Implications of inclusion of ISDS clause in Trade and Investment Agreements for Right to Water (and FSN)

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Trade, Investment and Food Security: Designing Rules for Sustainable Food Systems
1. The Right to Water and Sanitation (RtW&S) is necessary to ensure Food & Nutrition Security (FSN), esp. for vulnerable communities.

2. RtW&S has been strengthened significantly in the last few years

3. But ISDS has also grown exponentially, and is a potential threat to any public interest regulation/ law, and has been used to undermine Right to Water & Sanitation/ FSN.

4. Now is the time to get rid of ISDS, and this should be a priority for all governments.
Right to safe drinking water and sanitation and the Right to food:

- Access to safe drinking water and sanitation crucial for health and good nutrition;
- Access to water indispensable for food producers, and for the realization of the right to food of producers.
Right to Water victories in international law

• UNGA: Right to safe drinking water/sanitation essential for full enjoyment of life & all human rights (2013)

• UNHRC: agreement on the comprehensive normative content of the rights to clean drinking water and sanitation (2013)

• UN Special rapporteur on Right to Water (2014)
  – States must prevent third parties from interfering in any way with people’s enjoyment of the Right to Water and sanitation
  – Sustainability is a fundamental human rights principle, and is essential to the realization of the human rights to water & sanitation.
Criteria and Principles for realizing RtW&S

• RtW&S entitles everyone to access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.

• water is a public good, and its governance is rooted in principles and values that are central to good public sector governance:
  - Always acting in the public interest at all times
  - ensuring accountability for effective water management
Implications of RtW&S victories

• **Paves way for improved national legislation**
  And for regulations and policies that surpass the standards set by international human rights law, that go beyond the minimum legal requirement.

• **Investors can be required to**
  1. consider water impact while deciding the location of a plant
  2. use water efficiently and dispose of water responsibly
  3. prioritize sustainable water management and human rights principles
Some examples of ISDS cases

Right to water for drinking water & sanitation specifically

- Vivendi v. Argentina (1997)
- Azurix v. Argentina (2001)
- Biwater v. Tanzania (2005)
- Urbaser and CABB v. Argentina (2007)

Right to water, as a prerequisite for FSN and right to health

- Methanex v. USA (1999)
- Pac Rim v. El Salvador (2009)
- TransCanada v. USA (2016)
Growth in ISDS cases over three decades

1987-2014: 608 claims
Source: figure 2

1987-2017: 817 claims
(as of September 30, 2017, UNCTAD)
NAFTA renegotiations and ISDS

- 350,000 signatures on letter to congress representatives
- Civil society groups in Canada, Mexico and the United States want it to be dropped
- U.S. proposal on ISDS:
  - violation of the "minimum standard of treatment" no longer grounds to request an arbitration panel
  - eliminate "indirect expropriation" as an argument a foreign investor could use to file a claim.
- U.S. business & agri-business groups opposes it
End ISDS!

https://petitions.signforgood.com/EndISDS/?code=PCGTW

For more information on this North American Campaign, please visit www.isdscorporateattacks.org