


## Submission to the COP30 Presidency Roadmap on Transitioning Away from Fossil Fuels in a Just, Orderly and Equitable Manner


*Both ENDS is a Dutch civil society working at the intersection of trade, investment governance, and climate justice, with a global network of over 500 partner organisations across Africa, Asia, and Latin America.*



This submission addresses questions (a) and (b), focusing on investor-state dispute settlement (ISDS) as a structural barrier to the fossil fuel phase-out that the COP30 roadmap must directly address. We draw on our contribution to the side event "Exiting ISDS: An initiative to phase out a major obstacle to climate action," held at COP30 in Belém on 15 November 2025., our written submission to the First Conference on Transitioning Away from Fossil Fuels in Santa Marta, and our roadmap on ISDS exit for the Netherlands, published in April 2026.

### Question (a): Critical barriers

The most systematically under-recognised barrier to implementing the fossil fuel phase-out is the global network of over 2,600 investment treaties containing ISDS provisions<sup>1</sup>. These allow foreign corporations to initiate binding arbitration against states when government measures are alleged to harm their investments. Fossil fuel-related ISDS claims globally exceed USD 80 billion. The barrier operates through two channels: direct financial exposure, where governments face billion-dollar awards for implementing phase-out policies; and regulatory chill, where the threat of arbitration deters governments from adopting or strengthening such policies in the first place.



The Amazon makes this concrete. A November 2025 analysis by Boston University's Global Development Policy Center found that 218 oil and gas projects across the eight Amazonian countries are shielded by ISDS provisions, covering at least 26.5 billion barrels of oil equivalent. In Guyana, 96 per cent of oil and gas projects can trigger ISDS claims; in Colombia, 45 per cent, representing 129 projects and over USD 13 billion in pending claims. Brazil and Suriname, having largely avoided investment treaties with ISDS, face no such exposure in their oil and gas sectors. The contrast is stark: forest protection requires limiting extraction, but ISDS transforms those decisions into potential billion-dollar liabilities, creating what amounts to climate finance in reverse<sup>2</sup>.

Sunset clauses compound the problem, extending treaty protection for 10 to 20 years after termination, well beyond Paris-consistent timelines. The Netherlands, conference co-host, withdrew from the Energy Charter Treaty in June 2025 yet faced a new Shell arbitration in December 2025 under the treaty's 20-year sunset clause. Contract-based arbitration and stabilisation clauses create a further parallel layer of

<sup>1</sup> <https://investmentpolicy.unctad.org/investment-dispute-settlement>

<sup>2</sup> <https://www.bu.edu/gdp/files/2025/11/GEGI-PB-032-FIN.pdf>

legal risk. Climate finance discussions cannot proceed as if the governance of investment were a neutral backdrop. If the rules governing investment systematically penalise climate ambition, no amount of climate finance will be sufficient.

### **Question (b): Levers for accelerating implementation**

Political recognition of this barrier is now accelerating. In March 2026, over 220 economists and legal scholars, including Nobel laureate Joseph Stiglitz, Thomas Piketty, and Paris Agreement architect Laurence Tubiana, called on Colombian President Petro to withdraw from ISDS and launch a broader alliance of countries committed to unwinding it. President Petro subsequently announced Colombia's intention to do so. Experts have noted that such exits are more effective and immediate when coordinated with treaty partners, particularly those in the Global North that originally promoted and continue to maintain the treaties in question. The COP30 roadmap should translate this political momentum into three concrete levers<sup>3</sup>.

**First, national treaty review and termination.** Governments should audit their investment treaty portfolios, use upcoming termination windows, pursue joint termination with treaty partners to neutralise sunset clauses by mutual agreement, and adopt firm policies excluding ISDS from all new agreements and contracts.

**Second, a multilateral opt-in instrument for coordinated exit.** Bilateral termination is too slow at the scale required. A multilateral instrument allowing willing states to simultaneously terminate, amend, or withdraw consent to arbitration across multiple treaties, including neutralising sunset clauses, would multiply impact. The precedents exist: the 2020 intra-EU agreement terminated over 130 bilateral investment treaties at once; the BEPS Multilateral Instrument modified over 2,000 tax treaties without individual renegotiation. Santa Marta should formalise the coalition and agree terms of reference.

**Third, elimination of arbitration and stabilisation clauses in fossil fuel contracts.** Treaty reform alone is insufficient. Governments should exclude such clauses from new contracts, audit existing fossil fuel contract portfolios, and legislate exclusive domestic court jurisdiction for transition-related disputes.

The COP30 roadmap should explicitly identify ISDS exit as an enabling condition for just, orderly, and equitable fossil fuel phase-out, and establish a structured follow-up track connecting Santa Marta outcomes to COP31 in Turkey.

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<sup>3</sup> <https://cepr.net/publications/letter-from-220-economists-and-legal-scholars-to-colombian-president-gustavo-petro-calling-for-action-on-isds/>