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Africa and International Arbitration: from Accommodation and Acceptance to Active Engagement

by U. Ewelukwa Ofodile

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Africa and International Arbitration: from Accommodation and Acceptance to Active Engagement[♣]

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1. INTRODUCTION

Lack of diversity in international arbitration is taken as a given.[1] The claim that the international arbitration establishment is "white, male and English speaking," is one that is rarely refuted.[2] For African lawyers in general and African women lawyers in particular, the lack of diversity in the pool of arbitrators involved in international arbitration is a real concern. Why are Africans under-represented in international arbitration tribunals? More importantly, what can be done to address the problem? While bias (both conscious and unconscious) and problems inherent in the structure of the system (e.g. control by an elite group of insiders and information asymmetries) are undoubtedly contributing factors,[3] this paper takes the position that the problem of limited participation of Africans in international arbitration is a complicated one and cannot be completely divorced from the crisis of legitimacy of arbitration and ADR in Africa. As a result of this crisis of legitimacy, despite remarkable progress in the continent in international arbitration – two arbitral institution in the continent have received the Global Arbitral Review (GAR) Guide to Regional Arbitration award for the up-and-coming regional institution and one arbitral institution in the region featured in six categories of the nominations for the GAR 2015 awards – Africa as a whole is still characterized by weak arbitral institutions vis-à-vis their foreign counterparts, limited attention devoted to arbitration and alternative dispute resolution (ADR) in the continent, legal uncertainty, in some countries, about the status of ADR mechanisms more generally. This crisis of legitimacy has meant: an uneven legal landscape as regards the evolution of arbitration

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[1] Lucy Greenwood & C. Mark Baker, *Getting a Better Balance on International Arbitration Tribunals* , The Journal of the London Court of International Arbitration Volume 28 Number 4 (2012)(discussing lack of gender diversity but observing that "the questions surrounding the lack of diversity in relation to age and ethnicity that are also evident in the composition of international arbitration tribunals.").

[2] K.V.S.K. Nathan, *Well, Why Did You Not Get the Right Arbitrator?*, 15 MEALEY'S INTL. ARB. REP. 24 (July 2000). F. Peter Phillips, It Remains a White Male Game, INT'L INST. FOR CONFLICT PREVENTION & RESOLUTION (Nov. 27, 2006).

[3] See generally, Magdalene D'Silva, *Dealing in Power: Gatekeepers in Arbitrator Appointment in International Commercial Arbitration***,** J INT. DISP. SETTLEMENT (2014) 5 (3): 605-634.

law and arbitral rules in Africa; judicial ambivalence, if not hostility, to arbitration;[4] widespread ignorance in Africa about ADR mechanisms; and, until recently, the failure by governments to fully support the development of the arbitral infrastructure in the continent. The crisis of legitimacy has also meant limited success by arbitral institutions in the region in attracting more regional and international arbitration references to Africa, little attention given to the very important task of building an army of highly intelligent, experienced, and assertive international arbitrators, limited opportunity for African arbitrators to develop their skills in a familiar territory, and resulting lack of visibility for African arbitrators on the global arbitral scene.[5] The result is that while Africa has certainly produced some experienced international arbitrators, the numbers are relatively low compared to other regions of the world. And, compared to some of their foreign counterparts, African arbitrators are appointed less often to very important high-value international cases and by and large operate at the periphery of the system. What is more, compared to Asia which has seen what has been described as "an explosion" in international Arbitration, Africa is still struggling to gain a foothold in international arbitration.[6] While arbitration is not necessarily new in many jurisdictions in Africa,[7] it has not grown and flourished as is the case in Asia where talks now abound of possible "Asianisation" of international arbitration[8] and where the focus is now on the next generation of international arbitration in the region.[9] Furthermore, while leading global law firms and businesses are taking serious note of the growth of arbitration in Asia,[10] many still sound a cautionary note when it comes to arbitration in Africa even while noting its rise in the continent.[11] Overall, bias and

[4] See e.g.: Mkumbukwa, N.S., 'Is The Commercial Court Jealous Of Arbitration?' Available at http://www.comcourt.go.tz/comcourt/wp-content/uploads/2013/08/Mkumbukwa-Nuhu-S.-Is-the-Commercial-Court-Jealous-of-Arbitration_-Commercial-Court-Roundtable-8th-Oct.-2009.pdf.; *Chiann Bao, International Arbitration in Asia on the Rise: Causes and Effect*, 4(1) ARBITRATION BRIEF 31, 39 (2014)(noting that "The attitude courts hold in relation to arbitration is …paramount to the strength and reliability of any arbitral infrastructure.").

[5] Greenwood and Baker, *supra* note 1 (observing that one of the difficulties faced by those wishing to appoint arbitrators for both commercial and investment treaty arbitrations is the lack of visibility of potential arbitrators.).

[6] Bao, *supra* note 4, (observing that "Within what might seem like a blink of an eye, international arbitration in Asia has exploded and Asia is now firmly established on the arbitral map."); Chris Crowe, Asia's arbitration explosion, INT'L BAR ASS'N, http://www.ibanet.org/Article/Detail.aspx?ArticleUid=C55383E1-519F-4CD9-8822-BE34CC748D2F; Datuk Sundra Rajoo, *Arbitration in Asia: The Next Generation*, ASIAN LEGAL BUSINESS (July 2014.

[7] Julian DM Lew QC, Professor, *Increasing Influence of Asia in International Arbitration*, Inaugural ICC HK/HK45 Keynote Address delivered during Hong Kong Arbitration Week (Oct. 15, 2012), *in* ASIAN DISPUTE REVIEW, Jan. 2014, at 1, 2.; David P. Fidler, *The Asian Century: Implications For International Law*5, 9 S.Y.B.I.L. 19, 26, 29-35(2005); Mayer Brown JSM, *Asia's Arbitration Centres–Hong Kong, China and Singapore* 1 (Sept. 14, 2011), *available at* http://www.mayerbrown.com/publications/Asias- Arbitration-Centres—-Hong-Kong-China-and-Singapore-09-14-2011/

[8] Kenya's arbitration law dates back to 1914 (See The Arbitration Ordinance, 1914); The Tanzanian *Arbitration Act* was enacted in 1931; Ghana's arbitration law date back to 1961 (the Arbitration Act 1961 (Act 38)). A few countries in Africa were among the first to accede to the New York Convention including Egypt (9 Mar 1959), Morocco (12 Feb 1959), Ghana, Madagascar (16 Jul 1962), Central Africa Republic (15 Oct 1962), Tanzania (13 Oct 1964), Tunisia (17 Jul 1967), and Ghana (9 Apr 1968).

[9] Kanishk Verghese, *Arbitration in Asia: The next generation?* Asian Legal Business (July 1, 2014).

[10] Allen & Overy, *The Year of the Dragon and continued growth of international arbitration in Asia*, ALLEN & OVERY (JAN. 30, 2012), http://www.allenovery.com/ publications/en-gb/Pages/The-Year-of-the-Dragon-and-continued-growth-ofinternational-arbitration-in-Asia.aspx. See also Jawd Ahmad & Andre Yeap, *Arbitration in Asia*, ASIA-PACIFIC ARB. REV. 2014, http://globalarbitrationreview.com/reviews/55/the-asia-pacific-arbitration-review-2014/

[11] Dr. Stuart Dutson, Lucy Webster and Timothy Smyth, *International Arbitration Africa Style*, THE GLOBAL LEGAL POST. 24 June 2014 (noting the rise of arbitration in Africa and warning that while investors should be encouraged

barriers to entry although extremely significant do not fully explain the limited participation of Africans in international arbitration. The fact that African parties (particularly African State parties) have historically chosen to arbitrate their disputes in jurisdictions outside Africa, to appoint non-African arbitrators, and to retain non-African counsels suggests that the problem is far from straightforward. Regarding arbitral appointments by African Governments in cases involving countries in Africa, the figures are shocking and very troubling (See Annex 1).

Thus, regarding the limited participation of African arbitrators in international arbitration, there are both demand-side problems and supply-side constraints that cannot be ignored. Addressing the problem of lack of involvement of Africans in international arbitration requires that both sides of the problem be tackled. On the supply side, factors such as the reputation of the appointee within the arbitral community, expertise of the arbitrator, knowledge of applicable law, and recommendations of external counsel that parties take into account in deciding arbitral appointments are, in part, shaped by the strength of arbitral infrastructure in the region or country where a prospective arbitrator originates.[12] Where a region's arbitration infrastructure is weak, individuals from such a region may arguably find it harder to acquire those characteristics that the key users of international arbitration and the gate keepers of the system consider important such as repeat arbitral experiences and visibility on the global stage.

On the demand side, African arbitrators undoubtedly suffer from the negative perception of Africa as a jurisdiction that is anti-arbitration[13] and a region were arbitration has been "historically less important than in other regions of the world."[14] Factors that parties consider in making arbitral appointments, while arguably objective, may themselves be shaped by prevailing negative attitudes about the state of arbitration in a prospective arbitrator's country or continent. Moreover, unconscious bias is a problem in arbitral appointment and undoubtedly rears its head when subjective qualities, such as opinions, personality and likely influence over the panel, are applied.[15] On the demand side also, it stands to reason that a "largely private and underregulated market for services"[16] characterized by lack of transparency and a preference for so-called 'elite' arbitrators, and controlled by what has been described as "a governing 'cartel' of the most elite arbitrators," does not bode well for African arbitrators.[17] Catherine Rogers notes that "even with expansion, the field continues to be dominated by an elite group of insiders,"[18] who "both

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by this development, they "must be wary of the important considerations when choosing a jurisdiction in which to seat an arbitration.); See generally Steven Finizio, Thomas Führich, AFRICA'S ADVANCE, CDR (2014).

[12] Paul Darling QC, *Who do you want? Who do you get? Appointing the right arbitrator*, http://www.keatingchambers.co.uk/multimedia/docs/Who%20do%20you%20want%20Who%20do%20you%20get%20PD-4%2012%2009-mg.pdf (observing that experience is an essential characteristic of a party appointed arbitrator.).

[13] William Kirtley, *Bringing Claims and Enforcing International Arbitration Awards Against Sub-Saharan African States and Parties*, 8 THE LAW AND PRACTICE OF INTERNATIONAL COURTS AND TRIBUNALS 143-169, 144 (2009)(generally setting forth "potential difficulties in bringing claims and enforcing arbitral awards against sub-Saharan African parties and States.").

[14] Id., at 145 (noting that it was indisputable that arbitration in sub-Saharan Africa has been historically less important than in other regions of the world.").

[15] Darling, *supra* note 12 (dividing characteristics of a party appointed arbitrator into objective qualities (e.g. qualifications, skills and experience) and subjective qualities (e.g. opinions, personality and likely influence over the panel)).

[16] Catherine Rogers, *The Vocation of the International Arbitrator*, 20 Am. U. Int'l L. Rev. 957, 960 (2005).

[17] Id.

[18] Id., at 967.

through informal processes and their effective control over arbitral institutions, exert significant influence over who gets appointed as an arbitrator."[19]

From the standpoint of countries in Africa, therefore, addressing the problem of lack of diversity in international arbitration demands a two-pronged approach. First, there is a need to address bias in arbitral appointments and push for procedural and structural reform of the international arbitration regime. Second, the crisis of legitimacy of arbitration and ADR in Africa must be urgently tackled. Addressing the crisis of legitimacy problem is likely to prove easier than addressing the procedural and structural problems in the international arbitration system. Ethnic and national bias in arbitral appointment are rarely acknowledged. More articles have been written about lack of gender diversity in international arbitration than have been written about lack of ethnic or national diversity.[20] Moreover, the problem of bias in arbitral appointment is complicated by the fact that even African parties have historically appointed non-African arbitrators. Thankfully, scholars are now beginning to examine the issue of governance in international arbitration[21] and are starting to focus on international arbitration culture[22] and the problem of bias in arbitral appointments.[23] There is also increased discussion of possible reform of the system.[24]

With regards to the crisis of legitimacy of arbitration and ADR in Africa, the good news is that the last decade has seen significant, even remarkable, improvement in the legal and institutional framework for international arbitration in the continent, growing familiarity with arbitration by local courts, and a keen interest, by some governments, to make their jurisdiction a credible hub for international arbitration. The good news also is that key arbitral institutions without a traditional presence in Africa are beginning to increase their presence in the region.[25] Cases such *as Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* (Constitutional Court of South Africa) and *Cruz City 1 Mauritius Holdings v Unitech Limited & Anor* (Supreme Court of Mauritius)**,** coming from the highest courts in jurisdictions in Africa point to a changing judicial attitude to arbitration in the continent. The bad news is that progress is uneven, that suspicion of international arbitration lingers in the continent, that many of the challenges to

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[19] Id.

[20] Caley Turner, *"Old White Male": Increasing Gender Diversity in Arbitration Panels*, Student paper from Pepperdine Law School (2014); See Deborah Rothman, Gender Diversity in Arbitrator Selection, DISPUTE RESOLUTION MAGAZINE, Spring 2012, at 22. Victoria Pynchon, Do I Look Fat in This Profession? Escaping Gender Bias in ADR, ABA SECTION OF LITIGATION (Mar. 6, 2013), http://apps.americanbar.org/litigation/committees/womanadvocate/articles/winter2013-0313-do- i-look-fat.html.; Carrie Menkel-Meadow, Women in Dispute Resolution - Parties, Lawyers, and Dispute Resolvers: What Difference Does "*Gender Difference*" Make?, 18 No. 3 DISP. RESOL. MAG. 4 (2012) (generally noting that while the numbers of female arbitrators and mediators continues to grow, some areas, such as international commercial arbitration are notoriously known for their underrepresentation of women as dispute managers.).

[21] See Walter Mattli and Thomas Dietz eds., INTERNATIONAL ARBITRATION AND GLOBAL GOVERNANCE: CONTENDING THEORIES AND EVIDENCE (2014)(hereinafter "International Arbitration and Global Governance").

[22] Joshua Karton, *International Arbitration Culture and Global Governance* in INTERNATIONAL ARBITRATION AND GLOBAL GOVERNANCE 74-116 (2014).

[23] Stravros Brekoulakis, Systemic Bias and the Institution of International Arbitration: A New Approach to Arbitral Decision-Making, J Int. Disp. Settlement (2013) 4 (3): 553-585 (discussing bias in arbitral decision-making.).

[24] *See, e.g.*, Dora Marta Gruner, Note, *Accounting for the Public Interest in International Arbitration: The Need for Procedural and Structural Reform*, 41 COLUM. J. TRANSNAT'L L. 923, 962 (2003).

[25] The London Court of International Arbitration (LCIA) now has an office in Mauritius. See: http://www.lcia-miac.org/

international arbitration in Africa persist, that many concerns that African countries and other developing countries have about the international arbitration regime are yet to be addressed, and that negative perception about the arbitration climate in Africa persist despite remarkable progress made in the last decade.

This paper is part of an on-going project aimed at offering an exhaustive, comprehensive, and penetrating assessment of the state of international arbitration in Africa and contributing to the development of arbitration in the region. The paper is primarily based largely on a desk review of arbitration laws of selected countries in Africa, the arbitral rules of selected arbitral centers in the region, as well as on a study of the activities of arbitral institutions in the continent. In the future, site visits to the arbitral center in Africa, telephone conferences with key officials in each centre, and interviews with lawyers involved in international arbitration is planned. The paper is in five sections. Section Two provides a survey of the level of participation of African arbitrators in international arbitration. Section Three focuses on the legal framework for international arbitration in Africa generally and in selected jurisdictions: Mauritius, Nigeria, Kenya, Ghana, South Africa, Egypt, and the Organisation for the Harmonisation of Business Law in Africa (*Organisation pour l'Harmonisation du Droit des Affaires en Afrique*.). The purpose of Section Four is to assess the strengths and weaknesses of existing international arbitration institutions in Africa. In all, --- arbitral institutions are examined. Section Five examines the potential for the growth of international arbitration in Africa and offers suggestions on how stakeholders can go about with the task of promoting arbitration in Africa, challenging negative perception in Africa and overseas, and developing expertise in the legal profession and judiciary. Final thoughts and conclusions are offered in Section 6. Annex 1 is a table of arbitral appointments in nine cases registered with the International Center for the Settlement of Investment (ICSID) in 2014 and involving African countries for which arbitral tribunals have been constituted. Research on the issue of lack of diversity in international arbitration and the state of international arbitration in Africa is hampered by lack of publicly available data. Disaggregated data about arbitral appointments are not readily available or accessible even when established arbitral institutions are involved.

2. AFRICA AND DIVERSITY IN INTERNATIONAL ARBITRATION

Although a small but growing number of African arbitrators are involved in international arbitration, by and large Africans are shut out from the market for international arbitrator services.[26] For example, with respect to disputes filed with the International Centre for the Settlement of Investment Disputes (ICSID), although Sub-Saharan Africa accounts for 16% of the cases registered under the ICSID Convention and Additional Facility Rules, to date, only 2% of arbitrators, conciliators and ad hoc Committee Members appointed under that system have been from Sub-Saharan Africa. By contrast, Western Europe accounts for 47% of the arbitrators,

[26] Darling, *supra* note 12 (observing that in 2007 the main nationalities for ICC arbitrator appointments were: Switzerland 13.5%, UK 9.5%, USA 8.6%, Germany 8.2%, and France 7.6%.). Emilia Onyeama, *Empowering Africa in the 21st Century through Arbitration and ADR*. Paper delivered at the 4th Arbitration and ADR in Africa Workshop. 29-31 July 2008 at 6 (observing that arbitrators of African origin are underutilized in the regional and international arbitration circuits and are not appointed to sit international arbitral panels deciding multi-million dollar disputes even where one or more party is African.).

conciliators, and ad hoc Committee Members, and North America for 22% of the appointments (See Table 1).

Table 1: ICSID: Distribution of Cases by State Parties Involved and by the Number of Arbitrators, Conciliators and ad hoc Committee Members

Geographic Region	Distribution of Cases by State Parties Involved (%)	Number of Arbitrators, Conciliators and ad hoc Committee Members (%)
Western Europe	4%	47%
North America (Canada, Mexico & US)	4%	22%
South America	26%	11%
South & East Asia and the Pacific	8%	10%
Middle East and North Africa	10%	4%
Central America and the Caribbean	7%	2%
Sub-Saharan Africa	16%	2%
Eastern Europe & Central Asia	24%	2%

Source: ICSID (2015)[27]

It would appear that neither the ICSID nor the parties involved in investment disputes, including African State and Governments, appoint Africans as arbitrators. Only 16 people from Sub-Saharan Africa have been appointed by Parties and only 20 have been appointed by the ICSID.[28] This compares very poorly to other regions. Western Europe has seen 565 appointments by Parties and 220 appointments by the ICSID,[29] while North America has seen 304 appointments by Parties and 55 appointments by the ICSID.[30] Africa and Central America & the Caribbean are the only two continents where the appointments by the ICSID exceed appointment by parties. This begs the question, why are African countries reluctant to appoint African arbitrators and what can be done to address this state of affair? What is interesting is that the disparity between Western Europe and North America on the one hand, and Africa on the other hand, appears to be growing as evident in ICSID's reports for the past five years (**See Tables 2 and 3**).

[27] ICSID, THE ICSID CASELOAD – STATISTICS (ISSUE 2015 – 1), at 11 (2015).
[28] Id., at 19.
[29] Id.
[30] Id.

Table 2: Arbitrators, Conciliators and *ad hoc* Committee Members Appointed in Cases Registered under the ICSID Convention and Additional Facility Rules – Distribution of Appointments by the Parties (or Party-appointed Arbitrators) by Geographic Region

	2010(1)	**2011(1)**	**2012(1)**	**2013(1)**	**2014(1)**	**2015(1)**
Western Europe	344	374	408	447	509	565
North America (Canada, Mexico & US)	195	215	235	257	275	304
South America	67	70	88	105	115	127
South & East Asia and the Pacific	41	51	66	85	94	99
Middle East and North Africa	34	38	40	41	42	44
Central America and the Caribbean	13	13	14	16	17	16
Sub-Saharan Africa	12	13	15	13	16	16
Eastern Europe & Central Asia	7	9	10	13	14	17

Source: The ICSID Caseload – Statistics

Table 3: Arbitrators, Conciliators and *ad hoc* Committee Members Appointed in Cases Registered under the ICSID Convention and Additional Facility Rules – Distribution of Appointments by ICSID by Geographic Region

	2010(1)	2011(1)	2012(1)	2013(1)	2014(1)	2015(1)
Western Europe	140	155	168	183	201	220
North America (Canada, Mexico & US)	34	38	43	47	49	55
South America	28	28	38	43	47	51
South & East Asia and the Pacific	38	41	46	55	63	69
Middle East and North Africa	22	22	24	23	25	28
Central America and the Caribbean	13	9	10	13	16	21
Sub-Saharan Africa	11	11	13	16	17	20
Eastern Europe & Central Asia	8	8	10	10	10	14

Source: The ICSID Caseload – Statistics

In terms of the state of nationality of Arbitrators, Conciliators and *ad hoc* Committee Members appointed in cases registered under the ICSID Convention and Additional Facility Rules, some countries in Africa fare worse than others. Egypt has seen the most appointments to date (31), followed by Morocco (8), Senegal (7), and Somalia (5). Two countries – Algeria and Nigeria – have seen four appointments each. Togo has seen three appointments. Five countries have had two appointments each: Benin, Gabon, Ghana, Madagascar, and Malawi. Five countries have seen one appointment each: Cameroon, Central Africa Republic, South Africa, and Sudan. Regarding dual nationals, there has been one appointment of a UK/Ghana national and two appointments involving France/Mauritius nationals.[31] Based on the ICSID latest report, a whopping 37 countries in Africa have not had a single national appointed as ICSID arbitration, conciliator, or ad hoc committee members. Information available also reveals that African arbitrators are rarely appointed arbitrators in disputes involving non-African parties that have no connection to Africa.

[31] Id., at 20.

Judged solely by arbitral appointments made in cases submitted to the ICSID in 2014 in when arbitral panels have been constituted, African governments overwhelmingly prefer to appoint non-Africa arbitrators, particularly arbitrators from Europe and North America. Not a single African was appointed as an arbitrator in all the cases involving African countries that were registered with the ICSID in 2014 and in which arbitral tribunals have been constituted (**See Annex 1**). The result is that quite a few countries in Africa that have been or are presently involved in an ICSID arbitration (e.g. Kenya, Mauritania, and Tanzania) have never had their national appointed as arbitrators, conciliators or ad hoc committee members. This begs the question: why do African governments chose to appoint non-African arbitrators? Do the records suggest that African governments lack confidence in the experience and skill of African arbitrators and why?

Regarding arbitral appointments in international commercial arbitration and in institutional settings other than the ICSID, information is sparse. During the course of 2013, the London Court of International Arbitration (LCIA) made a total of 372 arbitral appointments.[32] Of the 372 individual appointments, 234 or 62.9% were U.K. nationals,[33] 120 or 32.3% [144 (41.9%)] of the individuals concerned were not UK nationals,[34] and 18 or 4.8% [19 (5.5%)] were dual nationals of the UK and another country.[35] Although arbitrators from Nigerian, Uganda, South Africa, and Mauritius, were among non-U.K. nationals selected as LCIA arbitrators in 2013, it is not clear what percentage of the total appointment were from countries in Africa. Only two Africans (both from Nigeria) appear on the list of panel of arbitrators of the Singapore International Arbitration Center (SIAC).[36]

African arbitrators are not always appointed even in cases hosted by arbitral institutions in Africa. In 2014, non-Egyptian arbitrators in cases hosted by The Cairo Regional Center for International Commercial Arbitration (CRCICA) were from U.K. (5.29%), Switzerland (4.23%), France (3.18%), Germany (2.12%), Ireland (1.6%), Jordan (1.6%) and Syria (1.6%). However, perhaps for the first time, in 2014, CRCICA's Board of Trustees decided unanimously to nominate two new African experts (Ms. Olufunke Adekoya from Nigeria and Judge Abdul Qawi Yusuf from Somalia) to become members of the board.

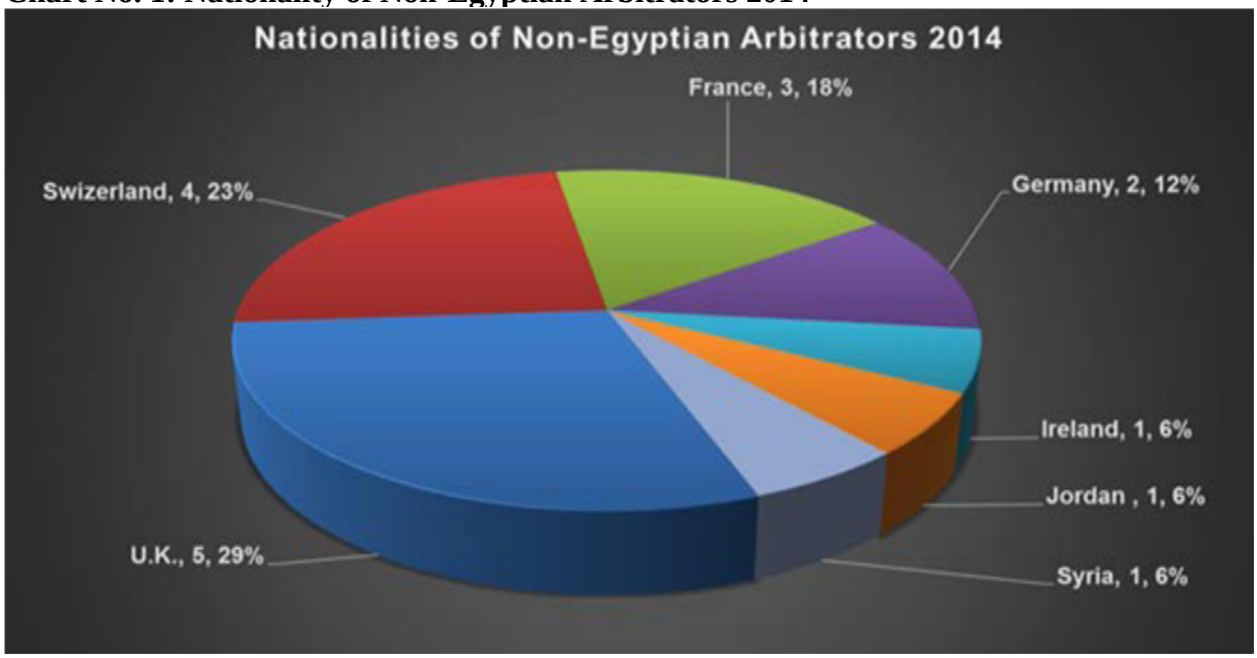
Overall, figures are scarce regarding the ethnic composition of arbitrators appointed in other institutional settings. However, Dr. K.V.S.K. Nathan's comment made in 2000 is one that has not been refuted. As Dr. K.V.S.K. Nathan put it:

> An observer from planet Mars may well observe that the international arbitral establishment on Earth is white, male and English speaking and is controlled by institutions based in the United States, England and mainland European Union. For

[32] LCIA, 2013 ANNUAL REPORT 4 (2013)
[33] Id. Of the 234 UK nationals appointed, 120 or 51.3% [84 (46.4%)] were selected by the parties, 81 or 34.6% [73 (40.3%)] by the LCIA Court and 33 or 14.1% [24 (14%)] by the co-arbitrators.
[34] Id. Of the 120 non UK nationals, 36 or 30% [40 (27.8%)] were selected by the parties; 68 or 56.7% [91 (63.2%)] by the LCIA Court; and 16 or 13.3% [13 (9%)] by the co-arbitrators.
[35] Id. Of the 18 dual nationals, 4 or 22.2% [9 (47.4%)] were selected by the parties; 13 or 72.2% [9 (47.4%)] by the LCIA Court; and 1 or 5.6% [1 (5.3%)] by the co-arbitrators).
[36] Singapore International Arbitration Center, SIAC Panel, http://www.siac.org.sg/our-arbitrators/siac-panel. The two Nigerians are Dorothy Udeme Ufot and Adedoyin Rhodes-Vivour.

> the most part, arbitrators and counsel appearing actively in international arbitral proceedings originate from these countries. The majority in a multi-member international arbitral tribunal is always white. The red alien from Mars will be puzzled in his own way because the majority of the published disputes before international arbitral tribunals involve parties from the developing countries and nearly three-quarters of the people on Earth live in those countries and are not white and more than half the total population are women.[37]

Chart No. 1: Nationality of Non-Egyptian Arbitrators 2014



Source: CRCICA Annual Report 2014

3. THE LEGAL INFRASTRUCTURE FOR ARBITRATION IN AFRICA

What is the strength of the arbitral infrastructure in Africa? Do most jurisdictions in the continent boast a solid legislative framework for international arbitration, reputable and effective arbitral institution, and a supportive judiciary? Is the arbitral infrastructure in Africa designed to produce, nurture, and ultimately launch "home grown" arbitrators unto the international stage? The good news is that a growing number of countries in Africa are beginning to recognize that effective dispute resolution mechanisms can encourage investment and business development and contribute to the overall development of a country and are, as a result, taking steps to strengthen their arbitral infrastructure. The good news also is that a growing number of internationally-focused arbitral institutions are emerging in Africa and that the judicial attitude to arbitration is changing in a number of jurisdictions. The bad news is that the legal and institutional framework for arbitration in Africa remains relatively fragile although significant improvements have been made in the last two decades. The bad news is that compared to other regions, the culture of arbitration in Africa is not widespread and is yet to be deeply entrenched. The bad news also is that international arbitration in Africa is affected by the same factors that

[37] Nathan, *supra* note 2.

contribute to poor business environment and lack of competitiveness in the continent such as corruption, weak institutions, and poor infrastructure. This section examines the legal framework for international arbitration in Africa while Section Four focuses on the institutional framework.

3.1. The Legal Framework for International Arbitration in Africa

Owing to their different colonial histories, various legal systems and traditions operate in Africa. Thus, when it comes to arbitration, multiple legal rules prevail in the continent. Generally, a good number of countries in the continent have taken concrete and positive steps to establish a legal framework for international arbitration that meet international standards. Many countries in the region have ratified or acceded to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention)[38] as well as the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention" or "Washington Convention").[39] Seventeen countries in Africa are now part of the Organization for the Harmonization of Corporate Law in Africa (OHADA)[40] and are bound by OHADA's Uniform Act on Arbitration. What is more, a growing number of countries are passing new legislation modeled after the Model Law on International Arbitration and Conciliation published by the United Nations Commission on International Trade Law (UNCITRAL Model Law).[41] In addition, many countries in the region are party to a significant number of bilateral investment treaties (BITs) most of which provide for recourse to ICSID arbitration. Some countries in the region (e.g. Kenya) are taking active steps to improve the local judiciary's knowledge of arbitration. In a number of countries (e.g. Mauritius), the highest courts have rendered decision that suggest a growing commitment to international arbitration.[42] However, despite measurable progress, the legal landscape for arbitration in Africa remains uneven and unsettled. The perception, among international arbitrators, is that many countries in Africa still lack modern arbitration law.

3.1.1. Africa and The International Regimes for Arbitration

An increasing number of countries have ratified the key treaties that are regarded as the cornerstone of international arbitration. About 33 countries in Africa (more than half) have ratified or acceded to the New York Convention,[43] and 44 countries have ratified or acceded the

[38] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention"). Adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958.
[39] 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 575 UNTS 159 / [1991] ATS 23 / 4 ILM 532 (1965) / UKTS 25 (1967).
[40] Cour Commune de Justice et d'Arbitrage de l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires in French.
[41] UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html
[42] Finizio and Führic, *supra* note 11 (observing that Nigerian courts "are gaining a reputation for being less adversarial and more cooperative in enforcing arbitral awards.").
[43] New York Convention, New York Convention Countries, *available at*: http://www.newyorkconvention.org/contracting-states/list-of-contracting-states.

ICSID.[44] About 10 countries in Africa have adopted legislation based on the UNCITRAL Model Law.[45] Moreover, the Uniform Act on Arbitration of OHADA which is directly applicable in the 17 Member States of OHADA is largely based on UNCITRAL Model Law. Some OHADA Member States (at least 13) are also party to the New York Convention. Significantly, Nigeria, now the largest economy in Africa, has ratified both the New York Convention and the ICSID Convention. South Africa, another economic powerhouse in the region, has ratified the New York Convention but not the ICSID Convention. On closer examination, Africa's embrace of key arbitration treaties and model law is less that complete. African countries are not fully or deeply plugged into the globalization of international arbitration rules that is definitely underway today.[46] About 20 countries in Africa have not ratified the New York Convention and, of those that have ratified the treaty, many are yet to incorporate its provisions into their domestic law. Information on decisions of courts in Africa interpreting and applying the Convention is sparse.[47] Compared to countries in Asia, countries in Africa have not proactively adopted the UNCITRAL Model Law.[48] The low number of countries that have enacted laws based on the UNCITRAL Model law means that more countries in Africa are not able to benefit from a common body of case law or to contribute to the development of transnational arbitration.[49]

3.1.2. Sub-Regional Legal Frameworks

3.1.2.1. OHADA Regime

OHADA came into being by virtue of a treaty that was signed in September 1993 and entered into force in 1995.[50] The revised Treaty was adopted 17 October 2008 and entered into force on 21 March 2010. Seventeen African countries have ratified the OHADA treaty.[51] An

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[44] Ten countries have not ratified or acceded to the ICSID Convention. These include: Angola, Djibouti, Equatorial Guinea, Eritrea, Libya, South Africa, Ethiopia, Guinea-Bissau, Namibia and São Tomé and Príncipe.

[45] UNCITRAL, *Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 200*6. http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html. The ten countries are: Egypt, Kenya, Madagascar, Mauritius, Nigeria, Rwanda, Tunisia, Uganda, Zambia, and Zimbabwe. It is possible that many more countries have adopted the Model Law. A disclaimer on UNCITRAL's website points out that the list of the countries that have adopted the Model Law "is only indicative of the enactments that were made known to the UNCITRAL Secretariat" and that the legislation of each State "should be considered in order to identify the exact nature of any possible deviation from the model in the legislative text that was adopted."

[46] Maxi Scherer, *The globalization of international commercial arbitration*, 2 LETTRE DES JURISTES DE SCIENCES PO 64 (2010); Gabrielle Kaufmann-Kohler, *Globalization of Arbitral Procedure*, 36 VAND. J. TRANSNAT'L L. 1313, 1329 (2003);

[47] Country List of Court Decisions on the New York Convention: http://www.newyorkconvention.org/court-decisions/decisions-per-country

[48] Bao, *supra* note 4, at 35 (observing that out of the ninety-six jurisdictions that have adopted the1985 UNCITRAL Model Law, the highest concentration of Model Law Countries can be found in Asia.).

[49] Id. UNCITRAL Secretariat, *Explanatory note by the UNCITRAL Secretariat on the Model Law on International Commercial Arbitration United Nations Vienna* (1994)

[50] Treaty on the Harmonisation of Business Law in Africa (OHADA), adopted on 17 October 1993 in Port-Louis (Mauritius), published in the official journal No 4 on 1 November 1997 (hereinafter "OHADA Treaty"). According to Article 1 of the OHADA Treaty, "The objective of the present Treaty is the harmonisation of business laws in the Contracting States by the elaboration and adoption of simple modern common rules adapted to their economies, by setting up appropriate judicial procedures, and by encouraging arbitration for the settlement of contractual disputes."

[51] OHADA Member States are: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, the Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea Bissau, Guinea, Mali, Niger, Senegal, Togo, and the

international organization rather than an economic, monetary or trade union, OHADA was created with the goal of promoting regional integration and economic growth and ensuring a secure legal environment through the harmonization of business law.[52] The official seat of OHADA is in Yaoundé, Cameroon.

One of OHADA's biggest achievement has been the adoption of standardized laws ("Uniform Acts") relating to various aspects of business law.[53] OHADA's Uniform Acts come into force ninety days after their adoption[54] and are not only directly applicable in the Member States but override domestic legislation to the contrary.[55] To date, a total of nine Uniform Acts have been adopted. A Uniform Act on Arbitration was concluded on 11 March 1999 and entered into force also in 1999. Based largely on the UNCITRAL Model Law, the Uniform Act on Arbitration replaced the national laws on arbitration in all OHADA Member States and entrenched a uniform arbitral law regime in OHADA Member States. The project of harmonizing business law in OHADA Member States is a welcomed development and could provide a measure of certainty to foreign investors and could foster a more enabling business environment in participating countries.[56] Business law is broadly defined and touches on many areas of interest to investors.[57] Besides arbitration, OHADA has adopted Uniform Acts on at least eight other subject matters: General Commercial Law,[58] Commercial Companies and Economic, Interest Groups,[59] Secured Transactions,[60] Bankruptcy Law,[61] Accounting Law,[62] Corporate law and rules concerning different types of joint ventures,[63] Securities Law, Law regulating contracts for the carriage of goods by road,[64] Debt recovery and enforcement law, and Laws concerning secured transactions (guarantees and collaterals).[65]

Democratic Republic of Congo (DRC). The DRC acceded the OHADA treaty on 13 July 2012 and the treaty came into came into force in the DRC on 12 September 2012.

[52] OHADA Treaty, *supra* note 45, Article 1 ("The objective of the present Treaty is the harmonisation of business laws in the Contracting States by the elaboration and adoption of simple modern common rules adapted to their economies …".).

[53] Id., Article 5 ("Acts enacted for the adoption of common rules as provided for in Article 1 of the present Treaty are to be known as "Uniform Acts".).

[54] Id., Article 9.

[55] Id., Article 10 **("**Uniform Acts are directly applicable and overriding in the Contracting States notwithstanding any conflict they may give rise to in respect of previous or subsequent enactment of municipal laws.").

[56] Renaud Beauchard and Mahutodji Jimmy Vital Kodo, *Can OHADA Increase Legal Certainty in Africa?* JUSTICE & DEVELOPMENT WORKING PAPER SERIES 17/2011 (2011).

[57] Article 2 of OHADA Treaty defines business law as ""regulations concerning Company Law, definition and classification of legal persons engaged in trade, proceeding in respect of credits and recovery of debts, means of enforcement, bankruptcy, receiverships, arbitration, are also included the following laws: Employment law, Accounting law, Transportation and Sales laws, and any such other matter that the Council of Ministers would decide, unanimously, to so include as falling within of Business Law, in conformity with the objective of the present Treaty and of the provisions of Article 8."

[58] Adopted on April 17, 1997, and entered into force on January 1, 1998.

[59] Adopted on April 17, 1997, and entered into force on January 1, 1998.

[60] Adopted on April 17, 1997, and entered into force on January 1, 1998.

[61] Simplified Debt Collection Procedures and Enforcement Measures, Bankruptcy was adopted on April 10, 1998, and entered into force on January 1

[62] Adopted on March 23, 2000, and entered into force on January 1, 2001 and on January 1, 2002

[63] Adopted on December 15, 2010, and entered into force on May 15, 2011.

[64] Adopted on March 22, 2003, and entered into force on January 1, 2004

[65] http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/plaquette_english.pdf

3.1.2.2. Other Regional Initiatives Relating to International Arbitration

A growing number of regional treaties provide arbitration option for foreign investors including the 'Protocol on Finance and Investment of the Southern African Development Community' (SADC Protocol)[66] and the Investment Agreement for the COMESA Common Investment Area (COMESA Investment Treaty).[67] There are proposals, in several regional economic communities (RECs) in Africa, to follow OHADA's lead and harmonize business laws and procedures.[68] Building on the OHADA initiative, the Economic Community of West African States (ECOWAS) is reportedly "working towards the harmonization of business laws, including the adoption of a Regional Investment Policy Framework and a Regional Competition Policy."[69] African heads of State and Government are stepping up regional integration efforts.[70] In June 2014, Member States of the Africa Union adopted the *Protocol on the Establishment of the African Monetary Fund* (Fund).[71] Progress with regional integration efforts in Africa could also prompt broader harmonization of business law in the continent which could in turn provide a more enabling environment for international arbitration.

3.1.3. National Legal Frameworks

The legal infrastructure for international arbitration in Africa is evolving and modernizing. A growing number of countries offer solid arbitration legislative framework that reflect important international developments. The constitution of several countries in the region (e.g. Kenya and Ghana) specifically mention arbitration and encourage its use as an alternative form of dispute settlement. A good number of countries in the region have ratified the New York Convention and the ICSID Convention without reservations. Six jurisdictions in Africa are examined in this sub-section: Mauritius, Ghana, Kenya, Nigeria, South Africa, and Kenya.

3.1.3.1. Mauritius

The Government of Mauritius is keen to establish Mauritius as the leading arbitration centre in Africa and is taking bold steps in this regard. The arbitration legislation – the International Arbitration Act 2008 ("the IAA" or "Act No. 37 of 2008") – is based on the 2006 UNCITRAL Model Law as amended.[7273] The stated goal of the IAA is "[t]o promote the use of Mauritius as a

[66] The SADC Protocol on Finance and Investment was signed on 18 August 2006 and entered into force on 16 April 2010 . Sections 27-28 of Annex 1 to the Protocol provides for Investor State Arbitration. See: http://www.sadc.int/documents-publications/show/1009 . Fifteen countries in Africa are Member States of the SADC. The Treaty of the South African Development Community (SADC Treaty) was signed on 17 August 1992.
[67] Signed 23 May 2007. Not yet in force. Article 28-31 provide for Investor-State arbitration.
[68] African Development Bank, *Regional Integration Strategy Paper for West Africa 2011–2015* (2011).
[69] Id., at 7.
[70] Treaty Establishing the African Economic Community, June 3, 1991, 30 I.L.M. 1241, [hereinafter Abuja Treaty].
[71] *The 23rd Ordinary Session of the African Union ends in Malabo*, AFRICA UNION (June 30, 2014), http://summits.au.int/en/23rdsummit/events/23rd-ordinary-session-african-union-ends-malabo.
[72] International Arbitration Act 2008. Act No. 37 of 2008. Proclaimed by [Proclamation No. 25 of 2008] w.e.f. 1 January 2009 Government Gazette of Mauritius No. 119 of 13 December 2008. Amended by the International Arbitration (Miscellaneous Provisions) Act 2013 w.e.f. 1 June 2013.
[73] The Third Schedule of the IAA is a table that outlines the provisions of the IAA and the corresponding provisions of the UNCITRAL Model Law as amended.

jurisdiction of choice in the field of international arbitration, to lay down the rules applicable to such arbitrations and to provide for related matters."

The IAA recognizes the key principles of international arbitration including the principle of party autonomy (e.g. Sections 12 and 14), limit on court intervention,[74] finality of awards (Sections 37-39), and recognition and enforcement by the courts (Section 40). Section 39(2) sets forth limited grounds for challenging an arbitral award. Recourse against an arbitral award may be made only by an application to the Supreme Court. Of Mauritius[75] Mauritius has also adopted a Company Act[76] and an Insolvency Act[77] that are recognized as very modern.

Mauritius has acceded to the New York Convention and has incorporated same into domestic law.[78] Mauritius is also a Party to the ICSID Convention and has also incorporated same into domestic law through the Investment Disputes Enforcement of Awards Act of 1969. Mauritius is the first in the world, and indeed the only country in the world, to ratify the 2014 United Nations Convention on Transparency in Treaty-based Investor-State Arbitration ("Mauritius Convention").[79] Mauritius is also the only country in Africa to sign and ratify the said treaty. Enacted in 2013, the International Arbitration (Miscellaneous Provisions) Act (Act No. 8 of 2013), of Mauritius amends the Code de Procédure Civile, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act, and the International Arbitration Act.[80] As a result of the 2013 enactment, the New York Convention now applies to the recognition and enforcement of all arbitral awards made in the territory of a State other than Mauritius, regardless of whether there is reciprocity on the part of that State. Also, arbitral awards made in the English or French language are now deemed to have been made in an official language of Mauritius for the purposes of Article IV of the New York Convention. The 2013 enactment also makes limitation or prescription period provided for in the laws of Mauritius inapplicable to the recognition and enforcement of an arbitral award under the New York Convention.

Mauritius' keen interest in internationalizing its arbitration infrastructure is evident in the role reserved for the Permanent Court of Arbitration (the PCA) at the Hague in the country's arbitration law.[81] Under the IAA, the Secretary-General of the PCA is vested with the power to appoint arbitrators (Section 12) and to take other measures relating to the arbitral proceedings such as dealing with arbitrator challenge and termination of mandate (Section 14-16), making possible adjustment of arbitrators' fees and expenses (Section 18), and extending time limits (Section 30). Pursuant to a 2009 Host Country Agreement with the Republic of Mauritius, the

[74] Id., Section 10 (Extent of court intervention).
[75] The International Arbitration Act of 2008, supra note 72, Section 39(1).
[76] The Companies Act No 15 of 2001 to amend and consolidate the law relating to companies and to provide for certain ancillary and consequential matters.
[77] The Insolvency Act No 3 of 2009 to amend and consolidate the law relating to insolvency of individuals and companies and the distribution of assets on insolvency and related matters.
[78] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 (the 2001 Act).
[79] The Convention open for signature in Port Louis, Mauritius, on 17 March 2015, and will enter into force six months after the deposit of the third instrument of ratification, acceptance, approval or accession. Thus far the Convention has received one ratification – that from Mauritius.
[80] International Arbitration (Miscellaneous Provisions) Act 2013. See also The Supreme Court (International Arbitration Claims) Rules 2013.
[81] PCA, PCA Mauritius Office. http://www.pca-cpa.org/showpage.asp?title=Mauritius&pag_id=1492

Permanent Court of Arbitration now has an office in Mauritius which opened for business in September 2010. Pursuant to the 2009 agreement, the PCA, for the first time, held a two-day hearing in Mauritius in an arbitration between an African company and an African State. On 15 and 16 December 2014, the third biennial Mauritius International Arbitration Conference (MIAC) was held in Mauritius with the following title: "The Litmus Test: Challenges to Awards and Enforcement of Awards in Africa". Mauritius is set to host the International Council for Commercial Arbitration (ICCA) Congress in 2016, a first for Africa. In the nominations for the 2015 Global Arbitration Review Awards, Mauritius was nominated for 'jurisdiction that has made great progress improving its arbitration regime in the past year' award, for building on continuous developments in the arbitration regime since 2008, and because the Supreme Court issued a key decision on the enforcement of foreign arbitral awards.[82]

3.1.3.2. Ghana

The prevailing legislation in Ghana is the Alternative Dispute Resolution Act 2010 ("Act 798"). Act 798 replaced the Arbitration Act, 1961 (Act 38). While arbitral tribunals may rule on their own jurisdiction,[83] certain matters are not arbitrable in Ghana. Act 798 applies to matters other than those that relate to "the national or public interest;" "the environment;" "the enforcement and interpretation of the Constitution;" or "any other matter that by law cannot be settled by an alternative dispute resolution method."[84]

In Ghana, parties are free to choose arbitration and the existence of "an arbitration agreement" is key to commencing arbitration. In the absence of an arbitration agreement, an investor may not be in a position to insist on arbitration. Under Section 29 of the now repealed Ghana Investment Promotion Centre Act 1994 (Act 478), investors could insist on arbitration.[85] The Ghana Investment Promotion Centre Act 2013 (Act 865) has eliminated the right of investors to insist on arbitration. Section 33(3) of Act 865 states that "Where in respect of any dispute, there is disagreement between the investor and the Government as to the method of dispute settlement to be adopted, unless there is any arbitration agreement to the contrary, the method of dispute resolution shall be mediation under the Alternative Dispute Resolution Act, 2010 (Act 798).

As noted, parties are free to refer matters to arbitration. Section 5 of Act 789 stipulates that a party to a dispute in respect of which there is an arbitration agreement may, subject to the terms of the arbitration agreement, refer the dispute to any person or institution for arbitration.

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[82] LCIA-MIAC and Mauritius featured in six nominations for the Global Arbitration Review Awards, http://www.lcia-miac.org/news/lcia-miac-and-mauritius-feature-in-six-nominations-for-gar.aspx

[83] Alternative Dispute Resolution Act (Act 798) of 2010. Section 24 states: "Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction particularly in respect of: (a) the existence, scope or validity of the arbitration agreement; (b) the existence or validity of the agreement to which the arbitration agreement relates; and (c) whether the matters submitted to arbitration are in accordance with the arbitration agreement."

[84] Id., Section 1.

[85] See Ghana Investment Promotion Centre Act 1994 (Act 478), Article 29(2) states "Any dispute between an investor and Government in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration." Section 29(3) states: "Where in respect of any dispute, there is disagreement between the investor and the Government as to the method of dispute settlement to be adopted, the choice of the investor shall prevail."

Act 798 embraces the concept of separability of arbitral agreements[86] and provides for expedited arbitration proceedings.[87] Section 53(1) of Act 798 provides that the Court "shall set aside an arbitral award where it finds that the subject-matter of the dispute is incapable of being settled by arbitration or the arbitral award was induced by fraud or corruption." Article 59 provides for the enforcement of foreign arbitral awards in Ghana. Innovative aspects of Act 789 include the provision for arbitration management conference (Article 29), provision on measures to encourage settlement (Article 47), provision for expedited proceedings (Article 60), and provision for electronic communication (Article 2(4)(a)). Despite improvements in the legislative framework for arbitration in Ghana, critics are concerned about the issue of arbitrability and the fact that "there is no provision which would limit the intrusiveness of the courts in arbitration, given the expansive powers of the court to intervene at some point in the arbitral process."[88]

Ghana ratified the New York Convention without reservations and the treaty is now incorporated into the domestic law of Ghana; the First Schedule of Act 798 reproduces the provisions of the New York Convention. Although incorporated into the domestic law, conflict between certain aspects of the New York Convention and a key provision of the Ghanaian Constitution has been noted. Ghana ratified the ICSID Convention on 13 July 1966 and the treaty went into effect for Ghana on 14 October 1966.

Overall, the climate for arbitration in Ghana has improved with the adoption of Act 798 which completely repealed and replaced the 1961 statute. According to Kwadwo Sarkodie with Mayer Brown: "[Act 798] follows the UNCITRAL Model Law less closely than does the Nigerian Arbitration and Conciliation Act 1990. Indeed, the terms of the Act are more extensive and comprehensive than those of the UNCITRAL Model Law, making provision for some circumstances and eventualities in respect of which the UNCITRAL Model Law is silent (and including certain provisions which reflect those of the English Arbitration Act 1996 (the "English Arbitration Act")), as well as providing for some innovative additional features."[89]

3.1.3.3. Kenya

Article 159(1) of the 2010 Constitution of Kenya stipulates that judicial authority 'is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution." Article 159(2) (c) of the Constitution provides that in exercising judicial authority, the courts and tribunals shall be guided *inter alia* by the principles of "alternative forms of dispute resolution including reconciliation, mediation, arbitration … shall be promoted."[90] Courts and tribunals are also be guided by the principle that "justice shall

[86] Id., Section 3(1).
[87] Id., Section 60 ("Parties to a dispute in respect of which there is an arbitration agreement may agree to the resolution of the dispute by the Centre through expedited arbitration proceedings or by the adoption by the arbitrator of the Expedited Arbitration Proceedings Rules of the Centre set out in the Third Schedule to this Act.").
[88] Nene A.O. Amegatcher, *A Daniel Come To judgment: Ghana's ADR Act, a progressive or retrogressive piece of legislation?* http://www.ghanabar.org/a-daniel-come-to-judgment/
[89] Kwadwo Sarkodie, *Arbitration in Ghana – The Alternative Dispute Resolution Act 2010*. Mayer Brown (2010).
[90] The 2010 Constitution of Kenya, Article 159(2)(c).

not be delayed"[91] and the principle that "the purpose and principles of th[e] Constitution shall be protected and promoted."[92]

In Kenya, arbitration practice is governed by the Arbitration Act of 1995,[93] the Arbitration Rules, 1997 (L.N. 58/1997), Civil Procedure Act,[94] and the Civil Procedure Rules 2010.[95] The 1995 Act, assented on 10th August, 1995 and came to force in on 2nd January, 1996, repealed an earlier piece of legislation – the Arbitration Act Cap 49 Laws of Kenya (enacted in 1968) and is modeled after the UNCITRAL Model Law. The 1995 has been amended vide the Arbitration (Amendment) Act, 2009, which was assented to on 1st January 2010. Kenya ratified the ICSID Convention on 3 January 1967 and the treaty went into effect for Kenya on 2 February 1967. Kenya has also ratified the New York Convention (ratified on 10 February 1989).

The 1995 recognizes the principle of party autonomy,[96] limit on court intervention,[97] and finality of awards.[98] The 1995 Act is applicable to international arbitration as defined in Section 3(3). Section 35(2) sets forth limited grounds for challenging an arbitral award. Courts in Kenya recognize the principle of finality of awards. In *Transworld Safaris Ltd v Eagle Aviation & 3 Others*, the Court observed:

> *Awards have now gained considerable international recognition and courts, especially commercial ones, have the responsibility to ensure that the arbitral autonomy is safeguarded by the court as arbitral awards are surely and gradually acquiring the nature of a convertible currency due to their finality*.[99]

International arbitration award are recognized as binding in Kenya and are enforced in accordance to the provisions of the New York Convention or any other convention to which Kenya is signatory and relating to arbitral awards. Section 37 sets forth limited grounds for refusal of recognition or enforcement.

3.1.3.4. Nigeria

Arbitration in Nigeria is governed by the Arbitration and Conciliation Act of 1988 ("ACA").[100] The law is modeled after UNCITRAL Model Law. At least one state in Nigeria has passed a law on arbitration. An example is the Lagos State Arbitration Law of 2009. A number of other statutes provide for arbitration in certain sectors of the economy. These include the Petroleum Act;[101] and the Public Enterprises (Privatisation and Commercialisation) Act.[102]

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[91] Id., Article 159(2)(b).
[92] Id., Article 159(2)(e).
[93] The Arbitration Act Cap 49, No. 4 of 1995(As amended in 2009).
[94] Cap 21, Laws of Kenya.
[95] Legal Notice No. 151 of 2010, Rules under Section 81, Cap 21.
[96] See e.g.: Section 11: Determine of the number of arbitrators; Section 12: Appointment of arbitrators; Section 14: Challenge Procedure **(**parties are free to agree on a procedure for challenging an arbitrator.).
[97] Id., Section 10 (Extent of court intervention).
[98] Id., Section 32A.
[99] [2003] eKLR. See also: *Kenya Shell Limited v Century Oil Trading Co Limited* [2008] eKLR and *Chrysanthus B. Okemo v APA Insurance Company Ltd* [2006] eKLR.
[100] The Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria (LFN) 2004
[101] Cap 10 LFN 2004.

Section 27 of the Investment Promotion Commission Act 1995 is worthy of note as it provides that any dispute between an investor and any Government of the Federation in respect of an enterprise to which the Act applies which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration.[103] The Multi-Door Courthouse concept is also gaining ground in some states in Nigeria.[104] Established in 2002 as a public-private partnership between the High Court of Justice of Lagos State and the Negotiation and Conflict Management Group, a non-profit private organization, the overarching objective of The Lagos Multi-Door Courthouse is "to facilitate dispute resolution within the Nigerian Justice System."[105]

The purpose of the ACA is to "to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation." The ACA distinguishes between domestic and international arbitration. Sections 4 and 5 of the ACA mandates the stay of judicial proceedings where there is an arbitration agreement. The ACA recognizes the principle of party autonomy (e.g. Sections 6 and 7), limit on court intervention (e.g. Sections 3 and 4), separability (Section 12(2)), the role of courts in enforcing arbitral awards (Section 31), and finality of awards (e.g. Section 31).

Nigeria has ratified the ICSID Convention (ratified on 16 August 1967). The International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, CAP 120, Laws of the Federation of Nigeria, 2004, provides for the enforcement of ICSID awards in Nigeria. Nigeria has also acceded to the New York Convention (acceded to17 March 1970) and has incorporated the treaty into domestic law. The New York Convention appears as the Second Schedule to the ACA. The Foreign Judgments (Reciprocal Enforcement) Act, CAP F.35, Laws of the Federation of Nigeria 2004.

Regarding enforcement of foreign arbitral awards, in the 2010 case of *Tulip Nigeria Limited v Noleggioe Transport Maritime SAS*, a division of the Court of Appeal in Nigeria noted that "[a] foreign arbitration award is now enforceable in Nigeria directly pursuant to the New York Convention to which Nigeria is a signatory" and that "foreign arbitral awards shall be recognised and enforced irrespective of their country of origin."[106] Nigeria has seen some arbitration-friendly Court of Appeal decisions and some not-so-friendly decisions. Decisions that point to judicial support for arbitration in Nigeria include: *Nigerian Agip Exploration Limited (NAE) v Nigerian National Petroleum Corporation (NNPC) & Ano*r.,[107] *Statoil Nigeria Ltd & Anor v NNPC & 2 Ors*.;[108] *Nigerian Agip Exploration Ltd. v Nigerian National Petroleum*

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[102] Cap 38 LFN 2004.
[103] Cap N117 LFN 2004.
[104] See generally, The Lagos Multi-Door Courthouse Law 2007; The Lagos Multi-Door Courthouse Code of Ethics for Arbitrators; Lagos Multi-Door Courthouse Guidelines for Court Referral to Alternative Dispute Resolution; and Lagos Multi-Door Courthouse Guidelines for Enforcement Procedure.
[105] See: The Lagos Multi Door Court House: http://www.lagosmultidoor.org/
[106] (2011) 4 NWLR (part 1237) 254.
[107] CA/A/628/2011 of February 2014
[108] 2014 NWLR (Pt 1373) 1; (2013) 7 CLRN 72. *Statoil (Nigeria) Ltd & Anor v. Nigerian National Petroleum Corporation & 2 Others (*2014 NWLR (part 1373) 1), decided by the Court of Appeal, Lagos Division, on 12 July 2013.

Corporation & 2 Others;[109]*Mutual Life & General Insurance LTD v Iheme;*[110] and *Tulip Nigeria Limited v Noleggioe Transport Maritime SAS*.[111] In *Mutual Life & General Insurance LTD v Iheme,* or example, the Court of Appeal (Lagos Division) called on courts to exercise restraint when reviewing applications to set aside arbitral awards.[112] Likely to be classified as a not-so-friendly decision is a 2013 decision of the Court of Appeal (Abuja Division) which has been criticized by arbitrators inside and outside Nigeria. In *Statoil (Nigeria) Limited & Anor v. Federal Inland Revenue Service & Anor*[113] ("*Statoil*") decided in June 2014, the Court of Appeal (Abuja Division) held that a third party had *locus standi* to challenge an arbitration agreement to which it was not a party.[114] The Court also held that where such a claim succeeds, the Court "may make a declaration that the arbitral agreement was void ab initio or that the Arbitral Tribunal lacked the jurisdiction to have entertained the dispute on grounds of constitutional or statutory illegality etc."" Even while noting that the decision in *Statoil*, "appears to have been based on the whims of the judge in question rather than the applicable arbitration law," Jeremy Wilson and Oliver Grazebrook from Covington & Burling LLP, conclude that the decision "shows that arbitration in Nigeria remains unpredictable" and advised that parties looking to invest in Nigeria "should be aware of these risks when negotiating the dispute resolution clauses of their agreements."

The legal infrastructure for arbitration in Nigeria is undoubtedly modern and compares very favourably in many respects with equivalent legislation in other jurisdictions, a certain measure of legal uncertainty remain nevertheless. A pending piece of legislation – the National Alternative Dispute Regulatory Commission Bill ("the ADR Bill") – contributes to this uncertainty. In 2011, the Nigerian House of Representation passed the ADR Bill to establish a commission to regulate ADR in Nigeria. Part of the function of the proposed Commission is to "regulate, through the process of accreditation, all Alternative Dispute Resolution bodies and institutions engaged in practice training, education or skills acquisition in alternative dispute resolution mechanisms."[115] However, the function of the proposed Commission also includes the promotion of ADR in Nigeria. For example, other functions of the proposed Commission include *inter alia* "develop[ing] an alternative dispute resolution policy for Nigeria;" "undertak[ing] public enlightenment programmes on the benefits of Alternative Dispute Resolution as effective means of settlement of disputes;" "develop[ing] and maintain[ing] relations with international Alternative Dispute Resolution bodies and organisations with a view to attaining best international standards and practices in the field of Alternative Dispute Resolution;" and "organiz[ing] local and international seminars, workshops and conferences for users and

[109] *Nigerian Agip Exploration Ltd v Nigerian National Petroleum Corporation & 2 Others* (Suit No. CA/A/628/2011), decided by the Court of Appeal, Abuja Division, on 25 February 2014.
[110] (2014)1 NWLR (part 1389) 670.
[111] See *Tulip Nigeria Limited v Noleggioe Transport Maritime SAS* (2011 4 NWLR (part 1237) 254).
[112] The international arbitration community are not happy with the Statoil decision. See Jeremy Wilson and Oliver Grazebrook, *Nigerian Court of Appeal Allows Third Party to Challenge Arbitration Award*, COVAFRICA, 12 February 2015. http://www.covafrica.com/2015/02/nigerian-court-of-appeal-allows-third-party-to-challenge-arbitration-award/ (stating that the decision "is particularly damaging to international arbitration in Nigeria.").
[113] (2014) LPELR-23144(CA).
[114] See Phillipson Consultancy Blog, *Third Party Challenge of Arbitration Agreement in Nigeria*. http://phillipsonsconsultancy.com/blog/challenge-arbitration-agreement-in-nigeria/ (arguing that the decision in Statoil Nigeria Ltd & Anor v Federal Inland Revenue Service & Anor may not be as damaging as it might first appear and should not be read as an open cheque for third party challenge of arbitration agreements in Nigeria.).
[115] The National Alternative Dispute Regulatory Commission Bill, Article 7.

practitioners."[116] Critics charge that the Bill is anti-arbitration and is a regulatory over-kill that sets a bad precedent for Nigeria in particular and Africa in general. The Bill is yet to become law and is still pending in the Senate.

3.1.4. South Africa

Arbitration in South Africa is governed by the Arbitration Act 42 of 1965 (Act No. 42 of 1965). Act 42 of 1965 is not modeled after the UNCITRAL Model Law and does not contain any provision that expressly deals with international arbitration. Matters not subject to arbitration are defined in Section 2 of the Act and are: "any matrimonial cause or any matter incidental to any such cause" and "any matter relating to status." Article 6 provides for the stay of legal proceedings where there is an arbitration agreement. Other provisions include Section 10 (Power of parties to appoint arbitrators to fill vacancies), Section 11 (Power of parties to appoint arbitrators to fill vacancies), and Section 21 (General powers of the court). Regarding finality of awards, Section 28 declares: **"**Unless the arbitration agreement provides otherwise, an award shall, subject to the provisions of this Act, be final and not subject to appeal and each party to the reference shall abide by and comply with the award in accordance with its terms." Section 33(1) of the Arbitration Act provides relatively narrow grounds for setting aside an arbitration award: misconduct by an arbitrator; gross irregularity in the conduct of the proceedings; and the fact that an award has been improperly obtained. The Act does not specifically provide for consolidation of proceedings and does not explicitly refer to international arbitration.

South Africa is not a party to the ICSID Convention but is a party to the New York Convention which it acceded to on 3 May 1976. On 1 August 1976. In 1977, South Africa incorporated the New York Convention into its domestic law by virtue of the Recognition and Enforcement of Foreign Arbitral Awards Act No. 40 of 1977 (Act No. 40 of 1977). A court in South Africa recently reiterated the fact that the New York Convention "was binding on South Africa when the Constitution took effect on 4 February 1997, and it remains so."[117] Overall, two Acts govern the enforcement of arbitral awards in South Africa: the Recognition and Enforcement of Foreign Arbitral Awards Act No. 40 of 1977 and the Protection of Business Act 99 of 1978. The principles laid down in *Jones v Krok 1995(1) SA 677(A)*) regarding enforcement of foreign judgments apply mutatis mutandis to enforcement of foreign arbitral awards. In *Jones v. Krok*, the Court held that foreign judgments constitutes a cause of action that will be enforced by South African courts if certain conditions are met.

Debate continues in South Africa about the appropriateness of the legislative framework for arbitration in the country. Although the South African Law Commission (Commission) recommended the adoption of a law modeled after the UNCITRAL Model Law and accession to the ICSID, the government is yet to act on both recommendations.[118] In its July 1998 report, the South African took the position that Act 42 of 1965 "is not suitable for international commercial arbitration" and that "the court's statutory powers or powers of assistance and supervision during the arbitral process may be excessive." The Commission recommended that "an effective

[116] Id., Article 7.
[117] *Pierre Fattouche v. Mzilikazi Khumalo*, South Gauteng High Court. Case No. 508/2012 (decided on 6/5/2014).
[118] South African Law Reform Commission, **(**PROJECT 94) ARBITRATION: A DRAFT INTERNATIONAL ARBITRATION ACT FOR SOUTH AFRICA (1997).

legislative framework for the resolution of international trade disputes should be created."[119] The Commission also recommended "the compulsory application of the [UNCITRAL] Model Law to international commercial arbitration with optional application to domestic arbitrations," accession to the ICSID Convention, and the adoption of a law – the International Arbitration Act – that embodies in a single statute all South African legislation on international arbitration.[120] Despite the criticisms by the Commission, many in South Africa consider South Africa to be a great destination for arbitration. Writing in 2009, John Brand and Emmylou Wewege of Bowman Gilfillan, opined that "Despite South Africa's failure to adopt the UNCITRAL Model Law and skepticism by some lawyers about the role of arbitration in South Africa, the country remains a relatively safe place to conduct international arbitration hearings, seat international arbitration and enforce international arbitration awards."[121]

3.1.5. Egypt

The prevailing law on arbitration in Egypt is *Law No. 27 of 1994 concerning Arbitration in Civil and Commercial Matters* (the Arbitration Law) which was promulgated on 18 April 1994 and went into effect on 22 May 1994. Egypt is one of ten countries in Africa with an arbitration law based on UNCITRAL Model Law.[122] A limited and exhaustive list of the grounds for setting aside arbitral awards is found in Article 53 of the Law. In 1959 Egypt acceded to the New York Convention without reservations.[123] Egypt is a party to the ICSID Convention (ratified on 11 February 1972), the New York Convention 3 September 1959), as well as the Convention of 1974 on the Settlement of Investment Disputes between the States hosting Arab investments and Nationals of other Arab States. Regarding BITs, Egypt ranks No. 1 in Africa in terms of country that has concluded the most BITs and country with the most BITs in force.

3.1.6. Conclusions

When it comes to the legislative framework for arbitration, Africa presents a mixed scenario. While some countries in the region boast modern and very progressive legislative framework that compare favorably with equivalent legislation in other jurisdictions, others have outdated, even archaic, laws. On the one hand are countries like Nigeria, Mauritius, Rwanda, and Ghana that have modernized their arbitration laws, and on the other hand are countries like Tanzania and South Africa, that have not. The Arbitration Act of 1931[124] and the Arbitration Rules of 1957[125] continue to regulate arbitration in Tanzania despite criticisms from many quarters.[126]

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[119] Id., at iv.
[120] Id., at v. See also Butler D., *A South African Arbitration Legislation - the Need for Reform* (1994) 27 CILSA 118
[121] Is it Safe to Arbitrate in South Africa? Practical Law. 13 November 2009. http://uk.practicallaw.com/7-500-4315?service=arbitration
[122] Mohamed Abdel Raouf, "Egypt", in Loukas Mistelis, Laurence Shore, Stavros Brekoulakis (eds), *World Arbitration Reporter Vol. I* (2nd Juris 2012).
[123] Presidential Decree No. 171/1959 of 3 February 1959.
[124] Cap 15, Laws of Tanzania (2002 Revised Edition).
[125] Published in Government Notice 427 of 1957).
[126] Bitekeye, A., 'TZ arbitration laws outdated, new statutes a must', *The Citizen*, Tuesday, April 30 2013. Available at http://www.thecitizen.co.tz/-/1840414/1840792/-/v8bx2lz/-/index.html. See also: Rana, R., 'The Tanzania Arbitration Act: meeting the Challenges of Today with Yesterday's Tools?' in Chartered Institute of Arbitrators, Kenya, *Alternative Dispute Resolution Journal*, Vol. 2, No. 1, 2014. Pp. 229-237.

Overall, regarding the strength of the legal framework for arbitration in Africa and capacity of existing framework to meet challenges associated with cross-border business and commercial disputes, the result is both good and bad. On the positive side:

- Some countries in Africa are party to key international conventions governing arbitration – an indication of willingness to accept and implement international best practices.
- Harmonization of arbitration rules, within the OHADA region, is a welcomed development that arguably enhances the business climate in the region and contributes to legal certainty in that region.
- A good number of countries have adopted progressive laws governing arbitration and are exploring to need to upgrade and meet the challenges of a complex global market.
- Regional integration efforts in Africa, if successful, holds the promise of contributing to the development of a more enabling and competitive business environment for Africa.
- A growing number of constitutions in Africa specifically encourage the use of arbitration in dispute resolution.

On the negative side:

- Some twenty countries in Africa have not ratified the New York Convention – a concern to international arbitration experts.
- Of those that have ratified, some have not incorporated the Convention into their domestic law with the effect that the treaty is without effect in those countries.[127]
- Of the countries that have incorporated the Convention into their domestic law, some chose the path of partial (not complete incorporation).
- Many countries in the region still have outdated laws and are slow to upgrade their laws.[128]
- The jury is still out on whether the OHADA project has actually produced legal certainty in Member States.[129] By some account, frictions between the national courts and the Common Court is ongoing and poses a real challenge to OHADA's harmonization effort.[130]
- Still a lot of ignorance about arbitration and key international conventions among judges and legal practitioners in many countries; the situation varies from country to country.

4. **The Institutional Framework for Arbitration in Africa**

4.1. **Arbitral Institutions in Africa: A Select Survey**

Local arbitral forums in Africa are increasing in number. There is however no pan-Africa arbitral institution and none of the existing institutions have attained continental stature. There

[127] Kirtley *supra* note 13, at 148.
[128] Dutson, Webster and Smyth, *supra* note 11 (observing that despite the growth of arbitration across Africa "some African States have been slow to adopt modern arbitration legislation.").
[129] Beauchard and Kodo, *supra* note 56 (observing that "'Although sufficiently comprehensive formal laws have been adopted, their overall application and enforcement continue to lag and there are legitimate concerns about whether they will ever be uniformly applied, since the domestic statutes that contradict OHADA have not even been identified, still less removed.").
[130] Werner Jahnel, ASSESSMENT REPORT OF ARBITRATION CENTRES IN CÔTE D'IVOIRE, EGYPT AND MAURITIUS 7 (2014)

are today over 20 international arbitration institutions around Africa of varying age, size, and stature. A good many of the centers have adopted, with minor modifications, the Arbitration Rules of the United Nations Commission on International Trade Law (the "UNCITRAL Rules"). As will be seen, the Asian Legal Consultative Committee (since 2001 the Asian African Legal Consultative Organization, "AALCO") has been instrumental in establishing three regional arbitral centers in Africa. Among the arbitral centers in Africa are:

- The Cairo Regional Centre for International Commercial Arbitration (Cairo; Egypt) – 1979;
- The Lagos Regional Centre for International Commercial Arbitration (Lagos; Nigeria) – 1989;
- The COMESA Court of Justice: arbitral Jurisdiction (Sudan) – 1994;
- The Permanent Court of Arbitration at the Mauritius Chamber of Commerce and Industry (Mauritius) – 1996;
- The Common Court of Justice and Arbitration (OHADA) – 1997;
- The East African Court of Justice – Arbitral Jurisdiction (Arusha; Tanzania) – 2001;
- The LCIA-MIAC Arbitration Center (Mauritius) – 2011;
- The Permanent Court of Arbitration at the Mauritius Chamber of Commerce and Industry (Mauritius);
- The Kigali International Arbitration Center (Rwanda) – 2012;
- The Lagos Court of Arbitration (Lagos; Nigeria) – 2012; and
- The Nairobi International Arbitration Centre (Nairobi; Kenya) – 2013.

A thorough examination of the caseload of the arbitral centers in Africa is hampered by lack of publicly-available statistics. Very few of the arbitral institutions in the continent publish their annual reports or other vital information such as annual or cumulative case load, statistics relating to arbitral appointments, or list of arbitrators.

4.1.1. The Cairo Regional Centre for International Commercial Arbitration

The Cairo Regional Centre for International Commercial Arbitration **(**CRCICA) is an independent non-profit international organization established in 1979 under the auspices of the AALCO.[131] CRCICA has been operating for 35 years and has administered many cases that have international elements**.** Since its establishment, CRCICA adopted, with minor modifications, the UNCITRAL Rules. Thus, CRCICA has its own rules - CRCICA Arbitration Rules – which were amended in 1998, 2000, 2002 and 2007 "to ensure that they continue to meet the needs of their users, reflecting best practice in the field of international institutional arbitration." On 1 March 2011, CRCICA adopted a new set of arbitration rules that are essentially based on the UNCITRAL 2010 Arbitration Rules ("Model Rules"). [132] The rules "have been streamlined to clarify and modernize procedural requirements, and to simplify requirements for party

[131] http://crcica.org.eg/
[132] New CRCICA Arbitration Rules (2007). http://crcica.org.eg/arbitration_rules.html

submissions and appearances,"[133] and "strengthen the role of the Centre, expanding its jurisdiction and its ability to host complex arbitrations."[134]

According to its newsletter, the total number of arbitration cases filed before CRCICA until 31 March 2015 reached 1030 cases.[135] Fourteen new arbitration cases were filed in the first quarter of 2015 of which six were construction cases. CRCICA continues to upgrade its facilities and inaugurated its renovated Hearing Centre in December 2013. CRCICA Conference Centre, currently under renovation, is due to be inaugurated in October 2015. When completed, the new conference center will boast a main room that can hold 130 participants, breakout rooms, library, reading room, lobby and a terrace overlooking the Nile River. The plan is that CRCICA Conference Centre will host the 2nd UNCITRAL/OECD Regional Conference on the Euro-Mediterranean Community of International Arbitration scheduled for November 2015.

CRCICA continues to explore new ways to modernize. One initiative begun in 2014 is the issuance of *Practice Notes Regarding the Centre's Decisions under the Arbitration Rules in force Since 1 March 2011*. Eight practice notes have been issued to date. This is the first institutional Practice Note in the whole of Africa. [136] The Practice Notes apply to all currently pending CRCICA cases and are readily available in Arabic and English on CRCICA's website.[137]

CRCICA is considered one of the leading arbitral institutions in Africa. It has been described by an observer as having "an impressively solid organisation and one that's now been operating for long enough to have encountered most situations at least once."[138] Steven Finizio and Thomas Führich of WilmerHale have noted that "CRCICA has administered a significant number of international arbitrations and it has a strong reputation in the region, as well as in the Middle East and Asia (although it is not a significant institution for other regions of Africa)."[139] CRCICA was recognized as the "Regional Institution of 2013" by the GAR "*in recognition* of *its great strides in the past year.*"

CRCICA appears to be taking its mandate seriously. Its influence is undoubtedly growing. CRCICA has several branches in Egypt including the Alexandria Centre for International Maritime Arbitration (established in 1992), the Mediation and Alternative Dispute Resolution Centre (established in 2001) and the Port Said Centre for Commercial and Maritime Arbitration (established in 2004). It is credited with helping to establish several institutes including: the Institute of Arab and African Arbitration and the Cairo Branch of the Chartered Institute of Arbitrators in 1999.

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[133] Samaa Haridi, Meriam Alrashid and Amal Bouhabib, *The Cairo Regional Centre for International Commercial Arbitration (CRCICA) Newly Revised Arbitration Rules: Incorporating the New UNCITRAL Model Rules of 2010 and Expanding the Centre's Role as an Appointing Authority*, TDM

[134] Id.

[135] "*CRCICA Recent Caseload: A Promising Start for Construction Cases*," CRCICA Newsletter, 1-2015.

[136] CRCICA Annual Report 2014 at 4 (2014).

[137] CRCICA Practice Notes JUNE 2014 (Arabic version):
http://www.crcica.org.eg/publication/PDF/CRCICA_Arbitration_PRACTICE_NOTES2014_AR.pdf
CRCICA Practice Notes JUNE 2014 (English version):
http://www.crcica.org.eg/publication/PDF/CRCICA_Arbitration_PRACTICE_NOTES2014_EN.pdf

[138] David Samuels, *Institutions worth a closer look: Middle East and Africa*, GDR, 5 February 2014.

[139] Finizio and Führich, *supra* note 11.

CRCICA is making meaningful contribution to the development of international arbitration in Northern Africa. Each year CRCICA holds several training programs, workshops, lectures and seminars on arbitration and mediation. CRCICA also offers an intensive internship program to locals and foreigners and the program has attracted students from India, U.K. and France. In 2011, CRCICA launched "Comparative Commercial Arbitration: Theory and Practice" (CCATP), the first comparative arbitration program in the Arab World.

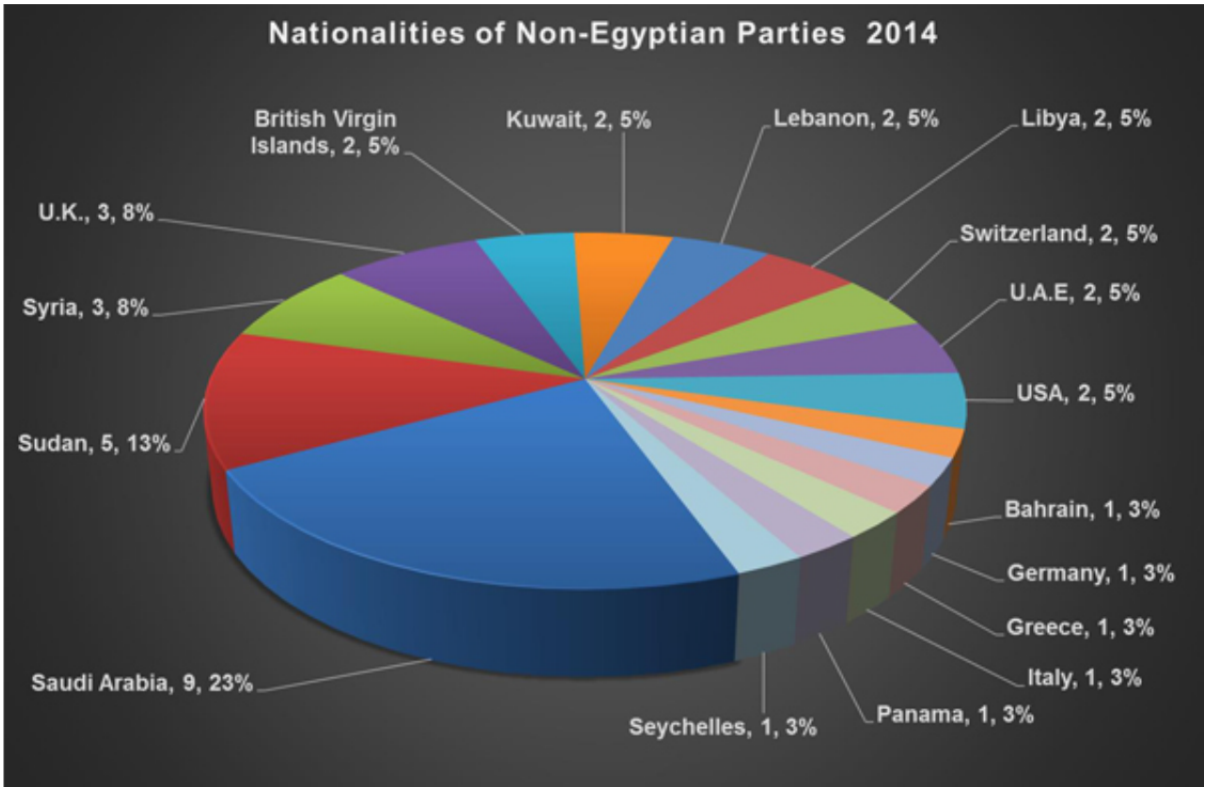
Unlike a good number of the other arbitral institutions in Africa, CRCICA is also contributing to the development of international arbitration in Africa through its own publications and through others publication that it supports including the *Journal of Arab Arbitration*.[140] In cooperation with Kluwer Law International, CRCICA publishes the *Arbitral Award of the Cairo Regional Center for Commercial Arbitration*. The fourth English volume of CRCICA Arbitral Awards was published in 2014. CRCICA was also featured in *Getting the Deal Through - Arbitration 2014*.[141]

A comparative assessment of arbitration institutions in Côte d'Ivoire, Egypt and Mauritius commissioned by the African Development Bank concluded that CRCICA "remains one of the best arbitration centres across the African continent and can readily be recommended for use by parties from both the African continent and elsewhere." [142] The report also noted that "the professionalism of the Centre and the suitability of the CRCICA Rules for the conduct of important international arbitration proceedings have been stressed by various interlocutors."[143]

Despite its many achievement, CRCICA is not a regional player although increasingly used by non-Egyptian parties from outside Africa. In 2014, top non-Egyptian Arab parties that referred their disputes to the CRCICA were from Saudi Arabia, Sudan, Syria, Kuwait, Lebanon, Libya, U.A.E. and Bahrain. Non-Arab parties that referred cases to CRCICA came from U.K., Switzerland, USA, British Virgin Islands, Germany, Greece, Italy, Panama and the Seychelles (See Chart 2).

[140] The Journal, which is in its 23rd volume, is a semi-annual CRCICA-sponsored publication of the Arab Union of International Arbitration (AUIA). See: http://crcica.org.eg/publication/JournalOfArabArbitration/v22.pdf.
[141] http://www.crcica.org.eg/newsletters/nl012014/A2014CRCICA.pdf.
[142] Jahnel, *supra* note 130, at 47.
[143] Id.

Chart No. 2: Nationalities of Non-Egyptian Parties 2014



Source: CRCICA Annual Report 2014

4.1.2. The Lagos Regional Centre for International Commercial Arbitration – 1989[144]

Established in 1989 under the auspices of AALCO, the Lagos Regional Centre for International Commercial Arbitration (RCICAL) is one of the older arbitral centers in Africa. A headquarters agreement between AALCO and the Nigerian government signed on 26th April 1999 guaranteed the future of RCICAL. The headquarters agreement ultimately led to the adoption, in Nigeria, of the Regional Centre for International Commercial Arbitration Decree 1999 ("Regional Act No. 39").[145] Regional Act No. 39 gives RCICAL legal status and recognition. According to the enabling legislation, RCICAL was established to "provide a united legal framework for the fair and efficient settlement, through arbitration and conciliation, of commercial disputes within the region;" "promote the growth and effective functioning of national arbitration institutions within the region;" and to promote the wider use and application of the UNCITRAL Rules within the region.[146] RCICAL has the power and function inter alia to "promote international arbitration and conciliation in the region,"[147] and to "provide arbitration

[144] http://www.rcicalagos.org/
[145] The Regional Centre for International Commercial Arbitration Decree 1999 (hereinafter Act No. 39 of 1999).
[146] Id., Article 3.
[147] Id., Article 4(a).

under fair, inexpensive and expeditious procedure in the region."[148] Pursuant to Article 2 of the enabling law, RCICAL is under the management of the Asian-African Legal Consultative Committee.

RCICAL's Rules of Arbitration, effective 1 July 2008, are adapted from UNCITRAL Rules and have not been updated since 2008 when they were adopted. Despite its over twenty-five years of existence, RCICAL has not gained a lot a traction regionally or internationally is less well known compared to the other AALCO arbitral centers such as CRCICA or the Kuala Lumpur Regional Centre for Arbitration (the KLRCA). Information about RCICAL's caseload and other necessary statistics is not available on the institution's website or elsewhere. Annual reports available on RCICAL's website are dated and provide very limited information regarding the center's current or future activities; the most current annual report on RCICAL's website is that for 2006.[149] RCICAL's list of arbitrators is also not available on its website. It is not readily apparent, from the center's website, what promotional activity the center plans for the future. The website is still announcing as "upcoming", events that occurred in 2012 and in 2013. It does not appear that RCICAL offer courses in arbitration or ADR.

4.1.3. The COMESA Court of Justice (Sudan) – 1994[150]

The Common Market for Eastern and Southern Africa (COMESA) is one of the regional economic communities in Africa. Nineteen countries in Africa are part of COMESA.[151] The Court of Justice of COMESA ("Court")[152] was established in 1994 under Article 7(c) of the COMESA Treaty to "ensure the adherence to law in the interpretation and application of th[e] Treaty."[153] The Court has jurisdiction to adjudicate upon all matters which may be referred to it pursuant to the COMESA Treaty.[154] Legal and natural persons can refer cases to the Court.[155] The arbitral jurisdiction of the Court is spelt out in Article 28:

ARTICLE 28
Jurisdiction under Arbitration Clauses and Special Agreements

The Court shall have jurisdiction to hear and determine any matter:

(a) arising from an arbitration clause contained in a contract which confers such jurisdiction to which the Common Market or any of its institutions is a party; and

[148] Id., Article 4(b).
[149] RCICAL, Annual Reports, http://www.rcicalagos.org/annual_reports.html
[150] http://comesacourt.org/?page_id=59
[151] Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.
[152] http://comesacourt.org/en/
[153] Treaty Establishing the Common Market on Eastern and Southern Africa, Article 19 (hereinafter "COMESA Treaty"). Adopted in 1993. See: http://www.comesa.int/attachments/article/28/COMESA_Treaty.pdf
[154] Id., Article 23.
[155] Id., Article 26 ("Any person who is resident in a Member State may refer for determination by the Court the legality of any act, regulation, directive, or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty.").

(b) arising from a dispute between the Member States regarding this Treaty if the dispute is submitted to it under a special agreement between the Member States concerned

The Court only moved into its new and permanent facility in Khartoun, Sudan, on 26 June, 2014. It is doubtful clear if any arbitral claim has been filed with the Court. There is no information on the Court's website about the court's arbitration caseload.[156] The Court does not offer courses or workshops on arbitration and is not actively engaged in promoting regional or international arbitration in Africa.

4.1.4. The Permanent Court of Arbitration at the Mauritius Chamber of Commerce and Industry (Mauritius) – 1996

The Arbitration and Mediation Center of the Mauritius Chamber of Commerce and Industry (MARC) was established in 1996 as the MCCI Permanent Court of Arbitration.[157] Current MARC Rules of Arbitration have been in force since 1 March 2014. New eligibility criteria for admission on the MARC Panel of arbitrators took effect on 1 March 2015.[158] MARC's Commission for Strategy and Development held its first meeting in March 2014. There is very little information available regarding MARC's current or prior case load, list of arbitrators, or past and present arbitral appointments.[159] Since its inception, MARCH has been primarily involved with domestic arbitration. MARC does not offer courses in arbitration or ADR and does not grant certificates in arbitration or ADR. The first edition of the MARC Newsletter launched only in February 2015.[160] The stated aim of the newsletter is to "educate and sensitize the business and legal community of Mauritius and the Region about the benefits of Alternative Dispute Resolution for resolving business disputes."

4.1.5. The Arbitration Foundation of Southern Africa (AFSA) – 1996[161]

Established in 1996, the Arbitration Foundation of Southern Africa describes itself as a "national leader in all types of appropriate dispute resolution."[162] Another organization recognized as prominent in arbitration in South Africa is the Association of Arbitrators (ASA). AFSA has national accreditation to provide arbitration services for domain name disputes. AFSA provides Commercial Rules for Arbitration for complex matters with substantial financial claims (Rules of the Arbitration Foundation of South Africa: Commercial Arbitration), and Rules for Expedited Arbitration for smaller, less intricate disputes. AFSA has several branches located South Africa

[156] http://comesacourt.org/?page_id=59
[157] http://www.mcci.org/en/our-services/arbitration-mediation/arbitration/introduction-to-marc-arbitration/
[158] MARC Newsletter (February 2015).
[159] http://comesacourt.org/?page_id=59
[160] MCCI, Business Updates, http://www.mcci.org/en/media-news-events/business-updates/first-edition-of-the-marc-newsletter-launched-in-february-2015/
[161] http://www.arbitration.co.za/pages/default.aspx
[162] Introduction to AFSA. http://www.arbitration.co.za/pages/default.aspx

and appears to have a branch in Mauritius.[163] AFSA does not have much presence outside of South Africa. The need for AFSA to show concrete results in extending the framework for dispute resolution throughout Africa is one that is increasingly expressed by South African experts connected with the center.[164] AFSA is seeking greater visibility and has developed close relationship with China Law Society that involves legal exchanges and training. If international disputes have ever been referred to AFSA, that information is not available on the organization's website. There is no information on AFSA's annual or cumulative case load or arbitral appointments. AFSA's list of arbitrators is not published on its website nor is its annual reports.

4.1.6. Ghana Arbitration Center – 1996[165]

Incorporated in October 1996, the Ghana Arbitration Center operates as an autonomous, non-profit-making institution and provides arbitral services. GAC has adopted its own rules.[166] Information is not readily available on the caseload of the Ghana Arbitration Center and what percentage of the caseload can be described as international. The GAC engages in some promotional activities. The most recent activity was a 3 day introduction workshop on International Commercial Arbitration that occurred in January 2011. If international disputes have ever been referred GAC, that information is not available on the organization's website. There is no information on GAC's annual or cumulative case load, or arbitral appointments. GAC's list of arbitrators is not published on its website nor is its annual reports.

The National Labour Commission is mandated to resolve disputes by arbitration. Ghana's arbitration law mandates the establishment of an Alternative Dispute Resolution Centre (Sections 114-124); this aspect of the legislation has not been implemented. In 2014, the International Chamber of Commerce (ICC) announced plans to establish an arbitration center in Ghana.

4.1.7. Common Court of Justice and Arbitration of the Organization for the Harmonization of Corporate Law in Africa (Cour Commune de Justice et d'Arbitrage de l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires) – 1997[167]

Established in 1997, the Common Court of Justice and Arbitration (CCJA) of OHADA is a supranational institutions tasked with supervising the administration of the OHADA Treaty. One of the principle organs of OHADA, the CCJA performs a dual function, serving as both an arbitral institution (the CCJA Center) and a regional supranational judicial court (the CCJA Court).[168] As a court, it serves as the Supreme Court of the Member States on certain issues.[169]

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[163] Apart from its head office in Sandton, AFSA has offices in Cape Town, Pretoria, Durban and Limpopo. See: http://www.arbitration.co.za/pages/Branches.aspx

[164] Adv. Michael Kuper SC, *Dispute Resolution Throughout Africa*, AFSA@Work, March 2014.

[165] http://www.ghanaarbitration.org/index.html

[166] http://www.ghanaarbitration.org/pdf/arbitration-rules.pdf

[167] http://ohada.org/ccja.html

[168] OHADA Treaty, *supra* note 50, Article 3.

[169] Id., Article 14 ("The Common Court of Justice and Arbitration will rule on, in the Contracting States, the interpretation and enforcement of the present Treaty, on such Regulations as laid down for their application, and on the Uniform Acts.").

Article 14 of the OHADA Treaty declares that "By way of appeal, the Court shall rule on the decisions pronounced by the appellate courts of Contracting States in all business issues raising questions pertaining to the application of Uniform Acts and to the Regulations provided for in the present Treaty, save decisions regarding penal sanctions pronounced by the appellate courts." As a court, the CCJA is "responsible for the uniform interpretation and uniform application of the Treaty, of the regulations promulgated to further the Treaty's implementation, of the Uniform Acts, and of other actions."[170] As an arbitral institution, the CCJA does not arbitrate matters but, like any arbitration institution, administers arbitral references. The arbitrators are to be chosen from the list of arbitrators established by the Court and updated annually.[171] Arbitrators specifically appointed or confirmed by the CCJA Center enjoy diplomatic immunity.[172]

Under the OHADA regime, parties have a choice of either institutional arbitration under the CCJA Arbitration Rules (adopted on 11 March 1999) or *ad hoc* arbitration under the Uniform Act on Arbitration. The OHADA Treaty makes it difficult for national courts to override arbitration agreements. Article 23 declares "Any national court of a Contracting State hearing a case wherein the parties have agreed that the matter to be resolved by arbitration shall hold itself as lacking jurisdiction to hear the case and, if necessary, refer the matter to Arbitration Proceedings."

The arbitration jurisdiction of the CCJA Center are outlined in Articles 21-26 of the OHADA Treaty. The CCJA's jurisdiction *ratione personae* and *territoriae* is somewhat limited. Article 21 states:

> In applying a arbitration clause or an out of court settlement, *any party to a contract may, either because it has its domicile or its usual residence in one of the Contracting States, or if the contract is enforced or to be enforced in its entirety or partially on the territory of one or several contracting States*, refer a contract litigation to the arbitration procedure provided in this section.
>
> The Common Court of Justice and Arbitration does not itself settle such disagreements. It shall name and confirm the arbitrators, be informed of the progress of the proceedings, and examine decisions, in accordance with Article 24.

Although parties to CCJA arbitration can be nationals of OHADA Member States or 'foreign' nationals, some link to OHADA is required. As already noted, the Arbitration Rules of the CCJA became effective in 1999.[173] Arbitral awards are final and there is a guarantee of enforcement for arbitral award made by the CCJA Center applying CCJA rules as opposed to arbitral award obtained through *ad hoc* arbitration that is subject to the Uniform Arbitration Act. Regarding finality of awards, Article 25 of the OHADA Treaty stipulates that award pronounced

[170] Treaty Related to the Revisions to the Treaty on the Harmonization of Business Law in Africa**,** Adopté le 2008/10/17 à Québec, Canada. Article 14.
[171] OHADA Treaty, *supra* note 50, Article 23.
[172] Id., Article 49.
[173]Arbitration Rules of the Common Court of Justice and Arbitration, 11 March 1999. See also Article 26 of the OHADA Treaty (providing that **t**he Arbitration Regulations of the CCJA shall be laid down by the Council of Ministers and shall be duly published.).

in compliance with the stipulations of the OHADA Treaty "shall have final and conclusive authorities in the territory of each Contracting State as judgments delivered by their national courts."

The relationship between the CCJA Court and the CCJA Center is an interesting one. The CCJA Court "may rule on any challenge of an arbitrator by any party."[174] The CCJA Court also reviews partial or final award of arbitrators.[175] Thus, CCJA Court exercises a number of judicial functions during arbitration proceedings. Since its inception in 1996, the CCJA Court has received only 10 requests for annulment of arbitral awards.[176] The CCJA Court is empowered to rule on enforcement on arbitral awards. Arbitral awards may be enforced and executed by an order of Exequatur which only the CCJA is authorized to issue. There are a limited number of circumstances when an order of Exequatur may not issue. One instance is where an order "is contrary to international public order." Article 27 of the CCJA Arbitration Rules states:

> "Awards made in conformity with the provisions of these arbitration rules are binding in respect of the claim on the territory of each member state, as if they were ruling, made by Courts in the state. They may be the object of compulsory enforcement on the territory of any one of the member states."

The final say on enforcement of CCJA awards lies with the CCJA Court and not the courts of OHADA Member States.[177] Annulment and enforcement proceedings against CCJA awards are heard by the CCJA Court.[178] The CCJA's procedure was recently modified by Regulation n°001/2014/CM ("Regulation") adopted on 30 January 2014 and published in the OHADA Official Gazette on 4th February 2014.[179]

The arbitral caseload of the CCJA is comparatively small. Since 1996 when it was established, the CCJA has administered 64 arbitrations; 18 are currently pending.[180] There is no information on what percentage of the CCJA's arbitral caseload can be classified as international. The main users are parties from OHADA Member States but about 7 cases have come from parties in Europe: France (5), U.K. (1) and Spain (1). [181] The CCJA's limited jurisdiction may make it difficult for parties whose agreement have no link to OHADA to opt for

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[174] OHADA Treaty, *supra* note 50, Article 22.
[175] Id. Article 24 ("Before signing a partial or final award, the arbitrator shall submit the proposed decision to the Common Court of Justice and Arbitration, which may suggest any formal amendments to such a decision.").
[176] Jahnel, *supra* note 130, footnote 15.
[177] See: The CCJA Decision No 043/2008, *M. DAM SARR v Mutuelle d'Assurances des Taxis Compteurs d'Abidjan*, 24 July 2008
[178] CCJA Rules, supra note 173, Article 2.2.
[179] Madonna Gerber, *OHADA – Reform of the procedures of the Common Court of Justice and Arbitration of OHADA*, 29 April 2014.
http://www.eversheds.com/global/en/what/articles/index.page?ArticleID=en/Africa_group/Reform-procedures-of-the-Common-Court-of-Justice-and-Arbitration
[180] Jahnel, *supra* note 130, at 10. For a few of the published jurisprudence of the CCJA see: http://ohada.org/jurisprudence.html
[181] The main users in terms of the number of cases have come from the following countries: Benin (9), Burkina Faso (2), Cameroun (11), Congo (2), Côte d'Ivoire (14), France (5), Gabon (1), the UK (1), Equatorial Guinea (2), Mali (10), and Senegal (2). African Development Bank, foot note 39 and 40.

CCJA arbitration.[182] A recent report alludes to "the limited experience of [CCJA] Judges in arbitration related matters."[183] The report also makes mention of "the CCJA Judges' lack of knowledge and fluency in arbitration," and the fact that practitioners "consider that the number of Judges (currently seven) is not sufficient to guarantee efficient proceedings." However, the same report goes on to state that "[t]hese shortcomings do not seem to affect the quality of the CCJA as an arbitration institution and other practitioners have had excellent experiences with the CCJA under its institutional arbitration rules."

The CCJA's list of arbitrators is published in the official journal of OHADA.[184] The 2013 list of arbitrators lists 154 persons from 29 countries; Of these 86 persons are from 15 countries in Africa. [185] A recent report concluded that the CCJA's selection process "is such that it guarantees a high level standard of arbitrators."[186] In terms of cooperation with arbitral institutions outside Africa, the CCJA has signed a cooperation agreement with the International Arbitration Centre of Vietnam.

4.1.8. The East African Court of Justice (Arbitral Jurisdiction) – 2001

Very few people inside and outside East Africa know about the arbitration jurisdiction of the East African Court of Justice (EACJ) – a court that was created by the Treaty for the Establishment of the East African Community (the EAC Treaty) and inaugurated on the 30th November, 2001.[187] The East African Court of Justice (EACJ) is one of the organs of the East African Community.[188] The EACJ is established as a judicial body tasked with ensuring the adherence to law in the interpretation and application of and compliance with the EAC Treaty. Legal and natural persons can refer cases to the EACJ. According to Article 27, "any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty." Pursuant to Article 27, the EACJ has jurisdiction to hear and determine any matter "arising from an arbitration clause contained in a contract or agreement which confers such jurisdiction to which the Community or any of its institutions is a party."

There is limited information on the extent of utilization of the EACJ as an arbitral tribunal. It does not appear that the EACJ has promoted its arbitration function. Article 32 of the EAC Treaty which spells out the arbitral jurisdiction of the EACJ reads as follows:

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[182] African development Bank at 11 (observing that although two parties with no link to OHADA could theoretically choose to include a CCJA arbitration clause in their contract this has never been done in practice and is not supported by the CCJA Rules).
[183] Jahnel, *supra* note 130, at 6.
[184] Publication de la liste des arbitres CCJA au titre de l'année 2014. http://ohada.org/communiques-ccja/fr/content/default/3770,publication-de-la-liste-des-arbitres-ccja-au-titre-de-lannee-2014.html
[185] Jahnel, *supra* note 130 at 8.
[186] Id.
[187] http://eacj.org/
[188] Treaty Establishing the East African Community, Article 9 and Articles 23-46.

Arbitration Clauses and Special Agreements

> *The Court shall have jurisdiction to hear and determine any matter:*
> *(a) arising from an arbitration clause contained in a contract or agreement which confers such jurisdiction to which the Community or any of its institutions is a party; or*
> *(b) arising from a dispute between the Partner States regarding this Treaty if the dispute is submitted to it under a special agreement between the Partner States concerned; or*
> *(c) arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court.*

Although the EACJ adopted its arbitral rules in 2004, in the first ten years of its existence, not a single arbitration case was referred to it. Altogether, the EACJ has received only one arbitration matter in the fourteen years of its existence. Writing in 2011, the President of the EACJ, Justice Harold Nsekela, made a plea for greater utilization of the EACJ as an arbitral center. According to Nsekela:

> In the decade ahead of us, Partner States should see the need for utilizing the Court's facility as an arbitral tribunal. The Court on its part is ready and prepared to handle any arbitration matter. Judges have been trained and familiarized themselves with international commercial arbitration principles and practices. The Court has already reviewed its rules of arbitration to measure up to international standards, but ten years down the road, no dispute has been referred to the Court for arbitration. The founding judges of the Court have all retired without handling an arbitral matter and training is under way for the new crop of judges.[189]

As an arbitral institution, therefore, the EACJ suffers from lack of use. The EACJ does not offer courses in arbitration or ADR and does not grant certificates in arbitration or ADR. The EACJ itself laments the lack of appreciation of the court by the EAC Member States and particularly the non-submission of Member States to the Court's arbitral jurisdiction.[190]

4.1.9. The LCIA-MIAC Arbitration Center (Mauritius) – 2011[191]

Located in located in Cybercity in Ebène, the LCIA-MIAC Arbitration Center is the product of a 2011 agreement between the Government of the Republic of Mauritius, the LCIA and the Mauritius International Arbitration Centre Limited (MIAC). The LCIA does not own the LCIA-MIAC. The center is an independent arbitral institution, based in Mauritius and supported by the London Court of International Arbitration. The LCIA-MIAC Arbitration Rules became

[189] Justice Harold Nsekela, *Overview of the East African Court of Justice*, A Paper for Presentation During the Sensitisation Workshop on the Role of the EACJ in the EAC Integration, Imperial Royale Hotel, Kampala, Uganda, 1st – 2nd November, 2011.
[190] East African Court of Justice, STRATEGIC PLAN 2010-2015 17 (2010) (stating that "the EAC Policy makers and stakeholders seem not to, consciously or unconsciously, appreciate its role and place in the EAC institutional structure.").
[191] See the official website of the centre: http://www.lcia-miac.org/

effective on 1 October 2012,[192] is three languages (English, French and Chinese), and applies to arbitrations commencing on or after 1 October 2012. The actual administration of arbitral cases is handled by an Arbitration Court (the LCIA Court).[193]

The inaugural LCIA-MIAC Users' Council guest lecture was delivered on 2 October 2014 by Dr. Mohamed Abdel Wahab, Professor at Cairo University and member of the LCIA Court. Dr. Abdel Wahab spoke on the theme of: "Glocalizing International Arbitration: An African Perspective". The first LCIA-MIAC Users' Council Forum was held on 5 March 2015 at the Seat of the Bar Council, Pope Hennessy Street, Port Louis. Some of the stated aims of the event, billed as an "open-door networking and knowledge-sharing" event, was to offer the opportunity to network with other professionals interested in international arbitration and to give feedback to LCIA-MIAC on any issues regarding international arbitration practice and LCIA-MIAC activities. This was the first of what promises to be a regular series of informal gatherings held by the LCIA-MIAC Users' Council. Other events that LCIA-MIAC have organized and/or sponsored include: LCIA-MIAC International Arbitration Symposium (2-3 December 2013), LCIA African Users' Council Symposium (13-14 June 2014), and the LCIA-MIAC International Arbitration Lunch (25 June 2014).

The efforts of the LCIA-MIAC has not gone unnoticed. The LCIA-MIAC Arbitration Centre won the GAR 2015 award for 'up-and-coming regional arbitral institution.'[194] LCIA-MIAC featured strongly in several other categories in the nominations for the GAR 2015 Awards 2015.[195] Presently, the LCIA-MIAC does not offer courses in arbitration or ADR and does not grant certificates in arbitration or ADR. The LCIA-MIAC is still relatively new with little or no precedent or track record. Given Mauritius enabling business climate, predictable legal regime, strong institutions, and the support shown so far by the Mauritian government, LCIA-MIAC has a real chance of becoming prominent, recognized and credible arbitration centre in Sub-Saharan Africa. While some may view the LCIA-MIAC collaboration as imperialistic, others see it is as a strategic move designed to increase the credibility of the center. As one expert put it: "the involvement of an established centre was very important to secure the LCIA-MIAC's future. The LCIA brings credibility and reliability to the new institution. It also provides support, guidance and expertise to the staff of the LCIA-MIAC. The administration of the LCIA-MIAC aims at achieving the quality standards of the LCIA."[196] The LCIA-MIAC's annual reports are not available on the organization's website. Also not available is information regarding the organization's caseload, list of arbitrators, or past and current arbitral appointments.

In terms of caseload, LCIA-MIAC a very organization with understandably very few cases yet to talk about. To date, it has fully administered one case and has also provided specific services in relation to three other cases in the form of arranging hearing rooms, arranging a transcription service and assisting with the selection of an arbitrator.

[192] http://www.lcia-miac.org/arbitration/arbitration-rules.aspx
[193] http://www.lcia-miac.org/about-us/organisation-structure.aspx
[194] Global Arbitration Review, GAR Awards 2015 – the winners, 16 February 2015, http://globalarbitrationreview.com/news/article/33584/gar-awards-2015-winners/
[195] http://comesacourt.org/?page_id=59
[196] Jahnel, *supra* note 130, at 57.

4.1.10. The Kigali International Arbitration Center (Rwanda) – 2012

The Kigali International Arbitration Center is one of the newest on Africa's arbitration landscape.[197] Created in 2011 and officially launched in 2012, KIAC is an independent body established under the auspices of the Rwanda Private Sector Federation (PSF) with the support of the Government of Rwanda.[198] The KIAC is located in the city of Kigali. Although under the enabling legislation, the KIAC may have branches abroad, it does not have one presently.[199] The KIAC is tasked with *inter alia*: promoting the country regionally and internationally as a centre for international commercial arbitration, promoting the resolution of disputes by arbitration and alternative dispute resolution, providing facilities and assistance necessary for the conduct of domestic and international arbitration, and providing accreditation for members of the Centre to act as arbitrators or mediators in resolving domestic and international disputes.[200]

The KIAC released its rules in 2012.[201] Because Rwanda has ratified the New York Convention, KIAC arbitral Awards can be enforced in any other country that has ratified the convention. The KIAC has the opportunity to gain international recognition through its Board of Directors and also through its International Committee of Arbitrators and its International Arbitral Advisory Committee when these are established. The enabling legislation stipulates that members of the Board of Directors "shall be persons of high integrity and demonstrated experience in matters relating to international or domestic arbitration, conciliation and settlements of disputes, national or international trade, industry, investment and corporate legal affairs."[202] The Board of Directors shall establish an International Arbitral Advisory Committee "responsible for advising the Centre on any matter relating to international commercial arbitration and advise the Centre on the selection of persons competent to carry out the duties of arbitrators in international commercial arbitrations."[203] The Board is also authorized to appoint international committee of arbitrators on matters relating to international trade, international insurance, international investment and construction, administrative contracts on international commerce and finance entered into between public institutions and the private sector operators and such other fields as the Centre may deem expedient.[204] Still relatively new, KIAC is yet to attract a lot of cases. In its July 2012-June 2013 Annual Report, KIAC reported that "around 20 cases were submitted to the Centre and five cases have been accepted for filing … since April 2013."

KIAC's main selling point is likely to be Rwanda's vastly improved business environment. Rwanda has seen improvements in the Enforcing Contracts category worldwide and improvement in the Ease of Doing Business survey (moving from 158th in 2008 to 46th in

[197] http://www.kiac.org.rw/.
[198] Law N°51/2010 OF 10/01/2010 Establishing the Kigali International Arbitration Centre and Determining its Organisation, Functioning and Competence (hereinafter Law No. 51/2010).
[199] Id., Article 3.
[200] Id., Article 4.
[201] Official gazette No 22 Bis of 28th May 2012
[202] Law No 51/2010 0f 10/01/2010, *supra* note 198, Article 7.
[203] Id., Article 15.
[204] Id., Article 14.

the latest report). The center's relatively low fees could also be a big attraction. However, there is no information on KIAC's website on the number of cases, if any, that has been referred to it and the international composition of those cases. The list of KIAC Panel of International Arbitrators is available on the organization's website. Out of 34 names of KIAC's Panel of International Arbitrators, 15 are Africans: 12 Nigerians, 2 Kenyans, and 1 dual national (Nigeria/UK). In March 2015, KIAC organized an Adjudication Training Program. In the past, KIAC has organized an accelerated Membership Program (AMP) leading to Member of the Chartered Institute of Arbitrators (MCIArb). KIAC's annual report (the inaugural edition covering July 2012 – June 2013) is available on its website. KIAC has organized some regional workshops/conferences. KIAC's inaugural regional workshop on arbitration was organized in May 2013 under the theme "Arbitration in East African Community: From Law to Practice".

4.1.11. The Lagos Court of Arbitration (Nigeria) – 2012

The Lagos Court of Arbitration (LCA) officially launched on 9 November 2012, and is described as an independent private sector driven international centre for the resolution of commercial disputes by arbitration and other forms of alternative dispute resolution services. LCA's vision is "[t]o be the preferred natural and neutral arbitral/ADR institution in Africa."[205] Its mission is "To deliver internationally acceptable disputes services."[206] The Board of Directors is primarily made up of prominent arbitrators from Nigeria. Important statistics such as case load are not available on LCA's website. The LCA is free of government regulation or control by virtue of a provision in the establishing legislation – the Lagos Court of Arbitration Law – which came into effect on 18 May 2009. The LCA has released its arbitral rules and is only now beginning the turn to the task of promotion and branding. Plans for a new purpose built facility are in the works. The LCA's list of arbitrators is not available on its website. The LCA does not offer courses in arbitration and does not grant certificates in arbitration. Information is not readily available about LCA's arbitral caseload. The LCA's annual reports are missing from the organization's website as are information regarding the organization's caseload, list of arbitrators, or past and current arbitral appointments.

4.1.12. The Nairobi International Arbitration Center (Kenya) - 2013

Established pursuant to the Nairobi Centre for International Arbitration Act, 2013 (Act No. 26 of 2013), the Nairobi Centre for International Arbitration (NCIA) is the latest arrival on Africa's arbitral scene.[207] It was established within the framework of the Asian-African Consultative Organization (AALCO). Act No. 26 of 2013 took effect on 25 January 2013 and is "An Act of Parliament to provide for the establishment of regional center for international commercial arbitration and the Arbitral Court and to provide for mechanisms for alternative dispute resolution and for connected purposes." The NIAC was established to *inter alia*

[205] http://lagosarbitration.org/?p=about
[206] Id.
[207] The Nairobi Centre for International Arbitration Act No. 26 of 2013.
http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=NO.+26+OF+2013

"promote, facilitate and encourage the conduct of international commercial arbitration,"[208] "administer domestic and international arbitrations as well as alternative dispute resolution techniques under its auspices."[209] The NIAC has long been in the making. On 3 April 2006, a Memorandum of Understanding (MoU) to establish a center in Nairobi was signed between AALCO and the Government of Republic of Kenya. The Agreement establishing the NIAC was subsequently signed in 2007. It does not appear that any dispute has been referred to the NIAC. NIAC is yet to issue its rules or to make embark on its numerous functions. The center does not offer courses in arbitration or ADR and does not grant certificates in arbitration or ADR. The future of the NIAC is uncertain and there are many questions begging for answers: will the center draw heavily from the experiences of the more established arbitral institutions inside and outside Africa? Will the center be adequately funded? How will the center co-exist with The LSK International Arbitration Centre which the Law Society of Kenya plans to establish very soon?

4.1.13. Arbitration Tribunal of ECOWAS[210]

The Economic Community of West African States (ECOWAS) was created on 28 May 1975 to promote economic cooperation and regional integration. In addition to the Court of Justice of the Economic Community of West African States (ECOWAS Court of Justice), an Arbitration Tribunal of the Community (ATC) is also envisioned.[211] Article 16 of the ECOWAS Treaty declares: "There is hereby established an Arbitration Tribunal of the Community." Article 16(2) goes on to state that "[t]he status, composition, powers, procedures and other issues concerning the Arbitration Tribunal shall be as set out in a Protocol relating thereto."[212] While the status, composition, powers, procedures and other issues concerning the ECOWAS Court of Justice is now set out in an ECOWAS Protocol as promised in Article 15(2) of the ECOWAS Treaty,[213] no Protocol on the ATC has been adopted. Thus, while the ECOWAS Treaty envisions a regional arbitral institution for the ECOWAS sub-region, one is yet to materialize.

4.1.14. Conclusions

The institutional architecture for arbitration in Africa is considerable stronger than it was a decade ago. A growing number of internationally-focused arbitral institutions are emerging in the continent.[214] In addition to the institutions already discussed, a number of other arbitral bodies exist in Africa including: the Center for Mediation and Arbitration of Congo (GENACOM), the Center of Arbitration of Cameroon (GICAM), Mediation and Arbitration of the Algerian Chamber of Commerce and Industry, the Tunis Mediation and Arbitration Centre,

[208] Id., Section 5(a).
[209] Id., Section 5(b).
[210] ECOWAS stands for the Economic Community of West African States. See Economic Community of West African States (ECOWAS) Revised Treaty. http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf [hereinafter "ECOWAS Treaty"].
[211] Id., Article 15. Article 15 provides for the establishment of an ECOWAS Court of Justice. The court was subsequently established in 1991.
[212] Id., Article 16(2).
[213] Protocol (A/P.1/7/1991) on the Community Court of Justice. http://www.courtecowas.org/site2012/pdf_files/protocol.pdf
[214] Norton Rose, *Arbitration in Africa* (2010). http://www.nortonrosefulbright.com/files/ohada-25764.pdf

the Arbitration Court of Morocco, the Centre for Arbitration and Dispute Resolution (Uganda), and the Commission for Conciliation, Mediation, and Arbitration (South Africa). On a positive note: the number of arbitral institutions in Africa is increasing and some of the institutions are taking their mandate very seriously and have done a lot to promote awareness of international arbitration in the continent. Not surprising, some of the arbitral institutions in Africa have received high praises from experts. LIAC-MIAC was recognized in the 2015 Global Arbitration Review Award. CRCICA is seen as a "very successful arbitration centre."[215] While the caseload of some arbitral centers in Africa (e.g. CRCICA) is growing, overall, it cannot be said that collectively the arbitral institutions in Africa have helped to minimize the flow of arbitration cases to arbitral institutions outside of Africa. Thus, despite the progress made in the last decade, there are glaring weaknesses and huge challenges ahead. Why? Because:

- While the number of arbitral centers in Africa has grown and while most of the centers have adopted rules modeled after UNCITRAL Rules, a casual assessment suggests that most of the centers do not have viable reach outside of the countries in which they operate.
- None of the arbitral centers in Africa has gained continental influence let alone international influence
- Most of the existing institutions have not been very successful in generating cases from parties from within and outside Africa.[216] Thus, despite an improved framework for arbitration, most non-African parties still prefer to arbitrate outside of Africa.[217] Overall, Existing institutions have weak international caseload although some are actively seeking ways to develop their international caseloads.
- Many of the existing institutions face challenges in the form of resource constraints, resistance from lawyers, lack of training, and limited pool of experienced arbitrators.
- The perception among international arbitrators is that the institutions in Africa lack necessary experience with international arbitration.[218]

Most of the existing arbitral institutions in Africa are in their nascent stage and still faces several uncertainties. While international arbitral institutions in Asia are seeing "a sharp increase in arbitration cases across the board," this is not so with most of the institutions in Africa.[219] Presently, only CRCICA, LCIA-MIAC, and possibly KIAC in a few years, are strong contender to becoming credible arbitration hubs in Africa. While international arbitral institutions in Asia are seeing "a sharp increase in arbitration cases across the board," this is not so with most of the institutions in Africa. Discussions about the strength, weaknesses and achievements of the arbitral institutions in Africa is hampered by lack of basic data. Annual reports are often not

[215] Jahnel, *supra* note 130, at 28.
[216] Emilia Onyeama, *Regional Arbitration Institution for ECOWAS: Lessons from OHADA Common Court of Justice and Arbitration*. 17(5) INTERNATIONAL ARBITRATION LAW REVIEW, 99-111, 107-108 (noting the dearth of arbitration references taking place within Africa).
[217] Finizio and Führich, *supra* note 11 (observing that "International arbitration institutions in Africa are still developing, with many foreign parties preferring to arbitrate outside of Africa (often in London or Paris").
[218] Id. (observing that "While there are local arbitral institutions in the region, none yet have significant experience with international arbitration.").
[219] Rajoo, *supra* note 6.

available from organizations' website. For most of the institution, information is not available regarding annul or cumulative caseload, the international composition of caseload, or nationality of arbitrators appointed.

4.2. Beyond Arbitral Institutions: A Look at the Underlying Institutional Infrastructure for Arbitration in Africa

4.2.1. Africa's Judiciary and International Arbitration

Political climate in Africa has improved significantly and democratic principles, including multi-party democracies, are taking root in many countries in the region.[220] Many countries in Africa are now party to the African Peer Review Mechanism (APRM), a governance initiative that was launched in 2003. However, courts in Africa do not have a reputation of maintaining a pro-arbitration stance in their supervisory role, have not always construed arbitration clauses broadly, and have not always maintained a pro-enforcement stance.[221] However, there are signs that this is changing in many countries in the continent. In the Nigerian case of *Okpuruwu v Okpokam* (Court of Appeal – Enugu Division) decided on 7 June 1988,[222] Oguntade JCA as he then was, in his dissenting judgment stated:

> The regular courts in the early stages of arbitration were reluctant to accord recognition to the decisions or awards of the arbitrators. This attitude flowed substantially from reasoning that arbitration constitutes a rival body to the courts. But it was soon realized that arbitration may in fact prove the best way of settling some types of disputes. The attitude of the regular courts to arbitration therefore gradually changed: It was then realised and acknowledged that if parties to a dispute voluntarily submit their dispute to a third party as arbitrator, and agree to be bound by the decision of such arbitration then the court must clothe such decision with the garb of estoppel per rem judicatam.

Courts in Nigeria are increasingly very supportive of the arbitral process.[223] However, judicial attitude in Nigeria is far from settled and uniformly consistent.

Regarding Egypt, a recent report concluded that Egypt "is generally considered to provide an arbitration-friendly environment where most commercial and construction disputes are settled through arbitration" and that "[m]any Egyptian court decisions demonstrate such "pro-arbitration" approach."[224] The situation is the same in Mauritius. A 2014 decision of the Supreme Court of Mauritius (*Cruz City 1 Mauritius Holdings v Unitech Limited & Anor*.) was nominated for a Global Arbitration Review 2015 awards for the most important published

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[220] Jahnel, *supra* note 130, at 2.
[221] See e.g.: Mkumbukwa, N.S., 'Is The Commercial Court Jealous Of Arbitration?' Available at http://www.comcourt.go.tz/comcourt/wp-content/uploads/2013/08/Mkumbukwa-Nuhu-S.-Is-the-Commercial-Court-Jealous-of-Arbitration_-Commercial-Court-Roundtable-8th-Oct.-2009.pdf
[222] (1988) 4NWLR (Pt.90) 544. Suit No: CA/E/435/86.
[223] See e.g. *Niger Progress Ltd. v. N.E.I. Corp.* (1989) 3 NWLR (Part 107) 68; *C.N. Onuselogu Ent. Ltd. v. Afribank (Nig.) Ltd*. (2005) 1 NWLR Part 940 577.
[224] Jahnel, *supra* note 130, at 43.

decision of 2014 for jurisprudential or other reasons. [225] *Cruz City 1 Mauritius Holdings* involved a challenge to an application seeking an order recognizing and declaring executory in Mauritius two foreign Awards issued in 2012 by the Arbitral Tribunal (the Tribunal) constituted by the LCIA. The Court rejected the argument that enforcing the awards would be contrary to the Constitution or that this will undermine its institutional integrity. The Court stressed the fact that arbitral awards have their foundation in the international arbitration agreement of parties and are the outcome of arbitration where the parties have considerable autonomy. To the Supreme Court of Mauritius:

> Therefore, a losing party in an arbitration award cannot, just because the award was not in his favour, be allowed, at the stage when [the Supreme Court] is called upon to adjudicate whether to enforce or refuse enforcement in accordance with the criteria laid down in the law, to ask the Court to interfere with the decision of the arbitral tribunal on grounds not laid down in the law. Such a request is not acceptable not only because it will be tantamount to asking this Court to act against the law, to step outside the jurisdiction conferred on it by law as provided by the Constitution, but it will also be unfair, unjust and inequitable as it will deprive the winning party of the benefit of the award, to which the losing party voluntarily agreed to be bound, by delaying and protracting matters. (10-11)

Also worthy of note is the decision of the Mauritius Supreme Court in *Mall Of Mont Choisy Limited v Pick 'N Pay Retailers (Proprietary) Limited & Ors.*[226] where the Court adopted a non-interventionist approach.

The "arbitrability" of dispute, that is, whether or not an arbitration tribunal has jurisdiction to hear certain disputes in the first place remains an issue in many countries in Africa. Whether arbitral rules and practice threaten sovereignty and to what degree is an issue that many countries in the region are grappling with. Ghana is a case in point. Yet to be resolved is a major conflict between a recent decision of the Supreme Court of Ghana and two arbitral awards from the Permanent Court of Arbitration (*Balkan Energy Limited (Ghana) v. The Republic of Ghana* and *Bankswitch Ghana Limited v. The Republic of Ghana).* Article 185(5) of the Constitution of Ghana renders all "international business or economic transaction to which the Government is a party" void unless approved by a resolution of Parliament. Article 130 of the Constitution of Ghana further provides in relevant parts that the Supreme Court shall have exclusive original jurisdiction in "all matters relating to the enforcement or interpretation of this Constitution." In *Attorney General v Balkan Energy Ghana Ltd (*"*BEG*"), Balkan Energy LLC and Mr. Philip David Elders, the Ghanaian Supreme Court, in a unanimous decision, concluded that a certain power purchase agreement (the "PPA") entered into between the Government of Ghana and BEG was an "international business transaction" within the meaning of Article 181(5) of the Constitution and was therefore void unless approved by the Parliament. The

[225] Supreme Court of Mauritius, *Cruz City 1 Mauritius Holdings v Unitech Limited & Anor*, 2014 SCJ 100, 28 March 2014. See also Alison Ross, "Mauritian court shows hand on enforcement", in *GAR News* (2 May 2014).
[226] 2015 SCJ 10. See generally, Bagshaw, D., '*Mauritius Supreme Court hands down two judgments on international arbitration*', February 2015. Available at http://www.lcia-miac.org/news/mauritius-supreme-court-hands-down-two-judgments.aspx

Supreme Court remitted the case back to the High Court for its interpretation of Article 181(5) of the Constitution to be applied to the proceedings before the High Court. The Supreme Court of Ghana thus concluded that the dispute in question was not arbitrable as the PPA was void for lack of Parliamentary approval. In 2014, the PCA came to the opposite conclusion holding that the PPA was valid and that the case arbitrable. One the question whether the determination of the validity of a certain Power Purchase Agreement or the arbitration clause contained in it required an interpretation of the Ghana Constitution – a function that falls within the exclusive original jurisdiction of the Ghanaian Supreme Court, the PCA answered in the negative. According to the PCA:

> Arbitration tribunals are not infrequently confronted with the need to interpret and apply constitutional provisions relevant to the resolution of disputes submitted to them, just as they are normally required to interpret and apply treaties that are relevant to the disputes. There is nothing abnormal in exercising a judicial function necessary for the proper administration of justice. Hence the Tribunal does not consider that, in asserting its competence to determine its jurisdiction in this case, it is disregarding or in anyway contradicting the force of Article 130 of the Constitution of Ghana.

How to balance access to court, a fundamental right recognized in most civilized countries, with arbitration is a question that many courts in Africa are still struggling with. This issue appears to have been settled in South Africa following a landmark decision of the South African Constitutional Court in 2009. Section 34 of Chapter 2 on Bill of Rights of the South African Constitution (Act No. 108 of 1996) provide that "Everyone has the right to have any dispute that can be resolved by the application of law *decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum*."[227] In the case of *Lufuno Mphaphuli & Associates (Pty) LTD vs Nigel Athol Andrews and Bopanang Construction CC*,[228] a landmark judgement, the Constitutional Court of South Africa grappled with the tension between article 34 and the role of private arbitrations in South Africa's legal system. The case involved an application for the review and setting aside of an arbitral award in terms of section 32(2) of the Arbitration Act of South Africa. The key constitutional issue in the case was how to resolve the tension between the principle of party autonomy and the duty of the courts to ensure, before ordering that an arbitration award be enforced by the state, that the award was obtained in a manner that was procedurally fair, as required by section 34 of the Constitution. O'Regan ADCJ, writing for the majority,[229] stated:

> In determining the proper constitutional approach to private arbitration, we need to bear in mind that litigation before ordinary courts can be a rigid, costly and time-consuming process and that it is not inconsistent with our constitutional values to

[227] Emphasis added.
[228] *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* (CCT 97/07) [2009] ZACC 6; 2009 (4) SA 529 (CC); 2009 (6) BCLR 527 (CC) (20 March 2009
[229] Id., Langa CJ, Mokgoro J, Van der Westhuizen J and Yacoob J concurred in the judgment of O'Regan ADCJ

> permit parties to seek a quicker and cheaper mechanism for the resolution of disputes.[230]

To the question "Does section 34 apply to private arbitration?," The Court concluded that section 34 does not have direct application to private arbitration and that the effect of a person choosing private arbitration for the resolution of a dispute is not that they have waived their rights under the Constitution but that they have instead chosen not to exercise their right under section 34.[231] On the question of the extent to which the judiciary may scrutinize arbitration awards, the Court called for judicial restraint and for a strict construction of Article 33 of the Arbitration Act which provides relatively narrow grounds for setting aside an arbitration award. According to the Court:

> To return … to the question of the proper interpretation of section 33(1) of the Arbitration Act in the light of the Constitution. Given the approach not only in the United Kingdom (an open and democratic society within the contemplation of section 39(2) of our Constitution), but also the international law approach as evinced in the New York Convention (to which South Africa is a party) and the UNCITRAL Model Law, it seems to me that the values of our Constitution will not necessarily best be served by interpreting section 33(1) in a manner that enhances the power of courts to set aside private arbitration awards. Indeed, the contrary seems to be the case. *The international and comparative law considered in this judgment suggests that courts should be careful not to undermine the achievement of the goals of private arbitration by enlarging their powers of scrutiny imprudently*.[232]

Regarding 'Judicial Independence' and 'Efficiency of Legal Framework in Settling Disputes' – two components of the first pillar of the World Economic Forum's Global Competitiveness Index – the results are mixed with some countries doing remarkably well and some doing very badly. With respect to judicial independence, out of the 144 countries assessed, six countries in Africa (all in Sub-Saharan Africa) are in the top 50,[233] 14 are in the top half,[234] and 21 are in the top 100. Unfortunately, 40% of the countries in the bottom ten are in Sub-Saharan Africa.[235] Once again, Nigeria posted a very disappointing score (102nd). Regarding Efficiency of Legal Framework in Settling Disputes, a few countries in Sub-Saharan Africa are showing significant improvements. Top-ranked in the region and among the top 50 on The Global Competitiveness Report 2014-2015 are South Africa (15th), Rwanda (16th), Mauritius (22nd), Namibia (29th), Botswana (32nd), Zambia (33rd), The Gambia (35th), Ghana (45th), and

[230] Id., para. 197.
[231] Id., para. 215-216.
[232] Id., at 235. Emphasis added. The principle of party autonomy was also stressed in a number of other cases including: *Telcordia Technologies Inc v Telkom SA Ltd.* [2006] ZASCA 112; 2007 (3) SA 266 (SCA); 2007 (5) BCLR 503 (SCA) at para 4.
[233] The six countries are: South Africa (24th), Mauritius (31st), Rwanda (34th), Botswana (35th), Namibia (39th) and Ghana (48th). See World Economic Forum, THE GLOBAL COMPETITIVENESS REPORT 2014-2015 411 (2014)(hereinafter "GCR 2014-2015").
[234] Id. South Africa (24th), Mauritius (31st), Rwanda (34th), Botswana (35th), Namibia (39th), Ghana (48th), Cape Verde (51st), Kenya (52nd), Seychelles (53rd), Lesotho (55th), Egypt (57th), Malawi (59th), The Gambia (66th) and Zambia (69th).
[235] Id. Four countries in Africa in the bottom ten are: Burundi (143rd), Guinea (139th), Angola (137th) and Burkina Faso (137th).

Kenya (47th).[236] The news is not all good. Nigeria comes in at a disappointing 99th and four countries in Africa are in the bottom 10: Libya (135th), Mauritania (138th), Angola (140th) and Guinea (142nd).

The good news is that some countries are taking proactive steps to transform their judiciary. Kenya is one example. The state of judiciary in Kenya was aptly summed up by the Chief Justice of Kenya, Dr. Willy Mutungu, when he state in 2011:

> "We found an institution so frail in its structures; so thin on resources; so low on its confidence; so deficient in integrity; so weak in its public support that to have expected it to deliver justice was to be wildly optimistic. We found a judiciary that was designed to fail. The institutional structure was such that the Office of the Chief Justice operated as a judicial monarch supported by the Registrar of the High Court. Power and authority were highly centralized. Accountability mechanisms were weak and reporting requirements absent. When we put people on a pedestal it is based on negative power and authority. That is the old order.

In Kenya, the *Judiciary Transformation Framework 2012-2016* ("Framework") presents an ambitious agenda that, if successful, could become a model for the rest of the continent. The framework acknowledges the "creeping dysfunctionality" and "unprofessionalism and corruption" that has been the fate of the judiciary in Kenya and sets out the goal of "restor[ing] the judiciary to its rightful constitutional and political place, and forg[ing] a new relationship with the public whose duty it exists to serve."[237] The Framework is premised on four key pillars: (i) "people focused delivery of service;" (ii) "transformative leadership, organization culture and professional, motivated staff; (iii) adequate financial resources and physical infrastructure; and (iv) harnessing technology as an Enabler of justice. Under the first pillar, one of the key result expected is "access to, and expeditious delivery of justice." Promoting and facilitating alternative forms of dispute resolution is explicitly identified as an overarching strategy. Under the Framework, the plan is to "[d]evelop laws and rules for ADR" and "[s]ensitise court users and communities on the ADR option."[238] The expectation is that Kenya will see increased use of ADR and a reduced number of court hearings. Judiciary Training Institute was created in ---- as the judiciary's think tank.

4.2.2. Enabling Business Environment/ Competitiveness

Political climate in Africa has improved significantly in the past decade and democratic principles, including multi-party democracies, are taking root in many countries in the region.[239] Despite remarkable progress in countries like Mauritius and Rwanda, many countries in the region including Nigeria, now the largest economy in the continent, continue to feature among the least competitive economies in the world and do not necessarily offer a safe and welcoming environment for international arbitration. The good news is that 11 countries in Africa are in the 100 highest-ranked economies in the Global Competitiveness Report 2014-2015 (GCR 2014-

[236] Id., at 145.
[237] The Kenyan Judiciary, JUDICIARY TRANSFORMATION FRAMEWORK, 2012-2016 2 (2012).
[238] Id., at 23.
[239] Jahnel, *supra* note 130, at 2.

2015).[240] Mauritius continues its steady upward trend. Mauritius moved up six positions to 39th place on the GCI and leads the countries in Sub-Saharan Africa on the GCI.[241] Mauritius benefits from relatively strong and transparent public institutions (36th) and strong judicial independence. The bad news is that 18 of the 25 lowest ranked countries are in Africa[242] and more than half of the 20 lowest ranked countries are sub-Saharan Africa.[243] Most concerning is the fate of countries that have the potential to drive the growth of international arbitration in Sub-Saharan Africa. Angola, Africa's second biggest oil exporter, ranks 140 out of 144 on the GCR 2014-2015. Nigeria, the largest economy in Africa and a country with relatively large market size, ranked 127 (down from 120 in 2013-2014 and from 115 in the 2012-2013 report) in the report.[244] Weak institutions (129th out of 144), corruption, undue influence, and dire security situation contribute to Nigeria's very disappointing score.

The World Bank's *Doing Business 2015* also holds both good and bad news for Africa. Out of 189 countries assessed, three countries in Africa are among the top 50: Mauritius (28th), South Africa (43rd) and Rwanda (46th). Tunisia (60th), Ghana (70th), Morocco (71st), Botswana (74th), Seychelles (85th), and Namibia (88th) make it to the top 100. What is more, Sub-Saharan Africa "accounted for the largest number of regulatory reforms in 2013/14, with 39 reducing the complexity and cost of regulatory processes and 36 strengthening legal institutions."[245] Sub-Saharan Africa also "had the second largest share of economies implementing at least one reform and the second largest average improvement in distance to frontier scores" and five countries in the region made it to the list of "The 10 economies improving the most across 3 or more areas measured by *Doing Business* in 2013/14." [246] However, many countries in the region ranked in the bottom quintile of the 189 countries assessed. 70% of the countries in the bottom ten are in Africa.[247] Nigeria, one of Africa's major powerhouses and a country with modern arbitral rules and large concentration of big businesses most likely to resort to arbitration in Africa, does very poorly on the Ease of Doing Business rankings coming in at a disappointing 170 out of 189.

In conclusion, regarding the institutional architecture for arbitration in Africa much work remains, despite significant, even remarkable, development in some countries. Overall, "much remains to be done to lay the foundations for sustainable long-term growth, requiring efforts across many areas" including in the area of efficient dispute settlement.[248] Sub-Saharan Africa "continues to underperform in many areas of the basic requirements of competitiveness: the infrastructure deficit remains profound, and despite gradual improvements in recent years, health

[240] Mauritius (39), South Africa (56), Rwanda (62), Morocco (72), Botswana (74), Algeria (79), Tunisia (87), Namibia (88), Kenya (90), Seychelles (92), Zambia (96). World Economic Forum, Global Competitiveness Report 2014-2015 (2014).
[241] Id., at 38
[242] Id. The countries are: Tanzania (121), Uganda (122), Swaziland (123), Zimbabwe (124), The Gambia (125), Libya (126), Nigeria (127), Mali (128), Madagascar (130), Malawi (132), Mozambique (133), Burkina Faso (135), Sierra Leone (138), Burundi (139), Angola (140), Mauritania (141), Chad (143) and Guinea (144).
[243] Id.
[244] Id., at 39.
[245] The World Bank, DOING BUSINESS 2015 5 (2015).
[246] Id., at 6. These are Benin, Togo, Cote d'Ivoire, Senegal, and the Democratic Republic of Congo.
[247] Angola (181), Democratic Republic of Congo (184), Chad (185), South Sudan (186), Central Africa Republic (187), Libya (188) and Eritrea (189).
[248] Global Competitiveness Report 2014-2015, *supra* note 234, at 38.

and basic education remains low."[249] Also remarkable is the marked regional variation that exist in terms of competitiveness ranging from Mauritius at 28th to the lowest ranked Guinea at 144th.

5. THE FUTURE OF INTERNATIONAL ARBITRATION IN AFRICA

International arbitration is on the rise in Africa and is gaining recognition in many countries in the region.[250] What is more, there is immense potential for international arbitration to grow in the region in the coming years. Thanks to economic advances in the continent, phenomenal economic growth, increase in foreign direct investment into the region, accelerated efforts at regional integration, and growing South-South economic linkages, Africa is likely to see a continued rise in cross-border transactions and a concomitant rise in the demand for efficient and effective ways to resolve international commercial and investment disputes. Countries in Africa are also beginning to accept the fact that global businesses are reluctant to rely on domestic courts in the continent to resolve dispute and prefer to resort to international arbitration.[251] With judicial backlogs that have become legendary and continued challenges in terms of corruption, judicial independence and undue influence, improving Africa's ADR infrastructure is becoming an imperative. Across the board, there is a growing realization of the need to develop international arbitration in Africa. "If the 21st is indeed to be "Africa's century," the development of international arbitration in Africa must be a key part of this," Stuart Dutson, Lucy Webster and Timothy Smyth, of Eversheds assert. Unfortunately, while internationally-focused arbitral institutions are on the rise in Africa, most are in their nascent stage and most are yet to make their mark on the global arbitral stage. As Advocate Michael Kuper SC, Chairman of AFSA, noted recently, "While Europe, America and other parts of the world are criss crossed with arbitral institutions, none in Africa have a viable reach outside of the countries in which they themselves operate."[252] The arbitration law of some countries in the continent are outdated and there are growing calls for these laws to be updated and modernized. [253] Without undermining the judiciary and rule of law in Africa, and without ignoring concerns that developing countries have regarding structural imbalances in the system of international arbitration, more can be done to support to develop international arbitration in Africa. Developing international arbitration in Africa would mean more experience for African arbitrators, greater visibility for them on the regional and global stage, and increased opportunity for international arbitral appointments. Regarding the task of developing international arbitration in Africa, there is a need to:

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[249] Id.

[250] Dutson, Webster and Smyth, *supra* note 11 (discussing the growing use of arbitration in Africa and observing that arbitration "is fast becoming the dispute resolution mechanism of choice across the continent.").

[251] Queen Mary, University of London, CORPORATE CHOICES IN INTERNATIONAL ARBITRATION INDUSTRY PERSPECTIVES 1-8 (2013).

[252] Kuper, *supra* note 164.

[253] Stephan Wilske, Jade G. Ewers, Why South Africa Should Update Its International Arbitration Legislation — *An Appeal from the International Arbitration Community for Legal Reform in South Africa*, 28 (1) *Journal of International Arbitration*, 1–13 (2011).

- promote a culture of arbitration in Africa through a variety of means but including through the purposive inclusion of ADR courses in legal education in the continent;
- mainstream arbitration as a legitimate and credible method of dispute resolution;
- build the capacity of African arbitrators and practitioners;
- improve the visibility of arbitral institutions in the continent and the overall infrastructure for arbitration in the region;
- gain the confidence of potential users (particularly non-African entities) by convincing them that jurisdictions in Africa are neural, safe and trust worthy as far as resolving disputes is concerned;
- improve the relationship between courts and arbitration in Africa; and
- address the issue of lack of legal certainty in many jurisdictions in Africa.

5.1. A Multi-Stakeholder Initiative

The task of developing arbitration and ADR requires the active collaboration of a broad range of domestic and international stakeholders. At the domestic level, the involvement of African governments, law faculties/schools and other academic institutions, arbitral institutions, national and regional courts in the continent, and bar associations/law societies, the media in Africa, as well as businesses operating in the continent is necessary. Externally, international financial institutions, development organizations/partners, foreign law firms, established arbitral institutions in Europe and North America, and even law schools in Europe, North America and elsewhere can have a positive impact on the development of international arbitration in Africa. Collaborations within the framework of South-South cooperation holds immense promises. The Asian-African Regional Consultative Organisation (AALCO) was instrumental in setting up three regional arbitration centres in Africa and could do more to strengthen these centers. The East Africa International Arbitration Conference is now in its third edition. The 2015 conference was the result of collaboration between a committee of independent international arbitration practitioners, East Africa Business Network, and the East Africa Economic Chambers of Commerce and was organized under the theme: "Improving capacity and highlighting dispute resolution capabilities in the region."

5.2. Credible and Influential Arbitral Institutions

Arbitral institutions in the continent must do more to build the confidence of potential users. As one expert rightly notes, "[p]arties are more likely to seat their arbitration in a place where they are comfortable that their administered proceedings will be handled impartially, professionally, efficiently and cost effectively by a reputable institution."[254] Apart from a recent assessment study sponsored by the African Development Bank, not much has been done to critically and comprehensively assess the strength and capacity of the arbitral institutions in Africa. The result is that many questions still beg for answers. How do existing arbitral institutions rank on factors such as neutrality, reputation/recognition, efficiency, professionalism, and arbitral rules?[255] How do the institutions stack up when compared to new and rising

[254] Bao, *supra* note 4, at 43.
[255] *See* White&Case and Queen Mary University of London, *2010 International Arbitration Survey: Choices in International Arbitration, available at* http://www.

institutions in Asia? Are arbitral institutions in Africa perceived to be able to supervise and manage proceedings efficiently? Are they maintaining international best practices? Do their rules feature innovative options that can make them viable alternatives to established centers? Are they responding to the growing complexity of commercial disputes? As already noted, in 2014, the African Development Bank commissioned an assessment of only three arbitration centres in Africa – those in Côte d'Ivoire, Egypt and Mauritius.[256] A more comprehensive assessment of all the main arbitral institutions in Africa is urgently needed. What emerges from the African Development Bank study is that none of the existing arbitral institutions in Africa can be considered a truly regional player. Although very highly regarded and arguably the best in Africa, the African Development Bank study concluded that "it clearly appears that the CRCICA is not widely used within Africa."[257] What about the CCJA that is operative within the OHADA framework? The assessment as to its influence in Africa is also disappointing. According to the study:

> If all parties to the agreement come from outside of OHADA (non-OHADA States and foreign investors), the CCJA, pursuant to its rules, cannot be used as a centre to administer their disputes. Therefore, in a scenario where the parties have no link to OHADA and the contract is not executed within this zone (an element in a contractual framework which is extremely difficult to foresee), it is strongly recommended not to use a CCJA clause because of the high uncertainty surrounding this situation.[258]

5.3. An Africa-Wide Arbitration Institution?

In light of the conclusion that none of the existing arbitral institutions in Africa has attained regional influence, the idea of a pan-African institution is receiving considerable attention and merits serious consideration. To Advocate Michael Kuper SC, AFSA in South Africa:

> What greater contribution can the lawyers and arbitrators and mediators of Africa make to the continent than to create and establish a single standard arbitral and mediation system crossing all borders and constituting the first real step towards a shared jurisprudence! What a contrast that will offer to the present dispensation, in which the legal communities of Africa are strangers to each other and in which the disputes of Africa are resolved in Europe or America. [259]

Is an African-wide arbitral institution possible and can African arbitral institutions work together to make this vision a reality? 'Africa ADR' is a new joint venture between the AFSA and the Association of Arbitrators (AOA). In 2014, AFSA and AOA agreed to work together "to fund,

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whitecase.com/files/upload/fileRepository/2010International_Arbitration_Survey_Choices_in_International_Arbitration.pdf.

[256] Jahnel, *supra* note 130. The focus of the study was on the CCJA in Côte d'Ivoire, CRCICA in Egypt, and LCIA-MIAC in Mauritius.

[257] Id., at 31.

[258] Id., at 19.

[259] Advocate Michael Kuper SC, supra note 164 (noting that "It is going to take time to create an arbitral highway between Johannesburg and Nairobi, and Nairobi and Lagos.").

develop and promote Africa ADR to ensure that investors had access to an arbitral body of regional and international arbitrators with profound knowledge and insight as to the way in which business works in Africa and the difficulties that Africa may face in resolving commercial disputes."[260] Africa ADR aims to be inclusive – an African vehicle to serve the cause of dispute resolution throughout Africa**.** According to Kuper:

> "What is required on the continent of Africa is not an invitation to the great institutions of Europe to come and make their home in Africa and to set up shop in a particular country in Africa. What should emerge in Africa is a body of regional arbitrators, who have profound knowledge and insight as to the way in which business works in Africa and the difficulties that Africa may face in resolving commercial disputes. Within Africa it is essential that we create an institution with a continental reach, which allows all of the continent to participate."[261]

5.4. Top-Notch Education

How to build a genuine and sustainable body of expertise in ADR in Africa is a question that needs serious attention. While some countries in the Africa (particularly Nigeria, South Africa, Egypt, and Kenya) have produced a good number of trained arbitrators, opportunities for obtaining quality education, training, and certification in Arbitration are still relatively scarce in Africa. The primary route for obtaining training in arbitration in Africa is through the courses offered by the Chartered Institute of Arbitrators through some of its few branches in Africa.[262] In partnership with the Chartered Institute of Arbitrators, a few of the arbitral institutions in the continent offer training workshops. Training have sometimes come through occasional lectures and workshops. For example, in 2014, a six hour course on the Peaceful Settlement of International Disputes was offered in Addis Ababa Ethiopia as part of the United Nations Regional Course in International Law for Africa. Also in 2014, the PCA Deputy-Secretary General, Mr. Brooks Daly, delivered a series of lectures in French in Arusha, Tanzania, as part of a course organized by the African Institute of International Law on "les traités bilatéraux d'investissement et l'arbitrage."[263] While admittedly the Chartered Institute of Arbitrators has branches in Africa and offers courses through its branches, as the primary and only route for obtaining education and training in arbitration, it is not sustainable.

Most of the existing arbitral institutions in Africa do not consistently offer workshops and training programs in arbitration. CRCICA is an exception. CRCICA launched "Comparative Commercial Arbitration: Theory and Practice" (CCATP) in 2011, as the first comparative arbitration program in the Arab World. CCATP is held in cooperation with the Cairo Branch of the Chartered Institute of Arbitrators (CIArb). Upon completion of the program, participants are eligible to apply for the membership of CRCICA. In Egypt, arbitration courses and workshops

[260] AFSA@Work, February 2015.
[261] Kuper, *supra* note 164.
[262] The Chartered Institute of Arbitrators has five branches in Africa: Egypt, Nigeria (established in 1999), Kenya (established in 1984), South Africa (formed 2010), Zambia (formed 2011), and Mauritius.
[263] http://pca-cpa.org/shownews.asp?ac=view&pag_id=1261&nws_id=505

are offered through Cairo University's Faculty of Law, Research and Legal Consulting Center, Center for Arbitration, and International Business Law Institute. Since 2014, AFSA, in conjunction with the University of Pretoria, has been offering an Advanced Certificate in Alternative Dispute Resolution. The Program, which is aimed at "building a genuine body of expertise in ADR in South Africa and further afield,"[264] is internationally recognized by the Chartered Institute of Directors in the UK and AFSA graduates with legal qualifications are eligible to become members of the Chartered Institute. The Association of Arbitrators in South Africa also offers courses and workshop through its e-learning platform.[265]

More law faculties and law schools in Africa need to offer both basic courses and skills courses in arbitration and ADR more generally. In Europe and North America where education and training in arbitration starts at an early stage, typically during law school. A growing number of law schools in United States offer extensive training (including skills training) in arbitration and ADR. By contrast most law faculties in Africa lack the resources to offer but the basic law courses. Thus, when it comes to training African arbitrators, academic institutions in Africa still play a very limited role. This ought to change. Admittedly, a growing number of Africans are admitted for post graduate legal studies in universities overseas and are thus exposed to arbitration courses that way. However, Africa cannot hope to build a genuine body of experts in international arbitration relying on the training that a few Africans obtain when they go to universities in North America and Europe for postgraduate studies.

5.5. Awareness Raising and Overall Development of International Arbitration in Africa

Existing arbitral institutions in Africa have to do a better job of popularizing their work as well as popularizing arbitration in Africa. Popularizing the arbitral bodies in Africa and creating general awareness about arbitration is important given deep-seated suspicion about non-adversarial approach to dispute settlement within the legal profession. "Lack of awareness of the arbitration jurisdiction" is listed as one the weaknesses of the East African Court of Justice.[266] Existing arbitral institutions have to do a better job of making their presence known and making their case to law firms, governments, and businesses in Africa. To the extent that they are familiar with arbitral bodies, businesspeople in Africa are likely to be more familiar with arbitral bodies in Europe and North America than they are about arbitral bodies in Africa.[267]

Through workshops, conferences, internship programs for law students, and their publications, arbitral institutions in Africa can create awareness of arbitration in Africa and contribute to the overall development of international arbitration in the region. CRCICA is clearly moving in this direction although its primary geographic focus appears to be North Africa and the Middle East. Since 2005, CRCICA has organized the SHARM EL SHIEKH conferences series in cooperation with the United Nations Commission on International Trade Law

[264] AFSA@Work, February 2015, supra note --.
[265] http://learning.arbitrators.co.za/
[266] EACJ, supra note 190.
[267] Nixon Peabody, *Doing business in Africa—new regional institutions bring international arbitration to Sub-Saharan Africa*, INTERNATIONAL ARBITRATION ALERT, 4 February 2013 (observing that while many are familiar with the more established arbitration institutions in Europe and North America, "experienced businesspeople working in Africa might be less familiar with regional arbitral bodies.").

(UNCITRAL), the International Federation of Commercial Arbitration Institutions (IFCAI) and the Arab Union for International Arbitration (AUIA). Sharm El Sheikh V took place in November and had as its theme "The Role of State Courts in International Arbitration." For a newly established arbitral center, the LCIA-MIAC is also investing substantial time and effort in promotion and training. In 2014, the LCIA-MIAC organized a major conference – the Mauritius International Arbitration Conference (MIAC) 2014. The conference was held under the auspices of six major international arbitration institutions: UNCITRAL, the LCIA, the PCA, the ICSID, the ICC and the International Council of Commercial Arbitrators (ICCA).

5.6. Visibility

Most arbitral institutions in Africa lack visibility on the regional and global stage. The EACJ, an institution that has rarely exercised its arbitral jurisdiction is an example. The EACJ admits that it "is not visible enough both physically and functionally."[268] Physically, "the Court is still in Arusha, and has not yet operated from anywhere else."[269] Functionally, "the users and other stakeholders still do not know sufficiently this regional mechanism of dispute resolution. Many of them do not know the jurisdiction and procedures of the Court."[270] While the LCIA-MIAC has a good chance of making a mark on the global stage, it is too early to tell what the future holds for the institution. KIAC is also making efforts to raise its visibility and its annual Kigali International Arbitration conference is gaining traction. The 2014 conference was organized under the theme "Emerging issues in International Arbitration: What a New Arbitral Seat can anticipate."

It is imperative that arbitral institutions in Africa explore new mediums to increase its portfolio on the regional and global arbitration front. Across the board, arbitral institutions, including those in Asia are constantly seeking new ways to improve their visibility and better serve their client. The Kuala Lumpur Regional Center for Arbitration recently launched its i-Arbitration Rules which deals with arbitration of disputes arising from commercial transactions premised on Islamic principles. The i-Arbitration Rules are reputed to be the first in the world.

Collaborations between arbitral institutions in Africa and their counterparts overseas can enhance the visibility of arbitral institutions in Africa and the African arbitrators. Agreements with established arbitral institutions that would allow them serve as alternate hearing venues for cases handled by such institutions could be a starting point. Pursuant to Host Country Agreements signed with Mauritius and South Africa, the Permanent Court of International Arbitration can conduct some of its meetings and hearings in the two countries. Under a 2012 agreement with the International Court of Arbitration for Sport (CAS), CRCICA can now host hearing sessions of CAS cases. While Host Country Agreements may have the effect of diverting cases away from arbitral institutions in Africa, they could help these institutions by attracting arbitrations to the host country that would otherwise be conducted elsewhere, raising the international profile of the host country as an arbitral forum, increasing domestic and regional

[268] EACJ, supra note 190, at 18.
[269] Id., at 18.
[270] Id.

awareness of arbitration and other methods of dispute settlement, promoting use of arbitral institutions located in the host country, and facilitating the exchange of expertise.[271]

5.7. Capacity Building

Most of the arbitral institutions in Africa lack the capacity to meet the demands of international arbitration in terms of staffing, facility, and finances. Inadequate organizational structure, inadequate human and financial resources, and unsatisfactory human resource development are common problems. Some of the existing institutions face challenges in the form of resistance from lawyers, lack of training, lack of familiarity with ADR processes within the wider population. The EACJ admits that it faces many "crippling challenges" including lean staff, budgetary constraints, and "lack of capacity to carry out its mandate."[272] Within the OHADA system, the CCJA is identified as the institution "facing the most important challenges."[273] By some account, the CCJA is "severely understaffed despite a constant increase in its caseload" with the result that it "must now deal with a significant backlog of cases." Capacity building for arbitral institutions in Africa is thus a necessity. On 24 October 2012, the Government of Rwanda and Investment Climate Facility for Africa signed an agreement to finance the Alternative Dispute Resolution Project (ADRP), a project that was to be implemented in two years from October 2012 to September 2014. Given the extent of need, more funding from a variety of sources will be needed to improve Africa's arbitral infrastructure and promote awareness of arbitration in the region.

Beyond the arbitral institutions, lawyers and corporate counsel need training on how to draft international arbitration clauses. Most international arbitrators speak multiple languages and linguistic skills is major barrier to entry that African lawyers and arbitrator face now and are likely to face in the future especially if international arbitration continues to rise in Asia. Additionally, there is a need to enhance the capacity of law faculties and law schools in the continent to teach arbitration and other ADR courses. South-South cooperation provides a great opportunity for exchange of knowledge and peer-to-peer review. In partnership with Kuala Lumpur Regional Centre for Arbitration, the Kigali International Arbitration Center organized a five days adjudication training Programme from 21-25 march 2015. With deepening China-Africa relations, collaboration with arbitral institutions in China such as the China International Economic and Trade Arbitration Commission, reputed to be "consistently handling more than 1,000 cases a year since 2007," is worth pursuing.[274]

5.8. Training. Tracking Judiciary-Arbitration Interaction

The judiciary in Africa need training in arbitration and ADR. Increasingly such training is occurring in other regions.[275] The perception is that the judiciary in most countries in Africa are

[271] Permanent Court of Arbitration, Host Country Agreements, http://www.pca-cpa.org/showpage.asp?pag_id=1280
[272] EACJ, *supra* note --, at v.
[273] Beauchard and Kodo, *supra* note 129, at 19.
[274] Rajoo, *supra* note 6.
[275] Organization of American States Secretariat for Legal Affairs Department of International Law, '*International Commercial Arbitration: Training Judicial Officers in Cross-Border Decision Enforcement*'. Available at http://www.oas.org/en/sla/dil/docs/International_Commercial_Arbitration_BROCHURE_En.pdf

hostile to arbitration.[276] Regarding Tanzania, for example, it has been noted "Courts do set aside arbitral awards and interfere with arbitration on grounds that are fluid and this makes the practice of international commercial arbitration in Tanzania unreliable. "[277] The good news is that there appears to be fresh efforts on the ground to promote the image of the EACJ as an arbitral institution and to train EACJ justices on arbitral issues. The bad news is that judicial training on ADR is neither consistent nor widespread.

The Kigali International Arbitration Center has organized at least two training sessions for Senior Judges primarily from the Supreme Court, High court, and the High Court of Commerce and Commercial courts. Training has been organized for judges of the Easts African Court of Justice and more are planned in the future. On 5th April 2015, the EACJ, the International Senior Lawyers Project (ISLP) and Professor Ball, a leading figure in the international arbitration community, signed a Memorandum of Understanding to assist the Court in its efforts to build the capacity of the Court to further promote the knowledge and practice of arbitration in East Africa as well as become a prominent arbitration centre institution.[278] The MOU will also involve an assessment of the strength and weaknesses of the Court and provision of advice on possible modification of EACJ Rules on Arbitration. On 16 April 2015, a two days training for judges of the Court on emerging trends in arbitration was organized. In his opening remarks at the two-day workshop, the Judge President, Hon. Justice Dr. Emmanuel Ugirashebuja, acknowledged the Court's need for more skills and knowledge in arbitration and the fact that the public was not aware of the Court's jurisdiction on arbitration.[279] Although the OHADA Treaty (Articles 41 and 42) makes provision for on-going training for judges of the CCJA by establishing the Regional Training Center for Legal Officers (ERSUMA), it is not clear if quality training is occurring and if training in arbitration is planned.[280] ERSUMA's mission appears to be "hampered by budgetary constraints."[281] With funding from the World Bank, Kenya has embarked on a bold and ambitious transformation of its judicial system. As part of the plan to expand access to justice and expedite delivery of justice in Kenya, promoting and facilitating alternative forms of dispute resolution is identified as a strategic objective. Within this framework, sensitizing court users and communities on the ADR option is planned.

5.9. What Role for Bar Associations and Law Societies in Africa?

Bar associations and law societies in Africa have a role to play in developing international arbitration in the continent and strengthening Africa's arbitral infrastructure. They can contribute to the development of arbitration in the region by: fostering awareness of

[276] Finizio and Führich, *supra* note 11 (stating that courts in many countries in East Africa "have reputations for being at best indifferent to, and at worst interfering in, the arbitral process" but also noting that courts in North Africa "generally have positive reputations for supporting arbitration, and for enforcing foreign awards under the terms of the New York Convention.").
[277] Kariuki Muigua, *Building Legal Bridges: Fostering Eastern Africa Integration through Commercial Arbitration*. Paper presented, at the 3rd Annual East Africa International Arbitration Conference 2015 held on 9th and 10th April, 2015 at Hyatt Regency Hotel, Dar Es Salaam-Tanzania.
[278] The East African Court of Justice, EACJ Judges' training on emerging trends in arbitration sets off, 16 April 2015. http://eacj.org/?p=2798
[279] http://comesacourt.org/?page_id=59
[280] http://ohada.org/ersuma.html
[281] Beauchard and Kodo, *supra* note 56, at 19.

arbitration, promoting a network of African arbitrators, offering quality continuing legal education (CLE) training in arbitration and ADR, building bridges between the legal community and the business community in the continent, identifying continental trends, progress and challenges, and working with the government to increase awareness among the judiciary. Perhaps time is ripe for a section on dispute resolution for some of the established bar associations in the continent. There is still an on-going need to stimulate a wider development and use of arbitration and ADR in Africa and the use of arbitral bodies in the continent, as well as use of African arbitrators. Collaboration between the bar associations in Africa and the business community can help. Law firms and bar associations in cooperation with arbitral institutions in the continent can sponsor moot court competitions. On 19 April 2014, CRCICA hosted the Oral Pleadings of The Shalakany Law Office International Commercial Arbitration Moot (SAM). SAM is described as "an annual competition of teams representing law schools throughout Egypt and is intended to stimulate the study of international commercial law and to promote and develop interest and skills in international commercial arbitration."[282]

5.10. Persisting Negative Perceptions of Africa, of Arbitral Institutions in Africa and, Perhaps, of African Arbitrators

African arbitrators and arbitral institutions must contend with negative perceptions about Africa and about arbitration in the continent and must seek to correct such negative perceptions.[283] In a 2009 article, John Brand and Emmylou Wewege of Bowman Gilfillan lamented the largely unfounded negative perception of South Africa as a jurisdiction that is anti-arbitration and unsafe as a seat of arbitration. They noted in particular that "[t]he perception that South Africa is a dangerous place for arbitration to take place is … difficult to confront because it feeds into afro pessimistic sentiments in many quarters."[284] At a recent conference in South Africa, Judge Edward Torgbor, a former judge of the high court of Kenya, now practising as a specialist arbitrator, presented a paper on Opening up International Arbitration in Africa.[285] Specifically Torgbor addressed the problem of prejudice and bias against Africa stemming from the negative image of the continent as hopeless, forever afflicted by ignorance, poverty and want. He rightly noted that the negative branding is so potent that the mere mention of Africa calls up images of subservience, incompetence and failure.[286]

African arbitrators, arbitral institutions in Africa and African government must seek ways to challenge, correct, and change the negative perception about arbitration in the continent. By highlighting activities of the more successful arbitral institutions in Africa, show-casing innovative rules and practices emanating from Africa, developing necessary expertise in the legal profession and judiciary, and contributing to developments in international arbitration through

[282] CRCICA, *supra* note 136, at 16.
[283] Kirtley, *supra* note 13, 145 (noting that it was indisputable that arbitration in sub-Saharan Africa has been historically less important than in other regions of the world." See also Finizio and Führich, *supra* note 11 (observing that "[s]erious issues… remain with arbitration in Africa").
[284] Is it safe to arbitrate in South Africa? Practical Law, 13 November 2009. http://uk.practicallaw.com/7-500-4315?service=arbitration
[285] AFRICAN ARBITRATION CAN BE A SUCCESS, Mail&Guardian, 24 November 2014. http://mg.co.za/article/2014-11-28-00-african-arbitration-can-be-a-success
[286] Id.

publications, Africans could attempt to take on, and hopefully correct, some of the negative perceptions about international arbitration in the continent. A reputable continent-wide arbitration journal is worth considering. There is presently no reputable journal dedicated to high-quality articles on developments in Africa in the field of international arbitration law such as scholarly articles, arbitration statutes and rules, arbitral awards as well as case law issued by State courts from various African jurisdictions.[287]

5.11. The Traditional and 'Not-So-Traditional' Gate-Keepers of the System

The fact that international arbitral appointments is essentially controlled by an elite group is not denied. The question is what can be the address the situation? What is the so-called 'cartel,' 'club,' or 'mafia' doing to address the situation? And, is there a need to look beyond the 'cartel' to other institutions that play a gate-keeping role in the system? Regarding the control of the selection of arbitrators, Rogers notes:

> Arbitrator selection is often in the hands of members of the same "club," who are either operating in the institutions or already appointed as party appointed arbitrators. In either situation, they are likely to favor other "members" of their "club." This effect is compounded by the fact that prior service as an arbitrator is the preeminent qualification for an arbitrator-candidate. As a result, the market for international arbitrators operates as a relatively closed system that is difficult for newcomers to penetrate.[288]

There should be more research into what, if any, the traditional gate-keepers are doing to encourage greater diversity in international arbitration. Are some arbitral institutions doing more to encourage diversity than others? Through creative arrangements with stakeholders in Africa, could the elite law firms and the traditional arbitral institutions create opportunities that would allow Africans gain the training, experience, mentorship, connection, and visibility that one needs to even stand a chance of penetrating the closed market for international arbitrators?

In addition to focusing on the traditional gate-keepers, there is a need to look at the practice of non-traditional gate-keepers of the system such as the international financial institutions (IFIs) and development partners. What role do international financial institutions (IFIs) play in decisions about arbitral appointment in cases involving enterprises and projects that they fund? Through loans and other financial products that they offer, IFIs such as the International Finance Corporation (IFC) exercise a measure of control over multinational corporations and other business that are operating in Africa. Do such control extend to dispute resolution clauses in the contracts these businesses conclude with host countries? Do such control extend to decisions about arbitral appointments if and when disputes arise? Through its Sustainability Framework, the IFC is beginning to promote sound environmental and social practices and encourage transparency and accountability on the part of businesses that they

[287] There is a growing list of international arbitration lawyers with a regional bent. These include: the Asian International Arbitration Journal, BCDR International Arbitration Review (BCDR stands for the Bahrain Chamber for Dispute Resolution, the Indian Journal of Arbitration Law, the International Journal of Arab Arbitration, and the Journal of International Arbitration

[288] Rogers, *supra* note 8, at 967-968.

fund.[289] Other IFIs are moving in a similar direction. Could the IFC and other IFIs exercise a similar leverage when it comes to encouraging diversity in international arbitration?

5.12. Further Research: Empirical Research

This paper fills a gap in understanding about the strengths and weaknesses of the arbitral infrastructure in Africa and the state of development of international arbitration in the region. While the problem of the limited participation of African arbitrators in the international arbitration system is complicated and may be connected, in no small measure, to bias and barriers to entry erected by the system's 'gate keepers,' weak arbitral infrastructure in the continent means that not enough Africans get to a position where they can be considered qualified for international arbitral appointments. Strong arbitral institutions operating within the framework of sound and comprehensive legal education and appropriate legal framework for arbitration provides the platform for an army of home-grown but internationally-competitive arbitrators to emerge from Africa. The paper calls attention to the urgent need for cutting-edge empirical research on the relationship between Africa and international arbitration, the development of international arbitration in Africa, and the participation of Africans in the system of international arbitration. Regarding the problem of lack of diversity in international arbitration and the limited participation of Africans in the system, the paper leaves many questions unanswered – questions that must be asked and would be more fully explored in subsequent articles. For example: Why African governments have historically appointed non-African arbitrators? Does information asymmetry explain African governments' preference for foreign arbitrators? Does this preference for foreign arbitrators suggest a lack of confidence, on the part of African governments, in the training, skill, experience and ability of African arbitrators? Do governments in Africa appreciate the need for increased involvement of African arbitrators in international arbitration? What specific steps are governments in Africa doing to enhance the participation of African arbitrators in international arbitration? How do arbitral institutions in Africa compare to those in Asia and Latin America? Have arbitral institutions in Africa succeeded in bringing back African cases that are going outside the continent? Are they successful in attracting foreign cases? Do existing arbitral centers have the capacity to discharge their responsibility efficiently? Is deeper cooperation between arbitral institutions in Africa and their counterparts overseas possible? Within the context of South-South cooperation, what forms of cooperative arrangements are possible and are emerging? What about law firms and corporate law practice in Africa? How many law firms in Africa have a large and dedicated international arbitration practice? How many of these law firms have their arbitration lawyers based in the key arbitral centers of New York, Washington, DC, London, Paris, Stockholm and Singapore or Egypt? How many have significant on-the-ground arbitration capability in cities where many big businesses are located and where cases are known to arise? Are corporate lawyers and corporate counsels in Africa aware of the existence of the arbitral institutions in Africa? What are their views regarding the arbitration in Africa and the quality of arbitral institutions in the continent? Do they know about African arbitrators? In the contracts that they negotiate, particularly with businesses overseas, do they have the leverage and the inclination to insist on seats of Arbitration in Africa and to appoint African arbitrators? Are corporate counsels in Africa skilled in drafting

[289] International Finance Corporation, IFC Sustainability Framework, http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/sustainability+framework

international arbitration clauses/agreements? Where are the gaps in terms of knowledge and skill? Finally, what about African arbitrators? What has been their experience practicing in a field dominated by arbitrators from Europe and North America? What are they doing to encourage the development of international arbitration in Africa and to mentor up and coming arbitrators in the continent?

6. CONCLUSIONS

International arbitration is a complex and evolving field of law and Africa can contribute to its development just like Americans did and Asian countries are trying to do.[290] The finding in the 2013 International Arbitration Survey, that "businesses continue to show preference for using arbitration over litigation for transnational disputes," is one that countries in Africa cannot easily ignore. African arbitrators are late comers to the system and must contend with the fact that "[t]he forefathers of the modern international arbitrator were a small, intimate group of European "grand notables" or "Grand Old Men""[291] and the international arbitrator of today inevitably retains some, if not most of the characteristics of their forefathers. The good news is that while international arbitration remains "a predominantly European affair," modem pressures is forcing it to diversify.[292] New entrants initially came from the United States. Today, new entrants from Asia are forcing themselves into the system – thanks to the rise in the global economic activities of Asia corporations and other market actors. Africa can participate in the expansion and diversification of the field of international arbitrators but must have "home-grown" and "home-trained" arbitrators to introduce to the system.[293].

This paper argues that absence of Africans in international arbitration cannot be completely divorced from the limited presence of internationally focused arbitral institutions in Africa, the low profile of existing institutions in terms of their activities and caseload, and the failure by governments to invest adequate resources towards creating the legal and institutional infrastructure needed in Africa to settle cross-border disputes through arbitration and other ADR mechanisms. Bias and barriers to entry do not explain why many disputes emanating from Africa are submitted to arbitration in non-African venues and presided by non-African arbitrators. Consequently, addressing the problem of bias in international arbitral appointments and systemic barriers to entry must go hand in hand with effort to build effective arbitral regimes in Africa. Functioning arbitration centers, modern arbitration laws, legal education and law schools that can produce an army of highly intelligent and assertive lawyers who are versed in international arbitration, as well as viable opportunities for lawyers in the region to gain experience in international arbitration are urgently needed in Africa. If indeed reports are right that major corporations "are becoming more sophisticated in procuring international arbitration services," that "[c]oncerns over costs and delays in proceedings persist," and that in-house

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291 Rogers, *supr*a note 16, at 963.

292 Id., at 965.

293 Id., at 955 (observing that participants from United States and some developing countries gained entrance into the field of international arbitrators and introduced "home-grown" arbitrators to the system.).

counsel are increasingly focused on getting value from the arbitration process," then arbitral institutions in Africa and arbitration practitioners in the region must step up their game.[294]

The paper does not discount the need for procedural and structural reform in the international arbitration system. The paper also does not intend to downplay the very important role that the traditional gate-keepers of the system – the so called "cartel," "club" or "mafia" – can play to promote greater diversity in the system. There is clearly a role for the dominant international arbitration institutions, elite law firms, and even international financial institutions in addressing the problem of lack of diversity in international arbitration. Dominant international arbitral institutions can do a better job of managing the arbitral selection process? Greater transparency in international arbitration will also go a long way in enhancing the legitimacy of the system and encouraging more diversity in the system. As they have done in the sustainability arena, the international financial institutions, in their role as lenders to corporate clients, can come up with creative ways to encourage diversity in arbitral appointments in those disputes involving their clients where their money is implicated. In any case the international financial institutions can contribute to the development of international arbitration in Africa by various capacity building initiatives.

The paper does not minimize the deeper and more entrenched problem of unconscious bias in arbitral appointment that is intimately tied to prevailing international arbitration culture. If Joshua Karton is right in his assessment that most international arbitration practitioners "have similar professional and educational backgrounds, including cosmopolitan and multicultural upbringings, graduate degrees from a fairly small number of elite universities, work experience at multinational business law firms, and close ties with practitioner, commercial, and academic communities,"[295] all but a few African lawyers have a chance of being admitted into the "the small, notoriously close-knit international arbitration community.[296] African arbitrators must contend with subjective considerations that come into play in arbitral appointments.[297] As Seppala put it: "if arbitrators are selected with no attention to their particular qualifications, their doctrinal views, their ways of thinking or to their characteristics or personalities, a party can have no way of knowing how they are likely to decide the dispute or to receive the party's evidence or arguments, or to react to the particular lawyers it has chosen to represent."[298] According to Bishop and Reed

"a party will strive to select an arbitrator who has some inclination or predisposition to favour that party's side of the case such as sharing the appointing party's legal or cultural background or by holding doctrinal views that, fortuitously, coincide with a party's case. Provided the arbitrator does not 'allow this shared outlook to override his conscience and professional judgment', this need carry no suggestion of disqualifying partiality."[299]

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[294] PwC and Queen Mary University of London, INTERNATIONAL ARBITRATION SURVEY 2013: CORPORATE CHOICES IN INTERNATIONAL ARBITRATION 1 (2013). http://www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf

[295] Karton, *supra* note 22, at 79.

[296] Id.

[297] Darling, *supra* note 12 (discussing the influence of "further elements, which may be harder to define, but are nonetheless important" in arbitral appointments.).

[298] C Seppala, *Obtaining the right international arbitral tribunal: a practitioner's view*, INTERNATIONAL CONSTRUCTION LAW REVIEW (2008) Vol 25 Part 2 p.198.

[299] D. Bishop and L Reed Practical guidelines for interviewing, selecting and challenging party appointed

Without not minimizing the problem of bias in arbitral appointment or the barriers to entry into the international arbitration system, this paper takes the position that one approach to addressing the limited participation of African arbitrators in international arbitration is by promoting the development of arbitration in Africa. Creating a strong arbitral infrastructure and developing expertise in the legal profession and the judiciary provides the greatest opportunity for Africa to build an army of experienced arbitrators able to survive in the highly competitive market for international arbitrators.[300] Moreover, by highlighting the significant legal and institutional developments in Africa's arbitration framework, the paper also hopes to challenge negative perception overseas about arbitration in Africa and the capability of African arbitrators – negative perceptions that may have negatively affected consideration of African arbitrators for international arbitral appointments. The growing experience of LCIA-MIAC buttresses this point. To date, the center has fully administered one case and merely provided specific services in three cases. In each of the three cases that LCIA-MIAC provided services the parties were international, and each case featured at least one party from an African jurisdiction. In each of the three cases the arbitrators were from a variety of jurisdictions, including African jurisdictions.[301] With respect to the one case that the LCIA-MIAC has fully administered, the arbitrator was a Mauritian national, appointed jointly by the parties.[302] To provide more opportunities for Africans to be involved in international arbitration, LCIA-MIAC is developing its own database of arbitrators, to supplement that maintained by the LCIA, with particular emphasis on African arbitrators.[303]

There are many question still begging for answers. Against the backdrop of the glaring lack of diversity in the pool of investment arbitrators, more work is needed. What factors influence the decision of Sub-Saharan African countries regarding arbitral appointments? What factors influence the decision of African parties regarding seat of arbitration and arbitral appointments in commercial disputes? What can academic institutions and bar associations in Africa do to encourage the development of international arbitration in Africa? What can African governments and arbitral centers learn from governments and arbitral centers in Asia?

Ultimately, the development of international arbitration in Africa and the full participation of African arbitrators in international arbitration may have to wait until African business as well the commercial and financial entities in the continent are able to flex their muscle overseas. The rise of international arbitration in Asia, particularly the rise in the caseload of arbitral institutions in the region, is attributed, in part, to the rise of Asian entities on the global stage.[304] Guy Spooner, a dispute resolution partner at Norton Rose Fulbright in Singapore,

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arbitrators in international commercial arbitration Arbitration International (1998) Vol 14 No. 4 p.395

[300] *see* White&Case, Queen Mary University of London, *2010 International Arbitration Survey: Choices in International Arbitration*, *available at* http://www.whitecase.com/files/upload/fileRepository/2010International_Arbitration_Survey_Choices_in_International_Arbitration.pdf.

[301] Email from Mr. Duncan Bagshaw, Registrar, LCIA-MIAC Arbitration Center, 22 June 2015.

[302] Id.

[303] Id.

[304] Datuk Sundra Rajoo with the Kuala Lumpur Regional Centre for Arbitration attributes the rise of international arbitration in Asia in part to "a rise in cross-border disputes involving multinational companies as well as Asian entities that are beginning to flex their muscles abroad." Rajoo, *supra* note 6.

opines that "the ability of Korean companies to compete on a global scale allows them to wield greater bargaining power in deals."[305]

Annex 1

Choice of Arbitrators in Cases filed with the ICSID in 2014 and involving Countries in Africa

Country	Case	President	Arbitrators
Mauritania	Tamagot Bumi S.A. and Bumi Mauritania S.A. v. Islamic Republic of Mauritania (ICSID Case No. ARB/14/23)[306]	Barton Legum (U.S.): *Appointed by the Secretary-General*	Pierre Mayer (French): *Appointed by the Claimant(s)* Brigitte Stern (French): Appointed by *the Respondent(s)*
Burundi	Tariq Bashir and SA Interpétrol Burundi v. Republic of Burundi (ICSID Case No. ARB/14/31)[307]	Jan Paulson (Swedish, Bahraini, French) - *Appointed by the Parties)*	Hamid Gharavi (Iranian, French) - *Appointed by the Claimant(s)* Anna Joubin-Bret (French) - *Appointed by the Respondent(s)*
Guinea	BSG Resources Limited v. Republic of Guinea (ICSID Case No. ARB/14/22)[308]	Gabrielle Kaufmann-Kohler (Swiss) - *Appointed by Co-Arbitrators*	Albert Jan Van Den Berg (Dutch) - *Appointed by the Claimant(s)* Pierre Mayer (French) - *Appointed by the Respondent(s)*
Senegal	VICAT v. Republic of Senegal (ICSID Case No. ARB/14/19)[309]	Klaus Sachs (German) - *Appointed by the Parties*	Peter Polak (Austrian) - *Appointed by the Claimant(s)* *Peter Legum* (U.S.) - *Appointed by the Respondent(s)*
Mozambique	Oded Besserglik v. Republic of Mozambique (ICSID	Makhdoom Ali KHAN (Pakistani) - *Appointed by the Chairman of the*	L. Yves Fortier (Canadian) - *Appointed by the Claimant(s)*

[305] Guy Spooner, Arbitration on the Rise, Asian Law and Business (July 2014).
[306] Registered on October 20, 2014. Panel constituted on 20 May 2015.
[307] Registered on December 12, 2014. Panel constituted on 1 June 2015. https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB/14/31
[308] Registered on September 8, 2014. Panel constituted on 5 February 2015. https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB/14/22
[309] Registered on August 5, 2014. Panel constituted on February 5, 2015. https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB/14/19

	Case No. ARB(AF)/14/2)[310]	*Administrative Council*	Claus Von Wobeser (Mexican) - *Appointed by the Respondent(s)*
Gambia	African Petroleum Gambia Limited (Block A4) v. Republic of The Gambia (ICSID Case No. ARB/14/7)[311]	Jan Paulsson (Swedish, Bahraini, French) - *Appointed by Co-Arbitrators*	Alexis Mourre (French) - *Appointed by the Claimant(s)* Loretta Malintoppi (Italian) - *Appointed by the Respondent(s)*
Gambia	African Petroleum Gambia Limited (Block A1) v. Republic of The Gambia (ICSID Case No. ARB/14/6)[312]	Jan Paulsson (Swedish, Bahraini, French) - *Appointed by Co-Arbitrators*	Alexis Mourre (French) - *Appointed by the Claimant(s)* Loretta Malintoppi (Italian) - *Appointed by the Respondent(s)*
Egypt	Unión Fenosa Gas, S.A. v. Arab Republic of Egypt (ICSID Case No. ARB/14/4)[313]	V.V. Veeder (British) - *Appointed by the Parties*	J. William Rowley (British, Canadian) - *Appointed by the Claimant(s)* Mark A. Clodfelter (U.S.) - *Appointed by the Respondent(s)*
Sudan	Michael Dagher v. Republic of the Sudan (ICSID Case No. ARB/14/2)[314]	Yas Batifatemi (Iranian, French) - *Appointed by the Parties*	William W. Park (Swiss, U.S.) - *Appointed by the Claimant(s)* Makhdoom Ali Khan (Pakistani) - *Appointed by the Respondent(s)*

Source: The ICSID

[310] Registered on July 3, 2014. Constituted on January 26, 2015.https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB(AF)/14/2
[311] Registered on March 12, 2014. Constituted on August 13, 2014. https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB/14/7
[312] Registered on March 12, 2014. Constituted on August 13, 2014. https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB/14/6
[313] Registered on February 27, 2014. Panel constituted on December 8, 2014. https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB/14/4
[314] Registered on February 21, 2014. Constituted on August 8, 2014. https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB/14/2