

Dispute Resolution

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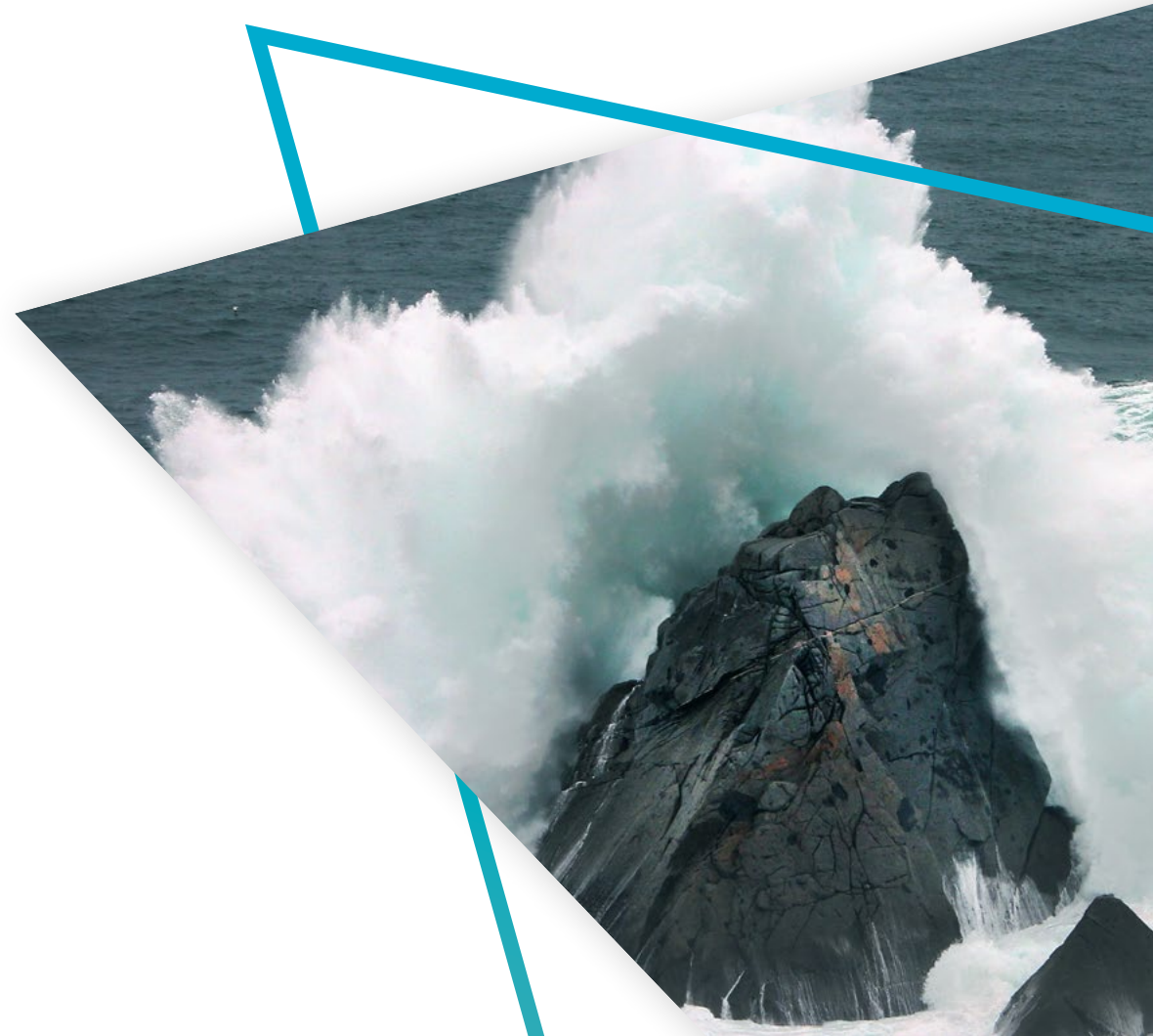
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SOUTH AFRICA

The devil is in the detail: Unpacking
arbitral institutions' statistics



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The devil is in the detail: Unpacking arbitral institutions' statistics

In the current Information Age there is a growing trend of international arbitral institutions releasing detailed information about the disputes they administer. This includes important statistics and information such as the growth of cases, the nationalities of parties, diversity of tribunals and the adoption of new innovations such as expedited proceedings.

Although some arbitral institutions have recently released this information for arbitrations commenced in 2023, other leading institutions do not release the same data or calculate their information in the same manner. Some institutions do not publish such information at all or have not released their 2023 information yet. This article therefore only considers the data recently shared by:

- The London Court of International Arbitration available on the LCIA's website.
- The China International Economic and Trade Arbitration Commission (CIETAC), available [here](#).
- The Cairo Regional Centre for International Commercial Arbitration (CRCICA), available [here](#).
- The Nairobi Centre for International Arbitration (NCIA), available [here](#).
- The Singapore International Arbitration Centre (SIAC), available [here](#).
- The Stockholm Chamber of Commerce (SCC), available [here](#).
- The Arbitration Foundation of Southern Africa (AFSA).

Diversity

There have been global efforts to improve the diversity of tribunals in terms of ethnicity, gender and age (considered in more detail by CDH [here](#)). The reports document that improvements have been made. For example, in 2023:

- Arbitrators from 38 jurisdictions across five continents were appointed in SIAC arbitrations, suggesting a broad range of cultural and ethnic diversity.
- In the context of concerns that African arbitrators are underrepresented in international arbitral tribunals, LCIA arbitrations appointed 10 arbitrators with African nationality, including arbitrators from South Africa, Mauritius and Nigeria, and over 75% of arbitrators on the NCIA's panel of arbitrators are of African nationality.
- As the appointing authority the LCIA appointed female arbitrators in 48% of cases, indicating a sustained improvement in gender diversity.
- Two thirds of arbitrators in NCIA arbitrations were first-time appointees. This could signify a recognition that greater diversity of experience is valuable and can be achieved by moving away from the traditional pattern of repeat or multiple appointments being made to a small pool of experienced arbitrators.
- Individuals under the age of 40 were appointed in 9% of CRCICA cases. This indicates a greater diversity of age and experience in appointees, particularly given the high average age of arbitrators who traditionally often receive repeat or multiple appointments.

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Despite these valuable improvements there remains work to be done to ensure greater diversity. For example, in 2023:

- Only 5% of arbitrators appointed in CRCICA arbitrations were female (although CRCICA has been proactive in appointing women when acting as the appointing authority and there has been an increase in female appointments).
- Many jurisdictions, especially in Africa, remain underrepresented on tribunals. For example, the SIAC registered disputes involving 21 African parties from seven African countries, but only four African arbitrators were appointed. This suggests that greater efforts are needed to achieve the 'Africanisation' of arbitration whereby African arbitrators are proportionately appointed on disputes concerning African parties or assets.
- Generally, there seems to be slow progress in improving diversity of age and experience. For example, the overall number of first-time appointees in LCIA arbitrations in 2023 was 16%, representing a slight fall from the 17% in 2022.

Importantly, the statistics also suggest that arbitral institutions are apparently more willing than parties or co-arbitrators to make appointments designed to achieve greater diversity. For example:

- As the appointing authority the SCC appointed female arbitrators in 55% of cases. However, SCC parties only appointed female arbitrators in 31% of cases and this number fell to just 10% when the appointment was made by co-arbitrators.

- As the appointing authority the LCIA appointed non-British arbitrators in 55% of cases. However, LCIA parties only appointed non-British arbitrators in 35% of cases, and co-arbitrators in 33% of cases.

These statistics therefore pose complex questions about the roles that parties and tribunals must themselves play in improving diversity and the role (if any) arbitral institutions should play in that.

Speed and efficiency

As costs of dispute resolution rise, parties are increasingly attracted to ways in which disputes can be resolved more expeditiously and efficiently. For example, in 2023:

- 38% of new cases registered at the SCC were under the expedited rules, an increase from 31% in 2022. This indicates a growth in client preference for quick resolution of disputes and increasing familiarity with and confidence in expedited procedures.
- 100% of expedited SCC cases were resolved within six months, an increase from 84% in 2022. This suggests that tribunals and the arbitral institutions are working effectively with parties to resolve disputes quickly.
- CIETAC recorded a significant growth in the number of cases filed, and hearings conducted, online. The promotion of digital platforms designed to secure time and cost savings has apparently been embraced by parties.

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Growth of international arbitration

As considered by CDH [here](#), recent years have seen a considerable growth in international arbitration, with commercial parties increasingly choosing to resolve their disputes in this way. This is a trend borne out in the reports, for example:

- In 2023 the SIAC had its second highest ever caseload with 663 new cases.
- The SCC recorded a 45% increase in the number of new international disputes registered.
- The LCIA has recorded a continued upward trajectory in the number of new cases over the last 10 years, with the number of new cases per year increasing from an average of 249 from 2014 to 2018, to an average of 339 from 2019 to 2023.
- Newer arbitral institutions have experienced growth and expansion in recent years. For example between 2009 and 2017 AFSA administered 17 international arbitrations, but this number has grown considerably in recent years with AFSA registering 49 new international arbitrations between June 2021 and December 2023.

However, it is important to note that although recent years have witnessed a general upward trend in referrals to international arbitration, such growth is not always consistent annually or across all arbitral institutions. For many institutions, the impact of the COVID-19 pandemic accounted for a significant short-term rise in new cases around 2020/2021 followed by a decline in new cases in 2022. Different institutions therefore have different trends in terms of their growth and expansion. For example:

- CRCICA recorded a drop in new cases registered in 2023. However, it did record a considerable 48% increase in the average sums in dispute.

- New international cases referred to CIETAC remain static at 645, only slightly up from 642 in 2022. However, the average amount in dispute increased significantly.

Internationalism

It is, of course, implicit that international arbitrations involve parties and arbitrators from different countries. However, the reports suggest that increased internationalism is also an identifiable trend, with governing laws, parties and arbitrators from ever increasing numbers of countries. For example:

- In 2023 the SIAC recorded parties from 66 different countries (the highest SIAC number ever), including seven African countries.
- 85% of the parties in LCIA arbitrations were not from the UK, and were drawn from 91 different countries.
- The governing laws of 27 different jurisdictions were applied in new SIAC arbitrations.
- The SCC administered arbitrations in 2023 not only in Sweden where it is based, but also arbitrations seated in England, Germany and Finland. Similarly, the LCIA administered arbitrations seated in 16 countries (an increase from 12 countries in 2022), including the African seats of Mauritius, Nigeria and Sierra Leone.
- Since its establishment, CIETAC has handled cases involving over 160 countries and regions, including adding parties from 30 new countries in the past five years.



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- Arbitration centres themselves are also embracing greater international collaborations, for example in 2023 AFSA joined a number of leading arbitral institutions, including the CIETAC, CRCICA, SCC and LCIA in becoming a full member of the International Federation of Commercial Arbitration Institutions.

The importance of data

Although the statistics provide valuable information, the dataset is sometimes too small or incomplete to allow consistent or certain conclusions to be drawn. This is especially true for arbitral centres with a lower caseload or where the statistics refer to rare or infrequently used procedures. For example, instances of parties challenging the appointment of SCC arbitrators varies widely each year as in 2022 there were only three challenges, but in 2021 there were 17.

There are also a number of unknowns in the data, for example the fact that an arbitrator has a certain nationality does not necessarily confirm that their appointment signifies greater racial or ethnic diversity.

Such data, if widely and consistently available, would provide an invaluable comparator to assess progress, innovation and growth. Arbitral institutions should be encouraged to collate and release such information for the benefit of their users and to quantify their own progression and development. This is especially important in relation to achieving greater diversity where the public release of information promotes awareness and encourages reflection and accountability.

The release of information by institutions is important because it provides statistics about and insights into the development and progression of international arbitration globally, highlighting possible implications for future arbitration practice and procedure.

Veronica Connolly

Chambers Global 2024 Results

Dispute Resolution

Chambers Global 2022–2024 ranked our Dispute Resolution practice in:
Band 2: Dispute Resolution.
Chambers Global 2018–2024 ranked us in:
Band 2: Restructuring/Insolvency.

Tim Fletcher ranked by Chambers Global 2022–2024 in
Band 2: Dispute Resolution.

Clive Rumsey ranked by Chambers Global 2019–2024 in
Band 4: Dispute Resolution.

Lucinde Rhoodie ranked by Chambers Global 2023–2024 in
Band 4: Dispute Resolution.

Jackwell Feris ranked by Chambers Global 2023–2024 as an
"Up & Coming"
dispute resolution lawyer.

Anja Hofmeyr ranked by Chambers Global 2024 as an
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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