

UN Special Rapporteur on Freedom of Opinion and Expression to the UN Human Rights Council: “Freedom of Opinion and Expression and Sustainable Development - Why Voice Matters”

Written submission by the Asia Pacific Forum on Women, Law and Development (APWLD)¹

Preamble

The world continues to reel from the devastation of the COVID-19 pandemic from health to social, political and economic crisis. A lot of setbacks in sustainable development goals and targets, as well as regression in human rights have been felt. The global south continues to face historical injustices, unequal access to resources and exploitation.

In the past three years of the pandemic, the crisis has worsened, but it was also glaring to see how big transnational corporations have profited more during the pandemic. While the rest of the world faces inflation, higher interest rates and a threat of recession, most global north corporations have gained more profits whilst workers’ wages remain low and unable to keep up with inflation. [Amazon.com, for example, has increased profits by 220 per cent during the pandemic.](#) On the other hand, pharmaceutical corporations have generated billions of dollars in the last three years. [Pfizer has been estimated to have earned almost \\$100 billion in 2022.](#)

The pandemic has also opened more opportunities for big transnational corporations to take control of most economic activities. From 2020 to 2021, there is also a concerning trend of an increasing number of Free Trade Agreements (FTAs)—mostly bilateral between the global south and north countries. For instance, the [Philippines from 11 FTAs in 2018, increased to 27 FTAs in 2020. Sri Lanka on the other hand, from 5 FTAs in 2018 to 15 FTAs in 2020.](#) Free Trade Agreements are economic bilateral or multilateral agreements between nations to reduce barriers in import and export policy between them. However, oftentimes, FTAs are only beneficial to one or few parties as it further

¹ APWLD is Asia Pacific’s leading feminist, membership driven network. Our 236 members represent organisations and groups of diverse women from 27 countries in the region. We use capacity development, research, advocacy and activism to claim and strengthen women’s human rights. For questions about the submission, please reach out to Samreen Shahbaz (samreen@apwld.org)

reduces the economic and labour protections of the other parties. In addition, according to the [OHCHR Report on the Right to Development](#), the current global trade regime has a significant impact on human rights as its framework for economic growth may not be democratic and equitable.

Trade and investment regimes have oftentimes sidelined peoples' recommendations and reinforced States' role in the violation of fundamental rights. FTAs are also often signed in secrecy, away from public scrutiny and oftentimes railroaded. They have been negotiated and decided with virtually no democratic consultation with the larger populations that will be affected, especially women's groups, farmers, fisherfolk, Indigenous Peoples, and workers. On the other hand, business lobby groups have been given more privileged access to the negotiations, which resulted in the pro-corporate provisions of the trade and investment deals.

FTAs also often contain conditionalities where partner governments relax their protectionist policies to allow investors to come. These have been detrimental to every basic human right– from violation of labour rights including the right to organise and unionise, the right to the land of indigenous communities, threats of further exploitation of natural resources, displacement of communities, and privatisation of commons, among others. These are accompanied by grave human rights violations (HRVs) including further curtailment of freedom of expression and opinion– as oftentimes most HRVs are located in areas with disputes. [Global Witness in 2021, has recorded 200 killings of activists in relation to environmental and resource disputes, of which a significant number is found in Asia \(mostly Philippines and India\).](#)

We highlight these concerns to shed light on the human rights violations directly and indirectly caused by FTAs and how this also violates rights to freedom of expression and opinion. FTAs lack the accountability and transparency to ensure peoples' needs and concerns are taken into account. In this submission, we would like to present how free trade agreements have been used as a tool to further undermine democratic rights– from economic, social and political, and impeding the peoples' right to development, women's human rights and Development Justice.

Free trade agreements violate labour rights, freedom of expression and right to information

FTAs have historically discriminatory effects on women. Trade agreements may provide benefits to people who have the capacity to capitalise on new market opportunities and workers classified as “highly skilled”. However, women are less likely to hold large amounts of resources, are most commonly engaged in the informal sector, are less likely to have secure land rights and access to policy-making spaces, and are more likely to benefit from public expenditure in health, education, water and energy. FTAs also deliberately undermine peoples’ right to information and freedom of expression, as seen in how negotiations are done and how agreements have been impacting specific rights such as labour rights and freedom of association, rights to organise and collective bargaining.

In the Philippines, as membership in the World Trade Organisation (WTO) and other trade and investment agreements, as well as unilateral trade and investment promotion measures, have led to the welcoming of large agricultural corporations in the country. In order to attract investors to the Philippines, the government amended its Labour Code through the Republic Act 6715 or the Herrera Law which was passed in 1989. The Herrera Law paved the way for contractualisation and other forms of flexible employment, further exploiting Filipino workers, especially women workers. Regarding the Japan - Philippines Economic Partnership Agreement (JPEPA) in 2008, the country also allowed Japanese agribusiness ventures to operate to connect local production to regional and global agricultural value chains. An example would be Sumifru, a Japanese conglomerate in fruit exportation based in Davao de Oro in Mindanao where it has banana plantations and banana packing plants under Sumifru’s refusal to recognise the workers, including women workers, as its employees led *Nagkahiusang Mamumuo sa Suyapa Farm (United Workers of Suyapa Farm)* (NAMASUFA), National Federation of Labour Unions (NAFLU) and *Kilusang Mayo Uno (May One Movement)* (KMU) to launch a strike on 1 October 2018. The fight for regularisation of the Sumifru workers was brought to the capital City of Manila after the violent dispersal of their strike camp in October 2018.

Sumifru still refuses to implement the Writ of Execution on Return-to-Work Order issued by the National Labour Relations Commission (NLRC) in 2019².

In Indonesia, the government issued an executive order to attract foreign investment to generate economic growth, and to 'cut red tape' by creating the Omnibus Law as a way to amend 79 existing laws in Indonesia³. The Law is designed to systematically exploit women's labour based on its neoliberal ideology and agenda. Women will be trapped into low-waged, precarious, and flexible labour forces, subsequently weakening their collective labour-power. Over time, these situations trigger women to move to the informal sector and migrate to work without any labour and social protections. Due to the lack of clarity in the regulatory framework on the labour inspection and the license of Indonesian migrant workers placement agency, women migrant workers will be more vulnerable to violence and other forms of human rights violations. In the process of assessing the proposed omnibus bill, the Indonesian Government systematically excluded women's rights groups, trade unions and workers, and civil societies. The government and parliament deliberately overlooked and silenced people's voices in its law-making procedure, and instead used COVID-19 as momentum to accelerate the legislative process. In opposition to the bill, massive rallies and protests have taken place in industrial areas, in the streets, and the cities across Indonesia, by the labour alliances, women human rights defenders, students, Indigenous Peoples, urban poor, farmers, fishers and other marginalised groups. In responding to the strikes, the government has continued to use explicit power to threaten workers and to crack down on trade unions with the police exercising excessive and uncalled for violence to ban the gatherings, disperse the strikes, and attack-and-arrest the protesters in Jakarta and other cities⁴.

Trade agreements continue to develop within a false development agenda. The non-transparent and corporate-dominated processes undermine democracy by establishing global rules that put profits before people⁵. Many trade agreements such as the Regional Comprehensive Economic Partnership (RCEP), and the Trans-Pacific Partnership (TPP)

²Excerpts of case study by the Women Studies and Resource Center (WSRC) on *Strengthening Sumifru Women Workers' Organisation Against Labour Contractualisation*

³ <https://indonesiaatmelbourne.unimelb.edu.au/indonesias-omnibus-bill-typo-or-mistaken-instruction/>

⁴ <https://www.theguardian.com/world/2020/oct/07/indonesia-police-use-water-cannon-and-teargas-to-disperse-labour-law-protests>

⁵ <https://www.hinrichfoundation.com/research/article/sustainable/aligning-trade-and-human-rights/>

were negotiated under the influence of hundreds of corporate advisors while the public had limited to no access. The RCEP negotiation started in 2012, and yet, the minimum text of the negotiations has been released⁶. The 3.5 billion people including those in the least developed countries, who will be impacted by these agreements have been kept in the dark, while corporate lobbies were invited to advise government officials⁷. For instance, the RCEP drafters' did not mention or include provisions on labour-rights protections despite abusive exploitation of workers⁸ including forced labour and sexual violence against women and girls⁹; the agreement has failed to address provisions on labour rights.

The current ongoing negotiations with the Indo-Pacific Economic Framework (IPEF) also remain exclusive and lack transparency. The proposals, negotiating texts and related documents of each negotiating round are kept secret. The last two rounds of IPEF negotiations were not announced with sufficient time to ensure broad public engagement and interactions with negotiators from each nation. In December 2022, over 60 women's rights organisations (WROs), labour unions and civil society organisations (CSOs) signed a statement opposing Pinkwashing through the IPEF's Gender 'Upskilling Initiative'. The group is expressing strong concern about the potential aggravated impact of this framework on the worsening economic, social and political crisis¹⁰. Trade and investment deals are negotiated in a high-level process, without the meaningful participation of those who will be most affected, including women which will undermine labour rights, the right to information and freedom of expression.

⁶ Tansey, R., & Cossar-Gilbert, S. (2017). RCEP: A secret deal Trade talks fail the transparency and public participation test. *Policy*.

⁷ Press statement: Asia Pacific csos gets ready for the NoRCEP week of action. Retrieved from <https://apwld.org/press-statement-asia-pacific-csos-gets-ready-for-the-no-rcep-week-of-action-with-the-release-of-video/>

⁸ <https://www.business-humanrights.org/en/latest-news/rceps-lack-of-labour-rights-protections-raises-concerns-over-exploitation-in-palm-oil-and-rubber-production/>

⁹ <https://asiatimes.com/2020/12/the-environmental-blind-spot-in-asias-big-new-fta/>

¹⁰ Statement Rejecting Pinkwashing in the Indo-Pacific Economic Framework. Retrieved from <https://itforchange.net/statement-rejecting-pinkwashing-indo-pacific-economic-framework>

Free trade agreements violate peoples' right to development and sustainable development.

While paragraph 30 of Agenda 2030 strongly urges states to '*refrain from promulgating and applying any unilateral economic, financial or trade measures not in accordance with international law and the Charter of the United Nations that impede the full achievement of economic and social development, particularly in developing countries*' trade agreements that conflict with both Agenda 2030 and the UN Charter were pursued immediately after the agreement was signed. These agreements give multi-national corporations powers to challenge national policies designed to advance environmental protections, fiscal policies, labour rights, affirmative action policies, public health and public access to basic needs and services and human rights.

The impacts of the free trade and investment agreements have been detrimental to the achievement of the Sustainable Development Goals (SDGs) by 2030. The UNESCAP Progress Report in 2021 stated that with the current pace of governments and available data, the SDGs will not be achieved in the region before 2065.

United Nations (UN) experts have also warned that they 'are likely to have a number of retrogressive effects on the protection and promotion of human rights, including by lowering the threshold of health protection, food safety, and labour standards, by catering to the business interests of pharmaceutical monopolies, and by extending intellectual property protection'. Evidence suggests that handing over economic and public goods and services to private companies, most frequently through Public Private Partnerships (PPPs), does more harm than benefit for the protection of women's human rights¹¹.

In Indonesia, a citizens coalition battled water privatisation through a class action lawsuit against Jakarta's public water contract partner PAM Jaya after decades of receiving poor quality water at one of the highest water tariffs in Southeast Asia.¹² The Coalition of Jakarta Residents Opposing Water Privatisation, which included Solidaritas Perempuan (SP), a feminist organisation, gave evidences how affected communities were paying the highest costs in Southeast Asia and receiving contaminated water in return, which is

¹¹ https://world-psi.org/uncsw/wordpress/wp-content/uploads/2019/03/FactSheetCSW63_Privatisation.pdf

¹² Elyda, Corry, and Dewi, Sita W. (2013). The Jakarta Post: Water privatization challenged after 16 years. Retrieved from: <https://www.thejakartapost.com/news/2013/06/05/waterprivatization-challenged-after-16-years.html>

harming women's reproductive health and causing skin diseases. The two businesses, PT Palyja and PT Aetra produced earnings of \$29,00 and \$18,00 in a single year, respectively (2010) for water privatisation. In 2017, the country's supreme court recognized that water privatisation has violated peoples' human rights to water, despite the ongoing struggle to re-municipalize water.¹³

The current economic crisis is also exacerbated by the intensifying authoritarian and patriarchal governance. Communities demanding genuine sustainable development are faced with suppression, violence and criminalisation from their governments. Women human rights defenders are experiencing assault, hate speech, and are being silenced for voicing out their demands from their governments. For instance, in the Philippines, the government harassed journalists and media companies through politically motivated persecution and other legal action, a court convicted journalist, Maria Ressa of cyber libel in June while the government shut down the country's largest television network the following month¹⁴.

Free trade agreements usher in corporate capture and further undermine peoples' right to participation

a. Investor-State Dispute Settlement (ISDS) - a powerful weapon of foreign corporations to exploit resources and the people

Investor-State Dispute Settlement or 'ISDS' is a commonly used clause found in trade and investment agreements - both in bilateral and plurilateral treaties as well as in project contracts or Memorandum of Understandings (MoUs) between government and multinational corporations. The clause sets up a one-way dispute settlement mechanism that protects the investor's 'investment' from the partner government. It gives foreign investors the privilege of suing the government and demanding financial compensation for any actions, laws, regulations, and policies that threaten their investments - both real or perceived, as well as current and future profits. This has enabled corporations to sue the government in international and often secretive tribunals¹⁵, for passing laws and

¹³ Varagur, Kritika (2017) VOA: Massive Water Privatization Program to End in Jakarta After 18 Years. Retrieved from: <https://www.voanews.com/a/water-privatization-to-end-in-jakarta/4077224.html>

¹⁴ <https://apwld.org/women-journalists-in-asia-challenges-and-rewards/>

¹⁵ The Secret Threat That Makes Corporations More Powerful Than Countries (2016). Retrieved from <https://www.buzzfeednews.com/article/chrishamby/the-billion-dollar-ultimatum>

policies that are supposed to protect human rights, labour rights and the environment. ISDS has become such a proven and powerful weapon for foreign corporations to use to force a government to change laws and regulations in their favour, with a significant adverse impact on human rights.

There have been at least 20 ISDS cases filed by corporations as a result of the government's decisions to reverse the privatisation of public services since 2000¹⁶. An example is an ISDS case between the Guatemala government vs the Kappes, Cassidy & Associates (KCA), an American company about the El Tambor gold mining project. After years of local protests and litigation, the Guatemalan Supreme Court ordered a halt to the project in 2016 for lack of prior consultation with Indigenous Peoples. In late 2018, Nevada-based KCA initiated its lawsuit against the Guatemalan government at the International Centre for Settlement of Investment Disputes (ICSID) for over US\$400M. KCA alleges that the Guatemalan government violated the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) by not providing adequate protection to KCA's investment against community protests, effectively claiming that the government did not do enough to suppress local opposition to the company's mine. It also claims to have been harmed by the court-ordered suspension of its mine over a lack of government-led prior community consultation. KCA is taking advantage of a supranational arbitration system to try to strongarm the Guatemalan government into either greenlighting its controversial gold project or compensating the company for hundreds of millions of dollars in future profits it had little hope of ever earning¹⁷.

b. Big tech companies as players in Free Trade Agreements further violate the right to information and freedom of expression

Big Tech companies like Google, Amazon, Facebook, Microsoft and Apple are using free trade agreements to protect themselves from regulation. For example, Facebook lobbied the Trump administration to insert legal protection to shield online platforms from lawsuits into free trade agreements like United States-Mexico-Canada Agreement and the United States-Japan Trade Agreement¹⁸. This allows Big Tech firms to gain rights to

¹⁶ Data extraction from <https://investmentpolicy.unctad.org/investment-dispute-settlement>

¹⁷ <https://inequality.org/research/guatemala-mining-lawsuit/>

¹⁸ <https://www.nytimes.com/2019/10/07/business/tech-shield-trade-deals.html>

control the cross-border transfer of data without privacy restriction or localisation requirements. These powerful and unregulated private corporations control the digital domain on which everyone, from governments to families, has come to depend is the ultimate in privatisation.

States should not be surrendering their right to regulate these technologies and their owners. There is currently very little regulation to control these activities or hold the tech giants to account. Their global reach allows them to organise their corporate identities, locations and operations to bypass the limited laws and restrictions and tax obligations. This is the purpose of the new rules on 'electronic commerce' or 'digital trade' that their governments are securing for them through international free trade agreements¹⁹. The Trans-Pacific Partnership Agreement (TPPA) set the template for later negotiations. Currently, there is pressure to adopt these digital trade rules in the WTO and apply them on a global scale. Governments seem to be dazzled by unsubstantiated claims that adopting them will bring new development opportunities and potential cost savings when in reality these rules are designed to tie their hands. Few people outside those negotiations have been aware that these rules were being developed because of the secrecy that screens them from public view.

Free trade agreements undermine democratic spaces

Asia and the Pacific region has four of the seven 'largest' democracies in the world and most of the governments claim they practise democratic governance, yet democratic processes continue to be undermined in the region. Across Asia and the Pacific, we are seeing widening inequality, routine violations of women's rights and systemic threats to peace and security. The restoration of democratic and accountable governance has never been more urgent.

A functioning democracy takes into account the electorate's aspiration and must be accountable to citizens. Empowering women and other marginalised peoples to be part of free, prior and informed decision-making in all stages of democratic processes at the local, national, regional and international levels is necessary to ensure the rights of people to determine their development and livelihood priorities. Accountable and participatory

¹⁹ James, D. (2020). Digital Trade Rules: A disastrous new constitution for the global economy written by and for Big Tech.

democracy can be realised when parliamentary and people's oversight is integrated into all processes of governance. Yet, when it comes to trade and trade-related treaties, accountability and the needs of marginalised peoples, including women in all their diversities, are not prioritised.

Through the APWLD survey, we have found that members of parliament have a critical role in oversight of trade agreements which is even enshrined in constitution²⁰. However, there is very little information on how this is implemented in practice at the mandating and negotiation stages. At the last stage of ratification, parliament members will decide either to approve, examine further or reject. The exception is Canada where the optional tabling policy provides 21 days for debate at the federal level. As shared by members of the parliament from Malaysia and the Philippines at an MP roundtable organised by APWLD in 2021, MP has limited access to trade agreement procedures. For instance, in the Philippines, the veto power is in the president. There is no veto power coming from the House of Representatives, so there is no mechanism to stop it if it passes the chamber and goes to the concurrence of the Senate and the president later on. Meanwhile, in Malaysia, the government determines what needs to be consulted on and what needs to be discussed within parliament. It is a one-sided approach. Only individual MPs raised the matter at debates and government responses to that and it stops at that level. Therefore it is much easier for the government to push through many ideas without public consent or public oversight. It is evident that the role of members of parliament in trade agreements oversight in many countries is undermined and not well-functioning.

There is an urgent need for a restoration of democratic principles and processes through parliamentary oversight of trade and investment agreements signed by the executive branch. Studies have found that effective parliamentary oversight can lead to an improved process that brings in more people into decision-making and improved policies that link economic and human development.²¹ As democratically elected legislators, Parliamentarians, public hearings, and community consultations have the obligation to intervene and fulfil greater accountability, and transparency and negotiate a better deal based on human rights for the peoples.

²⁰: [Information on MP Oversight Excel APWLD .xlsx](#)

²¹ [Global Parliamentary Report 2017, Parliamentary oversight: Parliament's power to hold government to account. Inter Parliamentary Union \(IPU\)](#)

Recommendations

- a. Ensure transparency and accountability mechanisms that peoples and civil society groups are able to review and scrutinise free trade agreement proposals by the provision of access to negotiation materials and text.
- b. Conduct ex-ante, periodic and ex-post human rights and gender-impact assessments of trade and investment agreements. The assessment should be conducted by independent experts in consultation, with civil societies and affected communities.
- c. End ISDS in all existing trade and investment agreements and reject it in any circumstance to hold corporations accountable for their human rights violations, especially multinational and foreign investors.
- d. Ensure protectionist policies are in place to address violations of labour rights, further exploitation of natural resources, and other conditionalities of free trade agreements.
- e. Regulate the big tech companies to respect free and prior informed consent and must explicitly involve civil societies in the establishment of national legislation and policymaking on transparency in data collection, management and usage.
- f. Ensure that freedom of expression and independence of media is not compromised and that people have access to fact-based information. Provide support for media—including financial assistance and technical support – to make sure independent media can thrive.
- g. All countries need to establish both decision-making and oversight trade agreement committees. Decision-making should be guided by public health experts, multi-party parliamentary representatives, representatives of different levels of government and public administration, including local governments, independent human rights commissions where they exist, trade unions and civil society.