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After the TPP ...
Whither the RCEP?

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Double issue

Editor's Note

IN recent years, with the eclipse of the World Trade Organisation (WTO) as the driver of multilateral trade, bilateral and regional trade agreements have taken centrestage. In Asia, two regional agreements have loomed large.

The first of these is the Trans-Pacific Partnership (TPP), which has the US as its driving force. Originally envisaged as a four-party agreement among Brunei, Chile, New Zealand and Singapore, it has since evolved, under US aegis, into a 12-member Asia-Pacific trade treaty. Significantly, China is not a member of this trade group and this is not fortuitous as the US has been intent on keeping it out. The fact is, for the US, the TPP is an integral part of its 'pivot to Asia' geopolitical strategy designed to isolate and 'contain' China.

However, it is the trade, commercial and developmental aspects of the TPP that have generated the real controversy. The corporate orientation of its provisions at the expense of consumer rights has raised serious concerns as to whose interests the treaty is designed to serve. For example, the treaty obligations requiring parties to provide enhanced intellectual property protection would confer monopolistic rights to a patent holder over the patented product. This has rightly been perceived as a serious threat to the right to health as it would place formidable obstacles to the production of cheaper generic medicines.

The TPP's privileging of corporations over consumers is even more glaring in the legal remedies it provides for alleged treaty breaches. Under its investor-state dispute settlement (ISDS) mechanism, corporations, though not parties to the agreement, are given the special right to sue states in international arbitral tribunals in respect of any alleged discriminatory rules or regulations which may result in any loss of profit. As previous judgements by such tribunals have revealed a strong corporate bias, the concern is that the prospect of being sued and being forced to pay huge awards will almost inevitably inhibit governmental policymaking.

All these concerns engendered protests against the TPP in the member countries, but it was the opposition in the US that has proved decisive. President-elect Donald Trump, who had during his election campaign pledged to withdraw the US from the TPP, has now confirmed that one of his first presidential orders upon assuming office next year will be to withdraw the country from the treaty. By so doing, he will in effect be signing the death warrant for the TPP as it is unlikely to survive the exit of its prime mover.

This leaves the stage completely to the Regional Comprehensive Economic Partnership (RCEP) as *the* Asia-Pacific regional trade treaty. Unlike the TPP, which is a pact duly signed by its members, the RCEP is still a work in progress. Contrary to a widespread misconception, it is not China but the 10-nation ASEAN (Association of South-East Asian Nations) bloc that is the prime mover of the RCEP. By bringing on board the six countries with which they have concluded free trade agreements (including India and, more significantly, China), the ASEAN nations are working to establish the largest free trade bloc in the world.

However, ultimately, the real significance of the RCEP will rest not on its size or volume of turnover but on how far it is consonant with the developmental needs of the developing countries which constitute the core of its membership. In fact, it is clear from the negotiating mandate of the RCEP that while it seeks to liberalise trade, a developmental dimension is also an integral part of its goals.

From its inception, there has been tension between these two goals largely on account of the attempts by its more market-oriented members to push their liberalisation agenda at the expense of the developmental concerns of its economically weaker members. With the impending demise of the TPP, this drive appears to have gained momentum, with some countries which are members of both trade pacts seeking to incorporate in the RCEP some of the most objectionable provisions of the TPP. These include its rigorous intellectual property provisions, key services chapters relating to telecommunications and e-commerce, as well as the substantive ISDS provisions referred to above. While the negotiating text of the RCEP is regrettably still a secret, leaked drafts of the relevant chapters would indicate there are indeed such moves.

Viewed from another perspective, though ASEAN was the original creator of the RCEP, the influence of Japan, South Korea and, to a lesser but significant extent, Australia and New Zealand is clear through the leaked texts, rather than China or ASEAN.

All this has elicited strong protests from civil society groups which are alarmed that the RCEP could end up becoming another TPP. Recently, more than 300 such organisations from across the region signed a letter calling on the 16 member countries to reconsider the whole basis of the proposed trade agreement. One hopes that the governments involved, particularly from the developing countries, will respond positively to this call.

Our cover story focuses on the RCEP in the context of the impending demise of the TPP. A broad assessment of the negotiations is followed by analyses (based on the leaked texts) of the key chapters relating to intellectual property, services and ISDS. Critiques of the controversial provisions, especially by civil society organisations, enrich the continuing debate on this treaty.

– The Editors

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There is growing concern as to whether the ongoing negotiations on the Regional Comprehensive Economic Partnership (RCEP) will produce an agreement similar to the corporate-friendly Trans-Pacific Partnership (TPP) or whether they will pursue a more development-oriented course. 11

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To keep a river running

Deep in the Amazon's central basin, one tribe is holding back the seemingly inexorable march of development.

Robert Walker

IT came in low, guns bristling through the open bay. Such a strange apparition, like a giant insect, almost familiar but for its unnatural sound and fury and the faces staring down at them, striped in the black and green war-paint of the *pariwat* (outsider). With school in session, no one thought to ask about the unwelcome intrusion by radioing FUNAI, the Brazilian government's agency for indigenous affairs.

As the shooting started, it reminded some of *carnaval* firecrackers in Jacareacanga. But only for an instant. The Munduruku knew *pariwat* gunfire when they heard it, so they ran. The one young man not out hunting, Adenilson Munduruku, was killed by a bullet to the back of the head, execution-style. Could the Brazilian Armed Forces have mistaken Adenilson for an illegal gold miner as they hovered over a Munduruku village and gazed upon an indigenous culture engaged in its daily rituals? Any such explanation must be rejected given that a dozen people were injured in the November 2012 attack, children among them. One of the Munduruku villagers later told human rights activist Maíra Irigaray: 'We knew immediately that this was intimidation because of our stand against the dams planned for Tapajós.'

Events have vindicated this interpretation, as the villagers have been forced to confront continuing efforts by Brazil to build a massive hydropower project in the Tapajós Valley, the Munduruku homeland. Tensions have persisted, particularly with Brazilian state agents trespassing on Munduruku territories seeking to develop a region over which the indigenous group claims sovereignty. Because this claim means nothing to the forces arrayed against them, the Munduruku have seen no choice but to resist. They know that development of the valley poses an existential threat to both the tribe and the forest.

The Munduruku people are resisting efforts to build a massive hydropower project in their Tapajós Valley homeland.

* * * * * *

After a long flight to Belém from the United States, my 12-year-old son, Nathanael, and I board the prop-plane for Itaituba, gateway to the Munduruku homeland in the Tapajós Valley. In an hour, it bounces onto a landing strip surrounded by dense vegetation, and we exit with five other passengers, heading for the cinderblock terminal to retrieve a key from the guard. Shortly, we're driving the rental, a Toyota Hilux pickup, down the Transamazon Highway, a dirt road still slick from the rainy season. Our destination is Jacareacanga, drop-off to the Munduruku heartland, a 12-hour drive we're not likely to make today. I've wanted to show my son the marvels of the Tapajós Valley for some time now, and with the hydropower project in motion, the time is now, or never.

It's late afternoon when I spot the marker for the *mirante*, meaning 'look-out'. The pickup parked, I rouse Nathanael, and off we walk past several empty shacks to a clearing with a wooden platform. Almost 250 feet above the Tapajós River, the structure seems to float atop the forest giants that root below. We sit down, and drape our legs over the edge, pleasantly cooled by the moisture of a recent shower. Two miles away on the opposite shore, the forest seems to form a canyon wall, while in the distance, downstream, the river winnows through a maze of islands and disappears. Just upstream, a line of rapids connects both sides of the valley with a thread of broken water.

For the next hour or so, we discuss the dam project, the wonders of Amazonia, and why human beings never seem to be satisfied with anything. Once Nathanael's questions have run their course, we return to the pickup. After a few snacks, we stretch out as best we can since nighttime driving is ill advised. Although Nathanael sleeps quickly, I do not, haunted by what's about to happen in the Tapajós Valley, and what this means for the Amazonian forest.

* * * * * *

Rising in the southwestern corner of Pará State, the Tapajós River is one of the Amazon's clearwater tributaries, in contrast to the whitewater ones that carry nutrients and loads of sediment. From its sources in Mato Grosso State, the Tapajós flows 1,200 miles and falls nearly 1,000 feet before reaching the Amazon, a topographic fact responsible for its spectacular rapids and hydropower potential. Its basin covers 155,000 square miles, an area the size of Florida, and nearly a tenth of the forested area in Brazilian Amazonia.

The river is now threatened by dams already operating in its headwaters, and in particular by five new ones planned for the middle valley. These five dams comprise the Tapajós Hydroelectric Complex that's projected to generate a total of 11,670 megawatts, which will make it one of the largest hydropower facilities in the world. There are also plans for dozens of smaller dams on tributaries across the Tapajós basin, as well as a 900-mile waterway from the soybean-agriculture region of Mato Grosso to the Amazon River.

The Tapajós Complex belongs to the vast infrastructure portfolio of the South American Council of Infrastructure and Planning or COSIPLAN, aimed at powering up and connecting all of the South American nations. COSIPLAN's Amazonian blueprint – together with individual national programmes – calls for more than 600 dams, 62,000 miles of paved highway, 12,000 miles of navigable waterway, a string of river ports, and a transoceanic railroad. The implications of this are staggering when considered in light of Amazonian conservation interests.

Not so long ago political scientist and futurist Herman Kahn – architect of the Cold War policy of mutually assured destruction and inspiration for Stanley Kubrick's *Dr. Strangelove* – proposed damming the Amazon River itself to create a lake 600 miles in extent, giving South America a 'Great Lakes' system like North America's, which was key to US industrialisation in the 19th century. COSIPLAN is a modern version of Kahn's plan, one that threatens to wipe out the Munduruku's homeland, thereby putting the entire Amazonian

cc Nelson Pretto

The Tapajós River basin covers 155,000 square miles and nearly a tenth of the forested area in Brazilian Amazonia.

forest at risk.

The Munduruku, like many Amazonian tribes, have origins lost to history. That they speak a Tupi-based language suggests long-term migrations, perhaps in response to coastal pressures originating with the Portuguese. Ultimately, they occupied the Tapajós Valley at the confluence of the river's Juruena and Teles Pires tributaries. An aggressive people, they expanded north to the Amazon, and into the Xingu and Madeira river basins. From a pre-contact population of nearly 40,000, the Munduruku's numbers shrank following the Portuguese occupation of the basin through the 17th and 18th centuries. But a demographic turnaround began in the 1950s and 60s, and today they number about 13,000.

The Munduruku's growing population has sparked a cultural revival, as well as efforts to consolidate the foundations of a state. The community is confronting the absence of democratic governance structures and addressing it with a willingness to build them: They now recognise a chief of chiefs, General Chief Kabá Munduruku, who governs by consensus. Currently, the Munduruku represent one of the largest and best organised of Amazonia's existing tribes.

But the fact that the Munduruku have survived culturally against historical odds does little to diminish the threats they face today, and they have understandably risen to resist the attack on the world that they call home. Their actions involve peaceful protests, the formation of political alliances with other tribes and sympathetic *pariwat*, and most importantly the self-demarcation of territories they claim by right of occupation.

As tribal activist Maria Leusa Kabá Munduruku asserts, '*Ipereg Ayu*,' which means, 'We are strong; we know how to protect ourselves and all that we believe in.' It also provides the name for the movement she leads to exercise sovereignty over the Tapajós Valley, a quest that's earned her the UN's Equator Prize for those who defend the natural world at personal risk. Maria Leusa has no illusions about the Munduruku's conflict with the Brazilian state, having bluntly told the environmental and human rights group Amazon Watch: 'I consider our government an assassin. It assassinates our rights and territories with dams, calling this development.'

Ipereg Ayu aims at cultural survival, and key to this is defending Tapajós Valley's pristine environment, an important component of Amazonia's continental rainforest, which has lost nearly 20% of its cover on the eastern and southern margins of the basin in a band of cleared land called the arc of deforestation. The arc is now a noose that's tightening.

The Tucurui and Belo Monte

dams on the Tocantins and Xingu Rivers, the Madeira projects to the west, and the Amazon River port system to the north delineate much of that noose whose rope extends to the far corners of the industrial globe. Through the middle of this encirclement runs the Tapajós River, so far largely untouched, although in certain places only 20 miles to the east, Federal Highway BR-163 connects the exploding agricultural economy of central Brazil to Santarém, a town at the river's confluence with the Amazon. The Tapajós Complex will realise its most immediate impact on Santarém, which is well positioned to capture initial growth impulses due to expanding port facilities and cheap electricity. With time, that impact will ripple through the central basin and beyond, synergising with nascent industrialisation in Manaus, Belém and the southeastern corner of Pará State.

The corporations vested in the dam's development – a consortium of Brazilian and European companies, including Eletrobras, Brazil's state energy company – promised green efforts in the early days of public discussion about the project. For example, they promised to use 'platform technology', flying workers to and from the dam sites to avoid building roads that might open areas to settlement, and to follow 'run-of-the-river' dam designs, rather than reservoir systems, in order to reduce flooding and impacts on fish and other riverine species. But they soon abandoned these promises.

Nevertheless, such misdirection created a base of political support, buttressed by the environmental impact assessment (EIA) of the largest planned dam in the Tapajós Complex, the $9 billion, 8,000-megawatt São Luiz do Tapajós facility. The assessment, paid for by one of the developers interested in the project, found that the dam would not have much of an effect on biodiversity. This finding alarmed the Munduruku, environmentalists and allies in the Brazilian judiciary. So Greenpeace commissioned a second, independent analysis of the EIA itself.

The analysis, which engaged the

Tribal activist Maria Leusa Kabá Munduruku leads the Ipereg Ayu movement to exercise sovereignty over the Tapajós Valley.

Federal University of Pernambuco and the National Institute of Amazonian Research, found egregious omissions in the EIA, and concluded that the dam, which would drown 145 square miles of rainforest that were recently recognised by FUNAI as traditional Munduruku lands, would likely instigate a massive loss of biodiversity, threaten endemic species, and unleash a level of environmental degradation that would negate any development credits.

But even this second study says little about the cumulative and synergistic effects of the entire series of dams planned, in combination with other infrastructure like waterways and highways. Brazilian law actually requires an assessment of such cumulative and synergistic impacts, which were completely overlooked in the Tapajós case, says Brent Millikan, Amazon programme director of International Rivers, a US-based conservation group. 'Eletrobras actually suppressed report elements critical of their plans,' he says.

The key question here is: Can you implement the Tapajós and COSIPLAN infrastructure without utterly changing the places where you build it? The answer is simple: You can't.

Construction of hydropower facilities in Brazil routinely attracts upwards of 100,000 workers. Once built, they are operated by technicians and professionals, who need schools, restaurants and health services. By the economic theory of cumulative causation, this attracts more workers, more professionals and new services, generating an ever-growing demand for more food and more shelter, until the growth is unstoppable. Add to this the manufacturing stimulated by cheap electricity and what do you get? You get what was the objective all along: industrial development. That the Tapajós watershed possesses vast mineral wealth, and some of the most productive agricultural land in Brazil, only raises the issue more forcefully, which is why the real battle to save the Amazonian forest has just begun.

To lose the Tapajós River would be bad enough. But an even greater danger looms, in light of the first wave of Amazonia development, which converted nearly 20% of the forest into fields and pastures. The danger is this – the Amazon forest's complete disappearance due to the transgression of a tipping point, a magnitude of deforestation capable of disrupting the rainfall cycle that sustains the region's moisture.

Tropical hardwoods are well-primed pumps that suck moisture from the soils to be released as vapour, forming the clouds that condense as rain and soak the soils again in a ceaseless cycle of ecological renewal. Knock down enough of them and the atmosphere dries as the cycle collapses. Current research places the tipping point at a basin-scale deforestation of 40%. Once that point is crossed, yearly rainfall drops from 80 inches on average, enough to sustain a rainforest, to less than 40 inches, the threshold for conversion to a shrubby waste. Simple arithmetic shows that the Tapajós infrastructure – by opening Amazonia's central basin – will push the deforestation numbers to the tipping point.

This past August, the Munduruku unexpectedly won a skirmish in their fight for sovereignty when Brazil's environmental protection agency, IBAMA, scrapped the permits for the São Luiz do Tapajós dam. The agency, which had initially stalled the project in April, said the EIA submitted by the developers had failed to present enough evidence to judge its social and ecological impacts. Brazil's Environment Minister, José Sarney Filho, said that the dam was 'entirely dispensable' and could be compensated by energy from smaller power generators and other sources such as wind.

Nevertheless, neither the Munduruku nor environmental watchdog groups are quite ready to celebrate, given the recent history of major dam projects in Brazil. Munduruku General Chief Arnaldo Kabá Munduruku called this latest development 'important', but added that his people would now 'continue to fight against other dams in our river'.

'It's wonderful news, but it's hard to know what this means for the future of the region,' says Christian Poirier, programme director of Amazon Watch. 'This project has been archived, and archived does not mean definitive cancellation,' he says, pointing to the Belo Monte dam on the Xingu River, the large Amazonian tributary just to the east of the Tapajós. Shelved in 1989 in the face of massive public protests, it was revived a few years later. Now nearly completed – the first turbines went online in May – the 11,233-megawatt Belo Monte Dam complex will divert 80% of the Xingu's flow and, according to Amazon Watch, cause the forced displacement of up to 40,000 people. As Poirier describes it, the Belo Monte dam is one of the world's 'most egregious examples of environmental destruction'.

Indeed, despite the surprise cancellation, the Tapajós Valley's development doorway remains wide open. Plans for the remaining components of the hydropower complex, as well as the waterway, are still a 'go', and developers are still free to request another licence for the São Luiz do Tapajós dam. Meanwhile, a Brazilian Senate committee has approved a constitutional amendment to remove environmental licensing requirements for 'strategic' infrastructure developments. If the rule is eventually passed by the country's new government, it will not be possible to cancel or even suspend projects considered important public works once an EIA has been submitted.

The unfortunate fact is that arguments about environmental and social consequences of hydropower carry little weight among the powers that be in most South American nations, particularly Brazil, which have long sought to develop the basin. These nations do not envision an eternally wild Amazonia, valuable to the world for its ecosystem services, although such a vision occasionally throws roadblocks in the way of an otherwise inexorable encroachment. In this context, the cancellation of the São Luiz do Tapajós dam project must be taken with a grain of salt, until Brazil justifies such decisions not by reference to economic need, but by reference to the constitutional rights of the Munduruku to exercise sovereignty over their homeland.

Businesses and politicians desirous of Amazonian development are beginning to respond to environmental concerns with promises of sustainability and best-management practices. Such promises, which are rarely kept, generally represent a form of greenwashing that has benefitted from repeated references to a downtick in deforestation over the past decade. After a spike in 2004 during which 10,400 square miles of forest were cleared – a loss reminiscent of the worst years of the 1990s – data from Brazil's space agency, INPE, shows that the country's deforestation rates have trended down.

However, as philosopher Karl Popper once noted, a trend is not a law. In other words, the decline in deforestation and the recent cancellation of the São Luiz do Tapajós dam project don't mean that the battle is over, and the forest and Munduruku saved.

* * * * * *

Waking at dawn, I leave Nathanael sleeping to head for the *mirante*, where I contemplate the thin line of rapids that cross the river, the design site for the currently shelved São Luiz do Tapajós dam. With a chorus of squawks, a pair of macaws shoot from the trees below, moving their wings in twittery pinwheels. I'm sad to see them leave, but out across the water they boomerang back, passing directly overhead and away from the river.

Perhaps it's started, the disappearance that will astound the world. Look, the dam goes up, and the *Dr. Strangelove* landscape rises, replacing forest with factories, biodiversity with a hundred million human ants. Agitated by what's planned to happen here, I return to the pickup and depart, arriving in Jacareacanga by noon and driving straight for its ramshackle port. Nathanael and I get out to stretch our legs.

The Tapajós is but the narrow channel of a stream braid here. Across 50 yards of jade-coloured water floats a forested island. Among the island's taller trees are several blooming ipê roxo, whose lavender crowns have snowed thousands of flower petals onto the river.

I ask Nathanael if he's ready. Of course he is, so we head back to the pickup and retrieve the bottle with the note he's prepared and corked inside. His message is direct, that the government please stop trying to change nature and steal from the Munduruku. I smile as he releases it into the Tapajós, knowing I couldn't have said it any better myself. ◆

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Modi's surgical strike on the Indian people

Prime Minister Narendra Modi's drastic action to combat 'black money' in India has caused needless misery to the poor without really effectively tackling the problem. *Jayati Ghosh* explains.

THE audacious move by Indian Prime Minister Narendra Modi to demonetise currency notes of 500 and 1,000 rupees at one stroke is supposed to indicate his government's resolve to root out black money. Unfortunately, it will barely touch the problem of generation of black money, while both design and implementation have flaws that have left the mass of people reeling.

The demonetisation of bank notes per se is not the problem. It has occurred periodically in India and many other countries, both to reduce concerns about counterfeiting and to stem the use of cash-based illegal transactions. But it has typically been done gradually, allowing adequate time for people to replace the old notes with new ones. This overnight shock, by contrast, is hugely destabilising and disruptive of normal economic activity.

People waiting in line outside a bank in New Delhi to exchange their old Rs 500 and Rs 1,000 notes. The shoddy implementation of the demonetisation move has led to long queues in banks, drastic cash shortages and breakdown of payments and settlements systems.

Government spokespersons argue that secrecy and speed were essential, because otherwise, those hoarding black money would simply turn their cash 'white' through buying other assets. But this argument will not hold. Suppose the government had announced that (say) from 1 December the old notes would no longer be valid. It could then start tracking all large sales of likely assets (such as land, houses and gold) and foreign exchange transactions, to follow up with those who had made them. This would have provided the government with all the information it needs to ensure legal and tax compliance from such individuals, while involving no cost to the ordinary law-abiding citizen.

As it happens, the secrecy and suddenness have created completely unnecessary problems which have hugely affected ordinary people across the country. In addition, the government clearly failed to recognise that, given the rise in prices over the years, it is absurd to treat Rs 500 as a 'high-denomination' note that poor and middle-class people are not likely to use. Given the prices prevailing for many essentials like food items and medicines (with some dals costing nearly Rs 200 per kg for example), it is absurd to consider that Rs 500 would be used only by rich people or black marketeers. The two cancelled notes account for 86% of the notes in circulation, and removing them at one stroke inevitably has had huge repercussions on liquidity, markets, production and consumption across the country.

In terms of implementation, what has been even more surprising than the design is the apparent lack of preparation on the part of the administration for such a major move, even though the Prime Minister claims that this was planned over nine months. The chaos evident in the week after the announcement is partly because not enough notes have been made available to banks and ATMs, and arrangements to deal with what should surely have been an expected rush to exchange notes were completely insufficient. Since the new cash notes have not become readily available, economic activity in the heavily cash-based Indian economy (where well above 90% of transactions are in cash) has been hugely affected.

The choice to introduce first the Rs 2,000 note rather than the Rs 500 note is also mystifying. If the idea is to eliminate black money, then why introduce even-higher-value notes that are even easier to store for those holding large quantities of undeclared cash? Obviously, this is not an effective liquidity substitute for the Rs 500 note, yet government representatives are surprised when people cannot find anyone to give them change for the higher-value note. The shortage of other, lower-value notes, inevitable when only higher-value notes are introduced, was also not anticipated.

It beggars belief that simple matters like ensuring that the central bank, the Reserve Bank of India (RBI), had sufficient notes to replace the ones that have been demonetised, or that ATMs are appropriately configured, were not taken care of before going through with this. Indeed, these implementation problems appear to have been unexpected: the government began by claiming that things would be sorted out in a matter of days, then weeks, and most recently 50 days, during which time the Prime Minister has asked the people of the country to bear with him.

Still, all this would have been justified if it would eliminate all black money in the country. But in fact, it will do little more than scrape the surface of the problem, despite all the hyperbole about this being a holy war on corruption.

The nature of 'black money'

One mistake is to see 'black money' as a stock of cash or pile of accumulated assets, because it is not about stocks at all, but about flows or transactions that are concealed from authorities or under-reported to avoid taxes and various other regulations. These include bribery and other corruption, as well as under-invoicing and over-invoicing by companies of all sizes, under-reporting of the values of sales of goods and services by individual providers, overstating of costs, reporting false or non-existent transactions and, of course, criminal activities of various kinds. Many of these do not necessarily require cash transfers at all but can be just as easily (and more speedily) done through electronic means. Also, money does not acquire a particular colour and keep it; as it flows through different transactions, it can move through white, black and grey hues.

For all these reasons, estimates of the exact amount of 'black money' in the system at any given time are necessarily problematic, since they rely on assumptions about both the number and the value of unrecorded and tax-evading transactions. A recent estimate by a private agency has claimed that black money amounts to 20% of total gross domestic product (GDP) or 25% of recorded GDP, which would make this one of the lowest in the world already. However, a report by the National Institute of Public Finance and Policy (NIPFP) on the incidence of black money in India (which was submitted in December 2013 but has still not been made public or even submitted in Parliament) is reported to have suggested that the black economy amounts to as much as 75% of the recorded GDP.

Most of this is not – and indeed cannot be – held in the form of local currency. Those engaged in such activities would speedily seek to transfer them into other assets, like land and other real estate property, gold and jewellery, benami accounts in banks, holdings of dollars and other global reserve currencies, holdings of stocks and shares through the anonymous vehicle of Participatory Notes and, most of all, sending the money abroad through various means.

Consider what proportion of the money in circulation is black money that could be flushed out by this new measure. We know that currency in circulation currently amounts to 12% of GDP, and 86% of this currency is in the form of Rs 500 and Rs 1,000 notes. But around half of GDP is produced in the informal sector, on which 85% of the population rely. This is unrecorded income, even though it is estimated in the GDP, but it is predominantly not 'black' because incomes here are generally too small to fall into the direct tax net and are anyway subject to indirect taxes of various kinds. These include incomes of farmers (which are not taxed), the returns of small traders and micro entrepreneurs, the incomes of daily wage workers, the incomes of small service providers, and many more such incomes.

This informal economy in India is hugely, if not completely, dependent upon cash. Probably anywhere from half to all of informal GDP is in the form of cash transactions. Since estimated cash balances amount to 12% of GDP, the cash equivalent of anything between 3-6% of GDP is involved in such informal activity, which is completely legal.

A move to demonetise larger-denomination notes of Rs 500 and Rs 1,000 would be successful only to the extent that it flushes out the part of black money that is held in cash, which would then be equivalent to 2.3-5.2% of GDP. In terms of the available estimates of black money, this comes to only 3.4-6.8% of the NIPFP estimate of black money or 10-20% of the smaller private estimate. So only a tiny or at most a small proportion of black money (or rather, of the assets acquired through illegal or unrecorded transactions) would be captured through this move.

The impact of sudden demonetisation

Even revealing this small amount would still be an unmitigated benefit, if the move did not simultaneously cause so much grief to innocent citizens. But the insensitive design and shoddy implementation of this move have already caused massive economic distress and the pain is likely to linger for some time. The immediate impacts – in the form of drastic cash shortages leading to immense hardship especially among less privileged groups; long and tedious waiting times in queues that often prove to be fruitless because banks and ATMs are unable to provide the required cash; breakdown of payments and settlements systems across India – have been widely portrayed in the media.

It is true that these are essentially temporary disruptions, which should be eased over the coming weeks, and the government and its supporters argue that this temporary pain is worth it to ensure the greater common gain of eliminating black money. And in some sectors like real estate where cash payments were rampant, this may serve to make property more affordable, at least for the moment. But other effects are very damaging for the economy and especially for the poor. And it will put a brake on economic activity, with medium-term effects that may be even worse than the immediate dislocation.

The biggest negative effect is the massive loss of liquidity for the informal economy. This has affected production systems, as moneylenders providing working capital to small producers are unable to provide the new notes. There are already reports of daily wage labourers unable to find work because employers cannot pay them with the new money and are only able to offer old notes, which are now without value. It has led to breakdowns in payments systems and has drastically affected trading. People hoard their slender cash holdings and do not shop; this affects large and small retailers who rely on cash sales; this affects their own demand for purchase of goods in the wholesale markets; and so on. Even in megacities like Delhi, there are reports of shopkeepers simply shutting their shops because of the lack of buyers, while traders in wholesale markets have been caught with huge amounts of unsellable stock of perishable items like fruits and vegetables because of lack of cash purchasers. This has permeated down the distribution chain to the small vendors and street hawkers. And the predominantly cash-based road transport sector has been very badly hit.

All this is worsened by the impact that the cash shortage has on consumption, as people cut down on purchases of non-essentials and even of food and other essentials, because of the lack of liquidity with which to purchase these items. Consumption squeezes have been especially dreadful for those facing medical emergencies who do not have new notes to pay for private hospitals or medicines. Stories abound of individual tragedies resulting from this mess.

As always happens in capitalism, the market quickly responded to these needs, in the form of intermediaries who offer to collect the old notes and exchange them for a discount. The prevailing rates in Delhi are at 20% discount: Rs 400 for a Rs 500 note and Rs 800 for a Rs 1,000 note. Similar rates were also being offered by market vendors for their goods. Those who are desperate to get hold of some cash quickly for whatever reason, or who cannot afford to lose a day's wages for standing in the queue at the bank, are then forced to take these rates. This amounts to an attack on the already low incomes of the poor. This has been made worse by the recent clampdown on exchange of old notes for new ones – the limit for this has now been set at Rs 2,000 in total, with indelible ink being used to prevent multiple transactions. So the poor who do not have bank accounts will now have no option but to exchange their old notes at a discounted rate, further impoverishing them.

In rural areas, matters are even worse. The number of rural bank branches has declined in past years, and these branches are now few and far between. Banking activities are supposed to be conducted through ATMs and through the Banking Correspondents (BCs), most of whom have been largely dormant for a while now. These systems have proved completely inadequate to the task of ensuring the supply of new notes.

Farmers are in a particularly difficult condition. Across much of India, farmers have recently harvested the *kharif* crop (monsoon crop) and are now about to begin sowing the *rabi* crop (winter crop). Many of them had saved up the cash proceeds of their *kharif* sales to buy inputs for the next sowing season. They need money to buy seeds and fertilisers, and to hire tractors and other equipment – and they need it now, because the agricultural season does not wait upon humans. Even a day's delay can be critical in some cases depending upon weather conditions, but these farmers have already been waiting nearly a week. The timing of this move is really terrible for them because it affects their incomes over two agricultural seasons.

There are also gendered consequences. Policy-makers persist in seeing India in terms of households, not recognising that men and women can have very different requirements and relationships to banking. Around 80% of women do not have access to the banking system, and even when they do, it is often in the form of joint accounts with their husbands. So it is common for many women to save some money in cash hoards to guard it from abusive husbands who would use it for drink, or to ensure some savings for children's future needs, or to provide for medicines in case of illness.

Many women now do not know what to do with these hard-won and carefully stored notes, and have neither the time nor the capacity and autonomy to go and stand in those endless queues to exchange the money. Revealing the existence of such money can infuriate the adult men in the house, with potentially violent consequences. It is extraordinary that those who introduce such a policy could have such little awareness of Indian society that they do not stop to think of such consequences.

The cashless society?

It is not as if at least some of these aspects are not known to those in the ruling Bharatiya Janata Party (BJP) who are currently singing paeans to what they describe as this 'historic move', supposedly a game changer in the reform process. In fact, in January 2014 when the previous government had tried to phase out old currency notes printed before 2005, BJP spokesperson Meenakshi Lekhi described the move as 'an attempt to obfuscate the issue of black money stashed outside the country … This measure is strongly anti-poor – those who are illiterate and have no access to banking facilities will be the ones to be hit by such diversionary measures'.

So what has differed over the past three years to make BJP leaders change their tune? They say that there is now much greater coverage of banking services through the Jan Dhan Yojana financial inclusion scheme. Indeed, the official website of the scheme notes that on 1 July 2016, 254.5 million accounts had been opened, with only around a quarter of them with zero balance and an average of Rs 1,780 per account. This has led to the claim that almost all households in the country are now covered by banking.

But actually, around one-third of the adult population do not have any bank account, even of the no-frills variety. Others may have an account but the distance from and sheer difficulty of getting to the nearest bank has meant that the account lies dormant and that institutional banking plays no role in their lives. They rely on intermediaries – the BCs created by the banks themselves, or local middlemen who spring up in response to these gaps. The logistical issues involved in exchanging the old money for the new would be huge in any circumstances, let alone the strained and overstretched conditions of today.

The Reserve Bank of India – which surely should know better than any of us the true state of the penetration of e-banking and digital transactions in the economy – had its own Marie Antoinette moment in a press release of 12 November 2016: 'public are encouraged to switch over to alternative modes of payment, such as pre-paid cards, Rupay/Credit/Debit cards, mobile banking, internet banking. All those for whom banking accounts under Jan Dhan Yojana are opened and cards are issued are urged to put them to use. Such usage will alleviate the pressure on the physical currency and also enhance the experience of living in the digital world.' Statements like this make one wonder whether the RBI is living only in the digital world.

In fact, e-banking has been increasing in India, but the shares are still very small: cash is still estimated to account for more than 90% of all transactions, and the remainder is approximately equally split between cheques and e-payments. Most bank accounts do not have a chequebook facility. The facile assumption that moving to e-banking is just a matter of personal choice is completely mistaken.

Of course, it is desirable to move to less reliance on currency, but it cannot be done in this abrupt and coercive manner, especially when most bank accounts are still not e-enabled, when basic infrastructure for this (such as secure Internet connections or even electricity) is not accessible everywhere, and when levels of education for a very large section of the population do not allow for easy e-banking. This must occur as a smooth and gradual process because of the greater ease and facility of such transactions. Disrupting currency transactions is a painful and ultimately much less effective way to push the population towards greater e-banking.

In any case, even opening bank accounts or getting them enabled for e-transactions is not something people can just do immediately. Just now the pressures on banks are so intense that they are in no condition to handle these new requests.

So what can be done to control black money?

This government has so far done very little to deal with the problem of black money, even in terms of the more obvious moves, none of which would cause hardship to common people. To prevent the generation of black money, what is required is a more effective, clean and accountable tax administration that uses all the information at its disposal to go after those who are evading the law in various ways. For companies, it is possible to identify practices such as over- or under-invoicing, false transactions and attempts to use loopholes in the laws. For individuals, it is now easily possible to uncover undisclosed incomes by tracking payments and following suspiciously large purchases, and put them under scrutiny. Obviously, movements of funds abroad are a major avenue which needs to be monitored much more closely. Indeed, this is what most countries that are known to have relatively 'clean' economic systems do as regular practice, without making a great song and dance about it.

It is also possible to deal with the assets held from such undisclosed incomes. It is not just land deals and gold and jewellery purchases that can be monitored, precisely as the government is trying to do now in the middle of this cash crunch. The completely uncalled for possibility of buying securities through Participatory Notes in the stock market, which do not require the buyer to reveal his/her identity, is an obvious means of parking illicit funds. These should obviously be done away with – yet both the previous government and this supposedly anti-corruption BJP government have been curiously reluctant to do so.

The most obvious thing to do – something Mr Modi continually roared about in his electoral campaign speeches – is to go after those who have stashed away their undisclosed funds in bank accounts and other assets abroad. He had promised to 'bring back' all this money, to the point that many holders of Jan Dhan Yojana accounts today still fondly believe that they will each receive around Rs 1.5 million as their share of the returned money! Yet his government has steadfastly refused even to divulge the names of such individuals, much less take any action against them.

Overall, this ill-conceived and even more poorly executed move appears to be an attempt by the government to display a lot of sound and fury, but signifying very little. It may be a smart (if temporary) success in terms of confounding public perceptions. But it is unfortunate that in the process it has inflicted such damage on ordinary people and on the economy to the point that even the Supreme Court of India said it was not a surgical strike so much as carpet bombing. ◆

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Robots could cause massive job losses in developing countries

Nearly two-thirds of all jobs in developing countries could be lost as a result of automation, says a UN report.

Chee Yoke Heong

AS companies around the world increasingly move towards automation to stay competitive, more and more low-paying jobs, especially in the developing world, will suffer as a result.

The United Nations Conference on Trade and Development (UNCTAD), in a policy brief titled ‘Robots and industrialisation in developing countries’, says nearly two-thirds of all jobs in developing countries could be lost as a result of automation.

‘The increased use of robots in developed countries risks eroding the traditional labour cost advantage of developing countries. If robots are considered a form of capital that is a close substitute for low-skilled workers, then their growing use reduces the share of human labour in total production costs,’ with significant adverse effects for developing countries, says the UN agency.

‘The share of occupations that could experience significant automation is actually higher in developing countries than in more advanced ones, where many of these jobs have already disappeared, and this concerns about two thirds of all jobs,’ says UNCTAD, citing World Bank research.

The report says industrial robots have primarily been deployed in the automotive, electrical and electronics industries.

‘This means that in developing countries – such as Mexico and many countries in Asia – those engaged in export activities in these two sectors are the most exposed,’ it says.

But in certain industries, it is still cheaper to employ low-wage labour than to deploy robots.

‘In many labour-intensive industries, such as garment-making, widespread automation is not yet suitable,’ the report explains.

‘While robots have become cheaper, some developing countries continue to have a large pool of cheap labour.

‘Thus, for those countries whose major challenge is to create jobs for a large number of low-skilled entrants to the labour force – such as in many parts of Africa – deploying robots under current cost structures many drive production costs up, rather than down.’

As such, for a range of labour-intensive industries, this leaves the door open for developing countries to enter industrialisation processes along traditional lines, such as garment-making which has been a stepping stone in many cases of industrialisation, according to the report.

Income polarisation

Since the adoption of industrial robots tends to create jobs in higher-skill activities with comparatively fewer benefits for low-skilled and medium-skilled workers, this will result in ‘polarisation’ in how income is distributed, UNCTAD warns. The ‘benefits [will be] accruing in productivity growth and for better-skilled workers and the owners of robots, while low-skilled workers risk being impoverished,’ it says.

But much of the debate on the economic impacts of robots remains speculative, UNCTAD says, adding that ‘disruptive technologies’ always bring ‘a mix of benefits and risks’.

Among developing countries, deployments of industrial robots have been concentrated in China, spurred by a shrinking working-age population and rising labour costs which have eroded the country’s cheap-labour advantage.

Each year since 2013, China has bought more industrial robots than any other country. By the end of 2016, it is likely to overtake Japan as the world’s biggest operator of industrial robots, the policy brief says.

Ultimately, says UNCTAD, the future adoption of robotics around the world ‘will be shaped by policies’.

The report advises developing countries to tax robots and to prevent the rising inequality – caused by loss of low-skilled jobs – through social transfers.

‘Clearly, without the introduction of a major tax on robots as capital equipment, robot-based manufacturing cannot boost the fiscal revenues needed to finance both social transfers, to support workers made redundant by robots, and minimum wages, to stem a decline in the living standards of low-skilled and medium-skilled workers,’ according to the report.

It also calls for greater public investment in infrastructure such as logistics and telecommunications, power and water utilities, in order to further stem the risk of return of industries to developed countries (or ‘reshoring’) even as the cost of owning and operating robotics systems further declines.

For Africa and Latin America, which are facing deindustrialisation, whatever strategy is taken will have to account for the rapidly increasing spread of new technologies in the form of robots, says UNCTAD. ◆

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The Regional Comprehensive Economic Partnership (RCEP)

An assessment of the negotiations

Negotiations by 16 Asia-Pacific nations to establish the RCEP – the world's largest trading bloc – have been proceeding since 2012. Surveying the negotiations, *Biswajit Dhar* argues that this ASEAN-led initiative can constitute the building block for a truly viable East Asian Community provided the parties break out from the straitjacket of trade liberalisation.

IN 2011, the leaders of the Association of South-East Asian Nations (ASEAN) took the decision to establish the Regional Comprehensive Economic Partnership (RCEP), for which the ASEAN members agreed to engage with partner countries with which the group had already concluded a free trade agreement (FTA).[1] Importantly, the ASEAN leaders decided that the process for establishing the RCEP should be driven by the members of the grouping. The process, according to the ASEAN leaders, was to be guided by the ASEAN Charter, which underlined the need to 'maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent, and inclusive' (Article 1, section 15).

The decision to establish the Regional Comprehensive Economic Partnership was taken by ASEAN leaders at their 2011 Summit.

The RCEP was conceived of within the broad framework of 'open regionalism', which, as stated in the 'General Principles' agreed by the leaders, was to have 'an open accession clause to enable participation of any of the ASEAN FTA partners ... as well as any other external economic partners'. This meant that the membership of the RCEP was kept open and was not confined to a select few countries. Such a model of integration has the advantage of being more robust and inclusive through the inclusion of a large number of countries.

However, a year later, the ASEAN leaders' decision to launch the negotiations for the RCEP restricted the scope of participation to the grouping's existing FTA partners, all of which lay in ASEAN's immediate neighbourhood. The 'Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership' stated that the RCEP would be guided by the principle of broadening and deepening 'engagement with significant improvements over the existing ASEAN+1 FTAs', while recognising 'ASEAN centrality in the emerging regional economic architecture'. The Guiding Principles thus reflected the motivation of the ASEAN members to bring all the grouping's FTA partners under one umbrella agreement and also the intent of the grouping to play a determining role in the process of economic integration that the RCEP was expected to bring about.

More importantly, the Guiding Principles recognised the 'interests of ASEAN's FTA Partners in supporting and contributing to economic integration, equitable economic development and strengthening economic cooperation among the participating countries'. This statement marks out the RCEP as a significantly different regional economic architecture from the other regional economic arrangements that are either in place or being negotiated. While the architects of the RCEP introduced a development dimension in the negotiating mandate, all other regional economic agreements are hinged on the singular objective of opening up markets. This challenging objective notwithstanding, the negotiating mandate for the RCEP stated that the aim would be to conclude the negotiations by the end of 2015.

As an economic formation in the East Asian region,[2] the RCEP brings to the fore the collective strength of some of the largest economies in the world. In 2015, countries involved in the RCEP accounted for more than 30% of the world's gross domestic product (GDP) and more than 28% of world trade. Collectively, these countries are home to nearly half the world's population.

These figures indicate that if its collective strength is properly harnessed, the East Asian region can become a strong pivot for the world economy. This will require the countries of the region to develop in a cooperative framework, one which meets the long-term interests of the countries participating in the RCEP negotiations. Given the considerable variations in levels of development, both across the participating countries and also within most of the individual countries, the underpinnings of the RCEP should be to address these development gaps.

This article looks at the state of the RCEP negotiations almost a year after the original end-2015 deadline for conclusion had lapsed. It begins by discussing the key elements of the negotiating mandate and tries to situate it in the larger context of regional cooperation between ASEAN and its FTA partners. A number of initiatives have been taken under this rubric of regional cooperation and these are clearly aimed at improving the development potential of the East Asian region. Importantly, the RCEP negotiating mandate also recognises this critical dimension of cooperation.

The second part of the article dwells on the negotiating dynamics of the RCEP in some of the critical areas. The negotiations are increasingly giving the RCEP the character of any other contemporary FTA, whose horizons are extremely narrow. These FTAs are typically focused on incremental market access possibilities in goods, services and investment that can be taken advantage of only by the dominant players in the marketplace. In other words, these FTAs have added further layers of exclusion to the existing exclusionary processes that were forced upon developing countries by the proponents of the Washington Consensus nearly three decades back.

Infrastructure development to improve connectivity between East Asian countries, including the least developed countries Laos, Cambodia and Myanmar, is key to achieving the objectives of the RCEP. Picture shows the port of Sihanoukville in Cambodia.

The RCEP as the basis for building an East Asian Community

The RCEP negotiating mandate, which was elaborated in the 'Guiding Principles and Objectives for Negotiating the RCEP' adopted by ministers of the proposed regional forum in August 2012, included at least two dimensions that differentiate the proposed agreement from conventional FTAs. The first of these was that, as mentioned above, the 'RCEP will recognise ... interests of ASEAN's FTA Partners in supporting and contributing to economic integration, equitable economic development and strengthening economic cooperation among the participating countries'. In other words, economic development and cooperation were expected to be the building blocks of the RCEP.

The second contrasting dimension was that the RCEP negotiating mandate includes economic and technical cooperation as one of its negotiating planks, which 'will aim at narrowing development gaps among the parties and maximising mutual benefits from the implementation of the ... agreement'. The Guiding Principles further clarify that 'economic and technical cooperation provisions in the RCEP will build upon existing economic cooperation arrangements between ASEAN and ASEAN's FTA partners participating in the RCEP'.

It is important to note here that ASEAN members have viewed 'technical and development cooperation' as a *sine qua non* for economic integration not only within their region, but between ASEAN and other parts of the world as well. This was highlighted in the Initiative for ASEAN Integration (IAI) launched in November 2000. The IAI stated that technical and development cooperation would 'address the development divide and accelerate the economic integration of the less developed ASEAN Member Countries so that the benefits of ASEAN integration are shared and enjoyed by all ASEAN Member Countries'. When it was launched, the IAI identified the following as priority areas: infrastructure, human resource development, information and communications technologies, capacity building for regional economic integration, energy, investment climate, tourism, poverty reduction and improvement in the quality of life.

Over the past few years, a number of regional organisations have made sustained efforts to improve connectivity within the East Asian region, thus giving effect to these critical 'regional public goods'. These efforts are intended to take full advantage of the 'economics of neighbourhood', which can provide a strong impetus for regional integration. An Asian Development Bank (ADB) study conducted in 2012 has argued that the Asian economies can 'unlock their vast economic potential, achieve sustained and inclusive rapid growth, and reduce poverty'.[3] Another study has pointed out that 'cooperation on infrastructure and trade facilitation (e.g., transport, customs clearance and product standards) and services (e.g., financial services and labour services) would likely lead to a reduction in trade costs and result in welfare gains well in excess of gains from mere tariff liberalisation'.[4] In keeping with this understanding about the importance of connectivity, the ADB is supporting a range of infrastructure projects in the East Asian region that can eventually result in the narrowing of the development gaps.

Effectively connecting the East Asian region is undeniably a critical factor for achieving the objectives of the RCEP. In recent years, a number of initiatives aimed at improving the connectivity between countries through efficient provisioning of regional public goods have been taken. Since the middle of the last decade, the East Asia Summit (EAS) process has been engaged in working out the details of the connectivity plan in the region. The most significant of these is the Comprehensive Asia Development Plan (CADP) aimed at improving connectivity within the East Asian region. The CADP provided 'a grand spatial design of economic infrastructure and industrial placement, and will claim to pursue both deepening economic integration and narrowing development gaps at the same time'.[5]

The infrastructure development plan spelt out in the CADP aimed not only to support the production networks that already exist in the East Asian region, but also to bring in countries and sub-regions which did not figure very prominently in the networks. Key among the latter category of countries are the least developed countries in ASEAN, namely Laos, Cambodia and Myanmar. Myanmar's opening to the outside world at the beginning of this decade has thrown up a plethora of possibilities of better connectivity between India and ASEAN. It raised expectations of an early implementation of the Mekong India Economic Corridor (MIEC), which proposes to connect 'Ho Chi Minh City, Phnom Penh, Bangkok, and Dawei by road and further to Chennai (Madras) in India by sea route'.[6] The MIEC increased the prospects of India participating in a more holistic manner in the production networks that are existing or are expected to come up in the East Asian region.

With these developments afoot, the RCEP can provide the overall framework through which a strong and viable East Asian Community can be developed. The RCEP therefore needs to have two tracks: the first, a regional cooperation and development track, and the second, a market integration track. The first track should tie in all the initiatives of building regional infrastructure. This would enable the RCEP members to provide a coordinated approach to the development of regional public goods like the infrastructure projects mentioned above. Fast-tracking market integration would merely enable the countries that are better prepared to benefit from the process, and this could exacerbate the existing inequities in the region.

Since the RCEP is focusing on generating growth impulses through the regional production networks, the two-phased approach would provide the lagging countries equal opportunities to secure the more coveted slots in these networks. Such an approach should be ideally suited to the interests of countries like India and Indonesia, which have been somewhat hesitant in pursuing the trade and investment 'liberalisation alone' agenda that seems to have driven the RCEP process thus far.

Issues in the RCEP negotiations

The RCEP negotiations began in 2013, and as mentioned earlier, the participating countries had initially expressed their intention to conclude the agreement by the end of 2015. With the original deadline having passed, the negotiating countries have wisely avoided specifying a fresh deadline.

The 15 rounds of negotiations that have been held thus far have exposed the deep divisions that exist between the participating countries in most of the major negotiating areas. Countries driving the negotiating process have tended to treat the RCEP as yet another conventional FTA, with dominant players focusing on issues like market access, investment and intellectual property rights. Economic and technical cooperation, which is the distinguishing feature of the RCEP negotiating mandate, appears to have been largely ignored.

Gleaning from the negotiations held thus far, it can be surmised that the negotiating dynamics are being driven by a set of countries with very high trade liberalisation ambitions. Several of these countries have brought these ambitions from their participation in the Trans-Pacific Partnership (TPP) negotiations. The TPP, which is led by the United States, was negotiated 'with the objective of shaping a high-standard, broad-based regional pact'[7] which not only aims at eliminating tariffs and other barriers to trade in a comprehensive manner between the participating countries, but also seeks to set high levels of investor and intellectual property protection. Yet another key objective of the TPP is to ensure regulatory coherence that would be based on the norms existing in the US.

The trade liberalisation agenda pursued in the RCEP negotiations has already exposed at least three anomalies. For instance, calibrated reductions in tariffs on goods offered by India have not been accepted; a single schedule for tariff cuts has been proposed as the approach to tariff cuts. Such an approach would imply that countries that need to protect their sensitive products from imports originating in a specific country would find it difficult to do so. And if the sensitivities are too high, the tariff negotiations could be protracted, as was the case in the TPP negotiations, which took a while to address Japan's sensitivities in the agriculture and automobile sectors.

A second anomaly is the slow pace of services negotiations relative to those on the goods sector, which gives the impression that tariff liberalisation in goods is being pushed as an early harvest. A third anomaly is the complete lack of interest in liberalising services trade via the so-called 'Mode 4', or the cross-border movement of service-providing workers. This issue has been extremely contentious, especially because the ASEAN members have argued that they do not favour its inclusion at this stage, while India has pushed for its inclusion, with some support from Australia.[8]

There are several issues included in the RCEP negotiating mandate, such as investment and intellectual property rights, on which participating countries have significant differences in perceptions. Existing investment agreements have generally adopted a template which provides high levels of protection to foreign investors and includes the controversial 'investor-state dispute settlement' (ISDS) mechanism that allows a foreign investor to litigate against its host government using private international arbitration procedures. In recent years, the number of ISDS cases has increased substantially,[9] a development that has prompted a rethink by several governments about these investment agreements. Among the countries participating in the RCEP negotiations, India had decided to terminate 58 of the 83 bilateral investment treaties it had entered into[10] after it had put in place a revised 'Model Text for the Indian Bilateral Investment Treaty' in 2015.[11] The new Model Text has rewritten the provisions relating to the ISDS mechanism and has introduced several public interest provisions which would limit the claims that a foreign investor can make while initiating a dispute against the Indian government.

On the issue of intellectual property rights, the RCEP negotiations have become yet another forum where the contestation between the rights of intellectual property owners and the interests of the public at large, especially in the area of pharmaceuticals, is being played out. The contested area has seen deep divisions between the participating countries on issues that have implications for access to medicines at affordable prices. For instance, countries have differed on the language for incorporating the World Trade Organisation (WTO)'s Doha Declaration on the TRIPS Agreement and Public Health, especially on the nature of flexibilities that the Declaration provides for addressing public health concerns. Japan, South Korea and, to a lesser extent, Australia and New Zealand have differed with the positions taken by India and the ASEAN members.

Japan and South Korea have also proposed so-called 'TRIPS-plus' provisions, i.e., provisions that go beyond those included in the WTO's TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement for enhancing the rights of intellectual property holders. For instance, these two countries have proposed that the term of a patent should be extended beyond the 20-year period provided by the TRIPS Agreement in order to compensate for delays in obtaining marketing approval for a patented product. Further, South Korea has proposed that the patent term be extended if there was a delay in processing a patent application.

Yet another 'TRIPS-plus' provision, put forward by Japan, South Korea and Australia, is in respect of intellectual property protection of plant varieties. These countries have proposed that RCEP members should compulsorily accept the framework provided by the International Union for the Protection of New Varieties of Plants, better known as the UPOV Convention. The framework that UPOV currently follows (this was adopted in 1991 and is hence commonly known as UPOV 1991) imposes several limitations on the activities of traditional farmers in developing countries. The most important limitation is that farmers are not allowed to either save seeds of a protected variety to be used in the following year's harvest, or exchange the seeds with their farm neighbours. The TRIPS Agreement, in contrast, does not require WTO member states to follow UPOV 1991; they can develop their own *sui generis* system for protecting plant varieties. India has used this flexibility to enact a *sui generis* system that allows farmers to save seeds and exchange with their farm neighbours.

Conclusion

The architects of the RCEP were mindful of the need to address the development aspirations of the participating countries, for they designed an agreement framework that looked distinctly different from that of any other agreement. We have elaborated in this article that the negotiating mandate for this regional integration agreement, namely, the 'Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership', emphasised the importance of 'equitable economic development and strengthening economic cooperation among the participating countries'. It also underlined the aspirations of 'narrowing development gaps among the parties and maximising mutual benefits'. In other words, economic development and cooperation were seen as the building blocks of the RCEP. We have also explained that while the development dimension is an integral part of the RCEP negotiating agenda, this dimension has largely remained on the backburner during the negotiations that have taken place thus far.[12]

Our view is that in order to deliver outcomes that are development-centric and inclusive, it is important for the RCEP to deviate from the path traversed by all other contemporary FTAs. These FTAs have been driven by dominant commercial interests and have thus militated against the interests of countries facing development deficits. The 'disciplines' introduced by such FTAs have denied these countries the policy space that they must have to climb the development ladder.

In other words, these countries have been deprived of opportunities to 'defy their comparative advantages'[13] and to therefore meet their development aspirations. While the development experiences of the present-day advanced countries are rife with examples where countries have 'defied their comparative advantages' over time, the FTAs have denied the developing countries the chance to follow suit.

Further, conventional FTAs are driven by short-term sentiments; development partnership is not part of the DNA of these agreements. The RCEP therefore needs to depart from the narrowly focused objectives of conventional FTAs and instead support the process of building an effective East Asian Community that makes the holistic development of the region its core objective.

The members of this formation need to recognise that in order to put their economies on a sustained growth path, they would have to ensure that their domestic economies are fully attuned to taking advantage of the market integration which they initiated. This can be done only if the RCEP members are given the opportunities to make the necessary adjustments. Failure to ensure this will drive another wedge between the leading and the lagging economies, raising uncertainty about the process of integration itself.

Despite its critical importance for furthering the process of East Asian integration, discussions regarding the future directions that the RCEP should take have been extremely inadequate. In the absence of such discussions, the approach towards the RCEP has been reduced to the pursuit of a narrowly focused goal of 'yet another FTA'.

In this article, we have tried to give a glimpse of the immense possibilities that the proposed regional economic formation has in forging a viable East Asian Community. We argued that regional connectivity projects, best described as regional public goods, can provide a strong impetus for the economic integration of the region. These regional public goods can result in benefits that far exceed those provided by a mere tariff liberalisation exercise. The RCEP can therefore provide a collective forum through which the participating countries can work towards the long-term development of their region. ◆

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Endnotes

1 'ASEAN Framework for Regional Comprehensive Economic Partnership', Nineteenth ASEAN Summit, Bali, Indonesia, 14-19 November 2011, accessed from: http://asean.org/?static_post=asean-framework-for-regional-comprehensive-economic-partnership.

2 The countries participating in the RCEP negotiations are the original members of the East Asian Community, which was formed in 2005.

3 Bhattacharyay, Biswa Nath, Masahiro Kawai and Rajat M Nag (2012), *Infrastructure for Asian Connectivity*, Asian Development Bank Institute and Edward Elgar, UK, p. 2.

4 Asian Development Bank Institute (2013), 'Connecting South Asia and Southeast Asia: interim report', ADB/ADBI, Tokyo, p. x.

5 Economic Research Institute for ASEAN and East Asia (2010), *The Comprehensive Asia Development Plan*, ERIA Research Project Report 2009-7-1, available at: http://www.eria.org/publications/research_project_reports/the-comprehensive-asia-development-plan.html, p. 1.

6 Ibid., p. 90.

7 'USTR Ron Kirk Remarks on Trans-Pacific Partnership Negotiations', Press Release, Office of the United States Trade Representative (USTR), 15 December 2009, available at: http://www.ustr.gov/about-us/press-office/press-releases/2009/december/ustr-ron-kirk-remarks-trans-pacific-partnership-n.

8 Mishra, Asit Ranjan (2016), 'RCEP faces services logjam; India pushes for liberalized visa regime', Livemint, 25 July, accessed from: http://www.livemint.com/Politics/7Zfm9yuQYP6XrcNztK7APM/RCEP-faces-services-logjam.html.

9 In 2015, 70 investor-state disputes were initiated, the most in a single year. For details, see UNCTAD (2016), 'Investor-State Dispute Settlement: Review of Developments in 2015', accessed from: http://investmentpolicyhub.unctad.org/Upload/ISDS%20Issues%20Note%202016.pdf.

10 Response of the Indian Minister of Commerce and Industry to a question in Parliament on 25 July 2016, accessed from: http://dipp.nic.in/English/questions/25072016/lu1290.pdf.

11 Accessed from: https://www.mygov.in/sites/default/files/master_image/Model%20Text%20for%20the%20Indian%20Bilateral%20Investment%20Treaty.pdf.

12 There is some reference to this dimension in: Elek, Andrew (2014), 'RCEP will help get Asian integration back on track', East Asia Forum, 7 June, available at: http://www.eastasiaforum.org/2014/06/07/rcep-will-help-get-asian-integration-back-on-track/.

13 See Ha-Joon Chang's arguments in Lin, Justin and Ha-Joon Chang (2009), 'Should Industrial Policy in Developing Countries Conform to Comparative Advantage or Defy It? A Debate Between Justin Lin and Ha-Joon Chang', *Development Policy Review*, 27(5): 483-502.

The TPP is dead. How will the RCEP shape up?

In the following article, *Kavaljit Singh* considers the future of the RCEP in the context of the impending demise of the TPP, the other Asia-Pacific trade treaty.

ON 21 November, US President-elect Donald Trump announced that the US will pull out of the Trans-Pacific Partnership (TPP) trade pact on his first day in office (20 January). In a video message outlining his policy plans for the first 100 days in the Oval Office, Trump stated: 'I am going to issue a notification of intent to withdraw from the TPP, a potential disaster for our country. Instead, we will negotiate fair, bilateral trade deals that bring jobs and industry back on to American shores.'

The administration of outgoing President Barack Obama had been trying hard to seek US Congressional ratification of the TPP this year but it abandoned efforts after Trump's victory in the November presidential election. The TPP faced stiff political opposition cutting across party lines and ideologies. Both the major presidential candidates had expressed their opposition to the TPP and avowed to reject it if elected. Trump was very vocal in his opposition to the TPP as well as the North American Free Trade Agreement (NAFTA) throughout his campaign, whereas Hillary Clinton flip-flopped on the TPP pact. While serving as US Secretary of State, she had praised the TPP as setting the 'gold standard in trade agreements', but she reversed her position during the presidential campaign due to a tough primary challenge from TPP critic Bernie Sanders.

As per the rules laid out in the TPP, the agreement allows a two-year ratification period in which at least six original member countries, representing 85% of the combined gross domestic product (GDP) of the grouping, should approve the text for the agreement to be implemented. The US alone accounts for nearly 60% of the grouping's GDP. Thus, with the US announcing its withdrawal, the TPP simply cannot enter into force even if all the remaining 11 member countries ratify it.

New Zealand's then Prime Minister John Key welcoming the signing of the Trans-Pacific Partnership agreement in Auckland in February. If the US pulls out of the pact, the TPP in its present form cannot enter into force.

In simple terms, the TPP, in its present form, is effectively dead.

What is the TPP?

Signed in February 2016, the TPP pact involves Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US and Vietnam. The idea of a Trans-Pacific Partnership had in fact been initiated by four countries – New Zealand, Singapore, Chile and Brunei – way back in 2002.

Initially, the US was not interested in joining the negotiations but President Obama in November 2009 decided to take part. Later on, many other countries such as Malaysia, Japan and Vietnam also entered the negotiations. China did not join; although it officially maintained that it has an 'open-minded attitude' towards the TPP, it was not ready to meet the higher standards (particularly on the operations of state-owned enterprises) envisaged in the agreement.

Seven years of negotiations culminated in the 4,500-page document that is the TPP agreement. It is the most ambitious free trade pact ever signed. It is much more than a typical free trade agreement (FTA) which aims to reduce import tariffs on agricultural and manufactured goods. This is because the average applied tariff rates among most TPP member countries are already very low, so there is little scope for further reduction.

The TPP represents a new generation of 21st-century trade agreements creating new mechanisms to govern cross-border economic activities with much higher standards than any existing bilateral, regional and multilateral trade agreements. As analysts have pointed out, the TPP is a kind of 'economic constitution' governing cross-border trade and investment with greater emphasis on the removal of regulatory barriers.

The TPP is touted as the 'gold standard' of trade and investment agreements because it contains stringent rules on a wide range of issues such as cross-border investments, intellectual property rights, state-owned enterprises, government procurement, electronic commerce, services liberalisation, regulatory coherence, labour and the environment.

One of the most contentious issues is the incorporation of an 'investor-state dispute settlement' mechanism which would allow foreign investors from TPP member states to bypass domestic courts of host states and sue a host state through international arbitration proceedings.

With the US and Japan in the driving seat, the negotiating agenda of the TPP was drastically reshaped to suit their core interests, while other negotiating countries (particularly the developing ones) did the heavy lifting to meet the onerous demands put forward by these two countries.

Concerned over the potential negative effects of the TPP on jobs, the economy and regulatory space, civil society groups and labour unions from both sides of the Pacific launched popular campaigns focused on the secretive nature of the negotiations and sought greater public participation during the negotiation process.

Obama's pivot to Asia-Pacific

For the Obama administration, the TPP was not purely a trade and investment agreement. It foresaw huge strategic value in joining this pact. The TPP was a key component of Obama's policy of 'rebalance' towards Asia which rested on three pillars: economic, political and security. By 2011, the TPP had become the linchpin of the administration's 'pivot to Asia' strategy to contain China's economic and geopolitical influence in the Asia-Pacific region.

Obama repeatedly emphasised the importance of maintaining US leadership in crafting global trade rules and how the TPP would strengthen the US's power in this area. In an opinion piece in the *Washington Post*, Obama stated: 'America should write the rules. America should call the shots. Other countries should play by the rules that America and our partners set, and not the other way around. That's what the TPP gives us the power to do … The world has changed. The rules are changing with it. The United States, not countries like China, should write them. Let's seize this opportunity, pass the Trans-Pacific Partnership and make sure America isn't holding the bag, but holding the pen.'

Is 'TPP minus one' feasible?

Some trade experts argue that it may be too soon to bury the TPP. Of course, the TPP agreement could possibly survive provided the remaining 11 signatory countries drastically modify the rules governing its entry into force. The so-called 'TPP minus one' pact is theoretically possible. It is also conceivable that countries like Indonesia and Thailand may join the TPP in future, thereby expanding its membership.

However, one is not sure whether all the remaining member countries of the TPP would agree to modify the rules governing its coming into force. With the lead country pulling out before the ratification process, the remaining members (particularly the traditional allies of the US) may lack motivation in ratifying and implementing the pact. For instance, Vietnam has already decided to shelve its ratification of the TPP. In a statement issued on 17 November, Vietnamese Prime Minister Nguyen Xuan Phuc said, 'Vietnam has prepared adequate conditions to join the 12-nation TPP. However, as the United States has announced to stop the deal, so Vietnam has not had enough basis to submit TPP participation to the National Assembly.'

Moreover, many member countries would not be keen to pursue a 'TPP minus one' pact due to the lack of exclusive access to the US market, which may have been a prime motivation for them to join in the first place.

The RCEP: The next best hope?

In this rapidly evolving scenario, many TPP members (in particular Japan, Australia and New Zealand) which are also members of the proposed Regional Comprehensive Economic Partnership (RCEP) will now shift their attention to this pact. These countries may further push for TPP-like provisions in the RCEP in order to secure the maximum possible outcome with the imminent demise of the TPP deal.

It is hard to deny that for many Asia-Pacific countries with a small domestic market, the export economy remains very important. Such countries would prefer a deal to no deal when it comes to joining a regional economic bloc. Of late, TPP member countries like Peru and Chile have also shown interest in joining the RCEP.

The RCEP is a proposed mega-regional free trade agreement between 16 countries (the 10 ASEAN countries and their six FTA partners, namely, Australia, China, India, Japan, New Zealand and South Korea). If accomplished, the RCEP would pave the way to the creation of the largest free trade bloc in the world, covering 45% of the world's population with a combined GDP of $22 trillion and accounting for 40% of global trade.

The RCEP would cover a wide range of issues including trade in goods, trade in services, investment, intellectual property rights, competition policy, dispute settlement and economic and technical cooperation. The negotiations were officially launched in November 2012 at the ASEAN Summit in Cambodia and the 16th round of negotiations will be held in Indonesia in December.

A negotiating session for the Regional Comprehensive Economic Partnership. With the imminent demise of the TPP, many TPP members which are also members of the proposed RCEP will now shift their attention to this pact.

China-led or ASEAN-centric?

Many commentators have described the RCEP as a China-led trade pact. There is no denying that China is an export powerhouse in manufactured goods and has enormous economic clout in the region, but it would be erroneous to view the RCEP as a China-led pact for three important reasons. Firstly, the RCEP is an ASEAN-centred FTA as it seeks to harmonise and build on existing FTAs between ASEAN and its six trading partners.

Secondly, having signed an FTA with ASEAN is the precondition for joining the RCEP negotiations. In other words, the US or any other country can also join the RCEP negotiations provided they first conclude an FTA with ASEAN.

Thirdly, Japan has pushed for strong RCEP rules in the areas of investment and intellectual property rights despite opposition from India and other members. Leaked draft texts of the RCEP reveal that TPP disciplines in areas such as investment, intellectual property rights, services, electronic commerce and telecommunications are currently under discussion in the RCEP talks at the insistence of Japan and South Korea.

Rethink of FTA strategy

In many important ways, the imminent demise of the TPP has eased pressure on India and other developing countries which are not supportive of an ambitious agenda on investment, intellectual property rights and zero tariffs under the RCEP framework due to potential negative impacts on local producers and businesses. Such countries would prefer the proposed pact to limit itself to a modest agenda with adequate flexibility available through provision for special and differential treatment, particularly to the least-developed member countries of ASEAN.

For India and many other developing countries, the pressure to sign bilateral and regional FTAs in order to counter other mega-regional trade pacts (such as the TPP) has subsided for the time being. Also, the demise of the TPP deal has weakened the negotiating position of countries like Japan and Australia in the RCEP.

At the forthcoming round of RCEP negotiations in December, India should forcefully argue that the 'gold standard' TPP framework has lost its appeal and popular support, and that therefore only a modest agenda based on the diverse circumstances of the negotiating countries should be pursued at the RCEP talks.

In the present context, when world trade is slowing and protectionist tendencies are rising across the developed world, India and other developing countries should rethink their FTA strategy in the short and medium term.

What about NAFTA, TTIP and FTAAP?

What will be the fate of the US's other regional FTAs? It remains to be seen whether Trump will renegotiate or withdraw altogether from NAFTA once he takes office.

Since 2013, the US has been negotiating the Transatlantic Trade and Investment Partnership (TTIP), another ambitious free trade agreement, with the European Union. The future of TTIP has become highly uncertain in the wake of the Brexit vote and Trump's election victory.

To a large extent, the prospects of a Free Trade Area of the Asia-Pacific (FTAAP) would depend on how negotiations proceed on the RCEP and other FTAs in the region. The idea of an FTAAP was proposed in 2006 by the Asia-Pacific Economic Cooperation (APEC) forum as a long-term, comprehensive FTA covering the entire Asia-Pacific region, but no concrete steps were taken by APEC member states to turn it into a reality.

At the APEC summit in Beijing in 2014, China revived the FTAAP idea by proposing a feasibility study but the US and other members did not support it. Given Trump's stated preference for negotiating bilateral trade deals, attempts to launch negotiations on giant regional trade pacts like the FTAAP are unlikely to gather support during his presidency. ◆

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Will the RCEP morph into another TPP?

In highlighting that the drafts of many of its key chapters are substantially similar to those of the TPP, *Sanya Reid Smith* warns that the RCEP may end up as a replica of the former.

DURING Donald Trump's campaign to become US president, he had repeatedly said that he would withdraw the US from the Trans-Pacific Partnership (TPP) on his first day in office. After he won the election in November, he repeated this pledge. In light of this, many are declaring the TPP dead. However, the TPP provisions have been proposed in a number of other trade negotiations, including those on the Regional Comprehensive Economic Partnership (RCEP), on the Trade in Services Agreement (TiSA) and at the World Trade Organisation (WTO). This article looks at some of the TPP provisions which have been proposed in the RCEP and their implications.

A chemical research and development facility in Nanjing, China. There are proposals for the RCEP to restrict member governments from imposing performance requirements on foreign investors, such as requiring them to undertake R&D locally.

Sixteen countries are negotiating the RCEP: the 10 countries of the Association of South-East Asian Nations (ASEAN) – Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam – and the six countries that have free trade agreements (FTAs) with ASEAN – Australia, China, India, Japan, New Zealand and South Korea. Of these 16 RCEP countries, seven are also in the TPP[1] and three are least developed countries (LDCs): Cambodia, Laos and Myanmar. Therefore, if the TPP provisions are agreed to in the RCEP, LDCs will have to comply with rules that Canada and the US (TPP but not RCEP countries) do not have to agree to.

The RCEP is being negotiated in secret and no texts of the chapters being negotiated have been officially released.[2] However, a number of RCEP chapters have been leaked – those on intellectual property,[3] investment,[4] goods, services, telecommunications and the e-commerce terms of reference[5] – and this article is based on these leaked chapters. As of the date of the leaked texts, most of the provisions were still proposals that had not yet been agreed to by all RCEP countries. This article looks at some of the main proposals that go beyond the WTO rules.

Goods chapter

FTAs are typically thought of as being about reducing or removing tariffs (taxes) on imported products. However, since ASEAN already has FTAs with all the other countries in the RCEP, there is not much more ASEAN countries can expect to be able to export via lower tariffs in the RCEP. For example, Australia and New Zealand have already committed to removing all their tariffs on all ASEAN products coming into their countries, so ASEAN cannot increase its exports to Australia and New Zealand via the RCEP. However, Indonesia only removed tariffs on 49% of Indian exports to Indonesia under the existing ASEAN-India FTA (and India only removed tariffs on 79% of Indonesian exports), so there is some room for further removal of tariffs between those two countries in the RCEP.

There are some RCEP countries that do not have FTAs between them, e.g., China-India and China-Japan, so they will be liberalising for the first time via the RCEP. It is not yet clear what percentage of tariffs will be removed under the RCEP (e.g., whether it is 100% or 90% etc).

In addition, there is a proposal in the leaked RCEP goods chapter to ban export taxes between RCEP countries. Export taxes on raw materials such as crude palm oil, timber, minerals etc are used by a number of RCEP countries to encourage value-added processing. In the TPP, Malaysia and Vietnam were given exceptions to the ban on export taxes for listed products. No such exceptions have been proposed in the RCEP.

Investment chapter

Basically all the TPP's substantive investment chapter rules and main investor-state dispute settlement (ISDS) provisions have been proposed in the leaked RCEP investment chapter. So apart from a few safeguards proposed by some countries, almost the whole proposed text in the leaked RCEP chapter is the TPP investment chapter.

For example, the broad definition of foreign investment that gets protected by the investment chapter has been copied from the TPP into the RCEP. Thus, there are proposals in the RCEP to give protection to:

• existing investments in RCEP countries by investors from other RCEP countries as well as investment that enters the RCEP country after the RCEP starts operating

• companies, shares, debt, contractual rights, permits, intellectual property and many other things.

Restrictions on performance requirements

The leaked RCEP investment chapter also includes proposals to restrict the ability of RCEP governments to require investors from any country (including investors from non-RCEP countries such as the US or European Union) to undertake activities that benefit the country they are investing in, such as hire local workers, transfer technology etc. This restriction on 'performance requirements' makes it harder for RCEP governments to make sure foreign investment benefits their economy by linking to local suppliers (e.g., of services such as banking, accounting, advertising etc), using local workers and transferring technology. The proposed restrictions on RCEP governments requiring investors to hire local workers, do research and development locally and have regional/global headquarters located in their country were not in the TPP. The RCEP proposals thus give even more rights to investors and restrict governments more tightly than in the TPP.

Furthermore, the proposed restrictions on performance requirements could constrain the use of laws such as Malaysia's which require locally made programmes to be broadcast on television and radio for a certain number of hours per day to ensure local culture and languages are still seen and heard instead of cheaper American programming.

These rules could also restrict the use of export taxes on products to all countries, even though many RCEP countries have successfully used export taxes on natural resources to develop value-added processing of their raw materials, e.g., palm oil, minerals, timber (into furniture), leather (into bags and shoes) etc.

The proposed restrictions on performance requirements would be on a 'negative list' basis, i.e., they would prevent the government from imposing these performance requirements in all sectors except those listed (and even these exempted sectors will presumably be heavily negotiated and all RCEP governments will have to agree to give the exceptions).

The Japanese government is even proposing that RCEP governments cannot set maximum royalties on voluntary licences (to keep medicines, climate change technology and other technology affordable and to minimise transfer pricing and tax evasion), unless an exception has been agreed to by all RCEP governments. This RCEP proposal does not even have the slight exceptions which Japan agreed to in the TPP.

No exceptions for LDCs were evident in the leaked version of the RCEP investment chapter, even though LDCs still have a transition period at the WTO before they have to comply with the WTO's minimal restrictions on performance requirements.

Fair and equitable treatment

The leaked RCEP text contains a proposal to give investors from other RCEP countries 'fair and equitable treatment' (FET). Failure to accord FET is the most commonly invoked ground for investors to sue under investment treaties.

FET has been given a wide range of meanings by international tribunals, including a 'standstill' on laws and regulations. This would mean that RCEP governments cannot amend their laws if it harmed investors from other RCEP countries.

Such a standstill would be problematic for any government as they often need to change their laws in response to changes in external circumstances such as financial crises, climate change or new information (e.g., that a chemical has now been found to be dangerous, such as BPA in baby bottles). However, developing countries and LDCs need to change their laws even more as they often do not yet have the laws they need in place (e.g., controls on noise pollution). As they develop and the regulatory capacity of their governments changes, they will need to adjust their laws. Therefore a standstill would be even more risky for them.

FET has become so controversial that even the US agreed in the TPP to some slight safeguards, but these were not proposed in the RCEP at the time of the leaked text, even though it was already after the TPP had been concluded. Canada and the EU have greatly restricted the scope of FET in their recently concluded Comprehensive Economic and Trade Agreement (CETA), while other countries (such as Brazil) have excluded FET from their recent investment treaties altogether.

Expropriation

The leaked RCEP investment chapter proposes compensation at fair market value for direct and indirect expropriation. Direct expropriation (or nationalisation) is when a government takes over a foreign investment (e.g., a factory) and becomes the owner of it. Indirect expropriation is when a government action or series of actions substantially or permanently reduces the value of the investment.

Since investment is broadly defined (see above) to include patents and licences etc, compulsory licences (to make/import a cheaper generic version of a patented medicine) and taxation can possibly be deemed to be expropriation. An exception has been proposed for compulsory licences and other limitations on intellectual property rights, but this, problematically, is only if it complies with WTO rules on intellectual property (and the RCEP's intellectual property chapter) – which makes the WTO's intellectual property rules enforceable via ISDS (see below).

Since the RCEP's chapter on general exceptions has not been leaked, it is unclear if there will be a taxation exception to expropriation (e.g., the TPP's partial exception for lowest common denominator taxes that the investor's home government agrees do not constitute expropriation). South Korea has proposed mere guidelines regarding when taxation is not expropriation, whereas ASEAN has proposed to exclude taxation from the whole investment chapter and India has proposed a partial exception.

There is no exception in the leaked RCEP chapter to take into account an investor's wrongdoing. Thus, even if an investor breaks the law (e.g., by polluting a river with its mining waste) in the RCEP country it is investing in, and the host government punishes it by cancelling the mining permit, the investor can still sue under ISDS (see below) for the lost profits it would have made for the remaining years of the permit. This happened to Ecuador when US oil company Occidental broke Ecuador's law and Ecuador consequently cancelled Occidental's mining permit, as it was permitted to do by its law and the contract. Occidental sued Ecuador under rules similar to those proposed in the RCEP and won $1 billion.

ISDS

There are proposals to make the RCEP investment chapter enforceable via investor-state dispute settlement. This would allow investors from other RCEP countries to sue an RCEP government at an international tribunal for unlimited monetary compensation and interest (which can be compounded every month at commercial interest rates from the date of the disputed government action).

Countries have had to pay up to more than $1 billion in ISDS disputes. Even when the governments win, they have still had to pay their own lawyers' fees (which amounted to $58 million in one case) 70% of the time. But when the investors win, they have only had to pay their own legal fees 40% of the time. Some governments find the legal fees alone so unaffordable that they are willing to settle the dispute by dropping their proposed law, as Uruguay was going to do for its tobacco control measures until Bloomberg funded its defence.

(Generally the TPP's slight safeguards in its investment chapter have also been proposed in the RCEP, but some have not. These may have been the late additions to the TPP, but the TPP negotiations were finished on 6 October 2015,[6] and the leaked RCEP text was as of 16 October 2015, so all the TPP safeguards were known and could have been added to the RCEP investment chapter by the date of this leaked RCEP text.)

Intellectual property chapter

The RCEP has a number of proposed rules that would provide broader, longer and stronger intellectual property protection than the WTO rules require. Some of these are outlined below.

Like with the TPP, there is a proposal in the RCEP that RCEP countries must join the UPOV 1991 plant variety protection treaty that increases the rights of seed companies at the expense of farmers' rights. UPOV 1991 requires farmers to pay royalties to use commercial seed for 20 or 25 years and prohibits farmers from swapping with each other commercial seed that they have saved from a harvest. A human rights impact assessment of UPOV 1991 which included the Philippines, an RCEP country, found that:

- If the Philippines joined UPOV 1991 and therefore had to prohibit seed exchange and seed banks for protected plant varieties, its farmers would have to pay over four times more for seeds.
- One of the reasons for using farm-saved seed or seed exchanged with neighbours is that it does not require cash in hand at the time of sowing, which is often not available.
- Some Filipino farmers noted that if UPOV 1991 was implemented in the country, they would have no money left for school fees and no more food.

Like in the TPP, there is a proposal in the RCEP for longer patent terms (longer than the WTO's 20 years) for two types of delays: in approving the patent (for any invention including climate change technology, medicines and agricultural inputs) and in assessing medicines as safe, effective and of good quality. One of these patent term extensions is triggered by a shorter delay than in the TPP. The patented versions of medicines to treat HIV/AIDS cost $15,000 per patient per year at the monopoly price but once the patent expired, generic versions could compete and the price fell to $67 per patient per year. Thus, agreeing to the patent term extensions proposed in the RCEP would keep medicines at the high prices for longer.

Furthermore, even if there is no patent, there is a proposal in the RCEP to have a monopoly on medicines for more than five years. This is longer than the TPP's five-year equivalent monopoly on medicines.

E-commerce chapter

Only the RCEP e-commerce chapter's terms of reference have been leaked. However, they include all the TPP e-commerce chapter provisions. This includes provisions on cross-border data flows with what are likely to be insufficient privacy exceptions. If it is the same as the TPP, it would mean that RCEP citizens' personal data (e.g., health, financial and tax records) can be sent to any country in the world (which has insufficient privacy exceptions), where it can then be sold to advertisers or accessed by the US government (as revealed by whistleblower Edward Snowden).

Other chapters

Like many other FTAs, the RCEP is likely to have an exceptions chapter which copies the health and environment exceptions from the WTO. However, these exceptions have proven very difficult to use at the WTO, with governments failing to satisfy the multiple criteria to use the exceptions 43 out of 44 times. Furthermore, the exceptions may not apply to all RCEP chapters. There is a privacy exception in the WTO rules, but it has a self-cancelling sentence that has led to doubts over its effectiveness.

As with most other FTAs, most RCEP chapters are likely to be enforced by RCEP governments suing each other at an international tribunal. The winning government would be able to impose tariffs on the losing government until the latter changes its law to comply with the RCEP.

Conclusion

Even if the TPP does not come into force due to Trump's election, the TPP rules may be resurrected in other trade agreements such as the RCEP. ◆

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Endnotes

1. The TPP countries are **Australia**, **Brunei**, Canada, Chile, **Japan**, **Malaysia**, Mexico, **New Zealand**, Peru, **Singapore**, the United States and **Vietnam**. Those in bold are also in the RCEP.
2. The Guiding Principles for the negotiations have been released: https://mfat.govt.nz/assets/_securedfiles/FTAs-in-negotiations/RCEP/Guiding-Principles-and-Objectives-for-Negotiating-the-Regional-Comprehensive-Economic-Partnership.pdf.
3. http://keionline.org/node/2472
4. http://keionline.org/node/2474
5. http://bilaterals.org/?-mega-regional-ftas-
6. http://dfat.gov.au/trade/agreements/tpp/Pages/trans-pacific-partnership-agreement-tpp.aspx

Civil society opposes stricter medicine monopolies at RCEP negotiations

The Regional Comprehensive Economic Partnership's draft negotiating text, which was leaked online, reveals that some countries are seeking 'TRIPS-plus' intellectual property measures that could delay price-lowering generic drugs from entering markets across the Asia-Pacific region. This commentary outlines key concerns that civil society groups, treatment providers and academics have regarding not only the intellectual property proposals but also the continuing lack of transparency in the RCEP negotiation process.

Belinda Townsend, Shailly Gupta, Patricia Ranald and Leena Menghaney

Activists at a demonstration held on the occasion of the 16th round of the RCEP negotiations in Indonesia in December. The sign reads 'RCEP = Expensive access to medicines'.

THE Regional Comprehensive Economic Partnership (RCEP) is a free trade agreement (FTA) currently under negotiation between the 10 members of the Association of South-East Asian Nations (ASEAN) and the six countries that have existing trade agreements with ASEAN: Australia, India, New Zealand, China, Japan and South Korea. The RCEP talks, which were launched in 2012, involve all aspects of intellectual property (IP), trade in goods and services, economic and technical investment and collaboration, dispute resolution, financial services, telecommunications and electronic commerce (Townsend et al. 2015).

While the RCEP's areas of negotiation are not as extensive as the 30 chapters in the Trans-Pacific Partnership (TPP) Agreement between the United States and 11 other Pacific Rim countries, there are seven areas that overlap between the two. Civil society groups have become concerned especially after draft negotiating texts for an IP chapter in the RCEP were made available online. According to the leaked documents, some countries, such as Japan, which are also a part of the TPP are including similar detrimental IP provisions in the RCEP that, if adopted, could affect millions of people across the region by delaying access to affordable and essential generic medicines.

It is also crucial to note here that the TPP's IP provisions undermine access to affordable medicines in several of the countries by creating additional monopolies that delay the entry of affordable generics in the market (amfAR: The Foundation for AIDS Research 2015). While ratification and implementation of the TPP is now increasingly in doubt, Japan together with its allies will increasingly focus on finalising an RCEP agreement which contains similarly damaging IP provisions for access to medicines.

Ever-increasing pressure on India to agree to harmful IP provisions in the RCEP is particularly concerning, as it would endanger millions of people globally who rely on life-saving generic medicines sourced from Indian generic manufacturers.

Concerns regarding access to medicines in the IP chapter

In 2015, two draft negotiating texts for an RCEP intellectual property chapter were leaked online (Knowledge Ecology International 2015a and 2015b). The documents show that Japan and South Korea are continuing to push for 'TRIPS-plus' IP provisions similar to those in the US-led TPP, which is considered the 'worst trade deal ever for access to medicines' (Stiglitz 2016).

In 1995, the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) had delivered a blow to growing generic competition by ensuring the introduction of the product patent system in key middle-income countries. This gave pharmaceutical companies 20-year patents and the opportunity to seek multiple 'evergreening' patents on essential medicines that would further delay low-cost generic versions from becoming available.

Global campaigns by public health organisations and developing-country governments achieved some 'flexibilities' for developing countries in the TRIPS Agreement in subsequent years. However, in order to become compliant with its obligations under WTO rules, India still had to amend its patent law in 2005. Pro-public-health legislators in India secured health safeguards in the Patent (Amendment) Act by referring to and interpreting relevant flexibilities in the TRIPS Agreement, all of which provide significant benefits to people in India and across the developing world. Legal safeguards include the public's right to challenge patent claims before and/or after patents are granted; examining patent claims strictly and rejecting patents on new uses and/or new forms of known medicines (as countries can define their own patentability criteria); the right to register generic versions of patented medicines; the right to issue compulsory licences (CLs) to locally produce more affordable generic versions of patented medicines; and the early working of patents to ensure immediate availability if a CL is granted or once the patent expires.

Medicines being produced at a manufacturing unit on the outskirts of Mumbai. The supply of affordable generic medicines from India – often known as the 'pharmacy of the developing world' – could be threatened by the stringent intellectual property provisions proposed for the RCEP.

The impact was clearly felt with the early entry of generic antiretroviral drugs used for HIV treatment. This has succeeded in reducing the cost of first-line treatment drugs by 99% (MSF Access Campaign 2014). Countries like Indonesia, Malaysia and Thailand have also been able to import low-cost medicines, in spite of patent barriers, by applying compulsory licensing (Velásquez 2012).

Presently, as increasing patent barriers lead to dramatically higher prices for new drugs to treat hepatitis C, tuberculosis and cancer, the need for affordable generic medicines and the continued use of flexibilities is stronger than ever (Andrieux-Meyer et al. 2015, MSF Access Campaign 2016a, *The Economist* 2016). It is critical that countries continue to make use of public health safeguards in their national patent laws to enable access to affordable treatment for their most vulnerable citizens.

A more recent leak of the RCEP IP chapter's consolidated draft negotiating text confirms that TRIPS-plus provisions are on the table (Knowledge Ecology International 2016a). These include demands for patent term extension (Article 5.13) that would extend the life of a patent on a medicine beyond 20 years, and for data exclusivity (Article 5.16), which would provide a monopoly on the clinical trial data submitted to a drug regulatory authority for a period of 'no less than five years', and could delay generic competition even for new medicines that are off-patent. Both these TRIPS-plus provisions should be continuously rejected by all other negotiators. Health groups are calling for the removal of patent term extension and data exclusivity from the negotiating text. A clear precedent for such removal exists in the EU-India FTA talks where the European Commission withdrew these provisions from future rounds of negotiations with India (MSF Access Campaign 2013).

Wide-ranging enforcement measures threaten access to affordable medicines

The consolidated draft RCEP text extends enforcement measures to cover all areas of IP and goes beyond the obligations of the TRIPS Agreement. Elevated levels of enforcement increase the likelihood of seizures and legal actions against legitimate suppliers of generic medicines. Provisions in the RCEP draft suggest that a broadened scope of IP enforcement could affect treatment providers and the generic medicines distribution and supply chain and put them at risk of litigation and court cases (Article 9*bis*.7). Such provisions are in contrast to judicial activism that is increasingly creating legal precedents towards remedies for IP infringement that provide the patent holder with royalties instead of enforcing monop-

Increasing patent barriers are leading to dramatically higher prices for new drugs to treat hepatitis C and other diseases.

olies that undermine access and competition.

The impact of over-reaching IP enforcement border measures has already been documented in the past. For example, wrongful seizures by customs authorities in the EU of Indian generic medicines in transit to Brazil and of HIV drugs en route to Nigeria severely affected patients in those countries (*Bridges* 2009). The current RCEP text on border measures makes no reference to exceptions and safeguards which are critical in safeguarding legal shipments of generic pharmaceuticals in transit.

The draft RCEP text on enforcement omits several procedural guarantees, safeguards and protections provided by the TRIPS Agreement, with several proposals going beyond the TRIPS standards (Weatherall 2016). Even the controversial Anti-Counterfeiting Trade Agreement (ACTA) allows countries to exclude patents and test data from the scope of the civil and border enforcement provisions (Footnotes 2 and 6 of the ACTA final text).

In the RCEP negotiations on IP enforcement, ASEAN and India should continue to oppose TRIPS-plus enforcement measures and specifically seek exclusion of patents, test data and civil trademark disputes from civil remedies and border measures.

Failure to protect least developed countries (LDCs)

The consolidated draft IP chapter of the RCEP does not adequately protect the transition period available to 'least developed' member countries – Cambodia, Myanmar and Laos – that would enable them to delay the implementation of the TRIPS Agreement vis-a-vis pharmaceuticals.

Production of and access to low-cost generic medicines is possible in LDCs because they have been granted a specific pharmaceutical transition period under the TRIPS Agreement in recognition of their economic, financial and administrative constraints and the need to make or procure low-cost medicines. Under this transition period – which can be extended – LDCs do not have to apply or enforce TRIPS provisions concerning patents and test data protection for pharmaceutical products until 1 January 2033 (TRIPS Council Decision IP/C/73, World Trade Organisation 2015). This provision enables local production, technological advancements and the import of generic medicines, which would, in turn, smooth the transition process.

Moreover, there are signs that Cambodia will soon 'graduate' from LDC status to a middle-income state, which would require it to adopt the TRIPS provisions immediately (Kawamura 2014). It may then find itself compelled to adopt not only a product patent system under the TRIPS Agreement but also TRIPS-plus provisions under the RCEP, which would severely threaten the registration and supply of affordable medicines on behalf of treatment providers, health programmes and patients.

In light of these arguments, the RCEP should recognise and uphold the current transition periods and waiver vis-a-vis intellectual property granted to LDCs as well as preserve the ability to seek additional extensions of the LDC waiver under WTO rules (MSF Access Campaign 2016b). In fact, the RCEP text should encourage LDCs to fully utilise these transition periods and ensure that countries like Cambodia, when they graduate to middle-income status, have the flexibility to incorporate public health safeguards into their patent system.

Concerns on inclusion of IP in investment chapter

There are 13 mentions of the term 'intellectual property' in the current leaked draft of the RCEP investment chapter (Knowledge Ecology International 2016b). It is obvious that the degree to which IP measures are included or excluded in the RCEP text is crucial since this will determine whether multinational pharmaceutical companies will be able to exact costly damages from countries like India whose patent law and its application have been constantly challenged and criticised by industry pressure groups.

As in the TPP text, if an investor-state dispute settlement (ISDS) mechanism was agreed to in the RCEP, pharmaceutical companies could sue governments in secret arbitration tribunals and claim huge financial compensation if any IP-related law, policy, rule, regulation, court decision or other action is deemed to interfere with their profits, even when these government actions are in accordance with national law and the TRIPS Agreement.

For example, in 2012, the US pharmaceutical firm Eli Lilly & Company started proceedings against the government of Canada through the ISDS mechanism of the North American Free Trade Agreement (NAFTA) and claimed $500 million in compensation (Eli Lilly 2012, Palmer 2013). The proceedings were triggered by the routine decisions of a Canadian court to invalidate evergreening patents on two of Eli Lilly's medicines: Strattera for attention-deficit hyperactivity disorder (ADHD) and Zyprexa for schizophrenia. In this case, the Canadian court invalidated the two patents because they were found not to deliver the promised health benefits and thus failed the test of efficacy (Hakert 2013). This ISDS case filed by Eli Lilly challenges a legitimate legal practice of testing the validity of a granted patent before domestic courts of law and ensuring a higher level of legal scrutiny in determining whether a patent is worth enforcing.

RCEP countries should resist the inclusion of ISDS in the investment chapter. Broader concerns about ISDS have been articulated by several countries particularly India and Indonesia in recent years, and these countries have intensified the review and termination of previous bilateral investment treaties containing problematic provisions (Kollamparambil 2016).

'Pharmacy of the developing world' threatened

Since India is one of the countries included in the RCEP negotiations, the proposed TRIPS-plus measures are all the more alarming. India – often known as the 'pharmacy of the developing world' for its wide-scale production of generic medicines – supplies affordable life-saving medicines needed to treat communicable and non-communicable diseases in developing countries. Two-thirds of all the drugs Médecins Sans Frontières (MSF) purchases to treat HIV, tuberculosis and malaria are generic medicines from India. To ensure an uninhibited supply of generic medicines which MSF along with so many people in developing countries rely upon, the authors have been urging RCEP negotiators to make sure that the trade agreement does not impose any TRIPS-plus barriers on India.

SDG commitments undermined

In 2015, all RCEP negotiating countries signed the United Nations Sustainable Development Goals (SDGs) (United Nations 2015). These goals included a commitment to 'provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of developing countries to use to the full the provisions in the Agreement on Trade Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all'.

The TRIPS-plus provisions in the leaked RCEP IP chapter draft contradict the spirit of the SDG agenda by potentially delaying access to affordable medicines in low- and middle-income countries.

Suggested RCEP-TPP convergence

After the signing of the TPP in February, RCEP negotiating countries began to publicly frame the RCEP as a 'stepping stone' towards a convergence with the TPP and towards an all-encompassing 'Free Trade Area of the Asia-Pacific' (Reuters 2015). There are seven countries that are common to both the TPP and the RCEP – Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Vietnam.

However, it is crucial to keep in mind that the TPP's IP provisions favour multinational pharmaceutical companies by providing increased monopolies on medicines. These stringent provisions will possibly delay generic competition in several of the TPP countries (Intellectual Property Watch 2015).

According to the recent draft consolidated RCEP text, India and ASEAN appear to be seeking to maintain the status quo in accordance with the TRIPS Agreement. Nonetheless, with seven of the 16 negotiating countries having already accepted TRIPS-plus provisions in the TPP such as data exclusivity and patent term extension, non-TPP signatories may be pressured to adopt TRIPS-plus IP provisions in the RCEP. It remains to be seen if India and ASEAN will be able to sustain a position that does not go beyond TRIPS standards.

Reflections on the RCEP public engagement process (or the lack thereof)

During the negotiations for the TPP, even though the discussion texts remained secret, some countries hosted stakeholder consultations that enabled substantial presentations by academics and civil society to the negotiators. Official public engagement in the course of the RCEP negotiations, however, has been much more limited.

Stakeholder consultations were not organised by India, South Korea and Malaysia when they hosted the RCEP negotiating rounds. The 12th round of negotiations, held in Perth, Australia, did provide some space for academics and civil society to voice their views on IP and investment. The 'consultations' held in Auckland, New Zealand, during the 13th round were much more limited, with stakeholders given two minutes each to present their concerns to negotiators. This contrasts sharply with the RCEP's engagement with the business community, which have been granted regular access to share their views since the negotiations began (Asian Trade Centre 2015).

In Auckland, in addition to concerns about the impact of proposals for increased medicine monopolies on public health, stakeholders also raised questions regarding the lack of transparency in the negotiations and the need for access to the document text. However, it again seemed that the consultation process was substantially lopsided towards industry, insofar as industry groups had far more involvement before and during the negotiations.

No public stakeholder consultations were held in the next two negotiating rounds, held in Vietnam and China. Indonesia, which is hosting the next round of negotiations in December, has organised a stakeholder consultation.

While efforts to engage the public through some stakeholder consultations are welcome, it is essential to remember that as the document text becomes more detailed and complicated, especially as negotiations proceed, access to this draft text is crucial so as to enable meaningful consultation and input from civil society groups and academic experts. Such input would improve the quality of the text and help to ensure that it does not negatively impact on public health or have other unforeseen consequences. Secrecy is the surest sign that negotiators are faced with decisions that could adversely affect the public interest, including public health.

For the December round of negotiations in Indonesia, it remains to be seen whether texts will be released and whether there will be a greater effort to allow civil society and academics to engage meaningfully with negotiators.

If the RCEP negotiations proceed without publication of draft texts and meaningful consultation with civil society groups and academic experts, the RCEP, if and when it is concluded, is likely to face the same strong public opposition and political barriers to implementation as the TPP today.

What's next?

To summarise, some countries in the RCEP negotiations are seeking to not only extend patent monopolies beyond the TRIPS-mandated 20 years but also require stronger IP enforcement measures, without weighing the long-term impact on access to medicines. If these TRIPS-plus proposals were incorporated into the RCEP agreement, they would likely delay the market entry of cheaper generic medicines in several low- and middle-income member countries, which are already facing crippling cost burdens that hinder affordable treatment (Low et al. 2014).

In parallel, the likely withdrawal of the US from the TPP (*The Guardian* 2016) and that agreement's impending collapse could trigger a strong political push from governments such as Japan (*The Japan Times* 2016) to speed up the RCEP negotiations and resolve differences in the upcoming negotiating rounds. Health organisations following the developments in the RCEP IP negotiations are concerned that, having seen its plans to increase market monopolies for pharmaceutical corporations through the ambitious TPP thwarted, Japan with the help of its allies will increase pressure on Indian and ASEAN negotiators to ensure TPP-like IP provisions are included in the RCEP agreement.

Against this backdrop of heightened RCEP negotiations, the report of the UN Secretary-General's High-Level Panel on Access to Medicines was released in September. The Panel had been mandated to recommend solutions to, among others, remedy the growing 'incoherence' between the right to health and trade agreements. Its report clearly recognises that today all countries – developed and developing – face challenges in ensuring the availability and affordability of pharmaceutical products that people need to live healthy lives. The report recommends that countries undertake rigorous public health impact assessments of proposed trade agreements as an imperative to inform the negotiations. It also encourages countries to better use the legal flexibilities available under the TRIPS Agreement to ensure affordable medical products. Most importantly, the report advises that future trade agreements should not include patent rights without true innovation, and other measures that lengthen monopoly rights (United Nations Secretary-General's High-Level Panel on Access to Medicines 2016).

So far, India and ASEAN negotiators have pushed back on accepting any IP provisions in the RCEP agreement that go beyond TRIPS rules and undermine the future of generic manufacturing and supply of low-cost medicines.

Developing countries and treatment providers who depend on affordable generic medicines will be watching the RCEP talks closely and pushing to support India's decision to continue its longstanding tradition of placing the interests of patients first in trade negotiations. ◆

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References

amfAR: The Foundation for AIDS Research (2015), 'Trans-Pacific Partnership: Curbing Access to Medicines Now and in the Future', May 2015, http://www.amfar.org/uploadedFiles/_amfarorg/Articles/On_The_Hill/2015/IB_TPP_Brief_RC_050615.pdf, accessed on 30 June 2016.

Andrieux-Meyer, I., Cohn, J., de Araújo, E. and Hamid, S.S. (2015), 'Disparity in Market Prices for Hepatitis C Virus Direct-Acting Drugs', *The Lancet Global Health*, Volume 3, No. 11, e676–e677, November 2015, http://www.thelancet.com/journals/langlo/article/PIIS2214-109X(15)00156-4/abstract, accessed on 27 May 2016.

Anti-Counterfeiting Trade Agreement Final Text, http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf, accessed 16 July 2016.

Asian Trade Centre (2015), 'Why Business Needs to Remain Involved in Trade Agreements', http://www.asiantradecentre.org/talkingtrade/2015/9/23/why-business-needs-to-remain-involved-in-trade-agreements, accessed on 21 April 2016.

Bridges (2009), 'Brazil Slams EU for Seizure of Generic Drugs', International Center for Trade and Sustainable Development, http://www.ictsd.org/bridges-news/bridges/news/brazil-slams-eu-for-seizure-of-generic-drugs, accessed on 26 June 2016.

Eli Lilly and Company (Disputing Investor) and the Government of Canada (Disputing Party). 'Notice of Intent to Submit a Claim to Arbitration under NAFTA Chapter Eleven', 7 November 2012, http://www.italaw.com/sites/default/files/case-documents/italaw1172.pdf, accessed on 18 May 2016.

Hakert, J.D. (2013), 'A Hard Pill to Swallow: A Critical Look at Eli Lilly & Co.'s NAFTA Challenge of the Canadian Patent Regime, and Its Potential Side Effects', http://www.americanbar.org/content/dam/aba/uncategorized/internation al_law/patent_law_eli_lilly_nafta_challenge.authcheckdam.pdf, accessed on 7 July 2016.

Intellectual Property Watch (2015), 'Impact of the TPP on the Pharma Industry', http://www.ip-watch.org/2015/12/02/impact-of-the-tpp-on-the-pharma-industry/, accessed on 21 April 2016.

Kawamura, H. (2014), 'The Likelihood of 24 Least Developed Countries Graduating from the LDC Category by 2020: An Achievable Goal?', United Nations, http://www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2014_20.pdf, accessed on 11 June 2016.

Knowledge Ecology International, Regional Comprehensive Economic Partnership (2015a), 'Japan IPR proposals', http://keionline.org/node/2173, accessed on 3 June 2016.

Knowledge Ecology International, Regional Comprehensive Economic Partnership (2015b), 'Korea IPR proposals', http://keionline.org/node/2239, accessed on 3 June 2016.

Knowledge Ecology International, Regional Comprehensive Economic Partnership (2016a), 'RCEP IP Chapter', http://keionline.org/node/2472, accessed on 3 June 2016.

Knowledge Ecology International, Regional Comprehensive Economic Partnership (2016b), 'RCEP Investment Chapter', http://keionline.org/node/2474, accessed on 6 July 2016.

Kollamparambil, U. (2016), 'Why Developing Countries Are Dumping Investment Treaties', University of the Witwatersrand, Johannesburg, https://www.wits.ac.za/news/latest-news/in-their-own-words/2016/2016-03/why-developing-countries-are-dumping-investment-treaties.html, accessed on 27 April 2016.

Low, W.Y., Lee, Y.K. and Samy, A.L. (2014), 'Non-Communicable Diseases in the Asia-Pacific Region: Prevalence, Risk Factors and Community-based Prevention', *International Journal of Occupational Medicine and Environmental Health*, 18 December 2014, http://www.ncbi.nlm.nih.gov/pubmed/25519942, accessed on 27 April 2016.

MSF Access Campaign (2013), Letter from MSF to the Indian Prime Minister regarding access to medicines and the EU-India FTA, http://www.msfaccess.org/content/letter-msf-indian-prime-minister-regarding-access-medicines-and-eu-india-fta, accessed on 24 July 2016.

MSF Access Campaign (2014), 'Untangling the Web of Antiretroviral Price Reductions', https://www.msfaccess.org/sites/default/files/MSF_UTW_17th_Edition_4_b.pdf, accessed on 23 April 2016.

MSF Access Campaign (2016a), 'Just 2% of people with the severest cases of drug-resistant TB currently have access to new, more effective treatments', https://www.msfaccess.org/our-work/tuberculosis/article/2566, accessed on 5 June 2016.

MSF Access Campaign (2016b), 'Civil society letter to countries negotiating Regional Comprehensive Economic Partnership (RCEP)', 30 May 2016, http://www.msfaccess.org/content/civil-society-letter-countries-negotiating-regional-comprehensive-economic-partnership-rcep, accessed on 7 July 2016.

Palmer, E. (2013), 'Lilly Files $500M Lawsuit against Canada', FiercePharma, http://www.fiercepharma.com/legal/lilly-files-500m-lawsuit-against-canada, accessed on 27 May 2016.

Reuters (2015), 'China-Backed Trade Pact Playing Catch-Up After US-led TPP Deal', 10 October 2015, http://www.reuters.com/article/us-trade-tpp-rcep-idUSKCN0S500220151011, accessed on 25 April 2016.

Stiglitz, J. (2016), 'TPP "worst trade deal ever," says Nobel-winning economist Joseph Stiglitz', CBC News, 31 March 2016, http://www.cbc.ca/news/business/joseph-stiglitz-tpp-1.3515452, accessed on 15 May 2016.

The Economist (2016), 'Priced Out', 11 June 2016, http://www.economist.com/news/science-and-technology/21700373-cancer-drugs-cost-more-america-elsewhere-may-be-just-priced-out, accessed on 7 July 2016.

The Guardian (2016), 'Trump to withdraw from Trans-Pacific Partnership on first day in office', 22 November 2016, https://www.theguardian.com/us-news/2016/nov/21/donald-trump-100-days-plans-video-trans-pacific-partnership-withdraw, accessed on 29 November 2016.

The Japan Times (2016), 'Abe warns TPP impasse would shift focus to China-inclusive trade pact', 15 November 2016, http://www.japantimes.co.jp/news/2016/11/15/business/economy-business/abe-warns-tpp-impasse-shift-focus-china-inclusive-trade-pact/#.WCux5Dj_rVg, accessed on 29 November 2016.

Townsend, B., Gleeson, D. and Lopert, R. (2015), 'Pharma's next frontier? New threats to public health in the Regional Comprehensive Economic Partnership agreement', *Australia and New Zealand Journal of Public Health*, published online 11 October 2015, http://onlinelibrary.wiley.com/doi/10.1111/1753-6405.12453/abstract, accessed on 25 June 2016.

TRIPS Council Decision IP/C/73, World Trade Organisation (2015), 'Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least Developed Country Members for Certain Obligations with respect to Pharmaceutical Products', Council for Trade-Related Aspects of Intellectual Property Rights, http://www.puntofocal.gov.ar/doc/ipc73.pdf, accessed on 17 June 2016.

United Nations (2015), Sustainable Development Goals, http://www.un.org/sustainabledevelopment/sustainable-development-goals/, accessed on 7 July 2016.

United Nations Secretary-General's High-Level Panel on Access to Medicines (2016), Report, 14 September 2016, http://www.unsgaccessmeds.org/final-report/, accessed on 29 November 2016.

Velásquez, G. (2012), 'Indonesia Government Granted 7 Compulsory Licences to Promote Access to HIV-Related Medicines', http://www.scielo.org.co/scielo.php?pid=S0121-40042012000300002&script=sci_arttext&t1ng=en, accessed on 5 April 2016.

Weatherall, K. (2016), 'RCEP IP Chapter Leaked 15 Oct 2015 – Weatherall Section by Section Comments inBrief.pdf', Working Paper, https://works.bepress.com/kimweatherall/35/, accessed on 8 July 2016.

The RCEP, IPRs and the threat to traditional farming

The stringent intellectual property rules being pushed for adoption by some RCEP members will have an adverse effect on the livelihoods of small and traditional farmers in poorer member states, warns *Shalini Bhutani*.

GOVERNMENTS in the Global South are known to be wary of 'TRIPS-plus' rules on intellectual property (IP), including in the seed sector. However, IP protection standards at a level higher than that mandated under the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), continue to be pushed for in the mega-regional free trade agreements (FTAs) under negotiation. This is particularly true of the Regional Comprehensive Economic Partnership (RCEP) that is on the table between ASEAN and its six existing FTA partners.

Another planned mega-regional trade pact, the Trans-Pacific Partnership (TPP) signed in February 2016, may die a premature death due to lack of support from the incoming President of the US, a leading member state. The TPP has 12 countries from the Asia and Pacific region, seven of which are also vying to be part of the RCEP (see table next page). Irrespective of the future of the TPP, however, it has been able to export its 'TRIPS-plus' IP standards into the RCEP negotiations.

The TPP's chapter on intellectual property rights (IPRs), which sets higher levels of protection than the TRIPS Agreement, is designed to be the new 'gold standard' for IP rules in trade agreements. There is a risk of spillover effects from the TPP on the RCEP, given the overlapping membership between the two.

The concerns of ordinary citizens in countries negotiating the RCEP are therefore not misplaced. Those RCEP members taking a more cautious approach on expanding IP rules will be under pressure to go beyond their currently TRIPS-compliant domestic laws. These governments will need to stay strong for their small farmers and peasant cultures, in view of the potential adverse effects of TRIPS-plus norms on the seed sector.


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A community seed bank in India. Seed saving and other traditional seed practices by farmers could be at risk if India is compelled under the RCEP to join the UPOV 1991 plant variety protection treaty.

Seed freedoms under threat

The current IP text (leaked in October 2015) proposed for the RCEP pushes for accession by all RCEP member states to the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991). Among the RCEP's 16 countries, seven are already members of UPOV: Australia, China, Japan, New Zealand, Singapore, South Korea and Vietnam. The other RCEP countries which are not UPOV members, including India, are coming under pressure to join UPOV 1991 – the most stringent version of UPOV – to provide IP protection for plant breeder rights (PBRs) at the cost of farmers' rights.

India already has a PBR law on seeds called the Protection of Plant Varieties and Farmers' Rights Act, 2001. The Act has intentionally been kept less stringent than UPOV 1991 to allow farmers to continue with their seed practices, imposing only a restriction on sale of packaged seed of protected plant varieties. This space for both small farmers and public breeders is at risk of being lost if countries like India relent to amending their PBR laws in line with UPOV 1991.

Seed laws the world over are already becoming more restrictive for farmer seed systems. The seed industry in India (through the National Seed Association of India) and in the region (through the Asia & Pacific Seed Association) has been lobbying governments for harmonisation of seed laws.[1] It is against any dilution of UPOV 1991 standards that would allow for farmers' freedoms at the cost of economic rights of corporate breeders.

People's knowledge on biodiversity

Another area where IP rules can have a serious impact on livelihoods is biodiversity-based people's knowledge. India is the only RCEP country that has explicitly proposed the inclusion of 'traditional knowledge' in the agreement text. The proposal from India raises several points relating to genetic resources, traditional knowledge and folklore. These are in line with the international Convention on Biological Diversity (CBD), but are opposed in the RCEP talks by Japan, South Korea, Australia and ASEAN.

All RCEP countries are already members of both the WTO and the CBD. In fact, many of the RCEP countries had previously come together in the 17-member Like-Minded Megadiverse Countries (LMMC) group of nations which are rich in biodiversity. Their shared interests with respect to preventing 'biopiracy' and promoting fair sharing of benefits from the use of genetic resources need to be remembered.

India has been seeking a 'biodiversity amendment' to the TRIPS Agreement,[2] while having amended its national patent law to insist on disclosure of the country of source and geographical origin for patents sought on traditional knowledge. Like other biodiversity-rich countries in the region, it has previously had problems with 'biopiracy' from user countries like Japan. Japanese companies such as the brewer Sapporo have in the past sought patents on India's genetic resources and people's knowledge, sans any benefit sharing or prior informed consent.[3]

Membership overlap between the RCEP and the TPP

RCEP	TPP
16 members	**12 members**
ASEAN 10	
Brunei	Brunei
Cambodia	
Indonesia	
Laos	
Malaysia	Malaysia
Myanmar	
Philippines	
Singapore	Singapore
Thailand	
Vietnam	Vietnam
plus	*plus*
Australia	Australia
China	
India	
Japan	Japan
New Zealand	New Zealand
South Korea	
	plus
	Canada
	Chile
	Mexico
	Peru
	USA

Under the Indian proposal in the RCEP negotiations, RCEP countries must become members of the Nagoya Protocol, a sub-treaty under the CBD on access to genetic resources and benefit sharing. Meanwhile, as a sign of the challenges faced in this area, India's own regulations on access and benefit sharing, issued in November 2014 in compliance with the Nagoya Protocol, have been challenged by Ayurvedic medicine manufacturers opposed to benefit-sharing obligations that they view as a 'double tax'.[4]

The protection of people's knowledge and their priority access to their local biological resources is, however, not articulated as a non-negotiable in the RCEP talks. There are currently no exceptions envisaged to the RCEP rules to safeguard people's knowledge (unlike the 'exception clause' that would enable the New Zealand government to provide preferential treatment to the country's indigenous Maori population in accordance with the Treaty of Waitangi).

Data exclusivity

There is another aspect of IP that is intrinsically linked with the seed discussion: data exclusivity on agricultural chemicals. While the demands of agroecology require that we move our farming systems away from use of harmful chemical fertilisers and pesticides, the fact is that wherever the mainstream industrial model of agriculture prevails, it remains chemical-intensive.

The stronger RCEP members with agribusinesses which have an interest in marketing their agrochemicals in the Asia and Pacific region will insist on data exclusivity to de facto extend the patent protection periods of their products. This would also act as a disincentive against cheaper generic versions.

IPR enforcement

Enforcement implies compelling the observance of laws, and the strict application of laws cannot happen without the support of state machinery. So it is with IP. Those promoting a maximalist IP agenda insist that IP laws should not only be passed but also be strictly enforced. The remedies typically include civil, criminal or administrative remedies. It can mean heightened demands on customs officials to check for and take action against what may be classified as ‘counterfeit’ goods. Demands for IPR enforcement by trading partners can also take the form of an insistence on border measures to check if generic versions of IP-protected goods are crossing borders.

The stress on enforcement outside of the WTO is among the reasons certain countries may not want to move away from the WTO’s minimum IP standards. It is also the reason the RCEP countries which want higher IP standards and face resistance on that front, are now contemplating making the demand for strict IPR enforcement.

Domestic measures

RCEP countries might also be undertaking unilateral measures on IP at the domestic level which may lock them into positions at the negotiating table.

For example, India’s new National IPR Policy 2016 states that the government will ‘engage constructively in the negotiation of international treaties and agreements in consultation with stakeholders; examine accession to some multilateral treaties which are in India’s interest; and become signatory to those treaties which India has de facto implemented to enable it to participate in their decision making process’. This could go against the strong position against UPOV that India has so far taken in the RCEP talks.

Indian farmers purchasing cotton seeds at a shop. The seed industry in India and in the region has been lobbying governments for harmonisation of seed laws to provide protection for plant breeder rights at the expense of farmers’ rights.

Japan’s lower house of Parliament has already ratified the TPP and passed a law related to the TPP (even though the chances of the TPP entering into force seem bleak after Donald Trump’s win in the US presidential election). Committing to the TPP level of IP protection gives countries a reason to demand the same standards in their other trade negotiations. Indeed, Japan has, along with South Korea, been placing strict IP demands on the other RCEP countries.

Conclusion

Balancing internal and external pressures in the RCEP negotiations will be a tightrope walk for governments, with small farmers and seed savers seeking freedoms in their seed practices rather than free trade with not-so-free IP rules.

Citizens and people’s groups will have to stay watchful against any TPP-style IP standards being slipped into the RCEP, even if the TPP itself does not become a reality. The entire RCEP negotiating process also needs to be opened up to allow for more public debate.

Meanwhile, trade negotiators need to be aware that, particularly with respect to IP, ‘TPP-plus’ can be worse than ‘TRIPS-plus’! ◆

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Endnotes

1 For the love of the seed industry. http://indiatogether.org/indian-seed-congress-2015-agricultural-alliance-between-industry-and-public-sector-agriculture

2 https://www.grain.org/article/entries/711-trips-close-call-in-geneva

3 http://www.downtoearth.org.in/blog/japanese-biopiracy-of-our-ballia-barley-43533

4 Ayush cos move Bombay HC against enforcing ABS compliance. http://www.pharmabiz.com/NewsDetails.aspx?aid=92576&sid=1

The RCEP and the shrinking of public policy space

Jane Kelsey explains how the RCEP services chapter will erode the regulatory capacity of the governments of developing and least developed countries.

THE Regional Comprehensive Economic Partnership (RCEP) is shrouded in secrecy, just like the other mega-regional agreements that people are rejecting as an assault on their right to decide their own future, such as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) between the United States and the European Union.

The draft services and investment chapters of the RCEP were leaked some months ago. These texts are now dated, but they remain the best publicly available source of information and provide disturbing insights into what is happening behind closed doors. The likely failure of the TPP has intensified pressure from ministers to conclude the RCEP. That makes it all the more urgent to expose how the governments of developing countries and least developed countries (LDCs) are being pushed into accepting an outcome that could cause severe damage to their economies and societies in the future.

Protestors holding up a banner which reads 'Mega-FTAs RCEP, EU-CEPA, TPP threaten state sovereignty' on the occasion of the December negotiating round for the RCEP in Indonesia. The proposed services chapter of the RCEP would impose severe restrictions on the regulatory sovereignty and policy space of governments.

The RCEP services text dated August 2015 embodies the anti-social and anti-democratic essence of these agreements. Services are treated as commercial products that are exchanged for money through markets. That very narrow view takes precedence over the social, employment, development and environmental dimensions of services that governments would usually give priority to, or at least treat as equally important when they make and implement policy and law. The RCEP rules aim to weaken such laws and policies, which foreign firms say make it harder for them to sell their services and compete with locals, even when they are massive transnational companies.

But these new-generation mega-deals are not just more of the same. Their rules and obligations on services are much more potent than the World Trade Organisation (WTO)'s General Agreement on Trade in Services (GATS) and earlier free trade agreements (FTAs). In the past, rich countries were principally concerned about gaining access for their corporations to other countries through foreign investment. Now they want to control the global supply chains and digital platforms through which global capitalism will operate for the 21st century. That means the right to supply services from outside the country and preventing governments from requiring them to have a legal presence inside the country. New technologies should be allowed to deliver services with no new restrictions. Rules that guarantee money flows into and out of the country to pay for those services are equally important. So is the right to store data, including financial data, anywhere in the world.

Making more services available through the Internet from outside the country can facilitate cheaper access to more diverse services for developing countries. But it also consolidates the power of dominant players in services supply chains and value chains. Countries and communities who rely on these services become dependent on offshore suppliers over whom they have very little influence and who can avoid local responsibilities in areas of taxation, training and employment, supporting small businesses, technology transfer, cultural relevance and legal liability.

The power politics of RCEP services

Restrictions on the number and size of hotels in a region, for example, would be prohibited under proposed RCEP rules that require governments to open and keep open their services markets to foreign firms.

The leaked RCEP services text reveals the very different positions of the 16 negotiating countries. Australia, Japan, New Zealand and South Korea have been aggressive in their demands and are insisting on new ways to bind the hands of governments in the future. These four countries are part of a group that call themselves the 'Really Good Friends of Services' which are negotiating a plurilateral Trade in Services Agreement (TiSA) that is designed for export back into the WTO, where they have not been able to upgrade the GATS because of resistance from the Global South and from civil society.

In the RCEP talks, ASEAN is negotiating with a single voice on behalf of its 10 members. It is difficult to know how much they are resisting individually or collectively. They seem to have agreed to the framework and are arguing about how far it should go and which parts are voluntary. India, on its part, has proposed some novel arrangements and protections, while pursuing its own ambitions to increase the mobility of services professionals and facilitate its back-office operations, but it seems to have few allies. As of a year ago, China had not played a prominent role.

Similar dynamics are evident in the leaked RCEP investment chapter. Japan and South Korea have tabled hardline pro-investor rules and rights of enforcement that are based on the failed TPP. India proposed a different approach based on its new model bilateral investment treaty (BIT) that seeks to preserve more power for the state and the domestic courts. China was midway – wanting protection for its investors offshore while protecting its regulatory authority at home.

Handcuffs on the future

To date, the RCEP's chapter on investment has attracted more attention than the services chapter. That reflects the international backlash against such pro-investor rules and the ability of corporations to enforce them directly against governments through investor-state dispute settlement. But the services chapter of the RCEP would impose at least as severe restrictions on the regulatory sovereignty and policy space of governments, with serious social, environmental, cultural, gender, political and economic consequences.

Both chapters would allow governments to preserve some rights over their future decisions through interrelated schedules of commitments. But that would be limited and subject to agreement by all other parties. The RCEP has not adopted the 'negative list' approach to services commitments that would require countries to state what laws, regulations and activities are *not* subject to the rules. But the South countries have been pushed into accepting an approach to scheduling commitments that would prevent them from adopting more restrictive rules in the future (standstill) and either a ratchet that locks in future liberalisation or promising all other RCEP parties will benefit from future FTAs that provide better terms for services providers from other countries. The exact terms of these 'value-added' commitments are not publicly known. But it is clear that developing countries and LDCs are being pressured to take on significant new commitments which will require changes to their domestic policies and regulation. Far from promoting development, these new obligations will have a disproportionate impact on them. The e-commerce chapter imposes a further layer of obligations designed to protect cross-border digital commerce from future regulation.

This approach is really dangerous. Policy space is critical for developing countries, especially for LDCs, which require flexible rules and the ability to respond to unanticipated problems without facing the threat of a legal dispute or economic sanctions. It is too easy to make mistakes in such complicated negotiations. What appears to be low-risk at the time it is agreed can become a major liability, especially when domestic and global economic circumstances change and new technologies alter the impact of rules and commitments. The international context can also change, as challenges like climate change and energy scarcity require fundamentally different approaches to production, distribution and regulation.

Above all, all the RCEP negotiating parties have obligations to address the asymmetry of development, where the legacy of colonialism and imperialism continues through a model of capitalism and global rules that are designed to maintain the dominance of powerful states and their corporations, and seek to constrain competition from newly ascendant countries like China and India. The negotiating parties have all committed to achieving the 2030 Agenda for

Sustainable Development. That will require a rebalancing of developmental over commercial outcomes, yet the RCEP is silent on those goals and the services and investment chapters will make it harder to achieve them.

The RCEP's framework for services

There is room here just to summarise some ways in which the RCEP services chapter would restrict governments' policy space and regulatory sovereignty. It is important, however, to stress the limitations: the draft text is over a year old and accompanied by only a few explanatory documents and it is unclear how far the negotiations have progressed since then.

The RCEP has some standard rules drawn directly from the WTO's GATS that operate across national, regional and local government levels.

The 'market access' rule requires governments to open and keep open their services markets so that foreign firms can expand their operations with few restrictions. This means removing restraints on the growth of the services market and access to it by providers of services, even when they are not just targeted at foreign firms. These commitments put handcuffs on the ability of governments to shape the provision of services to meet local needs. The rules would, for example, prohibit a transport monopoly, a requirement to show an unmet need before opening a new big supermarket or port, restrictions on the number and size of hotels in a region, or a ban on certain kinds of advertising.

Likewise, under the 'national treatment' rule, governments cannot give preferences to local services and service suppliers, and foreign suppliers of services must be treated at least as well as their national counterparts. An obvious breach would be to deny foreign firms the same subsidies, grants or loans that the government gives to local firms. However, recent agreements, including the RCEP, have an exception that allows subsidies to be limited to locals.

Even with this exception, the national treatment rule would prevent, for example, the exclusion of foreign investors from broadcasting or telecommunications, banning foreign ownership or leasing of land, a rule that only local communities can run ecotourism operations, levying remediation insurance only on foreign mining or forestry operators, restrictions on using offshore banks, requiring foreign firms to hire local personnel, only allowing domestic firms to run schools or hospitals, or saying only nationals can be registered as lawyers or midwives.

Other rules make it hard to regulate in ways which governments think are best for their communities but which services firms consider too burdensome. This applies to qualifications (teachers, lawyers, accountants, nurses etc), technical standards (such as land zoning, water quality, construction standards, advertising rules, mining discharges, location of hypermarkets) and licensing requirements (for fishery vessels, transport operators, schools, telecommunications, television, financial advisers).

Countries draw up their own schedules of commitments to these rules. As noted earlier, they have some choices about what they seek to include but that will be negotiated hard. Each country's final schedule will limit the right of the current and future governments to adopt new restrictions in the services sectors they have promised to keep open. They face legal challenges and trade penalties if they breach those obligations.

These restraints would apply to all levels of government – central, regional and local – as well as bodies that exercise powers delegated to them by those authorities. The leaked RCEP services chapter shows China has joined the rich countries in opposing the standard GATS flexibility that requires governments to take steps reasonably available to them to ensure the other levels of government comply. They now appear to expect strict compliance at all levels of government, possibly subject to reservations that countries are allowed to put in their schedules.

Empowering the digital domain

The 'TiSA-4' (Australia, Japan, New Zealand and South Korea) have proposed an architecture and level of commitments in the RCEP that strengthens their position in globalised markets and integrated supply and value chains. Although there is no public list of all the chapters and annexes, proposals on telecommunications and financial services appear to follow developed-country templates in the WTO, which very few developing countries have adopted. If agreed to in the RCEP, this would strengthen the dominance of the TiSA-4, and other, non-RCEP countries that would also benefit from them, while adding to the burden on developing countries and LDCs.

This is bolstered by a concept of 'technological neutrality' that was never formalised in the WTO but is being treated by those promoting these agreements as if it is accepted trade law. If a government commits a service to the RCEP's rules now, it must accept the delivery of that service through any technology in the future, even if the technology was not foreseeable when the commitment was made and it has significant negative impacts that would have deterred the government from making the original commitment. In an era where drones, robots and driverless trucks are no longer science fiction, the idea that governments would promise now to accept whatever new technologies emerge in the next 20 to 30 years is truly frightening.

The services chapter needs to be read in tandem with the e-commerce chapter. The RCEP version of the latter has not been leaked but it is expected to follow the approach in the TPP and TiSA. The underlying presumption is that barriers to cross-border supply of services need to be reduced or removed and prevented from being adopted in the future. One rule would prohibit governments from requiring an offshore service supplier to have a local presence in the country, allowing the supplier to avoid legal liability, accountability and taxation.

A second controversial rule would prevent governments from requiring that data a company holds from doing business in the country be held within the territory and subject to its laws on privacy, consumer protection and security. Prohibiting what Google, IBM and others call 'forced localisation' means they could hold that data anywhere in the world. The servers that operate the so-called 'cloud' are mainly in the US, whose privacy and consumer protections are minimal and security laws intrusive. In TiSA the US is demanding that this rule applies to financial data as well. That is unlikely to be included in the RCEP. But the TiSA-4 will be pushing to include most of the other rules from TiSA and the TPP.

Risks of policy and regulatory failure

Central, regional and local governments are principally responsible for meeting the needs of their local communities, local businesses, workers and families, and are held politically accountable for doing so. The foreign services firms that will dominate through the RCEP chapter are motivated by expansion of their market share and maximising the profitability and value of their business, not the needs of local communities or the responsibilities of governments to their people.

This is a time of chronic instability of the global economy, rapid technological change and commitments by all the RCEP countries to the 2030 Agenda for Sustainable Development. Governments need the maximum freedom to adopt policies and regulations they think are necessary for the national interest, and the freedom to amend, withdraw or expand them as they consider appropriate to their needs at the time.

There are five kinds of failures that governments negotiating RCEP rules and commitments need to anticipate.

Policy failure: This is where a policy, such as privatisation, liberalisation or deregulation of services, turns out to be inappropriate, unworkable or damaging to important interests and needs to be changed. The policy may have been designed by consultants who are unfamiliar with the local context, required as a condition of debt financing without full consideration of the implications, copied from another country that has different circumstances, driven by ideological preferences of officials or politicians, or patterned after a popular fashion without adequate critical review and/or a proper cost-benefit analysis.

Regulatory failure: Here, it is the regulatory techniques and institutions adopted to deliver a policy which are inappropriate, unworkable or damaging to important interests and need to be changed. The causes can be similar to those behind policy failure, but are also likely to arise when the elements considered in a regulatory impact assessment or cost-benefit analysis are biased towards quantitative factors and give preference to light-handed regulation and market mechanisms (which is implicit in the RCEP domestic regulation disciplines).

Market failure: The market may not be sufficiently big to accommodate competition, or parts of it may prove unattractive to service suppliers because of remoteness, poverty of consumers, uneconomic niche markets or difficult consumer requirements. Dominant players may fail or foreign firms may decide to exit the country, leaving a void in provision because there is no longer any local capacity and no foreign interest wants to take up on similar terms.

Social failure: Firms who come to dominate the market are often not interested in providing important social services or servicing locations or communities whose need is greatest. The firm may refuse to provide the specific service altogether, charge far more than what consumers can afford, or demand excessive subsidies from local or central governments which have become captive to them because they no longer have the capacity to provide the service themselves.

Political failure: Policies or regulatory approaches can become politically unsustainable, often as a consequence of other forms of failure.

All these forms of failure are heightened for developing countries and LDCs, whose regulatory regimes are still evolving, whose markets are limited in size and sophistication, and whose government agencies often lack strong institutional capacity and have competing priorities. Yet the leaked services chapter shows that the RCEP will systematically foreclose these countries' ability to address those failures.

The TiSA-4 want to take the RCEP far beyond the GATS and ASEAN's existing FTAs. The rules and schedules in the services chapter are being negotiated now. If ASEAN does not stick together to resist their demands, there is a serious risk that its developing-country and LDC members will be pressured to make concessions on services – possibly as a trade-off for outcomes of commercial importance to them in other chapters, such as market access for goods, or just from old-fashioned bullying. When problems emerge, the RCEP will make it almost impossible to change or withdraw these services commitments.

The timeline for these negotiations is uncertain, but the pressure to conclude them has become more intense as other mega-deals fall by the wayside. It is important to mobilise now to educate people, especially central and local governments, about the risks from the services and related e-commerce aspects of the RCEP, and to join forces with others who oppose the other parts of the deal (e.g., on intellectual property, investment, goods, state-owned enterprises) as being bad for our people, our nations and our futures. ◆

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Jettison ISDS from the RCEP!

The controversial investor-state dispute settlement (ISDS) mechanism in the TPP provoked a huge outcry as it conferred on foreign investors the exorbitant privilege of suing host governments in arbitral tribunals for any alleged loss caused by any regulatory or policy changes. There is no justification for its inclusion in the RCEP.

The world's third largest cement manufacturer Cemex was paid $337 million by Indonesia to settle their investment dispute.

THE Regional Comprehensive Economic Partnership (RCEP) is currently being negotiated between 16 countries in the Asian region. It includes China, members of the Association of South-East Asian Nations (ASEAN) and other key trading nations such as Australia, South Korea, Japan and India. Over 50% of the world's population live in the negotiating countries, which account for over a quarter of global exports and almost 30% of the world's GDP. Like with other trade agreements, such as the Trans-Pacific Partnership (TPP), these negotiations include a focus on trade liberalisation, address varying regulatory disciplines and are largely secret.

The RCEP also includes the controversial investor-state dispute settlement (ISDS) mechanism, which is facing increasing public criticism and scrutiny worldwide. ISDS is a one-way mechanism that empowers foreign investors to sue the state at international arbitration tribunals; it cannot be used by states. Foreign investors can circumvent domestic court systems and claim financial compensation from host governments in secret business-friendly international tribunals, if they deem their investments (including their potential future profits) are adversely affected by the introduction of regulatory and/or policy changes in the host state. These private tribunals are comprised of three for-profit arbitrators, who issue their decisions behind closed doors. Arbitrators often have serious conflicts of interest, as many have financial incentives to rule in favour of the investor and keep the system alive. Arbitrators also often switch sides and go on to work as counsels, representing and defending the companies filing investment treaty cases.

Negotiating new treaties that include ISDS runs counter to the decision by some governments in the region to reform or terminate these agreements in order to protect their right to regulate. Among RCEP countries, India, Indonesia and Australia have undergone review processes of the international investment framework. In the case of India and Indonesia, the outcomes of the reviews have led to the termination of several treaties as well as the development of new model bilateral investment treaties (BITs) that highly restrict the rights of investors.

This article highlights the current and potential costs of ISDS to countries negotiating the RCEP agreement. The North American Free Trade Agreement (NAFTA) shows that mega-regional trade deals are much harder to reform or change after ratification than bilateral agreements. The only way to roll back the rights granted to investors in free trade agreements is by terminating the entire treaties, not just their respective investment protection chapters. The dangerous impacts of investment treaties are likely to increase if governments in the region agree to grant far-reaching protection rights to investors in the RCEP and other ongoing free trade negotiations. Furthermore it can reasonably be expected that the RCEP would lock in the dangerous ISDS provision in the region for the foreseeable future. This would undermine governments' efforts to safeguard their right to regulate in the public interest.

Claims for compensation can – and do – amount to billions of dollars. However, ISDS cases are not fully disclosed to the public even when cases may relate to matters of public interest, such as the environment. When the state loses an ISDS case or settles a dispute with an investor, governments can be forced to foot the bill with public money. In other words, ISDS effectively allows foreign investors to pass their investment risks on to citizens and public budgets. Even when cases have been discontinued or when the outcome is said to be 'in favour of the state', the state will usually have to bear the exorbitant cost of legal defence and arbitrators' fees. According to Organisation for Economic Cooperation and Development (OECD) estimates, expenses for a single ISDS case amount to $8 million on average for legal and arbitration fees alone, half of which will be footed by the state.

This article compiles available data on ISDS cases taken against countries party to the RCEP negotiations. It highlights the ongoing corporate attack on Asian governments' right to regulate, including actions following the introduction of measures to protect the environment. It also underlines the costs that this system has already had to democracy in the region.

The impacts of ISDS in Asia

There are currently 50 known investment treaty lawsuits against 11 RCEP countries. Five countries (Brunei, Cambodia, Singapore, Japan and New Zealand) have so far been spared. India alone has been the target of 40% of the cases filed against RCEP countries. Indonesia, the Philippines and Vietnam are the next three most sued among RCEP countries.

Fifteen of the cases filed against India were based on only four bilateral investment treaties: the India-United Kingdom BIT (five cases), the India-Mauritius BIT (four cases), the India-France BIT (three cases) and the India-Netherlands BIT (three cases).

The exponential growth in the number of cases filed

Following the international trend, investment treaty disputes against RCEP countries have surged over the last decade. Only six cases were filed against RCEP countries between 1994 and 2003. The explosion of lawsuits started in 2004; at least 27 disputes were initiated between 2004 and 2013. From 2014 up until now, 17 ISDS lawsuits have already been registered, so it is likely that the decade 2014-23 will supersede the previous one.

Who are the investors suing?

Investors from 19 different nations have initiated lawsuits against RCEP countries. The most frequent home countries of investors initiating the cases are the Netherlands (9 cases), the United Kingdom (8 cases), France (5 cases), Belgium (4 cases) and Germany (4 cases). In fact, 68% of investors suing RCEP countries are based in Europe.

What are the targeted sectors?

Thirty-one out of the 50 lawsuits are related to just four sectors: electricity and gas, mining, information and communication, and manufacturing.

What are investors' favourite arbitration rules?

Against the international trend, investors suing RCEP countries have chosen the rules of the UN Commission on International Trade Law (UNCITRAL) in 60% of the cases, rather than those of the International Centre for Settlement of Investment Disputes (ICSID). This is probably due to the fact that a few RCEP countries have not signed the ICSID convention: India, Thailand, Vietnam, Myanmar and Laos.

Status of the ISDS cases against RCEP countries

Resolutions are still pending in a big portion of the cases (20). Among those that have been resolved (30 cases), the majority have favoured the investor either with a favourable award by the tribunal (3) or by a settlement with the state (17). The terms of most settlements are not disclosed, but largely involve a payment by the state, a decision to grant exemptions, or rolling back the piece of legislation that affected the investor in the first place.

Who is winning the cases against RCEP countries?

When looking at the 30 cases in which the outcome is known, we found that 57% have been settled and 10% were decided in favour of the investor. That makes a total of 67% of cases in which the investor won something out of the case. The tribunal dismissed the case and ruled that the state did not have to pay compensation to the investor in just 30% of the cases.

It is important to keep in mind that, regardless of the final outcome (whether in favour of the state, settled, etc.), the government would most likely have to pay its legal fees and part of the arbitration costs. On average, that amounts to $4.5 million, but the cost can also be much higher.

The financial costs of these lawsuits

Claims for financial compensation and the burden they create for public budgets in the host countries are a major problem in investment arbitration. While limited information is available in the public domain, we found that so far at least $31 billion has been claimed from RCEP countries. Given the secrecy surrounding ISDS proceedings, and the fact that for many cases the amount claimed by investors is not known, this could be much higher.

In terms of distribution of the financial claims across countries, India tops the ranking, with at least $12.3 billion claimed by investors since 1994. South Korea, Australia and Vietnam are next on the list.

By way of comparison, $31 billion is more than India's health budget for the year 2015 ($24 billion) or the amount of foreign direct investment inflows into Indonesia in 2014 ($26.2 billion).

Data about the amounts claimed by investors is available for 40 cases. Out of these, the amount was more than $100 million in 21 cases (that is, more than 50% of the cases). Most of the claims for financial compensation over $1 billion were filed after 2010, which is in line with international trends and proves that investors keep asking for ever-higher financial compensation as the years pass.

While many of the cases do not result in states being ordered to pay such exorbitant amounts, the mere threat of having to pay these costs is likely to act as a deterrent to advancing legislation in the public interest, for fear of being subjected to a lawsuit by a foreign investor in the future.

Since most cases in RCEP countries have been settled and there is almost no information on what the state agreed to give the investor as a condition for an early termination of the case, the exact financial impact of ISDS cases on RCEP governments is difficult to estimate. However, the available information shows that at least one settlement resulted in compensation of $337 million. This is the amount paid by Indonesia to the world's third largest cement manufacturer Cemex after they settled their ICSID dispute. The company received almost all of the $400 million that was initially claimed as compensation in the lawsuit. Other governments that have paid investors as a result of settlements include Thailand (a tribunal ordered the state to pay $41 million to German company Walter Bau) and India (which compensated US company Bechtel $160 million as part of a settlement).

Many of the ISDS cases in the region are recent and still pending. Therefore further research will be needed to determine their full impact. The sheer quantity of cases currently in process however guarantees a significant cost to countries in the future. India, for instance, has nine claims still pending, totalling $5.8 billion. Indonesia and South Korea have three pending claims each, totalling $1.9 billion and $4.9 billion respectively.

RCEP investors' usage of ISDS system

While governments of RCEP countries are clearly being impacted by these costly lawsuits, Asian investors have only modestly made use of international investment agreements. These are mostly Chinese, Australian, Indian, Korean, Malaysian, Singaporean and Japanese investors.

The investment protection regime of RCEP countries

RCEP countries have signed a total of 831 international investment agreements (IIAs), out of which 676 are in force.

The three countries that have signed the most IIAs are China, South Korea and India. New Zealand, Myanmar and Brunei are the three countries that have signed the fewest IIAs. Most RCEP countries' treaties were signed between 1990 and 2009.

RCEP countries have terminated 53 BITs, but only 24 of those were not replaced by any other investment protection treaty. Indonesia has led the process of letting its BITs expire without replacement and has so far terminated 22 BITs.

On average, treaties can be unilaterally terminated once the initial 10-year period after signing comes to an end. When looking at RCEP countries, this means that 87% of the BITs currently in force are likely to have passed the initial period and could be terminated.

All the BITs signed by RCEP countries include a survival clause. This is a clause that extends the effects of the BIT for existing investments for a certain period of years after it is terminated. For BITs ratified by RCEP countries, the average is 10 years (although in some cases it goes up to 15 or 20 years).

A big difference between BITs and free trade agreements (that include an investment protection chapter) is that the latter do not include a termination clause. Under FTAs, governments will find it much more difficult to withdraw their commitment to the rights granted to foreign investors. To terminate the clauses protecting foreign investors in FTAs, governments have to put an end to the whole agreement, rather than the investment protection chapter only.

IIAs under negotiation

Besides the 676 treaties in force, there are some ongoing negotiations for new international investment treaties. These include, besides the RCEP, several free trade agreements with the EU, in particular the EU-Thailand FTA (on hold), EU-Malaysia FTA (on hold), EU-India FTA (on hold), EU-Indonesia CEPA, EU-Philippines FTA, and EU-Myanmar BIT, all of which include an investment protection chapter and grant investors the right to sue governments at international investment tribunals.

Conclusion

ISDS is undemocratic, discriminatory, investor-biased and unnecessary. It has already been used to threaten countries currently involved in the RCEP negotiations, with citizens and public budgets footing bills of millions of dollars for the risks taken by foreign investors. These lawsuits should provide a warning of the potential high costs of the proposed RCEP trade deal.

Including the harmful ISDS clause in the RCEP agreement under negotiation contributes to cementing investors' rights and expanding the scope of private arbitrators' power. The RCEP will lock in place this system of privatised justice. Governments will find it much more difficult to withdraw their commitments to the rights accorded to foreign investors in the RCEP than in bilateral investment treaties, because they would need to put an end to the whole agreement and not just the sections on investors' rights.

This will likely result in a surge of new cases that will weigh heavily on governments' budgets. This will jeopardise the ability of national and local authorities from RCEP countries to regulate in the public interest, diverting public money from essential policies such as on health, education and environmental protection. This constitutes an unacceptable and unnecessary attack on democracy.

The evidence is compelling in showing that the risks of ISDS are higher than its proclaimed benefits. We call on all governments involved in the RCEP negotiations to exclude ISDS from this negotiation, and any other trade deal in the future.

RCEP governments have a golden opportunity to work together to build a new trade and investment regime that helps to develop sustainable societies, by supporting local economies, workers' rights, a clean environment and food sovereignty. ◆

The above is extracted from 'The Hidden Costs of RCEP and Corporate Trade Deals in Asia', a report published by Friends of the Earth International, Transnational Institute, Indonesia for Global Justice, Focus on the Global South, and Paung Ku (December 2016). The report was written by Cecilia Olivet, Kat Moore, Sam Cossar-Gilbert and Natacha Cingotti.

TPP rules in the RCEP must be rejected

The following is the text of an open letter by over 300 civil society groups from the Asia-Pacific region to the governments negotiating the RCEP. The letter was written on the eve of the latest round of the RCEP talks, held in Indonesia in December.

Opponents of the TPP protesting outside the White House in Washington. 'It is clear that the TPP has been soundly rejected by the American people and there has also been widespread opposition to it in other TPP countries...'

Dear Trade Ministers & Negotiators from the RCEP countries,

THIS is an urgent call by 316 civil society organisations from across the Asian and Pacific countries negotiating the Regional Comprehensive Economic Partnership (RCEP), which includes the 10 ASEAN Member States with China, Japan, South Korea, India, Australia and New Zealand.

This letter comes at a very important political moment, when in the aftermath of the US elections it seems clear that the Trans-Pacific Partnership Agreement (TPP) will not be ratified by the USA, in spite of its big push since February 2016 when the agreement was signed by the 12 countries.

It is clear that the TPP has been soundly rejected by the American people and there has also been widespread opposition to it in other TPP countries on both sides of the Pacific. According to the TPP text, if the US does not ratify it, the TPP cannot come into force.

The current negotiations in RCEP are complicated by the fact that there are 6 countries which are part of the TPP and there have been many attempts to import TPP texts into RCEP and sometimes even an attempt to go beyond the TPP. A few examples below bear testimony to how TPP wording is being proposed in RCEP.

• In the investment chapter, apart from a few safeguards, all the TPP's substantive and main investor-to-state dispute settlement (ISDS) provisions have been proposed in the leaked RCEP investment chapter.

• In services, for example, all the substantive TPP telecommunications chapter rules have been proposed in RCEP according to the leaked RCEP text.

• In RCEP's leaked draft e-commerce terms of reference, all the TPP e-commerce chapter rules appear to be proposed and all the RCEP e-commerce ideas appear to come from the TPP, therefore proposing an exact match of the texts.

• In the leaked RCEP intellectual property (IP) chapter, Japan, South Korea and some others are pushing many of the main substantive stronger IP provisions of the TPP.

With the demise of the TPP, there is no justification for adhering to the TPP texts in RCEP because these have no mandate. This is even more irrational in the absence of the TPP as Asian countries (including least developed countries (LDCs)) would end up carrying the load that other rich countries in the TPP (US, Canada) will not have to bear any more.

The RCEP texts which have leaked so far have many fundamental problems that will negatively impact all sectors of society in RCEP countries.[1]

We call upon the governments participating in the RCEP, to recognise this critical moment and not to bring the toxic content of the TPP into the RCEP and instead to stop the RCEP negotiations.

We urge you to revisit the trade relations between the 16 countries. A new model must be based on cooperation and not competition, one that puts the development needs of the region above that of corporations, and puts people and the environment at its centre, that recognises economic policy can work only if it is inclusive, not only in terms of the impact on different constituencies but also if it integrates the social and environmental concerns of the world.◆

See http://www.bilaterals.org/?civil-society-open-letter-to for the full list of signatories to the open letter.

Note

1. See for example civil society's concerns re RCEP's: intellectual property chapter provisions that can threaten access to medicines (http://www.bilaterals.org/?an-open-letter-to-the-sixteen) and investment chapter (http://isds.bilaterals.org/?civil-society-groups-say-no-to).

Empire of chaos

With the 2016 US elections, the disorder that the US has engendered abroad in its pursuit of empire has at last come home, says *Tom Engelhardt*.

THE one thing you could say about empires is that, at or near their height, they have always represented a principle of order as well as domination. So here's the confounding thing about the American version of empire in the years when this country was often referred to as 'the sole superpower', when it was putting more money into its military than the next 10 nations combined: it's been an empire of chaos.

Back in September 2002, Amr Moussa, then head of the Arab League, offered a warning I've never forgotten. The Bush administration's intention to invade Iraq and topple its ruler, Saddam Hussein, was already obvious. Were they to take such a step, Moussa insisted, it would 'open the gates of hell'. His prediction turned out to be anything but hyperbole – and those gates have never again closed.

An Afghan soldier keeping watch outside the NATO airbase in Bagram after the base was hit by a suicide bombing in November. 'From the moment of the invasion of Afghanistan in October 2001, ... everything the US military touched in these years has turned to dust.'

The wars come home

From the moment of the invasion of Afghanistan in October 2001, in fact, everything the US military touched in these years has turned to dust. Nations across the Greater Middle East and Africa collapsed under the weight of American interventions or those of its allies, and terror movements, one grimmer than the next, spread in a remarkably unchecked fashion. Afghanistan is now a disaster zone; Yemen, wracked by civil war, a brutal US-backed Saudi air campaign and various ascendant terror groups, is essentially no more; Iraq, at best, is a riven sectarian nation; Syria barely exists; Libya, too, is hardly a state these days; and Somalia is a set of fiefdoms and terror movements.

All in all, it's quite a record for the mightiest power on the planet, which, in a distinctly un-imperial fashion, has been unable to impose its military will or order of any sort on any state or even group, no matter where it chose to act in these years. It's hard to think of a historical precedent for this.

Meanwhile, from the shattered lands of the empire of chaos stream refugees by the millions, numbers not seen since vast swaths of the globe were left in rubble at the end of World War II. Startling percentages of the populations of various failed and failing states, including stunning numbers of children, have been driven into internal exile or sent fleeing across borders and, from Afghanistan to North Africa to Europe, they are shaking up the planet in unsettling ways (as their fantasy versions shook up the election here in the US).

It's something of a cliché to say that, sooner or later, the frontier wars of empires come home to haunt the imperial heartland in curious ways. Certainly, such has been the case for our wars on the peripheries. In various forms – from the militarisation of the police to the loosing of spy drones in American skies and of surveillance technology tested on distant battlefields – it's obvious that America's post-9/11 conflicts have returned to 'the homeland', even if, most of the time, we have paid remarkably little attention to this phenomenon.

And that, I suspect, is the least significant way in which our wars have been repatriated. What Election 2016 made clear was that the empire of chaos has not remained a phenomenon of the planet's backlands. It's with us in the United States, right here, right now. And it's come home in a fashion that no one has yet truly tried to make sense of. Can't you feel the deep and spreading sense of disorder that lay at the heart of the bizarre election campaign that roiled this country, brought the most extreme kinds of racism and xenophobia back into the mainstream, and, with Donald Trump's election, may never really end? Using the term of tradecraft that Chalmers Johnson borrowed from the CIA and popularised, think of this as, in some strange fashion, the ultimate in imperial blowback.

There's a history to be written of how such disorder came home, of how it warped the American system and our democratic form of governance, of how a process that began decades ago not in the stew of defeat or disaster but in a moment of unparalleled imperial triumph undermined so much. If I had to choose a date to begin that history, I think I would start in 1979 in Afghanistan, a country that, if you were an American but not a hippie backpacker, you might then have had trouble locating on a map. And if someone had told you at the time that, over the next nearly four decades, your country would be involved in at least a quarter-century of wars there, you would undoubtedly have considered him mad.

Thought of a certain way, the empire of chaos began in a victory so stunning, so complete, so imperial that it essentially helped drive the other superpower, that 'Evil Empire' the Soviet Union, to implode. It began, in fact, with the desire of Jimmy Carter's national security adviser, Zbigniew Brzezinski, to give the Soviets a bloody nose, or to be more precise, a taste of America's Vietnam experience, to trap the Red Army in an Afghan quagmire. In that light, the CIA would run a massive, decade-long covert programme to fund, arm and train fundamentalist opponents of the left-wing Afghan government in Kabul and of the occupying Red Army. To do so, it fatefully buddied up with two unsavoury 'allies': the Saudis, who were ready to sink their oil money into support for Afghan *mujahedeen* fighters of the most extreme sort, and the Pakistani intelligence service, the ISI, which was intent on controlling events in that land, no matter the nature of the cast of characters it found available.

In the fashion of Vietnam for the Americans, Afghanistan would prove to be what Soviet leader Mikhail Gorbachev called 'the bleeding wound' for the Russians. A decade later, the Red Army would limp home in defeat, and within two years a hollowed-out Soviet Union, never as strong as Washington imagined, would implode, a triumph so stunning that the American political elite initially couldn't take it in. After almost half a century, the Cold War was over; one of the two remaining 'superpowers' had left the global stage in defeat; and for the first time since Europeans set out on wooden ships to conquer distant parts of the globe, only a single great power was left standing on the planet.

Given the history of those centuries past, the dreams of Bush-Cheney & Co. about how the US would dominate the world as no power, not even the Romans or the British, had ever done seemed to make a certain sense. But in that triumph of 1989 lay the seeds as well of future chaos. To take down the Soviets, the CIA, in tandem with the Saudis and the Pakistanis, had armed and built up groups of extreme Islamists, who, it turned out, had no intention of going away once the Soviets were driven from Afghanistan. It won't exactly shock you if I add that, in those decisions, in that triumphant moment, lay the genesis of the future 9/11 attacks and, in some curious fashion, even perhaps the future rise of a presidential candidate, and now president-elect, so bizarre that, despite the billions of words expended on him, he remains a phenomenon beyond understanding.

As our first declinist candidate for president, Donald J Trump did at least express something new and true about the nature of our country. In the phrase that he tried to trademark in 2012 and with which he launched his presidential campaign in 2015 – 'Make America Great Again' – he caught a deeply felt sense among millions of Americans that the empire of chaos had indeed arrived on our shores and that, like the Soviet Union a quarter-century ago, the US might ever so slowly be heading into an era in which (minus him, naturally) 'greatness' was a goner.

Imperial overreach and the rise of the national security state

In the end, those seeds, first planted in Afghan and Pakistani soil in 1979, led to the attacks of 11 September 2001. That day was the very definition of chaos brought to the imperial heartland, and spurred the emergence of a new, post-Constitutional governing structure, through the expansion of the national security state to monumental proportions and a staggering version of imperial overreach. On the basis of the supposed need to keep Americans safe from terrorism (and essentially nothing else), the national security state would balloon into a dominant – and dominantly funded – set of institutions at the heart of American political life (without which, rest assured, FBI Director James Comey's public interventions in an American election would have been inconceivable). In these years, that state-within-a-state became the unofficial fourth branch of government, at a moment when two of the others – Congress and the courts, or at least the Supreme Court – were faltering.

The 9/11 attacks also unleashed the Bush administration's stunningly ambitious, ultimately disastrous Global War on Terror, and over-the-top fantasies about establishing a military-enforced Pax Americana, first in the Middle East and then perhaps globally. They also unleashed its wars in Afghanistan and Iraq, the US drone assassination programme across significant parts of the planet, the building of an unprecedented global surveillance state, the spread of a kind of secrecy so all-encompassing that much of government activity became unknowable to 'the People', and a kind of imperial overreach that sent literally trillions of dollars (often via warrior corporations) tumbling into the abyss. All of these were chaos-creating factors.

At the same time, the basic needs of many Americans went increasingly unattended, of those at least who weren't part of a Gilded Age 1% sucking up American wealth in an extraordinary fashion. The one-percenters then repurposed some of those trickle-up funds for the buying and selling of politicians, again in an atmosphere of remarkable secrecy. (It was often impossible to know who had given money to whom for what.) In turn, that stream of Supreme Court-approved funds changed the nature of, and perhaps the very idea of, what an election was.

Meanwhile, parts of the heartland were being hollowed out, while – even as the military continued to produce trillion-dollar boondoggle weapons systems – the country's inadequately funded infrastructure began to crumble in a way that once would have been inconceivable. Similarly, the non-security-state part of the government – Congress in particular – began to falter and wither. Meanwhile, one of the country's two great political parties launched a scorched-earth campaign against governing representatives of the other and against the very idea of governing in a reasonably democratic fashion or getting much of anything done at all. At the same time, that party shattered into disorderly, competing factions that grew ever more extreme and produced what is likely to become a unique celebrity presidency of chaos.

The United States with all its wealth and power is, of course, hardly an Afghanistan or a Libya or a Yemen or a Somalia. It still remains a genuinely great power, and one with remarkable resources to wield and fall back on. Nonetheless, the recent election offered striking evidence that the empire of chaos had indeed made the trip homeward. It's now with us big time, all the time. Get used to it.

Count on it to be an essential part of the Trump presidency. Domestically, for instance, if you thought the definition of American political dysfunction was a Congress that would essentially pass nothing, just wait until a fully Republican-controlled Congress actually begins to pass bills in 2017. Abroad, Trump's unexpected success will only encourage the rise of right-wing nationalist movements and the further fragmentation of this planet of increasing disorder. Meanwhile, the American military (promised a vast further infusion of funds by The Donald during the election campaign) will still be trying to impose its version of order in distant lands and, so many years later, you know perfectly well what that will mean. All of this should shock no one in our new post-8 November world.

Here, however, is a potentially shocking question that has to be asked: With Donald Trump's election, has the American 'experiment' run its course? ◆

Tom Engelhardt is a co-founder of the American Empire Project and the author of The United States of Fear *as well as a history of the Cold War,* The End of Victory Culture. *He is a fellow of the Nation Institute and runs TomDispatch.com, from which this article is reproduced. His latest book is* Shadow Government: Surveillance, Secret Wars, and a Global Security State in a Single-Superpower World.

The de facto US-Al Qaeda alliance in Syria

Buried deep inside the 29 October edition of *The New York Times* was a grudging acknowledgement that the US-armed 'moderate' rebels in Syria are using their US firepower to back an Al Qaeda offensive, reports *Robert Parry*.

Fighters from Al Qaeda's affiliate, the recently renamed Nusra Front. 'At least since 2014 the Obama administration has armed a number of Syrian rebel groups even though it knew the groups were coordinating closely with the Nusra Front...'

A CURIOUS aspect of the Syrian conflict – a rebellion sponsored largely by the United States and its Gulf state allies – is the disappearance in much of the American mainstream news media of references to the prominent role played by Al Qaeda in seeking to overthrow the secular Syrian government of Bashar al-Assad.

There's much said in the US press about ISIS, the former 'Al Qaeda in Iraq' which splintered off several years ago, but Al Qaeda's central role in commanding Syria's 'moderate' rebels in Aleppo and elsewhere is the almost unspoken reality of the Syrian war. Even in the recent US presidential campaign debates, the arguing between Republican Donald Trump and Democrat Hillary Clinton was almost exclusively about ISIS, not Al Qaeda.

Though Al Qaeda got the ball rolling on America's revenge wars in the Middle East 15 years ago by killing several thousand Americans and others in the 9/11 attacks, the terrorist group has faded into the background of US attention, most likely because it messes up the preferred 'good guy/bad guy' narrative regarding the Syrian war.

For instance, the conflict in Aleppo between Syrian government forces and rebels operating primarily under Al Qaeda's command is treated in the Western media as simply a case of the barbaric Assad and his evil Russian ally Vladimir Putin mercilessly bombing what is portrayed as the east Aleppo equivalent of Disney World, a place where innocent children and their families peacefully congregate until they are targeted for death by the Assad-Putin war-crime family.

The photos sent out to the world by skilful rebel propagandists are almost always of wounded children being cared for by the 'White Helmet' rebel civil defence corps, which has come under growing criticism for serving as a public-relations arm of Al Qaeda and other insurgents. (There also are allegations that some of the most notable images have been staged, like a fake war scene from the 1997 dark comedy, *Wag the Dog*.)

Rare glimpse of truth

Yet, occasionally, the reality of Al Qaeda's importance in the rebellion breaks through, even in the mainstream US media, although usually downplayed and deep inside the news pages, such as the article in the 29 October edition of *The New York Times* by Hwaida Saad and Anne Barnard describing a rebel offensive in Aleppo. It acknowledges:

'The new offensive was a strong sign that rebel groups vetted by the United States were continuing their tactical alliances with groups linked to Al Qaeda, rather than distancing themselves as Russia has demanded and the Americans have urged. … The rebels argue that they cannot afford to shun any potential allies while they are under fire, including well-armed and motivated jihadists, without more robust aid from their international backers.' (You might note how the article subtly blames the rebel dependence on Al Qaeda on the lack of 'robust aid' from the Obama administration and other outside countries – even though such arms shipments violate international law.)

What the article also makes clear in a hazy kind of way is that Al Qaeda's affiliate, the recently renamed Nusra Front, and its jihadist allies, such as Ahrar al-Sham, are waging the brunt of the fighting while the CIA-vetted 'moderates' are serving in mostly support roles. The *Times* reported:

'The insurgents have a diverse range of objectives and backers, but they issued statements of unity on Friday. Those taking part in the offensive include the Levant Conquest Front, a militant group formerly known as the Nusra Front that grew out of Al Qaeda; another hard-line Islamist faction, Ahrar al-Sham; and other rebel factions fighting Mr. Assad that have been vetted by the United States and its allies.'

The article cites Charles Lister, a senior fellow and Syria specialist at the Middle East Institute in Washington, and other analysts noting that 'the vast majority of the American-vetted rebel factions in Aleppo were fighting inside the city itself and conducting significant bombardments against Syrian government troops in support of the Qaeda-affiliated fighters carrying out the brunt of front-line fighting.'

Lister noted that 11 of the 20 or so rebel groups conducting the Aleppo 'offensive have been vetted by the CIA and have received arms from the agency, including anti-tank missiles. … In addition to arms provided by the United States, much of the rebels' weaponry comes from regional states, like Turkey, Qatar and Saudi Arabia, Mr. Lister said, including truck-borne multiple-rocket launcher systems and Czech-made Grad rockets with extended ranges.'

The US-Al Qaeda alliance

In other words, the US government and its allies have smuggled sophisticated weapons into Syria to arm rebels who are operating in support of Al Qaeda's new military offensive against Syrian government forces in Aleppo. By any logical analysis, that makes the United States an ally of Al Qaeda.

The *Times* article also includes a quote from Genevieve Casagrande, a Syria research analyst from the Institute for the Study of War, a neoconservative 'think tank' that has supported more aggressive US military involvement in Syria and the Middle East.

'The unfortunate truth, however, is that these US-backed groups remain somewhat dependent upon the Al Qaeda linked groups for organisation and firepower in these operations,' Casagrande said.

The other unfortunate truth is that the US-supplied rebels have served, either directly or indirectly, as conduits to funnel US military equipment and ordnance to Al Qaeda.

One might think that the editors of *The New York Times* – if they were operating with old-fashioned news judgment rather than with propagandistic blinders on – would have recast the article to highlight the tacit US alliance with Al Qaeda and put that at the top of the front page.

Still, the admissions are significant, confirming what we have reported at Consortiumnews.com for many months, including Gareth Porter's article last February saying: 'Information from a wide range of sources, including some of those the United States has been explicitly supporting, makes it clear that every armed anti-Assad organisation unit in those provinces [of Idlib and Aleppo] is engaged in a military structure controlled by [Al Qaeda's] Nusra militants. All of these rebel groups fight alongside the Nusra Front and coordinate their military activities with it. …

'At least since 2014 the Obama administration has armed a number of Syrian rebel groups even though it knew the groups were coordinating closely with the Nusra Front, which was simultaneously getting arms from Turkey and Qatar.'

Double standards

The *Times* article on page A9 also deviated from the normal propaganda themes by allowing a statement by Syrian officials and the Russians regarding their suspension of airstrikes over the past week to permit the evacuation of civilians from east Aleppo and the rebels' refusal to let people leave, even to the point of firing on the humanitarian corridors: 'The [Syrian] government and its [Russian] allies accused the rebels of forcing Aleppo residents to stay, and of using them as human shields.'

The 'human shields' argument is one that is common when the United States or its allies are pummelling some city controlled by 'enemy' forces, whether Israel's bombardment of Gaza or the US Marines' levelling of Fallujah in Iraq or the current campaign against ISIS in the Iraqi city of Mosul. In those cases, the horrific civilian bloodshed, including the killing of children by US or allied forces, is blamed on Hamas or Sunni insurgents or ISIS but never on the people dropping the bombs.

An entirely opposite narrative is applied when US adversaries, such as Syria or Russia, are trying to drive terrorists and insurgents out of an urban area. Then, there is usually no reference to 'human shields' and all the carnage is blamed on 'war crimes' by the US adversaries. That propaganda imperative helps explain why Al Qaeda and its jihadist comrades have been largely whited out of the conflict in Aleppo.

Over the past few years, US regional allies, such as Israel and Saudi Arabia, also have shifted their public attitudes towards Al Qaeda, seeing it as a blunt instrument to smash the so-called 'Shiite crescent' reaching from Iran through Syria to Lebanon. For instance, in September 2013, Israel's Ambassador to the United States Michael Oren, then a close adviser to Israeli Prime Minister Benjamin Netanyahu, told the *Jerusalem Post* that Israel favoured Syria's Sunni extremists over President Assad.

'The greatest danger to Israel is by the strategic arc that extends from Tehran, to Damascus to Beirut. And we saw the Assad regime as the keystone in that arc,' Oren told the *Jerusalem Post* in an interview. 'We always wanted Bashar Assad to go, we always preferred the bad guys who weren't backed by Iran to the bad guys who were backed by Iran.' He said this was the case even if the 'bad guys' were with Al Qaeda.

And, in June 2014, speaking as a former ambassador at an Aspen Institute conference, Oren expanded on his position, saying Israel would even prefer a victory by the brutal Islamic State over continuation of the Iranian-backed Assad in Syria. 'From Israel's perspective, if there's got to be an evil that's got to prevail, let the Sunni evil prevail,' Oren said.

Warming to Al Qaeda

As Israeli officials shifted towards viewing Al Qaeda and even ISIS as the lesser evils and built a behind-the-scenes alliance with Saudi Arabia and the Sunni states, American neoconservatives also began softening their tone regarding the perpetrators of the 9/11 attacks.

Across the US foreign policy establishment, pressure built for 'regime change' in Damascus even if that risked handing Syria to Sunni jihadists. That strategy hit a road bump in 2014 when ISIS began chopping off the heads of Western hostages in Syria and capturing swaths of territory in Iraq, including Mosul.

That bloody development forced President Barack Obama to begin targeting ISIS militants in both Iraq and Syria, but the neocon-dominated Washington establishment still favoured the Israeli-Saudi objective of 'regime change' in Syria regardless of how that might help Al Qaeda.

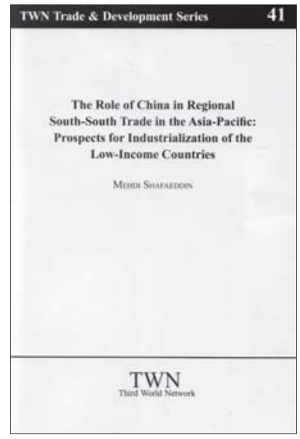
Thus, Al Qaeda's Nusra Front and its jihadist ally, Ahrar al-Sham, faded into the background under the fiction that the anti-Assad forces were primarily noble 'moderates' trying to save the children from the bloodthirsty fiends, Assad and Putin.

Grudgingly, *The New York Times*, deep inside its 29 October edition, acknowledged at least part of the troubling reality, that the US government has, in effect, allied itself with Al Qaeda terrorists. ◆

Investigative reporter Robert Parry broke many of the Iran-Contra stories for the Associated Press and Newsweek *in the 1980s. He is the founder and editor of Consortiumnews.com, where the above article first appeared. His latest book is* America's Stolen Narrative: From Washington and Madison, to Nixon, Reagan and the Bushes, to Barack Obama.

The Role of China in Regional South-South Trade in the Asia-Pacific: Prospects for Industrialization of the Low-Income Countries

By Mehdi Shafaeddin



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Based on his proposed alternative theoretical framework for South-South trade as a vehicle for industrialization and development and refuting the "decoupling" thesis – that is, that East Asian countries are decoupled from the business cycle in developed countries – the author analyzes the merits and shortcomings of China's regional trade with its partners. Moreover, considering the growing weight of China in the global production network and international trade, he proposes policies for the industrialization and development of the partner countries in the context of strengthening China's role as a growth "pole". He suggests, inter alia, the need for industrial collaboration among the low-income countries of the region – which benefit less than others from the dynamics of the Chinese economy as a "hub" – complemented by adjustment assistance by China and the newly industrializing economies (NIEs). He also proposes technological cooperation among China's trading partners which are currently involved in production sharing in a limited number of electrical and electronic products for export to third markets in developed countries. Such cooperation would be aimed at upgrading their industrial structure and reducing their vulnerability to changes in the economic strategy of China and to the business cycle in the developed countries.

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Venezuela on the brink?: A look beyond the spin

While there is no denying that Venezuela is going through a difficult economic phase and its people are having a hard time accessing food, the media coverage of the current situation is extremely distorted. *Christina Schiavoni* and *William Camacaro* attempt to set the record straight.

YOU may have seen the headlines about Venezuela – headlines that allude to food scarcity, rioting, people eating stray animals to survive, and a country on the brink of starvation. These stories are not only alarming but perplexing too. Is this the same country that was recognised by the UN Food and Agriculture Organisation (FAO) as recently as 2015 for having nearly eradicated hunger?[1] Is this the same country that has been the focus of international delegations and extensive alternative media coverage for its 'food sovereignty experiment' involving agrarian reform, food distribution programmes and direct citizen participation in the food system?[2] What's going on?

There is a nuanced story behind the current headlines on Venezuela. It's a challenging moment for average working-class Venezuelans as they navigate long lines at the grocery store, a lack of key food staples and inflated prices in order to feed their families.

But there's not an overall food shortage – food is in abundance, with distribution serving as a bottleneck.

There are numerous explanations coming from both the government and citizens. What is driving the current 'scarcity amidst abundance' in Venezuela? How did the present situation come to be? How dire is it, and what are the responses coming from communities, social movements and the government? To what extent is the present situation being distorted in the media, and why? This article attempts to delve behind the headlines to address these questions.

A petroleum economy and a food system in the balance

For nearly a century, Venezuela's economy has centred around oil, which accounts for the vast majority of its foreign earnings – over 95% at present – and national budget.[3] Since the 1930s, the orientation towards petroleum also meant a shift away from agriculture, which came with a massive price tag. As both the state and private capital withdrew from the countryside, Venezuela's peasant farmers and rural workers could no longer earn a living. Many flocked to Caracas and other urban hubs in search of work, making Venezuela one of the most urbanised countries in Latin America, with upwards of 90% of its population living in cities today.[4] It also became the first country in the region to be a net importer of food, as it was cheaper to import food with petroleum dollars than to produce it.[5] Such conditions facilitated the development of a powerful food import and distribution complex, controlled by national and international corporate conglomerates.

As a producer of a high-demand commodity and a voracious consumer of food imports, Venezuela became firmly inserted into the global economy in ways that have rendered it particularly vulnerable to fluctuations in global oil and food prices and to domestic inflation. The companies responsible for food imports and distribution have been able to use these conditions to their advantage in certain ways. For instance, since 1983, when the Venezuelan bolivar suffered a sharp devaluation against the US dollar, driving up inflation, a common practice has been to align product prices with black-market currency rates as opposed to official (regulated) currency rates, further fuelling inflation in the process.[6]

Venezuela's ability to import food through oil earnings in the past did not mean that its population was well fed. Indeed, the imports tended to be at prices well out of reach of the country's poor majority. In 1989, then President Carlos Andrés Pérez signed a structural adjustment deal with the International Monetary Fund (IMF), causing abrupt surges in food and fuel prices; the price of bread rose by over 600%.[7] For the over 60% of the population already living in poverty, enough was enough. Hundreds of thousands of people poured into Caracas from surrounding impoverished hillside communities, protesting in the streets and looting shops. The government responded to this massive mobilisation by ordering the military to open fire on the protesters. The official death toll was 276 civilians, with the number of actual deaths estimated to be much higher.

Efforts towards change

At the beginning of Venezuela's Bolivarian Revolution in 1999, with still over half of the population facing hunger and poverty, both the government and citizens identified food production and provisioning as strategic priorities – and significant strides have been made in the years since. On the production end, the state has made substantial reinvestments in agriculture, including an agrarian reform process to redistribute large landholdings and support small- and mid-scale farmers and fishers. On the distribution end, strategies have included increased availability of basic food items at subsidised and regulated prices and provision of free meals via school and workplace programmes as well as community-based feeding sites.

These efforts have made historic gains in food security, as recognised by FAO, but they are mainly separated projects rather than systemic shifts. That is, even with domestic production reinvigorated and the population better fed, the country's powerful longstanding food import and distribution complex has remained largely unaltered. Today, Venezuela's food and medicine supply is mostly controlled by 20 companies,[8] and one of these, Polar, is responsible for eight of the items in Venezuela's basic food basket, according to the Minister of Agriculture.[9] For instance, Polar is responsible for 62% of the market for pre-cooked corn flour used for corn patties, called *arepas*, that form an essential part of the Venezuelan diet.[10]

Scarcity amidst abundance?

What is going on in Venezuela today? While periodic food shortages are nothing new, particularly at politically heightened moments, for more than three years the country has experienced ongoing shortages of particular basic food products in addition to shortages of medicines and personal hygiene items such as soap, toilet paper, menstrual supplies and diapers. It is the particularity of the missing items that is essential – and often overlooked or distorted in media reports. There is no overall shortage of food and other basic goods in Venezuela. What is missing from supermarket shelves are particular essential items, while others are in abundance. There is a lack of milk, while dairy products such as yogurt and cheese are available. There is a lack of pre-cooked corn flour, while other corn-based products such as porridge are available. There is a lack of coffee, another Venezuelan essential, while teas, hot chocolate and other hot beverage mixes abound. The plot thickens when one leaves the supermarket and goes out into the streets. Prepared coffee is available on every street corner, and in every cafe. *Areperas* selling *arepas* with all sorts of fillings are ubiquitous.

Why, then, are essential items missing from supermarket shelves? The two most common arguments of the distribution companies are that: a) the regulated prices set by the government to ensure accessibility are too low, providing a disincentive to distributors, and b) with the plummeting of oil prices, insufficient dollars are available for import of necessary primary materials.

When Venezuelan economist and Universidad Simón Bolívar professor Pasqualina Curcio put these claims to the test in her extensive investigation of the country's current economic situation, she had some interesting findings.[11] First, several of the missing products have not been regulated since 2010, and among those that are regulated, the government has raised prices in an effort to incentivise distributors several times recently, but this has not resulted in increased availability. Second, the shortages began to intensify in 2013, before oil prices plummeted and while dollars were still readily available. Even once oil prices dropped and dollars became less available, the government continued to prioritise dollars for food import, and by their own accounting, the production levels of Venezuela's major food companies have been stable or have even increased in that time.

Curcio also found a correlation between intensity of food shortages and politically important moments, such as the lead-up to elections. Could it be that the shortages are manufactured? Many food sovereignty activists see it as no coincidence that Polar, the country's largest food company, responsible for many of the items missing from shelves, is owned by a well-known member of the political opposition to the government.

Regardless of what is driving the shortages, there is no doubt they are taking a toll on the population. For most people, the only ways to access basic products are to wait in extremely long lines when and where they are available – and it is important to note that this task falls disproportionately upon women. Another option is to buy basic products as contraband on the street through the parallel market, where they are sold at exponentially inflated prices.

Here it bears emphasis again that the shortages are of specific products, so other food remains available. For instance, Venezuela is largely self-sufficient in fruits, vegetables and root crops, which are mostly produced by small- and mid-scale farmers. As these are distributed through decentralised networks, they have for the most part been unaffected by the shortages and are abundant in street markets around the country. However, as people substitute available products for unavailable ones (e.g., cassava, potatoes and plantains in place of corn flour, pasta and other processed carbohydrates), increased demand, together with high inflation and speculation, is driving up food prices overall, both in shops and on the streets. The result is an immensely challenging and stressful situation for most Venezuelans as they strive to feed their families.

A look at impacts

Beyond the psychological and economic impacts of the shortages, lines and high prices, what are the physical effects? How are levels of hunger and nutrition being impacted? Here we will share both what we know and what we don't. What we do know is that based on the most recent food intake statistics available at the end of 2015, Venezuelans were consuming a daily average of 3,092 calories, which is well above FAO's recommendation of 2,720 for food security, but down from 2011 when average consumption was 3,221 calories.[12]

There are several reflections to be made. First, averages do not tell us about impacts on the most vulnerable populations. The flipside, however, is that Venezuela has a host of social programmes specifically targeted at most vulnerable populations, which has likely contributed to keeping the caloric averages high. Second, averages also do not tell us anything about food quality. Some argue current conditions are driving people towards more limited and less healthy dietary options, while others argue just the opposite – that as processed options are less available, people are opting for more nutritious whole foods as replacements. Likely there is some of both happening, and data is not yet available to tell us much more. Finally, in the months since these statistics were released, shortages and price inflation have both intensified. Data is not yet available to tell us if average caloric intake has dropped further, but anecdotal evidence suggests that it likely has. According to the National Institute of Nutrition, however, the situation is being carefully monitored and Venezuelans' caloric intake as a whole continues to remain well above the recommended minimum.

The bottom line? Indeed, people are having a harder time accessing food right now in Venezuela. The situation is serious and needs to be addressed urgently. Is Venezuela in the midst of a humanitarian crisis? No, not according to Venezuela's Department of Health, international authorities such as FAO, or our own observations and numerous interviews with community organisers and citizens. Are people eating dogs? We recently asked people in working-class rural and urban communities in six different states about this rumour; a common response, after initial shock, was 'Well, hot dogs, sure…' And rioting? So far riots have been isolated incidents and disproportionately in opposition-led areas, although the situation merits close monitoring and further investigation.[13]

Why, then, the extreme media distortion? Here it is important to look at the broader picture. While the media is painting a desperate situation in Venezuela, the opposition-controlled national assembly is calling for the ousting of President Nicolas Maduro and the US is calling to extend economic sanctions. Both are using the 'humanitarian crisis' as justification – and the media is reflecting these claims rather than the much more complex reality on the ground.[14]

Responses

While the government can still do more in its campaign to root out corruption in both the private and public sectors as well as implement further reforms in the currency exchange system, it certainly has not been sitting back in the face of the shortages. On the contrary, both the government and communities are taking the situation seriously, ramping up existing social protections while piloting new approaches.

Among the latter are Local Provisioning and Production Committees, known as CLAPs, which have rapidly formed across the country in recent months. CLAPs are partnerships between grassroots organisations and the government to provide an alternative food distribution network in all 24 states. CLAPs have a twofold purpose. In the immediate term, they are working to combat lines, shortages and speculation by delivering basic food products directly to people. Goods are purchased by the government directly from both private and state enterprises, and distributed house to house by the CLAPs based on community censuses. The project is seen as a temporary stopgap solution to the current shortages, aimed at the most vulnerable fifth of the population. In the longer term, CLAPs are also intended to engage in local food production and processing. In tandem is a major push for urban agriculture, overseen by a newly formed Ministry of Urban Agriculture. A recent hundred-day planting campaign involving 29,000 urban productive spaces throughout the country aims to increase the amount of fresh produce, eggs, fish and animal protein available locally.[15] These efforts are complemented by a renewed push for production in the countryside.

Meanwhile, social movements are seizing the moment to forge deeper transformation towards food sovereignty. Driven by necessity, unprecedented numbers of people are engaging and re-engaging in agriculture, from community farms to backyard patios, and in the process, exchanging seeds, bartering goods and creating new local enterprises. A reduced supply of industrial agriculture inputs is also driving a transition towards organic practices and agroecology, in what some are likening to Cuba's Special Period. The shortages are also causing a shift from processed foods and a renewed appreciation of local foods and traditional foodways. Many activists see these developments as elements of a new food system, a project they have been trying to advance for many years.

This transformative vision is reflected in the country's newly adopted seed law, pushed forward by social movements, which bans genetically modified organisms (GMOs) while protecting locally produced seeds of Venezuela's peasant, Indigenous and Afro-descendent communities.[16] It is also reflected in the Feria Conuqera, a highly popular monthly alternative market held in Caracas, featuring agroecological and artisanal alternatives to many of the products missing from supermarket shelves, from *arepa* mixes made from plantains, cassava and fresh corn, to homemade soaps, deodorants and other basic goods. Plan Pueblo a Pueblo, a grassroots project to forge direct people-to-people links between urban and rural communities, is also having success: in just over a year, this initiative has reached more than 40,000 urban families with affordable fresh foods while working to build a new food system across the urban-rural divide. A key mechanism enabling this effort to expand so rapidly is that it works through already established citizen-led social institutions known as *comunas*. According to food activist Gabriel Gil, 'the current crisis is pushing us to organise – and the *comunas* are key vehicles for doing so'.

Questioning the headlines

While hunger anywhere deserves high-level media coverage, it bears asking why Venezuela, a country which, by many indicators, has made important advances against hunger and poverty, is being targeted daily for dire coverage that does not reflect reality on the ground. Furthermore, why are the challenges being covered (albeit in a distorted manner), but not the many innovative and successful responses, from an explosion of urban agriculture, to an agroecological transition, to unprecedented levels of citizen organisation around food production and provisioning?

The answers to this are multifold, complex and subject to different perspectives and interpretations, but we hope readers are encouraged to seek out more information before taking current news reports at face value.

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Update

The authors wish to note some improvements to the food situation in Venezuela since this report was first published by Food First in July 2016. As the article was being written, a new national network of CLAPs was rapidly being formed, as a collaboration between the government and communities. As mentioned above, CLAPs are responsible for direct delivery of key food items to the poorest fifth of Venezuela's population. This has helped to reduce long lines, while boosting overall security for many families and weakening the parallel market. Many CLAPs are also engaging in food production and working on other community-based food initiatives. Then, in July, the 'Great Sovereign Supply Mission' was formed as a means of coordinating government efforts to oversee, promote and regulate a smooth supply of food and other basic goods. Likely due to these efforts along with other factors, there have been some notable improvements in food access since this report was written. Many challenges, particularly the structural issues mentioned above, remain, however. ◆

Endnotes

1. FAO (2015). 'Venezuela and FAO create SANA, a new cooperation programme to eliminate hunger'. http://www.fao.org/americas/noticias/ver/en/c/283757/
2. Schiavoni, C. (2015). 'The Venezuelan Food Sovereignty Experiment'. http://www.thesolutionsjournal.com/node/237281
3. Lander, E. (2014). 'Venezuela: Terminal crisis of the rentier petro-state model?'. https://www.tni.org/files/download/venezuela_terminal_crisis_of_the_rentier_petro-state_model._with_very_minor_chaanges_0.pdf
4. Wilpert, G. (2006). 'Land for People Not for Profit in Venezuela', in Rosset, P., Patel, R. and Courville, M. (eds.), *Promised Land*, 249-264. Oakland, CA: Food First Books.
5. Ibid.
6. Boza, T. (2014). *La Guerra contra el Pueblo: Reflexiones para el Contraataque Popular*. Maracaibo: Fundación Construyendo Ciudadanía.
7. Hardy, C. (2007). *Cowboy in Caracas: A North American's Memoir of Venezuela's Democratic Revolution*. Willimantic, CT: Curbstone Books.
8. Curcio, P. (2016). 'Apenas 20 empresas controlan la oferta de alimentos y medicinas en el país'. http://www.correodelorinoco.gob.ve/nacionales/apenas-20-empresas-controlan-oferta-alimentos-y-medicinas-pais/
9. Edgard, R. (2016). 'Los Clap: El resuelve de los pobres'. http://www.ultimasnoticias.com.ve/noticias/slider/los-clap-resuelve-los-pobres-2/
10. Curcio, P. (2016). 'Apenas 20 empresas controlan la oferta de alimentos y medicinas en el país'. http://www.correodelorinoco.gob.ve/nacionales/apenas-20-empresas-controlan-oferta-alimentos-y-medicinas-pais/
11. Personal communication with Pasqualina Curcio on 23 June 2016. Also see: Curcio, P. (2016). 'Los CLAP´S: ¿camino para la paz económica?'. http://www.celag.org/wp-content/uploads/2016/06/Seguir-leyendo-3.pdf
12. Personal communication with National Nutrition Institute representatives on 27 June 2015. See also 'Memoria y Cuenta 2015, Ministerio del Poder Popular para la Alimentación (MINPPAL) – Tomo I'. http://www.asambleanacional.gob.ve/uploads/documentos/doc_a25f279654e41ef2f24b23c31b992098e117a220.pdf
13. Misión Verdad (2016). 'Cartografía de los saqueos: actores, tácticas y métodos'. http://misionverdad.com/la-guerra-en-venezuela/cartografia-de-los-saqueos-actores-tacticas-y-metodos-para-su-ejecucion
14. See http://www.nytimes.com/roomfordebate/2016/06/28/how-to-save-venezuela/the-us-bears-blame-for-the-crisis-in-venezuela-and-it-should-stop-intervening-there?emc=eta1. Also, for a news clip (in Spanish) of former commander of the US Southern Command John Kelly saying that the US would consider intervening in Venezuela to avert a 'humanitarian crisis' involving lack of food and water, see minute 3 this video by CNN: http://edition.cnn.com/videos/spanish/2015/10/22/exp-cnne-general-kelly-part-two.cnn
15. See https://www.youtube.com/watch?v=BFWfx9jutjs
16. Camacaro, W., Mills, F. and Schiavoni, C. (2016). 'Venezuela Passes Law Banning GMOs, by Popular Demand'. http://www.theecologist.org/News/news_analysis/2986747/venezuelas_people_as_legislators_ban_gmos_protect_traditional_seeds.html

WORLD AFFAIRS

South Africa's deprivations and depravations

South Africa is currently experiencing a period of political turbulence. *Patrick Bond* explains what is behind it.

THE week of 31 October could well be remembered as South Africa's most important political inflection point since the September 2008 ousting of sitting President Thabo Mbeki by his own party, the African National Congress (ANC). His main tormentor then was Jacob Zuma, who – following a brief handover period – has ruled the country in an increasingly dubious manner since May 2009.

But several contradictions have exploded in Zuma's face. Political opponents from across the spectrum, radical university students and his own party's establishment smell the blood, as Zuma's fabled patronage system is now in the spotlight, apparently in tatters.

President Jacob Zuma *(left)* with one of the Gupta brothers, Atul, at an event in 2012. The Gupta family have been winning massive state deals and using alleged bribes to get even wealthier, as revealed in the public protector's 'State of Capture' report.

Zuma just suffered two major legal defeats: a fumbled state attack on Finance Minister Pravin Gordhan which was humiliatingly withdrawn by an incompetent prosecutor on 31 October following a national outcry, and the 2 November release of the public protector's 'State of Capture' report on the Zuma family's corrupt relationships, a report the president and two cabinet colleagues unsuccessfully attempted to quash.

Zuma loses his political grip while liberals and radicals gain momentum

While Zuma tried delay tactics, rumblings at the base have grown louder. The leftist Economic Freedom Fighters (EFF) party and the centre-right Democratic Alliance (DA) both held anti-Zuma marches in the capital city Pretoria on 2 November, with the former's leader Julius Malema clearly distancing himself from a third event – a 'Save South Africa' meeting at the nearby Anglican cathedral with scores of notables from civil society and big business.

Malema told a crowd of many thousands, 'A CEO will speak at that small church there, not Church Square. Let them speak there. Small churches are for CEOs. Only the EFF has the potential to collapse the ANC.' The threat of EFF activists marching to occupy Zuma's offices in Pretoria was deflected by police, but the red-shirted marchers took over much of the capital city's central business district.

Prior to the 355-page 'State of Capture' report, Malema's deputy Floyd Shivambu had written the most thorough analysis of the Gupta brothers' influence, and the EFF regularly refers to the network of state and Gupta cronies as the 'Zuptas'. The Gupta influence includes mass media (a newspaper and TV network), mining (especially exceptionally controversial links to the Eskom parastatal and its top manager) and provincial ANC leaders.

Other proletarian elements are also growing restless. One of the three most important trade unions still backing Zuma, the nurses (with more than 200,000 members – in the same league as teachers and mineworkers who have been Zuma's main labour backers), announced on 1 November that they now want the president to resign. The largest union, the metalworkers with 350,000 members, did so in late 2013. But more recently, so too have scores of major ANC leaders, along with what seems to be nearly the entirety of centre-left and centrist civil society and the media commentariat.

As a former guerilla fighter with no formal education, Zuma, 74, is a genius at maintaining not only talk-left, walk-right ideological flexibility, but also membership loyalty within his Zulu ethnic group and the country's eastern and northern provinces (KwaZulu-Natal, Mpumalanga, Free State, North West and Limpopo). Although in August municipal elections it lost 8% of the vote compared to the 2011 vote, the ANC won handily in most of these areas.

But for the first time since liberation, the ANC surrendered rule of the economic heartland of Johannesburg, Pretoria and the fifth largest city of Nelson Mandela Bay (Port Elizabeth) to what is sure to be a fleeting right-left alliance of the DA and the EFF. The second city, Cape Town, has been run by the DA since 2006, while third-largest Durban is safely pro-Zuma. Huge ANC patronage power dissipated with the loss of the three metro areas.

Zuma himself is also being battered again by 783 corruption charges relating to bribery in a late 1990s French military deal. The infamous arms deal unravelled the ANC's liberation mystique even during Nelson Mandela's 1994-99 rule. As a result of a colleague's jailing on the same charges, Zuma was fired as Mbeki's Deputy President in 2005. He then won acquittal in a high-profile 2006 rape case. The (HIV+) victim – daughter of a former ANC guerilla who was a close family friend of Zuma, Fezikile Kuzwayo – died in Durban in October, again reviving memories of his misogyny. Zuma, who has four wives and more than 20 children, claimed during the trial, 'In Zulu culture, you don't just leave a woman' – a stance Kuzwayo eloquently rebutted as she was forced into exile for several years by Zuma's manic supporters.

Until now, Zuma has kept dissident tendencies within the ANC's big political tent, in part by using divide-and-conquer patronage skilfully. But the day of reckoning is here because the Gupta family – three immigrant Indian brothers who became ostentatious tycoons over the past two decades – have been winning massive state deals and using alleged bribes to get even wealthier, as revealed in 'State of Capture'.

For example, the respected Deputy Finance Minister Mcebisi Jonas accused the Guptas of offering him $45 million a year ago if he agreed to become finance minister in an informal putsch, because his then boss Nhlanhla Nene had balked at airplane and nuclear deals favourable to Zuma's retinue. After Jonas forcefully declined, the subsequent firing of Nene and offer of the job to a political ingénue – Des van Rooyen – left the country shocked last December. Within four days, amidst a panicked currency crash, a business uprising led by three white bankers forced Zuma to shift the hapless van Rooyen over to the local government ministry and replace him with Gordhan, who had served in the same job to corporate applause from 2009-14.

But throughout 2016, Gordhan's stance became increasingly untenable, thanks to the economic downturn and repeated attempts by Zuma allies to prosecute him for what appear to be either nonsensical claims or relatively trivial misdeeds in his prior role in the tax authority. As the country barely dodged a recession, Gordhan's 2016 budgetary manoeuvres were also complicated by rising popular dissent – especially university students who demanded around $2 billion in new funding to achieve 'free, decolonised, quality higher education' in the #FeesMustFall campaign, as well as angry black communities denied decent levels of municipal services – and threats of a junk bond rating downgrade.

Credit rating threats and student demands

That junk rating has long been threatened by the local managers of three agencies: Moody's, Fitch and Standard & Poor's. But while Gordhan goes to great lengths to appease them and the financiers they front for, the three agencies are so often so spectacularly wrong (e.g., with AAA ratings for Lehman Brothers bank and AIG insurance in 2008), and so apparently biased towards the prejudices of Western banks, that in Goa, India, in October, the Brazil-Russia-India-China-South Africa (BRICS) economic alliance pledged to introduce their own.

The neoliberal financial elites in the BRICS machinery ensured, however, that the wording for such an agency's mandate emphasised 'market-oriented'. Thus, as with BRICS' New Development Bank and Contingent Reserve Arrangement, there would logically be no difference with existing institutions. And as with Brazil and Russia which were also given junk status recently, South Africa pays a 9% interest rate on its now dangerously high $135 billion foreign debt, which indicates that the markets already de facto consider South Africa to have junk status.

With those three agencies firmly in mind, on 25 October, Gordhan revealed his latest budget in parliament. At the time, 16 of the country's 25 universities had been forced by student protesters to temporarily close down, in the activists' attempt to raise national pressure on the government. Though valiant, and though 600 students were arrested and around $80 million in damage done by protesters to their campuses, neither Zuma nor Gordhan gave in.

On 25 October, several thousand furious university students met Gordhan for a talk at parliament's gates before the budget speech, but then after being attacked by police, began violently protesting throughout central Cape Town. They were then heartbroken by Gordhan's decision to offer only $420 million in new funds, following more than a year of intense social debate and student protest, in the wake of a legacy of university underfunding by Gordhan's predecessor, the famous neoliberal Trevor Manuel who now works for Rothschild. And they were infuriated by yet another heavy-handed police clampdown.

But the students should not have been surprised. Gordhan did after all signal divide-and-rule budget politics during a New York interview amidst his last investor roadshow on 5 October: 'We have a solution which will meet the needs of the poor students, and the so-called missing middle as well, and it's important that students who understand the calculations, who understand the trade-offs that we need between student fees being subsidised on the one hand, and housing and welfare and health and other issues being paid for on the other hand, that they should be part of a constructive conversation.'

Across South Africa, #FeesMustFall had rejected that 'solution' when it was proposed by Higher Education Minister Blade Nzimande – who also leads the South African Communist Party – two weeks earlier. They well understand that state subsidies provided 50% of university income in 2000, but steadily fell to 40% today, with students covering the bulk of the shortfall.

On 25 October, Gordhan again told them to borrow more – he offered $670 million – in order to pay for their undergraduate education. The National Student Financial Aid Scheme's extremely low repayment rates ($1.5 billion out of $1.8 billion in outstanding debt remains uncollected) reflect how that strategy is working. Adding household debt is usually only a short-term salve, as demonstrated by the ratio of South African borrowers whom the National Credit Regulator deems 'credit impaired': still in the unsustainable region of 45%, barely lower than the 2008 high.

Importantly, a report by Nzimande's 2012-13 commission on fees-free education was covered up until its findings were leaked in 2015. Nzimande's spokesperson Khaye Nkwanyana had explained, 'It is a public document, but due to the nature of the report, we decided not to make it public. Obviously we would have been setting the Finance Minister [Gordhan] up against the public if that decision and report was released.'

Gordhan's neoliberal bias

The choices Gordhan made in October necessarily set him against the public. For example, his February budget provided a mere 3.5% nominal increase to foster care providers (who play a vital role given the catastrophic AIDS orphan rate) and a 6.1% rise for mothers of many millions of Child Support Grant recipients. While old-age pensions are not increasing, the extra $0.75/month he offered to the latter – up to a tokenistic $27/month – brings the child grant's overall increase this year to 7.5%.

However, inflation for poor people will likely exceed 10%, due to a 15% rise in basic food costs, Eskom's 9.4% electricity price increase and higher transport expenses. Reflecting the gap between Pretoria's conscience and society's hunger, the poverty rate (for food and necessities) is now an excruciating 63%. But South Africa has the fifth lowest social spending rate amongst the 40 largest economies (half that of Russia and Brazil).

Instead of targeting social spending, Gordhan could instead have referenced the $17.3 billion in annual overcharging within Treasury's $45 billion procurement budget. Treasury's lead procurement official Kenneth Brown recently acknowledged, 'Without adding a cent, the government can increase its output by 30-40%. That is where the real leakage in the system actually is.'

Why has such fiscal wastage continued for so long? Gordhan himself admits that Treasury remains confounded by systematic ANC 'rent-seeking'. 'It means every time I want to do something, I say it is part of transformation. But in the meantime, it means giving contracts to my pals in closets.' (The 'I' and 'my' refer to the Zupta faction.)

But there are also other pals in other closets, who normally cheer on Treasury neoliberalism: the 1% of rich South Africans who have had an exceptional run since the early 1990s, according to a World Bank report released in October. Post-apartheid economic policies raised their income share from 10-12% of total income (excluding capital gains) in 1990-94 to 18-20% since 2009, nearly unprecedented in the world.

These are also the (mostly) men who take assets abroad illicitly. For in addition to around $11 billion in net profit, dividend and interest payments that leave the country – the main reason South Africa's current account deficit often reaches a dangerous 5% of gross domestic product (GDP) – there is $21 billion in annual average 'illicit financial flows' (as counted by Global Financial Integrity over the past decade).

This threat continues unless Treasury and the Reserve Bank counter it by tightening exchange controls. They won't. Apparently without any state regulatory friction, blatant tax dodging occurs at the biggest platinum companies, especially Lonmin with its Bermuda 'marketing' arm, De Beers with its $2.8 billion in diamond misinvoicing over seven years, and MTN's cellphone profit diversions to Mauritius from several African countries.

Society's challenge

A strong, committed Finance Minister would attack such depravities, so as to find funding needed to eliminate society's deprivations. Since Gordhan has failed, will society now ask what rearrangement of the balance of forces is required to finally construct a democratic, developmental state?

The first stage of that (liberal) revolution is upon us: confronting the Zuma faction's corrupt nexus of politicians, parastatal agency managers and public-private pilfering partners. The patronage apparatus may fall slowly, because Zuma will challenge the 'State of Capture' findings and a sluggish official commission will only then be appointed to investigate more of the details.

But the next stage, the ongoing prolific protests by opposition parties, university students, communities and labour, remains on the horizon as the political dust refuses to settle. The period ahead will not only clarify whether the liberals and their allies fighting on behalf of Gordhan and the anti-corruption cause can defeat the master of nationalist survival politics, Zuma. Just as importantly, we will learn what pressures from below can be mobilised to generate non-violent regime change in the interests of a post-Zupta, post-neoliberal budget next time Gordhan presents to parliament, in February 2017. ◆

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Pursuit of profit undermining workers' rights worldwide – UN expert

In a wide-ranging report highlighting the growing disenfranchisement of workers worldwide of their rights to peaceful assembly and association, a UN rights rapporteur has reminded governments that 'Labour rights are human rights'. *Kanaga Raja* reports.

FAILURE of economic policies in reducing poverty and inequality, the increasing power of multinational corporations and the fragmentation of the workplace, among other factors, have resulted in the disenfranchisement of the majority of the world's workers of their rights to freedom of peaceful assembly and of association in the workplace.

'Labour rights are human rights. It is time for states and the human rights community to place labour rights at the core of their work.'

This main conclusion was highlighted by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (Kenya), in his final report presented to the UN General Assembly on 20 October.

In his presentation, the rights expert said: 'Assembly and association rights in the workplace continue to be undermined for a large proportion of workers, mainly because of an economic world order that relentlessly pursues ever-increasing growth and profits at all costs.'

Meanwhile, the growing power and geographic reach of large corporations has meant that states are increasingly unwilling or unable to regulate these business entities and their attempts to place profits ahead of the rights and dignity of workers, he added.

Calling for fresh approaches, the Special Rapporteur said: '[T]he old ways of defending workers' rights are no longer working. Our world and its globalised economy are changing at a lightning pace, and it is critical that the tools we use to protect labour rights adapt just as quickly.'

'Labour rights are human rights. It is time for states and the human rights community to place labour rights at the core of their work,' said Kiai.

In a separate press release, the International Trade Union Confederation (ITUC) welcomed the publication of the report by the Special Rapporteur and called on governments to act on its findings.

'We congratulate Maina Kiai on this landmark report, bringing the struggles of workers from around the world to the heart of the United Nations. Millions upon millions of workers are denied the right to organise and decent work by governments and through the actions of employers including some of the world's best-known companies,' said ITUC General Secretary Sharan Burrow.

'Governments need to act to ensure these rights, to end the twin scandals of poverty and exploitation in supply chains, and to formalise informal work,' she added.

Disenfranchisement

In his report to the General Assembly, the Special Rapporteur said that the majority of the world's workers, particularly those in vulnerable situations, such as migrant, women and domestic workers, are disenfranchised of their rights to freedom of peaceful assembly and of association in the workplace.

That disenfranchisement is the result of many factors, including the failure of much-touted economic policies in reducing poverty and economic inequality; the increasing power of large multinational corporations and corresponding failure by states to effectively regulate and enforce norms and standards against those actors; the fragmentation of the workplace and diffusion of employer responsibilities across a range of actors; and the global crackdown on civil society that targets organisations and individuals working on labour issues.

'Workers are entitled to the rights to freedom of peaceful assembly and of association regardless of their status within a country. Further, those rights are central to ensuring that workers can claim their rights to just and favourable conditions of work in the face of structural obstacles that keep them and their issues marginalised,' said the Special Rapporteur.

'States have obligations under international human rights law to ensure that everyone within their jurisdiction is able to exercise his or her rights. Those obligations include refraining from violating workers' rights, taking positive measures to fulfil the rights and protecting against violations by third parties,' he added.

Indian workers taking part in a rally in Hyderabad during a nationwide strike called by trade unions in September. The rights to freedom of peaceful assembly and of association are fundamental worker rights.

Despite that, states generally prioritise economic and corporate interests at the expense of workers' rights, a counterproductive approach that exacerbates poverty and inequality.

'This situation must be urgently addressed, both to allow people to exercise their rights and to ensure the viability of the world's economic system.'

In this spirit, the Special Rapporteur called upon states, multilateral organisations, businesses and other stakeholders to commit themselves to creating the best possible enabling environment for the exercise of the rights to freedom of peaceful assembly and of association in the workplace.

According to the report by the Special Rapporteur, in recent decades, economic globalisation, implemented with as few regulations on companies and capital as possible, has been touted by many economists as an essential vehicle to global prosperity and the end of poverty.

The economic system that grew out of that philosophy has indeed led to a rise in global economic productivity and wealth, but it has also contributed to a dramatic rise in the power of large multinational corporations and concentrated wealth in fewer hands.

At the same time, states' power to regulate those business entities has eroded. Further, the world's recent economic growth has not been shared equally. Productivity and economic output have increased, but so has inequality, with the fruits of that growth going primarily to the wealthiest.

'Unconstrained power, whether public or private in origin, is a critical threat to the protection of human rights, including workers' rights to freedom of peaceful assembly and of association. The worldwide crackdown on those rights is contributing to a global crisis of governance.'

The majority of the world's workers, including informal, women, domestic, migrant and agricultural workers and day labourers, are often excluded from national legal protective frameworks, leaving them unable to exercise their fundamental rights to associate or assemble, and without access to remedies when their rights are violated.

According to the report, the impact of the lack of assembly and association rights is compounded for migrant workers by harsh immigration laws, unscrupulous labour recruitment organisations, militarised labour systems and rights-restricted structures in export processing zones.

Kiai pointed out that disenfranchisement is the shared condition of these workers and predominates across countries and global supply chains.

'Whether intentional or not, the legal environment for these workers promotes labour markets that fundamentally depend on powerless workers and a low-wage environment. Employers and others who evade the law and disrespect standards gain a competitive advantage over compliant employers, at the cost of workers' rights to freedom of peaceful assembly and of association.'

The rights to freedom of peaceful assembly and of association are fundamental worker rights. Since they enable people to voice and represent their interests, they are key to the realisation of both democracy and dignity, to holding governments accountable and to empowering human agency, the report underlined.

These rights are also a means to level the unequal relationship between workers and employers, thereby helping workers correct abuses and gain access to fair wages, safe working conditions and a collective voice.

'At the same time, the global attack on labour rights has made it disturbingly clear that the old ways of defending workers' rights are no longer working. Our world and its globalised economy are changing at a lightning pace, and it is critical that the tools we use to protect labour rights adapt just as quickly,' said the rights expert.

'A first step towards that goal is to obliterate the antiquated and artificial distinction between labour rights and human rights generally. Labour rights are human rights, and the ability to exercise those rights in the workplace is a prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.'

Global supply chains

The rise of multinational companies has driven structural changes in the global economy aimed at cutting costs, increasing corporate profits and limiting corporate responsibility to workers, the report noted.

Production and the provision of services are divided among different places with different employers in different countries. That has allowed lead firms to shift production of goods and services to companies in countries with lower costs and fewer regulations, putting pressure on manufacturers and service providers in global supply chains to cut costs. These structural shifts have drastically changed traditional employment relationships and systems.

Today, an estimated 60.7% of the world's workers labour in the informal economy, where employment relationships are not legally regulated or socially protected (another 13% work on fixed-term contracts). In some developing countries, informal jobs comprise up to 90% of available work.

'While the informal economy has always existed, deregulation and the development of global supply chains have exponentially expanded its growth.'

Millions of informal workers labour in global supply chains, where some of the worst abuses of freedoms of association and peaceful assembly are found and where migrant workers are often concentrated.

'States often weaken labour rights in order to attract investment, establishing special export processing zones where freedoms of peaceful assembly and of association are either sharply curtailed or explicitly prohibited. States may also use investor agreements as excuses to weaken labour standards.'

The Special Rapporteur argued that global supply chains are putting downward pressure on wages and working conditions, and distancing workers from their rights to freedom of association because workers fill permanent jobs but are denied permanent employee rights.

These arrangements – found in both formal and informal work, including part-time, short-term or temporary contracts, on-call schedules, multi-layered sub-contracts or franchises, and bogus self-employment schemes – are designed to drive down costs.

As a result of the widespread use of this practice, 1.5 billion people – 46% of the world's total number of workers – are working in so-called 'precarious employment'. In both Southern Asia and Sub-Saharan Africa, more than 70% of workers are employed that way.

The report went on to cite numerous examples of violations of workers' rights to peaceful assembly and of association in more than 50 countries, including outright bans on all legitimate unions, racial discrimination, gender-based violence, the use of precarious and informal labour, restrictions on the right to strike and to form or join a trade union, and the assassination of trade unionists.

Exploitation of migrant workers

The Special Rapporteur said globalisation is taking place in the context of the largest migration of people in human history, from rural to urban areas, within countries and across borders.

According to recent International Labour Organisation (ILO) estimates, the world has 150.3 million migrant workers, and an estimated 112.3 million of them (74.7%) are in high-income countries.

Low-wage migrant workers face severe economic exploitation, social exclusion and political disenfranchisement. They are often denied their freedoms of peaceful assembly and of association because of their irregular status or by structural barriers in legal channels that systematically disempower workers.

Many find themselves trafficked, in conditions of forced labour or slavery, isolated, unpaid, with restricted freedom of movement and no access to justice. Because most migrant workers are effectively barred from forming and joining unions, they are unable to advocate to improve wages and working conditions.

'Migrants have become a massive, disposable, low-wage workforce excluded from remedies or realistic opportunities to bargain collectively for improved wages and working conditions,' said the Special Rapporteur.

Having legal status does not ensure workers can exercise their fundamental rights. Most temporary or circular migration programmes structurally deny or inhibit rights to assembly and association and leave workers at the mercy of employers.

The rights expert cited the Middle East *kafala* and United States guest-worker programmes as being two such programmes.

In many Middle East countries (such as Bahrain, Kuwait, Oman, Saudi Arabia and Qatar), this hyper-rigid system ties a migrant worker's presence in the country to a visa sponsored by a citizen. Workers' ability to reside, work or even leave the country is subject to the approval and whims of a migrant's sponsor, who has near-total control over the worker's existence.

Nearly the same is true in United States guest-worker programmes, where visas are tied to specific employers.

'From a legal standpoint, these States have delegated oversight, control and responsibility for foreign nationals to private companies and individuals. Such devolution of responsibility has led to gross abuses and denial of fundamental rights.'

The report noted that every year the United States has more than 100,000 guest workers on temporary H-2 work visas in sectors like landscaping, construction, seafood processing and agriculture. Although they are documented migrants, guest workers report being cheated of their wages, threatened with guns, beaten, raped, starved and imprisoned. Some have died on the job.

The link between the visa and employer provides a coercive element: workers who complain about working conditions can be fired, and must leave the country or face deportation.

'This contingent relationship quells workers' efforts to exercise freedom of association and assembly. Workers who attempt to exercise their rights are often blacklisted by employers, who use the threat of denied future work opportunities to silence workers,' said the Special Rapporteur.

In the United Kingdom, gangmaster-controlled work in the hospitality, food-processing and agriculture sectors often exploits migrant workers through wage theft or confiscation of passports. The prospect of dismissal and loss of the legal right to work and remain in the country chills the exercise of rights by these workers.

'Because police investigations tend to focus more on immigration enforcement than claims of serious maltreatment of migrant workers, access to justice is denied. Forced labour is also a significant and growing problem in the United Kingdom.'

'Violence with impunity is also common,' Kiai said. In Mexico, migrant farmworkers at one of the country's biggest tomato exporters were physically assaulted when they complained about lack of food or tried to leave the work camp where they were kept 'as prisoners'. Camp bosses threatened workers who demanded their illegally withheld pay. The indebted workers could not enjoy their assembly and association rights for fear of losing wages that would not be paid until the harvest. The company received World Bank financing and supplied major US grocers.

Women workers

The report also noted that today only about half of women globally are in the labour force, compared with more than three-quarters of men. Three-quarters of their employment is in informal and unprotected work, making women far less likely than men to be in trade unions and enjoy work-related protections, including assembly and association rights.

'Discrimination, abuse and relegation to jobs at the bottom of the global economy undermine women workers' ability to join and form organisations that defend their interests.'

Perhaps the fiercest deterrent to the exercise of the rights to freedom of peaceful assembly and of association for women is gender-based violence, which affects more than 35% of women globally. While violence against women generally is increasingly in the global spotlight, its occurrence at work continues to be neglected or ignored.

Gender-based violence at work includes physical abuse; attempted murder and murder; sexual violence; verbal abuse and threats; bullying; psychological abuse and intimidation; sexual harassment; economic and financial abuse; stalking; and more.

A recent survey in European Union countries found that 75% of women in management and higher professional positions and 61% of women in the service sector have experienced some form of sexual harassment.

Women workers in countries as diverse as Bangladesh, Cambodia, the Dominican Republic, Haiti, Jordan, Swaziland and Tunisia have reported verbal, physical or sexual abuse, sexual harassment or rape at work.

Women union leaders in Guatemala are 'especially targeted' with threats, violence and murder. Women workers report being punched to force miscarriages, or abducted while waiting for transportation to and from work. In Guatemala, more than 5,000 women and girls were killed between 2008 and 2015.

Domestic workers

According to the report, situated at the intersections of gender, race, migration and informality, domestic workers represent a large component of the global workforce excluded from the rights to freedom of peaceful assembly and to association.

ILO estimates that 67 million people globally are domestic workers, and 80% of them are women; and that 11.5 million migrant workers are domestic workers, about three-quarters of them women.

'Many countries do not recognise domestic labourers as "workers" under the law, meaning that they have little ability to exercise their assembly and association rights at work. Roughly 90 per cent of domestic workers lack effective social protections, leaving them and their families in economically and socially vulnerable situations.'

The Special Rapporteur cited several examples of laws that differentiate domestic workers from other workers.

The United Kingdom excludes domestic workers from limits on hours of work, minimum wage and health and safety provisions. Canada, Finland, Japan and Switzerland similarly exclude domestic workers from minimum wage legislation.

Many countries, including the United Kingdom and France, exclude domestic workers from the jurisdiction of labour inspectorates in deference to employers' privacy. Canada (Ontario), Ethiopia and Jordan exempt domestic workers from laws covering trade union representation.

The rights expert noted as a positive step, however, that 30 countries have now extended labour protection to domestic workers.

He pointed out that the rights to freedom of peaceful assembly and of association are recognised in numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

'Both trade unions and the right to strike are fundamental tools to achieving workers' rights, as they provide mechanisms through which workers can stand up for their interests collectively, and engage with big business and government on a more equal footing. The State is obligated to protect these rights for all workers,' Kiai underlined.

He also said the right to strike has been established in international law for decades, in global and regional instruments, and is also enshrined in the constitutions of at least 90 countries. The right to strike has, in fact, become customary international law.

Many states place obstacles, both in law and in practice, that restrict workers' rights or fail to enforce laws protecting those rights. The ITUC found that 50 of 141 countries surveyed had such restrictions, said the Special Rapporteur. ◆

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Canadian indigenous injustice – a colonial problem?

A legacy of colonial injustice persists today for indigenous people in Canada subjected to unspeakable abuse, violence and prejudice daily.

Rose Delaney

THE history of Canada's indigenous population has been, for the most part, kept in the shadows.

According to leading expert on indigenous justice Lisa Monchalin, the consequences of colonialism and dispossession on native communities have been 'glossed over', unacknowledged and dismissed by the 'settled' population.

At the launch of her new book *The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada* in November at University College London, Monchalin emphasised the impact colonial legacies have left on indigenous peoples in modern-day Canada.

During colonial times, she explained, the native population was compelled to become dependent on a foreign system which paid little heed to their own distinct culture and customs. European settlers suppressed the rights of the indigenous groups, rapidly establishing a European hierarchical structure which considered them nothing more than an 'Indian problem'.

The colonial solution to the indigenous 'problem' was nothing short of deadly. As a direct result of European settlement, the native population became a vanishing race, with an estimated 80-90% dying from diseases brought from Europe. In the 1700s, blankets infected with smallpox were distributed as a means of eradicating indigenous peoples.

Those who did not die of disease were forcefully displaced. Many were pushed onto smaller parcels of land, obliged to culturally assimilate and abandon their traditions or left to die off in territories with few resources.

The consequences of colonialism and dispossession on native communities in Canada have been 'glossed over', unacknowledged and dismissed by the 'settled' population.

In many ways, Monchalin said, 'colonisation can also be drawn back to the prevalence of violence against indigenous communities through the centuries, including acts of gender-based violence'.

Before colonisation, traditional native societies prided themselves on being matriarchal, honouring and valuing the 'sacred' nature of women within their community. Women were granted a strong voice through positions of leadership and power and there was an equitable division of labour. 'Acts of sexual violence were a rarity before European contact,' Monchalin said.

Under the European system of governance, native women were forcibly dispossessed of their agency. They could no longer be considered valiant leaders; rather, their colonisers wanted to enforce the message that they were little more than subordinates to the male members of the community. Under colonial rule, only men were accepted to speak on behalf of their communities.

The colonisers began to formulate the image of the native woman as an 'exotic other'. They referred to indigenous women as 'squaws', the female version of a savage. They described them as having 'no human face, lustful and immoral', Monchalin explained.

These ingrained colonial perspectives not only converted the native female identity into a sexualised commodity, but also led to the widespread sexual objectification of native women, with acts of sexual violence committed justified by the fact that these women were 'human in form only'.

The subordination and oppression of native women rooted in colonial times is still prevalent today. Sexualised and romanticised constructions of the 'erotic' indigenous woman have resulted in widespread reports of sexual harassment and violations across the country.

'In Canada, 87% of indigenous women will experience physical violence in her lifetime. One in three of these women will be raped,' Monchalin said.

Indigenous women continue to be victimised by the persisting struc-


'Residential schools' were government-funded schools for Canadian aboriginal children. However, students were subjected to violence and abuse, and after over a century of 'state-sponsored violence', the last residential school closed in 1996.

tures of a dehumanising colonial system which stripped them of their agency and considered them 'lesser beings'.

This came to the fore in 2014 when 1,181 cases of missing native women between 1980-2012 were made public. The crisis was largely dismissed and a truth inquiry only established last year.

Police brutality conducted against indigenous women has also been reported across the country.

Many believe that the historical legacy of Eurocentric suppression contributes to the ongoing issues of injustice and inequality demonstrated towards indigenous peoples.

In 1873, one of the Royal Canadian Mounted Police (RCMP)'s main objectives was to address the 'indigenous problem', the goal being the 'silent surrender' of the native people.

This led to the creation of 'residential schools', government-funded schools responsible for educating aboriginal children in Canada. The Canadian government developed a policy called 'aggressive assimilation'. They believed that a church-run, industrial boarding school was the best way to prepare them for life in mainstream society and, ultimately, abandon their 'savage' traditions.

However, this government initiative took a turn for the worse. Native children were subjected to violence and abuse. Sexual abuse was found to reach epidemic levels within the schools and some children were even reported to have been used for 'nutritional experiments'.

After over a century of 'state-sponsored violence', the last residential school closed in 1996.

The need to suppress, silence and condemn a people based on their ethnicity has led to state-induced violence and mistreatment of native peoples by state authority to the present day.

Systemic issues of racism and discrimination 'legitimise' acts of police brutality and unjust incarceration of indigenous peoples. In fact, there's a clear indigenous over-representation in the Canadian prison system, with roughly 4.3% of the total population incarcerated.

The legacy of colonial injustice persists today for aboriginal peoples in Canada subjected to abuse, violence and prejudice daily.

Seven generations of residential school victims, deep-rooted female exploitation, state-induced violence and unlawful incarceration, amongst a host of other atrocities, have led to a build-up of inter-generational trauma within indigenous communities across the country, Monchalin said.

However, Canada's federal government has begun to address the widespread neglect and failed policies felt by past generations of indigenous people.

Prime Minister Justin Trudeau has publicly declared his commitment to beginning a new prosperous relationship between Canada and its indigenous people. 'No relationship is more important to me and to Canada than the one with First Nations, the Metis Nation, and Inuit,' he said at the assembly of First Nations in December 2015.

Canada plans to invest C$8.4 billion over five years, beginning in 2016-17, to improve the socio-economic conditions of indigenous peoples and their communities and bring about transformational change.

'Through education, awareness raising and a willingness to confront and question the violent past, the people of Canada can finally celebrate indigenous identity and ultimately, reconstruct their rich traditions that were forcibly broken down under colonialism,' Monchalin concluded. – *IPS* ◆

cc Obert Madondo/The Canadian Progressive

Participants at a 2013 vigil in Ottawa held in remembrance of missing and murdered indigenous women. In 2014, 1,181 cases of missing native women between 1980-2012 were made public.

#NiUnaMenos: Not one woman less, not one more death!

Recent protests against femicide in Argentina reveal the deep roots and spreading branches of feminist activism in Latin America.

Elisabeth Jay Friedman and Constanza Tabbush

ON 19 October, hundreds of thousands of women across Argentina participated in two extraordinary protests: an unprecedented women's strike and massive demonstrations against femicide (*femicidio*) – that is, the killing of cisgender and transwomen because of their gender.

Reacting in rage and sorrow to the 9 October murder of Lucía Perez, a 16-year-old high school student from the city of Mar de Plata who had been abducted, drugged and gang-raped so viciously that she died of her injuries, Argentine feminist organisers relied on social media to organise the strike and orchestrate the demonstrations in the space of about a week.

Dubbed 'Black Wednesday', the protests were notable not only for their rapid organisation and widespread diffusion, but also for their framing of gendered violence as inextricably linked to gendered structures of power – a point that was exemplified in the signs, slogans and speeches that accompanied the demonstrators on city streets across Argentina. 'Not even one woman less! We want us all alive!' thousands marched and sang, drummed and yelled.

What's more, the efforts of Argentine feminist organisers sparked a transnational response. Reports found that in addition to at least 138 separate protests that took place in Argentina, there were 25 protests in Chile, seven in Bolivia, five in Mexico, two in Uruguay, two in Honduras, and others in the capital cities of Paraguay, Ecuador, Costa Rica, El Salvador, Guatemala and beyond.

Former Argentine president Cristina Fernández de Kirchner wrote an open letter in support of the protests, while the current president of Chile, Michelle Bachelet, taped a video pledging her allegiance. Participants were amazed by the massive public presence and the creative ways in which women took to the streets wearing all black – 'a cipher code that was at the same time evident to everyone', in the words of one striker.

The protests also claimed historical spaces of national political struggle: in Argentina, it was the first time the emblematic Plaza de Mayo – traditionally the space of unions and political parties – filled with women chanting 'Patriarchy is going to fall!' In Chile, Alejandra Ramm from the University Diego Portales noted that she never thought she'd see the phrase '*Ni Una Menos*' (Not One Less) projected on the front of the country's presidential palace, La Moneda. Meanwhile, in Brazil, subtle gestures were also present as, for instance, one lecturer recalled going to teach her university class wearing black in solidarity with Argentine women, only to find that many of her students were wearing black as well. As political analyst Veronica Gago wrote, 'We can feel proud of having made palpable and visible the international strength that the women's movement has had since its beginnings.'

What can these events tell us about the current state of gender politics in the region? Are we witnessing a new feminist 'wave' in the region, made up of a wider range of participants, united behind a broader spectrum of demands? And if so, how much of what happened in Argentina can be explained by transnational trends, and how much is due to national dynamics? It is too soon to be able to answer these questions definitively, but we offer some evidence for further reflection.

Organising against gendered violence in Latin America

Latin America has long been the site of protest and policy-making around violence against women. Drawing on their experiences of authoritarian repression and economic austerity, activists have drawn connections between violence perpetrated by the state and by private actors. Beginning in the 1980s, feminists built regional networks at the Latin American and Caribbean Feminist *Encuentros* (Encounters or fora). The first *Encuentro* in Bogotá, Colombia, declared a Day to End Violence Against Women on 25 November, which is now observed worldwide. Participants chose the date as a tribute to the Mirabal sisters, who were killed on that day in 1965 for their opposition to the Dominican dictatorship of Rafael Trujillo.

This kind of activism pressured the Inter-American Commission on Women to take up the issue of gender violence, eventually transforming it into the Organisation of American States' vanguard Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women in 1994. Its mission statement takes an overtly feminist perspective, locating violence against women within 'the historically unequal power relations between women and men', and insists that states work to prevent violence wherever it takes place. Feminist advocates lobbied their governments to adopt Convention principles through national legislation, resulting in nearly every Latin American country outlawing some form of violence against women in the last two decades. The regional influences are clear in the Argentine case: in 2009, the Argentine Congress passed Law 26.485, the Law of Integrated Protection to Prevent, Sanction and Eradicate Violence Against Women.

Regional activism has continued apace. The powerful slogan '*Ni una mujer menos, ni una muerte más*' (Not one woman less, not one more death) was coined by Mexican poet and activist Susana Chávez Castillo in the 1990s to protest the notorious unsolved murders of women in Ciudad Juárez, Mexico. The 19 October protests were the latest entry in a long series of protests across Mexico and Central and South America sparked by the murder of Chávez Castillo herself in 2011. In 2015 and 2016, Argentina, Brazil, Chile, Mexico, Peru and Uruguay reclaimed her words to organise campaigns and demonstrations against femicide and violence against women.

In Argentina, the ability to organise massive demonstrations around just a week after the femicide of Lucía Perez is rooted in past experiences of post-dictatorship women's organising. Argentine women's and feminist activism has been enriched by the yearly in-person meeting called the *Encuentro Nacional de Mujeres* (National Women's Encounter or ENM), which emerged in the 1980s modelled after the regional *Encuentros*. As they constructed a space for deliberation on issues ranging from human rights to external debt, abortion to sports, sexuality to indigenous peoples, Argentine women forged connections between gender and other issues of structural inequality, according to Amanda Alma and Paula Lorenzo, authors of *Mujeres que se encuentran*.

However, ENM organisers have contended with overtly hostile local authorities. In late September of this year, the ENM took place in Rosario, in the northern Argentine province of Santa Fe. At least 70,000 women participated in the events. On the very day Lucía Perez was murdered, police fired rubber bullets into the final march to repress participants objecting to right-wing Catholic counter-demonstrators.

This confluence of activism, repression and horror sparked the 19 October strike and demonstrations inside and outside of the capital. Lesbian feminist activist and Rosario-based journalist Irene Ocampo explained in an interview that the 'effective, rapid and dynamic' response that enabled their local protest of 15,000 relied on the wide and deep roots of feminist activism. Feminist and women's organisations brought word of the effort to a local organising assembly, which multiple generations of activists and nearly all the organisations that had been responsible for the ENM attended. They also reached out to local unions of state and university employees for their support. But these activists, and others across the country and the region, would also rely on a more direct example of organising around violence: the Ni Una Menos protests of the last two years.

The making of #NiUnaMenos

Building on a performance organised as a marathon of literary readings in front of the National Library in March 2015 against femicides, the Ni Una Menos collective of prominent feminist journalists, artists and lawyers, including figures such as Marta Dillon, an editor at *Pagina 12*, started a Facebook page. The hashtag #NiUnaMenos spread virally and caught the attention of the media. They capitalised on their professional and activist networks, as well as their symbolic and social capital to great effect. Gendered and sexualised violence became the topics of talk-shows, national newspapers, radio programmes, Facebook and Twitter trends. Even future President Mauricio Macri, who has been implicated in empowering anti-abortion activists, was photographed holding a sign bearing the slogan 'Ni Una Menos'.

On 3 June 2015, the first massive Ni Una Menos demonstration against gender violence gathered 300,000 people in front of the National Congress in Buenos Aires and in major cities around the country. High school and college students, young families and workers representing different parties, organisations and movements filled the square in front of the National Congress, making it almost impossible to walk. Groups of girls and boys remixed songs from the 2014 World Cup and danced while singing 'In this society, abuse is so normal, that we still think women are the ones who provoked it.'

Participants listened as actress Erika Rivas, actor Juan Minujin and cartoonist Maitena read out the demands: the full implementation of Law 26.485 – only eight of its 45 articles had been implemented – the publication of official statistics on sexual assault, institutional and judicial guarantees for women's protection and access to justice, and the inclusion of gender violence in the curricula of sexual education and training of all state officials, including the police.

Following the march, Ni Una Menos collective members, like Florencia Abbate, said they saw changes in how the media covered violence against women, as they adapted to a heightened awareness on the part of their audience against victim-blaming. The protest signified a turning point where gender inequality became a public issue relevant to all Argentine society.

As an ever more heterogeneous group of organisers participated, the second Ni Una Menos march in June 2016 broadened the interpretation of violence against women, bringing in demands for the decriminalisation of abortion, an end to transphobia, and the rights of sex workers alongside opposition to trafficking women and girls. As Abbate explained to the *Argentina Independent*, the framing was open to all: 'Ni Una Menos belongs to everyone, and there are groups who want to identify as Ni Una Menos in the other provinces and parts of the country who unexpectedly use our logo to promote their local demands.'

The two years of regionally inspired national organising across many media platforms on ever more interrelated issues led to the perfect storm of the hundreds of thousands who took to the streets on 19 October.

The 'Black Wednesday' protests

The Ni Una Menos collective and another 50 organisations called for the 19 October 'Black Wednesday' strike and demonstrations, which integrated demands for women's social and economic rights in an unprecedented manner. 'We were hundreds of women … with the same will to organise … to say one more time: ENOUGH!' the call read. 'And together we decided to strike: those who have a formal job and those who don't, those in cooperatives, who have precarious work, those who do care work and do not receive a salary, the unemployed, the students, the artisans, the artists, all of us. Strike for an hour outside of our workplaces to make ourselves visible. Strike then march. Wear black.'

In the packed Buenos Aires subway on the morning of the 19th, women wearing all black smiled at each other as strangers with common goals. It did not matter if they were left or right, or from the political opposition or not: they were all against femicides. One rider described the commute: 'When the doors opened at each station you could hear women shouting "*Ni una menos!*" to others on the platform who answered "*Vivas nos queremos!*" [We want us alive!]. It was a very emotional moment, the subway was filled with these slogans, from anonymous, nearly ghostly voices.' A female conductor's announcement on the H Line went viral: 'Take care of your belongings, but also take care of women, who are not your belongings. *Vivas nos queremos!*'

Between 1 and 2 pm, thousands participated in the symbolic women's strike under a powerful slogan: 'If my life has no value, reproduce without me.' Using their actions to pointedly critique the business-as-usual negotiations between the National Union Confederation and the neoliberal government of President Macri, workers left all manner of workplaces, from the shoe stores of busy commercial streets to the National Library, and from the University of Buenos Aires to the National Congress.

At five that afternoon, a river of 150,000 protesters, braving a downpour, congregated at the Obelisco in downtown Buenos Aires and flowed down to the Plaza de Mayo. Myriad handmade posters exemplified the formation of a bottom-up gender justice agenda. Teenagers and young women focused on empowering images and demands to be free to go out in public, with signs reading 'I don't want to be a victim, and I want to be free.' Women linked to popular movements and transwomen denounced the criminalisation of social protest, demanding freedom for social activist Milagro Sala. Feminist collectives advocated free and safe abortion. Indeed, the very idea of 'Black Wednesday' was inspired by Poland's 'Black Monday' protests a few weeks prior, in which Polish women demonstrated against a total ban on abortion in the European country.

The recent protests have demonstrated a deepening understanding of the link between gender violence and other forms of gender inequality.

Women from unions and movements holding signs that read '[Economic] adjustment is part of the violence' emphasised the runaway costs of basic services and decreasing real salaries. The speech read out at the end of the march referred to femicide waged against Argentine women as 'the most extreme expression of a patriarchal logic, one that subjugates, objectifies and undervalues women across all spheres of life'. The chants of the activists who overflowed the Plaza de Mayo reverberated throughout downtown Buenos Aires: 'Power, power, popular power, now that we are together, now that they see us, the patriarchy will fall, it will fall.'

In the days after the protests, longstanding social attitudes towards women were up for debate. Victoria, one participant, reflected in an interview that the protests 'resulted in a lot of new conversations'. 'Many friends told me about family discussions about the protests when surprised fathers heard for the first time that their daughters had been groped when they were younger, or that men in the street had exposed themselves to them,' she said. Another participant added, 'I was surprised by many men who expressed their concern about these issues from I think a feminist perspective.'

While it might be too early to speak of a new wave of feminist organising, we can point to some important developments. For one, the recent protests have demonstrated a deepening understanding of the link between gender violence and other forms of gender inequality. Although social media is far from the only resource upon which such massive public repudiation of gendered structures of power is based, we also appear to be witnessing the continued development of creative links between online and offline modes of action; whether online, on the street or around the family dinner table, gender politics have a new presence and resonance.

As 15-year-old Ofelia Fernández, president of the student union at an Argentine high school, explained at the protest: '[Our] society was 100% *machista* but now we are starting to hear about abortion, about women's trafficking, femicide … we are starting to speak about gender inequality. Being a feminist is about understanding these realities, criticising them, but mostly it is about doing something to transform them.' ◆

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The voice of the Third World

A titan of our times, Fidel Castro (1926-2016) was, as *Vijay Prashad*'s tribute explains, the mirror of Africa, Asia and Latin America's aspirations. Hostile critics who have sought to dismiss him as a 'relic of the Cold War' are blind to the fact that at every phase of his long life he was alert to the 'new' problems facing humanity, responding to them with a freshness that was simply astonishing. His speech at the 1992 UN Conference on Environment and Development (Earth Summit) (see box), which could very well be his epitaph, is testimony of this.

THE room went silent at the UN's 2001 World Conference Against Racism when Fidel Castro entered. He took the podium and firmly denunciated not only racism but also the deep scars inflicted by capitalism. 'The inhuman exploitation imposed on the peoples of three continents,' he said in reference to Africa, Asia and Latin America, 'marked forever the destiny and lives of over 4.5 billion people living in the Third World today.' It was this history, he said, that left 'the current victims of that atrocity' in poverty, unemployment, illiteracy and sickness.

Fidel Castro: 'I believe in the mobilisation and the struggle of the peoples!'

Castro's words mirrored reality. He would not end there. It was hope, not despondency, that captured his personality. 'I believe in the mobilisation and the struggle of the peoples!' he said. 'I believe in the idea of justice! I believe in truth! I believe in man!'

It was hard to contain the applause. Castro, in his customary green fatigues, took in the adulation. There was nothing insincere about it: the leaders in the room admired the guerilla. He said things that many of them believed but had come to set aside. These were the ideas of their youth and of their anti-colonial traditions. But they had set them to mute. Never would we hear such honesty from these leaders of the Third World. But their applause suggested something important. Castro spoke for their suppressed values.

His words rang true, even as their articulation would be sneered at by the Global North and their representatives in the Global South. The most severe mockery would be reserved for Castro's hopefulness, his talk of mass mobilisation and struggle. Words like 'justice' and 'truth' had been emptied of their content. They would now mean the opposite. Commitments to mass mobilisation and struggle evoked excitement in some, condescension in others. It was the part of Castro's resilient message that set him apart.

Confronting imperialism

Castro, who represented a beleaguered revolution in a small island, stood for otherwise suppressed historical forces. Against all odds, the guerillas of the Sierra Maestra defeated the mafia leadership in Havana and defended itself from the Yankees of Washington DC. At the inauguration of the Non-Aligned Movement (NAM) in 1961, Cuba's President Osvaldo Dorticós Torrado spoke in a language that irked the more staid leadership of Gamal Abdel Nasser, Jawaharlal Nehru and Josip Broz Tito. Underdevelopment, he said, can be 'overcome only through a struggle against and by total victory against imperialism'.

Determined that imperialism needed to be confronted, Cuba hosted the Tricontinental meeting 50 years ago. It was here that Castro said that his government would 'coordinate support for revolutionary wars of liberation throughout the colonised world'. Che Guevara was already in the Congo, working with African revolutionaries. Cuban material support – in terms of military and medical training – came to Guinea-Bissau, Mozambique and Angola. It was the Cuban assistance to the militants in these struggles that helped defeat Portugal and summon Portugal's own Carnation Revolution against its fascist state in 1974. It was the Cuban intervention in Angola that helped defeat the South African military at the 1988 Battle of Cuito Cunavale, which broke the back of the South African apartheid regime and contributed to its demise in 1994. Cuba did its work and then withdrew. It did not seek to occupy – to get business deals or to create military bases. It came to help and then, having helped, it left.

Debt strike

In 1983, Castro arrived in New Delhi to hand over the presidency of NAM to India. He was received like a folk hero, the triumphant leader of a Third World then in great distress. The debt crisis had ended whatever hope had been kindled from the anti-colonial movements. Finance ministers lined up at the International Monetary Fund (IMF) and at the various commercial lenders to raise funds for depleted treasuries. The will to fight for another world had been squashed.

Fidel Castro had other ideas. He was not ready to bend his knee. What about a debt strike, he asked? What if every one of the NAM states refused to service their debts and what if they demanded that their debts be renegotiated? Castro received a standing ovation. But no one decided to follow him. There was no debt strike. Instead, country upon country faced a policy slate (neoliberalism) that cannibalised their resources.

Castro continued to beat the drum, warning against the direction taken by the planet. He spoke about the failure of the world's leaders to craft a global response to the perils that faced us all: a financial system that had become a casino, a social project that created perilous levels of inequality, a consumption pattern that would devour the earth's resources, wars that are the child of greed and hunger. New ideas had crept in to corrupt thought. 'The market has become today an object of idolatry,' he said in 1999, 'a sacred word pronounced at all hours.' The richest 10% of the world's population today controls 89% of the world's wealth. This kind of thinking, Castro said, has 'impaired the human mind'.

Nothing held Castro back. When journalist Ignacio Ramonet accused him of being a dreamer, Castro responded, 'There's no such thing as dreamers, and you can take that from a dreamer who's had the privilege of seeing realities that he was never capable of dreaming.' Solutions to such grotesque inequalities were needed. They cannot be found in apps and in microcredit. Much grander thoughts are required. Castro persisted with that ambition. It was his boldness that allowed so many people to breathe.

In 1953, a lieutenant and his squad captured Castro and some of his comrades. Castro hid his identity for fear of execution at the spot. The soldiers wanted to kill the guerillas. The lieutenant walked about calming them down. 'You cannot kill ideas.' He repeated, 'You cannot kill ideas.'

Later Castro wondered what made the lieutenant save his life and repeat that statement. 'Our ideas did not die,' Castro said. 'No one could kill them.' Without the long period of struggle and experimentation, without the years 'we had to educate, sow ideas, build awareness, instil feelings of solidarity and a generous internationalist spirit, our people would not have had the strength to resist'. You cannot kill ideas.

Castro, for the Third World, was not merely another leader. He was the mirror of its aspirations. That mirror is now shattered. ◆

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Tomorrow will be too late

The following is the text of *Fidel Castro*'s speech at the 1992 UN Conference on Environment and Development (Earth Summit) in Rio de Janeiro.

AN important biological species – humankind – is at risk of disappearing due to the rapid and progressive elimination of its natural habitat. We are becoming aware of this problem when it is almost too late to prevent it. It must be said that consumer societies are chiefly responsible for this appalling environmental destruction.

They were spawned by the former colonial metropolis. They are the offspring of imperial policies which, in turn, brought forth the backwardness and poverty that have become the scourge for the great majority of humankind.

With only 20% of the world's population, they consume two-thirds of all metals and three-fourths of the energy produced worldwide. They have poisoned the seas and the rivers. They have polluted the air. They have weakened and perforated the ozone layer. They have saturated the atmosphere with gases, altering climatic conditions with the catastrophic effects we are already beginning to suffer.

The forests are disappearing. The deserts are expanding. Billions of tons of fertile soil are washed every year into the sea. Numerous species are becoming extinct. Population pressures and poverty lead to desperate efforts to survive, even at the expense of nature. Third World countries, yesterday's colonies and today nations exploited and plundered by an unjust international economic order, cannot be blamed for all this.

The solution cannot be to prevent the development of those who need it the most. Because today, everything that contributes to underdevelopment and poverty is a flagrant rape of the environment.

As a result, tens of millions of men, women and children die every year in the Third World, more than in each of the two world wars.

Unequal trade, protectionism and the foreign debt assault the ecological balance and promote the destruction of the environment. If we want to save humanity from this self-destruction, wealth and available technologies must be distributed better throughout the planet. Less luxury and less waste in a few countries would mean less poverty and hunger in much of the world.

Stop transferring to the Third World lifestyles and consumer habits that ruin the environment. Make human life more rational. Adopt a just international economic order. Use science to achieve sustainable development without pollution. Pay the ecological debt. Eradicate hunger and not humanity.

Now that the supposed threat of communism has disappeared and there is no more pretext to wage cold wars or continue the arms race and military spending, what then is preventing these resources from going immediately to promote Third World development and fight the ecological destruction threatening the planet?

Enough of selfishness. Enough of schemes of domination. Enough of insensitivity, irresponsibility and deceit. Tomorrow will be too late to do what we should have done a long time ago. ◆

Linus Suryadi AG (1951-1999), who died tragically at the age of 48, was a promising poet and prose writer. He belonged to a literary generation which made Indonesian regional settings the focus of its writing.

Dew

Linus Suryadi AG

Lake Bratan, Bali

Dew adorns the morning world
Dew sets our senses shivering
Dewdrops of thought and feeling
The layer of dew upon the land
simmers beneath the silent sun

Dewdrops drip like falling tears
Dewdrops, the manifold plans of distant men
Oh, how the heat and the dew of this world
become the body's steam and drops of sweat

Translated by John H McGlynn