

**VAN BAEEL & BELLIS**



# ICSID's 2022 Caseload Statistics

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On 30 January 2023, ICSID [released](#) the latest issue of its [caseload statistics](#) (the “2022 Statistics”) which provides a comprehensive account of ICSID’s case-related trends in 2022, as well as data on all ICSID cases in the past 50 years.

ICSID updates its statistics every six months, and provides information on matters such as the number of cases registered at ICSID, the basis of consent invoked by the claimants, the geographic and economic distribution of cases, the outcome of proceedings, and information about the arbitrators, conciliators and ad hoc committee members in ICSID’s cases. ICSID’s caseload statistics contain the profile of ICSID cases since the first one was registered in 1972. The full collection of ICSID’s caseload statistics is available [here](#).

## NEW ICSID CASES IN 2022

Whilst ICSID has registered fewer new cases in 2022 than in 2021 (66 cases), ICSID’s new caseload is still significant. In 2022, 41 new cases were registered. Of these cases, 34 cases were brought under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966 (the “**ICSID Convention**”), and seven cases were brought under ICSID’s Additional Facility Rules.

## KEY CASE-RELATED TRENDS IN 2022

### Consent to arbitrate

In line with historical trends (60% of cases), most new cases in 2022 asserted ICSID jurisdiction on the basis of a bilateral investment treaty (54%). 22% of the registered cases were brought under the Energy Charter Treaty. Investment contracts between a foreign investor and host State constituted the basis of consent in 12% of the newly registered cases. 12 % of cases were brought under the North American Free Trade Agreement (2%), the United States–Mexico–Canada Agreement (2%), the Dominican Republic–Central America Free Trade Agreement (2%), the ASEAN–China Investment Agreement (2%), the Canada–Peru Free Trade Agreement (2%) and the investment law of the host State (2%).

### Geographic distribution of cases

New cases were distributed across the globe in 2022. The highest percentage of new cases were cases registered against countries from Eastern Europe and Central Asia (27%). South American States were involved in 17% of new cases. 14% of cases involved the Middle East and North Africa, whilst Western European States were involved in 12% of new cases. New cases were registered also against States from Central America and the Caribbean (10%), South and East Asia/Pacific (10%), North America (Canada, Mexico and the United States) (5%) and Sub-Saharan Africa (5%).

### Economic sectors

ICSID’s new cases are distributed across a variety of economic sectors. Oil, Gas and Mining cases account for the greatest share of new cases (24%). Electric, Power and Other Energy cases account for 20% of new cases. The newly registered cases also span the Finance sector (12%), Information and Communication (12%), Construction (8%), Water, Sanitation and Food Protection (8%), Agriculture, Fishing and Forestry (2%), Services and Trade (2%), Tourism (2%), Transportation (2%) and other industries (8%).

## Case outcomes

Of the cases concluded in 2022, 49% were decided by tribunals and 51% were settled or discontinued. This is consistent with ICSID's usual case outcomes to date.

In terms of tribunals' rulings, 56% of awards upheld the investors' claims in part or in full. 28% of awards rejected all of the investors' claims on the merits, whilst 8% of awards declined jurisdiction, and 8% of cases were dismissed for manifest lack of legal merit.

## **OTHER DEVELOPMENTS IN 2022**

### 'Non-ICSID' cases

ICSID also provides administrative support and facilities in inter-State and investor-State proceedings under 'non-ICSID' procedural rules. In 2022, it administered 21 such cases. ICSID frequently provides administrative assistance to investor-State arbitrations under the UNCITRAL Arbitration Rules (which represent the most common 'non-ICSID' cases administered by ICSID – 15 cases in 2022), free trade agreements and other ad hoc dispute settlement provisions. In such cases, ICSID provides support with matters, such as organising hearings, acting as the appointing authority, and deciding proposals for the disqualification of arbitrators. ICSID has also assisted with the organisation of hearings in arbitration proceedings conducted under the rules of key arbitral institutions, such as the ICC, LCIA, PCA and SCC.

### Nationality of arbitrators, conciliators and *ad hoc* committee members

The majority of arbitrators, conciliators and ad hoc committee members appointed in cases registered at ICSID in 2022 were from Western Europe (40%). 25% of them were North American (Canada, Mexico and the United States), 20% South American, 7% South and East Asian/Pacific, and 3% Eastern European/Central Asian. 2% were Central American/Caribbean, 2% were Sub-Saharan African and 1% were Middle Eastern/North African.

These proportions are largely consistent with those recorded by ICSID in all cases to date. For instance, in the 1966–2022 Statistics, ICSID reports that Western Europeans, and North Americans (Canada, Mexico and the United States) accounted for 46% and 20% of appointments respectively.

### Gender of arbitrators, conciliators and *ad hoc* committee members

Men accounted for 77% of appointments to ICSID cases in 2022. Women accounted for 23% of appointments, compared to 27% in [2021](#) and 23% in [2020](#). Overall, the 2022 Statistics reveal a slight improvement in gender diversity in appointments compared to the appointments made in all ICSID cases by the end of 2022, as ICSID's 1966–2022 Statistics report that men accounted for 86% of appointments in ICSID cases, compared to women who accounted for only 14% of appointments.

In 2022, appointments made by the co-arbitrators amounted to 40% women and 60% men, whilst appointments by made by ICSID accounted for 37% women and 63% men. Appointments made by the parties jointly comprised 32% women and 68% men. Finally, men accounted for 90% of claimant-appointed decision-makers, whilst those appointed by respondents accounted for 87%.

## **ICSID CASES OVER THE PAST 50 YEARS**

As of 31 December 2022, ICSID had registered a total of 910 cases under the ICSID Convention and Additional Facility Rules since 1972. 90.2% of these cases have been arbitrations under the ICSID Convention (821 cases), 8.4% of these cases were Additional Facility arbitration cases (76 cases), and just over 1% of cases were ICSID Convention conciliation cases (11 cases) and Additional Facility conciliation cases (2 cases).

## COMMENT

Whilst the number of newly registered ICSID cases has slightly decreased since 2021, ICSID's 2022 Statistics demonstrate that investor-state disputes continue to proliferate and that ICSID is still a highly trusted institution in the administration of investor-State arbitrations, as most such cases are brought under the ICSID Convention. As such, it is expected that ICSID will remain the leading institution for the administration of investor-State arbitrations for the foreseeable future.

The ICSID framework is remarkable not solely for the excellent services and facilities provided by the ICSID Secretariat, but also through its efforts to modernise and evolve constantly. In particular, ICSID is making strides in the promotion of gender diversity, as it is increasingly seeking to close the gap between appointments of men and women in ICSID cases. In this sense, it is pleasing to see that ICSID and co-arbitrators in ICSID cases are increasingly appointing female arbitrators, thus promoting an environment of diversity and inclusion in international dispute resolution.

## Lawyers to contact



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