ISDS in numbers

IMPACTS OF INVESTMENT ARBITRATION AGAINST LATIN AMERICA AND THE CARIBBEAN

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ISDS in numbers

AUTHORS
Bettina MÜLLER and Luciana GHIOTTO, Transnational Institute

DESIGN
Original Design by Ricardo SANTOS, update by Mauricio TARDUCCI

TRANSLATION
Pierre-Yves SERINET, Deborah EADE

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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[1]

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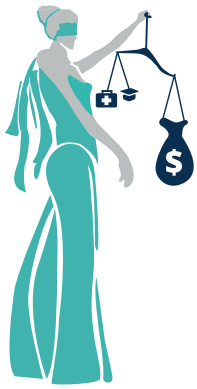
SUMMARY

This report presents a systematic overview of **foreign investor lawsuits against countries across Latin America and the Caribbean (LAC)** based on investment protection treaties up to **31 December 2023.**[2] The key findings are:

The **380** lawsuits against countries in LAC represent **28.5% of all known Investor-State disputes worldwide** making it the second most sued region worlwide.

2023 was the year with the highest number of ISDS claims ever registred against LAC countries, with **28 claims**.



In 60% of the cases resolved, the investor won, either obtaining a favourable award or benefiting from a settlement between the parties.

ARGENTINA, VENEZUELA, MEXICO, PERU AND ECUADOR are the most sued countries in the region. Together, they were challenged by **244** lawsuits, representing almost **2/3 of all claims** against LAC countries.

77,4% of all known claims against countries in LAC were filed at **ICSID.**

Lawsuits linked to **mining, gas and oil account for 22,4% of total claims,** more than half of which were filed during the last decade.

86% of the claims were initiated by **investors from the US, Canada and Europe** (mainly France, The Netherlands, the United Kingdom and Spain)

Governments have been ordered to pay foreign investors $33,629 billion.

This is a third more than the amount that climate catastrophes have cost the region between 1970 and 2021 and more than all the foreign direct investment received by the six Central American countries, the 15 Caribbean countries, Uruguay, Paraguay and Ecuador combined in 2022.

Only **30 arbitrators (top 10%) were part of 44% of the arbitration tribunals** in claims against LAC countries.

During the 1990s, countries across Latin America and the Caribbean (LAC) signed hundreds of international treaties protecting foreign investment and granting 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 signing Bilateral Investment Protection Treaties (BITs) would be decisive in attracting foreign investment. Thirty years on, however, it is evident that BITs did not help in attracting investment, let alone in promoting development. Rather, their effects have been harmful for countries throughout the region.

The negative impacts of BITs are still largely unknown and little discussed either in political and parliamentary circles, or in 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, Investor–State lawsuits have gone from a total of six known treaty-based cases in 1996 to 1,332 at the end of 2023.[3] **Countries in South and Central America and the Caribbean were sued on 380 occasions** over that period, **equivalent to 28.5% of known claims worldwide.**

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 organisations (CSOs) have expressed many criticisms of ISDS, including:

- The lack of transparency in arbitration proceedings.
- The lack of impartiality and independence of arbitrators.
- Award enforcement can take place anywhere in the world.
- The higher cost of Investor-State arbitration compared to trials in national courts.
- The system is unilateral: only the investor can initiate a lawsuit.
- The lack of a mechanism for victims to obtain justice in cases of abuse by TNCs.

The countries being sued

Of the 42 countries in the LAC region,[4] 23 have been sued and brought before the international arbitration system. In order of magnitude, Argentina, Venezuela, Mexico, Peru and Ecuador are the most sued countries in the region. Together, they account for 244 lawsuits, almost two-thirds of all those against LAC countries.

Table 1 Number of claims per country based on investment protection treaties

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 FTAs with investment protection chapters. In recent years, some countries have also agreed to include it in contracts signed directly with corporations for the exploitation of, for example, hydrocarbons, mines or even the management of the energy system. Some countries have also included it in their national laws, which extends the right to use the ISDS mechanism to investors from anywhere in the world. The latter is the case in Honduras and El Salvador.

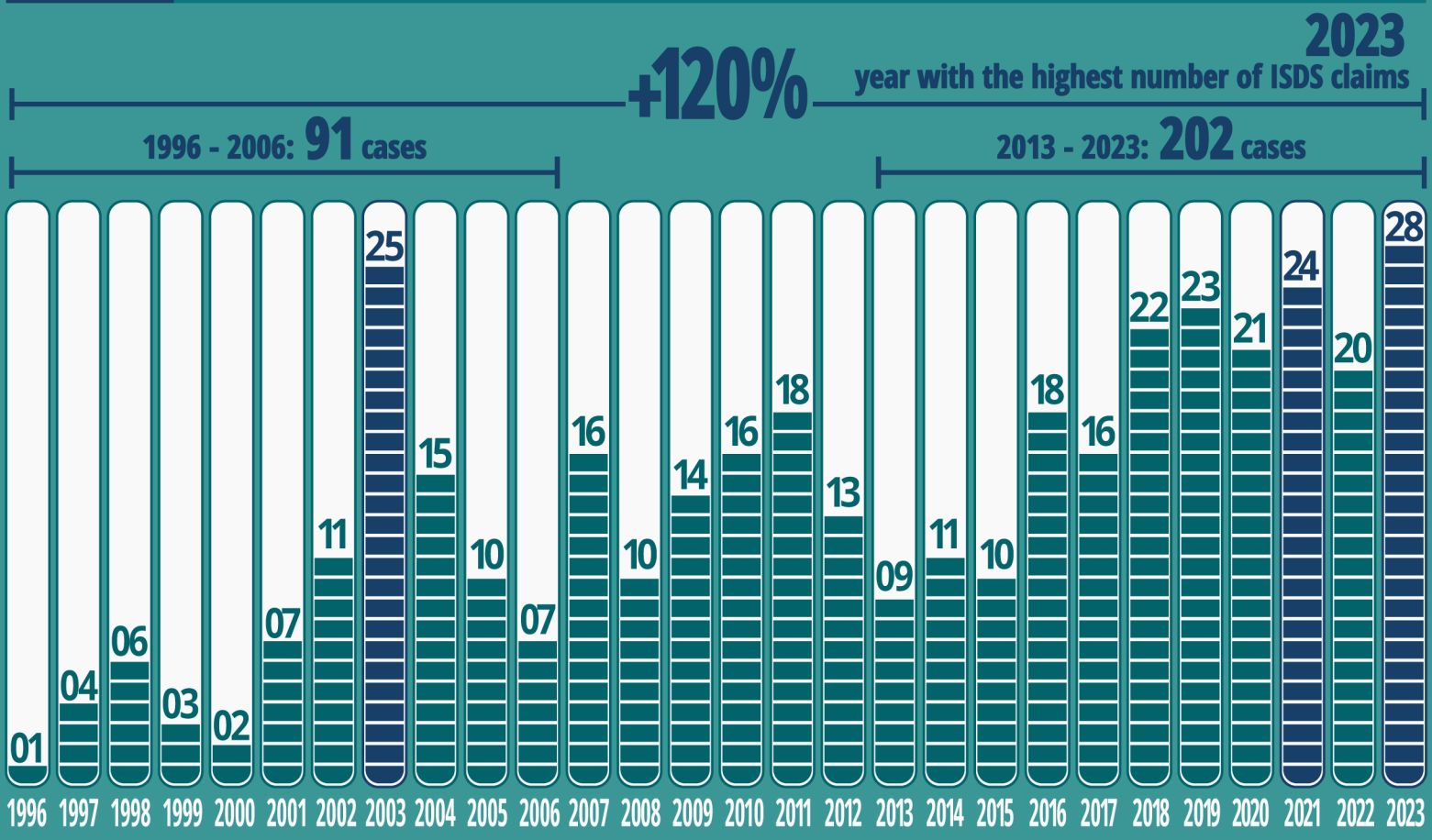
Until 2023, Honduras had faced almost no ISDS claims. But that year the number of cases skyrocketed and in just 12 months the country received five claims based on investment protection treaties, plus another four based on contracts, thus making it the second most sued Latin American country before arbitration tribunals in that year.

A Boom in Claims Over the Past Decade

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 increasing and reached its first peak in 2003, mainly due to the Convertibility crisis, which included a currency devaluation, pesification and freezing of utility tariffs and renegotiation of concession contracts.[6] Of the 25 claims registered in 2003, 20 were against Argentina.

Since then, the number of claims has continued to rise. While 91 lawsuits were registered between 1996 and 2006, in the past decade (2013-2023) these reached 202, a 120% increase over the earlier decade. In fact, **2023 was the year with the most claims in the history of investor-state arbitration in Latin America, with 28 claims registered**, of which 11 were from a single country: Mexico. This is because the old investment protection chapter of the North American Free Trade Agreement (NAFTA) could still be invoked, whose grace period expired in July 2023; three years after its replacement by the United States-Mexico-Canada Agreement (T-MEC). The T-MEC is a revised version of NAFTA and limits investor-state arbitration between Mexico and the United States to certain sectors, while between the US and Canada and Canada and Mexico it eliminates it altogether.

Figure 1 Number of claims per year



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

It is also important to know that there are dozens of threats of ISDS lawsuits and there are many cases in which governments have decided to backtrack on planned measures in order to avoid facing multi-million-dollar lawsuits. An example of this practice, known as *regulatory chill*, is the threat of the pharmaceutical company Novartis against Colombia for wanting to declare the drug Glivec, which is used to treat blood cancer, as a drug

of public interest and strip the pharmaceutical giant Novartis of its monopoly on production, so that generic competition would reduce the price of the drug. Novartis then threatened to sue Colombia in an arbitration court, which is why the Colombian government decided to back down on the measure.[7]

Arbitration Winners and Losers

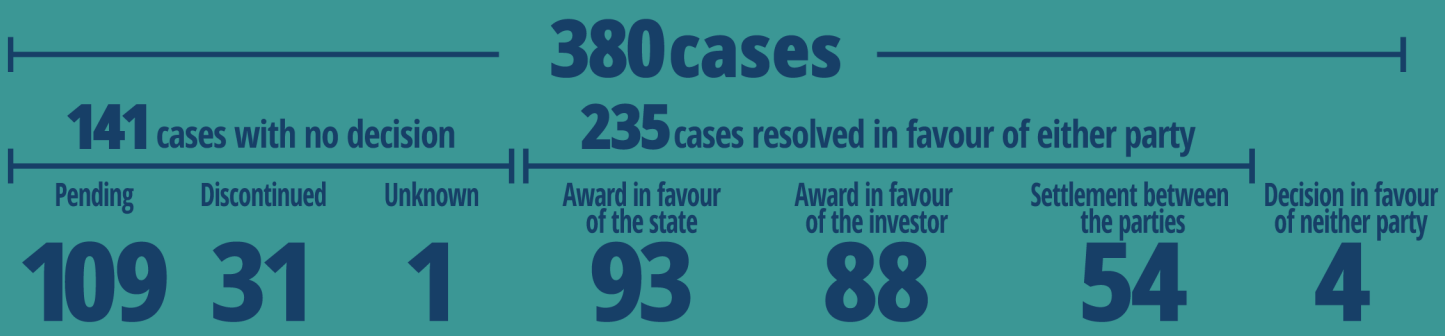
States have been the main losers in investment arbitration cases. Of the 380 known cases against LAC countries, 239 cases were resolved (either by a tribunal award or by an agreement between the parties[8]), 60% of which favoured the investor.[9]

Figure 2 Cases resolved in favour of either party

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

Of the 181 cases where the tribunal issued a ruling (i.e. excluding settlements between the parties), the award favoured the investor in 88 cases (48.6%).

Table 2 Status of claims



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

Given that claims incur millions in states' defence and legal expenses, they always lose out in the international arbitration system. Even when tribunals rule in their favour, they typically hire law firms that may charge an hourly rate of up to $1,000. For example, by 2013 Ecuador had spent $155 million for its defence and arbitration costs.[10] In the Freeport-McMoRan v. Peru lawsuit, the court rejected the US mining company's claims, but ordered the parties to pay its costs, which in Peru's case involved almost US$7 million spent on its defence.[11] In addition, when a ruling goes in favour of the investor, the tribunal often orders the state to pay the investor's arbitration costs. In Perenco's claim against Ecuador, for instance, the award also ordered the country to pay the investor $23 million to cover its fees.[12]

The Countries that Lost the Most Cases

In terms of the arbitration rulings by country, Argentina stands out. Of the 30 claims where the arbitrators' decision led to an award, only six favoured the state whereas 23 were in favour of the investor (one decision favoured neither party). In addition to the 18 cases in which a settlement was reached, we can infer that **85% of the claims resolved in the case of Argentina were decided in favour of the investor.**

There is also a significant imbalance in favour of the investor in the case of Venezuela, the second most sued country in the region. Of the 35 claims where the decision led to an award, 15 were in favour of the state whereas 20 were in favour of the investor. Adding to these the six cases in which a settlement was reached, we can infer that **63% of the claims resolved against Venezuela were decided in favour of the investor.**

The cases against Bolivia and Ecuador show similar outcomes.

Table 3 Status of claims against most sued countries

	ARGENTINA	VENEZUELA	BOLIVIA	ECUADOR
Claims resolved	48	41	17	21
Resolved in favour of the investor through an award or settlement between the parties	41 (85%)	26 (63%)	15 (88%)	14 (67%)
Decided in favour of the state	6 (12,5%)	15 (37%)	2 (12%)	7 (33%)
Cost of lost cases	9,216 billion dollars[13]	19,220 billion dollars	1,152 billion dollars	2,906 billion dollars[14]

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

The Cost of the Claims

In terms of the amounts, **investors' claims since 1996 total $279,083 bn**. In fact, the total claimed is even higher, as in 77 of the 380 claims the amount has not been disclosed.

Based on the disclosed amounts and the cases resolved so far (either by arbitral decision or settlement between the parties),[15] **states have been ordered to pay investors $33,629 bn**.

The **$33,629 bn** Latin American and Caribbean countries were ordered or agreed to pay are equivalent to...

- the total interest accrued on the debt that Argentina, Bolivia, Chile, Ecuador and Paraguay have to pay between 2024 and 2028.[16]

- the foreign direct investment received by the six Central American countries, the 15 Caribbean countries, Uruguay, Paraguay and Ecuador combined in 2022.[17]

- the entire amount, plus one third, that climate catastrophes have cost the region between 1970 and 2021 (US$25,046 billion).[18]

In **pending claims where the amounts have been disclosed** (47 of the 109 claims), **investors have claimed a total of $60,674 bn.**

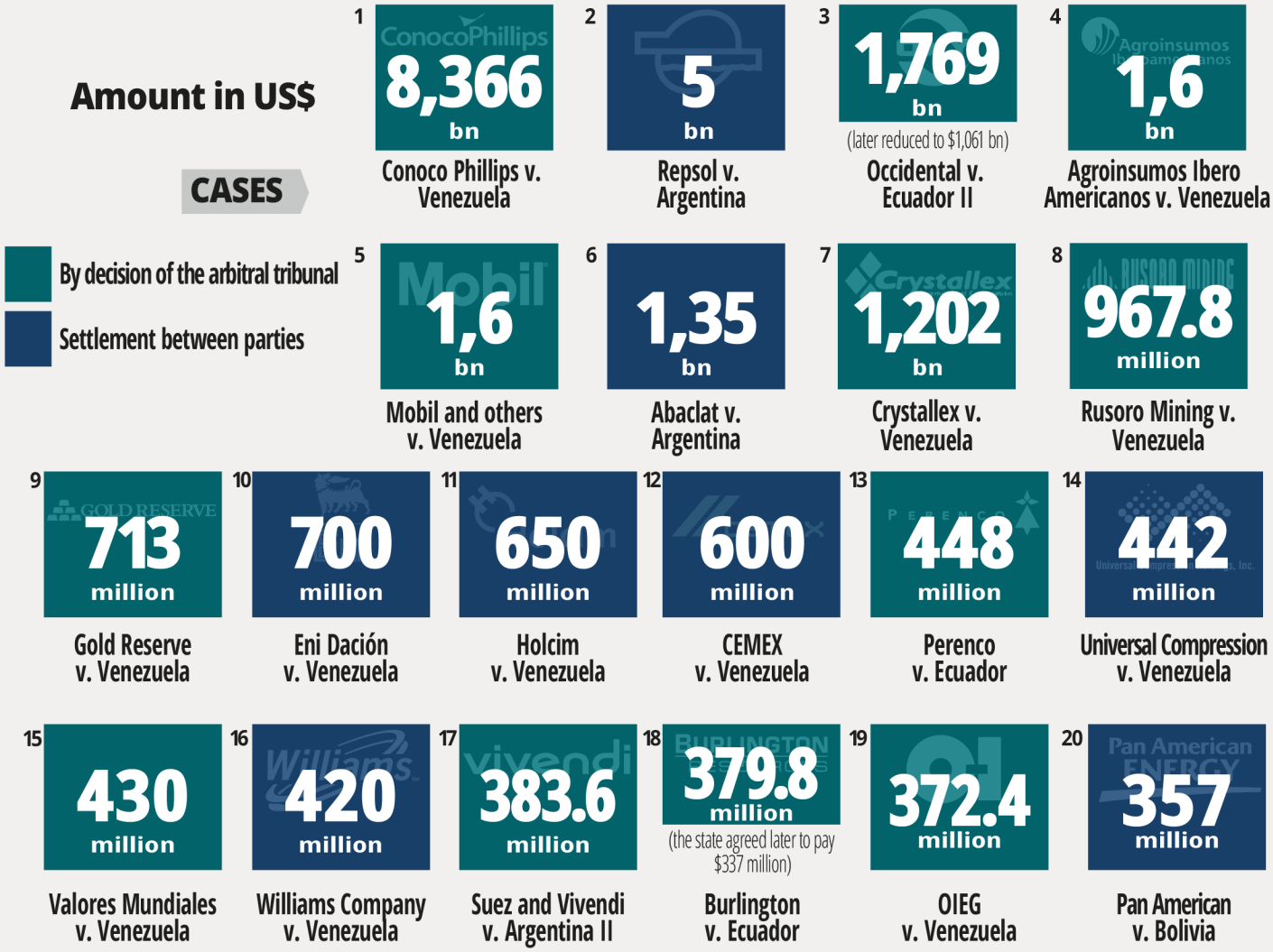
The most a country has ever paid as a result of a single claim was $5 bn, which Argentina paid to Repsol after negotiating a settlement with the company.

REPSOL v. Argentina

In 1999, Repsol, a then relatively small Spanish oil company, bought all of Argentina's Yacimientos Petrolíferos Fiscales (YPF). In 2012, due to the controlling company's investment abandonment, which plunged the country into an energy crisis, the state expropriated Repsol's shares. The company responded by filing lawsuits in four courts, including ICSID. Although its claim was for $10.4 bn, the government threatened to investigate environmental liabilities. Finally, in 2014, a $5.3 bn settlement was reached to end the case.[19] Despite this, a decade later, the country encountered another setback in a lawsuit filed in New York by the vulture fund Burford, which bought the right to litigate from a minority partner at the time of the expropriation, the Argentine group Petersen. By updating the value of its claim, Burford would obtain some $16 bn.[20]

In absolute terms, the costliest decision was against Venezuela, when it lost the ICSID case filed by Conoco Phillips in 2019. The Tribunal ordered Venezuela to pay an award of $8,366 bn. The country is currently using established procedures to seek annulment of the award.[21]

Table 4 The 20 largest claims from known cases[22]



Source: The authors, based on UNCTAD *Investment Policy Hub*, ICSID, journalistic sources and Claims' official documents.

THE SMALLEST AMOUNT PAID IN THE HISTORY OF ARBITRATION

The smallest amount ever paid in the history of arbitration related to 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 was privatised in 1999, Bechtel raised its prices by 50%, leading to the 'War over Water' uprising in 2000, which forced the country to renationalise water in Cochabamba. One year later, Aguas del Tunari, whose registered headquarters were in the Cayman Islands, changed its corporate domicile to the Netherlands so that it could use the Netherlands-Bolivia BIT to file an ICSID claim against the country for $50 million. The strength of Bolivian and international civil society protests against Bechtel led the corporation to abandon the case and agree that Bolivia should pay compensation for the token amount of 30 cents.[23]

Investors' Nationality

The investors that have filed the largest number of claims against LAC countries are based in the United States, with 124 claims, or around 33% of all lawsuits. They are followed by investors from European countries and Canada. **With all the claims brought by US, Canadian and European investors combined, we can infer that they account for 86% of the total.**

Table 5 Nationality of investors that sue more often

USA	SPAIN	NETHERLANDS	CANADA	UK	FRANCE
124	62	33	30	28	22
SECTORS AFFECTED BY CLAIMS					
Electricity supply, oil extraction, financial and insurance activities	Various sectors	Manufacturing and mining	Mining	Electricity and telecommunications	Water and electricity supply

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

To a lesser extent, investors based in the region also filed claims against LAC countries. Among these, Chilean investors issued nine such lawsuits, followed by Panama with eight claims. Another interesting case is Barbados, whose investors have filed seven claims, all of them against Venezuela. Only four investor–State lawsuits were filed by companies based in Argentina.

Figure 3 Origin of claimant investors

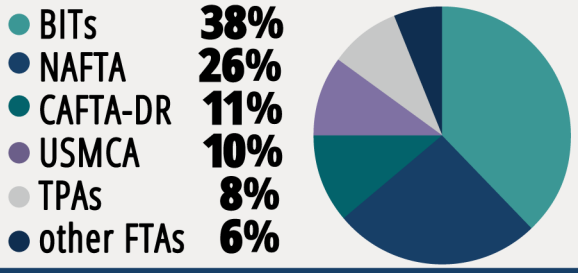
Source: The authors, based on UNCTAD *Investment Policy Hub*, ICSID and other arbitration tribunals.

Treaties invoked

The claims we display in this report are based on treaties signed between countries, whether they are Free Trade Agreements (FTAs) with investment protection chapters or specific investment protection treaties (BITs). In the claims against Latin American countries, investors cited alleged violations of BITs (306 cases) or for contravening FTAs (98 cases). A different treaty format, promoted mainly by the United States and known as Trade Promotion Agreements (TPAs), have already given rise to 12 arbitration claims.[24]

Given that US investors have most frequently initiated lawsuits, it is not surprising that US BITs, along with NAFTA (North-American Free Trade Area), including in its revised version known as USMCA (United States-Mexico-Canada Agreement), and CAFTA-DR (Dominican Republic-Central America FTA), are the most widely used.

Figure 4 Number of treaty-based claims invoked by US investors



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

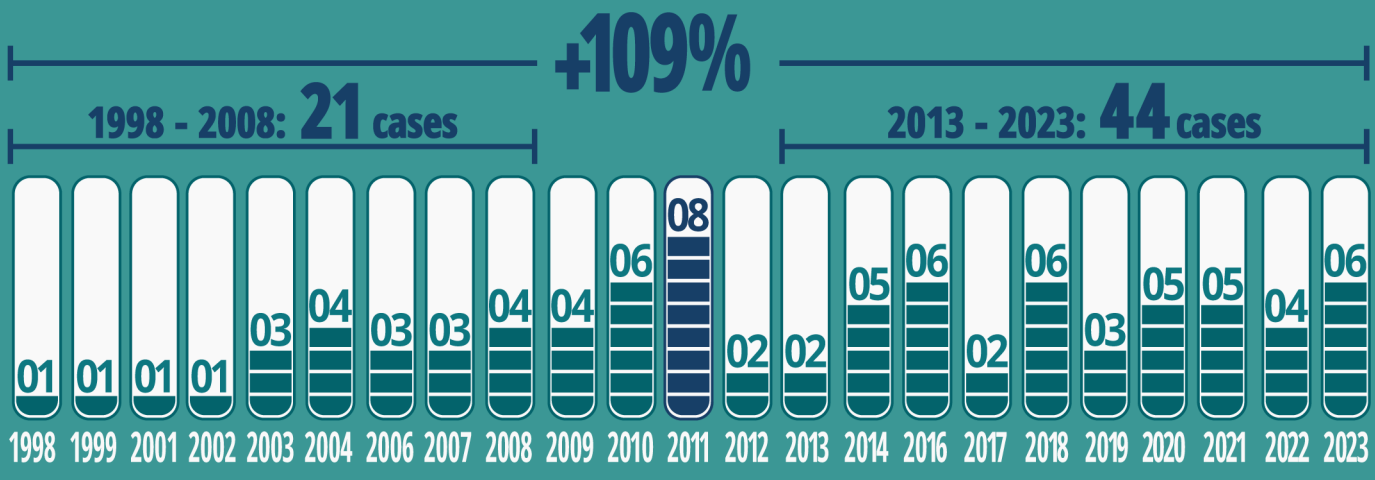
It is also interesting to know that a large number of the investors suing Venezuela invoked its BITs with the Netherlands (22 cases) and Spain (17 cases).

Economic sectors affected by claims

In recent years, most Latin American countries have faced a growing number of claims in the Mining and Oil & Gas sector, where investors have been challenging governments' environmental conservation policies, regulations protecting the rights of rural communities, and public measures to increase companies' tax contributions.

Of the 380 known cases against LAC countries, 85[25] **are related to these sectors, or 22.4% of the claims**. Comparing the 1998–2008 period against 2013–2023, investors in these extractive sectors sued LAC countries 21 times against 44, an increase of 109%.

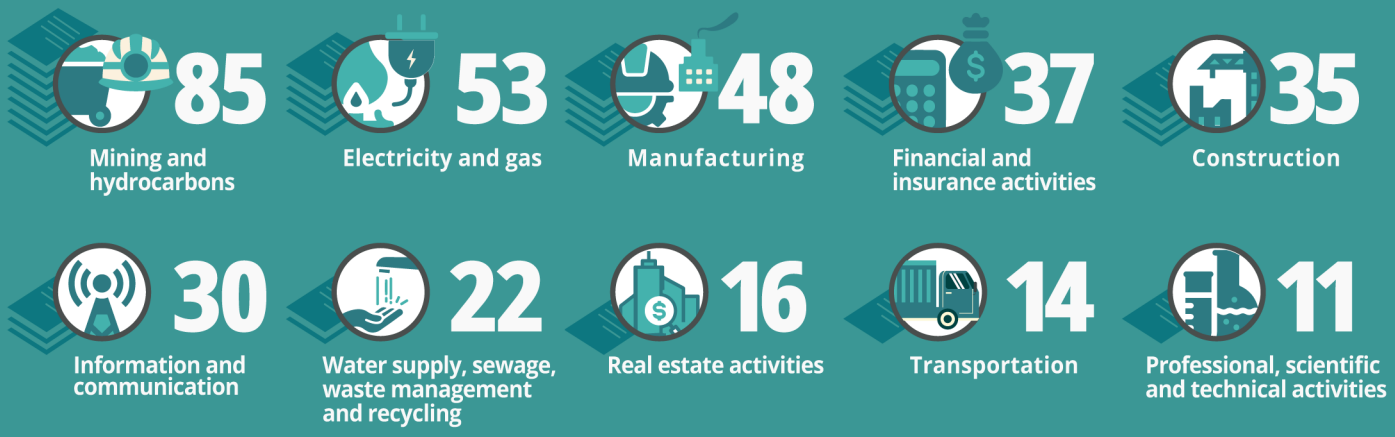
Figure 5 Claims in the Mining and Hydrocarbons sector by year



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

The other sectors with a large number of claims are: electricity and gas (53 cases) and manufacturing (48).

Table 6 The 10 sectors affected by the largest number of claims



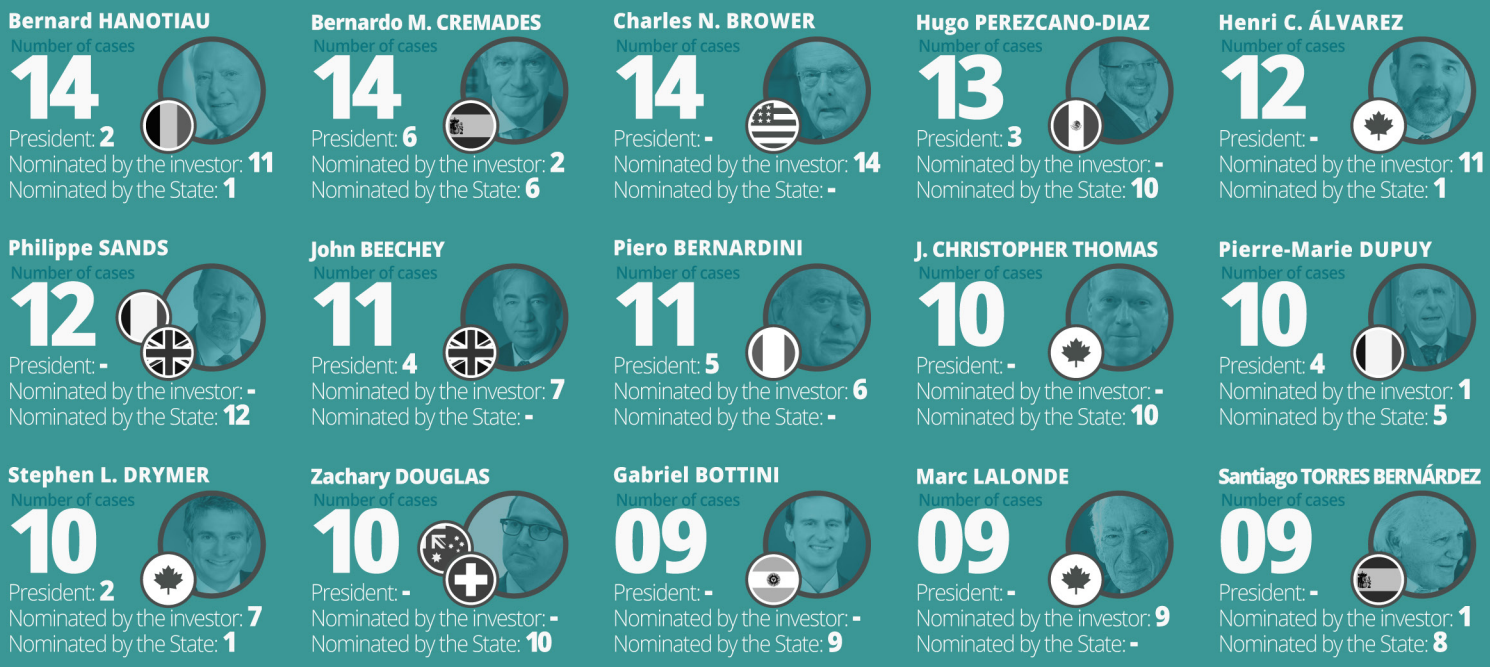
Source: The authors, based on UNCTAD *Investment Policy Hub.*

Arbitrators in the Cases

The arbitral tribunal is a panel of three arbitrators: one is usually nominated by the investor and one by the state, and the president is appointed by mutual agreement between the parties.

A total of 295 arbitrators have served on tribunals against LAC countries, the vast majority of whom have been involved in only a few cases. Indeed, **just 10% of the arbitrators have been elected to sit on 44% of the arbitral panels** (where the tribunal is known and/or has been set up).

Table 7 Top 30 arbitrators, or 10% of all arbitrators 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, and have most often appointed the French arbitrator Brigitte Stern. Investors have repeatedly chosen the Argentinian arbitrators, Horacio Grigera Naón and Guido S. Tawil, and the US arbitrator Charles Brower. The Swiss arbitrator Gabrielle Kaufmann-Kohler and Spanish arbitrators Juan Fernández-Armesto, Andrés Rigo Sureda and Albert Jan van den Berg are most frequently appointed as presidents of the tribunal.

The arbitrators' role on the tribunal depends on the case. For example, one might serve as president of the tribunal in one case and be appointed by the investor in the next. This happened repeatedly with the Chilean Francisco Orrego-Vicuña, who served seven times as president and eight as an arbitrator appointed by the investor; the arbitrators Alexis Mourre and Eduardo Siqueiros have been nominated indistinctly by investors and states.

Regardless of who nominates whom to the tribunal, most arbitrators of the so-called elite are pro-investor lawyers with a background in commercial arbitration.[26]

The Law Firms Defending Investors and States

276 international law firms have been hired by the parties in cases against LAC countries, among which 18 have represented either party in more than 10 cases.

The law firm investors used most often in cases against LAC countries is Freshfields Bruckhaus Deringer (59 claims), followed by King & Spalding (34), and White & Case (21). With a few exceptions, states also tend to hire international law firms for their defence, very often Foley Hoag (38 cases) – widely used by Venezuela and Ecuador; Arnold & Porter (32 cases) – supporting mainly Central American and Caribbean countries, especially Panama and the Dominican Republic – and Dechert (24 cases).

ARGENTINA - PERU: DIFFERENT PATHS TO FENDING OFF LAWSUITS

Argentina has defended itself using only its own team of state lawyers, with the exception of Vivendi's first lawsuit in 1997, AES in 2002, Abaclat et al. in 2007 and MetLife's lawsuit in 2017.

On the other hand, Peru, the fourth most sued country in the region with 34 lawsuits, has only hired private law firms to face the lawsuits against it, mainly: White & Case, Sidley Austin, Foley Hoag or Arnold & Porter (Kaye Scholer).

Table 8 The law firms most often used by investors and states[27]

Freshfields Bruckhaus Deringer Number of cases **59** Used by the investor: **56** Used by the State: **3**	**Foley Hoag** Number of cases **38** Used by the investor: **-** Used by the State: **38**	**King & Spalding** Number of cases **34** Used by the investor: **34** Used by the State: **-**	**Arnold & Porter** (Kaye Scholer) Number of cases **33** Used by the investor: **1** Used by the State: **32**	**Dechert** Number of cases **28** Used by the investor: **4** Used by the State: **24**	**White & Case** Number of cases **28** Used by the investor: **21** Used by the State: **7**
Pillsbury Winthrop Shaw Pittman Number of cases **24** Used by the investor: **1** Used by the State: **23**	**Sidley Austin** (Brown & Wood) Number of cases **19** Used by the investor: **4** Used by the State: **15**	**Hogan Lovells** Number of cases **18** Used by the investor: **11** Used by the State: **7**	**Curtis, Mallet-Prevost, Colt and Mosle** Number of cases **17** Used by the investor: **-** Used by the State: **17**	**Guglielmino Derecho Internacional / Guglielmino & Asociados** Number of cases **17** Used by the investor: **-** Used by the State: **17**	**Dechamps** Number of cases **14** Used by the investor: **14** Used by the State: **-**
De Jesús & De Jesús Number of cases **13** Used by the investor: **-** Used by the State: **13**	**Baker & McKenzie** Number of cases **12** Used by the investor: **12** Used by the State: **-**	**Clifford Chance** Number of cases **12** Used by the investor: **11** Used by the State: **1**	**Teresposky & DeRose** Number of cases **12** Used by the investor: **-** Used by the State: **12**	**GST** Number of cases **11** Used by the investor: **2** Used by the State: **9**	**Alfredo de Jesús O. Transnational Arbitration & Litigation** Number of cases **10** Used by the investor: **-** Used by the State: **10**

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

The rules of the game and the institutions enforcing them

There are many arbitration centres where investment disputes can be resolved, although most cases worldwide and most claims against LAC are conducted under the auspices of the World Bank's International Centre for the Settlement of Investment Disputes (ICSID). **Investors used ICSID 294 times** for their claims against countries in the region, meaning that **77.4% of all claims were brought to this arbitration centre**. Argentina is a case in point, with 61 of 65 claims registered at ICSID.

Some disputes have been addressed in other arbitration centres, for example in the Permanent Court of Arbitration (PCA) based in The Hague, and in the London Court of International Arbitration (LCIA).

Table 9 Institutions supervising the claims

380 cases

ICSID	PCA	Information not available or no institution supervising	LCIA[28]	ICC[29]	SCC[30]	CESCON[31]
294	59	19	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 govern the case. In the cases against countries in LAC, investors have chosen ICSID rules in 232 of the 380 claims. In addition to the 44 claims submitted under the ICSID complementary mechanism (ICSID AF),[32] **ICSID rules were used to resolve disputes in 72.6% of the claims against Latin American countries.**

Investors also have resorted to the UNCITRAL[33] rules which belong to the United Nations and have been used in 26.3% of the claims. Investors usually resort to 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. 13 of the 19 claims against Bolivia and 17 of the 29 against Ecuador were decided under UNCITRAL rules. Since Venezuela withdrew from the ICSID only in 2012, most of the lawsuits it faced before then were dealt with at ICSID and under its rules.

Table 10 Arbitration rules applied in the cases against LAC countries

380 cases

ICSID	ICSID AF	UNCITRAL	SCC	ICC	Arbitration Rules of the Inter-American Commercial Arbitration Commission
232	44	100	2	1	1

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

Sources

1 • The data presented in this report was correct at 31 December 2023. The analysis was carried out using a database of all cases of investor–state claims against LAC countries under investment protection treaties. The authors compiled the database based on public information from various sources and is available at: **www.ISDS-AmericaLatina.org**

2 • Regarding the outcome of the cases, arbitrators and law firms involved, the data is current up to 22 May 2024.

3 • UNCTAD (2024) Investment Policy Hub, data correct at 31 December 2023. **http://investmentpolicyhub.unctad.org/ISDS**

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

5 • Only arbitration claims that were filed alleging the violation of an international treaty (BIT or FTA with investment protection chapter) are registered here. Honduras also has investor claims that invoked its 2011 Law for the Protection and Promotion of Investment or contracts signed with the State. See box Contract claims: the case of Honduras.

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

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

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

9 • All decisions up to 22 May 2024 are included in this analysis, explaining any differences with UNCTAD data.

10 • For more information, see //caitisa.org; **https://www.tni.org/en/topic/ecuadorian-citizens-commission-on-investment-protection-caitisa**

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

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

13 • In 15 of the 40 claims resolved, the amount of the award or settlement was not disclosed.

14 • In two of the 14 claims resolved, the amount of the award or settlement was not disclosed

15 • This amount is based on the 142 claims for which the final amount that states had to pay to investors is known, whether as the result of the tribunals' award or the settlement between the parties. In 24 cases the amount remained undisclosed.

16 • Economic Commission for Latin America and the Caribbean, ECLAC (May 2024): Fiscal Panorama of Latin America and the Caribbean, 2024: Fiscal policy for addressing the challenges of climate change. pag. 38. **https://www.cepal.org/en/publications/69217-fiscal-panorama-latin-america-and-caribbean-2024-fiscal-policy-addressing**

17 • ECLAC (August 2023): Foreign Direct Investment in Latin America and the Caribbean 2023. Pag. 27. **https://www.cepal.org/en/publications/type/foreign-direct-investment-latin-america-and-caribbean**

18 • ECLAC (2021): Anuario Estadístico de América Latina y el Caribe. **https://repositorio.cepal.org/bitstream/handle/11362/47827/S2100474_mu.pdf?sequence=1&isAllowed=y**

19 • Taller Ecologista (2015): Frack Inc: Tensión entre lo estatal, lo público, lo privado, y el futuro energético. **https://cl.boell.org/es/2016/03/18/frack-inc-tension-entre-lo-estatal-lo-publico-lo-privado-y-el-futuro-energetico**

20 • Carlos Arbía (September 2023): Juicio a YPF: la familia Eskenazi podría cobrar unos 4.000 millones de dólares. MinutosdeCierre. **https://www.minutodecierre.com/nota/2023-9-13-11-45-0-juicio-a-ypf-la-familia-eskenazi-podria-cobrar-unos-4-000-millones-de-dolares**

21 • ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/30). **https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/07/30**

22 • 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.

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

24 • The total number of claims is higher because in several cases investors invoke two or more treaties.

25 • These are the cases related to mining of precious metals, coal and oil according to the classification criteria of the UNCTAD database. **http://investmentpolicyhub.unctad.org/ISDS**

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

27 • In many instances, investors and states contract more than one law firm to defend their case, even up to three, which explains why there are significantly more law firms involved than the number of cases.

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

29 • Centro de Solución de Conflictos de Panamá / Panamanian Center for Dispute Resolutions (CESCON).

30 • 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 UNCITRAL rules and the International Chamber of Commerce rules.

31 •United Nations Commission on International Trade Law (UNCITRAL).

32 • 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 UNCITRAL rules and the International Chamber of Commerce rules.

33 • United Nations Commission on International Trade Law (UNCITRAL).

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