

Kluwer Arbitration Blog

2022 Year in Review: Africa

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2022 witnessed the continued growth and concerted efforts of practitioners within Africa to promote the use of arbitration across the region. A [report](#) published by Herbert Smith Freehills in the first quarter of 2022 revealed that the number of arbitrations taking place in the continent, in comparison with those outside the continent, has increased. Despite the projections of a slow recovery of foreign direct investment (“FDI”) in Africa, coupled with the impact of the COVID-19 pandemic, the continent [holds hope for an increase](#) of FDI in the coming years. This projected increase is attributable to the latest developments with the African Continental Free Trade Area (“AfCFTA”) and the opportunities it presents for different sectors.

As FDI and intra-African investments are expected to rise, the need to resolve disputes resulting from them will likely rise simultaneously. Institutions and different countries have taken and are expected to continue taking steps that will position them to utilise the momentum these opportunities will provide.

In this sense, this post seeks to highlight some of the developments that have occurred within Africa in 2022. In doing so, it will start by recapping recent strides regarding the AfCFTA (Section 1), followed by the 2022 Africa Arbitration Academy (“AAA”) Model BIT (Section 2). It will then look at regional and national legislative developments (Section 3) and institutional developments and collaboration (Section 4), before finalising with some notes on the 2022 SOAS and AAA Surveys (Section 5). Lastly, it will offer some forward looking thoughts for developments that can be anticipated during 2023.

1. African Continental Free Trade Area: Recent Developments

2022 has come to an end with significant steps towards concluding [Phase II of AfCFTA negotiations](#), which includes the Protocol on Investment, Protocol on Intellectual Property, and Protocol on Competition.

Since [December 2021](#), state parties to the AfCFTA were engaged in discussion rounds on the [Investment Protocol zero-draft text](#), which focused on preliminary concerns on it. After rounds of negotiations that took place in March and June 2022, and two further rounds of negotiations in September 2022, the three Protocols were concluded and adopted at ministerial level by the AfCFTA Council of Ministers in October 2022. [The next steps](#) include the submission of the text

to the Assembly of Heads of States for review and adoption at its next ordinary session scheduled for this month, February 2023.

Further discussions on the future of the AfCFTA were held in the [African Union Summit on Industrialisation and Economic Diversification](#), held in November 2022 in Niger. In it, strategies for entrenching the rule of law to catalyse the emergence of Africa's private sector, as well as the synergies between the public and private sectors were discussed.

It is expected that the AfCFTA will give rise to many [opportunities for cross-border investment](#), especially establishing manufacturers plants, as well as the application of benefits of reduced tariffs and trade facilitation. In this context, there is space for reflection about the ways in which the AfCFTA could support [resilient and sustainable investments](#) in the next decades, which will likely be marked by increasing [environmental and climate pressures](#).

Indeed, developing countries are the most vulnerable to the effects of climate change, and are also the ones that need most investment and industrial development. In light of this, the AfCFTA and its Investment Protocol could be a platform for African states to develop their self-reliance and sustainability together – especially as has been identified that the AfCFTA framework contains [few references to environmental and climate matters](#) so far.

Lastly, after signing and ratification, the biggest challenge African states will face is the AfCFTA's Investment Protocol implementation. This step will [require states](#) to align their domestic law with the Protocol, to implement its provisions, and to focus on complementary action, especially in policymaking.

2. The 2022 AAA Model BIT

In July 2022, the AAA launched [the Model Bilateral Investment Treaty for African States](#) (the "Model BIT"). The AAA recognised the growing importance of FDI in Africa and the intention of African states to create an environment that promotes investment and sustainable development, hence it launched the Model BIT. The Model BIT, which is discussed on the blog [here](#), aims to provide a balance between investment promotion in Africa and continued sustainable development. It offers a comprehensive model that could form the basis for negotiations by African States when developing their own investment agreements with other states. In line with its objective to promote sustainable development, the Model BIT recognises the risks that may come with FDI and suggests necessary safeguards, [such as protecting traditional knowledge and the rights of indigenous communities](#). Another noteworthy feature of the Model BIT is its promotion of African seats and practitioners. The Model BIT provides that the arbitral tribunal shall comprise three arbitrators: the parties will appoint one each, and the third (who shall be a citizen of a third state and of African descent) shall be appointed by the party-appointed arbitrators.

The Model BIT is a welcome development to investor-state dispute settlement. It however remains to be seen how the Model BIT whether and how it will be embraced by African states in coming years. However, the drafting committee of the Model BIT is hopeful that it will [fulfil its objectives of promoting, encouraging and increasing investments, as well as enhancing sustainable development in Africa](#).

3. Regional and National Legislative Developments

Following its assent to the New York Convention in 2020, Sierra Leone took an important step in September 2022 when its President signed into law the [Arbitration Act 2022](#). The Act repealed and replaced the Arbitration Act of 1960. It also established the Sierra Leone International Arbitration Centre which is notably the first of its kind in the country.

Sierra Leone is not the only West African nation to have taken steps in improving its arbitration legal framework. In May 2022, the Nigerian legislature passed the [Arbitration and Mediation Bill](#). When it is signed into law by the President of Nigeria, the Arbitration and Mediation Act will replace the Arbitration and Conciliation Act that is currently in effect. The revised framework provides innovative provisions on, among other things, third-party funding, arbitrator's immunity and the establishment of an award review tribunal. It further generally provides for the incorporation of the 2006 amendments of the UNCITRAL Model Law. These improvements are expected to put the country's arbitration framework and commercial legal environment at par with the approaches in effect elsewhere in Africa and globally.

In Southern Africa, in July 2022, Angola became the 50th African state to sign the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("the ICSID Convention") and is now the 165th signatory to the ICSID Convention. This move has been [described](#) by Meg Kinnear, Secretary-General of ICSID, as "a testament to the important role that African countries have played in the development of ICSID", a demonstration of the importance Angola places on FDI and the concrete steps the country is taking to develop its economic and social sectors. Angola's signing of the ICSID Convention is also significant as it is the first following the 2022 amendments to the ICSID Rules, which has been previously discussed on the blog [here](#).

4. Institutional Developments and Collaboration

Africa is home to a growing number of arbitration institutions situated across the different regions of the continent. The [2020 Arbitration in Africa Survey Report](#) revealed that there are over 90 arbitration institutions in Africa. While not all the institutions presently enjoy strong global or regional recognition, African institutions are continuing to develop and, as they do so, they recognise the need for collaboration amongst themselves in a bid to ensure that disputes which arise within the continent are administered by African arbitral institutions and supported by African practitioners.

A good example is the 3rd edition of the Regional Training on Dispute Management in Africa Infrastructure Projects (DiMAP) 2022 which held in November 2022 in Accra, Ghana. DiMAP, which is a flagship event of the Lagos Chamber of Commerce International Arbitration Centre ("[LACIAC](#)"), was for the first time held outside of Nigeria and in collaboration with another institution, Ghana Arbitration Centre. This collaboration was inspired by the Africa Arbitration Centres' Collaboration Dialogue ("[ACCORD](#)"), which was held in 2021 amongst a number arbitral institutions in Africa.

Another instance of institutional collaboration is the [2022 SOAS Counsel in Arbitration Training](#)

which was organised by the SOAS in cooperation with the African Legal Support Facility. The training workshops were delivered in collaboration with four arbitral centres in Africa: LACIAC, [Centre de Médiation et d'Arbitrage du GICAM](#), [Kigali International Arbitration Centre](#), and [Cairo Regional Centre for International Commercial Arbitration](#). The training aimed to develop and enhance the advocacy skills and capacity of practitioners who act as counsel in international arbitration. Another edition of the training is expected to hold in 2023 in collaboration with a new set of arbitral centres in Africa.

We anticipate that there will be more of these collaborations amongst African institutions and further developments in 2023.

In addition to the above, the Economic and Monetary Community of Central Africa (also known as the Central African Economic and Monetary Community (“CEMAC”), [enacted](#) a law establishing the Statute of the Arbitration Center of the Community Court of Justice and another law on the Arbitration Rules of the Court of Justice of the CEMAC (CEMAC Arbitration Rules). These developments provide the opportunity for cases involving CEMAC Members States and/or CEMAC Institutions and Bodies to be referred to and administered by a central independent body.

5. The AAA and the SOAS Surveys

Two important empirical studies covering recent developments in Africa were released and were [covered in the Blog](#).

The [2022 SOAS Arbitration in Africa Survey Report](#) (“2022 SOAS Survey”) builds on the findings of its 2018 and 2020 editions (see [here](#) and [here](#)). The 2022 edition consists of a quantitative and qualitative study that tells us about the impact of two major global and two Africa-specific events on arbitration: Covid-19 and climate change, as well as the AfCFTA and the increase in infrastructure projects in the continent. Relying on the perspective of African arbitration practitioners, some of the 2022 SOAS Survey main findings are that climate change mitigation measure will increase their cost of doing business, and that the AfCFTA will probably encourage intra-African disputes.

Moreover, the [2022 African Arbitration Academy’s Survey on Costs and Disputes Funding in Africa](#) (“2022 AAA Survey”) looks at costs of resolving disputes, the financing of claims, and the impact that Covid-19 had on litigation and arbitration costs. The 2022 AAA Survey also analyses measures that could drive cost-efficiency in African disputes. The main focus of this quantitative study, and the main contributions it brings, relate to how arbitration users approach costs of disputes, as well as on aspects regarding third-party funding in Africa.

The Surveys are important systematic empirical studies that shed light on the current state of affairs of domestic and international arbitration in African jurisdictions, which have diverse historical trajectories and legal traditions. They consist of valuable endeavours for several reasons. For stakeholders in Africa, the Surveys will inform arbitration users, arbitral institutions, governments and international organisations about how arbitration is currently pursued in the continent, in particular as a result of Covid-19 and climate change concerns. In addition, the Surveys ultimately bring nuance to our understanding of the continent, and do so by relying on ‘[African voices](#)’ as survey respondents (who are mostly African) and data interpreters (the 2022 SOAS Survey’s lead investigator is [Emilia Onyema](#), and the 2022 AAA Survey was led by a [team](#)

of African arbitration specialists).

Outlook for 2023

Some of the [trends](#) predicted for 2023 in international arbitration include the use of sophisticated technologies for remote arbitrations, growth of gender diversity, and increased use of emergency relief in international arbitration. While all of these developments are expected to advance globally in the coming year, for Africa in particular, we hope to see these features as well more development of the interplay of the AfCFTA, FDI and disputes. In addition, considering the diversity in legal systems in Africa – which is reflected in their anglophone, lusophone and francophone legal traditions – there is room for more inclusion and representation across the different regions, as well as for reliance on African institutions and practitioners for Africa-related disputes.

Now that in-person events seem to have made a full comeback, we can expect to see more of these in 2023. In particular, it is expected that there will be more intra-regional collaboration with practitioners and arbitral institutions with respect to arbitration related seminars, conferences, and trainings – interactions that will likely inspire and support further cross-continental collaborations and opportunities. More so, as arbitration disputes are continuously evolving to cover issues relating to cybersecurity, climate change, ESG, there is a need for practitioners within the continent to keep abreast of the developments and possible challenges which may arise.

Finally, we believe the institutions are, more than ever, well poised for growth, and we expect to witness the growth in their resources and capabilities in 2023.

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This entry was posted on Friday, February 10th, 2023 at 8:12 am and is filed under [2022 in Review](#), [AAA Model BIT](#), [AfCFTA](#), [Africa](#), [Nigeria](#), [Sierra Leone Arbitration Act](#), [Surveys](#)

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