

# Investment Arbitration in Sub-Saharan Africa: Strategic Implications of the 2025 ICSID Caseload for States, Investors and Practitioners

OALP Arbitration Newsletter

## INTRODUCTION

The recently released ICSID Caseload Statistics<sup>1</sup> and the prevailing investment dispute climate highlight interesting developments concerning Nigeria and entire Sub-Saharan region.

First, within the period under review,<sup>2</sup> the Sub-Saharan African States generally experienced rising investment dispute claims—a 100% surge in the number of ICSID cases<sup>3</sup>—and the reasons for the huge increase are nuanced. Second, the ICSID framework remains a veritable tool for foreign investors to hedge their exposure against States, including the Sub-Saharan African States. Third, while Sub-Sahara African arbitrators remain underrepresented on the ICSID tribunals, more Sub-Saharan African arbitrators were appointed, compared to previous years.

In the ensuing paragraphs, this note examines these developments and their implications for Sub-Sahara African States, including Nigeria, the foreign investors doing business in the region and the investment arbitration community at large.

## SUB-SAHARAN STATES RISK INCREASED INVESTMENT DISPUTE CLAIMS AND THE REASONS FOR THE HUGE INCREASE ARE NUANCED

Out of the new 67 ICSID cases, 16 cases were initiated against Sub-Saharan African States. This constitutes the highest against any region within the period under review, and more than twice the number of cases against Sub-Saharan states in the last two years combined.<sup>4</sup>

This increase coincides with the return of military rule in Niger, Mali and Burkina Faso. But the cases against these countries (5 cases) only account for 30% of the increase. Senegal, Comoros, Rwanda and Togo account for the remaining 20%.<sup>5</sup>

In any event, the fact that a 100% plus increase is already recorded in the first half of this year and there are recent threats of investment claims suggest that the States might face additional cases including outside ICSID, before the end of the year

1. *The ICSID Caseload Statistics (2025-1) was recently released by International Centre for Settlement of Investment Disputes (ICSID), and it covers the cases brought under the ICSID Convention and ICSID Additional Facility Rules, as well as cases administered by ICSID under the UNCITRAL and other rules.*

2. *The first half of 2025.*

3. *The phrase "ICSID Case" or "ICSID Cases" is used here to represent not only the cases registered under the ICSID Convention and ICSID Additional Facility Rules, but also investor-dispute cases administered by ICSID pursuant to the UNCITRAL and other rules.*

4. *While it is already 16 cases in the half of this year, it was between 7 and 6 cases for the entire year in 2023 and 2024 respectively. See ICSID Caseload Statistics (2024-1), p. 9, and ICSID Caseload Statistics (2024-2) p. 9.*

5. *ICSID Caseload Statistics (2025-1), p. 9.*

6. *Jack Ballantyne, "Lithium miner threatens treaty claim against Nigeria," (Global Arbitration Review, July 7, 2025) accessed 12 September 2025*



For instance, a UK-based mining company has recently threatened a treaty claim against Nigeria over cancelled lithium leases.<sup>6</sup> Also, a Spanish Mining company is reportedly suing Equatorial Guinea over a mining claim at the Permanent Court of Arbitration.<sup>7</sup>

In addition, the sectors driving most ICSID disputes – oil, gas, and mining (43% of new cases)—closely mirror the economy of several Sub-Saharan States, thereby showing that the dispute triggers are much alive in the region. The regulatory shifts and long-standing disputes in these sectors<sup>8</sup> might exacerbate the risk of the triggers going off.

Thus, the Sub-Saharan States may want to start reviewing their investment instruments, recent policies and emerging disputes with a view to identifying gaps and navigating the dispute risks.

### **THE ICSID FRAMEWORK REMAINS A VERITABLE TOOL FOR FOREIGN INVESTORS TO HEDGE THEIR EXPOSURE AGAINST STATES, INCLUDING SUB-SAHARAN STATES**

The ICSID ecosystem remains attractive to foreign investors and other users of the system as 67 cases are already registered or administered by ICSID in the first half of the year.

Also, foreign investors seem to be getting better or more comfortable with the use of ICSID settlement framework. For one, the ICSID tribunals upheld in full or in part the claims in 57% percent of the cases concluded in the first half of this year. This is a rise

from the last two years where 55% and 45% of the claims enjoyed the same treatment.

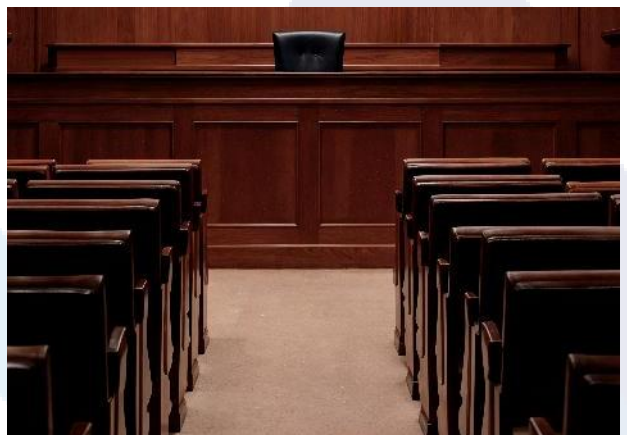
This increase might not be unconnected with the elite legal services that are now open to foreign investors. Having a good claim is not enough: getting the support of a competent legal team would make all the difference—even where a supposedly bad case is involved.

### **WHILE SUB-SAHARA AFRICAN ARBITRATORS REMAIN STRIKINGLY UNDERREPRESENTED ON THE ICSID PANELS, MORE SUB-SAHARAN AFRICAN ARBITRATORS WERE APPOINTED WHEN COMPARED TO PREVIOUS YEARS**

Arbitrators from Sub-Saharan African States remain underrepresented on ICSID tribunals. Only five percent of the appointments went to arbitrators from the region. This is notwithstanding that the bulk of the new cases—24 % of the cases—arose from the region.

While this again raises the broader question of underrepresentation of Africans in the ICSID space, the five percent represents some progress when compared to previous years, 2023 and 2024, where only two and four percents of the appointed arbitrators were from Sub-Saharan Africa.

Given this upward trajectory, it is hoped that more Sub-Saharan African arbitrators will be appointed in the coming periods.



7. [Sebastian Perry, "Equatorial Guinea faces billion-dollar mining claim" \(Global Arbitration Review\)](#) accessed 17 September 2025.

8. For commentaries on the regulatory shifts and long-standing disputes in Nigeria for instance, see ["The Petroleum Industry Act, 2021: Key Highlights"](#) (Olaniwun Ajayi LP, August 2021) accessed 12 September 2025; ["Mining: The New Nigerian Frontier,"](#) (Olaniwun Ajayi LP, October 2017) accessed 12 September 2025; ["Breaking the Cycle of Recurrent Nervous System Collapse: A Presentation"](#) (Olaniwun Ajayi LP, January 2025) accessed 12 September 2025.

9. ICSID Caseload Statistics (2025-1), p. 21.

10. ICSID Caseload Statistics (2024-1), p. 17, and ICSID Caseload Statistics (2024-2) p. 17.

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