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**ActionAid Australia submission to
the JSCOT inquiry into the Regional
Comprehensive Economic
Partnership**

April 2021

1. Introduction

ActionAid Australia welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties inquiry into the Regional Comprehensive Economic Partnership agreement (RCEP).

ActionAid Australia supports women living in poverty to stand up and claim their human rights by collectively confronting the injustices they face. In more than 45 countries, ActionAid supports women to understand their rights, reflect on the people and systems that affect them, and harness their power to act with others to change their lives and positions in society. More than 60,000 Australians support our efforts to advance economic and climate justice for women and their rights in emergencies. ActionAid is a member of the Australian Council for International Development (ACFID) and partners with DFAT through the Australian NGO Cooperation Program.

ActionAid advocates for an international trade system that is underpinned by strong gender analysis and oriented around the realisation of human rights, gender equality and sustainable development. ActionAid is pleased that the final RCEP agreement does not include many of the most harmful provisions that were included in earlier leaked versions of the RCEP negotiation texts, such as investor-state dispute settlement (ISDS) and TRIPS Plus provisions on medicines. The limited scope and lack of enforceability of the e-commerce chapter is also welcome. Our organisation hopes that these shifts will continue to be reflected in future trade agreements to enable more just and equitable trade.

However, ActionAid remains concerned that the tariff liberalisation, trade in services and intellectual property rules included in the RCEP continue to pose significant risks to women's rights and gender equality. Research also shows that the RCEP's trade in goods provisions risk undermining sustainable development for developing country partners, with many developing countries likely to experience a worsening balance of trade for goods as a result of this agreement.¹ This is compounded by the failure to include enforceable commitments on human rights, labour rights and environmental law.

Beyond this, it is critical that the RCEP is re-evaluated in the context of COVID-19, with the agreement threatening to undermine governments' ability to respond to the health and economic impacts of the pandemic, particularly in developing countries that are bearing the brunt of this crisis. In this context, **ActionAid recommends that the Government does not ratify the Regional Comprehensive Economic Partnership Agreement in its current form.**

¹ Banga, R., Gallagher, K. P., and Sharma, P (2021) *RCEP: Goods Market Access Implications for ASEAN*, Boston University, GEGI Working Paper 045, https://www.bu.edu/gdp/files/2021/03/GEGI_WP_045_FIN.pdf

Recommendations

Recommendation 1: Australia should develop a procedure for the negotiation and ratification of trade agreements that ensures that:

- i. Negotiating texts are published throughout trade negotiations and the final text of agreements are published before each agreement is signed.
- ii. Mandatory public consultations are conducted prior to the commencement of trade negotiations and regular consultations are conducted throughout trade negotiations. Opportunities are provided for women's rights organisations and civil society groups, including in partner countries, to input into consultation processes.
- iii. JSCOT is mandated to review all trade agreement texts to assess their alignment with Australia's commitments on gender equality, human rights and the environment, and to make recommendations to Parliament prior to signature.
- iv. All trade agreements are subject to Parliamentary debate and the ratification of trade agreements is subject to a parliamentary vote on the whole agreement, not just the implementing legislation.

Recommendation 2: Targeted strategies should be introduced to increase women's representation in trade negotiations and related decision-making at local, national and regional levels.

Recommendation 3: Australia should conduct, and publicly release, independent gender, human rights, economic and environmental impact assessments of the RCEP prior to ratification, and during the course of implementation, in order to identify and respond to any potential negative impacts on women's rights and gender equality.

- i. Australia should commit to conducting independent ex-ante and ex-post gender impact assessments, along with broader social, economic and environmental impact assessments, for all trade agreements.

Recommendation 4: Australia should support the proposal by developing countries in the WTO for a waiver on certain provisions of the TRIPS agreements in relation to COVID-19 vaccine access and production.

- i. The Government should ensure that this waiver carries over to the RCEP given that a number of partner countries have been significantly impacted by COVID-19.

Recommendation 5: RCEP rules on national treatment and market access should be reviewed to ensure that they do not prevent the implementation of gender responsive industry policies or restrict governments from employing policy tools that are necessary to have an equitable response to the pandemic.

Recommendation 6: The RCEP should be renegotiated to explicitly exclude public services due to their critical role in advancing gender equality. This should include adopting a broad definition of public services, which ensures that all public services are excluded, irrespective of whether these services are managed by public or private providers.

Recommendation 7: The RCEP should be reformed to exclude intellectual property rules on seeds, which undermine women farmers’ traditional practice of collecting and reusing seeds.

Recommendation 8: The RCEP should be re-negotiated to include enforceable labour rights protections, based on the ILO conventions and enforced through state-to state-dispute process.

- i.* The RCEP should also incorporate binding human rights obligations for international investors, including a requirement for investors to undertake gender-responsive human rights due diligence.

Recommendation 9: Given the significant human rights, regulatory and financial risks of ISDS the Government should take steps to ensure that ISDS is permanently excluded from the RCEP.

Recommendation 10: Given the risks to human rights and gender equality, ActionAid recommends that the Government does not to ratify the Regional Comprehensive Economic Partnership Agreement in its current form.

2. Improved transparency and stakeholder consultations vital for gender analysis of trade agreements

The RCEP has received sustained public criticism in Australia and internationally for its lack of transparency and weak consultation processes as well as the failure of governments to conduct social and environmental impact assessments.² This has limited public and civil society engagement with, and input into, the agreement. It has also meant that the agreement has been developed with little consideration of the outcomes for women’s rights and gender equality, and there is a risk that women will be negatively impacted by key RCEP provisions.

RCEP negotiations have been notoriously secret, with negotiation texts kept secret throughout the negotiations, despite frequent calls for their public release. The final text of the agreement was not released until after the agreement was signed. Transparent policy development processes are essential for any strong and inclusive democracy. Transparency is particularly important in trade negotiations because trade agreements have the potential to impact on a broad range of domestic policy issues. Transparency is also important to ensure trade agreements are designed to support gender equality goals, as they enable women to provide independent analysis of the gendered impacts of the agreement’s provisions. The lack of transparency throughout RCEP negotiations has severely limited this analysis and input.

Inconsistent and limited stakeholder consultations have also restricted public and civil society input into the RCEP, including from women’s rights organisations. Stakeholder consultations

² Civil Society open letter demanding the release of the RCEP text (2019) <https://www.bilaterals.org/?open-letter-demanding-the-release>

were not held until 2015, three years after negotiations started.³ In contrast, business stakeholders had access to negotiators throughout this period, including through formal presentations at RCEP negotiations.⁴ Even after civil society consultations commenced, stakeholder input was impeded by the lack of access to negotiation texts and the structure of consultation sessions. At the Melbourne round of negotiations in June 2019, stakeholders, including ActionAid Australia, were only given five minutes to present at the consultation and there was no opportunity for discussion with negotiators. It remains unclear if and how this evidence was taken on board by negotiators.⁵

Reform of Australia's negotiation and ratification procedures is necessary to redress these concerns, by guaranteeing public and civil society participation in trade negotiations and parliamentary oversight of trade policy. This will help to ensure trade agreements are designed to have the best possible outcomes for communities in Australia and in partner countries and will go a long way in rebuilding public trust in trade agreements.

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- ii. Mandatory public consultations are conducted prior to the commencement of trade negotiations and regular consultations are conducted throughout trade negotiations. Opportunities are provided for women's rights organisations and civil society groups, including in partner countries, to input into consultation processes.
- iii. JSCOT is mandated to review all trade agreement texts to assess their alignment with Australia's commitments on gender equality, human rights and the environment, and to make recommendations to Parliament prior to signature.
- iv. All trade agreements are subject to Parliamentary debate and the ratification of trade agreements is subject to a parliamentary vote on the whole agreement, not just the implementing legislation.

Recommendation 2: Targeted strategies should be introduced to increase women's representation in trade negotiations and related decision-making at local, national and regional levels.

³ Friends of the Earth International et al (2018) *RCEP: A Secret Deal*, <https://www.tni.org/files/publication-downloads/foe-rcep-secret-deal-2-web.pdf>

⁴ Ibid, p. 14.

⁵ See evidence given by the ACTU and ETU to the JSCOT inquiry into the Indonesia-Australia Comprehensive Economic Partnership Agreement and the Australia-Hong Kong Free Trade Agreement on 27 August 2019, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommjnt%2Fcacb4d67-172f-4092-8083-35680f552cde%2F0005;query=Id%3A%22committees%2Fcommjnt%2Fcacb4d67-172f-4092-8083-35680f552cde%2F0000%22>

3. Gender, human rights or environmental impact assessments necessary to identify social and environmental impacts

The Government's failure to commission an independent gender impact assessment (GIA), along with broader human rights, economic and environmental impact assessments of the RCEP, means that there has been no independent assessment of the agreement's social and environmental impacts, including the impacts on gender equality and sustainable development in developing countries. This is despite DFAT's *Gender Equality and Women's Empowerment Strategy* committing Australia to advance equality and economic empowerment for women across all aspects of Australia's foreign policy, including its trade and aid programs.⁶

JSCOT recognised the importance of impact assessments in its report on the PACER Plus trade agreement, recommending that "part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the Agreement."²¹

ActionAid urges the Government to conduct independent gender, human rights, economic and environmental impact assessments of the RCEP prior to ratification and during the course of implementation. It is also critical that independent social, environmental and economic impact assessments are conducted for all Australian trade agreements.

Recommendation 3: Australia should conduct, and publicly release, independent gender, human rights, economic and environmental impact assessments of the RCEP prior to ratification, and during the course of implementation, in order to identify and respond to any potential negative impacts on women's rights and gender equality.

- i. Australia should commit to conducting independent ex-ante and ex-post gender impact assessments, along with broader social, economic and environmental impact assessments, for all trade agreements.

4. RCEP must be evaluated in the context of COVID-19

COVID-19 is the world's largest global humanitarian crisis, with the human costs of the pandemic worsening as the crisis endures. The World Bank is now predicting that an additional 143 - 163 million people will be pushed into extreme poverty by 2021⁷ and women and girls already living in poverty and exclusion are bearing the brunt of this crisis.

COVID-19 has also demonstrated the fragility of global supply chains and exposed serious failings in the global trade system, particularly in regard to equitable access to medicines and healthcare, workers' rights, food security, and governments' right to regulate. In this context, it is critical that the RCEP is assessed against its ability to support member governments to

⁶ DFAT (2016), *Gender Equality and Women's Empowerment Strategy*, <http://dfat.gov.au/about-us/publications/documents/gender-equality-and-womens-empowerment-strategy.pdf>

⁷ World Bank (2021) *Updated estimates of the impact of COVID-19 on global poverty: Looking back at 2020 and the outlook for 2021*, 11 January, <https://blogs.worldbank.org/opendata/updated-estimates-impact-covid-19-global-poverty-looking-back-2020-and-outlook-2021>

respond to this crisis. Yet, there is no reference to COVID-19 in the RCEP text, and ActionAid is concerned that the agreement takes a business-as-usual approach at a time when genuine reform is needed to ensure that trade policy supports strong national and international response and recovery efforts.

4.1. No provisions to support access to medicines

ActionAid welcomes the decision to remove many of the TRIPS plus provisions that were proposed during RCEP negotiations and included in earlier leaked versions of the RCEP text, such as patent term extension and data exclusivity. However, there is concern that the strong IP enforcement provisions included within Section J of the Intellectual property chapter could impact on the legitimate trade in generic medicines by increasing the risk of seizure of legitimate medicines that are suspected of being counterfeit.⁸ It is also unclear how the inclusion of timebound party specific transition periods on some IP enforcement provisions will impact on TRIPS transition periods for Least Developed Countries (LDCs), with the risk that this could shorten transition periods for LDCs.⁹

ActionAid also notes that the RCEP does not include provisions that support equitable access to medicines at a time when governments, particularly in developing countries, are facing challenges providing affordable access to COVID-19 medicines and vaccines. This is significant in a context where developing countries are working within the WTO to request a temporary suspension on certain TRIPS provisions in order to facilitate affordable, timely and equitable access to COVID-19 vaccines and medicines.¹⁰ ActionAid urges the Government to support developing countries proposal for a TRIPS waiver in the WTO and to ensure that this waiver carries over to the RCEP agreement.

Recommendation 4: Australia should support the proposal by developing countries in the WTO for a waiver on certain provisions of the TRIPS agreements in relation to COVID-19 vaccine access and production.

- i. The Government should ensure that this waiver carries over to the RCEP given that a number of partner countries have been significantly impacted by COVID-19.

4.2. Governments' policy space restricted

COVID-19 has reiterated the need for governments to have the policy flexibility and regulatory space to adapt or implement new policies in response to emerging challenges and changing circumstances. This is particularly important for developing countries, which need access to the full suite of policy tools to respond to the growing impacts of the pandemic while continuing to progress their development agendas.

⁸ Text of the RCEP, Section J: Enforcement of Intellectual Property Rights, <https://www.dfat.gov.au/sites/default/files/rcep-chapter-11.pdf>

⁹ Text of the RCEP, Annex11A Party-Specific Transition Periods, <https://www.dfat.gov.au/sites/default/files/rcep-chapter-11-annex-11a.pdf>

¹⁰ The South Centre (2020) Proposal by India and South Africa to waive certain provisions of the WTO TRIPS Agreement to support the global covid-19 pandemic response, <https://www.southcentre.int/wp-content/uploads/2020/11/Note-on-India-SA-proposal-waiver-TRIPS.pdf>

The need for strategic and gender responsive industry policies is particularly evident in the wake of the pandemic, with support for local industries critical for economic recovery. ActionAid is concerned that the national treatment and market access rules in both the goods and investment chapters limit the ability of governments to develop these industry strategies. This could undermine developing countries' COVID-19 recovery efforts by restricting governments from supporting critical local industries, such as manufacturing, pharmaceutical and agricultural industries. It could also undermine progress towards the Sustainable Development Goals by locking developing countries into an economic model underpinned by low-value production and low-wage employment at the bottom of global supply chains and restricting the transition to value-added production and the development of decent employment.

Recommendation 5: RCEP rules on national treatment and market access should be reviewed to ensure that they do not prevent the implementation of gender responsive industry policies or restrict governments from employing policy tools that are necessary to have an equitable response to the pandemic.

5. Risks to women's rights and sustainable development

5.1. Tariff liberalisation and trade in services provisions reduce funding for public services and entrench women's unpaid care burden

ActionAid is concerned that RCEP rules could undermine women's access to public services, which are critical for the redistribution of women's disproportionate unpaid care burden and vital to the realisation of gender equality. Trade tariffs have been a critical source of revenue for financing public services in low-income countries,¹¹ and tariff liberalisation in the RCEP risks worsening resourcing gaps in developing countries and further undermine access to public and essential services. For example, research by Rashmi Banga, Kevin P. Gallagher and Prerna Sharma found that Malaysia will lose approximately US \$2.1 billion per year in revenue loss due to RCEP tariff liberalisation. Thailand will lose approximately US \$800 million per year and Cambodia and Vietnam will lose US \$334 million and US \$192 million per year respectively.¹² This loss in revenue is particularly concerning at a time when additional resources are urgently needed to fund COVID-19 response and recovery initiatives, including expanding healthcare and other public services.

The trade in services rules in the RCEP could also facilitate the privatisation of public services, by opening up services to foreign investment and limiting government's ability to regulate these services.¹³ ActionAid notes that many member countries, including Australia, have opted to use a negative list for services, which means that all services are covered under the agreement unless specifically excluded. Developing countries do have the flexibility of using a

¹¹ World Bank (2021) *Taxes on International Trade: Least Developed Countries*,

https://data.worldbank.org/indicator/GC.TAX.INTT.RV.ZS?locations=XL&year_low_desc=false

¹² Banga, R., Gallagher, K. P., and Sharma, P (2021) *RCEP: Goods Market Access Implications for ASEAN*, p. 29.

¹³ DFAT (2021) RCEP National Impact Analysis, Attachment II: Regulation Impact Statement.

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/RCEP/Treaty_being_considered

positive list, which means that only identified services are covered by the agreement. However, there is a requirement that all countries transition to a negative list within six years of entry into force of the Agreement, which could increase the number of services covered by the agreement for developing country partners.

Additionally, while the RCEP does exclude public services, the narrow definition of these services to those “supplied neither on a commercial basis nor in competition with one or more service suppliers”¹⁴ raises questions about the effectiveness of these exclusions in a context where many public services are delivered alongside private services.

The privatisation of public and essential services such as healthcare, education, social services, water and utilities can reduce their accessibility and affordability as service costs increase and the availability of services decreases. This hits poorer communities the hardest, with increasing costs meaning vulnerable communities can miss out on vital public services altogether. Additionally, when access to public and essential services decreases, women’s unpaid work burden increases, as they have to step-in to fill the gap.

Recommendation 6: The RCEP should be renegotiated to explicitly exclude public services due to their critical role in advancing gender equality. This should include adopting a broad definition of public services, which ensures that all public services are excluded, irrespective of whether these services are managed by public or private providers.

5.2. Small-scale farmers disadvantaged

Women farmers are disadvantaged by the IP chapter of the RCEP, which requires member governments to ratify or ascend to the Patent Cooperation Treaty¹⁵ and “provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.”¹⁶ This establishes monopolies on seeds and can prevent women farmers from undertaking the traditional practice of collecting, saving, selling and reusing seeds. From ActionAid’s experience, this can have devastating impacts on women farmers who not only lose potential income from selling seeds, but can also see their costs increase as they have to purchase seeds from multinational corporations. Women farmers are particularly disadvantaged because they have less access to the credit needed to purchase commercial seeds, which puts their livelihoods at risk. ActionAid urges the Government to take action to ensure that women farmers are not prevented from saving and using seeds.

Recommendation 7: The RCEP should be reformed to exclude intellectual property rules on seeds, which undermine women farmers’ traditional practice of collecting and reusing seeds.

5.3. Workers’ rights threatened

COVID-19 has raised new concerns about labour rights abuses for workers at the bottom of supply chains, with women workers hit the hardest by widespread job losses, particularly in

¹⁴ Article 8.1(o) of the RCEP, <https://www.dfat.gov.au/sites/default/files/rcep-chapter-8.pdf>

¹⁵ Text of the RCEP, Article 11.9

¹⁶ Text of the RCEP, Article 11.36.3(b)

the garment and manufacturing industries. This has demonstrated the need for reform of trade agreements so that rules are designed to support the development of decent jobs and transition to value-added production, in line with developing countries' development agendas.

The market access and national treatment provisions in the RCEP could increase the market access, power and flexibility of international corporations. In contrast, the agreement does not include any enforceable labour rights protections and places no obligations on investors to uphold human rights.¹⁷ This consolidates a global economic model that locks developing countries into the bottom of global supply chains and fosters a race to the bottom on wages and conditions, with women workers bearing the brunt of low-wages and exploitative working conditions.¹⁸ To ensure workers' rights are not further undermined, the RCEP should be reformed to include enforceable labour rights provisions and binding human rights obligations for international investors.

Recommendation 8: The RCEP should be re-negotiated to include enforceable labour rights protections, based on the ILO conventions and enforced through state-to state-dispute process.

- ii. The RCEP should also incorporate binding human rights obligations for international investors, including a requirement for investors to undertake gender-responsive human rights due diligence.

6. ISDS must be permanently excluded

ActionAid welcomes the exclusion of investor-state dispute settlement (ISDS) from the RCEP agreement. However, there remains a risk that this will still be included in the agreement, with governments agreeing to review this within two years. ISDS enables foreign investors to sue governments in international tribunals for policy decisions that impact on their investments. Cases can not only run into the millions of dollars, but they can also result in 'regulatory chill' as governments either delay the implementation of a policy measure while an ISDS case is being decided; or resolve against implementing a policy measure due to concern that it will lead to an ISDS claim.³⁵ In this context, it is critical that ISDS is permanently excluded from the RCEP.

Recommendation 9: Given the significant human rights, regulatory and financial risks of ISDS the Government should take steps to ensure that ISDS is permanently excluded from the RCEP.

¹⁷ Trade justice movement (2018) *Patriarchy and Profit: A feminist analysis of the global trade system*,

<https://www.tjm.org.uk/resources/reports/patriarchy-and-profit-a-feminist-analysis-of-the-global-trade-system>

¹⁸ Clean Clothes Campaign (2019) *Will women workers benefit from living wages? A gender-sensitive approach to living wage benchmarking in global garment and footwear supply chains*, https://cleanclothes.org/file-repository/ccc_dec2019_luginbuhl_lw_gender.pdf/view

7. Developing countries lose out from trade in goods provisions

International trade can play an important role in facilitating economic growth and increasing employment opportunities when it is aligned with governments' industry strategies and development goals. However, in their research into the impact of the trade in goods provisions in the RCEP on ASEAN countries, Rashmi Banga, Kevin P. Gallagher and Prerna Sharma found that the RCEP will result in a declining balance of trade in goods for ASEAN as a whole, as "Imports into ASEAN will increase much more than its exports."¹⁹ Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam will all experience a deterioration in their balance of trade due to a "trade diversion within the RCEP group towards more efficient exporters which adversely impacts the existing exports of ASEAN countries."²⁰

This raises serious questions about the impact of the RCEP on developing country economies, given the risk that a worsening balance of trade can "adversely impact GDP growth and employment".²¹ This is particularly concerning in the context of COVID-19, in which developing countries urgently need to facilitate economic growth and the development of decent employment in order to respond to, and begin to recover from, the health and economic impacts of the pandemic.

It is also worth noting that these risks to developing countries, as well as the significant risks to human rights and gender equality, come with little benefit to Australia, with DFAT's National Interest Analysis stating:

"Given the relative quality of Australia's existing FTAs with RCEP parties, including the CPTPP, we do not expect RCEP goods market access commitments to provide Australia with additional market access with our current FTA partners"²²

In this context, ActionAid urges the Government not to ratify the agreement in its current form, and instead take steps to reorient its trade policy to respond to the new COVID-19 reality. This includes by centring human rights, gender equality and sustainable development and ensuring trade provision support COVID-19 response and recovery efforts.

Recommendation 10: Given the risks to human rights and gender equality, ActionAid recommends that the Government does not to ratify the Regional Comprehensive Economic Partnership Agreement in its current form.

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¹⁹ Banga, R., Gallagher, K. P., and Sharma, P (2021) *RCEP: Goods Market Access Implications for ASEAN*, p 3.

²⁰ Ibid. p. 3.

²¹ Ibid. p. 30.

²² DFAT (2021) RCEP National Impact Analysis, Attachment II: Regulation Impact Statement.