

# African Dynamism: Morocco as a Potential Hub for International Arbitration

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In light of several recent developments in Morocco, its status as an international arbitration hub in Africa is worth a focus. This blog post will specifically consider the rise and recognition of economic opportunities in Africa, Morocco's lead as a diplomatic power in Africa, the country's experience with investment and commercial arbitration, and the emergence of the Casablanca International Mediation and Arbitration Center (CIMAC) in order to conclude that Morocco is a dynamic and key player in international arbitration that should be monitored.

### **1. Background: Foreign Direct Investment (FDI) in the African Region**

The recrudescence in FDI flows in Africa positions the continent well to become a key player in the current international arbitration scene. Indeed, International Court of Justice President, Judge Yusuf urged in his 2016 ICCA keynote speech address:

with the growing importance of African States and private corporations in international economic transactions and the unparalleled economic growth in the continent in the last decade, it is high time that this should be matched by a better recognition of African institutions' ability to serve as a venue for arbitration in the continent.

Several arbitral institutions have been operating in Africa, such as the Cairo Regional Center for International Commercial Arbitration (CRCICA) and the construction-specialized National Construction Council (NCC) of Tanzania. Further, and notably, in July 2018, the ICC Court announced its initiative to create an Africa Commission to "coordinate ICC's expanding range of activities and growth in the continent".

Although Egypt remains the main recipient for investments in Africa, the World Investment Report accounts FDI into Morocco was up 23% to USD 2.7 billion in 2018, while Morocco's investments into Sub-Saharan African countries are leading with approximately USD 5 billion, according to UNCTAD.

Moreover, Casablanca, Morocco's economic capital, is considered the first financial hub in Africa since the institution of the Casablanca Finance City (2004), ranked 22 out of 121 cities by the 2019 Global Financial Centers Index, above cities such as Paris or Geneva. An instrumental feature of the Casablanca Finance City is undeniably its international dispute resolution center, the Casablanca International Mediation and Arbitration Center (CIMAC). Despite a rise in BIT terminations within the

EU, the conclusion of megaregional agreements (e.g. CETA, USMCA, CPTPP) maintained impetus, especially in Africa, pending the promising operationalization of the African Union's first CFTA.

## **2. Morocco's Diplomatic Network Consolidated in the African Continent**

Morocco has been consolidating its plurilateral diplomatic network with Africa over the years. The country has been an Observer to the Economic Community of West African States (ECOWAS) since 2005, and recently filed an application to join the organization as a Member. Amidst some pushback from some African Member States, the ECOWAS Authority of Heads of State expressed its support to Morocco's membership in view of the "strong and multidimensional ties it has with Member States". Similarly, Morocco is in the phase of joining the Organization for the Harmonization of Business Law in Africa (OHADA), which notably adopted a revised version of its arbitration rules in November 2017.

The Moroccan comeback to the African Union in 2017, after 33 years of absence, also allowed the Kingdom to strengthen its plurilateral relations with African states based on already existing bilateral ties. Additionally, Morocco is a member of the OIC and Arab League Investment Agreements, treaties of the MENA region which have been revived by some recent cases. Morocco, as a cardinal point between the Middle East and North Africa, could serve as a hub between the regions. These diplomatic alliances are complemented by an overall political stability and geographic proximity to the European Union, with Morocco being one of the two strategic partners of the EU in the EUROMED Partnership.

## **3. The Current Status of International Arbitration in Morocco**

In view of the Kingdom's trade and investment protagonism in Africa and Morocco's experience in international arbitration since the 1960s, this constitutes a *know-how* that could serve as a basis to credibly set-up a regional institution, the CIMAC.

### **a. The Moroccan Experience of International Investment and Commercial Arbitration**

Morocco was notoriously the very first state to be part of an ICSID arbitration under the Washington Convention of 1965 through Holiday Inns v. Morocco (the case was settled by both parties in 1978), as well as one of the early signatories of the ICSID Convention. One of the most emblematic cases in investment arbitration, concerning the definition of an investment under the ICSID Convention (known as the "Salini test") stemmed from the Salini v. Morocco case. Recently, Morocco has also been faced with four ICSID cases brought in 2018 and May 2019, based on the US-Morocco FTA and the Bilateral Investment Treaties (BITs) of Germany-Morocco and Sweden-Morocco. It is worth noting that Morocco ranks second (after Egypt) in Africa with regards to the number of BITs in force, as it has 50 BITs.

Concerning commercial arbitrations, Morocco is a contracting state to the New York Convention since 1959. Moroccan courts could be deemed arbitration friendly because their approach to enforcement of foreign arbitral awards [fn]Provided in Decree No. 1-59-266 of 19 Feb. 1960 relating to the ratification of the New York Convention and Articles. 306-327 of the Civil Code of 1974, modified by Law No. 08-05 of 2007[/fn]. An order that decides to recognize or enforce a foreign award may be appealed only on very restricted grounds. Further, under the Moroccan Code of Civil Procedure (Art. 327.32), an order that refuses to grant enforcement or recognition of a foreign award is subject to appeal. In addition, Law No. 08-05 of 2007 establishes a dual system, distinguishing international arbitration from domestic arbitration.

As for ICC arbitration proceedings, the ICC has established a branch in Morocco, in the city of Casablanca. The ICC statistics of 2018 reveal 10 cases involving Moroccan parties (7 claimants and 3 respondents).

Concerning Morocco's liberal take on arbitration, it has been noted that third party funding in commercial arbitration in Morocco has potential, as currently there is no legislation forbidding the funding of costs of a commercial arbitration by a third party to the dispute.

## **b. The Casablanca International Mediation and Arbitration Center (CIMAC)**

The CIMAC was instituted in late 2014. It is a fairly new institution compared to the CRCICA or the Dubai International Arbitration Center (DIAC), which focuses on disputes arising in the Middle East. The international composition of the panel of arbitrators of CIMAC (as discussed further below), combined with the strengths of Casablanca Finance City, give the center an undeniable potential not just in Morocco but throughout the African continent.

The Casablanca Arbitration Days (the fifth edition of which took place in 2018), which replicated the Paris Arbitration Week concept, shone a spotlight on the institution. It is worth mentioning that during Paris Arbitration Week (which took place from 1 to 5 April 2019), there were four high level events on international arbitration in Africa, two of which were themed on CIMAC. The first event titled "Regionalization of Arbitration in Africa: Perspective of Three Arbitration Centers (CAG, CIMAC, MARC)" covered the promotion of African diversity and local talent, the advantages of using African arbitration institutions and solutions implemented regionally. The second event featured "CIMAC's bilingual debate between Professors Maxi Scherer and Thomas Clay", two prominent CIMAC members.

The CIMAC provides the efficiency and quality features expected from an arbitral institution, such as a diverse arbitrator list, expertise, a facility with proximity to major economic hubs, and clear flexible rules. *In concreto*, the Court is composed of renowned international experts in the field of arbitration: President Laurent Levy, Vice Presidents Jacob Grierson (Partner at Mc Dermott Will and Emery, Paris) and Jalal El Ahdab (Bird & Bird, Paris, and also the current UNCITRAL Delegate for Lebanon). The CIMAC rules of arbitration embody the clarity and flexibility criterion mentioned above:

- The international composition of the panel at Article 2 (RI.2.1) provides that "the Court will ensure the international character of its composition through a balance between the number of Moroccan and foreign members".
- Arbitration can be conducted in four languages upon agreement of the parties: French, English, Arabic or Spanish (Article 17.4).
- The seat of arbitration is decided by the parties, but if the parties do not agree, by default the seat will be Casablanca (Article 17.1).
- Regardless of the seat, hearings can take place in any venue worldwide (Article 17.3).

Furthermore, CIMAC signed a cooperation Agreement with the Vienna International Arbitration Center (VIAC) in October 2018, providing for the possibility of cases to be managed by either center.

## **Concluding Remarks**

In conclusion, in view of Africa's dynamism in arbitration – *inter alia*, the ICC African Commission, the first African CFTA, and OHADA's new arbitration provisions – Morocco's positioning as a stable FDI portal in Africa, combined with CIMAC's unique assets, potentiate Morocco as a hub for international arbitration. Whilst a new Pan-African Investment Arbitration Court might not see the light yet, building on already existing arbitration institutions such as CIMAC, makes the case for a repatriation of international arbitration to the African continent, upholding Judge Yusuf's vision.