Promoting African States as Seats of International Arbitration

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Abstract

As home to many countries that make up the fastest growing economies in the world, Africa remains a central hub for foreign investment. The volume of investments witnessed in Africa, therefore, opens a floodgate of disputes. When these disputes occur, parties often resort to arbitration as their preferred mechanism for resolution because it offers some benefits over litigation, including flexibility, confidentiality, and easier international enforceability of final decisions. While it would ordinarily be expected that parties to such arbitration proceedings will choose African States as their seats of arbitration, foreign countries are, instead, adopted as the preferred choice. This paper seeks to explore the reasons why African States are ignored as seats of arbitration, particularly in relation to Africa-related disputes, and proffers practical solutions on the way forward.

Keywords: Arbitration, African States, Disputes, Seat of Arbitration

I. Introduction

The proliferation of cross-border trade and commerce in Africa, influenced by the expansion and globalization of foreign investment due to the continent's natural resources and infrastructure needs, has resulted in the formation of complex, contractual relationships within the African continent.[1] These relationships come with cultural, economic, political, and legal risks, ultimately leading to disputes. Contracting parties have discretion to choose the mechanism for settling such Africa-related disputes,[2] and one increasingly popular mechanism is arbitration.

Arbitration is a system for the resolution of disputes which is based on the agreement of contracting parties to submit any dispute that arises in their relationship to an arbitral tribunal for resolution. It

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1 Foreign direct investment to African countries hit a record $83 billion in 2021, according to UNCTAD's World Investment Report 2022. UNCTAD, *World Investment Report 2022,* UNCTAD (June 9, 2021), https://unctad.org/webflyer/world-investment-report-2022.

2 For the purpose of this paper, Africa-related disputes mean disputes that involve either an African party, or disputes that arise with respect to a subject matter to be executed in an African state. Thus, Africa-related dispute may be observed in three structures of contractual relationships; (a) a dispute between two African parties, (b) a dispute between a foreign party and an African party, and (c) a dispute between two foreign parties with respect to a subject matter related to African projects, contract, or other investments.

is fast becoming a popular choice because many commercial parties are drawn to the confidentiality that it offers, the ability to enforce the final decision, and flexibility, particularly the opportunity to choose the arbitrator(s), procedural rules, and seat of arbitration. The seat of arbitration is particularly relevant because it has significant implications in the arbitral process. It determines the court that will supervise the arbitration in relation to set aside proceedings or issuance of interim measures, and the law and procedure of the arbitration, which could ultimately become relevant in the enforcement of arbitral awards. It is different from the venue of arbitration which is the physical place where hearings are conducted and could be in a location different from the seat of arbitration or even virtually. Overall, the choice of the seat of arbitration is crucial for commercial parties, specifically those involved in Africa-related disputes.

Despite the increase in the use of arbitration for the settlement of Africa-related disputes, African States do not enjoy a corresponding increase as the preferred seat for such arbitration proceedings. Instead, most commercial parties involved in Africa-related disputes choose a foreign country as their preferred seat of arbitration. Using the ICC International Court of Arbitration as an example, the institution's 2016 Dispute Resolution Statistics, which also sets out the parties' choice of arbitral seats, reported that there was a 50% increase in the number of parties from North and sub-Saharan Africa in the 966 new cases administered by the ICC in 2016. However, only 6 African cities (one arbitration in Morocco, Nigeria, South Africa, Tanzania, Egypt, and two arbitrations in Algeria) were chosen by the parties as the place for arbitration, out of 966 new cases that were seated across 106 cities in 60 countries around the world.[3] In 2020, about 949 new filings were made at the ICC and were seated in 113 different cities in 65 countries across the world. A total of 171 parties came from 35 African countries. However, only 10 arbitrations were seated in Africa: Algeria, Benin, Egypt (two cases), Kenya, Mozambique, Nigeria, South Africa (two cases), and Tanzania.[4]

This paper seeks to investigate the reasons discouraging commercial parties from choosing African States as seats of arbitration *(section II),* before proposing ways for possible improvements *(section III)* and offering concluding thoughts *(section IV).*

II. The prognosis

By way of background, the 2021 Queen Mary University and White & Case international arbitration survey report noted that the five most preferred seats for arbitration are London, Singapore, Hong Kong, Paris and Geneva.[5] In the report, respondents indicated that *"greater support for arbitration by local courts and judiciary", "increased neutrality and impartiality of the local legal system", and "better*

3 Herbert Smith Freehills, *2016 ICC Dispute Resolution Statistics: Record Year for the ICC* (Sept. 15, 2017), https://hsfnotes.com/arbitration/2017/09/15/2016-icc-dispute-resolution-statistics-record-year-for-the-icc/; International Chamber of Commerce, *Full 2016 ICC Dispute Resolution Statistics published in Court Bulletin* (Aug. 31, 2017), https://iccwbo.org/media-wall/news-speeches/full-2016-icc-dispute-resolution-statistics-published-court-bulletin/.

4 ICC, *ICC Announces Record 2020 Caseloads in Arbitration and ADR* (Jan. 12, 2021), https://iccwbo.org/media-wall/news-speeches/icc-announces-record-2020-caseloads-in-arbitration-and-adr/.

5 Abby Cohen Smutny, International Arbitration Survey Report on Adapting Arbitration to a Changing World 2 (White & Case, 2021), https://www.whitecase.com/sites/default/files/2021-06/qmul-international-arbitration-survey-2021-web-single-final-v2.pdf.

track record in enforcing agreements to arbitrate and arbitral awards" are important adaptations that would improve other arbitral seats outside the most preferred seats, including African States.[6] Within the African context specifically, the 2020 Arbitration in Africa survey report, which assesses the top African arbitral centres and seats, found that the top five African countries chosen by respondents as their preferred seat of arbitration are South Africa, Nigeria, Egypt, Rwanda, and Cote d'Ivoire.[7] The report also noted that arbitration friendly laws and jurisdictions, political stability and security, access to effective technology and facilities, and availability of expertise in arbitration, among others, are key considerations.[8] Correspondingly, the challenges faced by the respondents while arbitrating in Africa include unclear text of local arbitration laws, issues with enforcement of the award, too frequent recourse to courts during arbitral proceedings, and the length of proceedings.[9] The foregoing factors provide insight into why African seats are not the popular choice for commercial parties, even in relation to Africa-related disputes, and are discussed in turns below.

1. Hostile attitude from national courts

Some African national courts do not encourage contracting parties that have elected to settle their disputes by arbitration to respect their contractual bargain. They are, instead, quick to assume substantive jurisdiction in relation to those disputes, even though the arbitration agreement is valid and the dispute in question is arbitrable under national law. Even in instances where the parties have commenced the arbitral process, challenges with the national courts continue to affect the progress of such proceedings. For example, there are instances where some judges, with limited subject-matter expertise, take the view that the arbitral process is a threat which seeks to overshadow the judicial functions of the courts. In the South African case of *Telcordia Technologies Inc v. Telkom SA Limited,* for example, the High Court set aside an interim arbitration award, removed the arbitrator, and ordered that the dispute be heard afresh before three South African judges.[10] In the old Nigerian case of *Sonnar (Nig.) Limited & Another v. Partenreedri M.S. Nordwind & Another,* there was a valid arbitration agreement, and the dispute was one of a commercial nature, arbitrable under Nigerian law. Nevertheless, the court challenged the arbitration agreement holding that "[c]*ourts should not be too eager to divest themselves of jurisdiction conferred on them by the Constitution and by other laws. Our Courts should be in charge of their own proceedings. When it is said that parties make their own contracts and that the Courts will only give effect to their intention as expressed in and by the contract that should generally be understood to mean and imply a contract which does not rob the Court of its*

6 *Id.*

7 Emilia Onyema, 2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats 19–21 (SOAS University of London, 2020), https://eprints.soas.ac.uk/33162/1/2020%20Arbitration%20in%20Africa%20Survey%20Report%2030.06.2020.pdf.

8 *Id.*

9 *Id.*

10 Telecordia Tech. Inc. v. Telkom SA Ltd., 458 F.4d 172 (2006). It was on further appeal that the appellate court held as follows: "[t]*he High Court in setting aside the award disregarded the principle of party autonomy in arbitration proceedings and failed to give due deference to an arbitral award, something our courts have consistently done since the early part of the 19th century . . . ." See also* W.G. Schulze, *Of Arbitration, Politics and the Price of Neglect – South African International Arbitration Legislation Continues to Lag Behind: Bidoli v Bidoli,* 23 SA Merc. L. J. 291, 294–97 (2011); R. Baboolal-Frank, *Judicial Hostility towards International Arbitration Disputes in South Africa: Case Reflections,* 2019 SA Merc. L. J. 365 (2019).

jurisdiction."[11] *In another South African case of Bidoli v. Bidoli & Another,* a consent award was published by an arbitral tribunal following a settlement agreement concluded between parties. The award was, however, declared void by the High Court based on unsatisfactory grounds, a decision that was later overturned by the appellate court.[12]

In other cases, the nebulous ground of public policy is relied on as the basis for refusing enforcement of arbitral awards.[13] In the Egyptian case of *Court of Cassation, Challenge No. 282 of 89 JY,* for instance, the Egyptian Court of Cassation rejected, in part, the enforcement of an award of the London Court of International Arbitration (LCIA) which ordered the appellant to pay compensation with an interest rate of 8% and a compounded post-award interest rate of 4%. The Court instead ordered that the interest rate should be reduced to 5% per annum on the basis that the percentage is considered a rule of public policy that cannot be contravened.[14]

The foregoing approaches toward the enforcement of arbitration agreements and awards could, ultimately, lead to reluctance in the promotion of arbitration by such courts and, in turn, stifle the growth of arbitration, particularly in instances where the arbitral process requires the support of the courts such as the issuance of provisional reliefs and enforcement of arbitral awards.

2. Corruption

Corruption, due to weak institutions, remains prevalent in some African States. The latest Corruption Perception Index published by Transparency International, which ranks countries ranging from 0 (highly corrupt) to 100 (not corrupt) and where some African States are negatively ranked, corroborates this fact.[15] In Ghana, for instance, it has been reported that corruption is a

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11 Sonnar Nig. Ltd. & Anor. v. Partenreedri M.S. Nordwind & Anor. (1987) LPELR-3494(SC). Notwithstanding the foregoing, Nigerian Courts are now much more receptive towards respecting arbitration agreements. See The Vessel MT. Sea Tiger v. A.S.M. (HK) Ltd (2020) 14 NWLR (Pt. 1745) 418, for example, where the Nigerian Court of Appeal held that *"where a party to an arbitration agreement opts for and insists on the right to arbitration before a trial court, the court will hold the parties to the agreement to their intention expressed clearly in the arbitration clause(s) which bind(s) them." See also Onward Enterprises Ltd. v. MV "Matrix" & Ors (2008) LPELR-4789(CA) where the Nigerian Court of Appeal held that "It is a basic principle of law that where parties have agreed to submit all their disputes under a valid contract to the exclusive jurisdiction of foreign Arbitration panel, the regular Courts ought to give due regard to the voluntary contract of the parties by enforcing the arbitration clause as agreed by them."*

12 *Bidoli v. Bidoli (2982 of 2008)* [2010] ZAWCHC 39; R. Baboolal-Frank, *Judicial Hostility towards International Arbitration Disputes in South Africa: Case Reflections,* 2019 SA Merc. L. J. 365 (2019).

13 Article V(2)(b), New York Convention. In the Mauritian case of *State Trading Corporation v. Betamax Limited,* for instance, the Mauritian Supreme Court considered a contract of affreightment to have been illegally awarded due to the failure to obtain the approval of the Central Procurement Board as provided in the procurement rules of the Mauritian Public Procurement Act 2006. Consequently, the Court, in adopting a broad interpretation of public policy, held that the failure to obtain approval was illegal and conflicts with the public policy of Mauritius and, therefore, set aside the final award. See State Trading Corp. v. Betamax Ltd., 2019 SCJ 154; A. Abdallah & A. Esmail, *Challenges with Recognition and Enforcement of Arbitral Awards in Africa,* IBA Arbitration News (Nov. 24, 2021), https://www.ibanet.org/challenges-with-recognition-enforcement-arbitral-awards-Africa#_ednref7.

14 Court of Cassation, Challenge No. 282 JY 89 (Oct. 9, 2020); *see also* A. Abdallah & A. Esmail, *supra* note 13.

15 Trading Economics, *Africa's Corruption Index,* Transparency International (last visited Aug. 15, 2022), https://tradingeconomics.com/country-list/corruption-index?continent=africa ("The Corruption Perceptions Index (CPI) is published annually by the Transparency International, a non-governmental organization.").

problem in the country's judiciary.[16] An example that took the world by storm was the Ghanaian judicial scandal when a documentary implicated 180 judicial officials, 34 judges, as well as several prosecutors and state counsel who were accused of soliciting and accepting bribes in exchange for favourable judgments between 2013 and 2014.[17] In Nigeria, a recent report entitled *'Nigeria Corruption Index: Report of a Pilot Survey'* given by the Independent Corrupt Practices and Other Related Offences Commission, indicated that there was clear evidence to suggest that an estimated NGN 9.4 billion was exchanged in a bribe-for-judgment scheme in Nigeria's judiciary between 2018 and 2020.[18]

In Kenya, similar corruption reports and scandals have arisen, and the judiciary is said to be one of the most corrupt institutions in the country. Transparency International has also rated the country's courts as Kenya's *"most bribery-prone institution".*[19] Similarly, it has been reported that the Tanzanian judicial system is subject to executive influence and corruption, particularly the lower courts where judicial officials are known to accept bribes.[20] For instance, the Prevention and Combating of Corruption Bureau arrested a magistrate in 2013 for soliciting and receiving bribes from a relative of an accused person in order to influence the court's decision on the case.[21] Without a doubt, this corruption perception could discourage parties from choosing some African jurisdictions as their preferred choice of seat due to the fear of ill-motivated decisions in arbitration-related proceedings.

3. Incessant delays

Incessant delays in the disposition of cases in African courts is another factor that discourages reliance on African States as seats of arbitration. In some African countries, cases are known to linger on for many years. Dilapidated infrastructure, lack of adequately trained judicial employees, resource constraints, and general poor maintenance and administration of cases contribute to consequent backlogs and congestion in some African courts. Judges are, for instance, assigned huge numbers of cases even though most of them rely on the manual system of working, such as recording the details of proceedings in long hand and adopting archaic methods of filing court processes, due to the absence of modern technological resources such as stenographers and e-filing machines.

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16 K. Rahman, *Overview of Corruption and Anti-corruption in Ghana,* Anti-Corruption Resource Centre and Transparency International (Sept. 11, 2018), https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-in-ghana-2018-update.pdf; Ruth Green, *Ghana Gets Tough on Judicial Corruption,* IBA Arbitration News (Jan. 12, 2016) https://www.ibanet.org/article/2c8eb0c5-3ba2-4619-a7ac-b5c2d117633d.

17 BBC News, *Accused Ghana Judges Shown Bribe Videos,* BBC (Sept. 10, 2015), https://www.bbc.com/news/world-africa-34210925; *see also* Rahman, *supra* note 16.

18 Kunle Sanni, *At least N9.4bn paid as bribe for justice in Nigeria in two years — ICPC Report,* Premium Times (Dec. 26, 2020), https://www.premiumtimesng.com/news/headlines/433257-at-least-n9-4bn-paid-as-bribe-for-justice-in-nigeria-in-two-years-icpc-report.html.

19 The Economist, *How Kenyan Courts Benefit the Mighty and Punish the Needy,* The Economist (June 2, 2022), https://www.economist.com/middle-east-and-africa/2022/06/02/how-kenyan-courts-benefit-the-mighty-and-punish-the-needy.

20 Gan Integrity, *Tanzania Risk Report* (last updated Nov. 4, 2020), https://www.ganintegrity.com/country-profiles/tanzania/.

21 Kizito Makoye, *How Bribery Cripples Justice in Tanzania Courts,* Thomson Reuters Foundation (Nov. 27, 2012), https://news.trust.org/item/20121127153900-uc80o/.

Unnecessary and incessant adjournments also play a huge role in such delays. Two recent survey reports on arbitration-related cases in Nigeria, for instance, noted that most arbitration cases in Nigeria's appellate courts take above 5 to be finally settled on the average.[22]

Sadly, these factors cumulate in cases on the enforcement of arbitral awards or provisional measures taking months or years to be finally determined, given that unsuccessful parties are keen to appeal the decision of lower courts all the way to the final appellate court, sometimes just to frustrate the successful party.[23] The facts above could, indeed, pose as deterrence in choosing such African States as seats of arbitration.

4. Inadequate legal framework

The legal framework for arbitration in Africa is a mix of ancient and modern laws. Although there are some new or prospective arbitration laws,[24] a few others are outdated and are hardly amended to reflect recent global trends that aid the effective conduct of arbitral proceedings, including third-party funding, emergency arbitration, and virtual hearings. The Botswana Arbitration Act 1959 has, for instance, been described in the following words: "[i]*t is not suited for domestic, let alone international arbitration. The courts' powers of assistance and supervision are overwhelmingly excessive, and the arbitrators have too many powers to the detriment of the parties. It restricts itself to the enforcement of awards and makes no provision for recognition, a prerequisite for the enforcement of foreign awards."*[25] Another case in point is Section 48 (e) of the Sudanese Arbitration Act 2016 which provides, among other conditions, that *"no execution of the award of a foreign arbitration tribunal shall be made before the Sudanese courts, save after verifying the satisfaction that the award does not include what is inconsistent with public order, or morals in Sudan."*[26] In summary, a court may refuse an award if it is inconsistent with morals in Sudan. However, the Act does not explicitly define what 'moral' entails, thus, casting uncertainty as to when courts may deny or set aside an award.[27]

Also, the Egyptian Ministry of Justice, through the controversial Minister of Justice Decree No. 8310/2008 as amended by Decree No. 6570/2009, made some provisions regarding the deposit of

22 Victor Igwe et al., Templars Arbitration Report on Nigeria (TARN) 2021 5 (Templars, 2021), https://www.templars-law.com/knowledge-centre/templars-arbitration-report-on-nigeria-2021/#:~:text=TARN%20is%20a%20review%20of,interest%20on%20arbitration%20in%20Nigeria; *see also* Broderick Bozimo & Company, Analysis of Arbitration Related Decisions in Nigeria 2021 4–5 (Broderick Bozimo & Company, 2021), https://broderickbozimo.com/wp-content/uploads/2021/10/BBaC-Analysis-of-Arbitration-Related-Decisions-in-Nigeria.pdf.

23 For example, it has been observed that the decision of the Kenyan Court of Appeal in *Kenfit Ltd. v. Consolata Fathers* (2015) eKLR where it was held that, *"partial awards are not recognisable and enforceable if the arbitrator has reserved the issue of costs for later determination. This tends to cause delays in the recognition of awards, therefore prolonging the realisation and implementation of the award." See* A. Abdallah & A. Esmail, *supra* note 13.

24 *See, e.g.,* the Nigerian Arbitration and Mediation Act 2023 (AMA), the Tanzania Arbitration Act 2020, and the South African International Arbitration Act of 2017.

25 R.J.V. Cole, *Botswana's Arbitration Legislation: The Path for Future Reform,* 5(6) Bots. L. J. 87 (2007) https://journals.co.za/doi/pdf/10.10520/AJA18172733_210; Botswana Arbitration Act of 1959 (Chapter 06:01, 1959).

26 Salah A. Jebarah, *An Overview of the Attitude of Sudanese Public Policy towards International Commercial Arbitration*, Africa Arbitration Blog (Mar. 8, 2022), https://africaarbitration.org/2022/03/18/an-overview-of-the-attitude-of-sudanese-public-policy-towards-international-commercial-arbitration-by-dr-salah-abdelkadir-jebarah-wolverhampton-university/.

27 *Id.*

awards for enforcement in Egypt.[28] These regulations provide that the initial deposit of an award for enforcement is subject to approval by the Technical Office for Arbitration at the Ministry of Justice. Aside from the need to obtain this approval, the same may be withheld if the Office takes the view that the award contradicts Egyptian public policy, or concerns title to real property, and family/personal status, among others.[29]

In addition, contemporary jurisprudence on arbitration is missing in a few African countries, and some other countries are not parties to internationally recognized conventions, including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)—which ensures the enforcement of arbitral awards worldwide,[30] the UNCITRAL Model Law 1985, as amended in 2006—which seeks to assist countries in modernizing their laws on arbitration,[31] and the Convention on the Settlement of Investment Disputes between States and Nationals of other States 1965 (ICSID Convention)—which provides a framework for the settlement of investor-State disputes.[32]

Overall, there is no doubt that in considering a proposed seat of arbitration, parties will consider the legal framework for arbitration in the relevant jurisdictions, including how such framework supports the recognition and enforcement of arbitral awards. Uncertainty in the legal framework for arbitration—particularly where local arbitration laws are out of touch with present day reality—could, therefore, make their jurisdictions less attractive for contractual parties, especially when compared with their foreign counterparts.

5. Political instability

Political upheavals and security challenges—due to terrorism, religious extremism, and election-related violence arising from bad leadership, poor standard of living, and economic instability—which are prevalent in a few African States,[33] discourage commercial parties from choosing such jurisdictions as seats of arbitration. For instance, the 2018 Political Risk Map was published by a consultancy firm, Marsh, following research on global political environments. This research revealed that Africa has the most unstable political environment in the world. On a scale of 1 to 100,

28 Khaled El Shalakany, *Arbitration Procedures and Practice in Egypt: Overview,* Practical Law (July 1, 2015).

29 *Id.*

30 Namibia, The Gambia, Chad, Somalia, and South Sudan are examples of African countries that are not signatories to the New York Convention. See New York Convention, *Contracting States* (last visited Aug. 15, 2022) https://www.newyorkconvention.org/contracting-states.

31 Malawi, South Africa, Botswana, Libya, Sudan, and Namibia are examples of countries in Africa that have not adopted the UNCITRAL Model Law. *See* UNCITRAL Model Law on International Commercial Trade Law, https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status (last visited Aug. 15, 2022).

32 Countries such as Eritrea, Equatorial Guinea, Libya, and South Africa have not signed or ratified the ICSID Convention to date, while Ethiopia, Guinea-Bissau, and Namibia are examples of countries that have signed the ICSID Convention but have not ratified it. See ICSID, *Database of ICSID Member States* (last visited Aug. 15, 2022), https://icsid.worldbank.org/about/member-states/database-of-member-states.

33 The Global Economy, *Political Stability – Country Rankings* (last visited Aug. 15, 2022), https://www.theglobaleconomy.com/rankings/wb_political_stability/ (site data obtained from The World Bank), with countries like Somalia, Central African Republic, Mali, Libya, and Nigeria all making the list of top ten most politically unstable country in the world.

wherein any score less than 49 is considered unstable, only 6 countries in Africa registered a short-term political risk index of more than 50, classifying the rest of the continent as highly politically unstable.[34]

Although the seat of arbitration differs from the venue of arbitration, political instability, economic meltdown, and security challenges could ultimately disrupt the ability of national courts, which play a supervisory role in the arbitral proceedings, to act in a satisfactory manner. Overall, these factors deplete the interest of commercial parties in selecting African States as seat of arbitration. The next section considers some practical ways to tackle the foregoing challenges.

III. The way forward

Given that party autonomy allows contracting parties to select their preferred choice of seat, targeted and positive actions are required to sway such parties towards selecting African States as the preferred seats of arbitration, especially in relation to Africa-related disputes. For instance, there is an urgent need for countries that have not adopted the UNCITRAL Model Law, New York Convention, and ICSID Convention to do so to signal that they are arbitration-friendly jurisdictions. It is also necessary to reform all outdated African laws on arbitration by either modifying or entirely replacing them in order to account for principles that are generally accepted to be vital in the arbitral process, including provisions to promote third-party funding, expand the scope of arbitrable disputes, limit unnecessary interference of national courts by restricting or clearly defining the scope of grounds for non-enforceability of arbitral awards, particularly with respect to public policy, provide a fast-track procedure for disposing of arbitration disputes referred to court, and stipulate a specified time for appeal. It is encouraging that there is arbitration reform going on in the continent. Indeed, a few African countries are already taking steps towards reforming the applicable legal framework for arbitration. For instance, the Sierra Leone's parliament recently passed the Arbitration Bill 2022 into law and the Nigerian Arbitration and Mediation Act has come into force. Also, Angola recently became the 165th Signatory to the ICSID Convention earlier this year and Malawi ratified the New York Convention in March 2021 which came into force on 2 June 2021. These efforts must be encouraged and there is a need for other African countries with unsatisfactory arbitration laws to follow these positive examples to promote their countries as a hub for arbitration.

Since the judiciary and lawyers have a huge role to play in encouraging arbitration in the continent, African judges and lawyers, as well as staff of African arbitral institutions, need to be thoroughly trained in the practice and procedure of arbitration. This step could help the actors in the arbitral process, particularly judges and lawyers, to show better support to the arbitration process by enforcing arbitration agreements when they are valid, putting aside all forms of delay and guerrilla tactics in the conduct of arbitral proceedings, and shunning all forms of corrupt practices. Specialized arbitration courts, characterized by judicial officials who are trained in arbitration proceedings, could also mitigate the issue of delays due to a backlog of cases and encourage timely and competent

34 Consultancy.africa, *Botswana, Morocco and Ghana are the Most Politically Stable Countries in* Africa, Consultancy Africa (Apr. 9, 2018), https://www.consultancy.africa/news/513/botswana-morocco-and-ghana-are-the-most-politically-stable-countries-in-africa.

rules on arbitration-related issues. Indeed, these steps will eradicate any perceived hostility that national courts have towards arbitration, mitigate against any inherent fear that local courts in Africa will interfere with arbitration proceedings or prevent the enforcement of arbitration awards, and ultimately coat contracting parties with confidence to choose African States as seats of arbitration.

In addition, awareness should be created to promote African arbitration centres, including the Cairo Regional Centre for International Commercial Arbitration, the Lagos Chamber of Commerce International Arbitration Centre, the Regional Centre for International Commercial Arbitration, the Centre for Conciliation & Arbitration of Tunis, Lagos Court of Arbitration, Mauritius Chamber of Commerce and Industry Arbitration and Mediation Centre, Nairobi Centre for International Arbitration, Kigali International Arbitration Centre, and Arbitration Centre of Guinée. Publicity around the competence and availability of these centres can enjoin parties to choose African States as the seats of arbitration. These institutions should also be encouraged to join arbitration-related litigation as amicus in order to provide input to the judges on technical arbitration issues, thus building capacity within the judicial framework. Overall, such promotions can be achieved by African law firms and arbitral institutions seeking collaborations with their international counterparts in different activities such as hosting joint annual conferences and jointly sponsoring trainings on arbitration. These would, indeed, serve as a good marketing tool for African States to achieve market presence and gain international recognition and acceptability as seats of arbitration.

Furthermore, African governments need to ensure that the African arbitration centres possess and continue to possess the relevant infrastructure that is required for the conduct of arbitration proceedings as well as competent and dedicated professionals to administer commercial disputes. This would, in turn, crystallize direct actions to improve the awareness of the suitability of African States as seats of arbitration. It is also important to educate African government representatives and commercial entities that arbitration is not just a dispute resolution mechanism but also a source of business with potential for inflows into the economy, with African arbitrators, arbitral institutions, local lawyers, as well as conference centres and hotels set to benefit. Therefore, African States should be chosen, as much as practicable, as the seat, or at the very least, venue of arbitration proceedings in relation to Africa-related disputes. It is also important to appoint African nationals as arbitration counsel and arbitrators as a way of promoting Africa's expertise in international arbitration. Such insistence will draw foreign investors to the continent and may, over time, build confidence in and encourage the acceptance of African States as seats of arbitration.

Lastly, economic, social, and political challenges must be addressed by governments to shun the negative perception that arbitration proceedings in Africa will be affected by such instabilities. Again, government support is required in appointing suitably qualified judges and providing high quality infrastructure that will ensure that the arbitral process is run efficiently and the battle against procedural delay is won once and for all. Further, adopting a clear federal policy that favours arbitration and independent courts will go a long way in fuelling the popularity of African States as competent seats for arbitration. These will, without a doubt, signal to commercial parties, including foreign investors, that African States have stable legal and political frameworks for the administration of arbitration proceedings.

IV. Conclusion

As arbitration continues to grow in popularity and maintain its position as the preferred dispute resolution mechanism for Africa-related disputes, it is important to get rid of all obstacles that could jeopardize the conduct of arbitration proceedings in the continent. That is the best way to reassure commercial parties that African States can be trusted as seats of arbitration. Every participant in the arbitral process—African arbitral centres, national courts, judges, and local practitioners—as well as governments, have a role to play in improving African States as seats of arbitration, particularly in relation to Africa-related cases. Indeed, there are numerous reasons why African States would be the natural option for the settlement of Africa-related disputes. For example, choosing an African State as the seat of arbitration can make the enforcement of any final award easier where the relevant assets are in the same African State. It could also promote the advancement of African practitioners, arbitrators and institutions who would, in return, offer cultural perspectives in understanding the crux of the dispute. Therefore, if the steps discussed in section III above are adopted, they will enhance the perception of African States as arbitration-friendly jurisdictions and, in turn, provide significant opportunities for arbitration practitioners in Africa and increase the inflow of trade and investment.