

# Investor-State Arbitration in Sub-Saharan Africa



Perry Bechky

Principal, ITI Law

Visiting Scholar, Seattle University School  
of Law

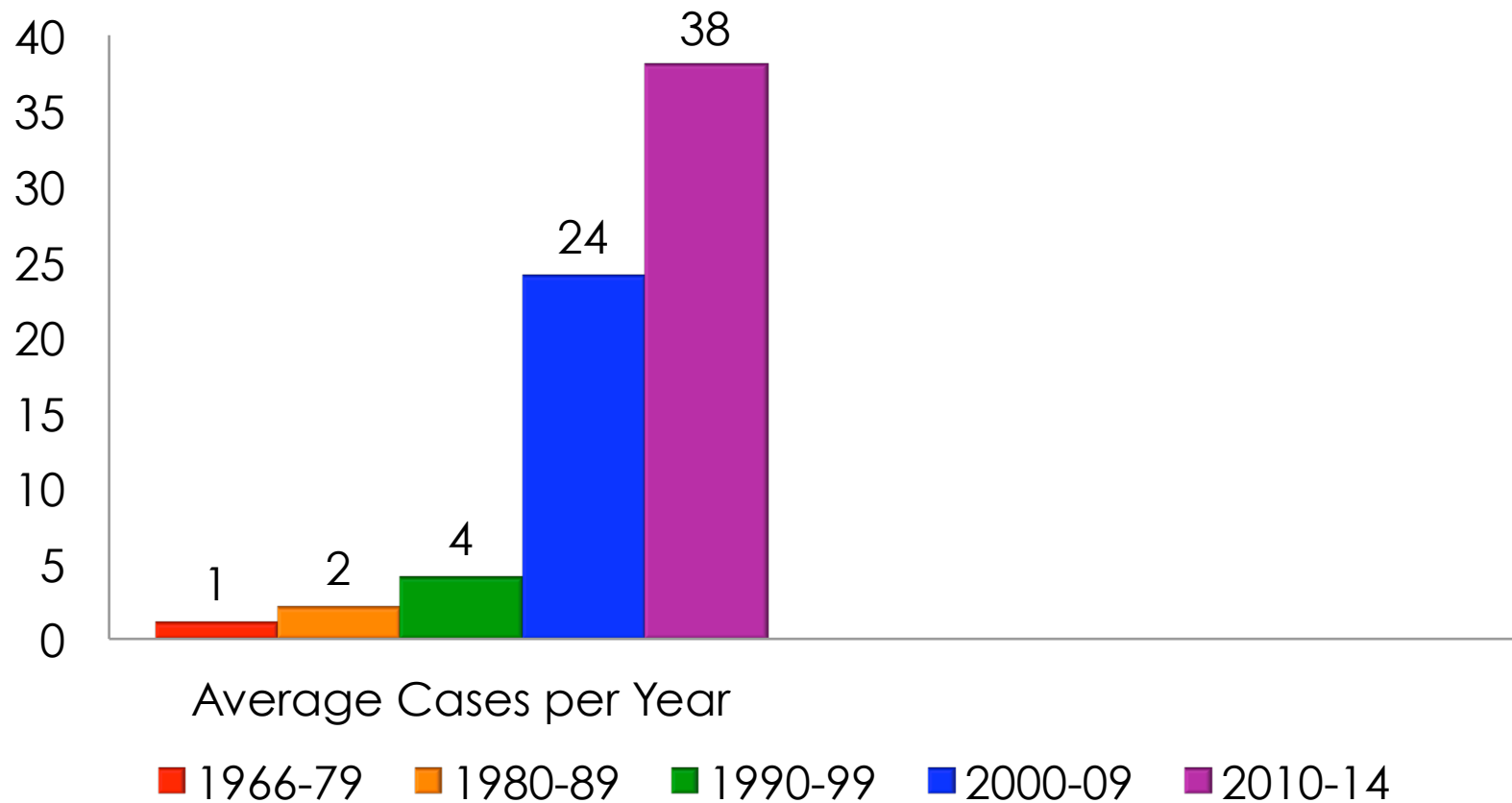
Co-Chair, ASIL Dispute Resolution Interest  
Group

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



Source: *ICSID Caseload—Statistics 2015-2*

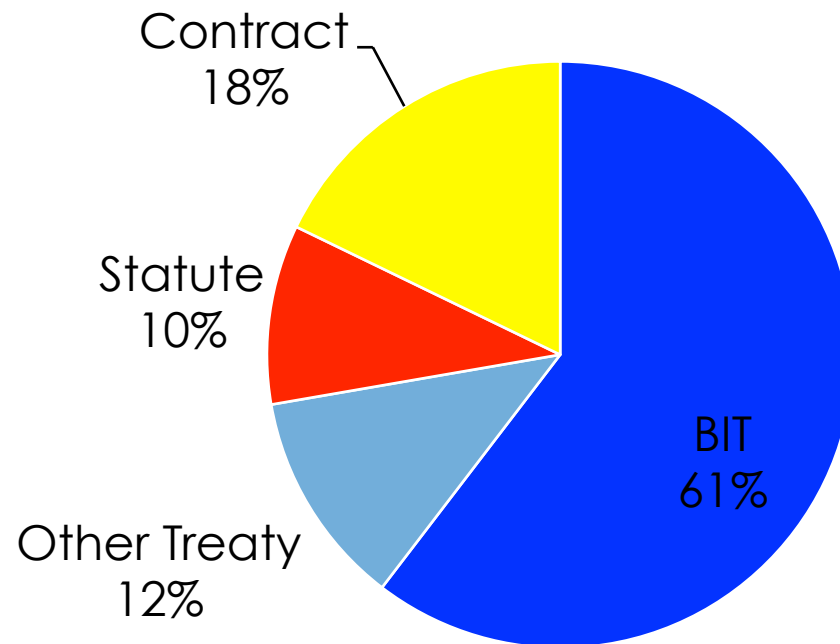


**ITI LAW**

International Trade & Investment Law PLLC

# The BIT Revolution

## Basis of Jurisdiction



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

Thank you!

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