



ISDS

in numbers

**Guatemala:
Overview of the
transnational
investment
protection regime**

*that undermines water,
territories and self-determination*





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American and Caribbean countries**
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Introduction

Over the last ten years, Guatemala has received a series of million-dollar international arbitration claims from mining and energy companies that sought to establish projects in the territory of indigenous peoples and campesino communities. These companies had state support to impose their projects against the self-determination of the affected peoples, leading to social and environmental harms and big conflicts that have involved threats, efforts to discredit and intimidate the affected people, as well as criminalization, militarization, assassination attempts and murders. These have had serious impacts for the communities in resistance.

In their attempt to impose these projects, the Guatemalan state collaborated with the companies to enable their investments to proceed, first, ignoring the decisions that affected communities and peoples had made widely known through good faith consultations, resistance camps, and other acts to demonstrate their self-determination and to reject a development model that destroys water and territory, while putting community health at risk. In addition to facilitating permits or allowing projects to advance despite irregularities, the state also participated in processes of repression or militarization in favor of investments.

Even with much in their favor, when transnational investors were unable to move forward with their investments, they resorted to the Investor-State Dispute Settlement System (ISDS) to file million-dollar claims against Guatemala in an attempt to pressure the state, or recuperate their investment and generate profits by this means.

Often, people acting to defend their water, territories and lives are accused of being responsible for these claims, as a new way to discredit and criminalize their legitimate struggles. Others may conclude that these claims result from institutional weaknesses to regulate and manage large investments. However, it is important to ask why corporations are able to sue sovereign states in the first place, and whether it is fair that they enjoy such recourse.

The transnational investment protection system, or ISDS, is part of extractivism and a global system of corporate impunity that has been imposed over the last fifty years to facilitate corporate control over the commons in indigenous territories and in the Global South.¹

In Guatemala, the neoliberal development model has been in place since the signing of the Peace Accords in 1996. In addition to the mining law reforms passed to attract transnational investment, and the privatization of the electricity system and installation of energy megaprojects to serve big energy consumers and the regional energy market, almost thirty Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) have been signed. These treaties enable transnational corporations to sue the country when they believe that government regulations or other measures affect their investments.

Recourse to ISDS deepens asymmetries between investors and the people affected by their investments. Peoples' right to self-determination is regularly denied. In addition, communities lack effective access to justice and reparation for harms to their lands and territories from these projects, or for the serious human rights violations they face. Meanwhile, corporations enjoy access to this powerful mechanism (ISDS) with which to pressure state institutions to reach a settlement that suits their interests, or to otherwise be awarded millions of dollars at great cost to the public purse.

This is an unjust system. As the former UN Special Rapporteur on Human Rights and the Environment, David Boyd, reported, "While ISDS is a powerful tool for foreign investors, it has become a catastrophe for the development, implementation and enforcement of environmental laws, regulations, policies and permitting decisions needed to address the planetary crisis."² However, this system is not inevitable. But, first, it is necessary to identify the legal instruments that enable it in order to, then, find a way out.

Investment protection treaties in Guatemala

Guatemala has 18 Bilateral Investment Treaties (BITs) in force. More than two thirds of these treaties (66%) could be terminated now, if the Guatemalan government so decides. In addition, two other treaties, with the Netherlands and with Luxembourg and Belgium, could be denounced as of 2027. The treaties with Finland and Turkey can similarly be terminated as of 2027. This means that by next year almost 90% of all Guatemala's BITs could be terminated.

The BIT signed with Russia in 2013 has never been ratified.

Table 1 • Guatemala's Bilateral Investment Treaties

Initial period ended, BIT may be terminated at any time				
Country	Date signed	Date when the BIT went into force	Date when the treaty could be terminated	Sunset clause*
France	27/05/1998	02/11/2001	2011	15 years
Taiwan	02/11/1999	01/12/2001	2011	10 years
Chile	08/11/1996	10/12/2001	2011	10 years
Cuba	20/08/1996	10/08/2002	2012	10 years
Argentina	21/04/1998	07/12/2002	2012	10 years
Spain	09/12/2002	21/05/2004	2014	10 years
Czech Republic	08/07/2003	29/04/2005	2015	10 years
Sweden	12/02/2004	01/07/2005	2025	20 years
Germany	17/10/2003	29/10/2006	2016	20 years
Israel	07/11/2006	15/01/2009	2019	10 years
Austria	16/01/2006	01/12/2012	2022	10 years
Trinidad and Tobago	14/08/2013	23/06/2016	2026	10 years
Initial period ended, BIT has a new expiration date				
Netherlands	18/05/2001	01/09/2002	2027	15 years
Switzerland	09/09/2002	03/05/2005	2030	10 years
BLEU (Luxembourg/Belgium)	14/04/2005	01/09/2007	2027	10 years
Italy	08/09/2003	03/03/2008	2028	5 years

Initial period not yet over, after which may be terminated

Country	Date signed	Date when the BIT went into force	Date when the treaty could be terminated	Sunset clause*
Hong Kong	23/01/2020	16/06/2021	2031 (art 36)	10 años
Emiratos Árabes	19/01/2016	25/01/2018	2028 (art 31)	10 años
Turquía	17/12/2013	17/12/2017	2027 (art 33)	10 años

Source: UNCTAD Investment Policy Hub³

*The sunset clause determines the period after a treaty has been terminated and during which investors continue to enjoy protection under its terms.

Guatemala's Free Trade Agreements

Guatemala has 9 Free Trade Agreements (FTAs) in force with an investment protection chapter. An FTA with Peru that includes ISDS was signed in 2011, but has not yet been ratified.

In addition, there are several FTAs without investment protection chapters. These include the Association Agreement with the European Union (2013), an FTA with the European Free Trade Association (Switzerland, Liechtenstein, Iceland and Norway) (2020),⁴ with Israel (2024), and with the United Kingdom (2021).⁵ And, Guatemala recently signed an FTA with the United States to complement the existing CAFTA-DR.⁶

Table 2 • FTAs with an investment protection chapter

Free Trade Agreement	Year the treaty went into force
Central America-South Korea FTA	2019
Central America-Mexico FTA	2012
FTA between Colombia, El Salvador, Guatemala and Honduras	2009
Guatemala-Taiwan FTA	2006
U.S.-Central America-Dominican Republic FTA (CAFTA-DR)	2006
CACM (Agreement on Investment and Services of the Central American Common Market)	2008
Central America-Panama FTA	2003
Central America-Chile FTA	2002
Central America-Dominican Republic FTA	2001

Source: UNCTAD Investment Policy Hub⁷

What is Investor-State Dispute Settlement?

Investor-State Dispute Settlement (ISDS) allows transnational investors to bypass national courts and file claims against governments in international investment arbitration tribunals. This creates an international system of "parallel justice" that ignores, and often overrules, national justice systems.

The transnational investment protection system is asymmetrical and unilateral, since it is exclusively for transnational investors that, despite illegalities, abuses, corruption, repression and lack of justice for affected communities, can bring claims against sovereign states. At the same time, it provides an opportunity for companies and their representatives, behind closed doors, to use the threat of possible claims to try to influence the scope or implementation of policies important to the public interest, respect for collective rights and environmental protection.

Investors bring their claims to tribunals such as the World Bank's International Centre for Settlement of Investment Disputes (ICSID), the most frequently used, where each arbitration panel is composed of three, highly-paid lawyers selected by the two parties. The arbitrators are not obliged to consider the rights of the people affected by the investments, but rather they rule on violations of investor privileges written into Free Trade Agreements and Bilateral Investment Treaties.

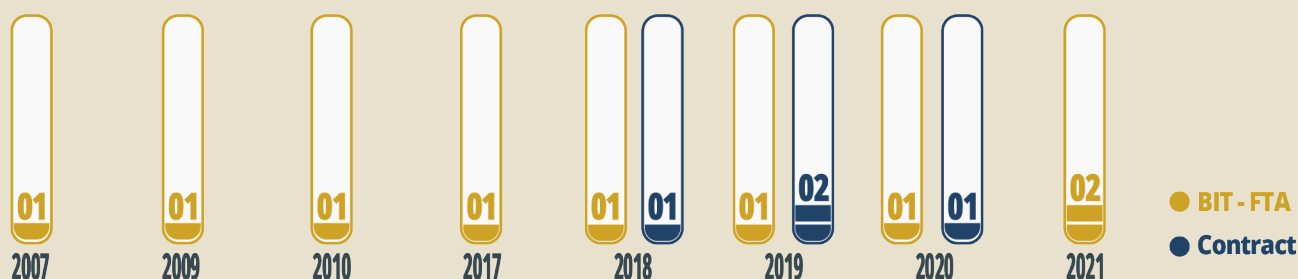
These tribunals, not to be confused with a court of law, are more akin to a "Wild Wild West of international law", where "there really are no hard and fast rules" and "misrepresentations of fact and gross misstatements of authorities are rampant and, when discovered, usually go unpunished,"⁸ as Arbitrator George Kahale III has said.

In addition, these arbitration claims may seek to influence public policy decisions. This represents an impediment against an effective response to the demands of affected communities who reject energy and mining projects that threaten their dispossession and displacement. The corporate motive is simple: if the government or communities do not allow them to conduct their business, they will seek millions in compensation, not only for what they report to have invested, albeit irregularly, but for their expectations of future lost profits.

ISDS suits against Guatemala

Since receiving its first claim in 2007, Guatemala has received a total of 9 investor-state claims based on BITs and FTAs. In addition, there are 4 claims, all from the same company (SIGMA), based on a road improvement contract.

Figure 1 • Claims against Guatemala by year



Source: Own elaboration based on data from UNCTAD Policy Hub, arbitration centers and journalistic sources.

Investors have benefited greatly

The vast majority of the corporate claims against Guatemala have already been decided, only two remain pending. The decisions were highly beneficial to investors. Of the 13 ISDS claims (based on BITs, FTAs and contracts), investors won in 7 cases, while the state prevailed in only 4.

Figure 2 • Status of claims



Source: Own elaboration based on data from UNCTAD Policy Hub, arbitration centers and journalistic sources.

Costs of the claims

Investors claimed almost US\$1.7 billion from Guatemala. The majority of this total arises from claims made based on BITs and FTAs (US\$1.63 billion). In the 7 claims decided in favor of investors, they were awarded more than US\$160 million (US\$61.6 million for claims based on contracts and US\$96.9 million for claims based on BITs and FTAs). This amount is equivalent to over three times the 2025 budget of the Ministry of Environment and Natural Resources (MARN), or twice the budget of the Guatemalan Ministry of Culture and Sports for the same period.⁹

It is worth mentioning that the amounts awarded do not include interest nor the state's costs, which generally increase the value of an award significantly.

For example, U.S. electricity company TECO sued Guatemala in 2010. In 2013, a tribunal issued an award for US\$21.1 million and ordered the state to bear its own costs (lawyers and arbitration costs) of US\$5.2 million and US\$7.5 million from the investor.¹⁰ After attempting to annul the award and proceedings in U.S. courts, Guatemala agreed to pay US\$46 million to the investor in 2022, more than 100% of the original award.¹¹

Two claims remain pending for US\$423 million from the same Colombian investors, Grupo Energía Bogotá S.A. E.S.P. (GEB) and Transportadora de Energía de Centroamérica S.A. (TRECESA).

Peaceful Resistance La Puya and Guatemala's first mining claim

Peaceful Resistance La Puya celebrated an important achievement at the end of 2025. On December 23, an arbitration panel of the World Bank's International Centre for Settlement of Investment Disputes (ICSID) ruled against Nevada-based mining company Kappes, Cassidy & Associates (KCA) over its more than US\$400 million claim against Guatemala.

KCA's claim was enabled by corporate privileges built into the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR). The company sought hundreds of millions of dollars in response to the court-ordered suspension of its "Progreso VII Derivada" gold mining project, which was halted for failure to hold a free, prior and informed consultation with the affected Maya Kaqchikel and Xinka peoples.

In its response, the Peaceful Resistance La Puya underscored in a communiqué¹² that it is the communities who have suffered harms from KCA's investment:

"This arbitration began in 2018 because the company and previous Guatemalan government administrations failed to respect the will of the population and their rejection of precious metal mining in defense of life, water and territory. The result of this violating action by the State in collusion with KCA has been conflict, local discord, intimidation, repression, and criminalization of the communities in resistance, and, finally, this international arbitration process that lasted seven years."

During the arbitration, La Puya collaborated with the Guatemalan legal team, providing testimony before the arbitration panel. To defend its case, the Guatemalan defense used arguments from the resistance at length¹³ to demonstrate that the company did not comply with Guatemalan regulations and that its project should never have been approved. As such, the government recognized the legitimacy of more than a decade of struggle by La Puya in defense of water, life and territory.

The media outlet IAREporter revealed that KCA lost its lawsuit because it "failed to adequately prove causation."¹⁴

Regarding the outcome, the Peaceful Resistance La Puya stated:

"We feel satisfied and vindicated in our peaceful struggle. KCA lost its wager to make millions of dollars through this international arbitration process, which it initiated knowing that it would never win the consent of the communities that have always said no to its unviable project. This project is so bad that the company couldn't even defend it in an arbitration system designed to protect the investments of transnational companies." ...

The Peaceful Resistance reaffirmed its commitment to seek the cancellation of the "Progreso VII Derivado" project and to ensure that no more mining licenses are granted in the area.

As a result, the company will now have to reimburse the Guatemalan government approximately \$380,000 in arbitration costs. However, the Guatemalan government will have to cover its other costs, estimated at US\$3.4 million for this case.

Investors suing

Excluding contract-based lawsuits (since they all arise from the same Guatemalan investor), most of the claims against Guatemala were initiated by U.S. companies. However, compared to other countries in the region, where U.S. and Canadian investors make up the majority of those suing, a variety of investors have registered claims against Guatemala.

Figure 3 • Country of origin of investors suing Guatemala



Source: Own elaboration based on data from UNCTAD Policy Hub, arbitration centers and journalistic sources.

Interestingly, most investors invoked protection chapters of an FTA. Only in three cases, or one third of the claims, were BITs invoked. Moreover, nearly 80% of these claims were registered with the World Bank's arbitration center, ICSID, the most widely used in the region.

Guatemalan investors sue their own country in the face of community opposition

In 2021, the company Energía y Renovación Holding, S.A. initiated its US\$178 million claim against Guatemala under the terms of the Central American Free Trade Agreement with Panama. The paradox is that the company's owners are part of the Guatemalan elite. This is not the first time that domestic investors use a transnational corporate structure to sue their own country, something that has happened, for example, against Honduras¹⁵ and Australia.¹⁶

However, this case is particularly controversial given that foreign investments within 15 km of the Guatemalan border, where the company intended to operate two hydroelectric projects, are prohibited by the Constitution.¹⁷

Energía y Renovación Holding, S.A., owned by the Castillo and Rodas families, attempted to impose the Pojóm II and San Andrés hydroelectric plants in the Yichk'isis (Ixquisis) Microregion, in the municipality of San Mateo Ixtatán, department of Huehuetenango, on Guatemala's border with Mexico. Prior to their arrival, the Mayan communities in the area had carried out a good faith community consultation in 2009 and said "no" to this type of megaproject in their territory, which is rich in rivers and forests.¹⁸ However, the State and the company ignored this,¹⁹ as did the Inter-American Development Bank (IDB) that financed the project through its subsidiary IDB Invest. The result was conflict, violations of the communities' collective rights, and an increase in aggressions against the communities, including threats and murders.²⁰

In 2018, the Plurinational Ancestral Government of the Akateko, Chuj, Q'anjob'al Indigenous Nations, together with the Interamerican Association for Environmental Defense (AIDA by its initials in Spanish) and the International Platform Against Impunity (PCI by its initials in Spanish), filed a complaint with IDB Invest, arguing that it had violated its own policies when it approved the financing and ignored the

presence of indigenous peoples, who rejected the serious impacts from the project already felt in their territory.²¹ As a result, in 2021, IDB Invest reached an agreement with the company to withdraw its financing.²² In this context, the Guatemalan investors resorted to international arbitration.

The company claimed to the arbitration panel that Guatemala breached the FTA by failing “to protect the claimant's hydropower plants from protests orchestrated by local communities.”²³ However, during an online forum in October 2024, Rigoberto Juarez of the Plurinational Ancestral Government commented that there was a military detachment and a National Civil Police substation in the area from 2014:

*"At the time when this company wanted to install its project in the territory there were three [security] forces, - including police, army and private security guards -, we calculate around 300 armed elements protecting the company. So, one wonders, what is the company complaining about, that there was no security? That's a lie. So that's where we see that there is an inordinate perversity on the part of the company and that, if ICSID listens to them, then we will also conclude that these mechanisms that fail to investigate make no sense either."*²⁴

In March 2025, the arbitration panel ruled in favor of the investor and ordered Guatemala to pay US\$64.5 million plus interest and costs to the company.²⁵ Currently, the state is seeking the annulment of the decision. However, it is important to note that an annulment is not an appeal and does not imply a review of the merits of the case, but rather only of the integrity of the arbitration process.

Sectors in which claims have been registered

Almost all of the claims against Guatemala are concentrated in two sectors, construction and energy supply.



The ‘Chilling Effect’ and claims against Guatemala²⁶

Guatemala's experience also illustrates the "chilling effect" that ISDS claims can have on the State, even including the effectiveness of measures ordered by international human rights bodies. It also demonstrates how ISDS is a threat to communities in resistance to the negative impacts on their health and the environment and puts pressure on the country's courts, which have been setting important jurisprudence regarding lack of respect for indigenous rights.

In 2010, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures in favor of 18 Mayan indigenous communities, and ordered the Guatemalan government to suspend the controversial Marlin mine in San Miguel Ixtahuacán in the department of San Marcos, which belonged to Canadian company Goldcorp. It also ordered measures to guarantee the life and well-being of the communities, including to address water contamination and health harms. The petition that affected communities had presented to the IACHR showed that at no time had the communities consented to the conflict-ridden project.^{27 28}

The Guatemalan government agreed to suspend operations pending the results of an administrative proceeding, but never did so. Rather, as indicated in internal documents obtained through a request under the Access to Information Law, the potential of an arbitration claim was one of the reasons cited to avoid suspending the mine. The documents state that the project's suspension could cause the mine's owners to "activate the World Bank's International Centre for Settlement of Investment Disputes (ICSID) or otherwise invoke clauses in the Free Trade Agreement to bring international arbitration and subsequently claim damages from the state."²⁹

Regarding law firms

The law firm White&Case, which is well-known and frequently used in claims against other Central American countries, was used in 5 BIT and FTA claims against Guatemala. Guatemala has hired the firm Dechert for its defense in 4 cases.

Conclusions

In recent years, Guatemala has faced a series of million-dollar claims over energy projects and one mining project that were permitted despite widespread rejection from affected peoples over the negative impacts these investments posed to their water, territories and community health. As a result, conflicts and processes of repression, militarization, criminalization and violence against the communities took place, which tends to go unpunished.

However, when investors cannot move forward with their projects due to conflict and resistance, they can sue the state for hundreds of millions of dollars. This is what happened in Guatemala. In the case of Kappes, Cassidy & Associates, ultimately, the company did not win. Guatemala, however, will still have to cover its legal costs. In the case of Energía y Renovación Holding, S.A., Guatemala faces a significant bill if its annulment process fails to prosper, and still faces a claim for US\$423 million from GEB and TRECSA.

In addition to the high costs for the public purse, it is hard to measure to what extent the chilling effect from arbitration claims and threats of claims from mining, energy and potentially other companies may have deterred the decisions of public officials in favor of corporate accountability, environmental protection and respect for the rights of affected communities, as took place in the case of the Marlin mine.

While the country remains at risk of ISDS claims, this system will remain an obstacle, particularly given how it impedes a serious debate over the appropriate development model(s) to ensure respect for the collective rights of communities and indigenous peoples, a healthy environment, and a dignified way of life in the country.

As the Peaceful Resistance La Puya states in its December 28, 2025 communiqué, after the arbitration panel ruled against mining company Kappes, Cassidy & Asociados:

"In this unfair arbitration system, which is a one-sided playing field where only transnational corporations can sue states and not vice-versa, the State effectively cannot win. It simply does not lose. This is an opportune moment for Guatemala [to] review the commitments it has made in investment treaties and decide, weighing the costs and benefits, whether or not to remain in this system."

Following, we propose some ways to begin to exit the transnational investment protection regime.

» Initiate a comprehensive review of Bilateral Investment Treaties and Free Trade Agreements that include Investor-State Dispute Settlement and urgently denounce, renegotiate or terminate all existing international investment agreements in order to eliminate ISDS.

» With regard to such a comprehensive review, conduct a full, participatory audit of all legal instruments that include ISDS, of the ISDS claims, and their economic, social and environmental impacts. Promote the active participation of populations affected by foreign investments in the audit in accordance with their collective rights. Put a moratorium on the use of ISDS for the duration of the audit and, once concluded, follow its recommendations.

» Denounce the ICSID Convention and promote the use of the national justice system for the resolution of investor-State disputes.

» Do not sign new FTAs, BITs or contracts with investment protection clauses and ISDS. Rather, give primacy to international human rights, indigenous rights, environmental and labor rights treaties.

» Government efforts should focus on creating binding mechanisms for corporate accountability, strengthening obligations for closure plans, environmental remediation, and comprehensive reparations for victims of the abuses of transnational corporations.



Appendix 1

List of claims brought under BITs and FTAs against Guatemala as of February 19, 2026

Investor	Year initiated	Country of origin	Treaty invoked	Administrative institution	Case number	Status	Amount claimed by investor (USD)	Amount ordered to be paid (USD)	Economic Sector
Grupo Energía Bogotá S.A. E.S.P., Transportadora de Energía de Centroamérica S.A.	2021	Colombia	Colombia-Honduras-El Salvador-Guatemala FTA	ICSID	ICSID Case No. ARB/21/59	Pending	423 M		Electricity, gas, steam and air conditioning supply
Energy and Renovation Holding, S.A.	2021	Panama	Central America-Panama FTA	ICSID	ICSID Case No. ARB/21/56	Decided in favor of investor	178 M	64.5 M + costs	Electricity, gas, steam and air conditioning supply
Grupo Energía Bogotá S.A. E.S.P. and Transportadora de Energía de Centroamérica S.A.	2020	Colombia	Colombia-Honduras-El Salvador-Guatemala FTA	ICSID	ICSID Case No. ARB/20/48	Pending	see 2021 claim		Electricity, gas, steam and air conditioning supply
IC Power Asia Development Ltd.	2019	Israel	Guatemala-Israel BIT	UNCITRAL	PCA Case 2019-43	Decided in favor of the State	117 M	Investor ordered to reimburse 1.8 M to the state for legal and arbitration costs.	Electricity, gas, steam and air conditioning supply
Daniel W. Kappes and Kappes, Cassidy & Associates	2018	U.S.	CAFTA-DR	ICSID	ICSID Case No. ARB/18/43	Decided in favor of the State	419 to 449 M	Investor ordered to reimburse 380,000 to the state for arbitration costs.	Mining and quarrying
Iberdrola Energía, S.A.	2017	Spain	Guatemala-Spain BIT	UNCITRAL	PCA Case 2017-41	Decided in favor of the State	N/A	Investor ordered to reimburse 800,000 to the state for legal and arbitration costs.	Electricity, gas, steam and air conditioning supply
TECO Guatemala Holdings	2010	U.S.	CAFTA-DR	ICSID	ICSID Case No. ARB/10/23	Decided in favor of investor	243.6 M	21.1 M	Electricity, gas, steam and air conditioning supply
Iberdrola Energía, S.A.	2009	Spain	Guatemala-Spain BIT	ICSID	ICSID Case No. ARB/09/5	Decided in favor of the State	188 M	5.3 M to the state for legal and arbitration costs.	Electricity, gas, steam and air conditioning supply
Railroad Development Corporation (RDC)	2007	U.S.	CAFTA-DR	ICSID	ICSID Case No. ARB/07/23	Decided in favor of investor	64 M	11.3 M	Construction

Appendix 2

List of claims brought under contracts against Guatemala as of February 19, 2026

Investor	Year initiated	Country of origin	Administering institution	Case Number	Status	Amount claimed by investor (USD)	Amount ordered to be paid (USD)	Economic Sector
Sigma Constructores S.V. Guatemala IV	2020	Guatemala	CENAC	CENAC Case No. 02-2020	Decided in favor of investor	32.8 M	30 M + interest	Construction
Sigma Constructores S.V. Guatemala III.	2019	Guatemala	CENAC	CENAC Case No. 10-2019	Decided in favor of investor	13.6 M	15 M	Construction
Sigma Constructores S.V. Guatemala II	2019	Guatemala	CENAC	CENAC Case No. 11-2019	Decided in favor of investor	11.2 M	11.2 M	Construction
Sigma Constructores S.V. Guatemala I	2018	Guatemala	CENAC	CENAC Case No. 13-2018	Decided in favor of investor	5 M	5.4 M	Construction

Endnotes

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