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ISDS: A costly legal barrier to phasing out fossil fuels

Why ISDS must be tackled at Santa Marta

opinion



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From 24-29 April 2026, Colombia and the Netherlands are co-hosting the First Conference on Transitioning Away from Fossil Fuels [↗](#) in Santa Marta. The goal is urgent and widely shared: to accelerate a just and orderly phase-out of coal, oil and gas. But while governments are under growing pressure to act on climate change, a less visible legal obstacle could undermine progress: investor-state dispute settlement (ISDS).

The hidden legal barrier to climate action

ISDS is a legal mechanism that allows foreign investors to sue states before international arbitration tribunals when public policies affect their investments. It appears in thousands of bilateral investment treaties (BITs), trade agreements and investment contracts.

This mechanism emerged after the Second World War and was promoted as a tool to protect investors from political risk in newly independent states. In practice, it has reflected the economic interests of former colonial powers, and today, ISDS has become a tool for companies to bypass domestic courts and challenge climate and energy policies, regulatory reforms, and even efforts to enforce accountability for social and environmental harm.

In the context of climate policy, this matters greatly. Closing coal plants, cancelling oil and gas licenses, or strengthening environmental regulations have all triggered [ISDS claims worth billions](#) in alleged lost future profits.

Such cases reveal a deeper structural power imbalance: while companies gain legal tools to defend their interests, governments face financial risk and political pressure when regulating in the public interest. The mere threat of billion-dollar claims can dilute or delay ambitious climate policies, a phenomenon widely described as “[regulatory chill](#)”.

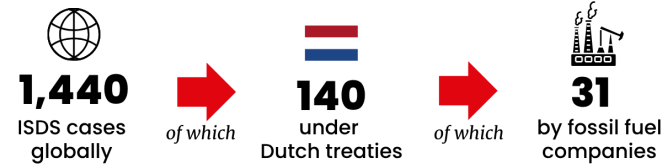
In a world that urgently needs to move away from fossil fuels, this imbalance between private legal power and public interest policy is becoming increasingly untenable.

The Netherlands as a hub for the ISDS system

The Netherlands plays a [central role](#) in this system. It was the first country to include ISDS in an investment treaty in 1968, with its former colony, Indonesia. Today, it maintains one of the world’s largest treaty networks, with 70 active BITs containing ISDS. Dutch treaties are highly investor-friendly and widely exploited through “treaty shopping”, where investors channel investment through so-called “mailbox” companies with minimal activity in the Netherlands to benefit from tax advantages and access to the country’s extensive treaty network.

As shown in the newly launched Dutch ISDS Datahub, Dutch treaties have been used in at least 140 known ISDS cases, nearly 10 per cent of all cases worldwide, making the Netherlands second only to the United States. These cases have exposed governments worldwide to US\$ 113 billion in claimed compensation, with around US\$ 20 billion already paid out to investors. The financial pressure of billions in potential liability weighs on public budgets, especially in the Global South, diverting resources from the very policies needed to achieve a just energy transition.

ISDS and the Netherlands



ISDS claims and awards under Dutch treaties

\$113 billion claimed



across all sectors

\$20 billion awarded



by fossil fuel companies

\$57 billion claimed

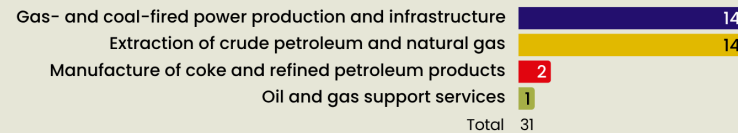
\$11 billion awarded

Number of ISDS cases per sector



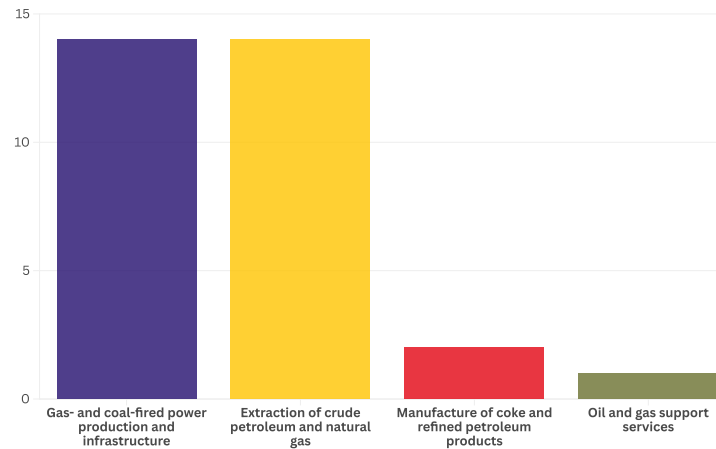
*These sectors include cases from fossil fuel companies

Fossil fuel cases per subsector



A significant share (22 per cent) of ISDS cases under Dutch treaties involve fossil fuel investments, with claims exceeding US\$ 57 billion, of which US\$ 11 billion has already been awarded. Major oil and gas companies such as Shell, ExxonMobil, TotalEnergies, ConocoPhillips, Eni, and Woodside Energy have relied on Dutch treaties to sue countries such as Nigeria, the Philippines, Senegal, Uganda, and Venezuela.

Breakdown of fossil fuel cases under Dutch treaties



Source: [UNCTAD](#), [ICSID](#)



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At the same time, the Netherlands has also become a target of ISDS claims itself. Between 2022 and 2025, [Shell and ExxonMobil](#) initiated multiple arbitrations over the closure of the Groningen gas field, claiming billions in lost revenues while disputing their liability for decades of extraction-related damage. In 2021, German utilities [RWE and Uniper](#) sued the Netherlands over its coal phase-out legislation, seeking a combined € 2.4 billion in compensation. Even though these cases were later dropped, the Netherlands was still [forced to pay millions](#) in legal costs.

In this sense, the Netherlands is now experiencing what countries in the Global South have faced for decades: the threat of costly arbitration, regulatory pressure, and legal challenges to measures taken in the public interest.

Momentum for change is building

There is [no conclusive evidence](#) [↗] that ISDS is necessary to attract foreign direct investment. At the same time, the financial and regulatory stakes are well documented. Across the world, governments are increasingly acknowledging that ISDS can conflict with climate action and environmental policy.

Colombia [recently announced](#) [↗] its intention to withdraw from ISDS, noting that the system too often favours private investors over the public interest and

exposes the state to financial risks. This move was backed by a [letter from 220 leading economists and academics](#), including prominent scholars like Joseph Stiglitz, Ha-Joon Chang, and Thomas Piketty, who argue that ISDS creates no measurable boost in investment but imposes enormous legal and financial risks on governments.

Other countries, such as Bolivia, Ecuador, India, Indonesia, and South Africa, have already taken steps to [terminate](#) their investment treaties. Even countries in the Global North, including traditionally strong supporters of ISDS, are shifting. [Australia](#) no longer includes ISDS in new treaties and has sought to remove such provisions from existing ones. The United States and Canada have eliminated ISDS in their [renegotiated North American trade agreement](#), while limiting its scope in relation to Mexico. A large number of European countries – including the Netherlands and the EU itself – have withdrawn from the [Energy Charter Treaty](#) after recognising incompatibility with climate objectives.

Yet despite this momentum, more than 2,600 treaties – most containing ISDS – remain in force globally.

Santa Marta: a chance for coordinated action

The Santa Marta Conference offers a unique opportunity to address these challenges directly. One of its thematic pillars focuses specifically on removing international legal barriers to a just transition, including ISDS.

For this discussion to be meaningful, this pillar must move beyond diagnosing the problem towards practical, coordinated solutions to reduce governments' exposure to ISDS. As co-hosts, Colombia and the Netherlands have a particular responsibility to lead.

For the Netherlands in particular, this includes addressing its own treaty network and supporting international efforts to advance practical solutions.

Pathways for phasing out ISDS

To support these discussions, SOMO and [Both ENDS](#) have developed a roadmap outlining several pathways that states can pursue individually or collectively to reduce or eliminate ISDS risks in the context of a fossil fuel phase-out, using the Netherlands as an illustrative example.

1. **Avoid new ISDS commitments.** Governments should refrain from negotiating or ratifying new treaties that contain ISDS provisions.
2. **Terminate or amend existing treaties.** Investment treaties can be terminated by mutual agreement at any time, or unilaterally if governments respect notification timelines to avoid automatic renewal. Many treaties, however, include sunset clauses that extend investor protections for 10–20 years after termination.
3. **Pursue multilateral coordination.** Addressing treaties one by one can take decades. In the Dutch case, for example, the final treaty that could be unilaterally terminated only expires in 2041, with investor protections

potentially lasting until 2062 due to sunset clauses. Governments could therefore explore a multilateral instrument that allows participating countries to jointly terminate investment treaties and neutralise sunset clauses among themselves.

4. **Avoid ISDS in investment contracts.** ISDS provisions in contracts with companies can create similar legal risks as treaty-based ISDS. Governments should likewise review existing contracts in key sectors and renegotiate where possible to remove ISDS provisions.

Timeline for unilateral termination of Dutch BITs

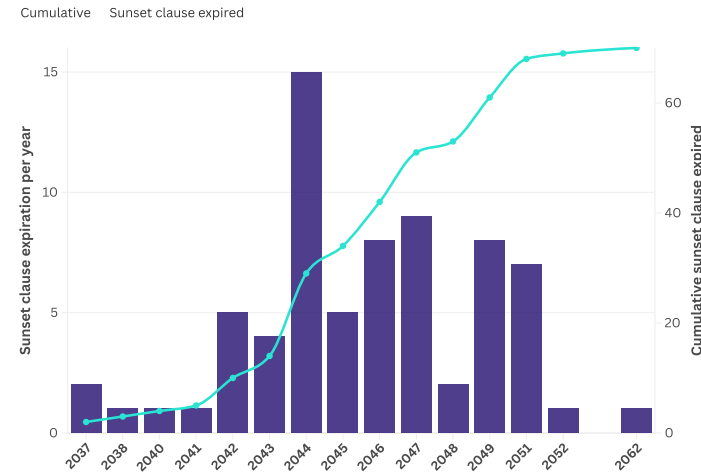


Source: [UNCTAD](#).
 * Note: These treaties have indefinite duration periods and can be terminated at any time.
 ** Note: These treaties could have been terminated between January and September 2026. They are shown at their next available termination window (2036).



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Timeline for expiration of sunset clauses in Dutch BITs



Source: [UNCTAD](#)



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The legal options and precedents to curb or end ISDS already exist. The main barrier is not feasibility, but political will.

Why can't action wait

The evidence is quite clear: ISDS does little to increase investment, but it does create significant legal and financial risks. Most importantly, it can constrain governments' ability to regulate in the public interest at a time when decisive and prompt climate action is essential.

As policymakers gather in Santa Marta, the stakes are high. Will Colombia, the Netherlands and other participating states act decisively to reclaim the policy space needed for a just transition? Or will the energy transition remain constrained by legal barriers arising from ISDS?

For more data and resources on the Netherlands' role in the global ISDS system, visit our [Dutch ISDS Datahub](#). This Datahub brings together key information on Dutch bilateral investment treaties (BITs), their termination deadlines, and known ISDS cases linked to the Netherlands – both abroad and at home.

[Download the policy brief](#)

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