How far did Petro go in reforming trade and investment treaties?

By Louise Winstanley

Based on the premise that trade and investment treaties grant excessive power to transnational corporations and limit the sovereignty of states, the government of Gustavo Petro promoted a series of reforms that incorporated recommendations from international experts and even sought to go further. Drawing on specific cases, this article examines how these treaties have affected Colombia's regulatory sovereignty and evaluates the main changes that Gustavo Petro's administration promoted to strengthen the state's regulatory capacity and rebalance the relationship between the protection of foreign investment and the public interest.

What is ISDS?

The ISDS mechanism is in over 2,600 investment treaties and trade agreements worldwide. By using ISDS foreign investors can bypass domestic courts and sue states over public-interest regulation, while states and domestic companies do not have equivalent rights under the same mechanism. The dispute is heard by three commercial arbitrators appointed on an ad hoc basis, to tribunals that happen in secrecy with little transparency. The process has been criticised for conflicts of interest and limited accountability.

Authoritative voices recognise that ISDS constrains states' ability to meet their international obligations. The Inter-American Court of Human Rights called on states to "review their existing trade and investment agreements…to ensure they do not limit or restrict efforts relating to climate change and human rights". The Intergovernmental Panel on Climate Change recognised the danger ISDS poses to climate action, noting that it could lead countries to refrain from, or delay, adopting mitigation policies such as phasing out fossil fuels. Denmark's Climate Minister acknowledged that phasing out fossil fuels before 2050, would leave Denmark with liability for expensive compensation claims under ISDS.

Colombia experienced a sharp rise in ISDS claims from 2018 onwards. By 2026, there were 32 known claims against Colombia in International Investment Arbitration (IIA). In 2023, with 23 claims against Colombia, the value of the claims was conservatively estimated at over US$13 billion, equivalent to over 13% of Colombia's annual budget.

ISDS democratic sovereignty and fiscal space

The fiscal exposure created by ISDS is substantial and fossil fuel and mining companies alone had won more than US$100 billion in awards by 2023. However, large awards are not limited to fossil fuel companies: in Telefónica's case against Colombia in 2025, a tribunal found that Ruling C-555/13 of Colombia's Constitutional Court breached the fair and equitable treatment standard in the Colombia–Spain BIT, creating liability of US$380 million plus interest. This case demonstrates that governments enforcing domestic law can still be sued, and lose, in arbitration tribunals.

The most concrete step taken in relation to ISDS during the Petro Government followed the decision on the Telefonica Case. When Petro instructed, in November 2024, his then Minister of Trade, Industry, and Tourism, Luis Carlos Reyes, to end or reform ISDS in bilateral investment treaties (BITs) and FTAs, Reyes prioritised the U.S.–Colombia Trade Promotion Agreement (TPA), this needs the consent of both parties for its modification.

In January 2025, an Interpretive Note was added to the TPA. Whilst this did not remove ISDS from the agreement. It did issue a binding interpretation of the investment chapter, intended to narrow expansive readings of investor rights and make clear that tribunals should not operate as an appeal body over domestic courts or public-interest regulation. Investors should now provide concrete evidence of the actual damage caused, ruling out claims based on hypothetical or future expectations. Whilst ensuring "fair treatment" for foreign investors, the note clarifies that justified changes in regulations are not considered discriminatory.

This interpretive route was politically significant because it demonstrated the direction that Colombia wanted to take to limit the scope of ISDS. In this case Colombia acted within the existing treaty mechanisms to constrain ISDS through an interpretive note. It also aligned Colombia with a wider international shift away from investor privileges in trade and investment agreements. However, it did not terminate investor-state arbitration nor remove existing investor rights limiting its effectiveness. It will depend on how tribunals apply the interpretation note in future cases, and there remains a risk that arbitrators interpret such decisions narrowly or treat them as disputed amendments rather than authoritative limits as has happened with the "interpretation" of investor protections under the North America Free Trade Agreement (NAFTA).[i]

Case study: protection of the páramos

Companies can sue even where mining projects have never reached the operational stage, claiming the projected value of profits, they argue they would have earned, over the full life of a contract, often 25 to 30 years.

Claims against Colombia from projects that had not reached the operational stage include three related to the Colombian Constitutional Court decision to uphold the ban on mining operations in the páramos, a range of high-altitude wetlands that serve as a primary source of Colombia's water supply.

- Eco Oro Minerals Corp. claimed **1.1 billion USD** (including interest)
- Red Eagle claimed **130 million USD**
- Montauk Metals (formerly Galway Gold) claimed **196 million USD**.

All three companies lost their cases, but Colombia still saw money drained from the public purse to pay legal expenses and arbitration costs. The Eco-Oro case alone, Colombia's arbitration costs amounted to about US$6.2 million. Despite not ruling against Colombia, the tribunal still ordered Colombia to pay half of Eco Oro's costs, as well, which were declared at US$33.3 million.

All three cases were brought under the Canada-Colombia Free Trade Agreement, which contains an environmental clause intended to ensure that both parties retain policy space to protect the domestic environment and address climate issues without *fear of arbitration*. The fact that investors were still able to bring claims against Colombia demonstrates the limits of such clauses. In practice, general environmental exceptions or affirmations of regulatory autonomy do not necessarily prevent investors from initiating arbitration, nor do they shield governments from the fiscal exposure associated with ISDS.

ISDS and the Amazon

In line with Petro's policies of a just transition away from fossil fuels, Colombia announced at COP 30 that it would ban all new oil and large-scale mining projects across its entire Amazon biome. This policy was an historic milestone, designed to protect approximately 48 million hectares, by effectively placing the area off-limits to all future oil exploration and large-scale mining projects. If implemented, this will provide a permanent shield to vital carbon sinks from extractive industries in 7% of the Amazon.

There are 218 distinct oil and gas projects across all Amazonian countries. The largest proportion are in the Colombian Amazon, of which 129 have recourse to ISDS. The Amazon is vital for addressing the climate crisis, it stores carbon equivalent to 15–20 years of carbon dioxide emissions.

Tropical Forests Forever Facility (TFFF) was launched in Belem at COP30, on the principle that countries that conserve the Amazon contribute a service to the rest of the world. If Colombia successfully stopped deforestation, it could receive annual TFFF payments of around US$272 million. But this could trigger ISDS cases and with the average ISDS claim involving a fossil fuel company being **US$1.4 billion**, and defence and arbitration costs averaging US$4.7 million, this climate finance would effectively be reversed and end up in the pockets of investors. ISDS therefore risks punishing countries for environmentally and socially beneficial policies that contribute to the global public good.

In March 2026, ahead of the Santa Marta Conference, 220 leading legal and economic experts, including Nobel laureate Joseph Stiglitz and Thomas Piketty, sent a letter urging Petro to “initiate steps toward withdrawing from ISDS and to galvanize coordinated international action” with likeminded countries.

On 9 April, Petro following a meeting with legal and economic experts, announced a more ambitious position that moved beyond defensive reform, to renegotiation and withdrawal from ISDS. This is important because it reframed Colombia not as a passive respondent to arbitration claims, but as a potential leader of a wider South-South and climate justice challenge to ISDS.

This announcement was followed by the International Conference on transition away from fossil fuels, held in Santa Marta and hosted by Colombia and the Netherlands. Colombia's role in Santa Marta was pivotal in bringing ISDS into discussions on the environment. Irene Velez, Environment Minister said the aim was to “advance[e] progress towards a fossil fuel-free trade system.”

The Santa Marta Conference will feed back into COP31, investment treaties and ISDS were repeatedly cited as potential barriers to ambitious climate action, creating legal and financial risks for governments seeking to phase out fossil fuels. Participants called for reforms that preserve policy space for climate action, alongside stronger international standards on corporate accountability, mandatory human rights and environmental due diligence. Legal and scientific experts at the Conference urged states to take collective action to end ISDS and neutralise sunset clauses through mutual agreement. Reform has been discussed at OECD summits for years without producing meaningful results. Strengthening the case for coordinated action by states willing to move beyond incremental reform.

The main defence of ISDS is that it attracts investment. But evidence does not support this claim. A meta-analysis drawn from 74 studies found robust evidence that the effect of ISDS is so small as to be considered zero. Comprehensive reviews show that investors do not generally consider ISDS a decisive factor when making investment decisions. There is little evidence that ISDS provides meaningful economic benefits or attracts additional cross-border investment. Brazil does not have ISDS and is ranked fifth globally for FDI inflows in 2023 demonstrating that ISDS is not a prerequisite for investment flows.

By contrast, the risks to public budgets, climate action and democratic decision-making are well documented. ISDS is used by a small number of corporations, most prominently fossil fuel investors. This is especially damaging for countries in the global South that are already facing the highest climate impacts and the tightest fiscal constraints.

Investors have access to domestic courts, contractual remedies and political risk insurance. It is also possible in some instances for the investor's home state to bring a claim on a state-to-state basis. These alternatives can protect investors from non-commercial risks, including expropriation and breach of contract, without bypassing domestic courts. Investors should be protected, but that protection should not be granted by a system that gives them exceptional power over governments' climate, environmental and public-interest policies. Petro opened a political window but did not complete the transition away from ISDS.

Recommendations for the incoming Government

ISDS has not been shown to increase foreign investment, yet Colombia remains highly exposed, with 32 known ISDS claims that could place a considerable future fiscal strain on the country.

The next Government should therefore exclude investor-state arbitration from all new trade and investment treaties. Design a roadmap that identifies priority treaties for termination or renegotiation; seek mutual agreements to neutralise sunset clauses; strengthen domestic judicial and administrative remedies for investors without granting exceptional foreign investor privileges; and build an international alliance of states willing to exit ISDS collectively.

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[i] In the case *ADF Group Inc v United States of America*, ICSID Case No ARB(AF)/00/1 the arbiters on the tribunal accepted the interpretation as authoritative, but in the *Pope & Talbot Inc v Canada [2002]* the arbiters said that the interpretative note did not narrow the scope of protection afforded under NAFTA, and so, disregarded it.