GlobalResearch
Center for Research on Globalization

Ousted Pakistani Prime Minister Imran Kahn Was Challenging Investment Treaties that Give Corporations Excessive Power

Mexico and many other countries are facing anti-democratic corporate lawsuits like the case that pushed Khan to withdraw from international investment agreements.

By Manuel Pérez-Rocha
Global Research, April 19, 2022
Inequality.org 14 April 2022

Region: Asia
Theme: Intelligence
In-depth Report: PAKISTAN

***

The parliament of Pakistan recently ousted Prime Minister Imran Khan in a no-confidence vote. The reasons for the former cricket star's political downfall are not entirely clear. His economic policies were a mixed bag at best, but he deserves credit for one thing: he'd taken a bold stand against international investment agreements that give transnational corporations excessive power over national governments.

In fact, Khan had begun a process of terminating 23 bilateral investment treaties (BITs) that allow corporations to sue governments in unaccountable supranational tribunals. Instead, he believed such disputes should be handled through local arbitration.

Khan had learned the hard way how these so-called "investor protection" agreements can tie the hands of government officials, limiting their ability to act in the public interest. In 2019, a year after Khan became Prime Minister, a tribunal (three private judges behind closed doors, to be clear) of the World Bank's International Centre for Settlement of Investment Disputes (ICSID) ordered Pakistan to pay an Australian mining company $6 billion in compensation for denying a mining permit on environmental grounds.

A similar suit by the same company, Tethyan Copper — a subsidiary of Canadian giant Barrick Gold, through a different tribunal under the International Chamber of Commerce brought the total amount Pakistan owed Tethyan to $11 billion.

The ICSID ruling concluded that Pakistan had violated a BIT with Australia by failing to provide Tethyan "fair and equitable treatment," a vaguely worded obligation that corporate plaintiffs love to exploit. The tribunal also decided that denying the license for Tethyan's

Reko Diq gold and copper project was tantamount to "indirect expropriation" — never mind the fact that the Supreme Court of Pakistan had ruled the permit invalid because the company had violated national mining and contract laws.

ICSID's response was to order Pakistan to draw billions of dollars from its public coffers to compensate Tethyan for their lost *expected future profits.* The company had only invested about $150 million in the project.

Khan's government went to great lengths to reverse the decision, highlighting that the $6 billion ICSID award alone represented about 2 percent of its GDP, or 40 percent of its cash reserves in foreign currency. The government argued that international tribunals must realize that their decisions have an impact on state policies, including poverty alleviation. But the U.S. District Court, responsible for enforcing the ICSID ruling, declared that Pakistan's hopes of annulling the award were nothing more than "wishful thinking."

The ruling against Pakistan under this investor-state dispute settlement system is even more unfair as it came just after the IMF had approved a $6 billion loan to the country that imposes harsh austerity measures on public spending. To overcome this financial straitjacket, Pakistan had no choice but to give in to this concerted attack by financial institutions and international courts and the world's second-largest gold mining company.

On March 20, Barrick Gold announced that it had reached a settlement with Pakistan that will allow the company to resume their controversial Reko Diq mining project in the province of Balochistan. This is a disturbing example of international investment treaties' *chilling effec*t on environmentally responsible policies and public interest regulations.

Other countries facing similar corporate lawsuits must pay special attention to this case. Mexico, for example, is being sued by the U.S. mining company Odyssey Marine Exploration for $3.54 billion. Filed before the ICSID in 2019 under the terms of NAFTA, the suit challenges Mexican authorities' decision to deny a seabed mining permit to extract phosphate (used for fertilizers) in the Gulf of Ulloa, off the coast of Baja California Sur. The Puerto Chale Fishing Cooperative had strongly opposed the project, on the grounds that their members' livelihoods depend on the marine areas and seafloor that Odyssey is intent on dredging.

After the company retaliated by bringing a claim to ICSID, the Fishing Cooperative and the Center for International Environmental Law (CIEL) attempted to submit an *amicus curiae* brief to share their concerns. They also argued that the decision by Mexico's Ministry of Environment and Natural Resources (Semarnat) to deny the exploitation permit was consistent with the precautionary principle recognized in national and international law. The ICSID tribunal refused to admit the brief. (https://bit.ly/3umy8dL)

In their recent report "A Sea of Trouble: Seabed Mining and International Arbitration in Mexico," Jen Moore of the Institute for Policy Studies and Ellen Moore of Earthworks explain that such refusals are common in this arbitration system designed to favor transnational corporations. The majority of the panel, made up of highly paid corporate lawyers, essentially asserted that the cooperative's contribution was "irrelevant."

One of the three arbitrators, Phillippe Sands, did express a dissenting opinion. Not only should the cooperative be heard, Sands argued, but that the failure to admit its concerns exposes the failings of the arbitration system, with potentially far-reaching impacts on

environmental protection policies in Mexico.

With Khan's ouster in Pakistan, it's unclear what will happen to his government's efforts to withdraw from Bilateral Investment Treaties and the invest-state dispute settlement regime. But resisting this anti-democratic system should not be a partisan issue. All governments should have the authority to adopt economic measures in the public interest — without the threat of expensive corporate lawsuits.

*

Note to readers: Please click the share buttons above or below. Follow us on Instagram, Twitter and Facebook. Feel free to repost and share widely Global Research articles.

Updated and translated from the original Spanish version available in La Jornada.

Manuel Pérez-Rocha is a researcher at the Institute for Policy Studies. Follow him on Twitter: @ManuelPerezIPS

Articles by: Manuel Pérez-Rocha