



Commercial dispute resolution through Arbitration

The role of Arbitration services for the Business Environment and how to ensure its functionality and efficiency

Implemented by

...before we start

➤ Please mute your microphones.



➤ This session is recorded.



➤ You're invited to participate actively! Put your questions to the speakers into the chatbox 😊



➤ **French** translation of the recording of online event available soon.



What is the Investment Climate Reform Facility?



Implemented by

Agenda

I) Welcome Words	Escipión J. Oliveira Gómez , Assistant Secretary-General, Organisation of African Caribbean and Pacific States (OACPS)
II) Introduction to Commercial Arbitration	Dr. Mahutodji Jimmy Vital Kodo , FCI Arb, Independent Arbitrator and Arbitration Specialist
III) Arbitration experiences from a Private Sector's perspective	Chantal Losembe , Senior Executive Head Legal Affairs, Vodacom Congo (DRC) S.A
IV) The role of Arbitration Centers for the facilitation of arbitration services	Victor Mugabe , Secretary General, Kigali International Arbitration Center
V) Q&A Session with Speakers	
VI) Get in touch with the ICR Facility & Closing	Christina Schmittmann , ICR Facility



Question for Participants

How familiar are you with the topic of Commercial Arbitration?

- Not at all
- A little bit
- Quite familiar
- I am an expert



Welcoming Words

ESCIPIÓN J. OLIVEIRA GÓMEZ

*Assistant Secretary General, Structural Economic Transformation and Trade
Organisation of African Caribbean and Pacific States*



Different perspectives on Arbitration

Implemented by



Dr. Mahutodji Jimmy Vital Kodo, FCIArb

*Independent Arbitrator and
Arbitration Specialist*



Dr. Mahutodji Jimmy Vital Kodo, FCIArb, is an **independent arbitrator** and a leading arbitration specialist with over 15 years of experience. He has been appointed arbitrator by African States in investment disputes, and regularly represents parties in complex litigation and arbitration proceedings as well as appeals before the **Common Court of Justice and Arbitration (CCJA)**, the Court of Final Appeal for the 17 African States Parties to the OHADA Treaty. He is Member of the Africa Commission of the ICC Arbitration Court. As a consultant for the ICR Facility, he drafted the Revised Arbitration Rules of the CENACOM (DRC) and trained 80 Congolese arbitrators.

Introduction to Arbitration

Definition of Arbitration

- Part of “Out of Court settlement” mechanisms (or Alternative Dispute Resolution, ADR)
- **Resolution** of a **dispute** between many parties **by a third party** appointed by them or by a different person or entity

Some of the International Rules that apply to Arbitration in many countries:

- UNCITRAL Model Law (enacted in 1985 and amended in 1985) & Arbitration Rules (Adopted in 1976 and amended in 2010 & 2013)
- New York Convention on the recognition and Enforcement of awards (effective since June 7th 1959)
- Many other rules may apply depending on several factors such as:
 - The seat of the arbitration proceedings;
 - The choice of the parties;
 - The country in which the arbitral award is likely to be enforced, etc.

Why Arbitration?

Arbitration developed within the business environment for “strategic” reasons:

- Confidentiality
- Swiftness
- Resolution of a dispute by **someone the litigants mutually trust**, generally one of their “peers”, (as opposed to referring a dispute to a Judge who knows more the Law and Rules than the peculiarities of a business)

Over the years, Arbitration developed into a more complex process with more elaborated rules

Different types of arbitration

- **Commercial** arbitration / **Investment** Arbitration
- **Ad hoc** arbitration / **Institutional** Arbitration

Foundation & Process of Arbitration

Foundation of Arbitration

- Commercial arbitration : An arbitration agreement
- Investment arbitration : provision of a Bilateral or Multilateral Treaty between a State of an investor and the State hosting the investments

Process

Appointment of arbitrator(s) (usually 1 or 3) depending on

- the parties' agreement: applicable rules
- whether ad hoc or institutional arbitration

Usually, each party to the dispute appoints one arbitrator and the first two jointly appoint the third who presides over the panel

3 main steps of proceedings:

- 1) **Case management conference** (After tribunal is confirmed)
- 2) **Hearing** (including witness hearing and examinations)
- 3) **Drafting, scrutiny, signature** and **notification** of the award (depending on the applicable Rules)

After notification, an unsatisfied party might decide to challenge the award

Main Arbitration & Process of Arbitration

- ADR are a current trend in dispute resolution around the world, including in Africa, with more than 70 arbitration centers on the Continent
- **OHADA Treaty** (applicable in 17 African States)
 - **Two sets of Arbitration Rules**
 - **Uniform Act** on Arbitration (for ad hoc and institutional arbitration in the member states)
 - **Institutional arbitration** under the Rules of the Common Court of Justice & Arbitration (CCJA)
- In the Caribbean, there are several Arbitration initiatives such as the one under the OHADAC Arbitration & Conciliation Rules (covering several countries and territories of the Caribbean)

Main Arbitration & Process of Arbitration

In the future, Arbitration as well as other Alternative Dispute Resolution mechanisms (Conciliation, Mediation, etc.) need to be developed.

For Arbitration to thrive in the Africa Region, **training** of all the stakeholders (staff members of arbitration centers, arbitrators, lawyers representing parties, in-house counsel, Judges that are involved in deciding challenges to arbitral awards, etc.) is required and must be done on a continuous basis.

The capacity of arbitration centers needs to be strengthened through :

- Appropriate premises/venue and logistic
- Qualified staff members
- Investment into technology

Chantal Losembe

*Senior Executive Head: Legal
Affairs, Vodacom Congo RDC SA
Director, Board of Director
Vodacash SA (MPESA DRC)*



Chantal was a practitioner lawyer and joined **Vodacom DRC** in 2003 where she is **heading the Legal Affairs Division**. She has worked extensively in the **field of telecommunications and mobile financial services regulations**, and more recently in telecommunications infrastructure agreements. Her business practice has led her to **resort to mediation, local arbitration in the DRC and international arbitration for conflict resolution**. She is also very involved in **contributing to the regulatory and legal framework on telecommunications and digital financial services**.

Why businesses resort to arbitration

1. Can be faster than litigation (not always)
2. Flexible and party-driven
3. Typically no discovery (depositions or interrogatories) and only limited document production
4. No public hearings (except in investment arbitrations) – and can be (nearly) fully confidential
5. Limited ability to appeal awards
6. Widespread enforceability of awards

INTERNATIONAL ARBITRATION

- Prevent giving one side a home-court advantage
- Avoid dysfunctional court systems
- Opportunity to choose the decision makers (e.g., with industry expertise)
- Greater party control of the process than in court litigation
- Avoid the need to translate evidence and oral testimony
- Good infrastructure & facilities, safe to appear at hearings

Experience with Local Arbitration in the DR Congo, facilitated through the local arbitration centre CENACOM

Past experiences with the National Center for Arbitration, Conciliation and Mediation (CENACOM) in the DR Congo have generally worked well in terms of **predictability of outcomes**, we are confident in the system and still appoint CENACOM for **medium value commercial disputes** with no international aspects.

DEFICIENCIES

- Independence of the arbitrators to be strengthened (small market), good progress made
- Lack of arbitration skills of local lawyers to accompany, capacity building with the Bar Association needed
- Good infrastructure & facilities

Lessons learnt

**Zero court policy for dispute
resolution efficiency is not working**

- State courts remain very effective for the management of **low-value and large volume** of disputes
- Some matters are not eligible for arbitration (e.g. labor, criminal ...), no choice but courts
- Arbitration gives a greater party control of the process than in court litigation

➔ **Dispute resolution management must build on both, local courts and the benefits of arbitration!**



Top 3 recommendations to investors

- Do not set a zero court disputes management policy, reserve international arbitration to stakeholders critical to your business
- Never opt for “ad hoc” arbitration, so play it safe: Use the sample clause recommended by that arbitral institution, adding or filling in optional details
- Have solid Procurement Policy to vet and critically check your suppliers before entering into a contract

Victor Mugabe

*Secretary General,
Kigali International Arbitration
Centre (KIAC)*



Victor is the Secretary General of the Kigali International Arbitration Centre (KIAC) since January 2021. Prior to that period, he served as the Executive Director of the **Rwanda Bar Association** from 2012 to 2020 and the Coordinator of the Justice Sector Coordination in the **Rwanda's Ministry of Justice** from 2010 to 2012.

Victor is a **lawyer** with rich and long experience in legal and justice related project management.

Background

[Kigali International Arbitration Centre \(KIAC\)](#) was initiated by Rwanda's Private Sector to provide institutional support to commercial dispute resolution proceedings in Rwanda, in the region and beyond.

Established in 2010 following the ratification by Rwanda of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in 2007 and the enactment of the Law governing Arbitration in 2008.

The 2008 arbitration law and KIAC Arbitration Rules 2012 are fully inspired by the [United Nations Commission on International Trade Law \(UNCITRAL\)](#) model law on international commercial arbitration & UNCITRAL Arbitration Rules.



KIAC core business

KIAC core business can be summarized in four components:

- Providing disputes resolution services through **arbitration and other Alternative Disputes Resolutions (ADR)** services;
- Promoting ADR through public education, publication and research in ADR;
- Providing training and accreditation in ADR;
- Promoting Rwanda as a venue of international arbitration and advise the government and other institutions/organizations in arbitration matters.



Key achievements

- More than 150 reputable international arbitrators from 24 nationalities
- Resolved 180 complex and high-value disputes of arbitration
- Almost 40% are international with parties from more than 20 nationalities
- Proceedings are conducted in English, French or Kinyarwanda
- Service and Construction sector account for approximately 82% of the KIAC caseload; Shareholding and Sale agreement sector and the Supply industry accounted for approximately 18%.

Role of Arbitration Centres

- Awareness creation for arbitration services
- Capacity building for arbitration practitioners
- Case administration including:
 - Administrative and other logistical support
 - Ensuring Applicability of Arbitration Rules
 - Scrutinizing the awards
 - Ensuring security and safety of confidential documents
- Facilities for arbitration proceedings
- Disseminating information on arbitration
- Advocating for conducive legal and institutional framework for arbitration
- Engaging in relationship with strategic institutions

Challenges for Arbitration institutions in Africa

- Inadequate funding
- Lack of trust in African arbitration institutions
- Lack of data in different arbitration institutions
- Lack of institutional capacity to meet the demands in international commercial arbitration matters
- Fear of Courts or Government interference in arbitration proceedings
- Inadequate legal and institutional framework on international commercial arbitration

Successful set-up and management of an Arbitration Centre

- Ensuring a conducive legal framework on international arbitration;
- Ensuring a conducive policy on investment and business promotion;
- Put in place strong capacity building programs;
- Enacting modern arbitration rules & affordable fees;
- Collaborating with the Bar Associations/Law Societies;
- Lobbying for Centre's funding;
- Safeguarding the quality of awards;
- Marketing the Centre;
- Collaborating with Arbitration Institutions;
- Diversifying the Centre's panel of neutrals (avoiding any discrimination in enrolling arbitrators);



7. Q&A Session

Do you have a question?

Please write your question into the box!



- Are you a public or private stakeholder in an ACP country?
- Do you want to improve your business environment for supporting women's economic empowerment?

The ICR Facility can support you with technical assistance of up to 90 expert days.

Check the eligibility criteria on our website and send us a request via the online request form.

www.icr-facility.eu



Thank you for your feedback!



info@icr-facility.eu



www.icr-facility.eu



Investment Climate Reform Facility



ICR Facility

Implemented by

