

STANDING UP TO CORPORATE POWER WITH COLOMBIA



**A UK trade deal is letting companies undermine
climate action and human rights in Colombia.
This is how we beat it.**

Imagine a coal mine so vast that you can't see the other side. Imagine it expanding into your neighbourhood, polluting your water and dispossessing your neighbours of their homes. A multinational mining giant owns the mine, which makes it difficult to fight back. But that is what the Indigenous Wayuu people in northern Colombia did in the face of the Cerrejón mine.

After a decades-long struggle, they won a ruling against its expansion in Colombia's highest court. Yet somehow the mining company can respond by suing the Colombian government in mammoth legal claims, using secretive, private tribunals.

These 'corporate courts' are written into many trade deals, including the UK-Colombia investment treaty. But momentum is growing in the fight to dismantle them.

 **Global
Justice
Now**



WHAT ARE CORPORATE COURTS?

Investor-State Dispute Settlement (ISDS) clauses, written into trade and investment deals, grant special privileges to transnational companies. ISDS creates a bespoke corporate court, which lets multinational companies from a trade partner country sue a government for huge sums of money and bully countries to get their own way.

These corporate courts were first dreamt up by bankers and oil executives in the 1950s, as a new legal regime expressly for Western investors to continue to extract profits from formerly colonised countries – a way to penalise newly liberated governments who, say, nationalised public infrastructure formerly sold off to Western multinationals. Today, the scope of these corporate courts has become even broader: foreign investors are able to sue for any change of regulation they perceive to affect their business interests. The closed-door tribunals are overseen by corporate lawyers who are not obliged to weigh up democratic laws, the public interest, human rights or the environment – only the narrow bounds of investment law.

As a result, ISDS claims have challenged everything from increases to the minimum wage to windfall taxes on excess profits. One tobacco company sued a government for introducing plain-packing cigarettes. But increasingly it is weaponised by fossil fuel companies to halt climate policies. The Netherlands' phase-out of coal-fired power, a ban on offshore oil drilling in Italy, and Slovenia's government merely undertaking an environmental assessment of a fracking project have all recently provoked ISDS cases.

By suing governments who have responded to their people's call for climate action, fossil fuel companies become the ones getting pay-outs. This is exactly the wrong way round. We need to make polluters pay for the harm they have caused, not compensate them for dirty and obsolete projects.



Cerrejón, Glencore's massive open-pit coal mine in La Guajira

WHY IS COLOMBIA UNDER FIRE?

Colombia is making strides away from the fossil fuel past, committing to end new oil and gas contracts and becoming the first producer country to endorse the Fossil Fuel Non-Proliferation Treaty. However, because of corporate courts, this is coming at a huge cost – to the public purse and to communities at the frontiers of extraction.

Colombia has been subject to 23 ISDS claims over the last decade, three by UK companies using the investment treaty between the UK and Colombia. An overwhelming majority 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.

Besides the threat of cases causing a chilling effect, by making countries think twice before introducing legislation, the financial burden on already stretched economies is enormous. Colombia's pending ISDS claims exceed US\$13 billion, an amount equivalent to over 13% of the government's annual budget.

Corporate courts may be little-known, but they've been vital in creating a global economy that enshrines the rights of big business above all else. They allow mega-corporations to extract ever more wealth from global south countries, overruling their sovereignty in the process. Besides this fundamental inequality, for the global action on climate we need, governments in the global north cannot keep other countries locked into fossil fuel dependence by maintaining the threat of investor claims through their trade deals.

Fortunately, a people-powered movement is rallying against the ISDS regime and increasingly countries are taking bold steps to extricate themselves – Colombia among them.

COSTA RICA

South32 and the Cerro Matoso mine

Australia does not provide access to ISDS through its trade agreement with Colombia. To work around this, Australian mega-miner BHP Group is suing Colombia for US\$94 million using the UK-Colombia investment treaty via its UK-registered spin-off company South32. The case was brought following an investigation by Colombia into BHP's local subsidiary Cerro Matoso, one of the largest open-pit ferronickel mines in the world, over alleged unpaid taxes of US\$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.

Glencore's coal mine in La Guajira

The British-registered mining giant Glencore has brought four ISDS cases in seven years against Colombia. Its open-pit coal mine, Cerrejón, has dispossessed and displaced 35 Indigenous communities from their ancestral territories and caused the toxic contamination of air, soil and water supplies. After years of campaigning led by affected communities, in 2017 Colombia's Constitutional Court suspended a proposed expansion to the mine, citing its impact on the community and the ecosystem. Among the ISDS cases Glencore raised in response, it won the first and was awarded US\$19 million, while the other three are still in process for undisclosed sums. One of these was initially brought joint with British miner Anglo-American via the UK-Colombia treaty, although Anglo-American has since sold its shares in Cerrejón.

Metal mining in the mountain wetlands

Canadian mining company Eco Oro sued Colombia for US\$696 million 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 – from metal mining, which had caused severe damage including arsenic and mercury pollution. This case is particularly worrying as the trade deal between Colombia and Canada contains a clause that supposedly safeguards the country's ability to protect the environment. However, the arbitration panel went ahead and ruled in favour of Eco Oro all the same. Only scrapping ISDS treaties, rather than adding exceptions or amendments, will truly protect countries' right to regulate in the public interest.

○ Bogotá

COLOMBIA

VENEZEULA

GUYANA

BRAZIL

ECUADOR

PERU

200 km



100 mi

A Colombian member of Congress addresses a public hearing on ISDS with Indigenous community leaders and international delegates in May 2023.



COLOMBIA STANDING UP TO CORPORATE POWER

At the end of 2024, Colombia announced it was seeking to renegotiate the UK-Colombia investment treaty. This came after the Colombian ambassador to the UK called such treaties a “bloodbath”, and the country’s president announced they would look to extricate Colombia from the threat of corporate courts in its trade deals with the United States and the European Union. President Petro has said allowing corporations to settle disputes outside national courts should never have happened, and that Colombia is “in the wolf’s mouth” as a result.

These bold steps have been driven by the social movements whose resistance to corporate destruction, from the deserts of La Guajira to the misty páramos of Santurbán, has led to the backlash of ISDS claims. These have been supported by campaigns in countries like the UK. In May 2023, Global Justice Now joined an international delegation of European and Latin American organisations to bear witness to these struggles and build solidarity between the countries being sued and the countries that are home to the investors doing the suing.

As part of that solidarity, we need to respond to Colombia’s call by ensuring our government comes to the table on the UK-Colombia investment treaty.

THE CAMPAIGN TO SCRAP THE UK-COLOMBIA INVESTMENT DEAL

With the growing number of claims by fossil fuel companies against decarbonisation policies, we have seen global north countries feeling the bite from treaties originally rigged to benefit their businesses. The USA, Australia and New Zealand have committed to exclude ISDS from future trade deals and explore revoking it in existing ones. In 2024, we won our campaign to get the UK to join a long list of European countries leaving the Energy Charter Treaty (ECT), the climate-wrecking pact most used by fossil fuel companies. On exiting, the UK government cited the risk of it harming our net zero efforts.

Yet the same countries who are acknowledging the risk of ISDS to their climate ambitions are far less keen on allowing global south governments to reclaim their sovereignty from corporate power in the same way: one rule for us, another for them.

Which is why we are campaigning for the UK to work with Colombia to bilaterally terminate their investment treaty. The deal passed its initial ten-year term in October 2024, after which it rolls over but either party can now withdraw from it at any time. However, only a mutual agreement between the two countries will stop the deal's sunset clause, which keeps its terms in place for another 15 years.

Following the exit from the Energy Charter Treaty, it is time the UK government extends this stance on corporate courts across the board: committing publicly to no more ISDS and reviewing its existing stock of investment treaties. The UK-Colombia deal is the place to start.

Colombia is not alone. There is a growing trend of global south nations standing up to these outdated and unequal deals. In recent years South Africa, Ecuador and Bolivia terminated their bilateral investment treaties. We have seen similar moves in Pakistan, India and Indonesia. Most recently, Kenya terminated its treaty with the Netherlands – whose corporations are behind only the US as the most aggressive users of ISDS in the world. In third place: UK investors.

The web of jargon-filled investment treaties enabling corporate abuses all over the world can seem daunting to fight. But the recent wins show we are chipping away at it steadily and successfully. **You can help us go a step further.**



Colombia's mountain wetlands threatened by metal mining.

WHAT CAN YOU DO?

With a large intake of new MPs into the UK parliament, we need to educate many more about corporate courts and amplify Colombia's demand. As the government develops the UK's new trade strategy, we need to push ISDS up the agenda and call time on this regime of corporate ransom.

Individually, or part of a group you can:

- **Email the trade minister** via the QR code or globaljustice.org.uk/colombia-isds
- **Lobby your MP**, by writing to them or perhaps asking for a meeting, in which you can share our parliamentary briefing on the UK-Colombia deal. Find it at globaljustice.org.uk/colombia-BIT
- **Get in touch** with our activism team to discuss more ways to get involved. Email activism@globaljustice.org.uk



Global Justice Now works as part of a global movement to challenge the powerful and create a more just and equal world. Our local activists campaign around the country for a global economy where people come before profit.

Find out more and get involved in the campaign against corporate courts:
globaljustice.org.uk/trade

Global Justice Now, 66 Offley Road, London SW9 0LS
offleyroad@globaljustice.org.uk • 020 7820 4900
globaljustice.org.uk • Global Justice Now
 @globaljusticenow.bsky.social • GlobalJusticeNow

