

Corporate courts vs the climate

How the fossil fuel industry is deterring climate action through secret tribunals

September 2021



© Jess Hurst

Uniper is using corporate courts to sue the Netherlands over coal phase out. This projection was on a different, gas-fired, Uniper power station in the UK.

- Just five fossil fuel corporations are demanding over US\$18bn through ‘corporate court’ tribunals from governments over climate policies.
- This is almost equivalent to the entire net annual climate funding provided by rich countries to the developing world, which Oxfam assesses as US\$19-22bn.
- Behind the corporate court system are specialist investment law firms, for whom the UK is a hub. Law firms in the UK are representing the fossil fuel companies in these climate-related cases.
- Most of these cases are being brought through a giant corporate court deal called the Energy Charter Treaty.
- Corporate courts can be used to undermine and vastly inflate the cost of climate action, suing governments into a state of climate paralysis. The UK government should get rid of corporate courts, starting by exiting the Energy Charter Treaty before COP 26.

Five fossil fuel corporations are known to already be suing governments over climate action using secretive tribunals outside of the national legal system, for huge amounts:

- RWE and Uniper are suing the Netherlands over coal phaseout
- Rockhopper, a UK company, is suing Italy over a ban on offshore oil drilling close to the coast
- Ascent Resources, also a UK company, is suing Slovenia for requiring an environmental impact assessment on fracking plans
- TC Energy is suing the US over the cancellation of the Keystone tar sands oil pipeline

These companies are using corporate courts, formally known as investor-state dispute settlement or ISDS to bring these cases.

Demanding payouts

In just these five cases, the fossil fuel companies are demanding over US\$18bn. This is almost equivalent to the entire net annual climate funding provided by rich countries to the developing world, which Oxfam assesses as US\$19-22bn.¹

Company	Amount in US\$ ²
RWE	1,652,000,000
Uniper	1,062,000,000
Keystone	15,000,000,000
Rockhopper	324,500,000
Ascent	118,000,000
TOTAL	18,156,500,000

This climate funding is desperately needed by countries in the global South to help cope with and tackle the climate crisis. The current level is ridiculously inadequate – what is needed is US\$400bn a year at least.³ So rich countries need to urgently deliver far more.

However for fossil fuel companies to be asking for this level of money is sheer profiteering. In the face of the threat to the entire planet, the livelihoods and homes already destroyed – the brunt of which has been in the global south, the flood, the wildfires

and the threat of the climate chaos to come, these fossil fuel companies think they are the ones that deserve a payout.

Notoriously, when laws were passed against the slave trade in Britain, it was slaveowners who were compensated, not the people who had been enslaved. Today fossil fuel companies are effectively asking for something similar – reparations for climate action, when instead, as polluters, they should be paying to help fix the problems they have caused. And it is corporate courts that tip the scales in their favour.

What are corporate courts?

Corporate courts, or ISDS, are written into the rules of trade and investment deals. They allow foreign corporations to sue governments outside of the national legal system – a custom-made legal system that no one else can use, which is tailored to corporate interests. The tribunals that hear the cases only need to look at whether the investors interests have been affected by a new law or policy. They do not need to balance this against the public interest and the reasons that law or policy may have been introduced - whether that is to do with public health, workers rights or climate action.

The tribunals can often make far larger financial awards than corporations might get in national courts. The legal costs for governments in fighting the cases can also be in the millions.⁴

Corporate courts have long been used to oppose environmental protections. Now that we are finally seeing governments around the world begin to take long needed action to address the climate crisis, we are seeing more and more cases from fossil fuel companies challenging those actions. The Energy Charter Treaty is being used for many of these cases.

Corporate courts can be used to undermine and vastly inflate the cost of climate action, suing governments into a state of climate paralysis. A country that passes meaningful legislation to phase out fossil fuels could face a multi-billion dollar fine, despite acting entirely legally. The UK is hosting the UN climate conference, COP 26, in six weeks and corporate courts make a mockery of the pledges that countries are being asked to make there.

The UK government should get rid of corporate courts, starting by exiting the Energy Charter Treaty before COP 26.

Law firms are complicit

The ISDS system is dominated by a relatively small number of specialist law firms and the UK is one of their hubs. All but two of the top 30 investment dispute specialist firms have offices in the UK. RWE, Uniper, Ascent and Rockhopper are all represented by law firms in London (it is not yet known which lawyers are acting for TC Energy).

These firms are not neutral within the system – they have actively created, driven and perpetuated the corporate court system. For instance, Gibson Dunn, the law firm acting for Uniper, which is among the top twenty investment dispute specialists globally⁵, recently published one of its regular information briefs for its clients flagging that legal reforms in

Mexico's energy sector could be grounds for an investment dispute and telling them treaties they could use to sue.⁶

It is a multi-million dollar industry for them and they go fishing for clients like ambulance chasers, promoting opportunities for cases and encouraging companies to sue. They also aggressively lobby for the ISDS system with decision makers. Investment law firms are deeply complicit in corporate courts.

More information

- [Climate injustice briefing](#)
- [Collection of case studies on corporate courts](#)
- globaljustice.org.uk/trade

References

- 1 Oxfam has calculated climate-specific net funding by excluding factors such as repayments and interest, and including only the climate relevant aspects of broader projects. See: Oxfam, Climate finance shadow report 2020, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621066/bp-climate-finance-shadow-report-2020-201020-en.pdf>
- 2 Sources and exchange rate calculations: https://docs.google.com/spreadsheets/d/1IVQcxe_BwFMutSVY4DQog11elpyR7Z44ybE3r4tUtNk/edit?usp=sharing
- 3 Rich countries, who bear by far the most responsibility for causing the climate crisis, have so far committed to provide at least US\$100bn but are falling far short. They claim to be providing around 60% of this. However Oxfam's calculation of the actual climate-specific net funding, above, shows that the reality is the much lower US\$19-22bn level.
- 4 For instance: Jarrod Hepburn, "Final costs details are released in Phillip Morris v. Australia following request by IAReporter", Investment Arbitration Reporter, 21 Mar 2019, <https://www.iareporter.com/articles/final-costs-details-are-released-in-philip-morris-v-australia-following-request-by-iareporter/>
- 5 Global Arbitration Review, "The GAR 30 and Power Index revealed", 2021, <https://globalarbitrationreview.com/the-gar-30-and-power-index-revealed>
- 6 Gibson Dunn, Mexico's reforms to Hydrocarbon Law and Electricity Industry Law may violate investment treaty protections. 1 June 2021, <https://www.gibsondunn.com/mexico-reforms-to-hydrocarbon-law-and-electricity-industry-law-may-violate-investment-treaty-protections/>

Take action

To find out how you can help tackle corporate power and become part of a movement for real change visit globaljustice.org.uk or call 020 7820 4900.



Global Justice Now campaigns for a world where resources are controlled by the many, not the few. With thousands of members around the UK, we work in solidarity with global social movements to fight inequality and injustice.

Global Justice Now, 66 Offley Road, London SW9 0LS
+44 20 7820 4900 • offleyroad@globaljustice.org.uk • globaljustice.org.uk