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Session Three: Regional Approaches to Enforcement

Enforcement of Arbitral Awards in Sub-Saharan Africa

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Introduction

This paper examines the issues surrounding the enforcement of arbitral awards by national courts in various countries within the Sub-Saharan region of the continent of Africa. This topic is within the larger topic of arbitration and national courts which discusses the attitudes of various national courts and national laws (and by extension the country itself) to arbitration. My discussion this afternoon is limited to Sub-Saharan Africa not because the countries of North Africa¹ are not part of the African continent but because another speaker will examine the same issues as it affects the Middle Eastern and Arab countries to which the countries of North Africa neatly fit. There are 54 independent states within the African continent and of these 48 states are situated in the south of the Sahara desert.²

There are various regional groupings within the continent, both economic and otherwise. Some factors which have influenced these regional groupings include geographically location, shared colonial language (and so by extension colonial history), common currency and legal system (also part of the colonial legacy)³.

There is no room within the scope of this presentation to examine the judicial attitudes of national courts in these 48 states. I had to choose some jurisdiction for comparative purposes and to give a fairly well rounded view of what obtains in this part of the continent regarding enforcement of arbitral awards. The arbitration regimes of countries of Sub-Saharan Africa can be divided into three major strands: those states belonging to the OHADA⁴ regime (to which 16 of these 48 states belong);⁵ those

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¹ The countries of North Africa are Algeria, Egypt, Libya, Morocco, Tunisia and Western Sahara

² See Table 1 below for details.

³ Some of these regional groups include OHADA, ECOWAS, COMESA, SADC

⁴ OHADA is the acronym for *Organisation pour L'Harmonisation en Afrique de Droit des Affaires* (Organisation for the Harmonisation of Business law in Africa) which was set up by a multilateral treaty originally concluded between fourteen African states and signed in Port Louis on 17 October 1993. It currently has sixteen member states with some more African states granted observer status. See http://www.ohada.com/etat_partie.php?newlang=english

⁵ The Democratic Republic of Congo is awaiting accession to the Treaty as its seventeenth member.

states that have implemented the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and/or whose arbitration law is modelled after the UNCITRAL Model Law on International Commercial Arbitration (Model Law) to which Nigeria (and 23 other states) belong; and those states who have neither implemented the New York Convention nor adopted or adapted the Model law and are not parties to the OHADA Treaty (there 18 of these states and Sudan is examined as representing this category of states).⁶

The OHADA signatory states are predominantly of the civil law legal tradition; French speaking and all but one⁷ belong to the franc economic zone.⁸ OHADA operates a uniform law regime which upon adoption becomes automatically applicable in all its member states. Within OHADA, there is the Common Court of Justice and Arbitration (CCJA) which has final jurisdiction on matters pertaining to OHADA Uniform Acts. Nigeria is a common law jurisdiction, English speaking and home to one of the Asian –African Legal consultative Organisation (AALCO)⁹ regional centre with a large professional interest in arbitration. It is both a New York Convention and Model Law jurisdiction. The third state in my comparative analysis is Sudan which in 2005 promulgated a new arbitration law but did not adopt the Model law, is not an OHADA contracting state and is not party to the New York Convention and geographically located in the Northeast of Africa.¹⁰

An examination of the attitude of national courts to international arbitration must necessarily involve:

- The examination of the legal environment in the particular state. This involves the adoption of modern arbitration laws – laws based on or influenced by the UNCITRAL Model Law and accession to the New York Convention. Table 1 below shows those African states parties to the New York Convention, OHADA and Model Law regimes.
- The availability of knowledge on arbitration within the business, legal and judicial communities of these countries. This we can glean from publications on arbitration, educational pursuits in arbitration (as courses taught in higher education institutions and workshops/conferences organised on relevant arbitration related themes), quality of judgments of the higher courts and their pronouncements on arbitration. There are very few published judgments on arbitration particularly international arbitration available in states within Sub-Saharan Africa. The reasons for this vary but will include the fact that very few cases come before these courts, very few international arbitration references have their seat in the cities in Sub-Saharan Africa, and the courts therefore do

⁶ See Table 1 below for details.

⁷ The Democratic Republic of Congo is not a member of the Franc Zone

⁸ For details see Emilia Onyema, “Arbitration under the OHADA Regime” [2008] Int. ALR 205

⁹ The AALCO is an intergovernmental organisation made up of 47 members as at 17 November 2008 and was established for the purpose of advancing the socio-economic and political interests of African and Asian countries. Details available at <http://www.aalco.int/>

¹⁰ It is instructive to note that the following countries are neither OHADA member states nor parties to the NYC, neither are their arbitration laws modelled after the Model Law: Angola, Burundi, Cape Verde, Eritrea, Ethiopia, Gambia, Lesotho, Malawi, Mauritania, Namibia, Rwanda, Sao Tome & Principe, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland,

not have the opportunity to assist such arbitrations through relevant decisions.¹¹

- The availability of viable and active arbitration institutions and associations within the relevant state.¹²

Generally, national courts become involved in arbitration at three stages in the arbitral reference¹³:

- Before commencement of the arbitration – to uphold the arbitration agreement, give directions on the commencement of the arbitral reference and assist with the appointment of arbitrators and preservation of the assets subject matter of the arbitration to protect it from dissipation;
- During the arbitral reference after its commencement – assist the parties and the arbitral tribunal in its function of gathering evidence, challenge and removal of arbitrators and again in granting (or enforcing) interim measures or enforcing orders of the arbitral tribunal made in this regard.
- After the award has been published by the arbitrators – by recognising and enforcing the final award, possible remission of the award back to the arbitral tribunal, and entertaining proceedings to nullify or set aside the arbitral award.

My presentation is primarily concerned with the third stage of these roles of national courts – the enforcement of awards.

To examine this issue, I have divided this paper into three parts. Part one will examine the grounds for recognition and enforcement of arbitral awards contained in the relevant laws applicable in the three jurisdictions and part two will examine the grounds on which awards may be nullified or set aside in these jurisdictions. Under these two parts, each sample jurisdiction is examined in turn. Part three examines the role of the SIA and AFSIA on arbitration generally in Sub-Saharan Africa and concludes with a brief look into the future.

1. Grounds for Recognition and Enforcement of Awards

The grounds for the recognition and enforcement of awards (whether foreign or domestic) are contained in relevant arbitration laws in the three jurisdictions. The relevant applicable laws are the Uniform Arbitration Act of 11 June 1999 in OHADA jurisdictions (UAA¹⁴); the Arbitration and Conciliation Act 1988 in Nigeria (ACA¹⁵) and the Arbitration Act 2005 in Sudan (SAA¹⁶). Each of these laws also state which court has competent jurisdiction to entertain arbitration related applications. This may be dependent on the subject matter of the arbitration (especially relevant in a federation like Nigeria) and possible situs of the assets (for example in Sudan and OHADA)

¹¹ Such decisions will in themselves also evidence the attitude of such courts towards (international) arbitration, so can be termed as a case of lost chance.

¹² Table 2 below gives a list of some arbitration institutions within Sub-Saharan African states.

¹³ For more details see Emilia Onyema, "Power Shift in International Commercial Arbitration proceedings" [2004] 14 (1&2)Caribbean Law Review 62

¹⁴ Journal Officiel de L'Organisatin pour L'Harmonisation en Afrique du Droit des Affaires 11 June 1999 and primarily French speaking.

¹⁵ Chapter 19 Laws of the Federation of Nigeria volume 1 1990 page 393 and English speaking.

¹⁶ An unofficial English translation from Arabic being the official language of the Sudan

OHADA

Recognition and Enforcement of awards within any OHADA contracting state is governed by article 25 of the UAA which recognises a valid award as final and binding on the parties with *res judicata* effect and is accorded the same status as a judgment of a national court in all OHADA member states.¹⁷ As a preliminary point, some OHADA member states are also parties to the New York Convention.¹⁸ In such states, it is for the enforcing party to choose which legal regime to ground his application on.¹⁹ In those OHADA states that are not parties to the New York Convention, enforcement and recognition can only be sought under the provisions of the UAA.²⁰

To obtain enforcement of an arbitral award under the UAA, an exequatur of the award must first be granted by a competent judge in a member state. The relevant member state may be the state where enforcement is sought and this may be the member state in which the losing party has assets on which enforcement can be levied. A pertinent question arising in this regard is whether exequatur can be granted in one member state and enforcement sought in another member state where there are assets on which to levy execution. The answer is in the affirmative and explains the requirement for the grant of exequatur as a pre-condition to enforcement of the arbitral award.²¹ So the first step is to obtain exequatur of the award by establishing the existence of the award and the arbitration agreement on which it is based. The party seeking exequatur of the award shall produce the original award and arbitration agreement or authenticated copies of both the award and arbitration agreement²² to the competent court, which will then grant exequatur of the arbitral award and enter that as the judgment of the court for enforcement purposes.²³ The last requirement is that the documents (that is the award and arbitration agreement) if they are not in the French language, must be translated into French. This requirement must be interpreted as being conditional on French being the language of the national court before which exequatur and enforcement is sought. This is necessarily so since the official language of some OHADA member states is not French and a court speaks its own language.²⁴ Thus a foreign party seeking recognition and enforcement of its foreign award in an OHADA member state need to take these peculiarities into account in deciding on whether to proceed under the New York Convention (where the choice is available) or UAA.

The application for exequatur and enforcement under the UAA requires the other party to be put on notice. The only ground on which a request for exequatur and

¹⁷ See articles 20 & 21 UAA which details what should be contained in the award which shall be reasoned, in writing and duly signed.

¹⁸ These are: Benin republic, Burkina Faso, Cameroon, Central Africa Republic, Gabon, Guinea, Mali, Niger, and Senegal

¹⁹ This is because article 34 UAA preserves the obligations of its member states under such conventions.

²⁰ These states are: Chad, Comoros, Congo Brazzaville, Equatorial Guinea, Guinea Bissau, and Togo

²¹ It is the same UAA that applies in all the member states and so the same requirements for exequatur and enforcement. However, the award will need to be registered with the court of each member state where enforcement is sought as a formality and to obtain assistance with the execution by officers of the court.

²² These are the same documents required under article IV of the New York Convention.

²³ Articles 30 & 31 UAA

²⁴ Spanish is the official language of Equatorial Guinea, Portuguese is the official language of Guinea Bissau while Cameroon is both French and English

enforcement of the arbitral award shall be refused is where the, ‘award is manifestly contrary to international public policy of the member states’.²⁵ It must be noted that unlike the New York Convention where the losing party can set up article V grounds as a defence against the recognition and enforcement of the arbitral award, under the UAA, a party wishing to set aside an award will proceed by way of nullification application and not come by way of defence. The other point to note is that the public policy ground is the public policy recognised as that affecting all OHADA member states – so in effect a regional public policy just like the case in the European Union.²⁶ I shall return to the issue of public policy below. The UAA gives a third party ‘who had not been called and when the award is damaging to his rights’ the right to oppose the recognition and enforcement of the award but not to proactively seek nullification of the arbitral award.²⁷ There is no time limit when recognition and enforcement of an arbitral award may be sought under the UAA before the courts of a member state. However the applicable limitation terms will apply to the subject matter of the arbitration.²⁸

Nigeria

The ACA contains sections applicable to both domestic and international arbitration proceedings and implements the New York Convention in Nigeria. Part III of this Act applies to international commercial arbitration proceedings. Thus a convention award will be enforced under the provisions of the New York Convention.²⁹ For non convention but international arbitral awards, these will be enforced under the relevant sections of the ACA.³⁰ Thus a party seeking recognition and enforcement of its convention award in Nigeria will proceed under article IV of the New York Convention under which he is required to produce to the relevant High Court the original award and arbitration agreement or authenticated copies and where necessary duly translated into the English language being the official language in Nigeria and the language of her courts.³¹ In accordance with section 54 of the ACA where the party seeking enforcement of the award is not party to the New York Convention (or falls within the proviso to that section³²) then they can proceed under sections 48 and 51³³ of the ACA which require production of the same documents.

The losing party can apply to the competent High court with a request to refuse recognition and enforcement of an arbitral award under sections 32 (domestic) and 52 (international). It is suggested that the grounds on which a party wishes to set aside the award will determine which section he should proceed under. Section 52 contains the same grounds as listed under article 34 of the Model Law.

²⁵ See art 31 paragraph 4

²⁶ See *Eco Swiss China Time Ltd v Benetton Int'l NV* [1999] ECR I-3055

²⁷ Article 25 paragraph 4 UAA

²⁸ An example is article 274 of the Uniform Act Relating to General Commercial Law of 17 April 1997 which provides a term of two years for the commencement of an action to resolve a dispute on commercial sales

²⁹ By virtue of section 54 ACA

³⁰ Section 51 ACA

³¹ See sections 43 and 51 ACA

³² The provisos provide for reciprocity and contractual relationship reservation under the New York convention.

³³ This section is the same as article 35 Model Law and applies to arbitral awards made in any other country (and not just New York Convention states as required under article IV New York Convention)

Sudan

Article 40 of the Sudanese Arbitration Act (SAA) provides that the arbitral award shall be binding and be executed automatically. Where the arbitral award is not automatically executed, the party to the arbitral proceedings wishing to enforce such award shall make a written request to the competent court for execution of the arbitral award.³⁴ To this request shall be attached an authentic copy of the original award. The other party to the arbitral award cannot raise any defence to this request. If the party wishes to set aside the award, he can only do so through a nullity proceeding. The execution of the arbitral award can only be requested at the end of the period for seeking nullity of the award (two weeks from the date of the award) and by putting the other party on notice.³⁵ The dates contained in the SAA seek to ensure that nullity proceedings are quickly determined so that request for execution of the award can be entertained and granted. Note that where the time to apply for nullity lapses, the award will be enforced. This is very important since there are no grounds allowed in the SAA to contest an execution proceeding. Clearly this enforcement regime is not rigorous but applies only to arbitral awards emanating from domestic arbitration proceedings. Also note that the party seeking enforcement of an award in Sudan is not required to produce a copy of the arbitration agreement on which the arbitral proceedings was based, neither is he required to actively seek recognition or exequatur of the award before its enforcement.

The legal regime for the execution of international arbitral awards in Sudan is very onerous. The party seeking execution of such award is required to satisfy the competent court that³⁶:

- the award was made in compliance with the arbitration rules or law it was subjected to;
- the award had become final under the arbitration rule or law mentioned above;
- the other party has been put on notice
- the award is not inconsistent with any judgment of the courts of Sudan;
- the award is not contrary to the public policy of Sudan
- the country of origin of the award maintains a reciprocity of execution of judgments with Sudan

In effect the other party to the arbitral award can contest the request for execution by showing that any of the grounds listed above has not been proved by the party seeking execution of the international award.³⁷ This is a very different regime since the onus is on the party seeking enforcement and can be interpreted as an anti-arbitration regime. However, the party seeking enforcement is not required to produce a copy of the arbitration agreement just like in domestic arbitral award enforcement proceedings.

An examination of the grounds listed above makes the relevance of some of the grounds difficult to justify especially since it is the winning party (and not the contesting party) that has the burden of proof. Why should the award not contradict

³⁴ According to article 4 SAA the competent court here is the court with original competence to hear the dispute if it had not been submitted to arbitration. The General court in Khartoum has jurisdiction to hear all applications relevant to international arbitration unless the parties choose another court in Sudan – article 5 SAA.

³⁵ Articles 42 and 45 SAA

³⁶ Art 46 SAA

³⁷ Note that in enforcing domestic arbitral awards the losing party cannot set up any defence.

any judgment of the courts of Sudan especially where the applicable law is not Sudanese law? Sudan is not party to the New York Convention and the requirement of reciprocity further limits the number of foreign awards for which enforcement will be sought in Sudan. Summarily, these provisions do not make the prospect of seeking enforcement of foreign awards in Sudan attractive! It is admitted that the chances of enforcing any foreign award in Sudan may appear remote, however it is not that far fetched for those transacting their businesses within the continent (especially between nationals of two different African countries).

This very brief analysis of these three national laws evidences a few similarities and differences. Under the UAA, the only defence against the recognition and enforcement of an award is on the ground of international public policy of the member states. In Nigeria, there are four grounds on which such application can be defended while in Sudan, in domestic arbitration there are no grounds on which such request can be defended but in the enforcement of international awards there are six grounds on which its enforcement can be defended.

2. Grounds for Nullity or Setting Aside of Awards

OHADA

A party against whom an arbitral award has been made under the UAA or pursuant to the OHADA Treaty can seek to nullify the award. Such nullification proceedings may be commenced immediately the award is published to the party and at the very latest one month after notification of the grant of exequatur of the award.³⁸ The effect of filing an application for nullity of the arbitral award is to automatically stay execution of the award.³⁹ The grounds on which an arbitral award may be nullified in an OHADA contracting state is contained in article 26 UAA which provides:

Recourse for nullity is only admissible in the following cases:

- € If the arbitral Tribunal has ruled without an arbitration agreement or on an agreement which is void or has expired;
- € If the arbitral tribunal was irregularly composed or the sole arbitrator was irregularly appointed;
- € If the arbitral Tribunal has settled without conforming to the assignment it has been conferred;
- € If the principle of adversary procedure has not been observed;
- € If the arbitral Tribunal has violated an international public policy of the member States, signatories of the Treaty.
- € If no reasons are given for the award.

These grounds cover the existence of a valid and effective arbitration agreement, valid constitution of the arbitral tribunal, due process, and public policy. Producing a reasoned award is a mandatory requirement for the validity of the award under the UAA.⁴⁰ Where the arbitral award is nullified, the parties can commence another

³⁸ Article 27 UAA

³⁹ Article 28 paragraph 1 UAA

⁴⁰ See article 20 paragraph 2. This basically implies that parties cannot empower the arbitral tribunal not to issue an unreasoned award. Where under article 15 paragraph 2 parties authorise the arbitrators to decide as *amiable compositeur*, the award still must be reasoned.

arbitration proceeding on the basis of the same arbitration agreement over the same subject matter if they so desire or repudiate the arbitration agreement and litigate their dispute.⁴¹

Nigeria

A party can take recourse against an arbitral award within three months from the date of the award⁴² by an application (Originating Summons) to set aside the award made before the competent High Court.⁴³ The party seeking to set aside an arbitral award need to prove that:⁴⁴

- (a) The award contains decisions on matters which are beyond the scope of the submission to arbitration (it is only those matters not submitted to arbitration that may be set aside)
- (b) Where the arbitrator has misconducted himself;
- (c) Where the arbitral proceedings or award has been improperly procured.

Again, under section 30 a party can apply to set aside the arbitral award on the following grounds:

- (a) Where the arbitrator has misconducted himself; and
- (b) Where the arbitral proceedings or award was improperly procured

The term ‘misconduct’ is not defined in ACA but under the common law it denotes irregularity.⁴⁵ In *William v Wallis & Cox*, Atkin J defined misconduct as, “... such mishandling of the arbitration as is likely to amount to some substantial miscarriage of justice”.⁴⁶ On misconduct, Orojo & Ajomo posited:

Since the intention of the parties to the arbitral proceedings is that the award should be final, what the law permits is not an appeal, but that where the arbitrator conducts himself in a way inconsistent with the reasonable expectations of the parties as to fairness in the conduct of the proceedings, the court on application by the party aggrieved, may intervene and set aside the award in the interest of justice.⁴⁷

Thus a losing party can proactively seek to set aside the arbitral award without necessarily waiting for the winning party to seek recognition and enforcement of the award. Where the winning party applies for recognition and enforcement of the arbitral award within the three months time limit, then the losing party can set these grounds up as a defence to the application for recognition and enforcement. In this instance both applications will be heard in the same suit. The grounds for setting aside

⁴¹ Article 29 UAA

⁴² This right is lost if the application is not made within the time provided.

⁴³ Section 29 ACA

⁴⁴ Section 29(2); See also section 48 which contains the same grounds and applies to international commercial arbitration proceedings.

⁴⁵ Some cases on misconduct include: *Taylor Woodrow (Nig) Ltd v SE GMBH* (1993) NWLR 127; *LSDPC v Adold Stamm Int'l Ltd* (1994) 7 NWLR 545;

⁴⁶ *William v Wallis & Cox* (1914) 2 KB 497

⁴⁷ J.O. Orojo & M.A. Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates 1999) page 275

are limited to matters affecting the scope of the arbitration agreement and the conduct of the arbitral proceedings.

The losing party can also proceed under section 48 to set aside the award. The section provides:

- 48.** The court may set aside an arbitral award-
- (a) If the party making the application furnishes proof-
 - (i) That a party to the arbitration agreement was under some incapacity,
 - (ii) That the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the laws of Nigeria,
 - (iii) That he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case, or
 - (iv) That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or
 - (v) That the award contains decisions on matters which are beyond the scope of submission to arbitration, so however that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decision on matters not submitted to arbitration may be set aside, or
 - (vi) That the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or
 - (vii) Where there is no agreement between the parties under subparagraph (vi) of this paragraph, that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act; or
 - (b) If the court finds-
 - (i) That the subject-matter of the dispute is not capable of settlement by arbitration under laws of Nigeria;⁴⁸ or
 - (ii) That the award is against public policy of Nigeria.

Section 48 grounds are the same as those under article 34 of the Model Law and are in addition to those grounds provided under sections 29 and 30 ACA for setting aside awards emanating from international commercial arbitration proceedings.⁴⁹ However, it is the public policy of Nigeria that is relevant here.

Sudan

A party seeking to nullify an award in Sudan must apply to the competent court for such nullification within two weeks after the judgment of the court granting execution of the arbitral award.⁵⁰ Two weeks is a very short period within which to apply to nullify the award. This is especially so since the losing party cannot proactively seek nullity of the award until execution of the award is granted by the competent court.

⁴⁸ Matters not arbitrable in Nigeria include: crimes, illegal contracts, gaming & wagering, divorce, bankruptcy, insolvency, admiralty – *KSVDB v Franz Construction Ltd* (1990) 4 NWLR 172

⁴⁹ This is by virtue of section 43 ACA

⁵⁰ Article 42 SAA which application may operate as a stay of execution of the award under article 44 SAA

Article 41 of the SAA lists grounds on which a party can seek to nullify an arbitral award. These are:

- Where the award relates to decisions outside or beyond the scope of the arbitration agreement so that the arbitral tribunal lacked jurisdiction to decide such disputes. There is no provision for bifurcation so that where some issues decided fall within the arbitral tribunal's jurisdiction, such issues can be executed.
- Corruption or misconduct of the arbitrators or any one of them;
- Existence of serious neglect of a basic procedure of the arbitration proceedings (due process but of such a nature as to cause injustice)
- Where the award is not reasoned⁵¹;
- Award contrary to public policy of Sudan

The competent court has discretion whether to nullify the award even where any of these grounds are proved. In the case of foreign awards, the same grounds apply where a party seeks to nullify the award in Sudan.

3. Role of SIA and the Future

This analysis of these three legal regimes may be an indicator of the relevance of a modern arbitration law in addition to adherence to the New York Convention as being very important currencies in a country's participation in international arbitration. OHADA though having a comparatively modern arbitration legal regime is not party to the New York Convention either as a regional body or as it affects most of its member states. Sudan on its part has a new arbitration law (2005) but not modelled after the Model Law and is not party to the New York Convention. The provisions of its arbitration laws can be read as being anti-arbitration. An example of this is the provision that the party in whose favour an arbitral award has been made has the burden of proof in enforcement proceedings while a very stringent regime attaches to the enforcement of foreign arbitral awards in Sudan.

The importance of the work of the SIA (and other institutions like SOAS to which I belong) in this regard through its dispute resolution courses which have always proved very popular with students coming from within the continent cannot be overemphasised. It is these same students who will advise and get involved in matters involving arbitration within the continent. Our involvement in the work of the AFSIA will keep us informed and updated on arbitration trends around the world and will filter down to the legal, legislative and judicial communities in these countries. Thus the role of the SIA and its alumni cannot be over-emphasised.

National courts in most Sub-Saharan African countries are more arbitration friendly and maintain a healthy respect for arbitration agreements especially in international commercial contracts. To retain the momentum, I believe we need to actively nominate more competent arbitrators of African origin and cite arbitrations in more African cities especially where such disputes are connected to any particular African state. The aim of this exercise is not to appear to be inclusive but to actually do this because we believe in its efficacy and eventual benefit to arbitration in general. This may assist with our engaging with the national courts in these countries in the development of their arbitral jurisprudence and expertise. Any fears of lack of

⁵¹ This is a mandatory requirement under article 33 SAA

enforcement of awards made in these countries should be allayed with the recent English Court of Appeal decision on 5 November 2008 in *IPCO (Nig) Ltd v NNPC* mentioned above.

Table 1: Countries of Sub-Saharan Africa

No	Country	OHADA	New York Convention	UNCITRAL Model Law
1	Angola	-	-	-
2	Benin Republic	17 October 1993	14 August 1974	-
3	Botswana	-	19 March 1972	-
4	Burkina Faso	17 October 1993	21 June 1987	-
5	Burundi	-	-	-
6	Cameroon	17 October 1993	19 May 1988	-
7	Cape Verde	-	-	-
8	Central Africa Republic	17 October 1993	13 January 1963	-
9	Chad	17 October 1993	-	-
10	Comoros	17 October 1993	-	-
11	Congo Brazzaville	17 October 1993	-	-
12	DR of Congo	Seeking Accession	-	-
13	Cote d'Ivoire	-	2 May 1988	-
14	Djibouti	-	27 June 1977	-
15	Equatorial Guinea	17 October 1993	-	-
16	Eritrea	-	-	-
17	Ethiopia	-	-	-
18	Gabon	17 October 1993	15 March 2007	-
19	Gambia	-	-	-
20	Ghana	-	8 June 1968	-
21	Guinea	21 November 2000	23 April 1991	-
22	Guinea Bissau	24 February 1996	-	-
23	Kenya	-	11 May 1989	-
24	Lesotho	-	-	-
25	Liberia	-	15 December 2005	-
26	Madagascar	-	14 October 1962	-
27	Malawi	-	-	-
28	Mali	17 October 1993	7 December 1994	-
29	Mauritania	-	-	-
30	Mauritius	-	30 April 1997	-
31	Mozambique	-	9 September 1998	-
32	Namibia	-	-	-
33	Niger	17 October 1993	12 January 1965	-
34	Nigeria	-	15 June 1970	Yes
35	Rwanda	-	-	-
36	Sao Tome & Principe	-	-	-
37	Senegal	17 October 1993	15 January 1996	-
38	Seychelles	-	-	-
39	Sierra Leone	-	-	-
40	Somalia	-	-	-
41	South Africa	-	1 August 1976	-
42	Sudan	-	-	-
43	Swaziland	-	-	-
44	Tanzania	-	12 January 1965	-
45	Togo	17 October 1993	-	-
46	Uganda	-	15 May 1992	Yes

47	Zambia	-	12 June 2002	Yes
48	Zimbabwe	-	28 December 1994	Yes

Table 2: List of Some Arbitration Institutions in Sub-Saharan Africa

No	Institution/Centre	Country
1	Arbitration, Mediation and Conciliation Centre of the Chamber of Commerce & Industry of Benin	Benin Republic
2	Conciliation and Arbitration Chamber of the Cotton Inter-professional Association of Cotonou	Benin Republic
3	Ouagadougou Arbitration, Mediation & Conciliation Centre of the Chamber of Commerce & Industry	Burkina Faso
4	GICAM Arbitration Centre Douala	Cameroon
5	Congo Arbitration Centre	Democratic Republic of Congo
6	Addis Ababa Chamber & Sectoral Association	Ethiopia
7	Ghana Arbitration Centre	Ghana
8	Court of Arbitration of Ivory Coast	Ivory Coast
9	Joint Court of Justice & Arbitration of OHADA	Ivory Coast
10	The Directorate of Dispute Prevention & resolution	Lesotho
11	Arbitration Centre of Madagascar	Madagascar
12	Mali's Conciliation & Arbitration Centre	Mali
13	Permanent Court for Arbitration at the Mauritius Chamber of Commerce & Industry	Mauritius
14	Lagos Regional Centre for International Commercial Arbitration	Nigeria
15	Arbitration Centre of the Dakar's Chamber of Commerce, Industry and Agriculture	Senegal
16	Dakar Arbitration & Mediation Centre	Senegal
17	Khartoum Center for Arbitration	Sudan
18	Arbitration Foundation of Southern Africa	South Africa
19	Commission for Conciliation, Mediation and Arbitration	South Africa
20	Association of Arbitrators	South Africa
21	Conciliation, Mediation and Arbitration Commission	Swaziland
22	Commercial Arbitration Centre in Harare	Zimbabwe