

Kluwer Arbitration Blog

LIDW 2024: The Rise of African Arbitration – Is Africa Leading the Way?

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As investors increasingly look to diversify their investments whilst seeking higher returns, and emerging nations continue the push to industrialise, to develop their infrastructure and to grow their economies, the emerging economies have become a hotbed of activity for investors, developers, and legal professionals around the world.

This post considers why all eyes seem to be on [Africa](#) in particular, how African nations have reacted to investors' demands for increased security for their investments, and the consequences for the world of arbitration.

Why Has Africa Taken Centre Stage?

As a result of the global economic downturn, brought on by [Covid-19](#) and the geopolitical issues we have been experiencing, such as the Russia and Ukraine war, the global energy crisis, climate risk, and the increased instability in the Middle East, many projects around the world have been put on hold or permanently shelved. But Africa appears to be striding ahead, seemingly insulated from such concerns. There continues to be an immense need for development and industrialisation in this vast region, with lack of adequate power, energy and infrastructure, as well as the urgent need to extract natural resources, including the mining of minerals critical to the energy transition, continuing to drive projects and investment in the region.

Where projects go, disputes follow. And these disputes have been exacerbated by liquidity and foreign currency issues, consequences of Covid-19 that have had a lingering impact on much of Africa. Consequently, we have seen an explosion of arbitrations, commercial as well as investor-state, emanating from Africa in recent years.

What Steps Have African Nations Taken to Attract Foreign Direct Investment?

Foreign investors, wary of the many challenges and risks associated with investments into the emerging markets, have been ever anxious for investor treaty protection and measures to ensure that they can secure judgments and awards which will be enforceable should the need arise. Over the years, this has led to a huge number of bilateral, multilateral and regional investment treaties

being concluded throughout Africa – as of 2016, there were approximately one thousand such treaties with an African state party.

In addition, with Djibouti and Angola [having signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States](#) in 2019 and 2022 respectively, the number of African member states now stands at forty-nine (albeit three of these, Ethiopia, Namibia and Guinea-Bissau, have not yet ratified the Convention).

Finally, the vast majority of African states (forty-two out of fifty-four) have now adopted the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#), including Malawi, Sierra Leone, Ethiopia, and the Seychelles since 2020. The twelve African nations that [have not adopted the New York Convention](#) are Gambia, Guinea-Bissau, Chad, Republic of Congo, Equatorial Guinea, Eritrea, Eswatini, Libya, Namibia, Somalia, South Sudan, and Togo.

These steps have also been important for intra-African trade.

Recent Advancements in Arbitration in Africa

Although some businesses and legal practitioners in certain African states remain sceptical, arbitration has become increasingly accepted as the appropriate forum for resolving cross-border disputes by reason of its perceived neutrality and the relative ease of enforcement of arbitration awards compared to the judgments of foreign courts.

As the African community has become increasingly comfortable with arbitration, the region has also experienced an acceleration in the development of domestic arbitration laws. Outdated domestic arbitration legislation has been updated in many jurisdictions, with nations often implementing international arbitration model laws, including the [UNCITRAL Model Law on International and Commercial Arbitration](#) and the [OHADA Uniform Arbitration Act](#), into their national law.

Most recently, Nigeria enacted the [Arbitration and Mediation Act 2023](#), thereby incorporating the UNCITRAL Model Law on International Commercial Arbitration into its arbitration legislation. The Act introduced provisions with respect to emergency arbitrators, arbitrators' immunity, interim measures, and third-party funding in arbitration, amongst others. As a consequence, Nigeria's arbitration framework, including its standards for the setting aside of arbitral awards, is now in line with international standards, thereby encouraging a more arbitration-friendly environment. The Act also contains some innovative new features including the establishment of the award review tribunal (Section 56), which provides a mechanism for the review of arbitral awards and the correction of errors under specific circumstances. This is aimed at ensuring the reliability and integrity of the arbitration process without resorting to the courts. The Act is further discussed in the blog by Laura Alakija [here](#) and the advantages and drawbacks of the award review tribunal are explored in some depth in the blogs by Abayomi Okubote, Aisha Suleiman, and Ibrahim Ati [here](#) and Isaiah Bozimo [here](#).

Malawi also modernised its arbitration legislation by adopting the [International Arbitration Bill 2023](#). This bill is similarly based on the UNCITRAL Model Law on International Commercial Arbitration and aligns the arbitration law of Malawi with international standards, as discussed in the post by Ibukunoluwa Owa [here](#).

Whilst a [plethora of arbitral institutions](#) has been established in the region, there is also an increased collaboration between the local institutions and international arbitral institutions. For example, the [Arbitration Foundation of Southern Africa \(AFSA\)](#) has established partnerships with international arbitral institutions and organisations such as [the Permanent Court of Arbitration](#) (as has the [Lagos Chamber of Commerce International Arbitration Centre](#)). AFSA International also recently became a member of [the International Federation of Commercial Arbitration Institutions](#), which includes [the London Court of International Arbitration](#) and [the International Chamber of Commerce's International Court of Arbitration](#) amongst its members. Such partnerships provide the local arbitral institutions in Africa with access to information on best practices in arbitration, and enable them to align their services with international standards, as well as helping to enhance their reputation amongst users as noted in an [interview](#) of the Secretary General of AFSA, by Ibukunoluwa Owa, earlier this year.

Various other initiatives have been set in motion such as the establishment of the [Africa Arbitration Academy](#) to provide training to arbitration practitioners in Africa and accelerate capacity building. [The Africa Arbitration Academy Protocol on Virtual Hearings in Africa 2020](#), which was drafted in response to the particular challenges of arbitrating in Africa during Covid-19, showed further commitment and determination by African arbitration practitioners to ensure that users continue to consider African seats when negotiating their arbitration clauses.

As arbitration in Africa has grown in sophistication, we have also seen an increase in the caseload of the more established African arbitral institutions such as the [Arbitration Foundation of Southern Africa](#), the [Cairo Regional Centre for International Commercial Arbitration \(CRCICA\)](#), the [Lagos Court of Arbitration](#), and [the Nairobi Centre for International Arbitration](#). CRCICA has updated its [arbitration rules](#) this year to provide for remote hearings, online filing, consolidation of arbitrations, emergency arbitrations and third-party funding, bringing it into line with other more established arbitration rules and rendering CRCICA more attractive to users.

Whilst contractual parties continue to choose London as a seat where the contract relates to anglophone Africa and Paris where it relates to francophone Africa, or perhaps New York where the investors are US based, it seems that even investors sitting outside Africa are now more willing to consider African seats for their arbitration clauses. A perception of potential bias and cultural differences has expedited this shift, with local parties, often governments or government entities, insisting on local seats in their arbitration clauses when negotiating contracts.

What Is the Future for Arbitration in Africa? Stay Tuned for LIDW 2024

A key question that arises is whether there has been an unprecedented rate of progress in the arbitration landscape in Africa over the last few years and does that mean that it is time for African arbitrations to be dealt with by African arbitrators in African seats? Or does Africa still have some way to go? Is the supervision of the English courts still important in light of the [Nigeria v P&ID](#) experience for example? Should investors be pushing back on African seat proposals when negotiating arbitration clauses? And do question marks remain over whether African nations are truly pro-arbitration as [Funke Adekoya](#) noted in relation to Nigeria in the wake of *Global Gas and Refinery Limited v Shell Petroleum Development Company* in 2020? Or do recent decisions of the Supreme Court of Nigeria and the High Court of South Africa show that the finality of arbitration awards will be respected by the courts of African states and effect will be given to those awards as

suggested in the post by Ibukunoluwa Owa [here](#)?

We will be exploring these and a number of other issues arising from African arbitrations and recent developments in the field, with a panel of pre-eminent international arbitration practitioners during [the International Arbitration Day of the London International Disputes Week 2024](#).

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