

Scrap the UK-Colombia investment treaty

How corporate courts let UK companies undermine human rights and the environment

October 2024

Summary

In October 2024, the Colombia-UK Bilateral Investment Treaty (BIT) reaches the end of its initial ten-year term. The UK and Colombian governments now have the opportunity to work together to terminate the treaty, which is incompatible with human rights, peace, democracy and environmental protection.

The Colombia-UK BIT contains the controversial Investor-State Dispute Settlement (ISDS) mechanism, which allows corporations to sue governments for policies they allege damage the value of their investments. Globally, the ISDS mechanism has been used more than 1300 times to challenge public policies on everything from climate action to minimum wage legislation. The UN Special Rapporteur on human rights and the environment recently warned that agreements incorporating ISDS have “catastrophic consequences for the environment and human rights” and represent a “daunting obstacle” to governments’ climate plans,

Colombia has been subjected to 23 ISDS claims over the last decade, three of which were made by UK investors using the Colombia-UK BIT. Many of these cases have been raised by mining companies in direct response to measures taken by the Colombian government to protect the natural environment and the rights of indigenous peoples. E3G estimates that Colombia is exposed to 286 potential ISDS claims relating to fossil fuel projects.

As of last year, Colombia’s pending ISDS claims exceeded \$13 billion, an amount equivalent to over 13% of the government’s annual budget.

The UK now has the chance to begin a new chapter for trade policy, in which the UK’s trade and investment agreements support human rights and environmental action around the world. Governments from the US to Indonesia to Australia are beginning to reject ISDS.

Parliamentarians should call on the government to bring the UK into line with emerging international best practice. This would mean terminating the Colombia-UK BIT, followed by a process of reviewing all UK treaties containing ISDS.

The impact of ISDS

The ISDS provision is found in more than 3,000 international trade and investment agreements, and is central to the UK’s BIT regime. It has been used by corporations to attack laws aimed at protecting the environment, the climate, labour rights, and vulnerable communities.

ISDS poses risks to the right to regulate in the public interest across both the Global North and Global South. High profile cases have seen governments challenged by private investors over 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.



To date, corporations have been awarded more than \$100bn in public money via the ISDS system. This places significant constraints on the ability of governments to regulate in the public interest; governments are forced to choose between using huge sums of taxpayers' money to defend a new measure or dropping the measure altogether to avoid an ISDS challenge. Even when states "win" a case, they receive no compensation and are forced to shoulder legal fees, which costs states US\$5 million on average.

The total compensation paid out to corporations through the ISDS system is equivalent to the amount of climate finance paid by rich countries in 2022. UN climate scientists have warned in an IPCC report of the risk of "ISDS being used by fossil-fuel companies to block national legislation aimed at phasing out the use of their assets." The mere threat of ISDS claims generates "regulatory chill," with governments fearful of legislating in the public interest given the possibility of costly arbitration.

ISDS is, by definition, a privilege available exclusively to foreign investors and not domestic companies or states. This goes against the fundamental principle that everyone should be equal before the law, and means multinational and big businesses have a disproportionate influence on government policy. The tribunals which hear ISDS cases are not transparent, often subject to significant conflicts of interest among arbitrators, and do not meet the same standards as the domestic court system.

ISDS and Colombia

Civil society in Colombia has exerted considerable pressure on the ISDS regime. In 2023, a mission of domestic and international organisations set out the case for dismantling ISDS after visiting regions and communities affected by the activities of international mining companies in the country.

Given the nature of the cases that Colombia has been forced to defend in recent years, Luis Guillermo Vélez, Director-General of Colombia's National Agency for the Legal Defense of the State, has explained that: "For Colombia, investment is very important. But it is also very important for the state to do its job, which is to regulate and to govern. When the government abides by the rule of law, it seems awfully unjust to have a dispute arise because the government is fulfilling its mandate. An investment regime that allows this to happen needs to be revised."

Three particularly egregious examples of ISDS being used by investors to challenge Colombia's right to

protect its own environment and communities are highlighted below:

Glencore and Anglo American vs. Colombia

The British-registered mining giant Glencore has brought four ISDS cases in seven years against Colombia. The Cerrejón open-pit coal mine is the largest in Latin America; the persistent expansion of the mine has led to ruinous environmental degradation and serious human rights impacts. These include the dispossession and displacement of 35 indigenous communities from their ancestral territories and the toxic contamination of air, soil and water supplies.

After several years of campaigning and legal struggle led by affected communities, in 2017, Colombia's Constitutional Court suspended a proposed expansion to the mine, citing concerns about the impact of the diversion on the community and the ecosystem. Glencore said the Court's decision was discriminatory, unreasonable and arbitrary, denying them "fair and equitable treatment".

Glencore over the years has launched four ISDS proceedings against Colombia. It won the first case and was awarded US\$19 million, while the other three are still in process for undisclosed sums of money. Among these is a case initially brought alongside its business partner Anglo-American via the Colombia-UK BIT, although Anglo-American has since sold its holdings in Cerrejón to Glencore.

Eco Oro vs Colombia

The Canadian mining company Eco Oro has brought a case against Colombia using the Canada-Colombia BIT after a 2016 decision by the Colombian Constitutional Court to protect the páramos - rare, high-altitude wetland ecosystems that serve as vital sources of freshwater. Eco Oro is claiming US\$696 million in compensation, arguing that Colombia's actions constituted indirect expropriation.

This case is particularly worrying as the Free Trade Agreement between Colombia and Canada contains an environmental clause that supposedly ensures both parties have policy space to protect the domestic environment and address climate issues without fear of arbitration. However, the arbitration panel ruled that this environmental exception did not preclude the obligation to pay compensation. This illustrates that environmental exceptions under ISDS do not work, and highlights the precedence such agreements have over states' domestic right to regulate in the public interest.

South32 vs Colombia

Australia does not provide access to ISDS through its trading agreement with Colombia. To work around this, Australian mega-miner BHP Group, via its UK-registered spin-off company South32, is [suing Colombia for \\$94 million](#) using the Colombia-UK BIT. The case was brought following an investigation by Colombia into its local subsidiary Cerro Matoso, one of the largest open-pit ferronickel mines in the world, over [alleged unpaid royalties of \\$152 million](#). The Cerro Matoso mine has been mired in wider controversies: Colombia's Constitutional Court found that over 30 years the mine's waste emissions have polluted the air, soil and water and [caused serious and long-term health problems](#) for local Indigenous communities.

Terminating the Colombia-UK BIT

Recent years have seen states take a decisive shift away from ISDS. A range of countries including Brazil, Indonesia, and South Africa have terminated or refrained from signing agreements that include ISDS. The governments of [Australia](#) and [New Zealand](#) have pledged not to include ISDS in their future trade agreements, leading to ISDS exemptions in recent FTAs signed with the UK. And in April 2024, the US indicated it is [actively reviewing options to remove ISDS](#) from its existing trade deals, after already committing to exclude it from future agreements.

In February 2024, the previous UK government [announced its withdrawal](#) from the Energy Charter Treaty, which contains ISDS, on the basis that remaining a member "could penalise us for our world-leading efforts to deliver net zero." This decision was taken after a number of European nations had already announced their intention to withdraw, and was followed in May 2024 by the European Union taking the [final decision](#) for a coordinated withdrawal.

The Colombia-UK BIT, as with many such agreements, has an initial treaty term of 10 years after which it automatically renews for an indefinite further term. The initial 10-year period ends in October 2024, opening the possibility for termination. The Agreement's [sunset clause](#) means that the provisions of the Agreement persist for a further fifteen years, unless a mutual termination of that clause is agreed. The UK must therefore work with the Colombian government to terminate the BIT and to neutralise the sunset clause.

Conclusion

We call on UK parliamentarians to support the overwhelming case for the termination of the Colombia-UK BIT on the grounds that it restricts both states from taking action in the public interest on important issues including climate action and human rights.

Leaving aside the substantial disadvantages of the system, ISDS fails to bring advantages even on its own terms. According to the [Columbia Centre for Sustainable Investment](#), "decades of research have failed to establish that legal protections contained within investment treaties have a discernable impact on promoting foreign investment flows".

Ending the Colombia-UK BIT should be the first step for the UK in reviewing and terminating its 83 other BITs. If the UK is serious about tackling climate change and human rights violations, and upholding democracy, it must join those stepping away from this outdated system.