

Asia Pacific Civil Society

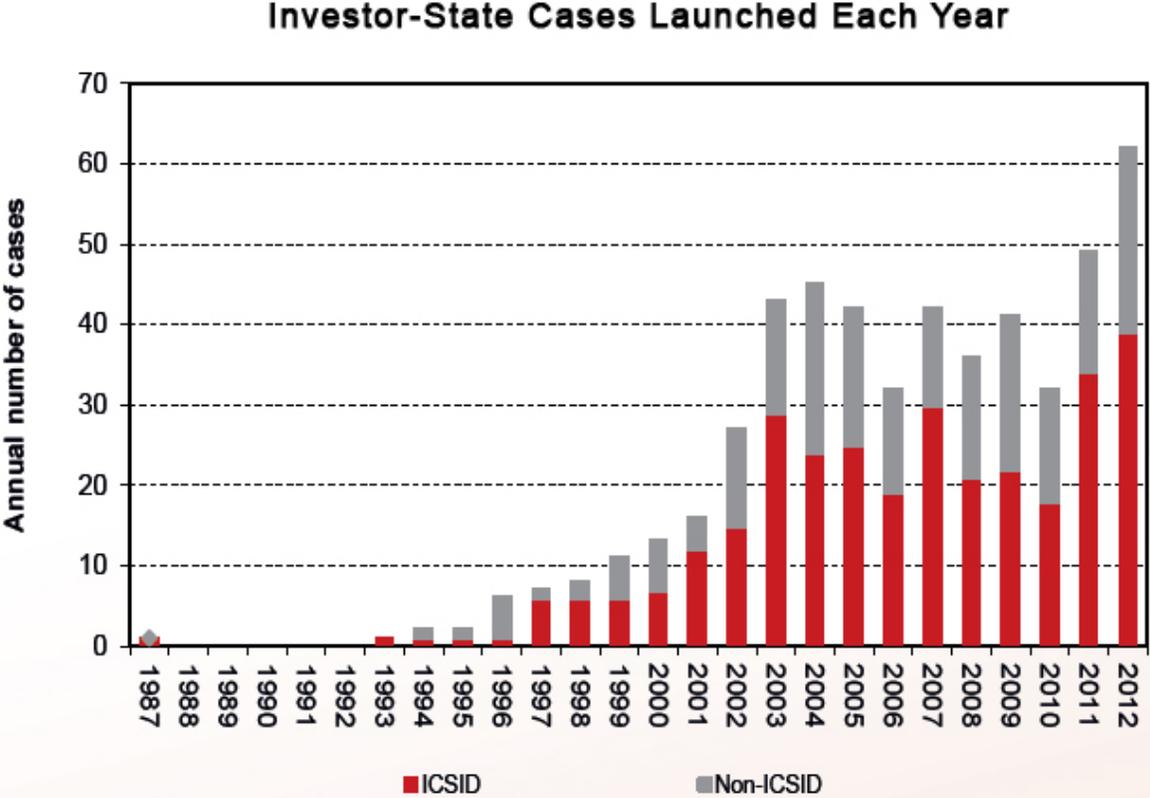
Statement to the United Nations' Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (IGWG)

Second meeting of the IGWG at the Human Rights Council, October 24-28, 2016

We, the undersigned members of Asia Pacific civil society, representing different constituencies, movements and organizations jointly call upon the United Nations' Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (IGWG) to include the elements outlined in this statement within any draft materials the IGWG develops to outline the content of the forthcoming binding international instrument (Treaty). This submission reiterates the demands made in our [Unity Statement](#) published at the Asia Pacific Regional Consultation on the Legally Binding Treaty on Business and Human Rights, May 1-3, 2015. In addition to the points made in our previous statement, we wish to emphasize that:

- The Asia Pacific region is host to over half of the global population, including millions of vulnerable, displaced and stateless persons. The region is already seeing the drastic effects of climate change on weather patterns, coastlines, and agriculture. State and corporate activities that do not recognize the primacy of human and environmental rights directly damage the lives and environment in the region. The severest impact of abuses and exploitation of human and environment rights is majorly faced by vulnerable, displaced and stateless persons - including women.
- TNCs-OBE have repeatedly excluded communities from decision-making processes surrounding projects that affect their landscape, livelihood, access to resources, and basic rights. States have compounded the powers given to foreign investors by offering protections and signing agreements without public consultations, or entirely ignoring public responses to proposals. This behavior is replicated in the negotiation and signing of free trade agreements which compromise human rights and labor standards, including health and safety, women's rights, and indigenous rights. Such free trade agreement weaken state sovereignty, especially in global south nations in Asia Pacific and Africa, making them targets for corporate violations of human and economic rights.
- Asia Pacific has a high and rising income gap between men and women, which, along with other systemic inequalities, is entrenched by the nature of corporate activities and foreign investment that seeks to profit from Asia Pacific's low cost labor and lack of recognition for care, domestic and other invisible work.
- Asia Pacific governments regularly sign bilateral and multilateral trade and investment agreements which are legally binding, and contain clauses enforcing the investor state

dispute settlement (ISDS) mechanism. At the same time, they make promises for development goals which are not legally binding and lack enforcing mechanisms for people to hold governments to account. This imbalance in commitment is reflected in the increased land confiscation across Asia Pacific (with heightened landlessness for women), and the spike in ISDS cases launched by TNC, as illustrated by the following chart:



Source: UNCTAD

The UN Charter of 1945 calls upon governments to give primacy to human rights, and together we need to ensure our governments continue to recognize UN Charter and not give primacy to trade and investment instead. Bearing this in mind, our recommendations are as follows:

The treaty should require corporations to follow due diligence measures, including publicizing meetings, all meeting minutes and negotiations (including investor state dispute settlement), publishing all proposed contracts and agreements, human rights and environment impact assessments as mandatory for any project. Community engagement must include mechanisms to incorporate the specific feedback of women, indigenous peoples and other marginalized groups.

Most Asia Pacific governments (except Indonesia) have ratified the only public health and corporate accountability treaty of the WHO, formally titled the WHO Framework Convention on Tobacco Control (FCTC). The first Guiding Principle of FCTC Article 5.3 is there is a fundamental and irreconcilable conflict of interest between the tobacco industry and public health. When governments in Asia Pacific (and globally) are obligated to the FCTC, they must keep tobacco industry out of the room during public health policymaking processes and must share minutes of meeting between governments and industry. This conflict-of-interest principle can and should be applied to other sectors, government departments and ministries. Climate policy cannot be made or influenced in any way by oil companies. We need to firewall development policy processes at all levels from industry interference and establish mechanisms to ensure transparency in the meetings, policies, and programs.

Individuals as well as corporations must be held to account for human rights abuses. The treaty must have obligatory transparency and financial disclosure measures for TNC-OBE, including country-by-country reporting (CBCR) in every state they operate in. The WHO FCTC Article 19 is on liability related issues and making 'polluters pay' principle. Corporations that abuse environment and human rights and must be held to account and should pay for the short-term as well as long-term consequences of the same.

Rights must be protected beyond borders. The treaty should facilitate the formation of a legal body with the capacity to address human rights abuses committed by TNC-OBE in multiple states, rather than each state resolve their cases separately. Human rights defenders in all states must be protected and their right to protest be respected by governments and TNC-OBE alike, without obstruction or the use of security forces to attack them or their families.

People whose rights have been abused by companies must be able to access justice and effective remedy. The treaty should introduce an injunction mechanism for corporate activities that are causing harm to communities or the environment, to be used by local communities, women, or Indigenous Peoples who are affected.

Signatories: