

Lettre ouverte des organisations sur le mécanisme de règlement des différends entre investisseurs et États (RDIE) et le COVID -19

À l'endroit des gouvernements :

Aujourd'hui, nous vous invitons, par la présente lettre, à prendre l'initiative pour assurer que les pays du monde ne soient confrontés à une vague de poursuites de règlements des différends entre investisseurs et États (RDIE) en raison des mesures prises pour lutter contre la pandémie du COVID-19 et la crise économique qui en découle.

Partout dans le monde, certains gouvernements prennent des mesures pour sauver des vies, endiguer la pandémie, protéger les emplois, lutter contre les catastrophes économiques et veiller à ce que les besoins fondamentaux des populations soient couverts. L'ampleur de ces mesures est sans précédent dans les temps modernes et la nécessité de ces actions est évidente. Cependant, la portée très étendue du mécanisme de RDIE pourrait exposer ces mesures gouvernementales cruciales à des plaintes avec demande d'indemnisation à hauteur de plusieurs millions de dollars de la part des investisseurs étrangers. Le nombre de ces plaintes pourrait également être sans précédent et imposer des charges financières considérables aux gouvernements qui croulent déjà sous le fardeau des crises sanitaires et économiques dévastatrices.

Le RDIE est inclut sous diverses formes dans de nombreux accords de commerce et d'investissement. Il permet aux investisseurs étrangers – et uniquement aux investisseurs étrangers – de poursuivre les gouvernements devant des tribunaux secrets en dehors du système juridique national pour obtenir des montants bien plus élevés que ceux qui seraient disponibles devant les tribunaux nationaux.

Les avocats, qui profitent énormément du mécanisme du RDIE, font déjà la chasse aux sociétés clientes qui souhaiteraient utiliser les tribunaux du RDIE pour soutirer des sommes importantes aux gouvernements en raison des mesures qu'ils ont prises en réponse à la crise du COVID-19. Les cabinets d'avocats^[1], les experts en commerce^[2], les organismes des Nations Unies^[3] et les experts en droits de l'homme^[4] ont déjà prédit une vague imminente de poursuites dans le cadre du mécanisme du RDIE. Les revues juridiques spécialisées estiment que « les dernières semaines pourraient marquer le début d'un boom » des poursuites liées au mécanisme RDIE^[5]. Les situations

¹ See for example: <https://www.alston.com/en/insights/events/2020/04/the-coming-wave-of-covid-19-arbitration/> , <https://www.ropesgray.com/en/newsroom/alerts/2020/04/COVID-19-Measures-Leveraging-Investment-Agreements-to-Protect-Foreign-Investments> , <https://www.reedsmith.com/en/perspectives/2020/05/reed-smith-quarterly-international-arbitration-focus> , <https://globalarbitrationreview.com/article/1222354/could-covid-19-emergency-measures-give-rise-to-investment-claims-first-reflections-from-italy> , <https://www.acerislaw.com/the-covid-19-pandemic-and-investment-arbitration/>

² <https://www.iisd.org/library/investor-state-claims-amidst-covid-19>

³ https://unctad.org/en/PublicationsLibrary/diaepcbinf2020d3_en.pdf

⁴ <http://ccsi.columbia.edu/2020/05/05/isds-moratorium-during-covid-19/>

⁵ <https://www.law360.com/legalethics/articles/1261213/third-party-funders-business-is-booming-during-pandemic>

de crise dans le passé, comme la crise financière en Argentine ou le printemps arabe, ont donné lieu à de nombreuses poursuites judiciaires.

Les poursuites pourraient naître des mesures prises par de nombreux gouvernements dans le but de :

- restreindre et suspendre les activités des entreprises afin de limiter la propagation du virus et de protéger les travailleurs ;
- sécuriser les ressources des systèmes de santé en exigeant l'utilisation des établissements hospitaliers privés, de placer les prestataires de soins privés sous contrôle public ou d'obliger des fabricants à produire des ventilateurs ;
- imposer pour les ménages et les entreprises un allègement des paiements hypothécaires ou du loyer
- empêcher les étrangers de racheter des entreprises stratégiques frappées par la crise ;
- garantir l'accès à l'eau potable pour le lavage des mains et l'assainissement par le gel des factures de services publics et la suspension des coupures ;
- assurer que les médicaments, les tests et les vaccins soient abordables ;
- favoriser la restructuration de la dette.

Les réparations qui résulteraient de la vague des poursuites judiciaires en matière de RDIE liée au COVID-19 pourraient être énormes. Sur les 1.023 poursuites de RDIE connues, treize ont donné lieu à des indemnisations ou à des règlements de plus d'un milliard de dollars, y compris des pertes de bénéfices futures^[6]. À la fin de 2018, des pays ont reçu l'ordre ou ont convenu de verser aux investisseurs dans le cadre des affaires de RDIE connues du public la somme de 88 milliards de dollars EU^[7]. Certains pays en développement ont des milliards de dollars d'impayés au titre de ces affaires.

À une époque où les ressources publiques sont mobilisées au maximum pour répondre à la crise, les fonds publics ne devraient pas être détournés de la sauvegarde de vies, des emplois et de moyens de subsistance pour payer des réparations ou des frais de justice pour lutter contre une plainte. Étant donné que la lutte contre COVID-19 va se poursuivre, une vague de poursuites pourrait entraîner un effet de « frilosité réglementaire », dans lequel les gouvernements dilueraient, reporteraient ou retireraient les mesures de lutte contre la pandémie par crainte de ces paiements, une situation qui pourrait s'avérer mortelle.

Afin d'éviter cette situation, nous invitons instamment les gouvernements à prendre immédiatement et de toute urgence les mesures suivantes, avant que les premières poursuites ne soient intentées :

1. restreindre de façon permanente l'utilisation du mécanisme de RDIE sous toutes ses formes au titre des plaintes qui selon l'État se rapportent à des mesures liées au COVID-19 ;
2. suspendre tous les litiges en matière de RDIE concernant toute action contre tout gouvernement pendant qu'il lutte contre les crises du COVID-19 et que ses capacités doivent être concentrées sur la réponse à la pandémie ;

⁶ <https://investmentpolicy.unctad.org/investment-dispute-settlement>

⁷ Calculation based on the UNCTAD database for cases up to December 2018. Out of the 310 disclosed cases which had been decided in favor of the investor or settled, information on damages was provided for 213 cases (69%).

3. veiller à ce que des fonds publics ne soient dépensés pour payer aux sociétés des indemnités liées au RDIE pendant la pandémie ;
4. cesser de négocier, signer et/ou ratifier tout nouvel accord prévoyant un mécanisme de RDIE ;
5. mettre fin aux accords existants qui prévoient un RDIE, assurer que les « clauses de survie » ne permettent pas d'engager des poursuites par la suite ;
6. compte tenu des menaces révélées par la pandémie, examiner de manière exhaustive les accords existants qui contiennent un mécanisme de RDIE pour voir s'ils répondent à leur objectif.

De plus amples informations sur les modalités de mise en œuvre de ces mesures sont disponibles dans l'annexe en page 11.

Nous vous prions de prendre des mesures immédiates pour garantir que le devoir des gouvernements de réglementer dans l'intérêt public soit sauvegardé et exclu du champ des plaintes de RDIE.

Liste des 630 signataires

Organisations internationales et régionales :

1. ACAFREMIN
2. ActionAid
3. Africa Europe Faith & Justice Network
4. Amigos de la Tierra América Latina y el Caribe – ATALC
5. Arab NGO Network for Development
6. Asia Pacific Forum on Women, Law & Development (APWLD)
7. Asian Peoples' Movement on Debt and Development (APMDD)
8. AWID
9. BEACON
10. bilaterals.org
11. Center for International Environmental Law (CIEL)
12. CIDSE
22. Focus on the Global South
23. Food & Water Action Europe
24. Friends of the Earth Europe
25. Friends of the Earth International
26. Gender and Trade Coalition
27. Global Alliance on Media and Gender (GAMAG)
28. Global Anti-Aerotropolis Movement (GAAM)
29. Global Policy Forum
30. GRAIN
31. Greenpeace
32. Health Action International
33. Health Global Access Project
34. IndustriALL Global Union
13. Committee for the Abolition of Illegitimate Debt (CADTM)
14. Confederación Sindical de trabajadoras/es de las Américas (CSA)
15. DAWN (Development Alternatives with Women for a New Era)
16. Emmaüs International
17. European Attac Network
18. European Coordination Via Campesina (ECVC)
19. European Environmental Bureau
20. European Federation of Public Service Unions
21. European Network Against the Privatization and Commercialization of Health and Social Protection / Réseau européen contre la privatisation et la commercialisation de la santé et de la protection sociale
35. Institute of the Blessed Virgin Mary – Loreto Generalate
36. International Association of Machinists and Aerospace Workers (IAMAW)
37. International Association of People's Lawyers
38. International Baby Food Action Network
39. International Corporate Accountability Roundtable (ICAR)
40. International Trade Union Confederation (ITUC)
41. International Treatment Preparedness Coalition
42. International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

43. International Women's Rights Action Watch Asia Pacific
44. Latindadd – Red Latinoamericana por Justicia Económica y Soc
45. ial
46. Médecins Sans Frontières Access Campaign
47. Moana Nui
48. Oxfam International
49. Pacific Network on Globalisation
50. Peoples Health Movement
51. Plataforma América Latina mejor sin TLC
52. Project on Organizing, Development, Education, and Research (PODER)
53. Public Services International – Interamerica
54. Public Services International (PSI)
55. Religious of the Sacred Heart of Mary JPIC / NGO
56. REPEM -LAC
57. RIPESS – Red Intercontinental de Promotion de l'Economia Social Solidaria
58. Social Watch
59. Society for International Development (SID)
60. Soroptimist International
61. SumOfUs
62. Tax Justice Network
63. Third World Network
64. UNI Américas
65. United Methodist Church – General Board of Church and Society
66. UNMGCY (United Nations Major Group for Children and Youth)
67. Urgenci International Community Supported Agriculture Network
68. WeMove Europe
69. WIDE+ (Women In Development Europe+) gender and trade WG
70. WoMin
71. World Rainforest Movement

Organisations nationales :

71. Campaign Against Foreign Control of Aotearoa, Aotearoa / New Zealand
72. GE Free NZ in Food and environment, Aotearoa / New Zealand
73. Its Our Future, Aotearoa / New Zealand
74. New Zealand Council of Trade Unions (NZCTU), Aotearoa / New Zealand
75. Sustainable Ōtautahi Christchurch, Aotearoa / New Zealand
76. Acción por la Biodiversidad, Argentina
77. Amigos de la Tierra Argentina, Argentina
78. Asamblea Argentina mejor sin TLC, Argentina
79. Asamblea Jáchal No Se Toca, Argentina
80. Asociacion Ciudadana por los Derechos Humanos, Argentina
81. ATTAC Argentina, Argentina
82. CENTRAL DE TRABAJADORES ARGENTINOS de los TRABAJADORES (CTA-T), Argentina
83. Centro de Estudios Legales y Sociales (CELS), Argentina
84. Colectivo de Estudios e Investigaciones Sociales (CEISO), Argentina
85. Confederación de Trabajadores Municipales (CTM), Argentina
86. Confederacion General del Trabajo de la Republica Argentina , Argentina
87. CTA Autónoma, Argentina
88. Diálogo 2000-Jubileo Sur Argentina, Argentina
89. Foro Ciudadanode Participación por la Justicia y los Derechos Humanos FOCO, Argentina
90. FSM, Argentina
91. Fundación ECOSUR, Argentina
92. Fundación GEP, Argentina
93. Fundacion para Estudio e Investigación de la Mujer , Argentina
94. Iniciativa Arcoiris de Ecología Política, Argentina
95. Multisectorial Antiextractivista, Argentina
96. Ong ALERTA ANGOSTURA , Argentina
97. PROYECTO CRECER CON ESPERANZA, Argentina
98. Red de Defensoras del Ambiente y el Buen Vivir, Argentina
99. Center for Development of Civil Society, Armenia
100. Confidence Health NGO, Armenia
101. ActionAid Australia, Australia
102. Australian Council of Trade Unions, Australia
103. Australian Fair Trade and Investment Network, Australia
104. Australian Food Sovereignty Alliance, Australia
105. Australian Religious Response to Climate Change, Australia
106. Australians for Justice, Australia
107. Bougainville Freedom Movement, Australia
108. Catholics in Coalition for Justice and Peace, Australia
109. ClimActs, Australia
110. Data Stream Pty Limited, Australia
111. Food Intolerance Network, Australia

112. Frenchs Forest Catholic Parish Social Justice Group, Australia
113. Friends of the Earth Adelaide, Australia
114. Friends of the Earth Australia, Australia
115. GeneEthics, Australia
116. Grail Global Justice Network, Australia
117. Locals Into Victoria's Environment, Australia
118. Loreto Sisters Justice Network, Australia
119. Missionaries of the Sacred Heart Justice and Peace Centre, Australia
120. Mundaring in Transition, Australia
121. Music Trust, Australia
122. Nature First, Australia
123. Pesticide Action Group of Western Australia, Australia
124. Public Health Association of Australia, Australia
125. SEARCH Foundation, Australia
126. Sisters of Charity, Australia
127. Sutherland Shire Environment Centre, Australia
128. Union Aid Abroad-APHEDA , Australia
129. Allianz gerechter Handel, Austria
130. Anders Handeln, Austria
131. Attac Austria, Austria
132. Center for Encounter and Active Non-Violence, Austria
133. International Fellowship of Reconciliation Austria, Austria
134. transform!at, Austria
135. Welthaus Diözese Graz-Seckau, Austria
136. WIDE, Austria
137. younion – Die Daseinsgewerkschaft, Austria
138. AK EUROPA (Chamber of Labour Austria), Austria
139. Aid Organization, Bangladesh
140. Bangladesh Krishok Federation , Bangladesh
141. ELA, Basque Country
142. 11.11.11, Belgium
143. Broederlijk Delen, Belgium
144. CGSP ALR, Belgium
145. CNCD-11.11.11, Belgium
146. Corporate Europe Observatory, Belgium
147. Entraide et Fraternité , Belgium
148. FIAN Belgium, Belgium
149. FOS, Belgium
150. Le Monde selon les femmes asbl, Belgium
151. Links Ecologisch Forum – Forum Gauche Ecologie, Belgium
152. Solsoc, Belgium
153. Viva Salud, Belgium
154. WSM , Belgium
155. MOC Mouvement Ouvrier Chrétien, Belgium
156. Social Watch Bénin, Benin
157. ANAPA, Bolivia
158. Coordinadora de la Mujer, Bolivia
159. TerraJusta, Bolivia
160. Centar za zivotnu sredinu/ Friends of the Earth Bosnia and Herzegovina, Bosnia and Herzegovina
161. Adufms, Brazil
162. Aliança RECOs – Redes de Cooperação Comunitária Sem Fronteiras, Brazil
163. Central de Movimento Popular de Pernambuco, Brazil
164. CENTRO ECOLÓGICO, Brazil
165. FONASC, Brazil
166. Fórum Sindical de AP, RR e RO, Brazil
167. Gestos (soropositividade, comunicação, gênero), Brazil
168. IBFAN Brasil, Brazil
169. Instituto Oca do Sol, Brazil
170. Instituto Políticas Alternativas para o Cone Sul (PACS), Brazil
171. Internacional de Serviços Públicos, Brazil
172. Movimento Ciencia Cidadã Brasil, Brazil
173. Movimento Mulheres pela P@Z!, Brazil
174. Movimento Negro Unificado de Pernambuco, Brazil
175. Movimento Ouro Preto pela Infância , Brazil
176. Observatório da Cidadania Dom José Alves da Costa, Brazil
177. Observatório da Mulher, Brazil
178. Organização de Cidadania, Cultura e Ambiente (OCCA Pantanal), Brazil
179. REBRIP- Rede Brasileira de Integração dos Povos , Brazil
180. Sindicato dos Psicólogos do Estado de São Paulo, Brazil
181. SINDSEP/AP, Brazil
182. Avtonomna Rabotnicheska Konfederacija – ARK (Autonomous Worker's Confederation), Bulgaria
183. Federation of Trade Unions – Health services – CITUB, Bulgaria
184. Za Zemiata, FoE Bulgaria, Bulgaria
185. ALTSEAN-Burma, Burma
186. DUKINGIRE ISI YACU, Burundi
187. SFBSP-Burundi, Burundi
188. Terre des Jeunes du Burundi, Burundi
189. Social Action for Community and Development , Cambodia
190. Women's Network for Unity, Cambodia
191. Worker's Information Center (WIC), Cambodia
192. Africa Development Interchange Network (ADIN), Cameroon
193. Cadire Cameroon Association, Cameroon

194. Federation of Environmental and Ecological Diversity for Agricultural Revampment and Human Rights (FEEDAR & HR), Cameroon
195. Alliance du personnel professionnel et technique de la santé, Canada
196. AmiEs de Terre de Québec, Canada
197. ATTAC-Québec, Canada
198. Canadian HIV/AIDS Legal Network, Canada
199. Centrale des syndicats démocratiques (CSD), Canada
200. Comité pour les droits humains en Amérique latine (CDHAL), Canada
201. Conseil central du Montréal métropolitain- CSN, Canada
202. Council of Canadians, Canada
203. MiningWatch Canada, Canada
204. National Union of Public and General Employees (NUPGE), Canada
205. Réseau québécois sur l'intégration continentale, Canada
206. Syndicat de professionnelles et professionnels du gouvernement du Québec, Canada
207. Unifor, Canada
208. CSN, Canada
209. Antimafia Chile, Chile
210. Asociación Nacional de Funcionarios de Impuestos Internos de Chile – ANEIICH, Chile
211. Chile Mejor sin TLC, Chile
212. CINTRAS. Centro de Salud Mental y Derechos Humanos, Chile
213. Comisión de DDHH Colegio de Enfermeras de Chile, Chile
214. Comunidad EcuMénica Martin Luther King, Chile
215. Confederación General de Trabajadores (CGT), Chile
216. Editorial Quimantu Chile, Chile
217. Fundación Constituyente XXI, Chile
218. Observatorio Latinoamericano de Conflictos Ambientales OLCA, Chile
219. Plataforma Chile Mejor sin TLC, Chile
220. Confederación de Trabajadores de Colombia – CTC, Colombia
221. Emisora Comunitaria de Víctimas VCA, Colombia
222. Federacion Seccional FECOTRASERVIPUBLICOS, Colombia
223. Fundación IFARMA, Colombia
224. Grupo Semillas, Colombia
225. Internacional de Servicios Públicos (ISP) Países Andinos, Colombia
226. ISP, Colombia
227. Organización Artemisas, Colombia
228. Fondation Eboko, Congo (Brazzaville)
229. CAUSE RURALE, Congo (Kinshasa)
230. Observatoire d'études et d'appui a la responsabilite sociale et environnementale (OEARSE), Congo (Kinshasa)
231. Fundacion Justicia y Genero, Costa Rica
232. PSI, Costa Rica
233. World Vision LACC, Costa Rica
234. Ekumenická akademie (Ecumenical Academy), Czech Republic
235. Global Aktion, Denmark
236. KULU-Women and Development, Denmark
237. NOAH – Friends of the Earth Denmark, Denmark
238. Confederación Nacional de Unidad Sindical (CNUS) , Dominican Republic
239. SITRACORAASAN, Dominican Republic
240. CEDEAL, Ecuador
241. Centro de Documentación en Derechos Humanos "Segundo Montes Mozo S.J." (CSMM), Ecuador
242. Frente Nacional por la Salud de los Pueblos del Ecuador (FNSPE), Ecuador
243. red Ecuador Decide Mejor sin TLC, Ecuador
244. UDAPT- Union of those affected by Texaco, Ecuador
245. CESTA Amigos de la Tierra, El Salvador
246. Diverse Voices and Action (DIVA) for Equality, Fiji
247. Finnish Asiatic Society, Finland
248. Maan ystävät , Finland
249. TTIP Network Finland, Finland
250. Adéquations, France
251. Aitec, France
252. Alofa Tuvalu, France
253. Amis de la Terre , France
254. Association des Femmes de l Europe Meridionale (AFEM), France
255. Attac France, France
256. CADTM France, France
257. CCFD-Terre Solidaire, France
258. Collectif Stop CETA-TAFTA, France
259. Comité Pauvreté et Politique, France
260. Confederation Paysanne, France
261. Coordination Nationale des comités de défense des hôpitaux et maternités de proximité, France
262. Fédération Syndicat CFDT Santé Sociaux, France
263. France Amérique Latine (FAL), France
264. FRANCE NATURE ENVIRONNEMENT, France
265. PHABRE, France
266. ReAct, France

267. Réseau Foi & Justice Afrique Europe antenne
France, France
268. SB-ECV, France
269. Sciences Citoyennes , France
270. Sherpa, France
271. Veblen Institute, France
272. Observatoire gabonais sur la responsabilité
sociétale des entreprises, des administrations
et des industries (OGARSEAI), Gabon
273. African Women 4 Empowerment e. V.,
Germany
274. Aktionsgruppe Babynahrung e.V., Germany
275. Attac Germany, Germany
276. BUKO Pharma-Kampagne, Germany
277. BUND (Friends of the Earth Germany),
Germany
278. Medico International, Germany
279. PowerShift e.V., Germany
280. Pro REGENWALD e.V., Germany
281. Stiftung Asienhaus, Germany
282. Umweltinstitut München e.V., Germany
283. Abibiman Foundation , Ghana
284. AbibiNsroma Foundation , Ghana
285. Alliance for Empowering Rural Communities
(AERC-Ghana) , Ghana
286. God's Harvest Foundation , Ghana
287. Consumer Association the Quality of Life-
EKPIZO, Greece
288. Nature Friends Greece, Greece
289. CEGSS, Guatemala
290. Consejo de Investigaciones en Desarrollo,
Guatemala
291. Coordinación de ONG y Cooperativas
CONGCOOP, Guatemala
292. SITRAINFORM, Guatemala
293. Confederation des Travailleurs-euses des
Secteurs Public et Prive (CTSP), Haiti
294. Ligue Nationale des Enseignants Haitiens
(LINEH), Haiti
295. PAPDA, Haiti
296. ANAFEA, Honduras
297. CONROA, Honduras
298. Clean Air Action Group, Hungary
299. Egyetemi Zöld Kör , Hungary
300. Fauna Alapítvány, Hungary
301. Fenntarthatóság Felé Egyesület (Towards
Sustainability Association), Hungary
302. Fridays For Future Budapest, Hungary
303. Gaja Environmental Non-governmental
Organization , Hungary
304. Hatodik Nap Egyesület , Hungary
305. Hungarian Association of NGOs for
Development and Humanitarian Aid, Hungary
306. Hungarian Climate Alliance, Hungary
307. Karátson Gábor Kör, Hungary
308. Kisközösségi Program, Hungary
309. Közép-Magyarországi Zöld Kör, Hungary
310. Magosfa Foundation, Hungary
311. Magyar Természetvédők Szövetsége / Friends
of the Earth Hungary, Hungary
312. Society of Women for the Lake Balaton,
Hungary
313. Tanácsadók a Fenntartható Fejlődésért,
Hungary
314. Védegylet Egyesület, Hungary
315. Zöld Akció Egyesület (Green Action) , Hungary
316. AINLIEF, India
317. Amitava Guha, India
318. Association For Promotion Sustainable
Development, India
319. Campaign for access to medicines, diagnostics
and medical devices, India, India
320. Delhi Network of Positive People (DNP+),
India
321. Food Sovereignty Alliance , India
322. Ibn Sina Academy of Medieval Medicine and
Sciences, India
323. Indian Social Institute, India
324. Initiative for Health & Equity in Society, India
325. Innovative Alliance for Public Health , India
326. IT for Change, India
327. Lawyers Collective , India
328. Madhyam, India
329. Indonesia AIDS Coalition, Indonesia
330. Indonesia for Global Justice, Indonesia
331. KRuHA – people's coalition for the right to
water, Indonesia
332. Solidaritas Perempuan, Indonesia
333. Tammuz Org. for Social Development, Iraq
334. Cobh Zero Waste, Ireland
335. Comhlámh Trade Justice Group, Ireland
336. Latin America Solidarity Centre (LASC),
Ireland
337. Peoples Movement – Gluaiseacht an Phobail,
Ireland
338. Trócaire, Ireland
339. Coordinamento nord sud del mondo, Italy
340. Effe Rivista Femminista, Italy
341. Fairwatch, Italy
342. MAG4 Piemonte sc, Italy
343. MEDICINA DEMOCRATICA, onlus, Italy
344. Partito Umanista, Italy
345. Salviamo il Paesaggio, Italy
346. Stop TTIP Italia, Italy
347. Stop TTIP NordOvest, Italy
348. Transform! Italia, Italy
349. Tripla Difesa Onlus Internazionale No Violence
ODV, Italy

350. Jamaica Association of Local Government Officers, Jamaica
351. AM-net (Advocacy and Monitoring Network on Sustainable Development), Japan
352. National Coalition for Joint Action to Stop the Second Stage of USJTA, Japan
353. Pacific Asia Resource Center (PARC), Japan
354. People's Action against TPP, Japan
355. Popoki Peace Project, Japan
356. ZENROREN, National Confederation of Trade Unions, Japan
357. Feminist League, Kazakhstan
358. East African Tax and Governance Network, Kenya
359. Haki Nawiri Afrika, Kenya
360. International Relations Society of Kenya, Kenya
361. Jamaa Resource Initiatives, Kenya
362. PELUM Kenya, Kenya
363. PA women's organization Alga, Kyrgyzstan
364. National Institution of Social Care and Vocational Training, Lebanon
365. Policy Analysis and Research Institute of Lesotho, Lesotho
366. Green Advocates International, Liberia
367. National Health Workers Union of Liberia (NAHWUL), Liberia
368. Mouvement Ecologique, Luxembourg
369. Centre for Social Concern and Development (CESOCODE), Malawi
370. Accessible and Affordable Medicines for All Malaysia (A2MAM), Malaysia
371. Consumers Association of Penang, Malaysia
372. EMPOWER Malaysia (Persatuan Kesedaran Komuniti Selangor), Malaysia
373. IDRIS Association, Malaysia
374. MyWATCH – Malaysian Women's Action on Tobacco Control and Health, Malaysia
375. National Union of Transport Equipment and Allied Industries Workers, Malaysia
376. Positive Malaysian Treatment Access & Advocacy Group (MTAAG+), Malaysia
377. PT Foundation, Malaysia
378. Sahabat Alam Malaysia (Friends of the Earth Malaysia), Malaysia
379. SOCIALIST PARTY MALAYSIA, Malaysia
380. University Malaya General Staff Union (UMGSU), Malaysia
381. Friends of the Earth Malta, Malta
382. ONG Mer Bleue, Mauritania
383. Réseau Mauritanien pour l'Action Sociale, RMAS, Mauritania
384. Asamblea Veracruzana de Iniciativas y Defensa Ambiental – LAVIDA, Mexico
385. Asociación Nacional de Industriales de Transformación (ANIT), Mexico
386. Centro de Derechos Humanos Fray Francisco de Vitoria O.P. A.C., Mexico
387. Centro de Promoción y Educación Profesional Vasco de Quiroga, Mexico
388. Equidad de Género: Ciudadanía, Trabajo y Familia, Mexico
389. Fundación Mexicana para la Planeación Familiar, A. C. MEXFAM, Mexico
390. Grupo Tacuba, A. C., Mexico
391. Iniciativas para el Desarrollo de la Mujer Oaxaqueña (IDEMO), Mexico
392. MY World Mexico, Mexico
393. Red Mexicana de Acción frente al Libre Comercio (RMALC), Mexico
394. STUNAM, Mexico
395. LGBT Centre, Mongolia
396. Oyu Tolgoi Watch, Mongolia
397. Global South Coalition for Dignified Menstruation, Nepal
398. National Alliance of Women Human Rights Defenders, Nepal
399. National Indigenous Women Forum, Nepal
400. Radha Paudel Foundation, Nepal
401. Tarangini Foundation, Nepal
402. Union of Public Services in Nepal, Nepal
403. Both ENDS, Netherlands
404. CBSM, Netherlands
405. Centre for Research on Multinational Corporations (SOMO), Netherlands
406. FNV, Netherlands
407. Handel Anders! coalitie, Netherlands
408. Milieudefensie, Netherlands
409. Transnational Institute, Netherlands
410. Vrijschrift, Netherlands
411. Water Justice & Gender, Netherlands
412. WO=MEN Dutch Gender Platform, Netherlands
413. De Groenen, Netherlands
414. CAFSO-WRAG for Development, Nigeria
415. Center for Peace Education and Community Development, Nigeria
416. Civil Society Coalition on Sustainable Development, Nigeria
417. Enowem Network, Nigeria
418. Girls Voices Initiative, Nigeria
419. IMAAP Projects, Nigeria
420. Nigeria Private Sector Alliance (NiPSA), Nigeria
421. Nigerian Women Agro Allied Farmers Association, Nigeria
422. Peace Point Development Foundation (PPDF), Nigeria

423. Society for the Improvement of Rural People (SIRP), Nigeria
424. Youth and Small Holder Farmers Association., Nigeria
425. Association ESE, North Macedonia
426. Campaign For the Welfare State, Norway
427. EL og IT Forbundet, Norway
428. Handelskampanjen, Norway
429. Norwegian Forum for Development and Environment, Norway
430. Oslo/Akershus Handel og Kontor , Norway
431. Spire, Norway
432. All Pakistan Labour Federation, Pakistan
433. Human Unity Movement, Pakistan
434. Roshni Tariqiyati Tanzeem, Pakistan
435. Pakistan Kissan Mazdoor Tehreek , Pakistan
436. Roots for Equity, Pakistan
437. Badil , Palestine
438. Hermanas de la Misericordia , Panama
439. Sociedad de Economía Política del Paraguay, Paraguay
440. COOPERACION, Peru
441. CUT Perú (Central Unitaria de Trabajadores del Perú), Peru
442. FENTAP, Peru
443. Grupo Emancipador, Peru
444. ISP – PERÚ , Peru
445. Red Peruana por una Globalización con Equidad (RedGE), Peru
446. Freedom from Debt Coalition, Philippines
447. Sanlakas Philippines, Philippines
448. Sentro ng mga Nagkakaisa at Progresibong Manggagawa (SENTRO), Philippines
449. Trade Justice Pilipinas, Philippines
450. WomanHealth Philippines, Philippines
451. Institute of Global Responsibility (IGO), Poland
452. TROCA- Plataforma por um Comércio Internacional Justo, Portugal
453. ZERO – Association for the Sustainability of the Earth System, Portugal
454. SAGAMBA, Rwanda
455. Ole Siosiomaga Society Incorporated (OLSSI), Samoa
456. Samoa Workers Congress, Samoa
457. Ekvilib Institute, Slovenia
458. Coalition of African Lesbians, South Africa
459. SEATINI- South Africa, South Africa
460. Trade Collective, South Africa
461. Association of Physicians for Humanism, South Korea
462. Center for Health and Social Change, South Korea
463. Knowledge Commune, South Korea
464. Korea Breastfeeding Network , South Korea
465. Korean Dentists Association for Healthy Society, South Korea
466. Korean Federation Medical Group for Health Right (KFHR), South Korea
467. Korean Pharmacists for Democratic Society, South Korea
468. PSPD (People’s Solidarity for Participatory Democracy), South Korea
469. AFDMD-Asociación Federal para el Derecho a Morir Dignamente, Spain
470. Amigas de la Tierra, Spain
471. Asociación de Usuarios de Sanidad de la Region de Murcia , Spain
472. ATTAC Catalunya, Spain
473. ATTAC España, Spain
474. Campaña No a los Tratados de Comercio e Inversión, Spain
475. Campanya Catalunya No als Tractats de Comerç i Inversió, Spain
476. CCOO – CS de Comisiones Obreras, Spain
477. CCOO Aragón, Spain
478. Coordinadora Estatal de Comercio Justo, Spain
479. Debt Observatory in Globalisation (ODG), Spain
480. Ecologistas en Acción, Spain
481. Ecoloxiste n’Aición d’Asturies, Spain
482. Entrepueblos/Entrepobles/Entrepobos/Herrierre, Spain
483. Federación de Asociaciones para la Defensa de la Sanidad Pública , Spain
484. LA TENDA DE TOT EL MÓN, Spain
485. Mareas Blancas / White Tides Spain, Spain
486. Medicusmundi Spain, Spain
487. Novact, Spain
488. Observatori DESC, Spain
489. Observatorio de la Deuda en la Globalizacion, Spain
490. OME (Asociación vasca de Salud Mental), Spain
491. Ong AFRICANDO, Spain
492. Osalde, Spain
493. SETEM Catalunya, Spain
494. Solidaridad Internacional Andalucía, Spain
495. UGT, Spain
496. Unión Sindical Obrera (USO), Spain
497. Unión Universal Desarrollo Solidario, Spain
498. National Fisheries Solidarity Movement, Sri Lanka
499. Jordens Vänner – FoE Sweden, Sweden
500. Alliance Sud, Switzerland
501. Arbeitsgruppe Schweiz Kolumbien ask! (Swiss Working Group on Colombia), Switzerland

502. MultiWatch, Switzerland
503. Public Eye, Switzerland
504. SOLIFONDS, Switzerland
505. Mom Loves Taiwan Association, Taiwan
506. Governance Links, Tanzania
507. HakiMadini, Tanzania
508. National Union of Mine and Energy Workers of Tanzania (NUMET), Tanzania
509. Sustainable Holistic Development (SUHODE), Tanzania
510. AIDS Access Foundation, Thailand
511. FTA Watch, Thailand
512. FENASSEP, Togo
513. Les Amis de la Terre-Togo, Togo
514. Humanitaire Plus, Togo
515. Network of Rural Women Producers Trinidad & Tobago, Trinidad & Tobago
516. Public Services International, Trinidad & Tobago
517. FGEG/UGTT, Tunisia
518. Equator School, Uganda
519. Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI) Uganda, Uganda
520. Uganda Land Owners Association, Uganda
521. Baby Milk Action, United Kingdom
522. Banana Link, United Kingdom
523. Bretton Woods Project, United Kingdom
524. Catholic Agency for Overseas Development (CAFOD), United Kingdom
525. Centre for Human Ecology, United Kingdom
526. Coal Action Network, United Kingdom
527. Compassion in World Farming, United Kingdom
528. CORE Coalition UK, United Kingdom
529. Farms not Factories, United Kingdom
530. Fresh Eyes, United Kingdom
531. GardenAfrica, United Kingdom
532. Global Justice Now, United Kingdom
533. GMB, United Kingdom
534. Health Poverty Action, United Kingdom
535. Jubilee Debt Campaign, United Kingdom
536. Keep Our NHS Public, United Kingdom
537. London Mining Network, United Kingdom
538. One World Week, United Kingdom
539. People's Health Movement UK, United Kingdom
540. Public & Commercial Services Union, United Kingdom
541. Real Farming Trust, United Kingdom
542. St Andrews TTIP Action Group, United Kingdom
543. Stamp Out Poverty, United Kingdom
544. STOPAIDS, United Kingdom
545. Thrive Scotland, United Kingdom
546. Tipping Point North South, United Kingdom
547. Trade Justice Movement, United Kingdom
548. Trade Justice Scotland Coalition, United Kingdom
549. Traidcraft Exchange, United Kingdom
550. UNISON, United Kingdom
551. Unite Scotland, United Kingdom
552. Unite the Union, United Kingdom
553. War on Want, United Kingdom
554. Women's Budget Group, United Kingdom
555. 350.org, United States
556. Accountability Lab, United States
557. AFL-CIO, United States
558. Alliance for Democracy, United States
559. Alliance for Retired Americans, United States
560. American Economic Liberties Project, United States
561. American Family Voices, United States
562. Americans for Democratic Action (ADA), United States
563. Americas Program, United States
564. Association of Pulp & Paper Workers, United States
565. Campaign for America's Future, United States
566. Center for Policy Analysis on Trade and Health (CPATH), United States
567. Citizens Trade Campaign, United States
568. CODEPINK, United States
569. Columban Center for Advocacy and Outreach, United States
570. Committee in Solidarity with the People of El Salvador (CISPES), United States
571. Communications Workers of America (CWA), United States
572. Community Services Unlimited Inc., United States
573. Corporate Accountability, United States
574. Democracy for America, United States
575. Earthworks, United States
576. Economic Strategy Institute, United States
577. Fair World Project, United States
578. Feminist Task Force, United States
579. Fight for the Future, United States
580. Food & Water Action, United States
581. Foundation for Integrative AIDS Research (FIAR), United States
582. Friends of the Earth United States, United States
583. Green America, United States
584. Hip Hop Caucus, United States
585. Humanitaire Plus, United States
586. Institute for Agriculture & Trade Policy, United States

587. Institute for Policy Studies – Global Economy Project , United States
588. International Brotherhood of Teamsters, United States
589. Just Foreign Policy, United States
590. Justice is Global, United States
591. Maryknoll Office for Global Concerns, United States
592. Milwaukee Fair Trade Coalition, United States
593. Naked Capitalism, United States
594. National Association of Consumer Advocates, United States
595. National Family Farm Coalition, United States
596. National Latino Farmers & Ranchers Trade Association, United States
597. Natural Resources Defense Council, United States
598. NETWORK Lobby for Catholic Social Justice, United States
599. New Rules for Global Finance, United States
600. Oakland Institute, United States
601. Occupy Bergen County (New Jersey), United States
602. Open Society Policy Center, United States
603. Oregon Progressive Party, United States
604. Our Revolution, United States
605. Presbyterian Church USA, United States
606. Pride at Work, United States
607. Public Citizen, United States
608. R-CALF USA, United States
609. RootsAction.org, United States
610. Salud y Fármacos, United States
611. SERR- Servicios Ecumenicos para Reconciliacion y Reconstruccion, United States
612. Sierra Club, United States
613. Sisters of Charity Federation, United States
614. Social Security Works, United States
615. UE, United Electrical, Radio and Machine Workers of America, United States
616. UNITE HERE, United States
617. United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) , United States
618. United Brotherhood of Carpenters and Joiners of America, United States
619. United Church of Christ, Justice and Witness Ministries, United States
620. United Steelworkers (USW), United States
621. Urgent Action Fund for Women’s Human Rights, United States
622. Washington Fair Trade Coalition, United States
623. Western Organization of Resource Councils, United States
624. Women’s International League for Peace and Freedom, US, United States
625. Womens Environment and Development Organization, United States
626. REDES-Amigos del Tierra (FoE) Uruguay, Uruguay
627. Coalición de Tendencia Clasista (CTC-VZLA), Venezuela
628. Yemeni Observatory for Human Rights (YOOHR), Yemen
629. Action for Development (AfD), Zambia
630. Zimbabwe Institute for International Affairs, Zimbabwe

Annexe : How to implement the proposals from the open letter on ISDS and COVID-19?

This annex is a companion to the open letter to governments on ISDS and COVID-19 signed by 630 organisations from around the world.

The letter addresses the imminent threat of ISDS lawsuits as the result of the COVID-19 pandemic and the related unfolding economic crises⁸ and urges governments to take immediate action to ensure that the duty of governments to regulate in the public interest is safeguarded and put beyond the scope of ISDS claims.

⁸<https://longreads.tni.org/pandemic-profiteers/>, <https://longreads.tni.org/cashing-in-on-the-pandemic/>; <https://www.iisd.org/library/investor-state-claims-amidst-covid-19>; and https://unctad.org/en/PublicationsLibrary/diaepcbinf2020d3_en.pdf

The letter proposes six measures governments should urgently take. These proposals are legally sound and within the full prerogative of governments' sovereignty to implement.

This annex aims to give more details about the legal avenues governments can take to implement the proposals from the letter.

1- Permanently restrict the use of ISDS in all its forms in respect of claims that the state considers to concern COVID-19 related measures.

This measure is already gathering [wide support](#) worldwide. There are, however, different ways to implement this proposal:

1. Governments can, in some treaties, **withhold consent to ISDS**. There are 98 of the 2577 IIAs mapped by [UNCTAD](#) that require case by case consent to ISDS disputes. This means that investors cannot sue unless governments explicitly agree to be sued. Therefore, withholding consent to arbitrate is the legal right of governments and it is an easy step to take.
2. In 96% of the IIAs in force, governments have agreed to automatic consent. However, **governments** have the option to **withdraw consent to ISDS**. This legal avenue has already been flagged years ago by [academics](#) and more recently, [detailed language](#) has been developed on how this could be achieved. It is important to note that while this measure will send a strong signal to the international community about the desire of governments to put a break to ISDS, it is unlikely to stop the actual filing of ISDS cases by investors. In the past, even after [Latin American governments](#) decided to withdraw consent to be sued at the International Centre for Settlement of Investment Disputes (ICSID), investors continued suing and ICSID arbitrators accepted to decide on those disputes.
3. One other way to restrict the use of ISDS would be by following the IISD proposal of an ["Agreement for the coordinated suspension of investor-state dispute settlement with respect to COVID-19 related measures and disputes"](#). IISD proposes the signing of a multilateral agreement, but also offers the option of a bilateral suspension agreement that could be negotiated between countries or blocs of countries. Countries resorting to bilateral solutions can still participate in multilateral efforts as a parallel, longer-term effort.

When we refer to ISDS in all its forms, we are making reference to other models of investor-state dispute settlement beyond the traditional included in most international investment agreements. In particular, the phrase is meant to include the investment court system proposal as embedded in the European Union (EU)-Canada Comprehensive Economic and Trade Agreement (CETA), EU-Singapore and EU-Vietnam free trade agreements. It would also include the Multilateral Investment Court proposal currently being discussed in the United Nations Commission on International Trade Law (UNCITRAL).

2- Suspend all ISDS cases on any issue against any government while it is fighting COVID-19 crises, when capacity needs to be focussed on the pandemic response.

There are currently 397 open ISDS cases against 83 countries. All of these governments, one way or another, are dealing with the COVID-19 crisis. Yet, they also have to worry about responding to the demands of the ongoing ISDS cases.

For example, Bolivia, has already asked tribunals in two ongoing cases ([Glencore v. Bolivia](#) and [Orlandini and Compania Minera Orlandini v. Bolivia](#)) to suspend proceedings explaining the government was unable to prepare its defense due to the pandemic crisis. In both cases, the Tribunals rejected the request for suspension of the cases. This is unacceptable at a time when the World Health Organization's Director General has [said](#) the whole of government must refocus on suppressing and controlling COVID-19.

Furthermore, from 1 March until 25 May 2020 when most governments were in the midst of the pandemic crisis, 12 new ISDS cases were filed at the International Centre for Settlement of Investment Disputes (ICSID) alone.⁹¹ Most of those were against Latin American countries, and Colombia was the worst hit with three lawsuits.

Unfortunately, it is not in governments' power to suspend ongoing proceedings. It is the decision of investors and arbitrators. So, in this case, governments will need to come together in a political declaration, which gathers the support of key international institutions, asking for a moratorium on all ongoing ISDS cases.

3- Ensure that no public money is spent paying corporations for ISDS awards during the pandemic.

Foreign debt moratoriums and cancellation programmes have recently received widespread support, including from international bodies such as the World Bank, UNCTAD among others.

From a policy perspective, the same rationale that applies to foreign debt payments should apply to ISDS debt. It would be rational for governments to stop payment of outstanding debts as a result of any ISDS awards while they face the mounting health and economic crises related to COVID-19, as well as reject payment of any ISDS awards related to actions that the state considers to concern COVID-19 related measures. Countries should discuss relief or restructuring of the payments with the creditors, in this case investors who have won an ISDS case.

Legally, ISDS awards can be set aside by the courts of the country that is the 'seat' of the arbitration, based on grounds set in the national law of arbitration. Generally, the grounds for annulment are limited and the number of successful annulments is consequently low. Grounds included in national arbitration laws, usually based on the UNCITRAL Model Law or the New York Convention, are limited to validity of the form and substance of the arbitration agreement, procedural elements pertaining to the constitution of the arbitral tribunal and compliance with its mandate, and public policy grounds. Given the exceptional circumstances attached to the COVID-19 crisis, states could take action to clarify these grounds in their national laws, particularly making ISDS awards that result from claims challenging COVID-19 related measures and undermining the capacity of the losing state to respond to the national COVID-19 crisis, incompatible with public policy considerations. Moreover, states could consider clarifying that the validity of the arbitration agreement does not hold where a respondent state had unilaterally withdrawn consent to ISDS as a result of the COVID-19 pandemic.

⁹ 12 ISDS cases (11 based on IIAs and 1 based on a contract) were filed against the following countries: Colombia (3 cases), Peru (2), Panama (1), Mexico (1), Dominican Republic (1), Norway (1), Croatia (1), Serbia (1), Romania (1)

4- Stop negotiating, signing, and or ratifying any new agreements that include ISDS.

There are hundreds of investment treaties that are currently under negotiation or have been signed but [await ratification](#) to enter into force. It is the prerogative of any government to put a stop to that process.

For example, recently the government of New Zealand [decided](#) to oppose ISDS in new agreements, [including](#) in the Regional Comprehensive Economic Partnership (RCEP). Also, all governments part of RCEP negotiations decided to [exclude ISDS](#) from the negotiations.

5- Terminate existing agreements with ISDS, ensuring that ‘survival clauses’ do not allow cases to be brought subsequently.

There are four possible avenues for governments to terminate their current investment agreements:

1. **Multilateral termination:** On 5 May 2020, 23 European Member States signed a [joint agreement](#) for the termination of intra-EU bilateral investment treaties among themselves. This is a clear example of how multilateral termination could be achieved.
2. **Unilateral termination:** many other countries have terminated bilateral investment treaties unilaterally (e.g. South Africa, Indonesia, India, Ecuador, Bolivia, Venezuela, Tanzania, and Italy, among [others](#)).
3. **Mutual consent of the parties involved** based on Article 54(b) of [the Vienna Convention on the Law of Treaties](#) (examples of recent termination by mutual agreement include Czech Republic terminated its BITs with Denmark, Italy, Malta and Slovenia; also Argentina and Indonesia agreed to terminate their BIT).
4. **Joint agreement of the governments in free trade agreements** to remove ISDS from the investment chapter.^[10]

The easiest option to pursue (unilateral termination), would trigger the survival clause which allows investors that were already in the country at the time of termination to continue suing the government for a set time (up to 20 years) after the treaty was terminated.

It is worth noticing that options 1, 3 and 4 could annul the effects of survival clauses, so investors would not be allowed to continue suing the government after the termination of the treaty.

IISD has recently [published](#) a briefing on Best Practices about “Terminating a Bilateral Investment Treaty” that offers specific language and addresses different considerations to take into account for governments.

It is worth mentioning that [recent studies](#) have found that termination of investment agreements does not affect investment flows.

¹⁰ For example the recently concluded Agreement between the United States of America, the United Mexican States, and Canada (USMCA) amended the North American Free Trade Agreement (NAFTA) to completely remove ISDS between the US and Canada and, partially, between US and Mexico. <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

6- In light of threats exposed by the pandemic, comprehensively review existing agreements that include ISDS to see if they are fit for purpose

Twenty years after most of these treaties were signed, there is a clear need to carry out comprehensive reviews of these type agreements. This need becomes even more urgent seeing the threats that the international investment regime poses in light of the current pandemic. Assessing the risks of these agreements vis a vis the benefits becomes imperative.

During the last decade, several governments have launched comprehensive reviews of their investment treaties. Among those, [South Africa](#) and [Ecuador](#) for example carried out publicly available reviews following different methodologies. In all cases, however, they ended up establishing that the risks of the agreements outweighed any possible benefit, and therefore recommended that governments roll back ISDS commitments and refrain from committing to ISDS in the future.

Furthermore, academics like Lauge N Poulsen, Jonathan Bonnitcha and Jason Webb Yackee have developed an [analytical framework for assessing costs and benefits](#) of Investment Protection Treaties, that provides clear methodology for how this type of assessment could be implemented.