LAWCOM
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Project study
(shortened version)

on possible cooperation with arbitration institutions in Africa

Client: Hamburg Chamber of Commerce

March 2022

1. Project idea

Establishment of a network of African arbitration institutions cooperating with the HIAC of the Hamburg Chamber of Commerce and Industry, which proceed according to international standards. Formulation and implementation of a suitable QM framework. Establishment of an IT-based platform. Establishment of a flanking training program for African arbitrators and employees of the African local state judiciary, possibly in cooperation with university institutions, foundations, law firms.

2. Task

- Inventory of existing arbitration institutions in Africa that meet international standards and are perceived internationally.
- Identification of African arbitration institutions that are suitable for cooperation in the sense of the project idea, with an evaluation of their respective procedural rules and organizational structures.
- Examination of the national legal framework in the seat states of the arbitration institutions, with regard to the implementation of international standards (UNCITRAL Model Law on International Commercial Arbitration, membership in the New York Convention). Evaluation of the arbitration-related jurisdiction of local courts and their practical handling of enforcement proceedings.
- Evaluation of the results and proposals for further action.

3. Executive Summary

a. Arbitration in Africa

Since the turn of the millennium, arbitration in Africa has enjoyed a remarkable upswing. The voices that African-related arbitrations should preferably be conducted in Africa with the participation of African arbitrators, instead of being "exported" to third countries and decided by arbitrators who are often unfamiliar with African customs and culture, have gained strength.

It is therefore not surprising that as of April 2020, there are already 91 African arbitral institutions - and the number is still growing. However, only very few of these institutions have a significant track record and visibility beyond the respective seat state.

This having been said, the traditionally prominent role of non-African arbitral institutions in the resolution of African-related disputes remains nonetheless unbroken. The vast majority of these cases are administered by the ICC or the London Court of International Arbitration (LCIA), so far only in the rarest cases with the participation of African arbitrators and even more rarely at arbitral venues in Africa.

b. Progress in legal harmonization

The progress made in harmonizing the law, which is very beneficial for the development of arbitration in Africa, is remarkable: arbitration legislation based on the UNCITRAL Model Law - i.e. in line with international, modern standards - now exists in 11 African states[1] . In addition, there are the 17 states of the OHADA Organization for the Harmonization of Business Law in Africa, in which the "OHADA Uniform Arbitration Act" (2017 version), which approximates the UNCITRAL Model Law, applies.

Acceptance of the 1958 UN Convention (New York Convention) is also high in Africa: 42 African states have acceded to the Convention.

c. State judiciary

Africa, with its 55 states[2] inspired quite differently by the former colonial powers, presents a very disparate picture historically, culturally, politically, economically and legally. This is reflected in the rather different standards of the rule of law from state to state as documented by the country reports and country rankings of the WJP Rule of Law Index 2021 as well as the CPI 2021 published by Transparency International.

Differences also exist with regard to the attitude of the state judiciary towards arbitration, i.e. on the issue of a (consistent) arbitration-friendly or -unfriendly local jurisdiction.

d. Identifying the leading African arbitration institutions

Based on the findings of the "2020 Arbitration in Africa Survey Report"[3] as well as a questionnaire, video calls and other sources, the following

[1] https://uncitral.un.org

[2] According to the UN's reading, which does not recognise Western Sahara as independent, there are only 54 states

[3] https://eprints.soas.ac.uk/33162/1/2020%20Arbitration%20in%20Africa%20Survey%20Report%2030.06.2020.pdf

African arbitration institutions were identified in this project study as possibly suitable in terms of the project idea:

- AFSA Arbitration Foundation of Southern Africa, South Africa
- CRCICA Cairo Regional Centre for International Commercial Arbitration, Egypt
- KIAC Kigali International Arbitration Centre, Rwanda
- LCA Lagos Court of Arbitration, Nigeria
- NCIA Nairobi Centre for International Arbitration, Kenya

However, the French-speaking OHADA region should also be taken into consideration: the OHADA arbitration court CCJA in Côte d'Ivoire and the CACI - Cour d'Arbitrage de Côte d'Ivoire could be considered as cooperation partners. The Ghana Arbitration Centre based in Accra could also be an option, in particular due to the fact that GiZ[4] (the German “Gesellschaft für Internationale Zusammenarbeit GmbH”) has already taken several initiatives in the field of arbitration through its regional office in Accra and has good contacts with the law faculty of the local University.

In northwest Africa, cooperation with arbitration lawyers in Tunisia could be interesting.

e. Country reports on the seat states of the selected arbitration institutions

Within the framework of country reports on the seat states of the arbitration institutions identified above, the respective local legal and factual circumstances were examined. The criteria of the "ClArb London Centenary Principles"[5] , which define whether a location can be considered an "*effective, efficient and safe seat for the conduct of international arbitration*", were used as a benchmark.

4. Introduction

Africa, with its 55 states[6], presents a very heterogeneous picture historically, culturally, politically and economically. This also applies to the legal character - "common law"-influences in Anglophone Africa, "civil law"-influences in the French-speaking and Lusophone states, Islamic-legal influences in Arabic-speaking countries - and to the existence of reliable rule-of-law structures.

[4] https://www.giz.de
[5] https://www.ciarb.org/media/4357/london-centenary-principles.pdf

[6] See fn 2

It can be said, however, that the continent as a whole is on the upswing. Many governments have understood that the enhancement of legal certainty - if suitable by harmonizing legal rules -, the facilitation of intra-African trade and a joint external policy are important prerequisites for economic and social progress.

An impressively visible example is the **African Free Trade Area (AfCFTA),** which was established after only 3 years of negotiations with the agreement of 21 March 2018 and has been operational since 1 January 2021. All African states with the exception of Eritrea have signed the underlying AfCFTA framework agreement. The declared aim is

> *"to accelerate intra-African trade and boosting Africa's trading position in the global market by strengthening Africa's common voice and policy space in global trade* negotiations" [7]

In addition to the dismantling of tariffs and non-tariff trade barriers, the improvement of legal certainty through the standardization of rules for investments, intellectual property and e-commerce is also on the agenda[8] .

a. <u>African arbitration on the rise</u>

Regional African associations with the goal of legal harmonization**, including arbitration,**[9] have existed on the African continent for a long time. For example, the "**OHADA-Organisation pour L'Harmonisation en Afrique du Droit des Affaires**", founded by a treaty of 17 October 1993, in which 17 predominantly Francophone African states[10] have joined forces, recognizes the lack of legal certainty as a major obstacle to development and states this in the definition of its "mission"[11] :

> *"The OHADA Treaty's main objective is to address the legal and judicial insecurity in its Member States. It is undeniable that legal balkanization and judicial insecurity were the key impediments to the economic development of the continent ....."*

The creation of a harmonized set of rules for all important areas of business law was recognized as being conducive to achieving the goal:

> *"Economic globalization requires the harmonization of laws and legal practices. Regarding developing countries like ours, this is a priority in order to create a favourable climate for legal and judicial security, a condition sine qua non to attract an inflow of*

[7] www.afcfta.au.int "About AfCFTA"
[8] GTAI report "African Free Trade Area AfCFTA launched in January 2021".
[9] In the context of this preliminary study, this refers exclusively to commercial arbitration.
[10] Guinea-Bissau is the only Member State where French is not at least one of the official languages: Portuguese is spoken there
[11] https://www.ohada.org/en/general

foreign investment. This task is even more important considering that investment is in itself a risk ...."

Further, the **CCJA - Common Court of Justice and Arbitration,** based in Abidjan, Côte d'Ivoire, was created to ensure uniform jurisdiction in this regard:

"The activities of the Organization have (amongst others) resulted in a coordinated justice at the regional level by the Common Court of Justice and Arbitration, which reviews decisions rendered by national courts".

In the field of arbitration, the CCJA not only acts as an arbitral institution with its own arbitration rules, but also has judicial functions. This includes the declaration of enforceability of arbitral awards as well as set-aside proceedings:

"… arbitral proceedings with the assistance of the Common Court which administers proceedings without acting as arbitrator, checks the quality of awards and gives them the executory force [12].

The explicitly mentioned arbitration as an important supplement to state jurisdiction was thus recognized here from the beginning and standardized for the territory of the OHADA member states in the "Acte Uniforme Relatif au Droit de L'Arbitrage" of 11 March 1999 - today in force in the version of 23 November 2017[13] .

The AfAA (African Arbitration Association)[14] also aims to standardize the law and strengthen African arbitration. It was founded in 2018 for the purpose of

"*of promoting international arbitration and other forms of international dispute resolution on the African continent*".

In the preamble of its statutes, explicit reference is made to the

"*desirability of strengthening the legislative framework for arbitration and other means of dispute resolution in all African jurisdictions in line with widely-accepted international standards, as well as of promoting the use of Africa-based arbitral institutions, African seats and venues*"[15] .

[12] For more details, see Niggemann, "Arbitration in the OHADA Economic Area after the 2017 Reform", SchiedsVZ 2020, 22 et seq.
[13] https://www.ohada.org/en/arbitration
[14] https://afaa.ngo
[15] Preamble to the Constitution of the African Arbitration Association

b. African state jurisdiction

Where access to the state civil judiciary and its independence and efficiency are not sufficiently guaranteed, extrajudicial dispute resolution mechanisms - including arbitration - are gaining in importance.

The "WJP Rule of Law Index 2021"[16] examines and documents the status quo of the Rule of Law. It is based on a comprehensive research on 139 countries worldwide, including 37 African states. A total of 8 indicators ("factors") are examined and ranked to determine the extent to which the rule of law is guaranteed in the countries concerned. The indicators also include civil justice as "Factor 7":

> *"Civil Justice: Factor 7 of the WJP Rule of Law Index measures whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system. It measures whether civil justice systems are accessible and affordable as well as free of discrimination, corruption, and improper influence by public officials. It examines whether court proceedings are conducted without unreasonable delays and whether decisions are enforced effectively. It also measures the accessibility, impartiality, and effectiveness of alternative dispute resolution mechanisms."*

Another valuable source of information is Transparency International's Corruption Perceptions Index 2021 ("CPI 2021"), which documents investigations in 180 countries worldwide in rankings[17] .

Both the WJP Rule of Law Index 2021 and the CPI 2021 report alarming deficits of the state civil judiciary in large parts of Africa. There is a remarkable exception though: Rwanda holds a top position in an Africa-wide comparison not only for the WJP indicator "civil justice" but also for the CPI-indicator "absence of corruption".

As such, it remains to be seen whether the above-mentioned efforts towards a joint external policy, legal standardization and the enhancement of legal certainty are sustainable. Merchants and other Africa experts with experience in Africa business fear that the momentum that has just begun could quickly fade again.

It is emphasized again and again that "there is still a lot to do". The African Free Trade Area in particular is "not a foregone conclusion. Corruption and poor infrastructure, for example, remain problematic"[18] .

[16] https://worldjusticeproject.org
[17] https://www.transparency.de/cpi/
[18] Deutsche Welle, "African Free Trade Area: Full of potential despite postponement", report from 12.08.2020

c. Hamburg's special role?

Hamburg could play a special role towards the strengthening of African arbitration because of its internationally recognized, industry specific commodity arbitration. Its strength and prominence as an arbitration location is fed by the multitude of traditional and new arbitration courts, the Center for International Dispute Resolution (CIDR)[19] at Bucerius Law School, the platform www.dispute-resolution-hamburg.com of Rechtsstandort Hamburg e.V.[20] as well as the multitude of renowned arbitration lawyers who have joined forces in the HAC - Hamburg Arbitration Circle e.V. [21].

d. Added value of strengthening African arbitration institutions for the German economy?

For the reasons outlined above, the arbitration jurisdiction of the ICC and the LCIA is increasingly no longer seen as desirable in Africa. The aim is to strengthen African arbitration institutions[22] .

This does not have to be disadvantageous for the German economy. Under various aspects and conditions, it could be interesting for them to agree on an arbitration clause in favor of an African arbitration institution in contracts with African contract partners as a dispute settlement mechanism and to appoint African arbitrators in the event of a dispute:

- Better cultural understanding with regard to possible causes of conflict and finding mutually agreeable solutions
- Higher local acceptance of the arbitral award
- As a rule, African arbitration institutions have a much more favorable cost structure than the ICC and LCAI
- Avoidance of litigation before African state courts in view of their long duration and uncertain outcome, especially in view of the deficits described above in more detail[23].

[19] https://www.law-school.de/international/research-faculty/institutes-centers/center-for-international-dispute-resolution
[20] https://www.rechtsstandort-hamburg.de//
[21] https://www.hamburg-arbitration.de
[22] For more details see 4. a. above and 5. c. below.
[23] For more details, see 4. b. above.

These advantages apply in particular to small and medium-sized enterprises, but also to large international companies that do business in Africa through group companies.

e. Added value of a cooperation model for African arbitral institutions?

Up to now, most African arbitration institutions have only administered arbitration proceedings on national or regional economic disputes ("domestic disputes"). This also applies - at least so far - to the larger and more renowned African arbitration institutions presented in this project study[24] . For them, this project could open up the possibility of entering the European market with a corresponding increase of the caseload in international arbitration proceedings, which in the long run would be linked to a strengthening of their (international) reputation.

f. Role of GIZ

During the interviews conducted for the purpose of this project study, African interlocutors repeatedly emphasized that Germany has a good reputation in Africa compared to other former European colonial powers. In this context, the positive role of the GIZ was frequently emphasized.

The promotion of the rule of law and justice in Africa is one of the long-standing GIZ projects[25] . In this framework, concrete projects such as the training of African arbitrators and ordinary judges as well as the strengthening of African arbitration institutions could be very welcome.

5. Inventory of existing arbitration institutions in Africa that meet a minimum of international standards or are perceived internationally.

a. Definition catalogue of "international standards“

Arbitration-friendly legislation and case law as well as local arbitration expertise are fundamental prerequisites for the success of a place of arbitration and thus also of the arbitral institution located there[26] . It is also important that the place of arbitration is easily accessible and secure, and that all technical requirements and services necessary for the conduct of arbitration proceedings are reliably available.

[24] An exception with numerous international procedures – including with parties from outside of Africa - is probably only the Egyptian CRCICA, see below in section 7

[25] https://www.giz.de/de/weltweit/79056.html

[26] Catherine Simpson, "Arbitration in Africa - is there a way back in?"; also Sami Houerbi in his presentation "Particularities of Dispute Resolution in Africa: Perspectives and Challenges" on 9 November 2021 at the web conference "The new Africa Agreement AfCFTA" organised by GIZ in cooperation with AfAA.

In 2015, on the occasion of its 100th anniversary, the London-based CIArb (Chartered Institute of Arbitrators)[27] presented a document entitled "CIArb 2015 London Centenary Principles"[28] . The document defines a catalogue of 10 criteria ("principles") that must be met in order for a venue to be considered an "*effective, efficient and safe seat for the conduct of international arbitration*". These criteria are:

- *Efficient and modern legal framework for international arbitration that recognises and respects the parties' choice of arbitration as a method of resolving their disputes;*
- *Independent, competent and efficient state judiciary that respects the parties' decision to resolve their disputes through arbitration.*
- *An independent bar with expertise in the areas of international arbitration and inter national dispute resolution;*
- *Facilities for the education and training of lawyers, arbitrators, judges, experts, users and students in the field of international arbitration;*
- *Unlimited right of the parties to be represented in the arbitration proceedings by party representatives of their choice;*
- *Easy and reliable accessibility and security for parties, witnesses and counsel;*
- *Availability of functional premises and services;*
- *Existence of and adherence to ethical principles governing the conduct of arbitrators and lawyers, taking into account the diversity of their legal and cultural traditions;*
- *Compliance with international treaties and agreements relating to the recognition and enforcement of foreign arbitration agreements, orders and awards ;*
- *Immunity of the arbitrator from civil liability for acts or omissions done in good faith in the course of his or her official duties.*

For the purposes of this project study, these CIArb principles were used as criteria for determining whether and, if so, which African arbitration institutions might be suitable for the purposes of the project idea.

[27] https://www.ciarb.org
[28] See above fn. 4

b. Legal framework in African countries

Arbitration legislation based on the UNCITRAL Model Law - i.e. in line with international, modern standards and thus satisfying paragraph 1 of the CIArb London Centenary Principles - exists in 11 African states[29] . In addition, there are the 17 states of the OHADA Organization for the Harmonisation of Business Law in Africa already mentioned, in which the "OHADA Uniform Arbitration Act" in the 2017 version, which is similar to the UNCITRAL Model Law, applies[30] .

Acceptance of the 1958 UN Convention (New York Convention) is also high in Africa: 42 African states have acceded to the convention[31] .

c. Which African arbitration institutions exist?

Arbitration in Africa has taken a remarkable upswing since the turn of the millennium. The voices that African-related arbitrations should preferably be conducted in Africa with the participation of African arbitrators, rather than being "exported" to third countries and decided by arbitrators who are often unfamiliar with African customs and culture, have gained increasing strength[32] .

It is therefore not surprising that - according to the "List of African Arbitration Centers/Institutions"[33] (hereinafter "List"), compiled by Prof. Dr. Emilia Onyema and last updated on 4 April 2020 - there are a total of 91 arbitration institutions in Africa[34] .

23 of these institutions, however, are only locally active: they do not even have a website (yet). In addition, many institutions on the List see themselves only as conference service providers: they have no arbitration rules of their own and do not administer arbitration proceedings, but only provide premises and other services needed for the conduct of arbitration proceedings. The latter category includes, in particular, the International Centre for Arbitration and Mediation (ICAMA) in Abuja/Nigeria, which is very well known in Africa and is considered the busiest arbitration center in Africa in terms of case load[35] .

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[29] https://uncitral.un.org

[30] Lise Bosman, "Preface", in: Arbitration in Africa, A Practioner's Guide, Wolters Kluwer, 2nd edition 2021

[31] Lise Bosman op. cit.; details at https://www.newyorkconvention.org/countries

[32] Ostrove/Sanderson/Veronelli, "Developments in African Arbitration", in "GAR Middle Eastern and African Arbitration Review 2018".

[33] https://researcharbitrationafrica.com/files/List%20of%20Known%20Arbitration%20Institutions%20in%20Africa%2020200404.pdf

[34] A good list under the title "Local arbitration institutions" is also printed in the White&Case "Africa Focus: Autumn 2020" under "Institutional Arbitration in Africa: Opportunities and Challenges".

[35] see fn. 3

It should be noted that the information on African arbitration institutions in the "AAL-African Arbitration Atlas"[36] sometimes deviates significantly from the information in the List. For example, the List contains 2 arbitration institutions each for the Democratic Republic of the Congo and Zimbabwe, while the AAL reports "*Arbitration Institution not present".* In any case, it is striking how unevenly the arbitration institutions are distributed across the African continent: according to the List, there are 8 arbitration institutions each in Nigeria and South Africa, and even in small Mauritius there are 3, while states such as Namibia, Somalia and Eritrea, according to insofar identical information in the List and the AAL, do not yet have their own arbitration institutions.

d. Which African arbitration institutions are internationally significant and can be considered in the sense of the project idea? Prof. Dr. Onyema's 2020 Arbitration in Africa Survey Report

The "2020 Arbitration in Africa Survey Report" (hereinafter referred to as the "Survey") is a helpful source for determining which African arbitration institutions could be considered in the sense of the project idea[37] . The purpose of the Survey, conducted by Prof. Dr. Emilia Onyema (SOAS University, London), was to identify the "*top African arbitral centres and top African cities for the conduct of arbitration".*

The survey data was collected through an online questionnaire that was answered by 350 respondents interested in arbitration in Africa, from Africa, Asia, the Middle East, North America and Europe. 83% of respondents indicated that they had been involved in arbitration in Africa - as a party, arbitrator, secretary, agent or expert - during the reporting period between 2010 and 2019.

In their responses, the survey participants named the following criteria as decisive for choosing an African arbitration institution:

- *convenient location*
- *spacious hearing rooms and break-out facilities*
- *recordings and transcription equipments*
- *convenience facilities*
- *professional staff*
- *clear rules of arbitration*
- *support in appointing arbitrators*
- *cost effectiveness*
- *arbitration rules in different languages with explanatory notes*
- *efficient case management*

[36] https://africanarbitrationatlas.org
[37] See **fn. 3**

- *access to efficient technology neutral and reputable*

This largely coincides with the criteria of the CIArb 2015 Centenary Principles and is therefore not surprising. Using these guidelines - with special consideration of the criteria "experience", "reputation" and "accessibility" - the participants of the Survey ranked the following African arbitration institutions as the "top African arbitral centers":

- AFSA Arbitration Foundation of Southern Africa, South Africa
- CRCICA Cairo Regional Centre for International Commercial Arbitration, Egypt
- KIAC Kigali International Arbitration Centre, Rwanda
- LCA Lagos Court of Arbitration, Nigeria
- NCIA Nairobi Centre for International Arbitration, Kenya

Of these arbitration institutions, the respondents indicated that they would use and recommend to potential litigants the AFSA, the CRCICA, the KIAC and the NCIA, and in addition the

- CCJA Common Court of Justice & Arbitration, Ivory Coast.

It remains unclear in the Survey why the LCA in Nigeria was not rated as "recommendable" by the survey participants. It also seems surprising that Ghana, with its Ghana Arbitration Centre in Accra, which is important from a European perspective, is not recommended in the Survey[38] . One explanation could be that, according to their own statements, both the LCA and the Ghana Arbitration Centre have so far administered mainly ad hoc arbitration proceedings and almost exclusively domestic arbitration cases[39] .

The best-known African arbitral institution among the "top African arbitral centers", with a comparatively high number of cases and a solid reputation, is the CRCICA, founded in 1979 and based in Cairo, Egypt. The AFSA, based in Sandton (near Johannesburg/South Africa), which has been in existence since 1996, is also comparatively well known. As far as can be seen, all other reputable African arbitration institutions - including the LCA, KIAC and NCIA, which are ranked among the "top arbitral centers" - were only founded in the current millennium and have yet to date hardly been noticed internationally.

It therefore seems understandable that only very few African arbitral institutions already have a considerable track record of international proceedings and are willing to disclose their case numbers: only 10 of

[38] Africa experts contacted in the context of this preliminary study repeatedly named Ghana as a possibly suitable location in terms of the project idea.

[39] on the LAC: Emilia Onyema/Isaiah Bozimo, country report "Nigeria", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021; on the Ghana Arbitration Centre: Emmanuel Amofa; country report "Ghana", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021.

the 73 African arbitral institutions contacted in the course of the research for the Survey responded with concrete information[40] .

The 5 "top African cities for arbitration" as identified by the participants of the Survey are

- Cairo
- Johannesburg
- Kigali
- Lagos
- Cape Town

e. Role of non-African arbitration institutions in the resolution of Africa-related conflicts

As an interim result, it can therefore be stated that - with the exception of CRCICA and AFSA - African arbitration institutions have so far lacked an (international) reputation and visibility. Consequently, when it is "only" a matter of agreeing on a dispute resolution clause immediately before the end of successful Africa-related contract negotiations, contracting parties and their legal advisors continue to instinctively resort to the model arbitration clause of renowned non-African arbitration institutions, especially the ICC or the LCIA. This is confirmed by the latest (2020) statistics:

- ICC

  In its annual statistics[41] , the ICC reports a record year in 2020 with 929 new ICC arbitrations involving a total of 2507 parties from 145 countries worldwide. Of these, 171 parties (6.8%) came from 35 different African countries; Nigeria (22) and Egypt (13) were the most represented, followed by Tunisia (10) and Congo and Mauritius (9 each). Apart from its high international reputation, a number of factors are presumably decisive for the apparently relatively high ICC-acceptance on the African continent. These could include the "ICC Africa Commission", which has existed since 2018 and is composed of arbitration experts from 16 African countries, as well as the annual "ICC Africa Conference on International Arbitration".

[40] The secretaries-general of several African arbitral institutions were similarly reticent during the webinar "Enhancing Access to Justice by Enhancing the Arbitration Institutions in Africa" organised by GIZ between 29 November and 1 December 2021: only CRICRA, KIAC, AFSA and NCIA disclosed case numbers.

[41] https://iccwbo.org/publication/icc-dispute-resolution-statistics-2020/

In stark contrast, ICC proceedings involving African parties are rarely conducted with the participation of African arbitrators: of the 1520 arbitrators appointed by the ICC in 2020, only 34 (2.3%) were from African countries. Egypt was the most represented with 12 appointments, followed by Nigeria with 5 appointments. It is also striking that in ICC arbitration proceedings, arbitral venues in Africa are very rare: this was the case in only 1.4% of proceedings in 2020.

- LCIA

  After the ICC, the London-based LCIA is the most important European address for Africa-related arbitration proceedings. The LCIA also reports in its annual statistics [42] a record year in 2020 with a total of 444 new cases, of which 11.7% involved African parties from Nigeria (3.00%, in 2019 4.4%), Mauritius (2.0%, in 2019 1.1%), Uganda (1.9%, in 2019 0.4%) and Others (4.7%, in 2019 4.4%).

  African arbitrators were nontheless used relatively rarely in LCIA proceedings: a total of only 6 Nigerian, 3 Kenyan, 2 Egyptian, 1 Ugandan and 2 Mauritian arbitrators were appointed.

- DIS

  The portfolio of proceedings administered by the DIS has become increasingly international in recent years, with a further upward trend. Thus, 65% of the 165 proceedings in 2020 involved foreign parties[43] .

  However, there was only very rarely an African reference: in 2020 only once with a participant from Egypt[44] .

- Other European institutions: SCC, VIAC, SCAI Swiss Arbitration

  Other arbitral institutions of European significance - namely SCAI Swiss Arbitration/Switzerland (since 2021 Swiss Arbitration Centre), VIAC/Vienna and SCC/Stockholm - play virtually no role in arbitration proceedings with a connection to Africa. In its 2020 statistics, the SCAI listed Africa as the country of origin of the parties without further specification under the heading "Other", the SCC indicates only one arbitration with a

[42] https://www.lcia.org/News/lcia-news-annual-casework-report-2020-and-changes-to-the -lcia-c.aspx
[43] in 2019: 50%
[44] In 2019, there were still participants from African countries in 3 cases - Egypt, Côte d'Ivoire, Gabon.

party from Africa (Egypt) for the year 2019, and the 2020 statistics of the VIAC do not show any proceedings with African participation.

- Non-European Institutions: HKIAC and SIAC

  At the renowned Asian arbitral institutions, no or only very few arbitrations with an African connection have been conducted so far. In its 2020 statistics, the HKIAC/Hong Kong does not list an African country in the top 10 under the heading "Origin of Parties" and not a single African arbitrator under the heading "Origin of Appointed Arbitrators". The situation is very similar at the SIAC/Singapore: the Annual Report 2020 lists only 41 Africa-related cases among the 1080 new cases and not a single African arbitrator in the category “origin of appointed arbitrators”.

6. Identification of the African arbitration institutions that are fundamentally suitable for cooperation in the sense of the project idea, with evaluation of their respective procedural rules and organizational structures.

This study was initially intended to focus on Ethiopia, Côte d'Ivoire, Ghana, Morocco, Senegal and Tunisia, which were designated as "reform partnership countries" in the "Marshall Plan with Africa" of the BMZ (German Federal Ministry for Economic Cooperation and Development). In the course of preparing the project study, however, it became apparent that it would make sense to expand this group. In the first step of the study, therefore, all African countries that are the focus of the G20 initiative "CwA - Compact with Africa", which was initiated in 2017 under the German presidency, were included. In addition to the reform partnership countries already mentioned, these are Egypt, Benin, Burkina Faso, Guinea, Rwanda and Togo. The next step was to focus on the arbitral institutions identified in the Survey as "top African arbitral centres".

As such, after consultation with Prof. Dr. Emilia Onyema - the author of the Survey[45] -, the Secretaries General of the leading African arbitral institutions were invited to a video call, as follows:

- CRCICA (Egypt): Dr Ismail Selim
- AFSA (South Africa): Lindi Nkosi-Thomas[46]
- KIAC (Rwanda): Victor Mugabe
- NCIA (Kenya): Lawrence Muiruri Ngugi

[45] See fn. 3

[46] Ms Nkosi-Thomas is the Chairperson of the AFSA Municipal Division.

- LCA (Nigeria): Oluwatosin Lewis
- CIMAC (Morocco): Hicham Zegrary
- CCJA (Ivory Coast): Narcisse AKA

The invitation met with great interest: with the exception of the CCJA, all the arbitration institutions contacted agreed to participate. The project idea was presented and met with clear interest from all participating arbitration institutions. However, it also became clear that only cooperation on an equal footing could be considered.

7. Cursory country reports

The following short country reports, limited to the essentials, are presented on the African arbitration institutions identified as leading and fundamentally interested in the project idea. The information contained in these reports is based on information provided by the arbitration institutions contacted, which was compared with publicly available sources. The relevant criteria were the aforementioned CIArb 2015 London Centenary Principles:

a. Rwanda

Literature: *Didas M.Kayihura, country report "Rwanda", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021; Fidele Masengo, A Regional Success Story: The Development of Arbitration in Rwanda, 2017*

- Arbitration institutions

In Rwanda, the only (so far) independent arbitration institution is the KIAC - Kigali Arbitration Centre[47] established by Law No 51/2010 ("KIAC Law") in the capital Kigali. It commenced its activities in 2012. Its arbitration rules ("KIAC Arbitration Rules 2012") comply with international standards and are based on the UNCITRAL Model Arbitration Rules: the deviations are mainly due to the adjustments required for institutional arbitration. The KIAC Arbitration Rules exist in English, French and the national language Kinyarwanda.

Per end of November 2021, KIAC Secretary General Victor Mugabe put the total number of arbitration proceedings administered so far by KIAC at 190; 40% of these were international proceedings with participants from more than 20 countries (although it remained open whether there were also non-African participants).

[47] https://kiac.org.rw

- Legal framework

  The "Law on Arbitration and Conciliation in Commercial Matters" (Law No. 005/2008 of 14 February 2008 - hereinafter referred to as "Rwanda Arbitration Law") in force in Rwanda implements - with regard to arbitration - the UNCITRAL Model Law as amended in 2006 almost word for word[48] . It applies equally to national and international arbitration proceedings.

  Rwanda joined the New York Convention in 2008.

- Independent, competent state judiciary and advocacy, education and training provision

  The jurisdiction of the state judiciary in Rwanda is considered to be exceptionally arbitration-friendly. This is particularly true for the Commercial Court (and, at the appellate level, the Commercial High Court) in Kigali, which since 2018 has exclusive jurisdiction nationwide for annulment actions against arbitral awards, but also for recognition and enforcement proceedings. KIAC Secretary General Victor Mugabe stresses that the Commercial Court and Commercial High Court have never had to set aside an arbitral award[49] issued under the KIAC Arbitration Rules.

  On its website, the KIAC maintains a "List of Domestic Arbitrators" with - as of February 2022 - 58 names, mostly lawyers. According to the application form, admission to the list requires proof of qualified arbitration training and practical arbitration legal experience. There is also a "List of International Arbitrators".

  KIAC regularly offers introductory courses ("Introduction to International Arbitration") and training courses ("Accelerated Route ...") open to both the legal profession and the judiciary. There are also annual training programs specifically for the judiciary, run jointly by KIAC and the state judicial authorities.

- Representation, selection and immunity of arbitrators

  Legal representation in arbitration proceedings, as well as the free choice of a domestic or foreign party representative, are regulated both in the Rwanda Arbitration Law - there Art. 19 para. 1 - and in the KIAC Arbitration Rules, Art. 6 last paragraph, Art. 16 and Art 24 of the KIAC Arbitration Rules 2012.

[48] Official Gazette of the Republic of Rwanda, https://www.international-arbitration-attorney.com
[49] whether this is a good or bad sign in terms of arbitration and the rule of law remains to be seen.

Art. 47 of the KIAC Arbitration Rules 2012 "Exclusion of Liability" explicitly guarantees immunity - also for arbitrators - from civil claims for acts and omissions made in good faith in the course of the arbitration.

- Accessibility, security and equipment of the place of arbitration

  Kigali cannot be reached by direct flight from Germany (at least not at present), but it can be reached with a stopover via Amsterdam (from there by KLM direct) or via Addis Ababa or Nairobi.

  Africa experts unanimously describe Kigali as "very clean and orderly" and "extremely safe by African standards".

  The KIAC has its own premises for conducting arbitration proceedings.

- Ethical principles

  The "Code of Conduct for Arbitrators" posted on the KIAC website is limited to the essentials and complies with international standards. Art. 16 of the KIAC Arbitration Rules 20212 and Art. 20 of the Rwanda Arbitration Law contain detailed rules on the independence and impartiality of the arbitrator in accordance with international standards.

- Enforceability

  As mentioned above, Rwanda has been a member state of the New York Convention since 2008. The very arbitration-friendly Commercial Court in Kigali has exclusive jurisdiction for the judicial recognition and enforcement of foreign (as well as domestic) arbitral awards.

b. Egypt

Literature: *Mohamed Abdel Raouf, country report "Egypt", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021; Christian Uhle, country report "Egypt", in Salger/Trittmann, Praxishandbuch Internationale Schiedsverfahren, C.H.Beck 2019; Werner Janehl, Assessment Report of arbitration centres in Cote d'Ivoire, Egypt and Mauritius, as prepared for the African Development Bank, 2014.*

- Arbitration institutions

  The aforementioned CRCICA - Cairo Regional Centre for International Commercial Arbitration is not the only[50] arbitration institution in Egypt, but it is by far the most important. Based in Cairo, it has been active since 1979 and, according to its own information, administers an average of 80 new proceedings annually with a 35%-share of proceedings with foreign participation, according to CRCICA Secretary General Dr. Ismail Selim.

  The 2011 version of the CRCICA Arbitration Rules is available in English, French and Arabic. They are based on the 2010 version of the UNCITRAL Model Arbitration Rules: the deviations are mainly due to the adaptations required for institutional arbitration. The CRCICA has been working for some time on updating its arbitration rules, which were planned for 2021 but have not yet been published.

  It is also noteworthy that since 2012, the CRCICA has maintained an African Hearing Centre for sports arbitration based on an agreement with the CAS (Court of Arbitration for Sport, Lausanne).

- Legal framework

  The Arbitration Law in force in Egypt, Law No. 27/1994 Promulgating the Law Concerning Arbitration in Civil and Commercial Matters, with Supplementary Law 9/1997, (hereinafter referred to as the "Egypt Arbitration Law") dates from 1994[51]. It is essentially based on the UNCITRAL Model Law (1985 version) and regulates both international and national arbitration proceedings[52]. Grounds for setting aside arbitral awards are set out in Art. 53 of the Egypt Arbitration Law and are interpreted restrictively by the competent Egyptian courts.

  For some time now, a new version of the Egypt Arbitration Law has been under discussion in Egypt in the sense of an adaptation to the UNCITRAL Model Law 2006. The subject of the bill is an amendment to the rules on jurisdiction for, amongst others, decisions on emergency-motions but also legislation on multiparty proceedings.

  Egypt joined the New York Convention in 1959.

[50] the AAL African Arbitration Atlas also lists the SHIAC Sharm El Sheik International Arbitration Centre, https://shiac.com

[51] https://crcica.org/FilesEnglish/ArbitrationRefrence_2016-11-01_09-12-31-298431.pdf

[52] Due to a successful constitutional complaint, the jurisdiction to rule on challenges was transferred to the ordinary courts in 2000.

- Independent, competent state judiciary and advocacy, education and training provision

  Arbitration as a method of dispute resolution has a long tradition in Egypt and enjoys a high level of acceptance. According to consistent reports, the state judiciary in Egypt is considered to be consistently arbitration-friendly.

  More than 800 domestic and foreign arbitrators are listed on a CRCICA list of arbitrators, which can be found on the website according to subject area.

  The CRCICA offers ongoing courses on arbitration, including in cooperation with the Egyptian branch of the CIArb, which is based at the CRCICA's headquarters.

- Representation, selection and immunity of arbitrators

  The parties may be represented in arbitration proceedings by domestic or foreign lawyers or other persons without any restrictions. They are also free to select and appoint their arbitrators: the aforementioned list of arbitrators maintained by the CRCICA is merely a suggestion without any obligation.

  Art. 16 of the CRCICA Arbitration Rules explicitly provides for an exclusion of liability under the title "Exclusion of Liability", which applies to acts and omissions of arbitrators in the performance of their duties.

- Accessibility, security and equipment of the place of arbitration

  Cairo is very easy to reach by plane from numerous European cities. The security situation is considered reasonably stable: in October 2021, the state of emergency that had previously lasted almost 4 ½ years was lifted.

  The CRCICA has sufficient, technically well-equipped facilities for conducting arbitration proceedings and conferences.

- Ethical principles

  The CRCICA arbitration does not have a separate Code of Ethics. Reference is made to the provisions in the CRCICA Arbitration Rules, there Art. 11 to 13, with disclosure principles of the arbitrators with regard to their impartiality and independence, as well

as the general principle in Art. 11.4. that "*the arbitrator shall avoid any act or behavior likely to hinder the deliberations or to delay the resolution of the dispute*".

- Enforceability

  Egyptian courts are also generally considered to be arbitration-friendly in recognition and enforcement proceedings. However, it is reported that these proceedings - especially with regard to foreign arbitral awards - not only take up to 1 year, but are also overpriced due to high costs.

c. Nigeria

Literature: *Emilia Onyema & Isaiah Bozimo, country report "Nigeria", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021; Simon Ejiofor Ossai, "Is the Nigerian Arbitration and Conciliation Act Suitable to Construction Disputes", 2021; Ademola Bamgbose, "The Proposed Amendment of Nigeria's Federal Arbitration Law could see the Arbitration Landscape in Nigeria improve Significantly!", 2021, 2020*

- Arbitration institutions

  Nigeria is considered "*one of the major arbitration hubs in* Africa"[53] . The supposedly busiest African arbitration institution is the "ICAMA - International Centre for Arbitration and Mediation" based in the capital Abuja[54] . However, it does not have its own arbitration rules, but only operates as a hearing center and conference service provider, usually for purely domestic ad hoc proceedings. According to its own information, ICAMA administered a total of 165 proceedings between 2012 and 2020.

  The independent LAC - Lagos Court of Arbitration[55] in Lagos, which has been in existence since 2012 and reports on 24 proceedings it administered in the period 2016 to 2020, is, according to the Survey, particularly worthy of mention. However, only one of these proceedings had an international dimension. Its arbitration rules ("LCA Arbitration Rules 2018") comply with international standards and are based on the UNCITRAL Model Arbitration Rules: the deviations are mainly due to the adjustments required for

[53] see Survey, page 14
[54] https://www.icama.com

[55] https://www.lca.org.ng

institutional arbitration. The LCA Arbitration Rules 2018 exist - as far as can be seen - only in English.

- Legal framework

  The Arbitration and Conciliation Act (ACA) Chapter A18 LFN 2004 in force in Nigeria dates back to 1988 (hereinafter referred to as "Nigeria ACA")[56] . In its part relating to arbitration, it is essentially based on the UNCITRAL Model Law (1985 version) and regulates both international and national arbitration proceedings[57] .

  Discussions are going on for quite some time in Nigeria on a long overdue revision of the Nigeria ACA: a draft law that is already available is largely oriented towards the UNCITRAL Model Law 2006 and provides, among other things, for the introduction of regulations on the emergency arbitrator and on the financing of arbitration proceedings: both do not exist in Nigerian legislation so far. Also, a very delicate regulation is to be abolished, which allows without further definition "*where there has been misconduct on the arbitrator's part*" or "*where the arbitral proceedings, or award, have been improperly procured"* to suffice as grounds for setting aside an arbitral award.

  Nigeria joined the New York Convention in 1970.

- Independent, competent state judiciary and advocacy, education and training provision

  The LCA describes the jurisprudence of Nigerian courts as basically arbitration-friendly: the defense to arbitration on the basis of an effective arbitration agreement is recognized and judicial interference in arbitration proceedings is also otherwise reduced to the permissible and necessary minimum. Other sources share this assessment only to a limited extent and explicitly regret that, in not infrequent individual cases, court decisions have led to a decidedly arbitration-unfriendly interpretation of the Nigeria ACA: "*inconsistent court decisions remain a* challenge"[58].

  Further, to be emphasized is the extraordinarily long duration of proceedings for the recognition and enforcement of arbitral awards, which can take up to 5 years in some cases.

[56] https://www.lawyard.ng/wp-content/uploads/2015/11/ARBITRATION-AND-CONCILIATION-ACCT-2004.pdf
[57] As Nigeria is a federal republic with 36 states and one capital district, there are also arbitration laws at the state level, such as the Lagos State Arbitration Law of 2009, which is based on the UNCITRAL Model Law 2006.
[58] for details see Onyema/Bozimo op. cit.

A "Lagos Court of Arbitration List of Neutrals" is available on the website of the LCA, on which currently (as of February 2022) a total of 40 "Domestic Arbitrators" and 23 "International Arbitrators" are listed, most of them on the basis of corresponding further training / proof as "FCIArb - Fellow of the Chatered Institute of Arbitrators". Qualifications for inclusion in the "List of Neutrals" include practical experience in arbitration as well as proof of professional knowledge.

The LCA offers seminars for training and further education in the field of arbitration in its "LCA Training School", with introductory courses ("Beginner Class") as well as postgraduate courses ("Master Class"). These courses are open to both the legal profession and the judiciary.

- Representation, selection and immunity of arbitrators

  Article 6 of the LCA Arbitration Rules 2018 provides that "*a party may be represented or assisted by a person chosen by them"*. Therefore, and also because of the provision in Art. 4 of the Arbitration Rules to the Nigeria ACA ("*the parties may be represented by legal practitioners of their choice"*), the LCA is of the opinion that representation of the parties by legal practitioners chosen by them - i.e. also foreign legal practitioners - is in principle guaranteed. This might be true for international arbitration proceedings, but for purely Nigerian-national ("*domestic*") arbitration proceedings rather doubtful[59] .

  Section 7 of the Nigeria ACA guarantees the right of the parties to freely choose their arbitrators.

  The Nigeria ACA does not contain a provision on arbitral immunity, but this is guaranteed for the LCA at the state level by the Lagos State Arbitration Law of 2009, section 18(1): "*An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of the arbitrator's functions as arbitrator unless the act or omission is determined to have been in bad faith*".

- Accessibility, security and equipment of the place of arbitration

  Lagos is one of the most populous cities in Africa, with over 20 million inhabitants in the metropolitan region. It is easily accessible from Frankfurt by direct flight.

  Special caution should be given to the status of security. According to the "Partial Travel Warning" issued by the German Federal

[59] for details see Onyema/Bozimo op. cit.

Foreign Office dated 07.02.2022, travel to the northern regions of Nigeria is "strongly advised against". It warns of terrorist attacks and kidnappings. Overall, the crime rate is considered to be “very high, with a continuous deterioration in recent years"[60] . Lagos itself is sometimes described as "probably the most chaotic city in the world"[61] .

The LCA is based at the ICAA - International Centre for Arbitration ADR - and has premises there for arbitration, conferences, etc.

- Ethical principles

  As part of their confirmation in an arbitration administered by the LAC, arbitrators must undertake to comply with the rules of the detailed "Lagos Court of Arbitration Code of Ethics and Standards of Conduct for Arbitrators and Mediators". This also applies before inclusion in the above-mentioned "List of Neutrals" maintained by the LAC.

- Enforceability

  As mentioned above, Nigeria acceded to the New York Convention in 1970. This is generally respected and implemented by the Nigerian courts in the context of recognition and declaration of enforcement proceedings of foreign arbitral awards, in the first instance with a (just about acceptable) duration of proceedings of up to 12 months. However, the duration of proceedings in the second instance is certainly not acceptable with up to 5 years.

d. Kenya

Literature: *Wairimu Karanja, country report "Kenya", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021; Kariuki Muigua, "Looking into the Future: Making Kenya a Preferred Seat for International Arbitration", 2020*

- Arbitration institutions

  There are several arbitration institutions in Kenya. These include the CIArb - Chartered Institute of Arbitrators Kenya Branch, which has its own recently revised arbitration rules based on the UNCITRAL

[60] Federal Foreign Office Security Advisories as of February 2022, https://www.auswaertiges-amt.de/de/aussenpolitik

[61] according to the Spiegel, article from September 2021: "A week in the most chaotic city in the world".

Model Arbitration Rules ("The Chartered Institute of Arbitrators (Kenya Branch) Arbitration Rules 2020").

However, the most renowned national and independent arbitral institution is the NCIA - Nairobi Centre for International Arbitration[62] in the capital Nairobi, established by the Nairobi Centre for International Arbitration Act No. 26/2013 ("NCIA Act"). Its field of activity is not limited to arbitration, but explicitly includes other forms of out-of-court dispute resolution, in particular mediation. Its arbitration rules ("NCIA Arbitration Rules 2015, in the revised version of 2019") comply with international standards and are based on the UNCITRAL Model Arbitration Rules: the deviations are mainly due to the adjustments required for institutional arbitration. The NCIA Arbitration Rules are based on the UNCITRAL Model Arbitration Rules. As far as can be seen, the NCIA Arbitration Rules exist only in English.

As per end of November 2021 NCIA Secretary General Lawrence Muiruri Ngugi estimated the number of new arbitral proceedings administered by the NCIA each year at 15 to 20 cases, some of them had an international connection, but so far only from other African countries and from China. In order to improve its international visibility, the NCIA has concluded a MoU with the Egyptian CRCICA (see the country report "Egypt") and a cooperation agreement with the South African CAJAC (see the country report "South Africa"[63]).

- Legal framework

The Arbitration Act No 4 of 1995 ("Kenya Arbitration Act"), as amended by the Arbitration Amendment Act No 11 of 2009, is the applicable arbitration law in Kenya. It is based on the UNCITRAL Model Law (1985 version) in its essential aspects and regulates international and national arbitration proceedings equally.

Kenya acceded to the New York Convention in 1989. In this context, it should be emphasised that the validity of international treaties ratified by Kenya is explicitly anchored in the Kenyan Constitution, Art. 2 (6).

[62] https://ncia.or.ke
[63] See below at 7. e.

- Independent, competent state judiciary and advocacy, education and training provision

  The state judiciary in Kenya is considered to be predominantly arbitration-friendly, with essentially extensive and strict compliance with the statutory provision in section 10 of the Kenya Arbitration Act: "*Except as provided in this Act, no court shall intervene in matters governed by this Act*". The High Court of Kenya is the court of first instance for arbitration-related court proceedings, with the Court of Appeal and the Supreme Court as appellate courts.

  The NCIA maintains a "Panel of Arbitrators" which is open to domestic and foreign persons. In addition to foreign arbitrators, numerous Kenyan lawyers are also listed [64] . Admission is based on the "Arbitrator Panel Status Standard (2021)", which provides for detailed professional and personal qualifications of the candidate.

  On the basis of its mandate under the NCIA Act, Art. 5, the NCIA, partly in cooperation with the aforementioned CIArb Kenya Branch, offers training courses on arbitration, which are open to lawyers, ordinary judges and other third parties alike.

- Representation, selection and immunity of arbitrators

  Section 25 (5) of the Kenya Arbitration Act ensures that *".... the parties may appear or act in person or may be represented by any other person of their choice"*. This principle is reinforced in Rule 21 of the NCIA Arbitration Rules 2015 (2019): "*A party may be represented by a legal practitioner or any other representative*".

  The free choice of arbitrator - also with regard to his/her nationality - is guaranteed in Section 12 of the Kenya Arbitration Act ("*No person shall be precluded by reason of that person's nationality from acting as an arbitrator, unless otherwise agreed by the parties*") as well as the rules on the constitution of the arbitral tribunal in Rule 7 of the NCIA Arbitration Rules 2015 (2019).

  Section 16B "Immunity of Arbitrator" of the Kenya Arbitration Act and Rule 35 of the NCIA Arbitration Rules 2015 (2019) "Exclusion of Liability" govern the immunity of the arbitrator.

- Accessibility, security and equipment of the place of arbitration

  Kenya with its large "Nairobi International Airport" - an African hub of international air traffic - is very easy to reach.

[64] For details see https://ncia.or.ke/wp-content/uploads/2021/04/6.-2019-20-Annual-Casework.pdf

However, there are certain doubts about security in the country: "*Kenya has had an unprecedented level of insecurity from both internal and external forces such as the Somali Islamist group al-Shabaab ... the perception that the larger horn of Africa is unsecure still affects Kenya's rating*".[65]

The NCIA has its own, technically well-equipped premises for conducting arbitration proceedings.

- Ethical principles

  The NCIA publishes the "NCIA Code of Conduct for Arbitrators 2021"[66] with very detailed rules, also on issues of corruption.

- Enforceability

  As mentioned above, Kenya has been a member state of the New York Convention since 1989, the provisions of which are part of Kenya's legislation according to Art. 2 (6) of the Constitution. The details are regulated in Art. 37 of the Kenya Arbitration Act, which reproduces the provisions of Art. 5 of the New York Convention largely word-for-word, but with a notable addition: a further ground for refusing recognition and enforcement of foreign arbitral awards is that "*the making of the arbitral award was induced or affected by fraud, bribery, corruption or undue influence*".

  The Kenyan state judiciary is considered to be essentially arbitration-friendly with regard to the enforcement of arbitral awards.

e. South Africa

Literature: *Lise Bosman, country report "South Africa", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021; David Butler, "Attaining Maturity: South Africa's Transition to an Interna tional Arbitration Friendly Jurisdiction", 2020*

- Arbitration institutions

  In South Africa, there is a large number of arbitration institutions, some of which are sector- or law area-specific (for more details, see

[65] Kariuki Muigua op. cit.; the Federal Foreign Office expresses a similar opinion as of February 2022, see "Security advice".
[66] https://ncia.or.ke/wp-content/uploads/2021/07/3.-NCIA-CODE-OF-CONDUCT-FOR-ARBITRATORS-2021.pdf

the above-mentioned "List" and Bosman, op. cit.). The only independent arbitration institution with (significant) international business is the AFSA Arbitration Foundation of South Africa, founded in 1996 and based in Sandton (near Johannes burg)[67] , where the otherwise independent CAJAC China-Africa Joint Venture Arbitration Centre, founded in 2015 and specifically targeting Chinese-African disputes, is also located[68].

The recently revised and further modernized AFSA Arbitration Rules ("AFSA International Arbitration Rules 2021") comply with international standards and are closely aligned with the LCIA Arbitration Rules 2020. As far as can be seen and officially, the AFSA International Arbitration Rules are only available in English.

As per end of November 2021 the Vice-Chairman of the AFSA-SADC Division, Stanley Nyamanhindi, put the number of international arbitrations administered by AFSA since 2017 - the time of the entry into force of the SA International Arbitration Act - at "over 80": this is in line with the data in Bosman op. cit. which reports 75 cases with an international element as of mid-2021.

- Legal framework

The International Arbitration Act 15 of 2017 (hereinafter referred to as the SA International Arbitration Act), which is applicable in South Africa, implements the UNCITRAL Model Law as amended in 2006 by reference to with only a few differences[69] . It applies only to international commercial arbitration. In addition, there is the Arbitration Act No. 42 of 1965, which regulates domestic arbitration.

South Africa joined the New York Convention in 1976.

- Independent, competent state judiciary and advocacy, education and training provision

According to consistent reports, the South African judiciary is traditionally arbitration-friendly: in a decision dating back to 2009, the Constitutional Court emphasized that "*courts should be careful not to undermine the achievement of the goals of private arbitration*".

[67] https://arbitration.co.za
[68] https://cajacjhb.com However, CAJAC is apparently not (yet) a success. According to - confidential - information, it has not administered a single case so far
[69] https://www.gov.za/documents/international-arbitration-act-15-2007-20-dec-2017-0000#

AFSA maintains both a *Domestic Panel of Arbitrators* and an *International Panel of Arbitrators*, each with a large number of lawyers listed there with arbitration experience.

Within the framework of its AFSA Training Department, AFSA, in close cooperation with the University of Pretoria, offers training courses in the field of arbitration. The courses are also open to judges.

- Representation, selection and immunity of arbitrators

  Each party may be represented in the arbitration by one or more third parties, Art. 26 (1) of the AFSA International Arbitration Rules.

  The parties are free to choose the arbitrators, also with regard to their nationality.

  The immunity of arbitrators is guaranteed by Chapter 2 Art. 9 (1) of the SA International Arbitration Act and Art. 37 of the AFSA International Arbitration Rules 2021.

- Accessibility, security and equipment of the place of arbitration

  According to the Survey, the South African cities of Johannesburg and Cape Town are among the "top African cities for arbitration"[70] . Both cities are very easy to reach from Germany by direct flight.

  South Africa has a comparatively high crime rate. However, a stay is largely safe if the elementary safety advices are respected.

  AFSA has premises suitable for conferences and arbitration in Johannesburg, Cape Town, Pretoria and Durban.

- Ethical principles

  AFSA does not have its own Code of Conduct, but refers to the *IBA Guidelines on Conflicts of Interest in International Arbitration*.

  Annex 2 of the AFSA International Arbitration Rules 2021 contains "*Guidelines for Party Representatives*". According to Art. 26 (4) of the AFSA International Arbitration Rules, the parties to an arbitration administered by AFSA must ensure that the representatives they appoint have undertaken to comply with these Guidelines.

[70] See above at 5. d.

- Enforceability

  The enforceability of foreign arbitral awards is governed by Chapter 3 of the SA International Arbitration Act, which refers to Articles 35 and 35 of the UNCITRAL Model Law. According to this, enforceability follows the rules of the New York Convention, of which South Africa has been a member since 1979.

f. OHADA region

Literature: *Gaston Kenfack Douajni & Philippe Leboulanger, "Arbitration under the Common Court of Justice and Arbitration of the OHADA Contracting States", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021; Niggemann, "Die Schiedsgerichts barkbarkeit im OHADA-Wirtschaftsraum nach der Reform von 2017", SchiedsVZ 2020, 22 ff; Achille André Ngwanza, Country Reports "Ivory Coast" and "Senegal", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 2021*

It was already mentioned above that the CCJA - Common Court of Justice and Arbitration in Abidjan / Côte d'Ivoire might be other options for a cooperation. Further, the arbitration institutions of individual OHADA member states might be interested in the project idea. Insofar one could think of Côte d'Ivoire and Senegal in particular, with their essentially stable legal framework with regard to arbitration: both countries are member states of the New York Convention (Côte d'Ivoire since 1991, Senegal since 1994), and in both countries the OHADA Uniform Arbitration Act of 2017, which approximates the UNCITRAL Model Law, applies.

In Côte d'Ivoire, one could think of the CACI - Cour d'Arbit rage de Côte d'Ivoire[71] and in Senegal of the CAMC - Centre d'Arbitrage et de Médiation et de Conciliation de Dakar[72] . However, hardly anything is known about either of these institutions with regard to the administration of arbitration proceedings with an international dimension. They are also not mentioned in the Survey.

[71] www.courarbitrage.ci
[72] https://arbitragesenegal.com

8. Evaluation of the results and proposals for further action

a. Particularly suitable arbitral institutions

During the research for this project study, the African arbitration institutions in Egypt - CRCICA -, in Kenya - NCIA -, in Rwanda - KIAC - and in South Africa - AFSA - proved to be particularly suitable in terms of the project idea. The comparatively good legal and local framework conditions at the seat of these arbitration institutions are decisive for this assessment. Further, the constructive and quick support of the respective Secretaries General within the framework of this study as well as their experience in the administration of international arbitration proceedings can be emphasized. All of them showed great interest in the project idea and emphasized that strengthening arbitration in Africa was a common and fundamental concern. There was no dispute in this respect. This seems plausible if one considers that African arbitration institutions are not (yet) in direct competition due to their so far primarily domestic orientation.

b. Alternatives

Furthermore, it might be worthwhile to take a look at Ghana. According to its own information, the Accra-based Ghana Arbitration Centre has so far mainly administered ad hoc arbitration proceedings and practically exclusively domestic arbitration cases[73] . However, it should be emphasized that the GiZ has already taken some initiatives in the field of arbitration through its local regional office and has good contacts with the law faculty of the University of Accra.

From the point of view of some of the interlocutors interviewed in the course of this project study, the selection of arbitration institutions should further take into account the different regions of Africa, in particular the French-speaking countries organized in the OHADA. First and foremost, the CACI - Cour d'Arbitrage de Côte d'Ivoire should be considered[74] .

c. Rule of law

The interlocutors contacted in the course of this project study agreed that strengthening arbitration - especially in view of the deficits of the

[73] Emmanuel Amofa; country report "Ghana", in Bosman (ed.), Arbitration in Africa: A Practioner's Guide, Wolters Kluwer, 2nd ed. 202

[74] See above at 7. g.

state judiciary[75] - can make a significant contribution to strengthening the rule of law and economic stability.

d. Education and training

The importance of training and further education of African lawyers, state judges and arbitrators cannot be overestimated, especially with regard to the importance of adhering to ethical principles.

e. Role of GIZ

GIZ has an exceptionally good reputation in Africa. It is represented by regional offices in the countries where the arbitration institutions mentioned in this project study are located - as well as in many other African countries. Depending on their respective priorities, these offices may offer starting points for an initiative to strengthen arbitration.

Within the framework of a cooperation with the GIZ involving its African country offices, the following measures and initiatives could be of interest:

- Training of lawyers and arbitrators
- Support for Moot Courts and Premoots
- Sponsorships and twinning models with (Hamburg) law firms and institutions
- Scholarships
- Cooperation with African universities
- Training of state judges
- Initiation of and support for African legislative projects to strengthen arbitration.
- Enhancement of perceptibility of arbitration as an instrument for strengthening the rule of law in Africa
- Strengthening economic and thus social stability.

[75] For more details, see 4. b. above.

f. Role of the Hamburg Chamber of Commerce

The Hamburg Chamber of Commerce could play an outstanding role in the implementation of the project idea. It has a high reputation as an institution and by virtue of its integration in the German Chamber of Commerce organization. The German chambers of commerce in African countries should also be taken into account: they are the contact point for the German economy for questions about the framework conditions in African countries, but also the contact point for African arbitration institutions.

Of particular importance could be the role of the Hamburg Chamber of Commerce - via HIAC - in the framework of a cooperation model with African arbitration institutions, aiming to strengthen their international visibility and reputation. With the exception of the CRCICA and the AFSA, African arbitration institutions have so far mainly administered domestic and regional proceedings. The prospect of opening up access to arbitration proceedings with German / possibly European participation, especially for small and medium-sized enterprises, through cooperation with HIAC is interesting, as the reactions to the project idea show.

What form the cooperation may take in detail must be left to further discussions and the realization of the project.

Hamburg, March 2022

LawCom Institute GmbH

signed Friedrich-Joachim Mehmel signed Dr. Jan Curschmann