The Guarantee of Impartiality of Arbitrators in Contractual Disputes Resolution within Ohada Laws

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Abstract **—** The poor judicial machinery noted within OHADA (1) region before 1993 acted as a barrier for foreign investors to enter the zone. One of the causes of poor judicial machinery lies on the fact that third parties settling disputes via court settlement (national state judges) most often do not respect their obligation of impartiality. To fight against this situation, OHADA encourages arbitration as a mode of resolving contractual disputes. In arbitration, many techniques are used before, during and after the arbitral hearing to guarantee the impartiality of the third party (arbitrator) who is requested to resolve disputes. Before arbitral hearing, parties in dispute are free to choose the arbitrator(s) and any chosen arbitrator must disclose any fact which can hinder his impartiality. During arbitral hearing, arbitrators must respect the right to a fair hearing. After the arbitral hearing, disciplinary sanctions, criminal sanctions etc can fall on an arbitrator who failed to respect his duty of impartiality. But since OHADA has not expressly provided criminal sanctions for arbitrators it is recommended that, OHADA should expressly do so. This article aims at identifying the techniques used by OHADA to guarantee the impartiality of arbitrators.

Keywords— guarantee, impartiality, arbitrator, contract, dispute, OHADA.

INTRODUCTION

Prior to 1993, it was perceived within the OHADA region that there was a slowdown in economic activities in the zone. The diagnosis given to the reaction of investors was that, they were scared of the inadaptability of the business laws at the time and equally scared of the poor judicial machinery. One of the reasons which accounts for poor judicial machinery within the zone is the fact that those who are mostly given power to resolve disputes via litigation or court settlement (national state judges) do not respect their obligation of impartiality in all cases that they are called upon to resolve. The poor judicial machinery created legal barriers to entry for new investors that the governments of the OHADA countries had to intervene to fight against this negative situation.

The idea behind the creation of OHADA sprang from a political will to strengthen the African legal system by enacting a secured legal framework for the conduct of business in Africa, which is viewed as essential to the development of the continent (2). African heads of state, heads of government, jurists and finance ministers of the CFA (3) franc zone greatly contributed for the creation of OHADA. It was after a careful analysis of the economic situation (4) by the African heads of States and governments that it was noted that international resources companies investing in Africa viewed the African legal regimes as a potential risk because of legal insecurity (5). When a judge fails to respect his duty of impartiality, this will consequently lead to legal insecurity. At a summit held in April 1991 in Ougadougou (Burkina Fasso), the finance ministers of the CFA franc Zone (6) entrusted to a group of jurist led by H.E KEBA MBAYE (7) with the task of assessing the political and technical feasibility of creating OHADA (8). That is drafting an international treaty and identification of the area of laws to be harmonized (9). This group prepared a report which was approved in October 1992 at a summit in Libreville (Gabon). On the 17th of October 1993, the OHADA treaty was signed in Port-Louis by 14 heads of States from French speaking Africa (10). Subsequently two other countries (11) joined the organization. Today, the organization has 17 members (12). The objectives of the treaty are outlined in its preamble (13). One of the objectives of OHADA is to promote arbitration as an instrument to settle contractual disputes (14). A contract is an agreement between two or more persons of which the parties intend that the agreement should have a legal effect. A dispute can be defined as a specific disagreement relating to a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another. Contractual disputes refer to disputes which originates as a result of a contract between two or more persons. The OHADA legislator encourages arbitration as a mode of settling contractual disputes. The desire of the OHADA legislator to promote arbitration as an instrument to settle contractual disputes can be seen in Article 1 of the OHADA treaty. This article stipulates that: "the

encouragement of arbitration for the settlement of contractual disputes" (15).

The promotion of arbitration as a mode of resolving contractual dispute is one of the means which is used by OHADA to fight against the judicial insecurity which was declared within the OHADA zone (16). It is important to know that foreign investors are traditionally suspicious about African national justice systems because judges in these countries can easily be forced by their government to favor them at the detriment of foreign investors. When a state judge is forced by his home state to grant un just favor to his home state, this will consequently be a hindrance to his duty of impartiality. This type of behavior can easily be avoided in arbitration. In arbitration, there are many techniques used in guaranteeing the impartiality of arbitrators.

As an alternative to judicial mechanism, arbitration is governed by the prevailing principle of due process to ensure a certain standard of justice and the fair and equal treatment of parties (17). One of the principles of due process is that the arbitrator must be impartial.

Impartiality means that an arbitrator favors no party and is not preoccupied with regards to the issue in the dispute. Impartiality is the absence of any bias in the mind of arbitrators towards a party or the matter in dispute. It is the absence of any favoritism and the commitment to serve all the parties as opposed to a single party. Partiality of an arbitrator can be defined as a premeditated psychological intention to favor a party in the dispute (18).

The OHADA legislator encourages arbitration as a mode of contractual dispute settlement, but it failed to define this concept (19). Arbitration can be defined as an arrangement for taking and abiding by the judgment of selected persons in some disputed matter, instead of carrying it to established tribunals of justice, and is intended to avoid the formalities, delay, expense and vexation of ordinary litigation (20). Arbitration can also be defined as a private process of dispute resolution between parties to an arbitration agreement.

Arbitration may be either institutional, that is conducted under the control of an arbitration center which administers the arbitration according to its rules, or ad hoc that is conducted without the assistance of an arbitration center and in accordance with any rules that the parties or the tribunal may choose to apply, subject to any mandatory rules laid down by the applicable law (21). OHADA recognizes both institutional and ad hoc arbitration. In this light, OHADA has created different sets of legislations applicable to arbitration. There is the OHADA treaty itself, which provides for institutional arbitration under the auspices of the Common Court of Justice and Arbitration (CCJA) in accordance with the CCJA'S own Rules of Arbitration. There is the Uniform Act on Arbitration, which lays down basic rules that are applicable to any arbitration (ad hoc or institutional) where the seat of the arbitral tribunal is in one of the member states.

The arbitrator is different from arbitration. An arbitrator is a neutral and an impartial third party chosen by the parties in the dispute to resolve the dispute between them. The arbitrator is a private judge freely chosen by the parties to resolve their dispute.

The arbitrator is a principal actor in arbitration. It is not an over statement to say the effectiveness of arbitration lies on the conduct of the arbitrator during the arbitral process. One of the most important behavior of the arbitrator during the arbitral process is that the arbitrator must be impartial. Thus for the parties to be satisfied after the settlement of the dispute, the arbitrator must be impartial. If the arbitrator favors a party in the dispute, this will have a negative effect on the satisfaction of the unfavored party. This has a negative effect on arbitration in the sense that disputants will not be encouraged to settle their disputes via arbitration. Consequently, one of the objectives of arbitration within OHADA entitled "…the encouragement of arbitration for the settlement of contractual disputes" (22) shall be defeated. Also, foreign investors will not be attracted in the OHADA zone. To fight against this type of a situation, the OHADA legislator has guaranteed the impartiality of arbitrators.

From the forgoing, an important question which can be raised is that, what are the techniques used by the OHADA legislator to guarantee the impartiality of arbitrators? This article aims at identifying the techniques used by the OHADA legislator to guarantee the impartiality of arbitrators. It identifies the techniques used in guaranteeing the impartiality of arbitrators before the arbitral hearing (I), during the arbitral hearing (II), and after the arbitral hearing (III).

I-The guarantee of impartiality of arbitrators before the arbitral hearing

There are a number of techniques used by OHADA to guarantee the impartiality of arbitrators before the arbitral hearing. These techniques are, the parties are free to choose the arbitrator(s) in the arbitration

agreement (A) and the arbitrator who has been chosen must declare any factor which can hinder his or her duty of impartiality (B).

A-Liberty of the parties to choose the arbitrator

The particular person to resolve the dispute is of prime importance to the parties. The person to resolve the dispute is an important element to determine whether there will be impartiality or not in the course of dispute resolution. In arbitration, the parties are free to chose the arbitrator (judge). The party's power to choose the arbitrator is a means to fight against the partiality or bias of a judge (23).

Arbitration being firstly a matter of the parties, the OHADA Uniform Act on Arbitration (UAA) recognizes that the appointment of arbitrators belong first to the parties freedom. This is why in its Article 5 paragraph 1 it stipulates that: " the arbitrators are appointed…in accordance with the parties agreement".

Within OHADA, provisions dealing with the liberty of the parties to freely choose the arbitrator can be seen in the national legislation of some countries. Some of these countries are:

In Mali, Article 880 of a decree of 28 June 1994 relating to the Code de Procedure Civile, Commerciale et Sociale requires that the clause compromissoire (24) must appoint the arbitrator(s) or must state the modalities for appointing them. In Ivory Coast, Article 2(2) of law no. (number) 93-671 of 9th August 1993 relating to arbitration contains a similar provision.

In Chad, Article 372 of an ordinance of 28th July 1967 relating to the Civil Procedure Code requires that the compromise (25) shall state…the name of the arbitrator failure of which it shall be null and void.

In Togo, Article 276(2) of a decree of 15th March 1982 relating to the Civil Code and Article 578 of the Cameroonian Law no. 75/18 of 8th December 1975 relating to the Civil Procedure Code contains a similar provision.

Once the parties are confident on any person, they can choose he or she to act as their arbitrator. The parties can choose any person who has the wanted skill in the field of the dispute which the parties intend to submit to arbitration.

When the arbitration is conducted under the control of the Common Court of Justice and Arbitration (CCJA), parties are free to choose any arbitrator to settle the dispute between them. This provision can be seen in Article 3.2 of the CCJA rules of Arbitration. According to this article, parties may choose arbitrator(s) from the list of arbitrators established by the Court (26) and updated each year. The expression parties "may " choose arbitrator(s) from the list of arbitrators established by the Court shows that parties are free to choose arbitrators whose name are not on the list of arbitrators established by the CCJA. This is intended to actually give to parties the liberty to choose an impartial arbitrator.

The mechanism of choosing the arbitrator varies depending on whether the arbitral tribunal is made up of a single arbitrator or it is made up of three arbitrators. The OHADA legislator made provision for one or three arbitrators (27). This means the parties are given the powers to decide on whether the dispute should be resolve by one or three arbitrators. When the parties agree that the dispute should be resolved by a single arbitrator, the parties will mutually agree on the arbitrator within thirty days. In situations where they agree that the dispute should be resolved by three arbitrators, each (28) party shall appoint one arbitrator and the two thus appointed shall appoint the third arbitrator who shall act as the president of the arbitral tribunal.

When the arbitrator has been chosen by the parties, the arbitrator must disclose any factor which can hinder his impartiality.

B-The arbitrator's duty of disclosure

As a means to guarantee the impartiality of arbitrators, when once an arbitrator is approached by the parties or a party in the dispute requesting the arbitrator to arbitrate a dispute, the arbitrator is expected to conduct a conflict search. If after the search he or she finds that he or she has an interest in the case, this must be disclosed to the parties.

French case law traditionally holds that an arbitrator is under a duty to disclose all circumstances which may reasonably call in to question his duty of impartiality in the mind of parties and should particularly inform the parties of any relationship which is not of common knowledge and which could be reasonably expected to have an impact on his judgment in the parties eyes (29). Under Article 7 paragraph 2 of the OHADA Uniform Act on Arbitration, when an arbitrator has been approached by a party or parties in the dispute to settle a dispute, the arbitrator is expected to declare any factor which can hinder his or he duty of impartiality in the

course of resolving the dispute. This Article provides that: " if an arbitrator knows of any circumstance about himself for which he may be challenged, he should disclose them to the parties and may only accept his function with the unanimous agreement, in writing by the parties".

This obligation has been copied in a different manner by some arbitration centers within OHADA. For example the Arbitration Rules of the Employers Organization of Cameroon (GICAM) requires that when an arbitrator is approached to act as an arbitrator, before his nomination or confirmation by the arbitration center, the arbitrator must inform the sectary of the center in writing of any fact which can raise a doubt about his impartiality in the mind of parties (30). The manner in which the Arbitration rules of the Arbitration Court of Ivory Coast (CACI) copied the arbitrators duty of disclosure is not the same with that of the Arbitration Rules of GICAM and the OHADA U.A.A. The Arbitration Rules of CACI requires that before an arbitrator assumes his or her duties, he or she shall sign a declaration of independence which shows or prove that according to he or she there is no factor which can affect his or her impartiality when handling the case (31).

What ever the manner in which the arbitrator's duty of disclosure has been noted by any of the Arbitration Rules stated above, what is important is that the arbitrator must disclose any fact which can cast a doubt on his or her impartiality when handling the case. Therefore any person approached to act as an arbitrator must inform the parties or the arbitration center competent of any factor which can raise a doubt on his independence or impartiality. An example of a factor which must be declared by the arbitrator is that the arbitrator has a blood relationship with a party in the dispute. This is another means to guarantee the impartiality of the arbitrator before the arbitral hearing.
The guarantee of impartiality of arbitrators is not limited before the arbitral hearing. It is also guaranteed during the arbitral hearing.

II-Guarantee of impartiality of arbitrators during the arbitral hearing

During the arbitral hearing, the impartiality of arbitrators has been guaranteed using the right to a fair hearing. An arbitrator can be said to have violated his duty of impartiality if he fails to respect the right of a party to a fair hearing.

Fair hearing is a fundamental requirement of every judicial process. The right to fair hearing is recognized in many documents (32). It is also referred to in Latin as audi alteram partem in most jurisdictions.
Unfair hearing for example means inability of a party to present his case and denial of the right to be heard (33). It is obligatory for the arbitrator to respect a certain standard of fair hearing.

What may constitute fair hearing may significantly differ from country to country. For example what constitute fair hearing in the country where the arbitration took place may not be exactly the same in the place where the award is to be enforced. The law and the court in the country where the hearing of the arbitration takes place normally has its own notion for the requirement of fair hearing and this may be different from the requirements of the seat of enforcement. This can lead to uncertainty and additionally to an unenforceable out come of the arbitration. This constitutes a problem. However, generally, the national courts should be satisfied if the arbitral hearings are carried out in accordance with the agreement of the parties respecting the principle of equality.

Under OHADA, the arbitrator must respect the principle of equality. This principle can be seen in Article 9 of the OHADA Uniform Act on Arbitration. Based on this Article, the arbitrator must give all the parties equal opportunity to contradict each other. When an arbitrator gives each party the opportunity to present his case and to also contradict the opposite party, it makes the arbitrator to be impartial.

In its desire to strengthen the guarantee of impartiality of arbitrators, the other legislator has not limited the guarantee of this impartiality before and during the arbitral hearing. It has gone further to guarantee the impartiality of arbitrators after the arbitral hearing.

III-Guarantee of impartiality of arbitrators after the arbitral hearing

The OHADA legislator has clearly guaranteed the impartiality of arbitrators after the arbitral hearing. This has been done by providing sanctions which can be given to an arbitrator who fails to respect his or her duty of impartiality. These sanctions are, annulment of the arbitral award (decision of the arbitrator) (A), disciplinary sanctions of arbitrators (B) and criminal sanctions of arbitrators (C).

A- Annulment of the arbitral award

The arbitral award (decision of the arbitrator) can be annulled based on the partiality of arbitrators. In other words, when an arbitrator fails to respect his or her duty

of impartiality the decision taken by the arbitrator shall be rejected or set aside by the competent court at the request of a party in the dispute. Annulment of arbitral awards based on partiality of an arbitrator is caused by some reasons. These reasons are; failure of arbitrator(s) to respect the arbitrator's duty of disclosure (1) and failure to respect the right to a fair hearing (2).

1-The setting aside of arbitral award on grounds of failure of arbitrator(s) to respect the arbitrator's duty of disclosure

When an arbitrator fails to disclose any factor which can affect his impartiality when handling a case, the arbitral award can be set aside based on grounds of irregularity in the composition of the arbitral tribunal. Within OHADA, irregularity in the composition of the arbitral tribunal is a ground to set aside an arbitral award. To this effect, Article 2 of the OHADA Uniform Act on Arbitration stipulates that recourse for nullity is possible:" if the arbitral tribunal was irregularly composed or the sole arbitrator was irregularly appointed". Failure of an arbitrator to respect his duty of disclosure is not the only reason which can cause an arbitral award to be set aside. Arbitral awards can also be set aside because the right of a party to a fair hearing was not respected.

2-Arbitral awards can be set aside when the right to a fair hearing is not respected

When an arbitrator fails to ensure the right of the parties to a fair hearing, the arbitral award can be set aside. Violation of fair hearing is probably the most important ground to set aside an arbitral award and it is necessary to ensure the future of arbitration (34). Any party who thinks that his or her right to a fair hearing was not respected during the arbitral hearing has the right to make a complain to the competent court. When this is done the court shall set aside the arbitral award if it finds that the arbitrator did not respect the right of a party to a fair hearing. To further strengthen the desire to guarantee the impartiality of arbitrators within OHADA, within this zone, an arbitrator who fails to respect his duty of impartiality can also be punished with a disciplinary sanction.

B-Disciplinary sanction of arbitrators

The arbitrator can be made to suffer a disciplinary sanction in the event of misconduct. The objective of disciplinary sanction is to reinforce the guarantee of impartiality of arbitrators. Disciplinary sanction increases the guarantee of impartiality of arbitrators. Unfortunately, the OHADA legislator is silent in the domain of disciplinary sanction. Irrespective of this silence, it is still possible to engage the disciplinary sanction of arbitrators. The disciplinary sanction of arbitrators varies depending on whether the arbitration is institutional (i) or ad hoc arbitration (ii).

i-Disciplinary sanctions of arbitrators in institutional arbitration

This type of sanction is caused by violation of a code of ethics or code of deontology and to make this sanction clear, some arbitration institutions have established a code of deontology for their arbitrators. An arbitrator who fails to respect his duty of impartiality is considered to have violated a rule in the code of ethics or code of deontology for arbitrators.

As said earlier, institutional arbitration is arbitration conducted under the auspices of an arbitration center that administers the arbitration in accordance with its own rules. Generally, arbitration centers have codes of ethics or codes of deontology which must be respected by arbitrators of the institution in question. In effect, each arbitration institution is expected to have a code of deontology which must be respected by arbitrators working in that institution. When an arbitrator violates the code of deontology of the arbitration center where the arbitrator is working, the arbitration center can punish the arbitrator with a disciplinary sanction. The International Court of Arbitration has an established code of deontology for its arbitrators. Article 4(2) of this code provides that: « arbitrators must respect the deontology of their status, they must act in good faith, must be honest and must guarantee the parties that they will be neutral, impartial and will respect equalities of the parties in the arbitration proceedings ». Article 11 of the same code provides the sanctions which can be applied on an arbitrator who fails to respect the deontology of the profession. Sanctions for failure to respect deontological principles according to this article include the following:

- A written warning;
- Suspension of from 6 months to 12 months from acting as an arbitrator;
- Permanent dismissal from acting as an arbitrator of the court.

The above Article establishes the sanctions in order of gravity and also provides that this sanction is independent from any other sanction. Thus disciplinary sanction of arbitrators can easily be understood when it involves institutional arbitration.

It is quite unfortunate that within OHADA, arbitration centers like GICAM, the Agricultural and Industrial Chamber of Commerce of Dakar (Senegal), the

Arbitration Court of Ivory Coast and the C.C.J.A do not have a code of deontology for its arbitrators. It is recommended that OHADA should establish a code of deontology for arbitrators in the OHADA zone.

As said earlier, in institutional arbitration, disciplinary sanction is applicable when an arbitrator fails to respect the deontology of the arbitration center where he or she is working. This is not the case with the disciplinary sanction of arbitrators when it involves ad hoc arbitration.

ii-Disciplinary sanction of arbitrators in ad hoc arbitration

Like in the case of institutional arbitration where the OHADA legislator is silent on the disciplinary responsibility of arbitrators, the OHADA legislator is also silent on the disciplinary sanctions of arbitrators in ad hoc arbitration. This silence as it is the case with institutional arbitration does not also mean that in ad hoc arbitration, an arbitrator can not be disciplinary responsible. However a great difference exist between disciplinary sanction of arbitrators in institutional arbitration and disciplinary sanction of arbitrators in ad hoc arbitration. Contrary to institutional arbitration where there is no prior condition to engage the disciplinary sanction of arbitrators, in ad hoc arbitration, a prior condition must be respected (a) and it is only when this condition has been respected that the disciplinary sanction of arbitrators in ad hoc arbitration can be made a reality(b).

A - The prior condition to engage the disciplinary sanction of arbitrators in ad hoc arbitration: the creation of an association of arbitrators

In the domain of arbitration, disciplinary sanction of arbitrators can easily be engaged in institutional arbitration as compared to ad hoc arbitration. In institutional arbitration, the arbitration center can easily engage the disciplinary sanction of an arbitrator who is registered in the arbitration center in question. In ad hoc arbitration, some difficulties are witnessed as far as the engagement of the disciplinary sanction of arbitrators is concerned. The difficulty to engage the disciplinary sanction of arbitrators in ad hoc arbitration is based on the fact that in ad hoc arbitration there is no center acting as a control authority of the arbitration. To eliminate this difficulty, it is proposed that an association of arbitrators should be created. This is the case with some professions like the noble profession (lawyers) where there is the Barristers Association. The creation of an association of arbitrators does not mean the transformation of ad hoc arbitration in to institutional arbitration.

When the association of arbitrators is created, the association can establish a list of arbitrators who are recognized by the association. Like any other association which controls the behavior of the members of the association in question, the association of arbitrators shall be competent to engage the disciplinary sanction of arbitrators in ad hoc arbitration.

b – The engagement of disciplinary sanction of arbitrators in ad hoc arbitration

As aforesaid, the creation of an association of arbitrators will facilitate the engagement of the disciplinary sanction of arbitrators in ad hoc arbitration. The association of arbitrators will be competent to punish an arbitrator with any of the disciplinary sanctions which can be given to an arbitrator in the International Court of Arbitration. Finally, within OHADA, arbitrators can be punished with criminal sanction when they fail to respect their duty of impartiality.

c-The criminal sanctions of arbitrators: Arbitrators are criminally liable for the offence of favoritism

Within the OHADA zone, an arbitrator who fails to respect his duty of impartiality can be punished with a criminal sanction. In this light, Article 9 of the OHADA UAA provides that: “the parties shall be treated with equality and each party shall be given full opportunity to present his case”. The content of this article shows that arbitrators are obliged to treat the parties equally. To treat the parties equally means it is prohibited for arbitrators to favor a particular party in the dispute.

Favoritism means a display of partiality towards a favored person or a group. It is an illegal or unjust favor granted to a person. Article 143 of the Cameroonian Penal Code defines favoritism as an act of deciding because of favor or intimacy with a person. With regards to arbitrators, favoritism can be qualified as an act in which the arbitrator grants unjust favor to a party in arbitration proceedings because of diverse reasons.

An example of a behavior which is considered to be favoritism is when an arbitrator involves himself in a secret communication with one of the parties in the dispute.

It is quite unfortunate that the OHADA legislator is silent on criminal responsibility in the domain of arbitration law. This is contrary to other domains like company law where OHADA made provisions for criminal responsibility of company executive. Nonetheless, silence of the OHADA legislator can not be interpreted to mean that arbitrators are criminally

irresponsible within the OHADA zone. One can easily say that OHADA has left this punishment to be decided by each member state of OHADA. In Cameroon, favoritism is punished under section 142 of the Cameroonian Penal Code. Therefore, any arbitrator who favors a party in an un just manner will suffer the punishment found in section 142 of the Cameroonian Penal Code. Nonetheless, it is recommended that in its future amendments, OHADA should make provisions for the criminal sanctions of arbitrators as it is the case with company executive.

CONCLUSION

The OHADA legislator encourages arbitration as a means to resolve contractual dispute in other to fight against judicial insecurity and hence attract foreign investors in the zone. The arbitrator is the principal actor in arbitration. It is not an overstatement to say the future of arbitration lies on the conduct of the arbitrator during the arbitral process. For arbitration to be successful, the arbitrator must respect his duty of impartiality. The OHADA legislator has used a number of mechanisms to guarantee the impartiality of arbitrators before, during and after the arbitral hearing. Before the arbitral hearing, parties in the dispute are free to chose the arbitrator(s) and any arbitrator who has been chosen must disclose any fact which can hinder his or her impartiality. During the arbitral hearing, the arbitrator must respect the right of the parties to a fair hearing. After the arbitral hearing, disciplinary sanctions, criminal sanctions etc can fall on an arbitrator who failed to respect his or her duty of impartiality. But nonetheless OHADA has not expressly provided for the criminal sanctions of arbitrators the same way in which it has expressly provided for the criminal sanctions of company executive. Against this backdrop, it is recommended that in its future amendments the OHADA legislator should expressly provide for criminal sanctions of arbitrators.

REFERENCE

[1] Organization for the harmonization of business laws in Africa.

[2] MATOR(B.),et al., Business law in Africa : OHADA and the Harmonization Process, Eversheds, 2002, 2nd ed., p. 3.

[3] Franc de la Communauté Financiére d' Afrique Francaise.

[4] The analysis was carried out in several summit meetings of heads of States and government from French speaking Africa. The idea of a harmonized business law in Africa was conceived in OUGADOUGOU, BURKINA FASSO in April 1991. From March to September, 1992, a commission of experts visited the different countries of the franc zone to get information and sensitize authorities and states of the applied legislation.

[5] KRISH (M.), in his Article « Histoire de l'OHADA », Recueil Penant, May-August 1998, n° 827, spécial OHADA, p. 129 prefers to use the phrase « legal and judicial insecurity ». TIGER (P.), in «Le droit des affaires en Afrique-OHADA, PUF, coll. «Que sais-je», 1992, p. 2 defined legal insecurity as a situation of uncertainty in which an economic operator finds himself in proceedings in which he ought to be a party, but his weakness distorts the course of justice. He states that judicial insecurity is manifested through contestable decisions, matters kept for deliberation for several years, impossibility of execution, diverse forms of negligence, poor mastery of the rules of deontology, reception of dilatory tactics, and the process of "renvoi" which ends up discouraging the plaintiff of good faith.

[6] The CFA franc zone is an economic and monetary area that uses CFA franc as its currency. Apart from Equitorial Guinea and Guinea-Bissau, the member states of this zone are predominantly former French colonies.

[7] KEBA MBAYE was a distinguished judge who occupied several important positions both at the level of his country and at the international level including those of president of the Supreme Court of Senegal, president of the Constitutional Council of Senegal and vice-president of the International Court of Justice.

[8] MARTOR (B.), et al, Business law in Africa, 2nd ed., GMB Publishing Ltd., 2007, p.3.

[9] Today, nine areas have been harmonized using nine Uniform Acts. These Uniform Acts are; Uniform Act Organizing Securities adopted in 1997 and amended on the 15 of December 2010, Uniform Act on General Commercial Law adopted in 1997 and amended on the 15 of December 2010,Uniform Act on Commercial Companies and Economic Interest Groups adopted in 1997 and amended on the 30th of January 2014, Uniform Act Organizing Corporate Accounting adopted in 1998, Uniform Act on arbitration adopted in 1998, Uniform Act on Simplified Recovery Procedure and Measures of Execution adopted in 1998, Uniform Act on Collective Proceedings For Wiping Off Debts adopted in 1998 and amended on 10th September 2015, Uniform Act on Carriage of Goods by Road

adopted in 2002 and Uniform Act on Coperative Societies adopted in 2010.

[10] Benin, Burkina-Faso, Cameroon, Central Africa Republic, Comoros, Congo (Brazzaville), Côte d'Ivoire, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Tchad and Togo.

[11] Guinea Conakry and Guinea-Bissau.

[12] The most recent member to joint the organization is the Democratic Republic of Congo.

[13] The objectives are as follows: the determination to accomplish new progress on the road to African unity and to establish a feeling to trust in favor of the economies of the contracting states in a view to create a new center of development in Africa; to reaffirm their commitment in favor of the establishment of an African economic ; the fact that their membership in the franc zone is an economic and monetary stability factor and constitutes a major asset and that this integration must be carried on a larger African frame work; the fact that the realization of those objectives demands an application in the contracting states of a business law which is simple, modern and adaptable; it is essential that the law to be applied with diligence in such conditions so as to guarantee legal stability of economic activities and to favor the expansion of the latter and to encourage investment; the desire to promote arbitration as an instrument to settle contractual disputes; and the determination to participate in common new efforts to improve the training of judges and representatives of the law.

[14] See, Article 1 of the OHADA treaty of 17th October 1993 as revised in 2008.

[15] See the OHADA treaty of 2008.

[16] KEBA MBAYE,«L'histoire et objective de l'OHADA» , Petites affiches no 25 du 13 octobre 2004, p.4 ; POUGOUE (P-G.), «OHADA : Instrument d'intergration juridique», Revue Africain des Sciences Juridique, vol.2, no.2, 2001, p.11 ; POUGOUE (P-G.) et KALIEU ELONGO (Y-R.), Introduction critique à l'OHADA, PUA, Yaounde, 2008, p.225 ; PAILLUSSEAU (J.),« Le droit de l'OHADA, un droit très important et original», La Semaine Juridique no.5, supplément à la Semaine Juridique no.44 du 28 octobre 2004, p.1.

[17] REDFEM (A.), Hunter (N.), BLACKABY (N.), and PARTSIDES(C.), Law and Practice of International Commercial Arbitration, Sweet and Maxwell, 4th ed., 2004, p. 6.

[18] POUGOUE(P-G), TCHAKOUA (J-M.) et FENFON (A.), Droit de l'arbitrage dans l'espace OHADA, PUA, 2000 , no 98.

[19] The OHADA treaty, Uniform Act on Arbitration, CCJA Rules of Procedure and CCJA Rules of Arbitration did not provide a definition for arbitration.

[20] See, section 74 of the Southern Cameroons High Court Law 1955 and section 60 of the Magistrate Courts (Southern Cameroons) Law 1955.

[21] MARTOR (B.) et al., opcit, p.255.

[22] See, Article 1 of the OHADA treaty.

[23] TEYNIER (E.) and FAROUK YALA, Un nouveau centre d'arbitrage en Afrique Sub-Saharienne, ACOMEX, 2011, p.1.

[24] This is a clause in the arbitration agreement which stipulates that any future dispute between the parties shall be resolved by way of arbitration.

[25] It is an agreement between parties in a dispute to submit an existing dispute between them to arbitration.

[26] The word" court" hear means the CCJA acting as a court and not an arbitration institution. It is important to recall that the CCJA can seat as a court and it can also seat as an arbitration center.

[27] Arts. 8 of the OHADA Uniform Act on Arbitration, 3.1 of the CCJA rules of Arbitration.

[28] See, Arts 5 of the OHADA Uniform Act on Arbitration, Art 3.1 of the CCJA rules of Arbitration.

[29] See, for example, the judgments of the Court d'appel of Paris on September 9,210, in Allaire Vs SGS Holding and of March 10, 2011 in Allaire, Nykcool Vs Dole France and Agrunord et al., Review Arbitrage Francaise no.2

[30] Art. 10.1 of the Arbitration Rules of GICAM.

[31] Art.13.1 of the Arbitration Rules of CACI.

[32] See for example the Universal Declaration of Human Rights of 1948 (Art. 10), the European Convention on Human Rights (Art.6), The American Convention on Human Rights (Art.8), African Charter on Human and Peoples Rights(Art.7), Preamble of the Cameroonian constitution etc.

[33] REDFERN(A.) and HUNTER (M .), Law and Practice of International Commercial Arbitration, 4th ed.,Thomas Sweet and Maxwell, London, 2004, p. 528.

[34] NDEUGWE TUMNDE (B-T.), " Grounds For Refusal of Arbitral Awards Under OHADA Uniform Act on Arbitration 1998" Posted on August 6th, 2012 by AILA, blogailacom/2012/08/06/grounds-for-the-refusal-of-arbitral-awards-under-the-ohada-uniform-act. Last visited on 20th of January 2020.