

Global Justice Now contribution

COP30 Presidency Roadmap on the Transition Away from Fossil Fuels in a Just, Orderly and Equitable Manner

Who we are

Global Justice Now is a democratic membership organisation that campaigns on economic justice issues that affect global inequality and development. We are submitting evidence because of our long history of working on trade justice, highlighting the far-reaching impact of modern trade agreements and rules on many areas of climate policy and just transition.

Summary

Investor-State Dispute Settlement (ISDS) mechanisms are written into many trade and investment agreements. They entitle transnational corporations to sue governments in secretive tribunals outside of the national legal system over law and policy changes that they fear could reduce their profits. ISDS grants privileges to foreign investors that are unavailable to local businesses or ordinary citizens – especially the peoples and communities most affected by their investments. By giving fossil fuel companies the power to sue governments for actions that they allege harm their profits, ISDS acts as a major obstacle on the roadmap away from fossil fuels. However, withdrawing from ISDS is both technically feasible, precedented and advocated for by a diverse group of institutions and stakeholders. The UNFCCC is an ideal forum in which to convene countries around strategies for cooperative withdrawal from ISDS.

(a) What are the most critical barriers — whether physical, economic, financial, institutional, technological or social— preventing a transition away from fossil fuels?

ISDS threatens a just transition from fossil fuels and the urgent need for a social and ecological transformation for people and the planet. ISDS allows foreign corporations to bypass domestic courts and sue host governments in private international tribunals over alleged harms to their investments. Corporations have been [paid out](#) \$114 billion of public money, of which over \$87 billion to the fossil fuel sector. ISDS is thus a major barrier to countries' policy and fiscal space to reduce or eliminate fossil fuel production, consumption, licensing and subsidies, per their international legal obligations, as their climate action makes them liable for billions of dollars. In a phenomenon of 'regulatory chill', the mere threat of ISDS has deterred states from regulating private actors and phasing out fossil fuels.

UN bodies have raised fundamental concerns over ISDS, including the 2022 IPCC [report](#) and reports by [Special Rapporteurs](#). The International Court of Justice has [emphasised](#) that investment treaties must not be interpreted in isolation, but in harmony with international climate law and that countries have obligations under multiple sources of international law to prevent, mitigate and remedy climate change and its resultant harms. The UNFCCC has already [identified](#) ISDS as a systemic barrier within Baku to Belém Roadmap of the COP29 and 30 presidencies.

(b) What potential levers, whether economic, financial, institutional, social or technological, exist for accelerating the implementation of the transitioning away commitment?

The COP Presidency can advocate for the following unilateral action which can be levered by governments to tackle the barrier ISDS poses to the transitioning away commitment:

1. Publicly commit to not negotiate, sign or ratify future agreements that include any form of ISDS.
2. Initiate a process to terminate or withdraw from their existing agreements containing ISDS.
 - a. Initiate a comprehensive review of existing investment treaties and strategies for withdrawal, including consultation with civil society.
 - b. Issue termination notices to withdraw from ISDS agreements, or requests for bilateral termination or renegotiation with relevant trading partners.

However, given the number of treaties in force, the need for bi- or multi-lateral negotiations for terminations that address treaties' sunset clauses, and countries' concerns about taking unilateral action against strong vested corporate interests, durable and effective solutions require coordination among states.

Pluri- and multi-lateral action:

The UNFCCC provides a forum in which a willing group of Parties could launch a coalition committed to exploring collective disengagement from ISDS. This coalition can then explore the following institutional levers:

1. Launch a process to bilaterally terminate or initiate renegotiation of those investment agreements in force between Parties of the coalition.
2. Develop *inter se* agreements between Parties who are exiting multi-party agreements, such as the Energy Charter Treaty, to neutralise sunset clauses.
3. Negotiate collectively as a bloc to remove ISDS or terminate their agreements with non-Parties.

The most comprehensive and effective method to address the spread of ISDS treaties would be a multilateral termination treaty, which could also take the form of an opt-in agreement, that would terminate investment agreements and their sunset clauses automatically between all Contracting Parties to it. Adopting a multilateral instrument to terminate multiple investment agreements at once by mutual consent was the approach taken by European Union Member States for the termination of their intra-EU Bilateral Investment Treaties (BITs).

1. UNFCCC negotiations could investigate the scope and arrangements in which to develop a multilateral or plurilateral termination treaty.
2. This should include a consultative process with a coalition of governments, civil society, academic and legal experts on strategies of cooperative withdrawal from ISDS and legal routes towards said treaty.

(c) What country, regional or sector roadmap experiences, best practices, and lessons learned can be shared?

Growing numbers of states are demonstrating that withdrawal from ISDS is feasible. South Africa, India, Indonesia, Ecuador, Bolivia, Australia and New Zealand have terminated or are reviewing their ISDS agreements. EU member states terminated their mutual investment treaties and most, plus the UK, are withdrawing from the Energy Charter Treaty. This month, Colombia announced it will withdraw from the ISDS system. A large amount of academic literature shows a negligible correlation between investment treaties and foreign direct investment: a 2020 meta-analysis found “robust evidence that the effect of international investment agreements is so small as to be considered zero.” In public international law, Contracting States are “masters of their treaties”: free to define their content, terminate or withdraw from them unilaterally or terminate, modify or amend them by mutual consent. All Bilateral Investment Treaties contain conditions for unilateral termination, meaning as part of a comprehensive process to review their treaties States can identify those without or past “fixed terms” as lower hanging fruit for reopening.

However, treaties usually also contain ‘survival’ or ‘sunset’ clauses which continue the application of the treaty after a country has left it, usually between 10 and 20 years in length. Yet states have increasingly demonstrated that sunset clauses can be neutralised through mutual agreement. The most prominent example is the 2020 EU Termination Treaty, in which 23 EU member states agreed not only to terminate their intra-EU BITs but also to render their sunset clauses without legal effect, including those in treaties that had already been terminated unilaterally. This precedent shows that the supposedly irreversible nature of sunset clauses is a political choice, not a legal inevitability, and offers a model for countries around the world seeking to exit the investment treaty regime without remaining exposed to ISDS claims for further decades.

Recommendations

The UNFCCC could be a space for governments to build a formal coalition of countries committed to freeing themselves from all forms of ISDS. This alliance would explore:

- Cancelling treaties with ISDS, or renegotiating to remove ISDS, between the governments involved, in ways that address ‘sunset clauses’
- Collective engagement with other countries to support further potential for stepping away from ISDS
- Committing to not signing any new ISDS agreements
- Including provisions on cancelling ISDS in a future Fossil Fuel Treaty
- Initiating negotiations for a multilateral treaty to bring about a world free from ISDS

We call on the COP presidency to publicly support an end to ISDS, and to encourage inclusion of the above commitments in the final decision arising from COP31.

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