ISDS in numbers

IMPACTS OF INVESTMENT ARBITRATION AGAINST LATIN AMERICA AND THE CARIBBEAN

2nd Edition - February 2026

ISDS in numbers

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For more information about the impacts of the investment protection regime in Latin America and the Caribbean
www.ISDS-AmericaLatina.org

Impacts of Investment Arbitration Lawsuits against States in Latin America and the Caribbean

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Executive Summary

This report presents a systematic overview of foreign investor lawsuits against countries across Latin America and the Caribbean (LAC) based on investment protection treaties as of 15 October 2025 and their impacts.[I] The key findings are:

2023 was the year with the highest number of investor-state dispute settlement (ISDS) claims ever registered against LAC countries, with **28 claims**.

By mid-October 2025,

419

ISDS claims had been filed against countries in **LAC**, almost a third (28.5%) of all known investor-state disputes worldwide. This makes it the **second most sued region in the world.**

ARGENTINA, VENEZUELA, MEXICO, PERU and **ECUADOR** are the countries in the region that have been sued the most. Togheter, they face **257** lawsuits, almost **two-thirds of all claims** against LAC countries.

Goverments have been ordered to pay foreign investors

36.6 BILLION.

This amount is enough to cover more than one third of LAC's annual financing gap to meet targets in six priority areas of the Sustainable Development Goals by 2030–namely social protection and decent work; education; food systems; climate action, biodiversity loss and pollution; the energy transition, and inclusive digitalization.

Investors from **The United States (US), Canada and Europe** (mainly France, The Netherlands, The United Kingdom and Spain) initiated **85%** of the claims.

In **61% of the cases resolved**, the investor won, either obtaining a favourable award or benefiting from a settlement between the parties.

Lawsuits linked to **MINING, GAS and OIL** account for **23%** of total claims. More than half were filed in the last decade.

Of all known claims against countries in LAC, **79%** were filed at **ICSID**.

Only **30 ARBITRATORS** (top 10%) participated in **43%** of the arbitration tribunals of claims against LAC countries.

I • The authors of this report complied this database from public information from various sources. To access the database: https://isds-americalatina.org/

In the 1990s, countries across LAC signed hundreds of international treaties that protect foreign investments and grant investors unprecedented rights, including the right to sue states before international tribunals when they believe their profits had been affected by government actions. These countries expected that bilateral investment protection treaties (BITs) would be decisive in attracting foreign investment. Thirty years later, evidence shows that the BITs have not helped bring in investment, much less promote development. Instead, they have had harmful effects on the countries of the region.

The negative impacts of BITs are still largely unknown and little discussed in political and parliamentary circles and by civil society, academia and social movements. This report highlights the social and financial costs of the investment protection system and international arbitration as a mechanism to resolve disputes between foreign investors and states.

The explosion in the number of claims

In the last two decades, the number of investor-state lawsuits has gone from six known treaty-based cases in 1996 to a total of 1,401 at the end of 2024.[1] Countries in South and Central America and the Caribbean were sued 399 times during this period, which represents 28.5% of all known claims in the world. Between January 2025 and the time of the writing of this report (15 October 2025), another 20 claims were filed against countries in the region, bringing the total to 419 cases.

What is the investor-state dispute settlement mechanism?

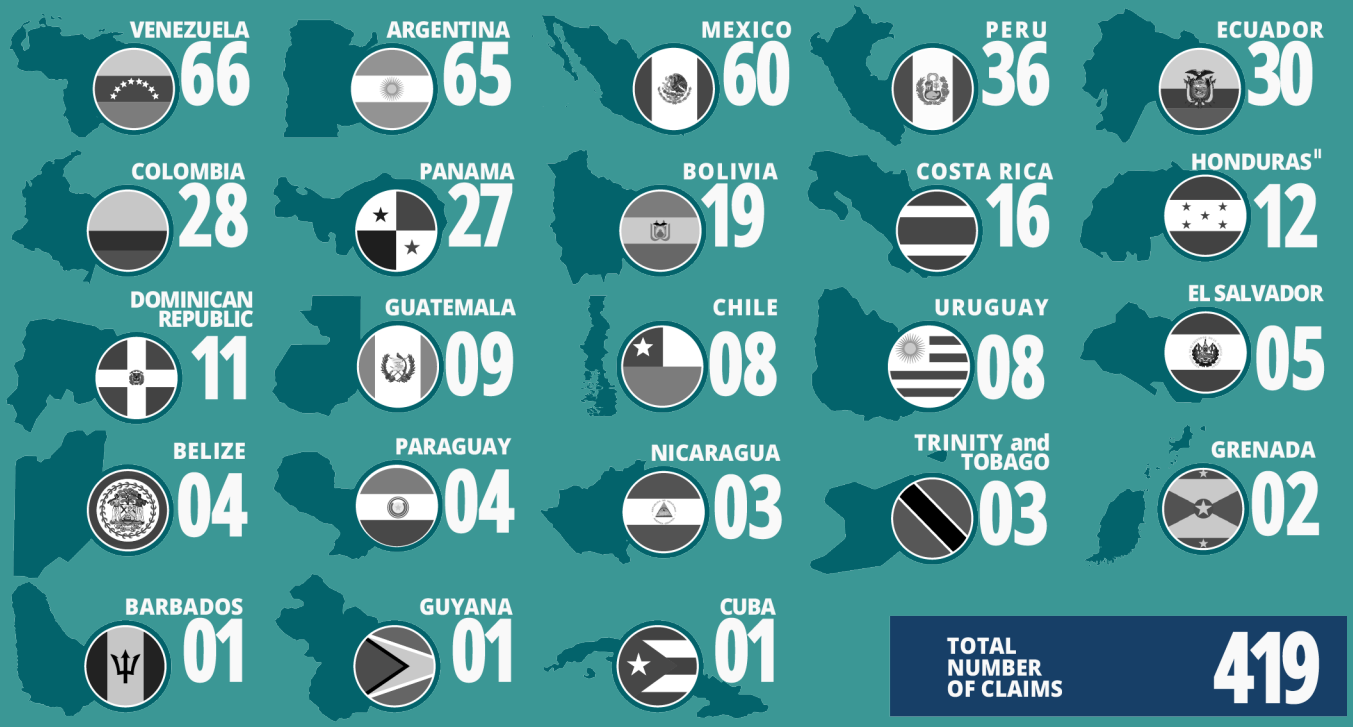
The investor-state dispute settlement mechanism (ISDS) allows foreign investors, mainly large transnational corporations (TNCs) and investment funds, to sue states before international arbitration tribunals when they believe that national laws, regulations, legal decisions or other public measures violate their treaty protections. Cases are usually decided by three arbitrators, often private-sector lawyers with strong pro-investor biases. Academics, practitioners and civil society organizations (CSOs) have voiced many criticisms of the ISDS, including:

- The lack of transparency in arbitration proceedings.
- The lack of impartiality and independence of arbitrators.
- Awards can be enforced anywhere in the world.
- The cost of investor-state arbitration is higher than proceedings in national courts.
- The system is unilateral: only investors can file lawsuits.
- Victims of the abuses of TNCs do not have access to similar mechanisms to obtain justice.

The countries being sued

Of the 42 countries in the LAC region,[2] 23 –or more than half– have been brought before the international arbitration system. Venezuela, Argentina, Mexico, Peru and Ecuador have been sued the most. Together, they account for 257 lawsuits or almost two-thirds of all claims against LAC countries.

Table 1 • Number of claims per country



Source: The authors, based on UNCTAD Investment Policy Hub.

Contract claims: the case of Honduras

The ISDS mechanism was not only included in BITs and the investment protection chapters of free trade agreements (FTAs). In recent years, some countries have also agreed to include it in contracts signed directly with corporations for the exploitation of hydrocarbons or mines, for example, or the management of the energy system. Some countries have also incorporated it into national legislation, which extends the right to use the ISDS mechanism to investors from anywhere in the world. The latter is the case in Honduras, El Salvador and, more recently, Argentina with its Large Investments Incentive Regime (Régimen de Incentivos a Grandes Inversiones, RIGI).[3]

Prior to 2023, Honduras had faced almost no ISDS claims. But that year, the number of cases against it skyrocketed, and in just 12 months, the country was hit with five claims based on investment protection treaties, plus another four based on contracts. This made it the second Latin America country that had the highest number of claims filed against it with arbitration tribunals that year. In total, Honduras now faces 12 treaty claims, six contract claims and another three lawsuits based on its 2011 Law for the Promotion and Protection of Investment.

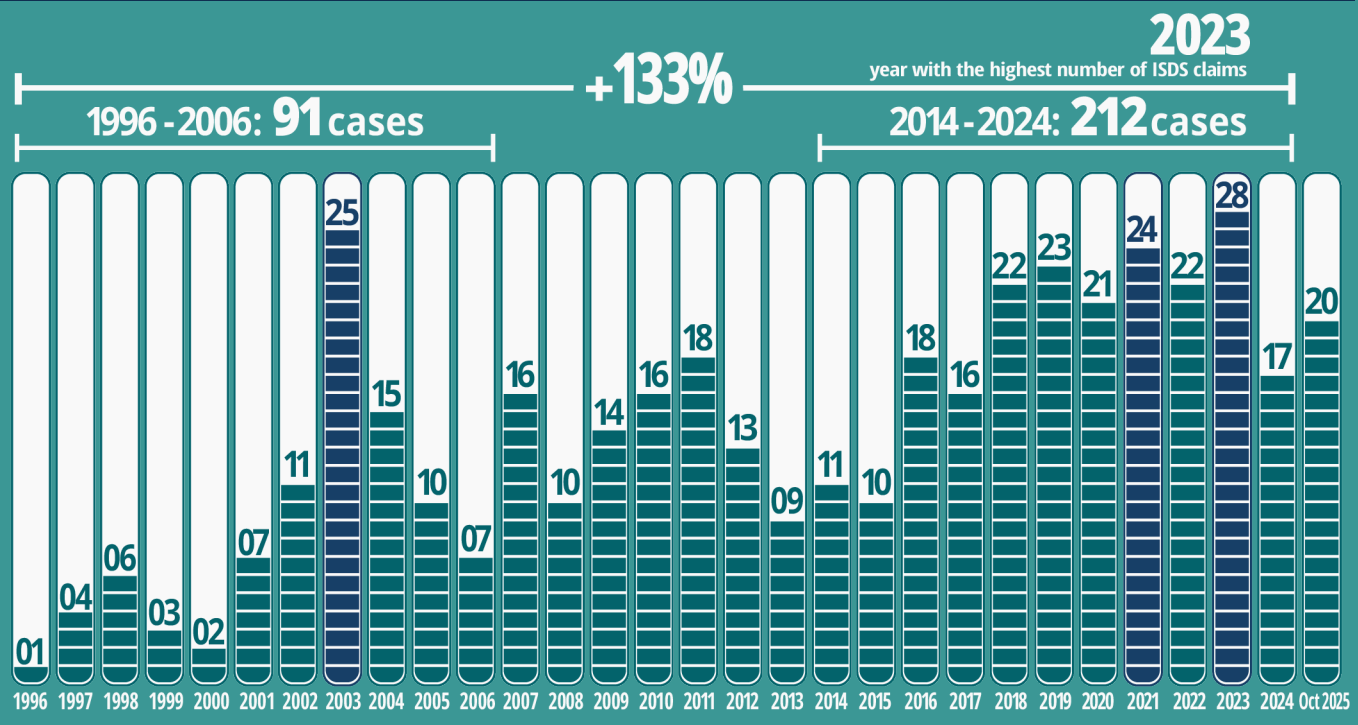
II • This only includes the arbitration claims that argue that an international treaty (BIT or FTA with an investment protection chapter) has been violated. Honduras also faces investor claims based on its 2010 Law for the Promotion and Protection of Investment or the contracts signed by the state. See the box on "Contract claims: the case of Honduras".

A boom in claims

The first claim against a LAC country based on an investment protection treaty was brought against Venezuela in 1996. Since then, the number of lawsuits has been rising steadily. It reached its first peak in 2003, mainly due to Argentina's convertibility crisis, which involved a currency devaluation, "pesification"[4], the freezing of utility tariffs and the renegotiation of concession contracts.[5] Of the 25 claims registered in 2003, 20 were against Argentina.

Lawsuits against LAC countries continue to multiply. Between 1996 and 2006, 91 lawsuits were registered. In the past decade (2014-2024), the number jumped to 212 –a 133% increase. In fact, 2023 was the year with the most claims in the history of investor-state arbitration in LAC, with 28 claims, 10 of which were against one country: Mexico. This is because investors had until July 2023 to file claims under the investment protection chapter of the North American Free Trade Agreement (NAFTA)– three years after NAFTA had been replaced by the United States-Mexico-Canada Agreement (USMCA).The USMCA is a revised version of NAFTA, in which investor-state arbitration between Mexico and the United States is limited to certain sectors; between the US and Canada and Canada and Mexico, it was eliminated altogether.

Figure 1 • Number of claims per year



Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and specialized media outlets.

It is important to note that besides the investor claims at arbitration tribunals, there are also dozens of threats of ISDS lawsuits. In many cases, governments have decided to backtrack on planned measures to avoid multi-million-dollar lawsuits. One example of this practice, known as "regulatory chill", was in 2016, when Novartis threatened Colombia for attempting to declare Glivec, a drug used to treat blood cancer, as a medicine of public interest and strip the pharmaceutical giant of its monopoly on production so that competition with generics could help reduce the price of the drug. Faced with the threat of being sued in an arbitration court, the Colombian government decided to back down on the measure.[6]

Arbitration winners and losers

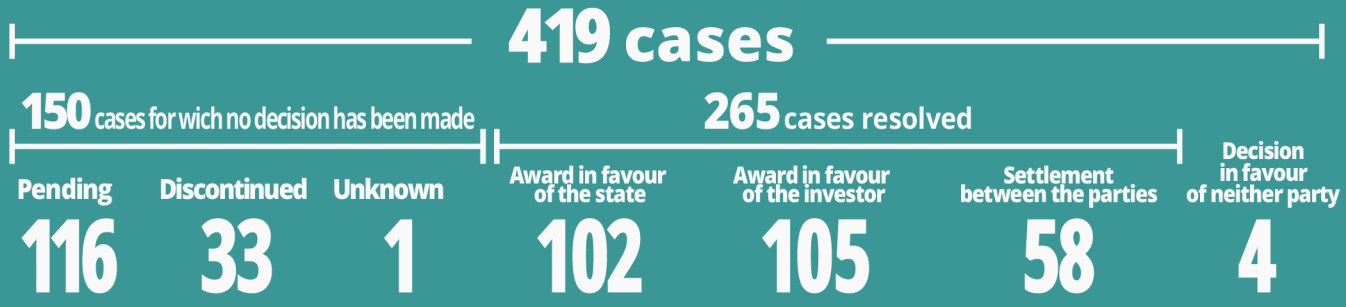
States have been the biggest losers in investment arbitration cases. Of the 419 known cases against LAC countries, 269 have been resolved (either by a tribunal award or an agreement between the parties[III]). Almost two thirds of these were resolved in the investor's favour.

Figure 2 • Cases decided in favour of one of the parties

Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and journalistic sources

Of the 211 cases in which the tribunal issued a ruling (i.e., not including settlements between the parties), the ruling favoured the investor in 105 cases (49.75%).

Table 2 • Status of claims



Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and journalistic sources

It is important to recall that in the international arbitration system, states always lose out, as the lawsuits force them to spend millions on legal expenses. Even when tribunals rule in their favour, they often have to fork out millions to pay law firms that may charge up to US$1,000 per hour for their services. For example, by 2013, Ecuador had already spent US$155 million in defence and arbitration costs.[7] In the Freeport-McMoRan v. Peru lawsuit, the court rejected the US mining company's claims, but ordered the parties to pay their own legal costs, which in Peru's case involved almost US$7 million spent on its defence.[8] In a recent decision in a claim arising from Argentina's 2001 crisis and dating back to 2002 (AES v. Argentina), Argentina was required not only to bear its own costs–US$ 3.5 million–but also those of the US company, to the tune of US$16 million, plus an award of US$716 million.[9] In fact, when a tribunal rules in the investor's favour, it also often orders the state to pay the investor's arbitration costs. In Perenco's claim against Ecuador, for instance, the country had to pay the investor US$23 million to cover its legal fees.[10]

III • When the case concludes with a settlement between the parties, it is usually because the state has agreed to pay compensation or bowed to the investor's demands (for example, by repealing the law or regulation that gave rise to the claim).

The countries that have lost the most cases

When we look at arbitration awards by country, the case of Argentina stands out. Of the 33 claims ending in an award, only six favoured the state, whereas 26 were in favour of the investor (one decision did not favour either party). If we add the 18 cases finalized with a settlement to these 26, we find that 86% of the claims against Argentina were decided in the investor's favour.

There is also a significant imbalance in favour of the investor in the case of Venezuela, the country with the most claims against it in the region. Of the 41 claims in which the decision led to an award, 18 were in favour of the state, and 23, in favour of the investor. When we add to these 23 cases the seven cases in which a settlement was reached, we find that 62.5% of the claims resolved against Venezuela were decided in favour of the investor.

The cases against Bolivia and Ecuador had similar outcomes.

Table 3 • Status of claims against the countries sued the most

	Argentina	Venezuela	Bolivia	Ecuador
Resolved claims	51	48	17	23
Resolved in favour of the investor (through an award or settlement between the parties)	44 (86%)	30 (62,5%)	15 (88%)	15 (65%)
Decided in favour of the state	6 (12%)	18 (36,5%)	2 (12%)	8 (35%)
The decision did not favour either of the parties	1 (2%)			
Cost of lost cases	US$10.046 billion[IV]	US$19.680 billion	US$1.152 billion	US$3.706 billion[V]

Source: The authors, based on UNCTAD Investment Policy Hub, ICSID, journalistic sources and official documents of the claims

The cost of ISDS claims

In the claims filed since 1996 in LAC, investors have demanded a total of US$295.4 billion. The total claimed is, in fact, higher, as in 90 of the 419 claims, the amount has not been disclosed.

In all cases resolved so far (either by an arbitral decision or a settlement between the parties) in which the amounts have been made public,[VI] states have been ordered to pay investors US$36.6 billion.

IV • In 15 of the 44 claims resolved, the amount of the award or settlement has not been disclosed.
V • In two of the 15 claims resolved, the amount of the award or settlement has not been disclosed.
VI • This amount is based on the 137 claims for which information on the final amount that the state had to pay to investors either as the result of the tribunals' award or the settlement between the parties is available. In 25 cases, the amount remains undisclosed.

The US$36.6 billion that LAC countries have been ordered to pay to investors is equivalent to...

» **the entire public debt service** due between 2025 and 2030 of several of the region's poorest countries combined: Bolivia, Ecuador, El Salvador, Guatemala, Honduras and Paraguay;[11]

» **more than one third of LAC's annual financing gap to meet targets in six priority areas of the Sustainable Development Goals by 2030**–namely social protection and decent work; education; food systems; climate change, biodiversity loss and pollution; the energy transition, and inclusive digitalization;[12]

» **one and a half years' worth of all of Central America's funding for the inclusive transformation of its food systems.**[13]

In pending claims for which the amounts have been disclosed, investors have demanded a total of US$64.7 billion. It is worth highlighting that the amount claimed has been made public in a little over half of the pending cases (53 out of 116).

The most that a country has ever paid out in a single claim was US$5 billion, which Argentina paid to Repsol after reaching a settlement agreement.

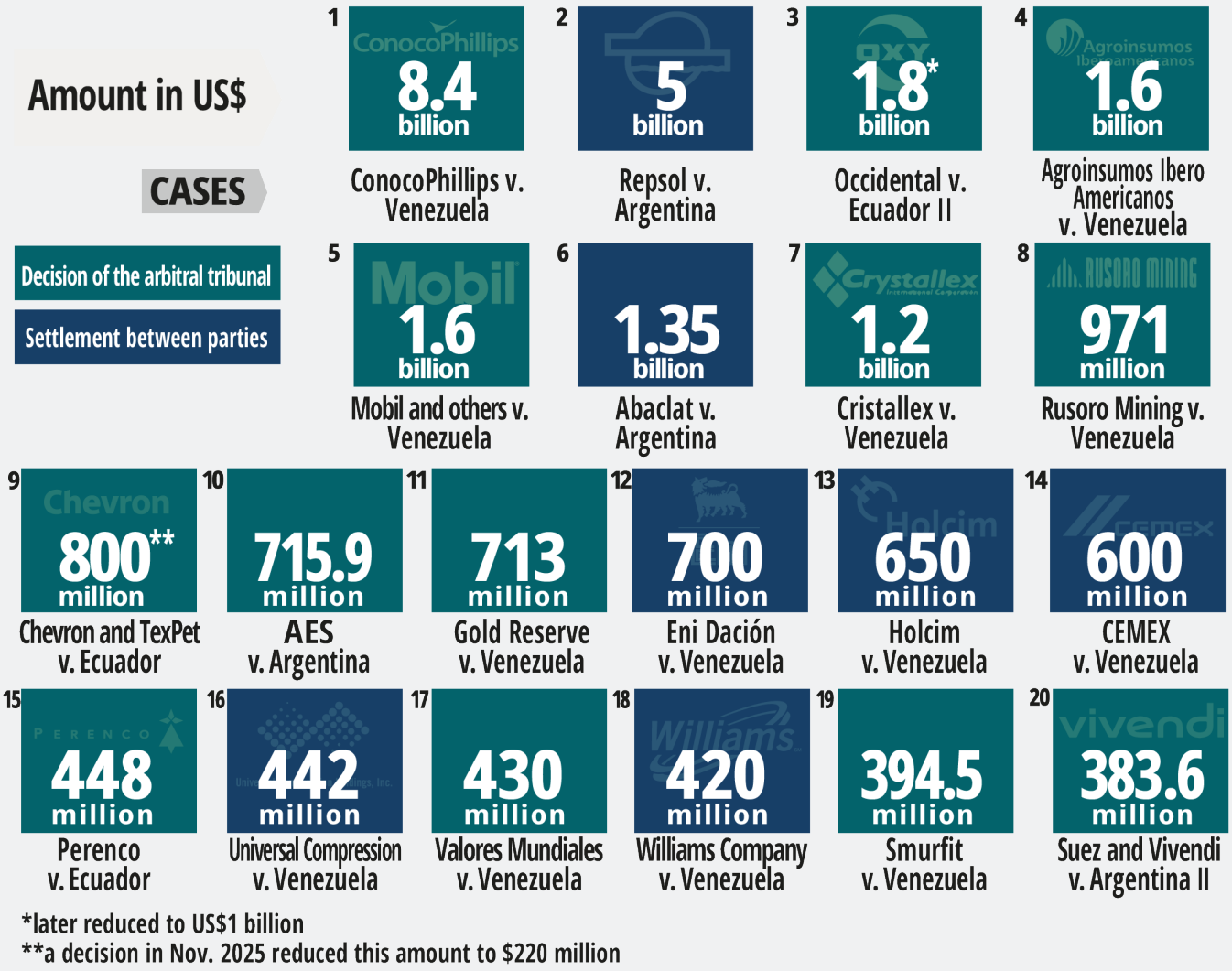
Repsol v. Argentina

In 1999, Repsol, a then relatively small Spanish oil company, acquired Argentina's Yacimientos Petrolíferos Fiscales (YPF). In 2012, due to the controlling company's abandonment of investments in YPF, which plunged the country into an energy crisis, the state expropriated Repsol's shares. The company responded by filing lawsuits in four courts, including the International Centre for Settlement of Investment Disputes (ICSID), demanding US$10.4 billion in compensation. The Government of Argentina responded by threatening to investigate environmental liabilities. Finally, in 2014, a US$5.3 billion-settlement was reached to end the case.[14] Despite this, a decade later, the country suffered another blow in this case, when the Burford vulture fund filed a lawsuit in New York, after buying the right to litigate from the Peterson Group, an Argentinean-based minority partner at the time of the expropriation. The amount of Burford's claim was updated and it obtained around US$16 billion.[15]

A detailed description of the case can be found in our report "Between national engine and corporate plunder: the drift of Argentina´s Fiscal Oilfields YPF".[16]

However, the costliest award was issued in a case against Venezuela, the country facing the highest number of cases in the region. In 2019, it lost the ICSID case filed by ConocoPhillips and was ordered to pay $8.4 billion to the company. The country also lost the annulment proceeding it had initiated. Currently, ConocoPhillips is trying to reinforce the award in national courts in order to confiscate Venezuelan assets in other countries.[17]

Table 4 • The 20 known claims that have cost countries the most[VII]



*later reduced to US$1 billion
**a decision in Nov. 2025 reduced this amount to $220 million

Source: The authors, based on UNCTAD Investment Policy Hub, ICSID, journalistic sources and official documents of the claims

The smallest amount paid in the history of arbitration

The smallest amount ever paid in the history of arbitration was for the claim filed by Aguas del Tunari (a subsidiary of the US corporation Bechtel) against Bolivia for having terminated its concession to supply water in Cochabamba. After water had been privatized in 1999, Bechtel raised its prices by 50%, leading to the 'War over Water' uprising in 2000, which forced the country to renationalize water in Cochabamba. One year later, Aguas del Tunari transferred its headquarters from the Cayman Islands to the Netherlands so that it could use the Netherlands-Bolivia BIT to file a US$50 million-claim against the country with ICSID. The strength of Bolivian and international civil society protests against Bechtel led the corporation to abandon the case and agree to receiving a token amount of 30 cents in compensation from Bolivia.[18]

VII • Of the 20 costliest claims, 13 have been against Venezuela, which is partly explained by the fact that these were based on direct expropriations, which generally result in higher compensation.

Investors' countries of origin

The investors that have filed the largest number of claims against LAC countries are based in the US: 127 or around 30.3% of all lawsuits. They are followed by investors from European countries and Canada. The claims brought by US, Canadian and European investors combined account for 85% of the total.

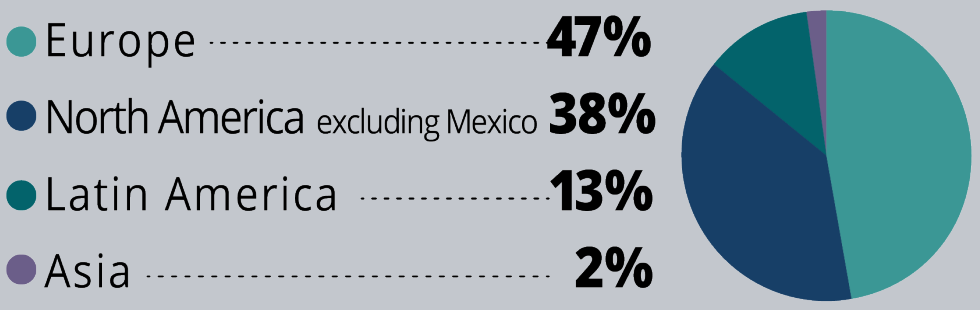
Table 5 • Country of origin of investors that have filed the most claims

	UNITED STATES	SPAIN	CANADA	THE NETHERLANDS	UNITED KINGDOM	FRANCE
	127	69	40	33	32	24
SECTORS WITH THE MOST CLAIMS	Electricity supply, oil extraction, financial and insurance activities	Various sectors	Mining	Manufacturing and mining	Electricity and telecommunications	Water and electricity supply

Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and other arbitration tribunals

Investors from LAC have also filed claims, although fewer in number. Chilean investors launched ten lawsuits, followed by Panama and Barbados with eight claims each. All the claims from Barbadian investors are against Venezuela. Only three investor-state lawsuits were filed by companies based in Venezuela, the most sued country in the region and the world.

Figure 3 • Region of origin of investors who have sued countries



Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and other arbitration tribunals

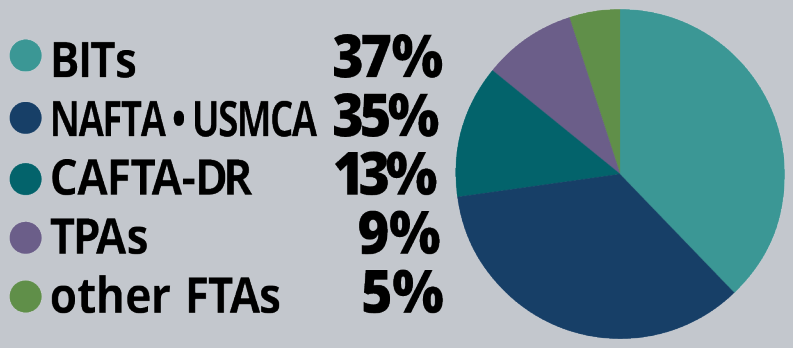
Treaties invoked

The claims discussed in this report are based on treaties signed between countries: either free trade agreements (FTAs) with investment protection chapters or bilateral investment treaties (BITs). In the claims against Latin American countries, investors have cited alleged violations of BITs (329 cases) or FTAs (112 cases). There is also a different treaty format, promoted mainly by the US and known as Trade Promotion Agreements (TPAs), which has given rise to 14 arbitration claims.[VIII]

VIII • The number of cases mentioned in this paragraph is higher than the total number of claims filed against LAC countries because in several claims, investors invoke two or more treaties.

Given that US investors are the ones who have initiated the most claims, it is not surprising that the US's BITs, along with NAFTA, including in its revised version, USMCA, and CAFTA-DR (the FTA between the US, Central America and the Dominican Republic) are the most widely used.

Figure 4 • Number of claims per treaty invoked by US investors



Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and other arbitration tribunals

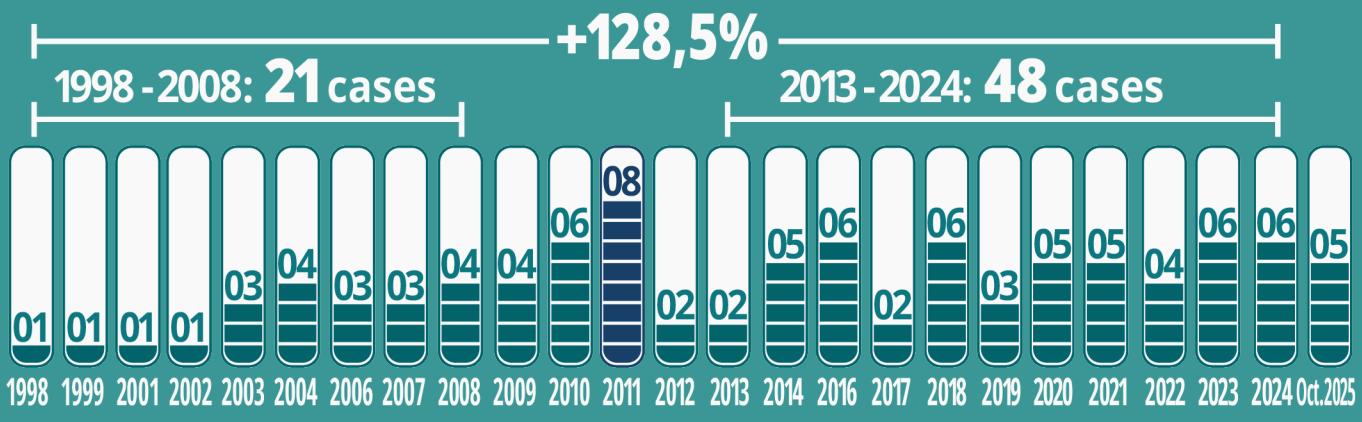
It is also interesting to note that many investors that are suing Venezuela have used its BITs with the Netherlands (20 cases) and Spain (18 cases) to base their claims.

Economic sectors affected by claims

In recent years, most Latin American countries have faced a growing number of claims from investors in the mining and oil and gas sector in which they challenge governments' environmental conservation policies, regulations protecting communities' rights and measures to increase companies' tax contributions.

Of the 419 known cases against LAC countries, 96 or 23% of the claims are related to these sectors.[19] If we compare the number of claims filed by investors from these extractivist sectors between 1998-2008 and 2014–2024, we find that the numbers jump from 21 to 48–an increase of 128.5%.

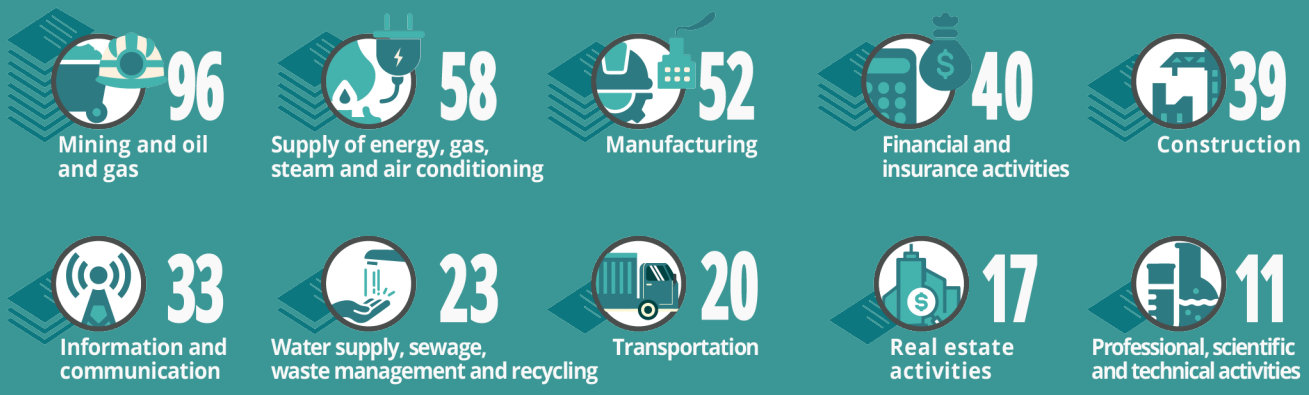
Figure 5 • Claims in the mining and oil & gas sector by year



Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and other arbitration tribunals

Other sectors with numerous claims are electricity and gas (58) and manufacturing (52).

Table 6 • The 10 sectors with the most claims



Source: The authors, based on UNCTAD Investment Policy Hub

The arbitrators

The arbitral tribunal is a panel of three arbitrators, who are lawyers specialized in international trade law. Normally, one arbitrator is appointed by the investor, one by the state, and the president is appointed by mutual agreement between the parties.

While 298 arbitrators have served on tribunals hearing claims against LAC countries, the vast majority have been involved in only a few cases. Only a small group of arbitrators have been nominated repeatedly and, as a result, the power to make decisions on the claims has been concentrated in their hands.

A mere 10% of the arbitrators–the ones who have intervened in more cases–have been chosen to sit on 43% of the arbitral panels for which the arbitrators have been appointed and/or the composition of the panel is known.

Table 7 • Top 30 arbitrators (or top 10%) involved in claims against LAC countries

Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and other arbitration tribunals

States tend to prefer certain arbitrators. French arbitrator Brigitte Stern has been appointed the most often by states. Investors have repeatedly chosen Argentinian arbitrators Horacio Grigera Naón and Guido S. Tawil and US arbitrator Charles Brower. Swiss arbitrator Gabrielle Kaufmann-Kohler and Spanish arbitrators Juan Fernández-Armesto, Andrés Rigo Sureda and Albert Jan van den Berg are the ones who have been appointed president of the tribunal most frequently.

There are also arbitrators whose role on the tribunal varies from one case to the next. For example, some arbitrators served as the president of the tribunal in one case and were appointed by the investor in the next. This has happened repeatedly with Francisco Orrego-Vicuña from Chile, who has served seven times as president and eight times as the arbitrator appointed by the investor. Arbitrators such as Alexis Mourre and Eduardo Siqueiros have also been nominated by investors and states.

Regardless of who nominates whom to the tribunal, there is a tendency for these "elite" arbitrators to have a background in commercial arbitration and pro-investor biases.[20]

The law firms defending investors and states

In the cases against LAC countries, 294 international law firms have been hired by the parties. However, there is a select group of 19 firms that have represented parties in more than 10 cases or advised the state or investor in 45% of all claims. They are the elite in law firms involved in international arbitration.

The law firm that investors have used the most in cases against LAC countries is Freshfields Bruckhaus Deringer (62 claims), followed by White & Case (37) and King & Spalding (36). With a few exceptions, states also tend to hire international law firms for their defence. The ones that have been hired the most by states are Foley Hoag (43 cases), often used by Venezuela and Ecuador; Arnold & Porter (Kaye Scholer) (39 cases), which mainly supports Central American and Caribbean countries, especially Panama and the Dominican Republic, and Pillsbury Winthrop Shaw Pittman (31 cases), which has been hired almost exclusively by Mexico.

Argentina and Peru: different ways to fend off lawsuits

Argentina has defended itself mostly by resorting to its own team of state lawyers. It has only hired foreign firms in the claims filed by Vivendi in 1997, AES in 2002, Abaclat and others in 2007, and MetLife in 2017.

Peru, on the other hand, which ranks fourth in countries sued the most in the region (with 36 lawsuits), has only hired private law firms to defend it. The main ones are: White & Case, Sidley Austin, Foley Hoag and Arnold & Porter (Kaye Scholer).

Table 8 • The law firms used most often by investors and states[IX]

Freshfields Bruckhaus Deringer
Nº of cases in which they have represented one of the parties
62
Used by the investor: 59
Used by the state: 3

Foley Hoag
Nº of cases in which they have represented one of the parties
43
Used by the investor: -
Used by the state: 43

Arnold & Porter (Kaye Scholer)
Nº of cases in which they have represented one of the parties
39
Used by the investor: 1
Used by the state: 38

White & Case
Nº of cases in which they have represented one of the parties
37
Used by the investor: 30
Used by the state: 7

King & Spalding
Nº of cases in which they have represented one of the parties
36
Used by the investor: 36
Used by the state: -

Pillsbury Winthrop Shaw Pittman
Nº of cases in which they have represented one of the parties
31
Used by the investor: 2
Used by the state: 29

Dechert
Nº of cases in which they have represented one of the parties
27
Used by the investor: 4
Used by the state: 23

Teresposky & DeRose
Nº of cases in which they have represented one of the parties
20
Used by the investor: -
Used by the state: 20

Sidley Austin (Brown & Wood)
Nº of cases in which they have represented one of the parties
20
Used by the investor: 5
Used by the state: 15

Guglielmino Derecho Internacional / Guglielmino & Asociados
Nº of cases in which they have represented one of the parties
19
Used by the investor: -
Used by the state: 19

Hogan Lovells
Nº of cases in which they have represented one of the parties
19
Used by the investor: 12
Used by the state: 7

Curtis, Mallet-Prevost, Colt and Mosle
Nº of cases in which they have represented one of the parties
17
Used by the investor: -
Used by the state: 17

Dechamps
Nº of cases in which they have represented one of the parties
16
Used by the investor: 16
Used by the state: -

Baker McKenzie
Nº of cases in which they have represented one of the parties
14
Used by the investor: 14
Used by the state: -

De Jesús & De Jesús
Nº of cases in which they have represented one of the parties
14
Used by the investor: -
Used by the state: 14

Clifford Chance
Nº of cases in which they have represented one of the parties
13
Used by the investor: 12
Used by the state: 1

Alfredo de Jesús O. Transnational Arbitration & Litigation
Nº of cases in which they have represented one of the parties
10
Used by the investor: -
Used by the state: 10

GST
Nº of cases in which they have represented one of the parties
10
Used by the investor: 2
Used by the state: 8

Reed Smith
Nº of cases in which they have represented one of the parties
10
Used by the investor: 2
Used by the state: 8

Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and other arbitration tribunals

IX • Investors and states often hire more than one law firm to defend their case (sometimes as many as three), which explains why the number of law firms is much higher than the number of cases.

The rules of the game and the institutions enforcing them

There are many arbitration centres that hear investment disputes, but the busiest one in the world and for claims against LAC is the International Centre for the Settlement of Investment Disputes (ICSID) of the World Bank Group. Investors used ICSID 331 times for their claims against countries in the region, meaning that 79% of all claims were brought before this arbitration centre. Argentina is a case in point: 61 of the 65 claims against it were registered at ICSID.

Other arbitration centres where many investor-state disputes have been settled are the Permanent Court of Arbitration (PCA), based in The Hague, and the London Court of International Arbitration (LCIA).

Table 9 • Institutions processing the claims

419 claims

ICSID	PCA	Information not available or no institution handling the claim	LCIA[21]	ICC[22]	SCC[23]	CESCON[24]
331	62	18	3	3	1	1

Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and other arbitration tribunals

In addition to selecting the arbitration forum, investors have the right to choose the arbitral rules that will be applied to the case. In the cases against countries in LAC, investors have chosen ICSID rules in 265 of the 419 claims. When we add to this the 47 claims submitted under the ICSID complementary mechanism (ICSID AF),[25] ICSID rules were used to resolve disputes in three quarters of the claims against LAC countries.

Investors have also used the rules of the United Nations Commission on International Trade Law (UNCITRAL) in 24.5% of claims. Investors usually choose the rules of UNCITRAL and other tribunals when the country is not an ICSID member or has withdrawn from it, as in the case of Bolivia, Ecuador and Venezuela. UNCITRAL rules were applied in 13 of the 19 claims against Bolivia and 18 of the 30 against Ecuador. As Venezuela withdrew from the ICSID only in 2012, most of the lawsuits it has faced have been dealt with at ICSID and under its rules.

Table 10 • Arbitration rules applied in cases against LAC countries

419 cases

ICSID	ICSID AF	UNCITRAL	SCC	ICC	Arbitration Rules of the Inter-American Commercial Arbitration Commission
265	47	103	2	1	1

Source: The authors, based on UNCTAD Investment Policy Hub, ICSID and other arbitration tribunals

Recommendations

In view of the problems generated by the current investment protection regime for countries in Latin America and the Caribbean, we recommend the following:

» **Conduct an audit of all investment protection treaties** (IPAs or BITs or those included in FTAs) and assess their impacts on Latin American economies and societies.

» **Suspend the ability of foreign companies to file investor-state claims** while such an audit is being carried out and take the necessary steps once it has been completed.

» **Withdraw from ICSID** and promote national and regional alternatives (for example, by creating a mechanism under ECLAC) for the resolution of investor-state disputes.

» **Refrain from signing new treaties containing investment protection clauses**, and instead:

- Give priority to the protection of human and environmental rights, the commons and ecosystems.
- Safeguard basic sectors for the population–energy, food and public services–while protecting their sovereignty from international investment rules.
- Ensure the participation of populations affected by projects involving foreign companies in accordance with the principles of free, prior and informed consent, as well as the monitoring and evaluation of project implementation.
- Provide the state policy space to design and implement measures to promote MSMEs, regional development and specific sectors and impose certain performance requirements on investors.
- Hold transnational corporate investors accountable for their labour, social, and environmental impacts in accordance with the same regulations that apply to them in their countries of origin.
- Support the creation of a binding UN Treaty on Business and Human Rights.

Endnotes

1 • UNCTAD (2024) Investment Policy Hub, data updated on 31 December 2024. http://investmentpolicyhub.unctad.org/ISDS

2 • According to the Latin American Network Information Center (LANIC). http://lanic.utexas.edu/subject/countries/indexesp.html

3 • For more information on the RIGI, see Observatorio RIGI:https://observatoriorigi.org/

4 • Pesification describes the process in which all US dollar-or foreign currency-denominated debts in existence on January 6, 2002 were converted to Argentinian peso-denominated debts, and foreign currency deposits in financial entities were converted to pesos. For a full description, see:https://www.marval.com/publicacion/devaluacion-pesificacion-y-otras-medidas-de-emergencia-4841?lang=en

5 • Between 2003 and 2006, 35 lawsuits were filed against Argentina, giving rise to what is referred to in academic circles as 'the Argentine case' in the ISDS system.

6 • HOW BIG PHARMA SABOTAGED THE STRUGGLE FOR AFFORDABLE CANCER TREATMENT: Novartis vs Colombia. TNI, FOEE, CEO.https://10isdsstories.org/cases/case2/

7 • From the report of ISDS in Ecuador, Ecuadorian Citizens Commission on Investment protection (CAITISA), 2017. The report is not available online. For more information, see: //caitisa.org;https://www.tni.org/en/topic/ecuadorian-citizens-commission-on-investment-protection-caitisa

8 • ICSID (2024): Award Freeport-McMoran v. Republic of Peru, page 312.https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/20/8

9 • Italaw: AES Corporation v. Argentine Republic, ICSID Case No. ARB/02/17,https://www.italaw.com/cases/49

10 • ICSID (2019) Award Perenco v. Ecuador.https://www.italaw.com/sites/default/files/case-documents/italaw10838.pdf

11 • CEPAL (2025): Panorama Fiscal de América Latina y el Caribe 2025, page 34.https://repositorio.cepal.org/server/api/core/bitstreams/125212af-3578-487a-b902-05ad34f22604/content

12 • ECLAC (2025): Latin American Economic Outlook 2025.https://repositorio.cepal.org/server/api/core/bitstreams/ea8b48d3-03ff-4f32-b423-c2dc005ac7ad/content, page 148.

13 • ECLAC (2025): Latin American Economic Outlook 2025.https://repositorio.cepal.org/server/api/core/bitstreams/ea8b48d3-03ff-4f32-b423-c2dc005ac7ad/content, page 149.

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16 • Cantamutto, Francisco (2025): Between national engine and corporate plunder. The drift of Argentina's Fiscal Oilfields YPF, November 2025. https://isds-americalatina.org/argentina_ypf/

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18 • For more information, see https://www.democracyctr.org/the-bolivian-water-revolt

19 • This includes the cases classified as being related to the mining of precious metals, coal and oil in the UNCTAD database.http://investmentpolicyhub.unctad.org/ISDS

20 • Eberhardt, P. and Olivet, C. (2012) Profiting from injustice. Transnational Institute, Corporate Europe Observatory.https://www.tni.org/en/briefing/profiting-injustice

21 • London Court of International Arbitration.http://www.lcia.org

22 • International Court of Arbitration of the International Chamber of Commerce (ICC).https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/

23 • Arbitration Institute of the Stockholm Chamber of Commerce.http://www.sccinstitute.com

24 • Centro de Solución de Conflictos de Panamá (CESCON, or the Centre for Dispute Resolution of Panama (CESCON).

25 • The ICSID Additional Facility rules are based on the ICSID arbitration rules and those provisions in the Convention that are applicable to an agreement of a contractual nature. They include some provisions taken from the rules of UNCITRAL and the International Chamber of Commerce.

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