



## THE MULTILATERAL INVESTMENT COURT: THE WOLF'S NEWEST OUTFIT

THE EU'S LATEST CORPORATE PRIVILEGE  
REBRAND

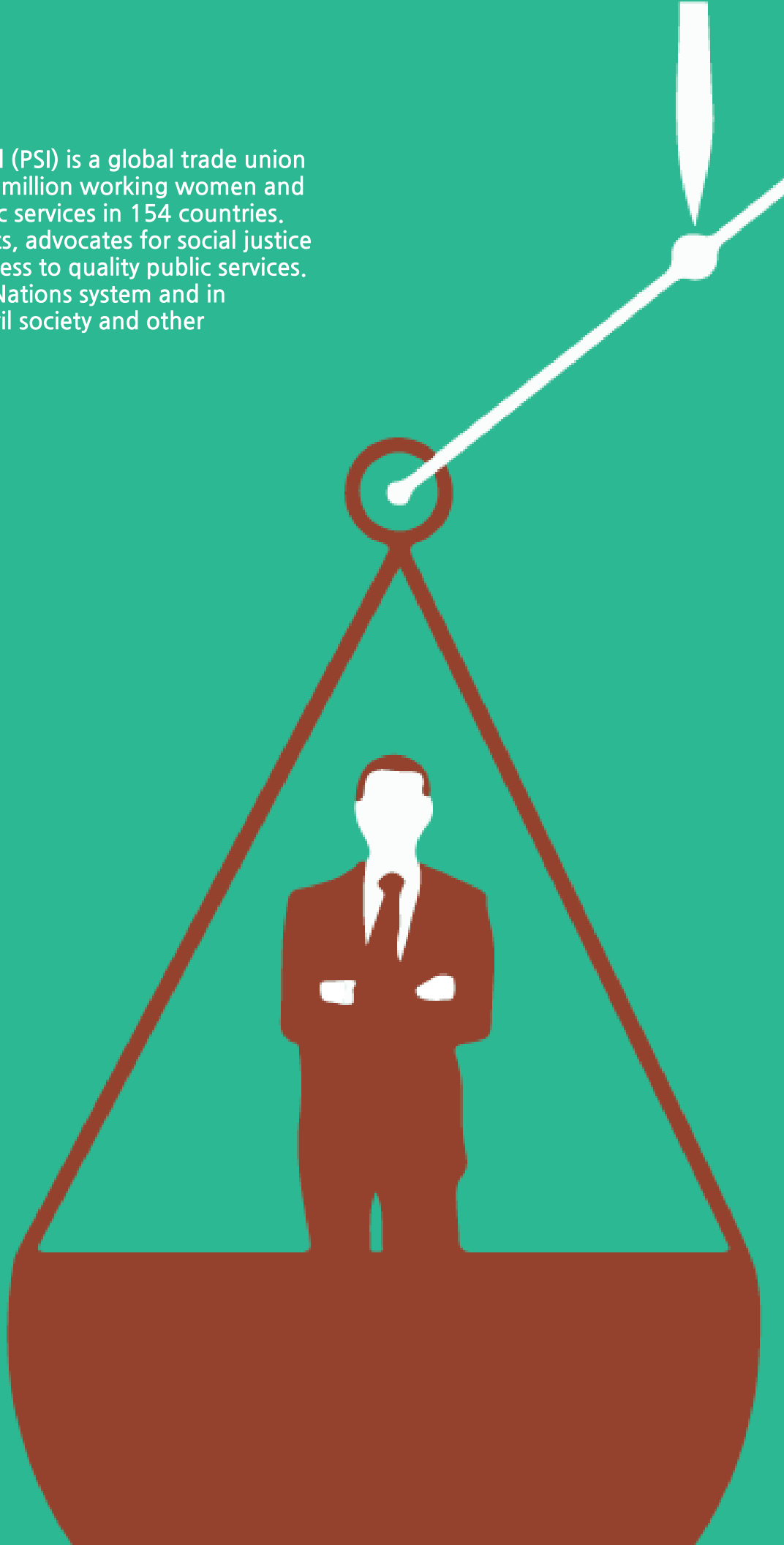
MIC Fact Sheet



## About the publisher:

Public Services International (PSI) is a global trade union federation representing 20 million working women and men who deliver vital public services in 154 countries. PSI champions human rights, advocates for social justice and promotes universal access to quality public services. PSI works with the United Nations system and in partnership with labour, civil society and other organisations.

[www.world-psi.org](http://www.world-psi.org)





## Background

Embedded within more than 3,000 trade and investment agreements is a system that empowers multinational corporations to sue governments over laws that the corporations claim violate their investor rights.

This secretive regime — Investor-State Dispute Settlement or (ISDS) — is a separate system of “justice” that workers, domestic companies, or governments themselves cannot access.

Corporations can be awarded unlimited sums of taxpayer dollars following attacks on health and safety standards, environmental laws, and other basic protections.

## Context

In recent years, public opposition to ISDS has made this acronym political poison.

Recognizing this, the EU has attempted a number of rebranding exercises to try and give the ISDS corporate power grab a ‘friendlier’ face.

In 2016, PSI launched our investigation into the EU’s new Investor Court System (ICS), exposing it as the same dangerous ISDS system (The report, titled “ICS - The Wolf in Sheep’s clothing” can still be found on our website).

Now, yet again, we are seeing ISDS creeping into international decision making – this time under the guise of the Multilateral Investment Court or MIC.

Governments have already been ordered to pay out billions of dollars under the ISDS system, and tens of billions more remain in pending cases.

**Just a few examples of past ISDS cases include:**

- One U.S. company, Lone Pine, launched a \$241 million ISDS case against Quebec after the Canadian province suspended oil and gas exploration permits for deposits under the St. Lawrence River as part of a wider moratorium on the controversial practice of fracking.
- Another U.S. company, Ethyl Corporation, launched a case against Canada for its ban on MMT, a toxic gasoline additive. The corporation received \$13 million and the ban was reversed.
- In 2003, the Czech Republic paid a corporation US\$354 million, then the equivalent of the country's health budget.
- Ecuador was ordered to pay US\$ 1.1 billion to a US-based oil company – 90% of its social welfare expenses budget for 2015.

And there are many more.

As inequality, austerity and unemployment rise, anger understandably grows with a system that gives 94.5% of known awards to companies with at least US\$ 1 billion in annual revenue or to individuals with over US\$100 million in net wealth.

These outrageous corporate attacks on legitimate public-interest laws have led some countries to say enough is enough! Governments from South Africa to Indonesia to Ecuador have terminated many of their treaties that include ISDS. The EU Trade Commissioner admitted that ISDS was “the most toxic acronym in Europe.” Even the Trump administration has proposed eliminating ISDS from the North American Free Trade Agreement (NAFTA).

But ISDS supporters are on the defensive, desperately trying to regroup to salvage the system through various “reform” proposals .

# The EU's Alphabet Soup of Corporate Privilege: ISDS, ICS, and now the MIC...

In response to the growing controversy around ISDS worldwide and especially in Europe, in 2015 the European Commission proposed a re-brand for this corporate privilege regime.

The Commission claimed it would replace the “old” ISDS and created a new acronym: “Investment Court System” (ICS).

The Commission then continued to try to cement new free trade agreements that included the ICS corporate privileges.

As explained in the 2016 PSI report “ICS: Wolf in Sheep's Clothing,” the ICS was a clever rebrand that addressed some of the worst procedural problems of the ISDS regime while keeping the fundamental injustice of ISDS intact.

In 2018, the Commission went a step further and created yet another acronym, when it secured a mandate among EU member states to attempt to negotiate globally a proposed “Multilateral Investment Court” (MIC).

This is a way of permanently establishing a court under which the ICS can operate.

The European Trade Union Confederation was critical of the MIC proposal, recognizing that it “would not change the reality of a parallel legal structure for the protection of foreign investment.”

This alphabet soup of acronyms is confusing — probably deliberately so to distract us from our opposition to the extreme corporate rights of ISDS.

**But the bottom line is simple: The MIC is no “solution” to ISDS.** The MIC project is another attempt by those supporting exclusive rights for investors to rebrand ISDS and entrench it around the world.

The ISDS wolf in ICS sheep's clothing has a new MIC suit, but we can't allow ourselves to be fooled.

The ICS and now the MIC is supposed to deflect criticism by claiming to fix the problems with ISDS — but neither comes even close.

Nearly all of the same detailed criticisms PSI outlined in our 2016 ICS: Wolf in Sheep's Clothing report apply to the MIC.

The MIC establishes some minor new procedural rules governing who can serve as a judge on these in ISDS cases, and it adds some transparency and appeal procedures.

But it does not address the core problems with ISDS.



# Under the MIC:

- Public interest policies would still be subject to attack — even legitimate, non-discriminatory laws designed to protect public health and the environment.
- Foreign companies would still be the only ones who can launch cases — not domestic companies or any groups (such as workers, or downstream communities) affected by the conduct of the foreign investor.
- Corporations would still be allowed to side-step domestic legal procedures to launch cases and win taxpayer money. There is no requirement to first exhaust all domestic legal recourses.
- Governments would still face the so-called “chilling effect” — an incentive for governments to refrain from enacting public interest laws in the first place out of fear of a corporate attack.
- Corporations would still be granted the same problematic “rights,” which have been interpreted to mean they are due compensation for any law, regulation, court ruling, etc. that diminishes their expected future profits.
- Even the most notorious corporate criminals could still access the system. There would be no requirement that companies bringing cases must be in compliance with national or international labor, human rights, or environmental standards.

# Why does this matter now?

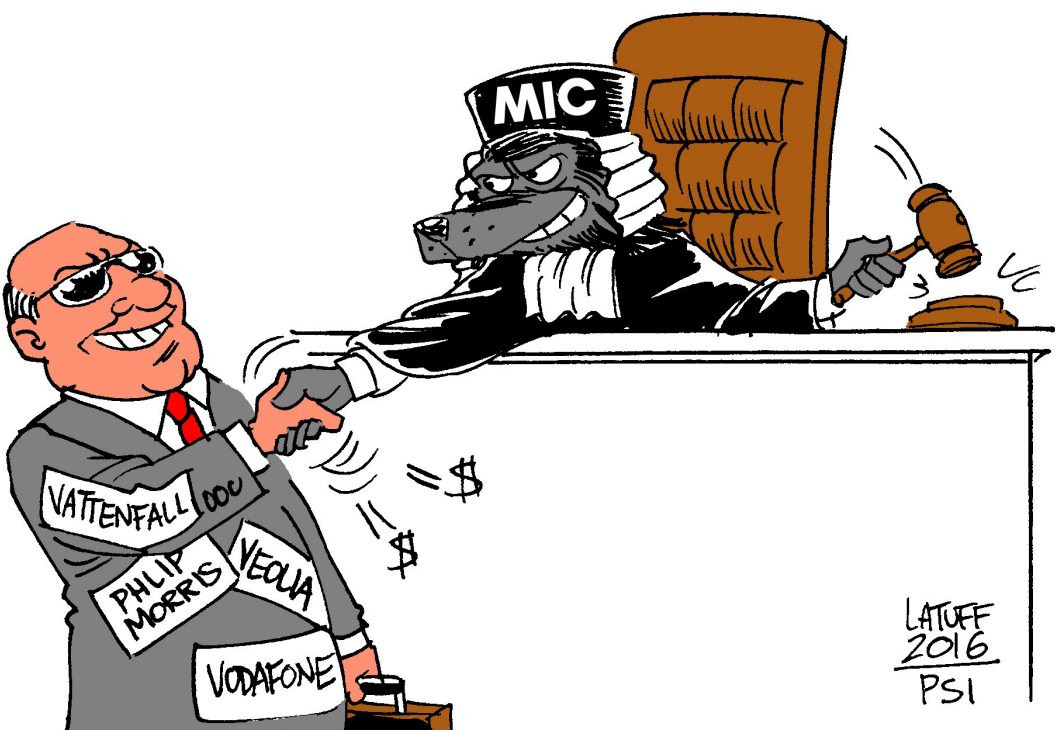
The United Nations Commission on International Trade Law (UNCITRAL) — a UN body that provides one set of rules under which many ISDS cases are litigated— has created a working group, likely in response to international criticism of ISDS. This working group is tasked with considering what the problems are with ISDS, whether reform is desirable, and what that reform should be.

These working group discussions should be an opportunity to really reform this damaging system, but so far, those who wish to save the ISDS regime are aiming to hijack the UNCITRAL reform discussion to maintain the status quo or promote half-measures around the margins that do not address ISDS' fundamental flaws. For example, the European Union is trying to convince UNCITRAL member governments to adopt its MIC proposal.

If the MIC's model of phony ISDS reform takes hold, it will cement the ISDS regime and make it even harder to enact true reform in the future. We cannot allow this to happen

## Take Action

Unions and Civil Society Organizations across the world are rallying against MIC: the latest ISDS trojan horse. To add your name or the name of your organization's to the Global Sign On letter against MIC visit: <https://tinyurl.com/ybbkrtxh> To find out more about the MIC process check out: [www.world-psi.org/trade](http://www.world-psi.org/trade) To determine your country's involvement, visit the UNCITRAL website: [www.uncitral.org](http://www.uncitral.org) To contact PSI directly on this issue, email [leo.hyde@world-psi.org](mailto:leo.hyde@world-psi.org).





## **Public Services International**

Public Services International, BP 9, F-01211 Ferney-Voltaire Cedex, France.

Tel: +33 (0)4 50 40 64 64 Fax: +33 (0)4 50 40 50 94

E-mail: [psi@world-psi.org](mailto:psi@world-psi.org)