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# Developments in African Arbitration

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Arbitration in Africa has reached a tipping point. While Africa-related disputes have kept lawyers busy for a number of years in traditional arbitration centres, the market is steadily changing. The number of arbitral centres across the African continent is growing rapidly, and African lawyers are developing specialist arbitration skills to service this growth. As the market becomes more mature, notably in jurisdictions such as Kenya, Nigeria, Ghana and South Africa, but also increasingly in francophone Africa, governments, arbitration lawyers and arbitrators are calling for these disputes to be heard in Africa rather than 'exported' to international centres. One of the leading advocates for the repatriation of arbitration is distinguished Somali Judge Yusuf, the newly appointed president of the International Court of Justice.[1] At the ICCA Congress in Mauritius in 2016 he spoke passionately about the continent's long tradition of 'arbitration under the acacia tree', and called for better representation of African arbitrators in Africa-related disputes to give the system legitimacy.

In response to this call, the arbitral landscape across Africa continues to mature. Governments have grown wise to the fact that arbitration can be a source of economic activity, with conference centres, hotels and local lawyers all set to benefit. For any country, a recognised arbitral centre is also a great show of 'soft power', helping to underline broader messages about political and legal stability, and give comfort to foreign investors.

Arbitral institutions operating within the continent are contributing to the development of arbitration in Africa, promoting their practice through events attracting practitioners and arbitration users from the region and beyond. The increasing regularity of arbitration conferences in Africa illustrates the significant appetite amongst practitioners to develop skills and harness the growth potential of the African market. The topics discussed at these conferences illustrate an increased awareness of the interest and use of international arbitration and a strong resolve to promote and build a solid arbitration practice throughout the continent. For example, the third SOAS Conference, which took place at the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in April 2017 focused on the theme of the role of African states and governments in creating a viable legal and regulatory environment for arbitration to grow.[2] The next SOAS Conference – which will take place at the Kigali International Arbitration Centre in May 2018 – will build upon this theme of growth and will consider how arbitration practitioners can better support the development of arbitration on the continent.[3] However, in order to offer true competition to the established arbitral centres around the world, these emerging centres in Africa will need to demonstrate that they can offer a reliable and efficient alternative for the users of arbitration – including by giving comfort that the local judiciary will actively support, or at least not interfere with, the arbitral process.

The growth of arbitration across Africa is further supported by a wide array of legal reforms gaining momentum across the continent. For example, in light of the much-discussed *Getma v Guinea* case, in November 2017, the Organisation for the Harmonization of Business Law in Africa (OHADA) Council of Ministers adopted the Uniform Act on Mediation, and updated two other texts, the New Uniform Act on the Law of Arbitration and the Revised Rules of Arbitration of the Common Court of Justice and Arbitration (CCJA), to improve the attractiveness of the CCJA arbitration centre.[4] OHADA's desire to modernise the Uniform Arbitration Act (UAA), and recent ratifications of the New York Convention – such as Angola's ratification in March 2017[5] – all contribute to a more stable and reliable environment in which arbitration can flourish. Most African states have understood that this stability is key to facilitating and encouraging both domestic and foreign investment. When it comes to arbitration of investment disputes, however, not all states are aligned on the benefits of this method of dispute resolution. More on this below.

Against the backdrop of this largely positive outlook for arbitration in Africa, we also explore in this article some of the challenges that the continent still faces and consider whether the steps that a number of jurisdictions are taking are sufficient to tip the balance in favour of arbitration.

## Recent trends

While many African economies were hit by the marked reduction in commodities prices in 2016, commentators noted that '[d]espite its slowdown, the African continent remained the second fastest-growing economy in the world'.[6] It is generally agreed that Africa's economy as a whole is set to rebound in the next couple of years, pulled upwards by three leading economies: Nigeria, South Africa and Angola.[7] Indeed, a recent rise in commodities prices was witnessed, which, if it continues, would boost the continent's growth and make it rebound from 3.4 per cent in 2017 to 4.3 per cent in 2018.[8]

In the next section, we reflect on how the recent economic growth has driven increased commercial and investment treaty arbitration across the continent and seek to identify certain trends which could shape the landscape over the next few years.

### Commercial arbitration

The number of arbitration cases involving African parties remains steady. According to the London Court of International Arbitration (LCIA) 2016 statistics, Nigeria represented 1.6 per cent of the LCIA's caseload (against 2.1 per cent in 2015) and other countries of Africa 6.3 per cent (against 4.3 per cent the year before).[9]

For the International Chamber of Commerce (ICC), according to preliminary statistics for the year 2016, ICC Arbitration was increasing in North and sub-Saharan Africa with a 50 per cent increase in the number of participating parties. Record figures were observed, especially for Nigeria which accounted for 30 of 3,099 parties involved in the 966 new cases administrated by the

Court filed in 2016.[10] Though the full statistical report for 2017 has not yet been published, there seems to be a significant growth in cases and parties from sub-Saharan Africa, as 87 of the 810 new cases filed in 2017 were from their region.[11] As such, a 35 per cent growth in cases from sub-Saharan Africa was registered, while a 40 per cent growth rate was registered regarding the number of parties involved from that region.[12] State-owned entities and parastatals continue to feature in significant numbers as parties to ICC arbitration, reflecting the central role they continue to play in African economies.

A new and welcome trend in the appointment of arbitrators was identified by the ICC in 2016.[13] There was a significant rise in the number of arbitrators from African countries appointed to sit on international commercial arbitration tribunals. The 'diversity gap' in international arbitration has been a recurrent theme in recent years,[14] but 2016 might have become a tipping point in this respect. According to ICC figures, in 2016, around 2 per cent of the arbitrators appointed originated from Africa (with 16 appointments of arbitrators principally from Nigeria, Tunisia and South Africa).[15] This rise in appointments of African arbitrators is a positive trend which will over time start to redress the historic stark underrepresentation of African arbitrators in arbitration. Indeed, African arbitrators could well benefit from a similar evolution to that of their Latin American counterparts, whose increase in appointments was considered to be the 'most notable change' in the 2015 arbitrator appointments at the ICC. The ICC observed: '[w]hile this no doubt reflects the increased involvement of Latin American parties in ICC arbitration . . . it also points to greater numbers and wider recognition of practitioners in the region.'[16] This trend will have to be confirmed with the latest statistics from the ICC later this year.

Even though the number of African-seated cases remains extremely low in ICC arbitrations in 2016 (representing 0.01 per cent of the new cases filed that year), a slight increase was recently witnessed with six arbitrations seated in Africa (one in each of Morocco, Nigeria, South Africa, Tanzania and Egypt and two in Algeria), against only two arbitrations seated in African cities the previous year.[17] Whilst the overall figures remain small, the trend is certainly in the right direction.

To date, practitioners' experience suggests that the majority of commercial arbitration disputes in Africa have arisen in the telecoms, construction, energy and natural resources sectors. The energy and natural resources sectors have long been two of the driving motors of the African economy as resource-rich countries remain attractive targets for foreign investment,[18] as reflected by the ICC claim recently filed against Burkina Faso by a South African subsidiary of Timis Mining concerning the suspension of the operations in one of the world's largest manganese mines.[19] However, investment paradigms are changing, with *The Economist* observing that: '[i]nflows of capital are increasingly focused on less resource-rich countries, as investors target the continent's booming middle class. The amount of investment into technology, retail and business services increased by 17 percentage points between 2007 and 2013.'[20] According to the 2017 UNCTAD World Investment Report: 'FDI [foreign direct investment] flows to Africa are likely to increase moderately in 2017 on the back of modest oil rises and a potential increase in non-oil FDI.'[21] Indeed, according to UNCTAD data on 2015/2016, FDI in Africa increased by 10 per cent[22] and financial investment in important greenfield FDI projects also increased by 40 per cent.[23]

Investment in Africa continues to attract investors not only in new sectors, but also from different jurisdictions. China became the key player for investment into Africa, challenging the investment model offered by investors from jurisdictions with long-standing ties to the continent (notably, the UK, France and Belgium). China's recent fall in economic growth did not dint its outbound investments. China invested over US$36 billion in greenfield FDI projects in Africa in 2016, three times the amount invested by the European Union and a thirteen fold increase on China's own investment in greenfield FDI projects in Africa the previous year.[24] To confirm its strong foothold in Africa, the Chinese president has even offered a US$60 billion loan and aid package to Africa.[25] This investment is supported by improved links between Asia and Africa, illustrated by the renewal of the ties between the two continents under the Asian-African Legal Consultative Organization (AALCO) and the rebranding of the Kuala Lumpur Regional Centre for Arbitration (KLRCA) as the Asian International Arbitration Centre (AIAC).[26] However, whilst Chinese investment into Africa increased exponentially in recent years, it also gave rise to a number of salutary 'lessons learned' as projects turned sour and African governments started to re-evaluate their preferred business partners. African host countries now have a much greater choice of partners with whom to do business – while Asian partners such as South Korea and Japan remain strong investors, Africa is now courted by capital rich nations across the globe, including the UAE.[27]

## Investment treaty arbitration

Like commercial arbitration, investment arbitration cases involving African state respondents have also seen a signifincat increase in recent years. According to the most recent statistics published by the International Centre on the Settlement of Investment Disputes (ICSID) Secretariat, African states are today party to about 22 per cent of pending arbitrations.[28] Mirroring the empirical observation made by practitioners in commercial arbitration, statistics show most of these disputes relate to the energy and natural resources sectors,[29] with 33 per cent of the ICSID cases involving an African state relating to oil, gas or mining projects.[30] In 2017, new case were registered against Algeria, Ivory Coast, Egypt, Gambia (two cases), Madagascar (two cases), Mozambique and Tanzania.[31] Notwithstanding the increase in the number of cases against African states, the appointment of African arbitrators in ICSID matters still remains very low. According to the 2017 ICSID statistics, about 4 per cent of all appointments made in ICSID cases involved nationals from an African state,[32] including appointments by ICSID's chairman of the administrative council. ICSID seems to have taken a proactive stance on the appointment of African arbitrators, naming 26 arbitrators from sub-Saharan Africa (as opposed to 21 party-appointed).[33]

The increasing number of investment disputes involving African states can be attributed to a number of factors. First, there is an inevitable corollary between increased investment activity anywhere and increased investment-related disputes. The past decade has also seen an increase in the number of bilateral investment treaties (BITs) signed by African states, as well as an increasing number of investment codes that incorporate similar protections. In parallel, investors worldwide are increasingly both aware of the availability of investment arbitration, and willing to bring such claims. Finally, a further factor which has contributed to this growth is a renewed effort on the part of a number of African countries to crackdown on corruption. In a number of instances, these efforts have resulted in the cancellation of contracts and projects, with investors seeking remedies pursuant to BITs.[34]

Investment arbitration is thus increasingly in the spotlight in Africa. Concerns raised by civil society groups about transparency of investor-state arbitration proceedings coupled with concerns that poor and heavily indebted states are at a significant disadvantage in disputes against well-funded investors have led to questions about the balance of power in these disputes. These concerns, amongst others, no doubt played a part in the decision of a number of states to sign the Mauritius Convention, which purports to adopt measures to redress the perceived lack of transparency in investment arbitration.[35] Similarly, Morocco and Nigeria took steps in the preparation of their innovative BIT between the two states to provide that the arbitral procedure is to be transparent and fully open to the public. The hearings in the long-running *BSGR v Guinea* arbitration were streamed live, setting an important precedent at ICSID.[36] The concerns voiced on transparency are only the tip of the iceberg, and a global reassessment of investment arbitration is likely to result in further reforms to meet the demands of users and other interested parties.

Such reassessment has been one of the driving forces behind the African Union's preparation of a draft Pan-African Investment Code (the Code), which was released in December 2016.[37] This model investment code (which could also be used for purposes of a model treaty) underscores a desire on the part of a number of African countries to develop an uniform model in international investment law which is more balanced. The 'Code' is defined as 'a guiding principle' rather than as a uniform act[38] and focuses on achieving sustainable development goals.[39] The Pan-African Investment Code takes a stand on various issues that have been the source of debate in investment arbitration, for example, the exclusion from the definition of 'investment' debt securities issued by a government or loans to a government, or investments of a speculative nature.[40] The application of the Code will raise many questions, as the broad language in some provisions will undoubtedly spark heated debates. For example, the Code excludes from the definition of investment those 'investments in any sector sensitive to [the state's] development or which would have an adverse impact on its economy'.[41] The application of this definition will no doubt be subject to significant scrutiny. The Code may also be of interest to the drafters of the investment chapter of the Continental Free Trade Area (CFTA), which was much debated during the the course of 2017 and should be finalised in the next 12 months.[42]

### Development of new institutions and growth of existing institutions

Alongside the growth in the number and importance of both commercial and investment arbitrations involving African parties, the proliferation of arbitral centres across Africa is testament to the increasing importance of arbitration as a means of dispute resolution on the continent. In the next section, we evaluate some of the challenges and opportunities that these institutions face as competition grows in the African continent.

#### The Maghreb

Northern Africa has had a strong arbitration scene for a number of years, notably in Morocco and Egypt.

The recent inflow of foreign law firms to Casablanca, and their growing market presence, demonstrates the keen interest in the Moroccan market.[43] While domestic arbitration is common in Morocco, international arbitration remains less prevalent. Yet Morocco benefits from its strategic gateway position between Africa and both Europe and North America, making it a favourable entry point for investment into Africa. The country is also creating stronger ties with its African neighbours, joining the African Union in January 2017 and currently working towards membership of OHADA.[44] Together, these factors create a persuasive narrative for the viability of Morocco to become a hub for African disputes.

The Casablanca International Mediation and Arbitration Centre (CIMAC) has set out its bold ambition to become the reference point for international dispute resolution, not only in the region but also for the entire African continent. The centre's inaugural arbitration conference in 2014, Casablanca Arbitration Days, attracted a number of high-profile guest speakers from the global arbitration community, and was supported by the LCIA, the ICC, and the International Centre for Dispute Resolution (ICDR). The third such conference was held in November 2017 to discuss the future of arbitral institutions and arbitration more generally in Africa.

Casablanca's ambition to entrench itself as an arbitration hub is further illustrated by CIMAC's wish to elect a foreign chair, in order to strengthen the centre's independence, credibility and its regional and international influence.[45] CIMAC is also looking to establish an experienced panel of arbitrators and experts who would be familiar with its rules and in a position to offer the international business community a viable alternative to arbitrating in Paris or London.

The CIMAC Rules of Arbitration, in force since January 2017, play an important part in establishing it as a viable seat for international arbitration.[46] Article 17 of the CIMAC Rules stipulate Casablanca as the default seat of the arbitration. The rules also have a number of modern features including an express provision for the confidentiality of the arbitral proceedings (article 44) and an expedited procedure (article 43).

Furthermore, Morocco has listened to criticism levelled at its 10-year-old arbitration legislation, and is expected to enact a new arbitration law in the coming months. This new legislation will seek to simplify and modernise the arbitration procedure, including provisions regarding third-party document production and electronic arbitration agreements.[47] The law will also remove the current obligation for arbitrators to be registered on a list with the public prosecutor's office, thus protecting the independence of arbitrators and widening the pool of potential nominees. While the new law will be a positive development for Morocco, it is unfortunate that this overhaul of the arbitration legislation did not include a modification of the provisions relating to the procedures available for challenging an international award or its enforcement. Thus, as it stands, parties may challenge the enforcement decision issued by the first instance court, and also appeal the award on the merits before Moroccan appeals courts, which would consider the award as though it were a domestic court ruling.[48]

For Casablanca to succeed as an arbitration centre, however, it still needs to address several further key issues. In common with a number of African institutions, at the time of writing, CIMAC lacked a good website to explain the role and aspirations of the Centre and, crucially, to serve as a platform where its rules could be published in various languages. Moreover, to succeed as an arbitration hub, Morocco would need to allow court submissions in arbitration-related matters to be submitted in French (rather than just Arabic). This restriction will continue to limit the willingness of international companies and many states to use a Moroccan seat for non-Arabic language arbitrations. Morocco would also benefit from arbitration-related court applications being directed to a specialised division of the courts, so that local judges can develop the requisite expertise through training and experience.

To the east, the Egyptian capital is home to the oldest African arbitration institution, the Cairo Regional Centre for International Commercial Arbitration (CRCICA). Created in 1979, CRCICA was ranked as one of the leading arbitration centres across the African continent by the African Development Bank in a survey published in April 2014. CRCICA's status is supported by its ongoing cooperation agreements with ICSID,[49] and with the Permanent Court of Arbitration (PCA).[50] Under the agreement with the PCA, both institutions intend to promote international arbitration and to improve their cooperation by making available to the other their premises in order to hold hearings, meetings and conferences.

CRCICA has shown a growing interest in African-related disputes, organising a series of events, including the Africa Arbitration Week and a consultative workshop in association with ICCA on African arbitral initiatives.[51] CRCICA also hosted the SOAS 2017 international arbitration conference. The Centre has yearly grown in strength – in 2016, CRCICA registered a record caseload with a total of 91 new cases, almost doubling its yearly new caseload in comparison with 2015.[52] CRCICA has already shown its clear intent to enhance transparency, through the publication of awards in an anonymised form and quarterly newsletters providing key statistical information.[53]

CRCICA is to be joined by a new institution, an independent arbitration and mediation centre provided for by the new Egyptian Investment Law No. 72, which entered into force in June 2017. This new institution – the Egyptian Arbitration and Mediation Centre – is to be seated in Cairo and will be charged with pursuing 'the settlement of the investment disputes which may arise among the investors, or among the investors and the state or one of the state's public or private bodies, should they agree at any point to settle the dispute through arbitration of [sic] mediation before this Centre, subject to the provisions of Egypt's laws which regulate the arbitration and dispute settlement'.[54] As yet, the precise timetable for the establishment of this Centre remain unclear.

### East Africa

East Africa has a promising story to tell when it comes to the growth of arbitration in Africa. Noteworthy progress in developing arbitration has taken place in Rwanda, Ethiopia, Tanzania and Uganda.

For example, Rwanda has clearly shown its will to win a slice of the arbitration market, notably with the Kigali International Centre of Arbitration (KIAC).[55] KIAC, which celebrated its fifth year of operation, administers cases under its own rules and under the UNCITRAL Rules, and provides both a domestic and an international panel of arbitrators. KIAC actively seeks to attract internationally renowned arbitrators, as shown by its decision to revamp both panels in 2016. KIAC now has a panel of 63 international arbitrators and a total of 54 domestic arbitrators.[56] KIAC has registered a total of 66 cases since its creation, with a record number of 26 cases in 2016–2017 (doubling the number of new cases comparing to the year before when only 12 cases were filed).[57] While historically the majority of cases before KIAC relate to infrastructure, in 2017, the services sector saw by far the greatest number of new arbitration claims with 20 cases.[58] Interestingly, the KIAC Annual Report has published more information than it previously had, indicating that 7 per cent of the arbitrators in its cases are women, and that a majority of cases were conducted in Kinyarwanda – the official language of Rwanda - the latter suggesting a less international orientation than might have been hoped for.[59] The fifth East Africa International Arbitration Conference (EAIAC) was held in Kigali in September 2017 under the theme 'Linkages between international arbitration and Africa's economy'.[60] KIAC has also helped to build capacity in Africa, and has indicated it trained more than 15 arbitrators from the EAC region.[61]

Kenya is one of the shining lights of the East Africa market for international arbitration. Since the amendment of its Arbitration Act in 2009,[62] and the promulgation of the 2010 Constitution (which promotes arbitration and other ADR mechanisms), Kenya has shown a strong appetite to be at the forefront of the development of arbitration in Africa. Steadily building up a strong arbitration practice to match its position as the region's commercial and investment hub, Kenya has made a number of significant reforms through the concerted efforts of both government and the private sector. These culminated in the establishment of the Nairobi Centre for International Arbitration (NCIA) in 2013,[63] which was officially inaugurated at the first International Arbitration Conference in Central and East Africa in December 2016. President Kenyatta (in a speech read on his behalf by the Kenyan Cabinet Secretary of the National Treasury) observed that 'the inauguration of the [NCIA] today will mark another milestone in a journey to transform the way we do business in Kenya. We are committed to transforming the lives of our people and the realisation of the final agenda for Africa's emancipation and rapid sustainable development'.[64] Notwithstanding this resolve at the highest level of the state, the NCIA has had a timid start: it is currently setting up its database of arbitrators and mediators and thus far has not registered any cases. In September 2017, the PCA signed a Cooperation Agreement with the NCIA in order to further promote arbitration.[65]

### South Africa

The development of arbitration in South Africa had been held back by its outdated arbitration laws, which have been unreformed since 1965. However, 2016 saw a raft of reforms affecting the landscape for international arbitration in South Africa. The International Arbitration Act 2017 incorporates the UNCITRAL Model Law on International Commercial Arbitration into South African law.[66] The Act's ambition is to align the administration of arbitration in South Africa with international arbitration best practices.[67] This is considered by many to be a long overdue step towards making South Africa a potential hub for international arbitration in Africa.[68]

Meanwhile, the South African government has pursued the course it set out on regarding the termination of its BITs in favour of a general framework for the settlement of investment disputes under the new Protection of Investment Act 2015.[69] The Act seeks to shift the resolution of investor-state disputes away from arbitration in favour of mediation and the South African courts. Transitional provisions in this Act provide that existing investments made under BITs 'will continue to be protected for the period and terms stipulated in the treaties', but that those investments made after the termination of the treaties and before the promulgation of the Act will be governed by general South African law. Subject to the consent of the South African state, the Act also permits state-to-state arbitration between South Africa and a foreign investor's home state.

South Africa's leading arbitral institution, the 20-year old Arbitration Foundation of Southern Africa (AFSA), has achieved a degree of success and has demonstrated a keen desire to develop further. Following an ambitious legal exchange programme with China, in August 2015, AFSA launched a new international

arbitration centre dedicated to the resolution of commercial disputes between Chinese and African parties – the China Africa Joint Arbitration Centre (CAJAC). There is however relatively little information on the centre's actual activity. In March 2017, the CAJAC members held its fourth session in Shanghai and agreed to further support the promotion of the new arbitration centre.[70] The first CAJAC China-Africa International Arbitration conference was held in November 2017 in Cape Town.[71]

### West Africa

Given the significant international investment in West Africa, notably in the oil and gas sector, the region has been relatively slow to adopt the dispute resolution machinery typically sought by foreign investors.

Nigeria is the only country in the region to have a modern arbitration law, the Arbitration and Conciliation Act (ACA), based on the UNCITRAL Model Law. Nigerian parties have been increasingly involved in arbitration cases in international arbitral institutions, illustrating the leading economic role that the country has taken in the African continent. The state has taken the proactive step of signing an innovative BIT with Morocco in December 2016.[72] The BIT includes a number of provisions aimed at promoting sustainable economic development, and which place obligations on investors who wish to benefit from the protections afforded by the treaty.

Nigerian courts have also developed a strong line of arbitration-friendly jurisprudence. Nigeria is home to various arbitral institutions, including the Lagos Regional Centre for International Commercial Arbitration (LCRICA), the Maritime Arbitrators Association of Nigeria, the Lagos Court of Arbitration (LCA) and the International Centre for Arbitration and Mediation Abuja (ICAMA). Lagos will also host the third ICC Africa Conference on International Arbitration in June 2018.[73]

A few hundred kilometres to the west, interest in arbitration has been growing in Ghana, especially in the business community, as the traditional court system can be considered to be slow, often ineffective and expensive. A recent corruption scandal has done little to assuage these views. In September 2015, a journalist released an undercover report into corruption of the judiciary resulting in a series of resignations, dismissals and the investigation of over 30 judges.[74]

Arbitration is well placed to be the beneficiary of the public's desire to see efficient and impartial decision-making in the country. There are two main arbitration bodies in Ghana: the Ghana Arbitration Centre (GAC) and the Ghana Association of Chartered Mediators and Arbitrators (GHACMA). Both deal mainly with domestic arbitrations. The passing of the Alternative Dispute Resolution Act 2010 provides for both arbitration and mediation, and the courts themselves are empowered to encourage the use of ADR. The Act acknowledges the traditional role of arbitration in Africa, with a full chapter dedicated to customary arbitration.[75] Attitudes in the country are changing, and the business community is increasingly seeking the inclusion of arbitration and ADR clauses in contracts.

### Francophone Africa – OHADA

The Organisation for the Harmonization of Business Law in Africa was set up by treaty in 1993 to harmonise commercial law in the African franc zone. As part of this remit, OHADA established a dual track for arbitration: institutional arbitration administered by the Common Court of Justice and Arbitration (CCJA) and ad hoc arbitration where the CCJA acts as the Supreme Court for the purposes of applications for recognition, enforcement and annulment of awards.

As it nears its 25th anniversary, the CCJA has made considerable efforts towards modernisation, including the signature of various cooperation agreements, in particular a partnership with the ICC signed in June 2016. Under this partnership, the ICC will deliver training across the region and co-host an annual conference on alternative dispute resolution each year in a different OHADA country.[76]

The CCJA has sought over the past year to improve knowledge and awareness of arbitration. As such, the CCJA organised an 'OHADA Arbitration Tour' in 2017, stopping in six different states between May and June 2017. Each of the two-day sessions was dedicated to a practical case study of a typical CCJA-OHADA arbitration, from the request for arbitration through to an arbitral award. In the same vein, the CCJA has published a Guide to CCJA-OHADA Arbitration, which is to be made available in French, English and Spanish.[77] The accessibility of arbitration, and of alternative dispute mechanisms in general, in the OHADA zone is seen as key to the economic development of this region.

The recent revamp of the Uniform Act of Arbitration (UAA) – which sets out the rules for all arbitrations seated in the 17 OHADA countries and guarantees that OHADA-governed arbitral awards will be enforceable in all member states – has been an important step in the right direction. The latest version of the UAA includes a range of provisions which underscore OHADA's desire to improve the efficiency of the arbitration procedure. Article 14 places new obligations on the parties to act with efficiently and article 8 provides that jurisdictional challenges must be brought within 30 days.

## Attitudes to enforcement

Enforcement of international arbitral awards in Africa is considered by many – not without some reason – to be complicated and difficult.[78] However, the reality is in fact more positive and nuanced than is generally thought. The vast majority of African states are party to the New York Convention or to other multilateral treaties that facilitate the enforcement of awards. Attitudes of local courts are, however, key and great strides have been made in a number of jurisdictions to train the judiciary to deal with applications relating to arbitral awards. Further efforts need to be made across the continent to maintain this momentum. According to a recent survey, the enforceability of awards is the number one reason why parties turn to arbitration.[79] It is therefore fundamental that awards be enforced easily in Africa, even where the state is the losing party.

It is incumbent upon all African states to ensure that they have a modern arbitration law which deals effectively with enforcement procedures, supported by a consistent and published body of case law supporting the enforcement process. The importance of enforcement process issues was taken into account in the South African International Arbitration Act, 2017, which relied upon the UNCITRAL Model Law – but curiously it seems to have been omitted altogether from Morocco's overhaul of its arbitration legislation.

In the OHADA zone, the revised UAA updated the provisions on enforcement to bring them into line with international best practice by seeking to strictly limit the time frame in which challenges against arbitral awards may be heard. The UAA now provides in its article 31 that if the national court fails to issue a decision on an enforcement request within 15 days, the award's enforcement order is deemed to have been granted. In so doing,

this provision ensures the almost immediate enforceability of an award, thus preventing dilatory measures against enforcement. However, in so doing, this new rule potentially creates difficulties where an award is alleged to be defective, or has been rendered without due process. As of today, it seems unrealistic to expect from the OHADA national courts to act with such celerity. While the objective of the UAA reform is laudable, the reality of its implementation may lead to new difficulties and some lively jurisprudence in the next few years.

## Opportunities and challenges

Arbitration is now firmly entrenched as a viable alternative to the courts in many jurisdictions across Africa. The developments seen in recent years have helped establish more reliable and consistent practices and procedures. There is, however, still more work to be done. While progress has been made, there are still too few international arbitration cases heard on African soil (in 2016, only six ICC arbitration cases were heard in African countries),[80] and the number of African arbitrators appointed on international cases remains woefully small. The 'delocalisation' of African-related arbitration proceedings, to paraphrase Judge Yusuf's words during his intervention at the ICCA conference,[81] is doubly damaging to Africa, as it prevents arbitration from contributing to the rule of law and impedes the growth of arbitration in African countries.

In order to cement the progress made to date, three key evolutions are needed. The first is the modernisation of domestic arbitration laws, which is one of the key factors influencing a party's choice of the arbitral seat.[82] The second is that local judges and lawyers must acquire deeper knowledge of arbitration. The third is to ensure that states, and government lawyers in particular, are fully aware of the upsides – as well as the downsides – of arbitration as an effective means of dispute resolution.

This capacity building is being carried out across Africa and is led, in large part, by non-profit organisations such as Africa International Legal Awareness and the African Legal Support Facility. Capacity building is also being implemented through international cooperation agreements, such as those concluded by the PCA, by African arbitral institutions and by international law firms.[83]

As arbitral institutions have bloomed over the continent, the main challenges to be met now are those of public awareness of these institutions and their modernisation. Communication remains a challenge, however, and a quick fix would be to ensure that institutions maintain user-friendly websites where the latest arbitral rules and details of arbitrator panels can be found.

According to a recent survey, the most commonly cited challenge by parties when conducting arbitration in Africa is the availability and experience of arbitrators.[84] Training, in part, is the answer, but also the appetite for greater diversity in the pool of arbitrators is not solely an African problem – it is an issue with which the wider arbitration community continues to grapple.

Although to date international corporates may have been reluctant to have their disputes heard in Africa, arbitration in Africa now finds itself at a tipping point. With increased attention on the continent's arbitral centres, improved legislative frameworks underpinning international commercial and investment arbitration, and better resourcing and training, Africa can secure for itself a place on the global arbitration map.

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## Notes

1 A Ross, 'Somali judge-arbitrator takes presidency of ICJ', at www.globalarbitrationreview.com/article/1153444/somali-judge-arbitrator-takes-presidency-of-icj /.
2 For details see 'SOAS Arbitration in Africa Conference Series 2016', available at www.soas.ac.uk/news/newsitem114170.html.
3 For details see 'SOAS Fourth Arbitration in Africa Conference', available at apam-afrique.org/soas-fourth-arbitration-in-africa-conference/.
4 See below.
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DLA Piper has particular expertise in African disputes. DLA Piper is acting in numerous commercial disputes for private entities, and it is also currently defending the Republic of Guinea and the Republic of Kenya in ICSID proceedings, as well as representing the Democratic Republic of the Congo in respect of enforcement issues arising from an arbitral award.

DLA Piper has a presence in 17 countries in Africa, with DLA Piper offices in South Africa and Morocco; and DLA Piper Africa firms in Algeria, Angola, Botswana, Burundi, Egypt, Ethiopia, Ghana, Kenya, Mauritius, Mozambique, Namibia, Rwanda, Tanzania, Uganda and Zambia.

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