

Investor-State Dispute Settlement: A Barrier to Global Climate Action

Overview

At a time when it is imperative that governments accelerate the pace and ambition of climate and environmental action the Investor-State-Dispute-Settlement (ISDS) provisions in international trade and investment agreements are a **“daunting obstacle”** to policy changes to address the climate emergency and to **fulfil international legal obligations**.ⁱ

ISDS disputes are litigated not in public courts with impartial judges but in private and secret arbitration and are **rife with conflicts of interest**.

Originally ISDS provisions in trade and investment agreements were sold as protection from expropriation. However, given the high financial and reputational costs for states, and the deterrent effect on future investment, expropriations are unlikely to occur. Furthermore, the **World Bank and governments provide insurance against such expropriation**. Rather, ISDS is being used as a tool for large corporations, most prominently fossil fuel investors, to challenge climate laws and obtain multi-million taxpayer-funded payouts. This has particularly dire consequences for southern countries attempting to address the climate crisis, e.g. Colombia, at a conservative estimate, faces ISDS claims amounting to 13% of its annual budget.

“Investor–state dispute settlements don’t just mean growing debt burdens for countries: they are also a barrier to action on the climate crisis”. Joseph Stiglitz

ISDS has recently taken on greater urgency for the UK, as it is **facing a legal challenge** by a fossil fuel company as a result of a ruling by the High Court that blocked the Whitehaven mine on environmental grounds.

As the UK prepares for COP30, **it should confront ISDS as a systemic obstacle to climate action and commit to reform**. This must include leadership on the global stage and a review of its own investment treaties.

Legal Action against the UK

Investors in the West Cumbria coal mine are suing the UK in international arbitration, after the UK High Court quashed the mine’s planning permission over its climate impacts last year (2024).

The controversial major coal mine project, was opposed by large community mobilisations and environmental campaigns, leading to a **domestic legal challenge**. The West Cumbria Mining, despite **withdrawing** its application for planning permission, subsequently, on 8 August 2025, lodged a request for international arbitration proceedings against the UK Government using ISDS provisions in the UK-Singapore Bilateral Investment Treaty.

Impact on democratic sovereignty and climate action

ISDS allows private companies to raise disputes with states, not via national courts but in ad hoc international tribunals. Extractive companies, and in particular fossil fuel companies, are using ISDS provisions in Investment and Free Trade Agreements to block climate actions by governments or to seek millions of pounds in compensation.ⁱⁱ These actions include the **phase-out of coal-fired power, bans on offshore exploitation of oil and gas**, and moves to **strengthen environmental impact assessments** on high-emissions natural resource projects.

Besides the million or billion-dollar awards shouldered by the taxpayer, countries point to the **“regulatory chill”** caused by the mere threat of cases: the climate Ministers of Denmark and New Zealand stated that the threat of ISDS **has prevented their governments from instituting ambitious climate policies**.

Nearly one-third of fossil fuel arbitrations are settled before the tribunal reaches a final award, and with almost all these cases being confidential, **the implications of the settlement for public policy and states’ regulatory and fiscal space is unquantifiable**.ⁱⁱⁱ

“International investment agreements may lead to ‘regulatory chill’... [and to] countries refraining from or delaying the adoption of mitigation policies, such as the phasing out fossil fuels” The 2022 Report of the Intergovernmental Panel on Climate Change

A quantitative analysis of investment arbitrations identified that **the fossil fuel and mining industries are the most litigious of all the industries^{iv} and have won over \$100 billion in awards.^v** The majority of fossil fuel and mining claims filed between 1995 and 2021 were brought by investors from just five countries - and **one of these five was the UK.^{vi}** The average arbitration claim related to a **fossil fuel company is \$1.4 billion.** For low- and middle-income governments who wish to adopt policy changes and transition away from fossil fuel mining, ISDS is economically severely damaging.

Glencore vs. Colombia. The Cerrejón open-pit coal mine, owned by Glencore and registered on the London Stock Exchange, is the largest in Latin America. The persistent expansion of the mine has led to environmental degradation, health issues and serious human and indigenous rights impacts. After Colombia’s Constitutional Court suspended a proposed expansion to the mine in 2017 citing such concerns, Glencore sued the Colombian government claiming USD 489 million in damages. This was despite the fact that the challenged measures affected only a small part of the Cerrejón Mine, which continues to operate, produce coal, and yield extraordinary profits - in 2022 alone these were USD 5.6 billion.

The Colombian government has expressed significant dissatisfaction over its ISDS commitments. As of last year, **Colombia’s pending ISDS claims exceeded \$13 billion,** an amount equivalent **to over 13% of the government’s annual budget^{vii}** and further potential ISDS claims relating to fossil fuel projects are possible.^{viii} ISDS claims are draining money from the Colombian budget, this has costly implications for the implementation of the Peace Process which in 2017, was, at a conservative estimate, to cost \$42 billion.^{ix}

Does ISDS increase investment?

In recent years, many countries have terminated or refrained from signing agreements that include ISDS, such as Brazil, Indonesia, and South Africa. The Governments of **Australia** and **New Zealand** have pledged not to include ISDS in future trade agreements, leading to ISDS exemptions in recent FTAs signed with the UK. In April 2024, the US indicated **it was actively reviewing options to remove ISDS** from its existing trade deals, after already committing to

exclude it from future agreements; and as an interim measure, with the Colombia-US FTA, in January 2025, an explanatory note was added clarifying and restricting specific interpretations of investor rights related to ISDS.

Counter-arguments offered by proponents of ISDS often centre on the importance of ISDS in investment decisions. However, comprehensive and systematic reviews showed that investors do not consider ISDS a relevant factor when making investment.^x A 2024 report commissioned by the **UK’s Department for Business and Trade** on the impact of investment agreements for UK-based businesses’ investment decisions found that **“almost all of the businesses interviewed were not aware of IIAs (international investment agreements)”**. There is little evidence that investment treaties provide economic benefits or attract cross-border investments.^{xi}

The UK Government recognised these arguments in its February 2024 decision to withdraw from the Energy Charter Treaty (ECT) as the **ISDS protections for fossil fuel investments in this Treaty were deemed to be incompatible with the Paris Agreement requirements to limit global warming to 1.5°C.** This raises an important question as to the UK’s approach to ISDS with other nations, such as Colombia.

Colombia and the UK

“We [the UK] withdrew from the energy charter because of concerns that its ISDS provisions would impede our policy to phase out fossil fuels. It would be somewhat inconsistent to do that while compelling Colombia to abide by similar ISDS provisions in our treaty with it.” Lord Des Browne, UK parliament

As Colombia and the UK seek to phase out fossil fuels, ending ISDS in the Colombia-UK BIT would better equip both countries to fulfil their nationally determined contributions (NDCs), which are at the heart of the Paris Agreement and embody the efforts by each country to reduce national emissions and adapt to the impacts of climate change.

“States and taxpayers are paying fossil fuel companies compensation for trying to take measures to advance the just transition, diverting public funding from investments in renewables, adaptation and workers’ social protection.” UN Special Rapporteur on Climate and Human Rights

The majority of ISDS cases today challenge legitimate public policies enacted by democratic governments in countries with independent judiciaries.^{xii} The surge in fossil-fuel ISDS claims could not come at a worse time.

Humanity has reached the now or never point for achieving the Paris Agreement, a goal that requires reducing CO2 emissions by 45 per cent by 2030 and achieving net zero emissions by 2050.

“States should review their existing trade and investment agreements, and also settlement mechanisms for litigation between investors and States to ensure they do not limit or restrict efforts relating to climate change and human rights” Inter-American Court of Human Rights advisory opinion on the climate emergency and human rights

The world faces a debt and development crisis. ISDS payouts massively increase the debt burden and impede governments’ ability to take climate action.

Therefore, it is imperative that an international agreement to end ISDS is on the COP agenda and addressed by countries and civil society organisations alike.

An International Court of Justice Advisory Opinion, highlighted that States’ have a **legal obligation** to protect the climate system, including by addressing fossil fuel production.

The UK should take a leadership role at COP30 and review its own investment treaties. **An important first**

step would be the UK and Colombia to come to the table on the Colombia-UK BIT.

Recommendations

Investor-State Dispute Settlement is incompatible with global climate imperatives. Ahead of COP30, the UK has an opportunity to:

- **Initiate a renegotiation of the Colombia – UK Bilateral Investment Treaty to remove ISDS.**
- **Commit to excluding ISDS in all future trade and investment agreements.**
- **Launch a review of the UK’s existing investment treaties to assess alignment with climate ambitions.**
- **Promote international cooperation on ISDS reform at COP30 and within the UNFCCC process.**

ⁱ UN Special Rapporteur, David R. Boyd, Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights

ⁱⁱ Prioritizing Profits over People and Planet: The Devastating Impacts of Large Businesses on the Right to a Clean, Healthy and Sustainable Environment, UN Special Rapporteur on human rights and the Environment

ⁱⁱⁱ Investor–State Disputes in the Fossil Fuel Industry, IISD REPORT
^{iv} ibid

^v David Boyd op cit.

^{vi} Manuel Perez-Rocha, “Missing from the climate talks: corporate powers to sue Governments that limit pollution”, Foreign Policy in Focus (Institute for Policy Studies, November 2021). Cited in the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights

^{vii} Report of the International Mission to Colombia: Stop ISDS

^{viii} Investment Treaties are undermining global Transition E3G f

^{ix} Lea Di Salvatore, 2021, Investor–State Disputes in the Fossil Fuel Industry, International Institute for Sustainable Development, at pp. 17-19

^x Columbia Centre on Sustainable Investment (CCSI); Investor–State Disputes in the Fossil Fuel Industry, IISD REPORT; the OECD found little evidence that investment treaties provide economic benefits, cited in the UN Special Rapporteur on Environment and human rights: a systematic review of 74 studies found the effects were negligible or zero; Mary Hallward-Driemeier, 2003. "Do bilateral investment treaties attract foreign direct investment? Only a bit - and they could bite," Policy Research Working Paper Series 3121, The World Bank; A 2020 meta-analysis of 74 separate studies found “robust evidence that the effect of ISDS is so small as to be considered zero” on FDI; Does Investor Protection Increase Foreign Direct Investment? A Meta-Analysis, Josef C. Brada, Zdenek Drabek, Ichiro Iwasaki; The Importance of BITs for Foreign Direct Investment and Political Risk Insurance: Revisiting the Evidence, Yearbook on International Investment Law and Policy 2009/2010, K. Sauvant, ed., Oxford University Press, 2010: There is also little evidence to show that investment decisions are conditional upon the presence of ISDS provisions.

^{xi} Impact of International Investment Agreements on outward direct investment

^{xii} David R. Boyd op. cit. <https://docs.un.org/en/A/78/168>