy would reduce their future profits and/or they were not consulted sufficiently about it, even if the change was in the public interest. There were increasing numbers of ISDS cases against laws protecting [workers’ rights](#), [public health](#) and [the environment](#), and awards of billions of dollars which were especially damaging to low income countries. Governments were cancelling ISDS arrangements because of its impact on their national finances and sovereignty.

Today, as known ISDS cases have [more than doubled to 1,401](#), there is even more public and government resistance to ISDS and more evidence to support the permanent exclusion of ISDS from the RCEP. There is no [compelling evidence](#) that agreements with ISDS result in increased Foreign Direct Investment. There are increasing numbers of huge claims against developing, and even developed, countries. In 2019, [Pakistan had to pay \\$ US 5.8 billion](#) to a mining company, which was almost equivalent to an emergency loan from the International Monetary Fund to address Pakistan’s economic crisis.

More developing country governments are resisting ISDS arrangements. [India](#), [Indonesia](#), [South Africa](#) and [Ecuador](#) have cancelled old investment agreements with ISDS. [Brazil](#) has never agreed to ISDS. Capital exporting countries are now also resisting ISDS. Australia and New Zealand have policies against ISDS. ISDS is a growing threat to the urgent government action needed to address climate change. Increasing numbers of fossil fuel companies are [using ISDS](#) against government actions to reduce carbon emissions.

The [European Union](#) and the [United Kingdom](#) have withdrawn from the Energy Charter Treaty because its ISDS provisions were being used by fossil fuel companies against government policies to address climate change.

A [United Nations report](#) has warned that ISDS is a major obstacle to addressing the climate change crisis. The Organisation for Economic Co-operation and Development (OECD) has [acknowledged](#) that ISDS is not aligned with the global transition to a sustainable, low-carbon economy and canvassed options, including coordinated government withdrawals from ISDS arrangements.

The current global trend of competition to secure critical mineral supplies for green energy transition is pushing for the expansion of mining investment into mineral-rich countries. ASEAN is well-endowed with critical mineral resources, and most of the members have intensified their efforts to process these minerals to add value, rather than export raw materials. Certainly, it will consolidate

the role of multinational corporations as key investors who are likely to push for more investment protection rules. This dynamic may, in turn, spur major mining multinationals to engage in lobbying efforts, aiming to incorporate the ISDS mechanism into the RCEP review process, particularly in the context of mounting resource nationalism practices in mineral-rich developing countries. Foreign mining companies' lawsuits against [Indonesia's policy ban](#) on raw materials exports are a concrete example of why ASEAN Governments should avoid the ISDS Mechanism.

Amid the current economic turmoil caused by the US Trump administration's application of unilateral tariffs, RECP governments should not add the additional risk of possible ISDS cases.

Given the overwhelming evidence against ISDS, we call on all RCEP governments to continue to exclude ISDS from the RCEP.

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

List of endorsing organisations

National organisations from RCEP countries

Greenpeace Aotearoa	Aotearoa New Zealand
Coromandel Watchdog of Hauuraki Incorporated	Aotearoa New Zealand
New Zealand Council of Trade Unions Te Kauae Kaimahi	Aotearoa New Zealand
Campaign Against Foreign Control of Aotearoa	Aotearoa New Zealand
Environment and Conservation Organisations of NZ Inc	Aotearoa New Zealand
Endangered Species Foundation of New Zealand	Aotearoa New Zealand
Extinction Rebellion Tāmaki Makaurau	Aotearoa New Zealand
Australian Fair Trade and Investment Network	Australia
Combined Retired Union Members Association	Australia
Pax Christi Australia	Australia
Missionaries of the Sacred Heart Justice and Peace Centre	Australia
ActionAid Australia	Australia
Catholics in Coalition for Justice and Peace	Australia
Australian Nursing & Midwifery Federation	Australia
Migrante Australia in New South Wales	Australia
Union Aid Abroad-APHEDA	Australia
GeneEthics	Australia
Reconciliation for Western Sydney	Australia
Electrical Trades Union	Australia
Uniting Church in Australia, Synod of Victoria and Tasmania	Australia
Sutherland Shire Environment Centre	Australia
Oxfam Australia	Australia
The Alliance for Responsible Mining Regulation	Australia
Jubilee Australia Research Centre	Australia
UnionsWA	Australia
Aid/Watch	Australia
New South Wales Retired Teachers' Association	Australia
SEARCH Foundation	Australia

Friends of the Earth Australia	Australia
The Wilderness Society (Australia)	Australia
Maritime Union of Australia	Australia
Currie Country Social Change Indigenous Organisation	Australia
Social Action for Community and Development (SACD)	Cambodia
Indonesia for Global Justice	Indonesia
Federasi Perjuangan Buruh Indonesia	Indonesia
Kesatuan Perjuangan Rakyat	Indonesia
Puanifesto	Indonesia
Indonesia Aids Coalition	Indonesia
Serikat Petani Indonesia	Indonesia
Koalisi Rakyat untuk Keadilan Perikanan (KIARA)	Indonesia
Resistance and Alternatives to Globalization (RAG)	Indonesia
Sahita Institute	Indonesia
Perkumpulan INISIATIF	Indonesia
FIAN Indonesia	Indonesia
Publish What You Pay (PWYP) Indonesia	Indonesia
Koalisi Rakyat untuk Hak atas Air (KRuHA)/People's Coalition for the Right to Water	Indonesia
Konfederasi Serikat Buruh Seluruh Indonesia	Indonesia
Consumers' Association of Penang	Malaysia
Forum Kedaulatan Makanan Malaysia (FKMM)	Malaysia
Positive Malaysian Treatment Access & Advocacy Group (MTAAG+)	Malaysia
Sahabat Alam Malaysia (Friends of the Earth)	Malaysia
Karen Environmental and Social Action Network (KESAN)	Myanmar
Alyansa Tigil Mina (Alliance to Stop Mining)	Philippines
Kilusan Para sa Repormang Agraryo at Katarungang Panlipunan (KATARUNGAN)	Philippines
Public Services Labor Independent Confederation (PSLINK)	Philippines
IBON International	Philippines
Freedom from Debt Coalition (FDC)	Philippines
Sentro ng mga Nagkakaisa at Progresibong Manggagawa (SENTRO)	Philippines
Trade Justice Pilipinas	Philippines
FTA Watch	Thailand

International and regional organisations with members in RCEP countries

Third World Network
 Focus on the Global South
 Transnational Institute
 Public Services International
 Peoples' Health Movement
 International Association of People's Lawyers
 Oil Change International
 GRAIN Sustainable Agriculture