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EUROPEAN UNION - AUSTRALIA TRADE TALKS QUIETLY DUMP INVESTOR RIGHTS TO SUE GOVERNMENTS (ISDS)

‘We welcome the fact that the European Union (EU) mandate for the current negotiations on an EU-Australia free trade agreement (FTA) has dumped the controversial rights for foreign investors to sue governments in international tribunals, known as Investor-State Dispute Settlement (ISDS). European courts have found that ISDS cases have undermined democratic regulation and that ISDS is so unpopular that the EU fears that its inclusion may lead EU national parliaments to reject any trade agreements with ISDS clauses,’ writes Dr Patricia Ranald, Convenor of the Australian Fair Trade and Investment Network (AFTINET).

Dr Ranald explained that Investor-State Dispute Settlement (or ISDS) gives increased legal rights to foreign investors, enabling them to bypass national courts and sue governments for millions of dollars in unfair international tribunals over changes in national law or policy, even if they are in the public interest. There are now over 850 known court cases and the numbers increase, challenging government laws and regulations in health, environment and even indigenous land rights policy.

‘ISDS cases against EU governments, eg, the Swedish energy company Vattenfall suing the German government over its phase-out of nuclear energy, have led to fierce European public opposition to ISDS, and to two recent court cases in which national governments challenged the legality of ISDS under EU law. The European Court of Justice determined in

2017 that ISDS provisions impinged on national sovereignty and that EU member parliaments had to vote separately on ISDS provisions in trade agreements. In March 2018, the same court found that damages awarded to a Dutch private health insurance company against Slovakia by an ISDS tribunal also breached EU law. In response, the European Commission President has now proposed a ‘fast track’ process for agreements without ISDS: these would be approved by the European Commission alone, without seeking approval from national parliaments. This is the process proposed for the EU -Australia FTA.’

Dr Ranald goes on to note that neither of the two negotiating governments have mentioned the exclusion of ISDS in the publicity about the EU-Australia agreement. ‘The Australian Turnbull government does not want public scrutiny of the fact that it is dumping ISDS in the agreement with the EU but continues to support it in the Trans-Pacific Partnership agreement (TPP-11). The TPP-11 implementing legislation is currently under review in the Australian Parliament by both the Joint Standing Committee on Treaties, which is dominated by the government, and by a Senate inquiry in which the government is a minority. The Labor Party, the Greens and the Centre Alliance all have strong policies against ISDS. We are calling for them to implement these policies and reject ISDS in the TPP-11.’

Source: Dr P Ranald, Media Release, 18 June 2018, AFTINET www.aftinet.org.au Slightly edited by A Healey.

SUSTAINABLE DEVELOPMENT GOALS: THE ROAD TO 2030

PART 1

The Sustainable Development Goals (SDGs) are a collection of 17 global goals set by the United Nations in 2015. The SDGs are set out in a document titled, *Transforming our World: the 2030 Agenda for Sustainable Development*. This title is often shortened to the *2030 Agenda*. 156 countries made a commitment to the *2030 Agenda*, The SDGs cover social and economic development issues including poverty, hunger, health, education, global warming, gender equality, water, sanitation, energy, urbanization, environment and social justice.

Where are we on the way to reaching the *2030 agenda for the Sustainable Development Goals*?

According to a Report called *Spotlight on Sustainable Development 2017*, by a global coalition of civil society organizations, ‘Unbridled privatization, corporate capture and mass-scale abuse are blocking progress towards the Sustainable Development Goals.’¹

This coalition known as the High Level Development Forum (HLDF) comprised six inter-national NGOs and southern-based networks, including the Center for Economic and Social Rights (CESR). The Forum undertook a global stocktaking of the world’s progress on the *2030 Agenda*. Its shadow report stands as an important counterpoint to the official discussions at the UN headquarters. It provides the most comprehensive, independent assessment of the implementation of each of the seven-teen SDGs, based on experiences and reports of national and regional groups and coalitions from all parts of the world.

The Report casts a critical eye over the way nation states and the UN system are privileging corporate-led ‘fixes’ such as unfettered privatization and public-private-partnerships (PPPs), despite evidence in many

cases that these increase inequalities and worsen human rights.

The *Spotlight Report* states: ‘In the *2030 Agenda*, governments committed themselves to a revitalized Global Partnership between States and declared that public finance has to play a role in achieving the SDGs. But in recent decades, the combination of neoliberal ideology, corporate lobbying, regressive fiscal policies, tax avoidance and tax evasion has led to a massive weakening of the public sector and its ability to provide essential goods and services.’² The Report argues that the same corporatized strategies and fiscal and regulatory policies that led to this weakening have enabled an unprecedented accumulation of individual wealth so that economic inequality has reached historic heights.

It states that market concentration³ is increasing, and suggests: ‘It is high time to counter these trends, reclaim public policy space and take bold measures to strengthen public finance, regulate or reject PPPs and weaken the grip of corporate power on people’s lives; in short, to put “people over profit”... These are indispensable prerequisites for achieving the SDGs and turning into reality the vision of the transformation of our world, as proclaimed in the title of the *2030 Agenda*.’⁴

Kate Donald, Director of CESR’s Human Rights in Sustainable Development Program, authored the Report’s chapter on Goal 10, in which governments pledge to reduce inequalities within and between countries. This chapter builds on CESR’s policy brief on Goal 10, *From Disparity to Dignity*. It explores how corporate influence over tax policy has resulted in increasingly regressive fiscal regimes, which drain governments of resources necessary to tackle inequality. It describes how ‘corporate capture’ (the

¹ Center for Economic and Social Rights, Spotlight on Sustainable Development, <http://www.cesr.org/spotlight-sustainable-development-2017>

² Ibid. p.2

³ Market concentration has to do with how many or how few companies are operating within a given industry.

⁴ Ibid.

effective power over our public institutions achieved by corporate interests seeking to put profit before people) creates an ‘inequality trap’, by which growing economic inequality increases the ability of corporations and rich elites to manipulate policy and protect and advance their wealth and privilege.

The Report also examines how corporate lobbying for tax incentives, financial secrecy laws in tax haven countries and the drive to lower effective tax rates on businesses, all have profound effects globally on the enjoyment of human rights. Poorer countries are deprived of the resources they desperately need to realize economic and social rights.

Social Watch, in an article called, *Reclaiming the Public Space for the SDGs*, warns that, ‘in the aftermath of the global financial crisis, 2007-2008, the discourse around privatization and PPPs has gained new momentum, shaped particularly by corporate think tanks and international financial institutions (IFIs). At a time when governments seem unable and unwilling to meet pressing challenges, private actors are positioning themselves as an alternative solution that is more flexible and efficient and less bureaucratic than

governments. A disturbing example of this strategy is the report of the World Economic Forum (WEF) on the future of global governance, *Global Redesign*. It advances the idea that a globalized world is best managed by a coalition of multinational corporations, governments (including through the UN system) and select civil society organizations (CSOs). It argues that governments no longer are ‘the overwhelmingly dominant actors on the world stage and that the time has come for a new paradigm of international governance stake-holders’. The WEF vision includes a ‘public-private’ United Nations, in which certain specialized agencies would operate under joint State and non-State governance systems. For example, the Food and Agriculture Organization (FAO) would operate through a Global Food, Agriculture and Nutrition Redesign Initiative.... This model assumes that some issues would be taken off the agenda of the UN system and addressed by ‘plurilateral, often multi-stakeholder coalitions of the willing and able’.⁵ Scary stuff!

Source: Submitted by Mary Boyd (Grail Canada)

**‘Fascism should rightly be called corporatism as it is a merge of state and corporate power.’
Benito Mussolini**

THE DEMOCRATIC REPUBLIC OF CONGO Behind the violent upheavals

As in other African countries, the huge natural resources of the Democratic Republic of Congo (Congo DR) have become a curse for her citizens. Their political elites have squandered their post-independence years, looting their resources instead of creating structures for nation-building. The armed conflicts in Congo DR represent a systematic struggle of the political elites to keep control of the country’s vast natural resources and continue with their looting spree.

The present impasse in Congo arose from the refusal of Joseph Kabila to hold democratic elections at the end of his mandate in 2016 and the decision of the Catholic Church to stand with the people and demand accountability from him. Indeed, the decision of the Church to stand with the voiceless people of Congo is truly encouraging. It is not only prophetic for the people of Congo; it is also an encouragement to other Episcopal

⁵ Jens Martens, Global Policy Forum, *Reclaiming the Public (Policy) Space for the SDGs*, Social Watch,

Conferences in Africa who remain silent in the face of injustices, exploitation and oppression of the people by leaders in their countries.

Meanwhile, recall that the Congolese Constitution was created only in 2006; 32 years after Mobutu Sese Seko had plundered the resources of the country. Joseph Kabila and his coterie appear ready to use all available means to crush, silence and eliminate any opposition to their efforts to stay in power and protect their corrupt and ill-gotten wealth. It is on record that the Kabila family business empire includes 80 companies, 71,000 hectares of farmland, the largest diamond permits along 450 miles of Congo's border with Angola and a 4.8% stake in one of the country's largest mobile phone networks.

In April 2015, Ibrahim Thiaw, the Executive Director of the United Nations Environment program, stated that the estimated annual earnings from exploitation of natural resources in Congo by far exceeded USD1 billion.

While we stand aghast at the corruption, lack of vision and desperation of African leaders, we must point out the complicity of the Global North in providing safe havens for their loot. Thiaw noted that approximately 98% of these earnings each year ends up in the coffers of international interests, while the remaining 2% funds armed groups in Congo DR. It is not possible to speak about the looting of African resources without speaking of the shadow interests of the Global North.

It is known that the links between the illegal exploitation and trade of natural resources and

arms proliferation are fuelling and exacerbating the conflicts in Congo DR. Can we find here some explanation for the Global North's reluctance to bring its democratic principles to bear on its relations with Africa?

In 2016, the European Union (EU) shied away from the complete regulation of the supply chain of tin, tungsten, tantalum and gold, despite compelling evidence that this was a pressing need. The EU must now rise above its shadow interests to mobilise the international community and pressure Kabila to step down from power. Not only this, the EU will need to go beyond mere words to reconsider her unproductive, paternalistic economic relations with Africa. Although the Chinese, who are pushing on all fronts of the African economy, may not be the perfect economic collaborators, at least they represent a wake-up call to the former colonial masters that a new economic interest has entered the 'market place' that was originally their monopoly.

For now, the Congo DR boils, and the poor people are dying in their hundreds. The international media carry the news of killings, maiming, incarcerations and other inhuman acts. Immediate and long-term responses are needed. How will the international community act to resolve this crisis (and others in Africa)? Will it be in just economic partnerships or will it be further plunder?

Source: Chika Onyejiuwa, 26 | March 2018, Africa Europe Faith and Justice Network.

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If you cut a tree, the Gross Domestic Product (GDP) goes up. But if you preserve the tree, the GDP does not grow. Now you have to decide whether you need the tree or the GDP.

Devinder Sharma, New Delhi

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