**Open call for Inputs**

**Should the interests of foreign investors trump the human right to a clean,
healthy and sustainable environment?**

In recent decades, thousands of bilateral and multilateral trade and investment treaties have been negotiated by States. The overwhelming majority of these treaties include Investor-State Dispute Settlement (ISDS) mechanisms, which enable foreign investors to sue States for taking actions that adversely affect the value of their investments.

In the context of the triple planetary crisis, these ISDS mechanisms undermine States’ ability to enact, implement and enforce the stronger climate and environmental measures needed to respect, protect and fulfil the human right to a clean, healthy and sustainable environment. States have already been ordered, by international arbitration panels, to pay more than $100 billion to corporations in the coal, oil, gas, electricity and mining industries. Taking the actions needed to comply with the UN Framework Convention on Climate Change, the Paris Agreement, the Convention on Biodiversity, the Kunming-Montreal Global Biodiversity Framework and other environmental commitments could force States to pay more than one trillion dollars in compensation to foreign investors. Even the threat of being targeted by these cases is blocking more ambitious action urgently needed to address the climate crisis, reduce pollution, protect biodiversity and safeguard the human right to a clean, healthy and sustainable environment.

The Special Rapporteur is seeking inputs on this topic from States, rightsholders, foreign investors and other businesses and other stakeholders through responses to the questions below. Your replies will inform the Special Rapporteur’s analysis and contribute to his report, which will be presented to the United Nations General Assembly in October 2023.

**Questions**

The Special Rapporteur invites and welcomes your answers to the following questions:

1. Has your State been the subject of ISDS arbitration claims as a result of government actions intended to address climate change, protect the environment or advance the right to a clean, healthy and sustainable environment? Please provide details, including links to settlements or decisions by international arbitration panels where possible.
2. Has the public been informed of these ISDS cases and been given an opportunity to participate?
3. Has your State been threatened by foreign investors regarding potential ISDS arbitration claims to be pursued regarding proposed government actions intended to address climate change, protect the environment or advance the right to a clean, healthy and sustainable environment? Please provide details of the proposed measures, the foreign investors making the threats, and whether the proposed measures were implemented or abandoned.
4. Has the public been informed of these potential ISDS cases?
5. Has your State taken any actions to protect itself from future ISDS claims that could result from government actions intended to address climate change, protect the environment or advance the right to a clean, healthy and sustainable environment? For example, withdrawing from investment and trade treaties containing ISDS mechanisms (e.g. Energy Charter Treaty), renegotiating these treaties, or refusing to include ISDS provisions in new investment and trade treaties. What were the motivations for, and consequences of, these actions? What were the main obstacles to taking such actions?
6. Has the public been informed of these ISDS developments and been given an opportunity to participate?
7. Is your State participating in international processes intended to reform some of the problematic aspects of ISDS mechanisms, such as amendments to the ICSID rules, reforms proposed by UNCITRAL Working Group III, or amendments to the Energy Charter Treaty? In the alternative, does your State or business favour the elimination of international Investor-State Dispute Settlement mechanisms? How could this be achieved in a way that ensures States are able to fulfil their obligations to protect human rights and the environment while enabling foreign investors to bring forward claims before impartial courts or tribunals?
8. Please provide any other information regarding the impacts of ISDS mechanisms on human rights and the environment, including your perspective on the wisdom of prioritizing the interests of foreign investors above the right to a clean, healthy and sustainable environment and other human rights, especially where the rights of specific groups including women and girls, children, Indigenous Peoples, people of African descent, peasants and other local communities, disabled persons, migrants, persons living in poverty and other groups are involved.

**Submission of responses**

Please send your responses to the questionnaire in Word format by email to
hrc-sr-environment@un.org.

However, submissions will also be accepted via regular mail at the following address:

UN Special Rapporteur on human rights and the environment

Thematic Engagement, Special Procedures and Right to Development DivisionUNOG-OHCHRCH-1211 Geneva 10, SwitzerlandFax : +41 22 917 9006

**We kindly request that your submission be concise and limited to a maximum of 5 pages (or 2,000 words), not including appendices or attachments.**

Due to a limited capacity for translation, we also request that your inputs be submitted in English, French, or Spanish.

To avoid unnecessary duplication: if you have recently replied to other questionnaires from UN human rights mechanisms (or other international bodies) with information that would be relevant to this request as well, we welcome your directing us to those replies.

**The deadline for submission is** **15 June 2023**. Submissions received after this date will not be incorporated in the report.

All submissions will be published on the website of the mandate. Non-state actors could request the confidentiality of the submission.

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