

Arbitration Centres in Africa: Too Many Cooks?

Kluwer Arbitration Blog

October 1, 2019

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Please refer to this post as: Gregory Travaini, 'Arbitration Centres in Africa: Too Many Cooks?', Kluwer Arbitration Blog, October 1 2019, <http://arbitrationblog.kluwerarbitration.com/2019/10/01/arbitration-centres-in-africa-too-many-cooks/>

"Too many cooks spoil the broth" – this expression works in both personal and professional situations. Everyone can relate to this universal concept that where each of many people involved in a common project adds his or her own idea, it actually makes it very hard, if not impossible, to work efficiently and can even end up ruining the project. With this in mind, the present article reflects on whether the fast-growing development of arbitral institutions on the African continent benefits the development of arbitration as a credible dispute resolution mechanism locally.

A new comer...

On 5 April 2019, 6 years after a meeting in Strasbourg (France), a constitutive congress set up the *Cour Africaine de Mediation et d'Arbitrage* (CAMAR) – the African Court of Mediation and Arbitration – during a conference held in Marrakech on mediation and arbitration. The conference was organized by the founding committee of the CAMAR, with the support of the *Fondation Trophée de l'Africanité* – the Africanity Trophy Foundation, an organization that promotes interreligious dialogue, economic independence, cultural diplomacy, innovation, good governance, sustainable development, pan-African patriotism and solidarity among the peoples of the African world. According to its Vice President, Abdelkrim Benkhalfallah, CAMAR is *"an independent organization which is adapted to the*

socio-economic environment of the African continent“.

The Court is the first of its kind on the African continent. It currently has 11 chambers covering a number of industries, including commercial contracts, banking and finance, tourism, real estate, sports, engineering, intellectual property, environment and oil and gas. CAMAR has ambitions to open representative offices in every African capital and branches in Europe and the United States of America.

Ali Ouhmid, President of CAMAR's Founding Committee and member of the *Cour Internationale de Médiation et d'Arbitrage* (CIMEDA) – International Court of Mediation and Arbitration – explains that *“there are several arbitral courts before which all disputes affecting Africa are dealt with (...). Our goal is to unite all African countries around the creation of CAMAR. It reminds us that skills that exist in Africa can be valued to help resolve disputes“.* Abdelkrim Benkhalfallah adds that *“setting up CAMAR aims first and foremost at having the maximum number of African arbitration cases handled on African soil by internationally recognized African arbitrators, who are competent and who put their expertise to work elsewhere“.*

The above clearly confirms the current trend to open up new perspectives in relation to the resolution of international disputes involving an African element. CAMAR could well be a contributing step towards the “Africanization” of arbitration. But, will it make a difference?

... Amongst Many

Globally, arbitration has become a (if not ‘the’) preferred means of dispute resolution. As international investment and trade on the African continent is surging, the number and frequency of commercial and investment disputes in Africa have inevitably increased. Yet international arbitration, even with an African element, has traditionally been administered under the aegis of western institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and International Centre for Settlement of Investment Disputes (ICSID). In 2017, the ICC itself had 87 new cases involving Sub-Saharan African. As a result, recently and more intensively in this past decade, many African arbitral institutions have flourished across the African continent.

Today, nearly **80** arbitral institutions exist (and counting). An impressive number considering that the continent comprises 54 countries in total. In a recent AfricArb[fn]AfricArb is a non-profit organization founded by international practitioners with a shared interest in Arbitration and Africa. The organization aims to promote arbitration further through the involvement of actors both inside and outside the African continent. It provides free training and other events to encourage the sharing of ideas, knowledge and experience.[/fn] event held at the Hong Kong International Arbitration Centre on *Africa: El Dorado or Mirage?*, it was said that the number of arbitration centres on the African continent seem disproportionate.

Some countries host multiple arbitration centres. For instance, Nigeria has at least six: the Regional Centre for ICA Lagos, the Maritime Arbitrators Association of Nigeria, the Lagos Court of Arbitration Centre, the International Centre for Arbitration & Mediation, Lagos Chamber of Commerce International Arbitration Centre and the Janada International Centre for Arbitration & Mediation. South Africa also has six: the Arbitration Foundation of Southern Africa (AFSA), the Equillore Group, the Africa Alternative Dispute Resolution, the Association of Arbitrators, the Commission for Conciliation, Mediation & Arbitration and the Tokiso Dispute Settlement. Egypt has three: Cairo Regional Centre for ICA (CRCICA), the Sharm El Sheikh International Arbitration Centre and the Dr A Kheir Law & Arbitration Center.

Even smaller countries follow the same trend. Sudan hosts three arbitral institutions: the Arab Centre for Arbitration, the International Chamber of Arbitration and the Sudanese Centre for Conciliation & Arbitration. Ghana also hosts three: the Ghana Arbitration Centre, the Ghana Association of Certified Mediators & Arbitrators and the Copyright Office Ghana Arbitration Centre. Mauritius, one of the smallest countries in Africa, has two: the MCCI Arbitration and Mediation Center (MARC) and the Permanent Court for Arbitration at the Mauritius Chamber of Commerce & Industry.

Why such a frenzy?

Why so many?

One could say that there are at least three reasons for the development of

arbitration centres in Africa.

First, the legitimate need to capture disputes with an African element and thus “africanize” them. The African specificity cannot reasonably be overlooked in a time when diversity is not just fashionable but a true necessity that the global market is craving. As described in more detail in the London University’s School of Oriental and African Studies (**SOAS**) publication of its Arbitration in Africa Survey – *Domestic and International Arbitration: Perspectives from African Arbitration Practitioners*, the perception that international arbitration, or at the very least those with an African element, cannot be dealt with correctly on the African continent itself needs to be remedied. This is part of a larger Africanisation movement, which also involves law-making. Indeed, African states have now become “rule makers” at both regional and continental levels and are no longer mere “consumers” of norms as they have been in the past, focusing notably on sustainable development, environmental protection, human rights and corporate governance.

Second, costs. Local clients and counsel repeatedly stress on the costs of arbitration proceedings under the aegis of western institutions. For example, the ICC’s filing fee (regardless of the amount in dispute) is currently USD 5,000 and its administrative costs are capped at USD 150,000. Not all international cases involve multi-million/billion dollar claims with respect to infrastructure, oil and gas, mining or construction projects. Marie-Andrée Ngwe, President of the Permanent Committee at the Inter-employers’ Group of Cameroon (GICAM) Arbitration Centre, confirms that *“this flowering of centres responds to a need for justice; for local economic operators, access to major arbitration centres poses difficulties in terms of distance and various costs”*. To address the issue of costs, especially involving common trade and commercial disputes either regionally or internationally, many institutions based in Africa offer reduced administrative and arbitrators’ fees to accommodate the market’s needs locally. For instance, the Nairobi Centre for International Arbitration’s filing fee is less than USD 200 and its administrative fees cannot exceed USD 21,000 in international arbitration cases.

Third, the prospects of generating substantial revenues. Securing the administration of international arbitration disputes and becoming an international hub locally can be lucrative. Arbitral centres not only administer cases – a service they charge to the parties – but also offer a variety of on-site auxiliary services. For example, MARC offers excellent hearing and meeting room facilities and services

at its offices in Port Louis (Mauritius) and promotes in particular local court reporters and hotels.

However, can all 80 arbitration centres thrive?

is it too many?

It is said that a lack of competition results in complacency and mediocrity. Competition, within the legal and business communities, is generally accepted as healthy because it encourages efficiency and strengthens the market. When it comes to international arbitration centres, competition pushes institutions to make the necessary efforts to achieve longevity, such as by administering cases skilfully, appointing competent arbitrators and providing suitable services which take into the specificities of each case. So, what are their prospects of success on the African continent?

Some arbitral institutions have already gained international recognition. In North Africa, CRCICA, which was originally set up for three years, has become a reference with full financial autonomy and has administered more than 1,100 cases since its creation in 1979. In recent years, CRCICA and its rules have increasingly been chosen by non-Egyptian parties – a true recognition. It is also named as a possible institution in Bilateral Investment Treaties and was ranked as one of the best centres by the African Development Bank. In South Africa, AFSA has opened an international branch following the adoption of the 2017 International Arbitration Act and has reported more than 50 cases so far! In East Africa, the Kigali International Arbitration Centre set up in 2012 has already administered more than 50 cases and is often cited as a successful example of an arbitral institution in the region. In West Africa, the Common Court of Justice and Arbitration (CCJA) created in 1998 has administered around 100 cases and is very hopeful that its new rules issued in late 2017 will increase significantly the number of cases it deals with in francophone Africa.

While the arbitral community has recognized the potential of a number of institutions in the past decade, it seems that less than 10 centres have, for the time being, effectively gained credibility. The key for newly established centres may then lie in specialism. Instead of becoming an internationally polyvalent centre competing with well-established organisations worldwide, it may be wise to

target a specific industry or region (or both) and rethink the institution's role in order to reach an optimal level of success. It is worth noting that AFSA and the Shanghai International Arbitration Center have created the China-Africa Joint Arbitration Centre (CAJAC) in Johannesburg and Shanghai, positing itself as a platform for managing disputes on the Belt and Road Initiative. Additionally, it seems that cooperation would be more fruitful than dry competition. Signing cooperation agreements with well-established western arbitral organizations might give credibility and encourage users to resort to local African centres. For example, on 23 June 2016 the ICC and the CCJA signed a partnership agreement reflecting their common will to work together for the promotion of international arbitration and other alternative dispute resolution mechanisms within the OHADA space through co-organized events and the ICC providing training to the CCJA staff in case administration.

The rapid multiplication of African arbitral institutions across the continent is undeniably correlated to a will to develop and promote arbitration as a means of dispute resolution on the continent. Yet, to what extent will it attain its goal of Africanizing arbitration, gaining international credibility and generating economic benefit in the region? Only time will tell...