Investor-State Arbitration in Sub-Saharan Africa

Perry Bechky
Principal, ITI Law
Visiting Scholar, Seattle University School of Law
Co-Chair, ASIL Dispute Resolution Interest Group

Penn State International Arbitration Day
March 11, 2016
Brief Introduction to ICSID

- Created by multilateral treaty in 1966
- 152 member states
- Autonomous international institution
- Close relationship with World Bank
- Resolves investor-state disputes, mainly by arbitration
ICSID Awakens

Average Cases per Year

- 1966-79
- 1980-89
- 1990-99
- 2000-09
- 2010-14

Source: ICSID Caseload—Statistics 2015-2
The BIT Revolution

Basis of Jurisdiction

- BIT: 61%
- Contract: 18%
- Statute: 10%
- Other Treaty: 12%

Source: ICSID Caseload—Statistics 2015-2. Total exceeds 100% due to rounding.
ICSID Cases against Sub-Saharan States

- 81 ICSID arbitration cases against 32 Sub-Saharan countries, concluded and pending
- 28 pending cases against 20 different countries
- 13% of total pending cases (208 total)
- Also, 7 ICSID conciliations
  - 1 pending against Equatorial Guinea
ICSID Claims by Sub-Saharan Claimants

- 31 cases with Sub-Saharan Claimants
  - Many of them, however, are local subs of foreign investors
- Sudapet (Sudan) v South Sudan
- Oded Besserglik (South African individual) v Mozambique
- Also two cases started by African states
  - Gabon 1976
  - Equatorial Guinea, recent conciliation
Sub-Saharan ICSID Arbitrators

- 35 total appointments, 33 arbitration + 2 conciliation
  - Abdulqawi Ahmed Yusuf (Somalia) – 7 appointments
  - Keba Mbaye (Senegal) – 5
  - No one else more than 3

- 7 appointments in pending cases (3% of cases)

- Nature of appointment:
  - 14 by ICSID for annulment committees:
    - Yusuf - 7
    - Mbaye - 3
  - 6 by ICSID for respondent
  - 13 by respondent state, including 5 by own state
  - 2 by claimants
For more information, please see Perry Bechky, “Microinvestment Disputes” in *Vanderbilt Journal of Transnational Law* (2012) and “International Adjudication of Land Disputes: For Development and Transnationalism” in *Law & Development Review* (2014). Please do not hesitate to contact me:

Perry Bechky  
International Trade & Investment Law PLLC  
+1.202.549.5551  
pbechky@iti-law.com  
www.iti-law.com