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The challenges and opportunities of arbitrating in Africa

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An article describing the significant evolution of Africa's arbitration landscape, examining both the opportunities and the challenges shaping dispute resolution across the continent. This article covers the surge in global attention, the growth of arbitral institutions, and the expanding expertise among African practitioners. It highlights key developments, including widespread legislative modernisation aligned with the UNCITRAL Model Law and a strengthening pro-enforcement judicial approach toward arbitral awards. The ongoing challenges it addresses include fragmentation caused by institutional proliferation, high costs, and the gradual implementation of the African Continental Free Trade Area (AfCFTA) dispute settlement framework. This article further considers the emergence of third-party funding as both a solution to cost barriers and a source of new regulatory questions, while also assessing the progress made in improving diversity and representation.

Introduction

Africa's arbitration landscape has evolved significantly during the last several years, marked by new challenges and remarkable opportunities. This article explains the arbitration of African disputes, encompassing those involving African parties or investments and proceedings seated or conducted across the continent.

The past decade and a half has seen the rise of new institutions, modernised legal frameworks, an increasing pro-enforcement approach (including from the judiciary), and enhanced practitioner expertise, all of which have positioned Africa as an increasingly confident and credible player in the global arbitration arena. This has coincided with persistent and emerging challenges on matters ranging from institutional proliferation and the safety of African seats to the implementation of continental integration, high costs, and the regulation of third-party funding. These, in addition to still-limited diversity and representation, continue to shape the practice and uptake of arbitration across the continent.

The Opportunities

A Surge in Global Attention and Institutional Growth

Africa's arbitration ecosystem has never been more visible on the world stage. Today, cities such as Cairo, Nairobi, Johannesburg, Lagos, and Kigali are emerging as preferred arbitral seats on the continent, alongside traditional global centres like London and Paris. This evolution reflects both the growing confidence of African parties in arbitration and the strengthening of African arbitral institutions, which now number close to one hundred across the continent, including these, to name a few:

- Arbitration Foundation of Southern Africa (AFSA).
- Cairo Regional Centre for International Commercial Arbitration (CRCICA).
- Kigali International Arbitration Centre (KIAC).
- Lagos Court of Arbitration (LCA).
- Nairobi Centre for International Arbitration (NCIA).

Disputes involving African parties are also becoming increasingly prevalent in the global arena. The 2024 Annual Casework Report of the London Court of International Arbitration (LCIA), for example, noted that parties from Africa represented the second-highest proportion of parties in LCIA arbitrations and made up a higher percentage of the LCIA's caseload than parties from the United Kingdom. Similarly, disputes involving states in sub-Saharan Africa made up the largest share of cases registered by the International Centre for Settlement of Investment Disputes (ICSID) in 2025 and totalled 24 percent (ICSID Annual Report 2025).

Institutions including the LCIA and the International Chamber of Commerce (ICC) have also expanded their presence in Africa through dedicated regional commissions and user councils. The ICC Africa Commission and the LCIA African Users' Council have become central pillars in advancing arbitration practice across the continent. For example, the ICC Africa Commission was established to deepen the ICC's engagement with African users and plays a strategic role in capacity-building, policy development, and advocating for institutional reform. It organises training workshops for practitioners, works with governments to modernise arbitration laws, and promotes African representation on ICC tribunals and working groups. The ICC Africa Commission also serves as a bridge between African institutions and the ICC Court, ensuring that local realities inform global arbitration policy.

Relatedly, the LCIA African Users' Council has created a vital platform for knowledge exchange, regional dialogue, and user feedback, connecting African practitioners to global best practices while championing the inclusion of African arbitrators and counsel in LCIA-administered cases.

Through conferences, roundtables, and practical training initiatives, both bodies have helped:

- Professionalise the practice of arbitration in Africa.
- Foster collaboration among regional institutions.
- Amplify Africa's voice in the international arbitration community.

Similarly, major annual conferences, including the East Africa International Arbitration Conference (EAIAC), Nairobi Arbitration Week, Kigali Arbitration Week, and ICC Africa conferences draw participants from across the globe. These gatherings have become platforms for learning, collaboration, and showcasing Africa's fast-maturing arbitration landscape. Notably, the 2025 ICCA Congress in Kigali symbolised Africa's growing leadership role in international arbitration.

Expanding Expertise Among African Practitioners

The calibre and visibility of African arbitration practitioners have grown significantly over the past several years. According to the 2024 SOAS Arbitration in Africa Survey, over 70 percent of African arbitration practitioners have participated in international proceedings, a dramatic increase from a decade ago. African counsel and arbitrators are now regularly appointed in high-value investor-state and commercial disputes, which demonstrates both competence and international credibility.

Programmes such as the African Arbitration Academy and regional centres like the NCIA, KIAC, and LCA have become incubators of talent. They offer trainings, fellowships, and mentorships that are steadily reducing reliance on foreign practitioners. This has led to stronger local capacity and more cost-effective arbitration across the continent.

The notable rise of African arbitration practitioners taking the lead in international arbitration proceedings can also be attributed to the growing use of local laws in the underlying contracts in dispute. Taken together with the previous knowledge transfer when international firms co-counselled with African arbitration practitioners, African practitioners are in a strong position now to capitalise on such mandates, which is a welcome trend.

Legislative Modernisation

African governments have shown an impressive commitment to modernising arbitration-related legislation. Tanzania, Sierra Leone, and Nigeria recently enacted or updated comprehensive arbitration laws aligned with the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration 1985 (*UNCITRAL Model Law*) and other internationally accepted standards of good practice in arbitration. Nigeria's Arbitration and Mediation Act of 2023 (which repeals the 1988 Act), for example, introduces modern features such as third-party funding, interim relief by emergency arbitrators, and explicit limits on

court interference, signalling Nigeria's commitment to international arbitration standards. (See Practice Note, Arbitration Procedures and Practice in Nigeria: Overview.)

Furthermore, Kenya has recently published the Arbitration (Amendment) Bill 2025 (the Bill), which proposes comprehensive reforms to the country's primary arbitration statute, in a significant move toward enhancing its dispute resolution landscape. The Bill, championed through the NCIA and supported by the Office of the Attorney General, seeks to align Kenya's arbitration framework with global best practices, improve institutional efficiency, and make the country a more attractive seat for both domestic and international arbitration. Other reforms include:

- The Bill's creation of the Arbitral Court, which is one of its most significant changes and takes over many of the functions previously handled by the High Court. This specialised court will oversee applications related to arbitrator appointments, challenges, interim measures, jurisdictional disputes, and the setting aside of awards. By concentrating arbitration-related judicial functions within a specialised court, the Bill is expected to reduce court backlogs, improve efficiency, and bring much-needed predictability to the enforcement of arbitration agreements and awards.
- The Bill's recognition of the role of emergency arbitrators. This is a progressive move that brings Kenya's framework in line with leading international arbitration rules, such as those of the LCIA, the ICC, and the Singapore International Arbitration Centre (SIAC), by allowing urgent interim relief even before a tribunal is formally constituted.
- The Bill's introduction of strict time limits for various steps in an arbitration, including the delivery of arbitral awards, and new rules that render most decisions of the Arbitral Court final and non-appealable. This reinforces arbitration's core principle of finality and reduces protracted arbitration-related litigation in Kenya.

In other words, the Bill represents a bold step forward for Kenya's arbitration regime. It not only adopts global best practices, such as emergency arbitrators, but also introduces local innovations like the fast-track regime and the specialised Arbitral Court. While there will be a learning curve in implementation and stakeholder alignment, the Bill signals Kenya's ambition to position itself as a leading arbitration hub in Africa.

More broadly, many African jurisdictions are modernising their arbitration legislation, which is a welcomed development to aid them in becoming more competitive as arbitral seats.

Judicial Support and Enforcement

Enforcement of arbitral awards in Africa has improved significantly over the past decade. Ten years ago, only 32 African states had ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (*New York Convention*); today, that number has risen to 42 and only 12 countries on the African continent have not yet acceded to the New York Convention, namely the Gambia, Guinea-Bissau, Chad, Congo (Brazzaville), Equatorial Guinea, Eritrea, Eswatini, Libya, Namibia, Somalia, South Sudan, and Togo.

Courts across Africa are also becoming more arbitration-friendly, with landmark decisions reinforcing respect for party autonomy and the finality of arbitral awards.

In its decision of Nyutu Agrovet Limited v. Airtel Networks Kenya Ltd & Another (6 December 2019) KLR, for example, the Kenyan Supreme Court held that although arbitral awards are generally final, a limited right of appeal exists only where a significant question of law arises that affects public interest. This carefully balanced approach preserves the principle of finality while enhancing judicial oversight in exceptional cases, signalling Kenya's maturity as an arbitration jurisdiction.

Similarly, in *Statoil Nigeria Ltd v. Nigerian National Petroleum Corporation* (2013), the Nigerian Court of Appeal upheld the validity of an arbitration clause and rejected attempts by NNPC to litigate contrary to the parties' agreement, affirming the binding nature of arbitration agreements, and limiting judicial interference.

The legal framework in South Africa, specifically Article 36 of Schedule 1 to the International Arbitration Act, 2017 (the IAA), goes a step further than the UNCITRAL Model Law by setting out two situations where the recognition and enforcement of an award would be contrary to public policy, including where:

- A breach of the tribunal's duty to act fairly occurred in connection with the making of the award, which has caused or will cause substantial injustice to the party resisting recognition or enforcement.

- The making of the award was induced or affected by fraud or corruption.

These concepts were tested in *Industrius D.O.O v IDS Industry Service and Plant Construction South Africa (Pty) Ltd.* (2021) (ZAGPJHC 528), where the South African court's stance on the enforcement of foreign arbitral awards was reaffirmed and compared with the approach adopted in Australia and the Asia Pacific region. It held that the IAA and the UNCITRAL Model Law do not provide for the court to refuse or delay the enforcement of the award on the basis that a party has instituted other proceedings that are not related to the arbitral award, or have no bearing on the finality or enforceability of the arbitral award.

This pro-enforcement trend is also reflected in the landmark case of *Betamax v. State Trading Corporation* (2021) UKPC 14, where a party applied to annul an arbitral award on the basis that the arbitration agreement was invalid and that enforcing the award would violate public policy. The Mauritian Supreme Court initially ruled that an award enforcing an illegal contract was against public policy and should be set aside. However, the Judicial Committee of the Privy Council reversed this decision, holding that the courts could not revisit the legality of the contract once the arbitral tribunal had already examined and ruled on that issue. As a result, the award was upheld as final and binding.

Additional sources of information on arbitration in Nigeria and South Africa include the following:

- *Emerald Energy Resources Ltd v. Signet Advisors Ltd, Court of Appeal* (CA/L/932/2018, Lagos, 13 November 2020), which upheld a lower court decision granting recognition and enforcement of a London-seated award, finding that the exequatur application was not time-barred.
- *Momoco International Ltd v. GFE MIR Alloys and Minerals SA (Pty) Ltd* (High Court (Gauteng), 2 June 2023), which enforced a CIETAC Beijing-seated award and rejected public policy objections about tax evasion allegations as speculative. Leave to appeal was refused and the enforcement order was kept fully operative.
- Practice Notes, Arbitration in South Africa and Enforcing arbitration awards in South Africa; and Country Q&As, Arbitration Procedures and Practice in South Africa: Overview; and Arbitration Procedures and Practice in Nigeria: Overview.

Overall, these examples mark a notable expansion in the continent's commitment to international enforcement standards: judicial deference is given to arbitration and Africa's pro-arbitration jurisprudence is consistently being strengthened. This creates a more predictable and harmonised framework for the recognition and enforcement of arbitral awards across Africa.

Diversity and Representation

Diversity remains a global challenge in arbitration, yet Africa is taking proactive and measurable steps to change that narrative. The African Arbitration Association (AfAA), established in 2018, has become the leading continental body promoting inclusivity, transparency, and collaboration within Africa's arbitration ecosystem. Through its annual African Arbitration Report, institutional partnerships, and practitioner directories, AfAA has enhanced the visibility of African arbitrators and counsel, provided data-driven insights into representation gaps, and fostered greater collaboration among regional centres.

Complementing the AfAA's work, the Africa Arbitration Academy (AAA), founded by leading African practitioners and academics, is an annual three-week programme in London that brings together selected arbitration practitioners from across Africa and provides them with specialised arbitration training provided by leading international experts in the field. This initiative has created a growing pool of highly skilled African practitioners with global exposure, many of whom have gone on to serve as arbitrators, counsel, and tribunal secretaries in high-value international disputes.

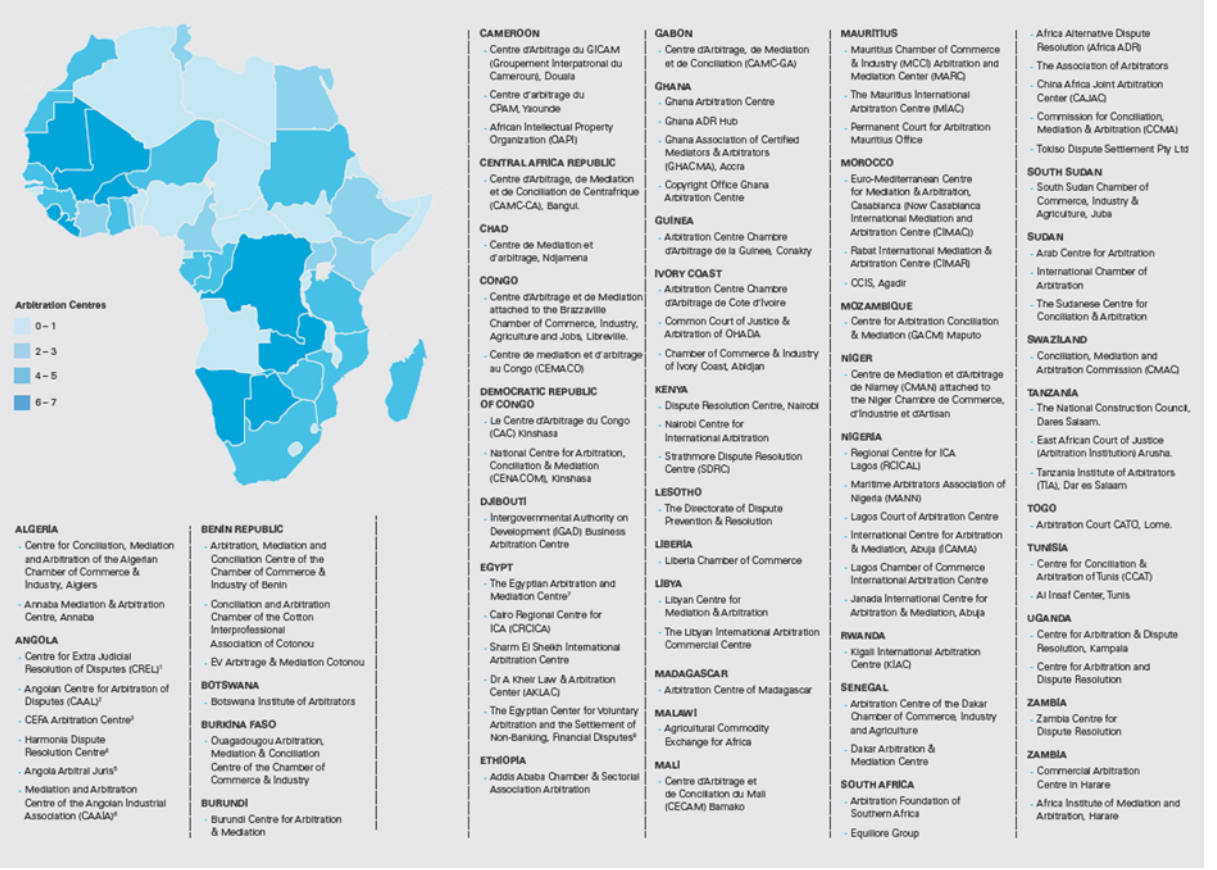
The African Promise, launched in 2019 and drafted by Kamal Shah (this article's coauthor), has further strengthened this drive toward inclusivity by committing signatories, including arbitral institutions, law firms, and practitioners, to actively appoint and recommend qualified African arbitrators in both regional and international disputes. This has contributed to a notable increase in African representation on institutional rosters and in arbitral appointments globally. Similarly, the Equal Representation in Arbitration (ERA) Pledge has accelerated gender diversity within African arbitrations, encouraging institutions and parties to adopt equitable appointment practices.

The Evolving Challenge

While the outlook is optimistic, certain structural and operational challenges continue to influence arbitration practice in Africa. These should be viewed not as setbacks but as opportunities for further growth.

Managing Institutional Proliferation

Africa now hosts nearly 100 arbitration centres, ranging from regional hubs like the AFSA and KIAC to smaller chambers attached to local bar associations or trade bodies, as shown here:



Source: Institutional arbitration in Africa: Opportunities and challenges, 2020.

While this proliferation reflects enthusiasm for arbitration, it has also created fragmentation. Some centres lack clear governance structures, sustainable funding, or modern procedural rules aligned with the UNCITRAL Model Law.

For example, in 2020, Angola, Nigeria, and South Africa had at least six arbitration institutions each and Mauritius, being one of the smallest countries in Africa, boasted three centres. The question arises: how can they set themselves apart from other African institutions, and even more so from the well-established foreign centres? Besides an institution's reputation, the key obstacle preventing African institutions from setting themselves apart appears to be the safety of the seat of the host country, defined in accordance with the London Centenary Principles as published by the Chartered Institute of Arbitrators in 2015.

By way of example, Mauritius is a country that has seemingly succeeded in becoming an established arbitration hub. While in the 2011 version of this Article we referred to the Mauritian government's backing as an example for the often passive support provided to new institutions in Africa, the country was listed (merely seven years later) as the only safe seat of arbitration in the African Union among 32 safe seats worldwide, as published by the arbitral institution Delos, following its Guide to Arbitration Places, which covered 54 jurisdictions. There is also promising case

law, including from the Mauritian Supreme Court, which held that enforcement applications must be made to the court's arbitration branch (a specially constituted three-judge panel designed to create a single body with advanced expertise in international arbitration), even where the arbitration is not governed by the country's 2008 arbitration legislation. (See Practice Note, Enforcing arbitration awards in Mauritius.)

While Mauritius has been lauded as the only African "safe seat," many other jurisdictions face uncertainty over the interaction between arbitration laws and domestic courts. This unevenness makes it difficult to market African seats consistently to international users. Institutions such as the NCIA, KIAC, and CRCICA have begun addressing these concerns by updating their procedural rules, introducing electronic filing, and establishing judicial liaison programmes, but more remains to be accomplished.

Continental Integration and the AfCFTA Framework

A further-evolving challenge lies in the development of robust legal and political frameworks to sustain Africa's economic integration agenda. A central example is the African Continental Free Trade Area (AfCFTA), whose origins date to the 19th session of the African Union (AU) in 2012, when African heads of state resolved to establish a continent-wide free trade area by 2017. Formal negotiations began in 2015 and culminated in March 2018, when 44 of the AU's 55 member states signed the agreement establishing the AfCFTA. The agreement entered into force in 2019, marking one of the most ambitious trade and economic cooperation projects in Africa's history. (See Legal Update, African Continental Free Trade Area Agreement comes into force.)

However, implementation has been gradual. As of February 2023, several signatories had yet to deposit their instruments of ratification, even as the AU heads of state adopted the Protocol on Investment to the AfCFTA (the Protocol). Although the Protocol provides for independent arbitration as one mechanism for dispute settlement, several challenges have arisen:

- The limited participation of non-state actors restricts the Protocol's scope to disputes between state parties, excluding private enterprises, civil society organisations, and individuals, who are often directly affected by trade measures. Their exclusion risks narrowing access to justice and may limit the Protocol's effectiveness in addressing commercial or investment-related disputes.
- The issue of capacity-building remains critical. Successful implementation depends on the availability of trained arbitrators, judges, and institutional staff across the continent. Yet, many jurisdictions still face shortages of skilled professionals and adequate institutional resources, constraining their ability to manage complex trade and investment disputes efficiently.

Despite these growing pains, the AfCFTA remains an impressive achievement, one that symbolises Africa's collective commitment to deeper economic integration and intra-African trade. There has also been fresh impetus to this scheme that has been slow to take off when Ethiopia, the second most populous country in Africa, began trading duty-free under the AfCFTA in October 2025, marking the first transaction under the AfCFTA. Continued negotiations, institutional strengthening, and inclusion of non-state actors will be vital to transforming the AfCFTA's framework into a truly comprehensive and credible dispute-resolution mechanism for the continent.

Costs Barriers

High arbitration costs remain a deterrent, particularly for state-owned entities and small and medium-sized enterprises. The Africa Arbitration Academy's 2022 Survey on Costs and Disputes in Africa identified costs as the second-most significant concern surrounding international arbitration after enforceability. These costs are driven largely by counsel fees and the appointment of foreign experts.

However, the emergence of third-party funding (TPF) frameworks offers an important solution. These frameworks are recognised in jurisdictions such as Sierra Leone, where arbitration legislation expressly provides for TPF in Sierra Leone-seated arbitrations and related court proceedings, setting an important precedent for regulatory clarity and investor confidence. They are also proposed in Kenya: the Bill sets out clear rules requiring funded parties to disclose the identity, beneficial ownership, and terms of agreements with third-party funders. Tribunals are empowered to order security for costs, suspend proceedings, or even terminate funding agreements that violate these provisions. Furthermore, the NCIA Council is tasked with developing a Code of Practice to regulate and set standards for third-party funding. This step not only ensures transparency but also enhances access to justice by facilitating funding for complex claims without compromising the independence of proceedings. TPF, when properly

regulated, can expand access to justice, level the playing field for smaller entities, and attract complex, high-value claims to African seats.

Third-Party Funding

Although TPF is noted as a means of addressing cost barriers, it equally raises important regulatory and ethical questions that are now emerging as a distinct challenge within Africa's arbitration landscape. While TPF has emerged globally as a mechanism for expanding access to justice and enabling parties to pursue or defend legitimate claims, its growth on the continent remains uneven and cautious. One of the key obstacles to increased investor confidence, beyond the institutional and legislative reforms discussed above, is the rise in cases brought by vulture funds against states under ICSID rules. These speculative claims, often pursued by entities purchasing distressed sovereign debt or arbitral awards, have generated concern regarding the potential misuse of funding mechanisms. This trend has been documented in both the UN Human Rights Council's 2015 Draft Progress Report on the Activities of Vulture Funds and the Impact on Human Rights, and the technical paper titled "Dealing with Uncooperative Creditors in Sovereign Debt Workouts" presented at the UNCTAD Third Conference on Financing for Development (Addis Ababa, 14 July 2015).

In this context, TPF offers both a solution and a new layer of complexity. On the one hand, a nascent funding market has begun to take shape across Africa, with several high-profile arbitrations now backed by reputable funders who view the continent as a strategic growth market. On the other hand, uptake across other African jurisdictions remains limited. This may be partly due to concerns about speculative enforcement practices, particularly where funders purchase arbitral awards or court judgments with the aim of seizing state assets, though we note that some funders have clarified that they also provide defence-side funding and funding for respondents with legitimate counterclaims. Another factor may be the low level of awareness about the benefits and safeguards associated with TPF, reflecting its relatively uncommon and unregulated status across much of the continent.

Diversity and Representation

Despite marked progress, the representation of African arbitrators and experts remains limited in global institutions. While states in sub-Saharan Africa made up the largest share of ICSID cases in 2025, only 8% of the arbitrators, conciliators, and committee members appointed by ICSID and the parties in 2025 were African. Similarly, the ICC's 2024 Dispute Resolution Statistics showed that only 35 of the ICC Court's 192 members (roughly 18 percent) were African. In contrast, 91 percent of appointments within the CRCICA in 2022 were Egyptian nationals, with the remainder primarily from Europe. This imbalance in geographical diversity is being addressed through several initiatives that aim to reflect the modern reality that African professionals are no longer peripheral but central to global discourse.

Long-Term Prospects

Africa's arbitration landscape has matured significantly over the last decade and a half, with stronger institutions, modernised legislation, increasingly supportive courts, and growing practitioner expertise and visibility. Yet the sector's long-term credibility and competitiveness will depend on how effectively stakeholders confront the core constraints identified in this article:

- Rationalising institutional proliferation and reinforcing the safety of arbitral seats.
- Converting the AfCFTA's intended goals into operational dispute-resolution capacity.
- Reducing cost barriers while ensuring transparent, responsible third-party funding.
- Accelerating meaningful diversity and representation in appointments and leadership.

Focused implementation, through sustained judicial alignment, practical capacity-building, and inclusive appointment practices, should help permanently position countries on the African continent as reliable forums for resolving complex, high-value disputes involving African parties.