UNIVERSITY OF RWANDA

College of Arts and Social Studies

School of Law

ADDRESSING LEGAL ISSUES OF CHALLENGING ARBITRAL AWARDS UNDER THE RWANDAN LAW

BY

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DECLARATION

"I, Kayisharaza Ariane, do declare that this dissertation is my own work. I have to the best of my knowledge acknowledged all authors of sources from where I got information. I further declare that this work has not been submitted to any university or institution for the award of a degree or any of its equivalent.

Signed……..…….…...……Date…….…..……

APPROVAL

This is to acknowledge that this dissertation has been submitted with my approval.

Supervisor's name: Dr. Ntezilyayo Faustin

Signed……Date……

DEDICATION

To my beloved husband, our children and the family as a whole.

ACKNOWLEDGMENT

The accomplishment of this would not be possible if there were not various persons to whom I owe special recognition.

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Kayisharaza Ariane

ACRONYMS

CAER	*: Centre d' arbitrage et d'expertise du Rwanda*
EACJ	: East African Court of Justice
Frw	: Rwandan francs
ICC	: International Commercial Chamber
KIAC	: Kigali International Arbitration Centre
LCIA	: London Court of International Arbitration
MINICOM	: Ministry of Commerce and Industry
MoJ	: Ministry of Justice
N°	: Number
NLRC	: National Law Reform Commission
OG	: Official Gazette
OGRR	: Official Gazette of the Republic of Rwanda
P./pp.	: Page / pages
PAU	*: Académie polonaise des sciences et des lettres*
PSF	: Private Sector Federation
RBA	: Rwanda Bar Association
SHLP	*: Société historique et littéraire polonaise*
SEC	: Self-Regulatory Organization
SIAC	: Singapore International Arbitration Centre
UK	: United Kingdom
UNICITRAL	:United Nations Commission on International Trade Law
UR	: University of Rwanda

ABSTRACT

This study entitled "Addressing legal issues of challenging arbitral awards under the Rwandan Law" had as objectives to deeply explore legal issues associated with challenging arbitral awards and therefore to suggest legal mechanisms that should be adopted in order to assure appropriate appealing procedures against arbitral awards. In order to reach these objectives of this study, documentary technique, exegetic, analytic and synthetic methods were used and were basically oriented to the analysis of the Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, the Law n° 51/2010 of 10/01/2010 establishing the Kigali International Arbitration Centre (KIAC) and the Ministerial order n° 16/012 of 15/05/20012 establishing rules of arbitration in KIAC, while comparing them with few arbitral cases that managed to be lodged before the Rwandan courts and with other arbitration systems, mainly arbitration rules of the the United Nations Commission on International Trade Law (UNCITRAL), the English and the Kenyan arbitration laws. Key findings demonstrated that the text of the Law n° 005/2008 of 14/02/2008 on arbitration has gaps related to both the qualification of procedures meant to revisit or challenge an arbitral award and the lack of a room for challenging an arbitral award on merit. It was found that various appellations were used without considering their specific meanings. Apart from the review, correction and interpretation of the award, as well as the issuance of an additional award; whereas the common expression as found in UNCITRAL rules is setting aside an arbitral award as a result of an appeal against an arbitral award, the Law n° 005/2008 of 14/02/2008 uses instead terminologies that include appeal and dissolution of an award (Article 48), the setting aside of an award (Article 47), annulation of an award (Article 49), and cassation of an award (Articles 47 and 49), in a disorganized manner, though the sought meaning is one – "setting aside an arbitral award". Another thing is that the Law on arbitration in Rwanda mentioned above does not recognize appeal against an arbitral award as such, though the same law uses the terminology of "appeal", because the court has no right to assess the substance of the award, but rather examines if procedural conditions were met by an arbitral tribunal and parties thereto, and send back the case to arbitration if the conditions were breached, which is known as setting aside an arbitral award. The study found however that in some legislations like English and Kenyan, appeal on merit against an arbitral award is allowed. It is against this summary of findings that the study recommended the legislative drafting bodies in Rwanda and the legislator to amend the arbitration law in order to correct drafting errors associated with revisiting and challenging an arbitral award and to recognize the right to the challenging of an arbitral award on merit, in case parties choose to do so. The study also recommended KIAC, arbitrators and parties about capacity building and awareness raising in arbitration matters.

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INTRODUCTION AND BACKGROUND TO THE STUDY

1. Introduction

Arbitration is a procedure applied by parties to the dispute requesting an arbitrator or a jury of arbitrators to settle a legal, contractual dispute or another related issue[1]. In other words, arbitration is a formal, private and binding process where disputes are resolved by a final award made by one or more independent arbitrators. The process of arbitration is a faster, simpler and less expensive alternative to litigation. The parties involved in a dispute must consent to arbitration and the arbitrator(s) to be used must be agreed by the parties[2] or nominated by an independent body[3].

In Rwanda, arbitration as one of modes of disputes resolution was introduced in 2008 by the Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters[4]. In order to make arbitration system more operational, in 2011, the Kigali International Arbitration Centre (KIAC) was established[5]. In 2012, KIAC arbitration rules were determined[6].

As seen in its definition, arbitral award is meant to be final and binding. In other words, arbitration is by principle not subjected to an appeal. However, the arbitral tribunal itself has powers similar to appeal against court decisions, that is, review, correction and interpretation of award and an additional award by the same arbitral panel or college[7]. There is possibility to appeal through ordinary litigation procedures in case of arbitral award cassation which seems to be more procedural than substantive[8]. Cassation also

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[1] Article 3 of Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, Official Gazette (OG) special no of 06 March 2008

[2] R. COM. AA 0006/05/CS of 14/09/2005, SOGEA-SATOM/AMSAR vs. DANDARI Vincent, Supreme Court, Kigali, Rwanda

[3] CIARB, *Arbitration*, accessed at https://www.ciarb.org/training-and-development/arbitration, on 13/01/2015.

[4] See OG special no of 06 March 2008

[5] Law n° 51/2010 of 10/01/2010 establishing the Kigali International Arbitration Centre and determining its organization, functioning and competence, Official Gazette n° 09 *bis* of 28/02/2011

[6] Ministerial Order n° 16/012 of 15/05/2012 determining arbitration rules of Kigali International Arbitration Center, Official Gazette nº22 *bis* of 28 May 2012.

[7] See article 45 of the Law n° 005/2008 of 14/02/2008, aforementioned.

[8] See articles 46 and 47 of the Law n° 005/2008 of 14/02/2008, aforementioned. Some of these reasons are incapacity, non-compliance to the law, notice issuance irregularities, a case dealt with by arbitrators whereas it is out of the scope of the arbitral contract/clause, decisions containing matters not submitted to the arbitration, composition of the arbitral tribunal, dispute subject-matter that does not fall under the arbitral tribunal's competences, award which is in conflict with the public security of the Republic of Rwanda.

means that the award is nullified and brought back to the arbitral tribunal but not dealt with the litigation court, or simply nullified but not sent back to the arbitral tribunal, depending upon interested parties' request and the litigation court appreciation[9].

Given that appeal against arbitral awards is unique and totally different from the ordinary appeal against court decisions, given that it is not recognized as appeal but rather qualified as "review, correction, interpretation of award and an additional award and arbitral award cassation", among other motivations, the researcher decided to undertake a deep research entitled " *Addressing legal issues of challenging arbitral awards under the Rwandan Law*", in order to understand more the demarcation between ordinary appealing procedures and arbitral appeals and suggest solutions to related problems which are well illustrated in the statement of the problem.

2. Statement of the problem

It is commonly accepted that arbitration seek to promote finality and justice[10]. However, justice is not an isolated island where errors are not likely to appear. That is why, litigation courts decisions are attackable via various methods of appeal[11], which are not unfortunately recognized to the arbitration system, because arbitral awards remain by principle final and binding[12].

That said, arbitration awards errors seem to be accepted and therefore breach the appealing principle of justice. The analysis of articles 45, 46 and 47 of the Rwandan arbitration law shows that what can be called "appeal against arbitral awards" does not fulfil minimum appealing conditions. They are procedures that are not even called "appeal" but rather "review, correction, interpretation of award and an additional award and arbitral award cassation"[13].

[9] See article 49 of the Law n° 005/2008 of 14/02/2008, aforementioned.

[10] Tai-Heng Cheng, *Finality and Justice in ICSID Arbitration*, accessed at http://www.iilj.org/research/documents/abstract.pdf, on 15/06/2018.

[11] The Rwandan Law recognizes some appealing methods like opposition, appeal, opposition by a third party and case review as well developed in the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure (Official Gazette nº Special of 29/04/2018) and the Law Nº 30/2013 of 24/5/2013 relating to the code of criminal procedure, Official Gazette nº 27 of 08/07/2013.

[12] Tom Stilwell, "Correcting errors: imperfect awards in Texas arbitration", in *BAYLOR LAW REVIEW*, Vol. 58:2, Texas, USA,p. 469.

[13] See OG special no of 06 March 2008

In addition to this, whereas the Rwandan legal system recognizes the double degree of appeal, it is quite impossible for a loser of the arbitration case to exercise a double degree of appeal[14], because the first court where to appeal against the arbitral award is the Commercial High Court[15]. This means that cases from this Court and at first instance would directly be appealed in the Court of Appeal, at the second instance of appeal, which will not be possible for so many arbitral related cases, as the minimum value of the subject-matter to be received by the Court of appeal is seventy five million Rwandan francs (75,000,000 Frw)[16].

Before even the 2018 judicial reform, as this study is also interested by cases that existed under the 2008 Law on Courts jurisdictions[17] as was amended and complemented until the new laws in 2018; the situation was somehow similar. That said, the new laws did not bring in any positive contribution to the right of appeal against an arbitral award. For instance, the double degree of appeal which was recognized to court cases[18] was not allowed to the appeal against arbitral awards because the first court where to appeal against the arbitral award was still the Commercial High Court[19]. This means that cases from this Court were directly appealed in the Supreme Court and parties would not have chance to exercise their appeal to the Supreme Court if the value of the dispute was less than fifty million Rwandan francs (50,000,000 Frw)[20], a situation that had already been a point of discussion before the Supreme Court within the arbitration framework[21]. Therefore, one would wonder why the legislator did not make the Commercial Court the appellate court for arbitration awards instead of the Commercial High Court.

Another legal issue is that the litigation court has by principle no right to check the veracity of the award but rather the compliance to arbitral processes and therefore send

[14] See for example article 52 (§2) of the Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts (Official Gazette n° Special of 02/06/2018) about jurisdiction to try at the second level of appeal cases tried by the High Court, the Commercial High Court and Military High Court.
[15] Article 82 (§4) of the Law N°30/2018 of 02/06/2018, aforementioned.
[16] Article 52 of the Law N°30/2018 of 02/06/2018, aforementioned.
[17] Organic Law n° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of Courts, as modified and complemented until June 2018 when it got repealed, OG n° SP. 10/09/2008
[18] See articles 105 & 106 of the Organic Law n° 51/2008 of 09/09/2008, aforementioned.
[19] Article 13 in fine of the Organic Law n° 06/2012/OL of 14/09/2012 determining the organization, functioning and jurisdiction of commercial courts, Official Gazette n°45 of 05/11/2012
[20] Article 28, 7° of the Organic Law n° 03/2012/OL of 13/06/2002 determining the organization, functioning and jurisdiction of the Supreme Court, Official Gazette nº 28 of 09 July 2012
[21]RCOMAA 0041/11/CS of 05/07/2012, RukerikibayeRaphaëlvs.Golf Course Estate ltd, Supreme Court, Kigali, Rwanda

parties back to the arbitration tribunal, what the law qualifies as arbitral award cassation. The additional legal issue to this is that the case is held by the same arbitrators[22] whereas litigation appeals are normally either by different judges of the same court or by different and superior courts[23], in order to efficiently correct errors made by previous judges or courts[24].

Therefore, without jeopardizing the essence for the arbitration to provide quicker justice delivered by private judges (arbitrators), there is still the problem as to whether arbitral awards can be corrected through an appellate mechanism.

This led to the formulation of the following research question: "Are means availed by the Rwandan legislation to challenge an arbitral award sufficient for the arbitration errors correction"?

3. Objectives of the study

As well illustrated above, justice is exposed to errors which are normally corrected via appealing against taken decisions. However, the arbitral award is a final and binding decision. Therefore, errors associated with arbitral awards would remain uncorrected.

It is this framework that the research has a general objective to find out appropriate procedures that should be opted for in correcting arbitration errors without breaching its essence of being a faster, simpler and less expensive alternative to litigation.

Specific objectives of the study are:

- To deeply explore legal issues associated with appeal against arbitral awards;
- To suggest legal mechanisms that should be adopted in order to assure appropriate appealing procedures against arbitral awards.

4. Hypothesis

This study is based on the hypothesis that existing procedures similar to appeal against arbitral awards, that are, "review, correction, interpretation of award and an additional award and arbitral award cassation", can contribute to the correction of arbitration errors but are not quite enough to assure justice within arbitration framework.

[22] See Article 49 of the Law n° 005/2008 of 14/02/2008, aforementioned.

[23] See Articles 147 – 160 of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure (Official Gazette nº Special of 29/04/2018). For the old system (until April 2018), see the Organic Law n° 03/2012/OL of 13/06/2002, aforementioned, Law n° 21/2012 of 14/06/2012, aforementioned; Law nº 30/2013 of 24/5/2013, aforementioned and the Law n° 005/2008 of 14/02/2008, aforementioned.

[24] Tom Stilwell, *op. cit.*, p. 469.

5. Research methodology

In order to attain the objectives of this study, different techniques and methods were used. These are the documentary technique, exegetic, analytic and synthetic methods.

The documentary technique was used in collecting data from different written documents relevant to the topic including law texts, books, journal articles, annual reports, newspapers, etc. The exegetic method helped to interpret the various law materials. The analytic method was used for analysis of different elements of data collected. Finally, the synthetic method helped in regrouping the collected data in a coherent manner.

6. Structure of the study

Apart from the introductory part, the study consists of further three main chapters which are followed by a general conclusion, which also embodies recommendations.

Whereas chapter 1 presents the current status of appeal against arbitral awards, chapter 2 explores key issues that hamper the correction of arbitration errors based on the arbitration law into force. Chapter 3 therefore provides legal mechanisms that should be adopted in order to assure appropriate appealing procedures against arbitral awards.

As introduced above, the study ends in a conclusion where also recommendations are formulated for the implementation of mechanisms as discussed in chapter 3 for the assurance of appropriate means to correct arbitration errors.

Chap I. ARBITRATION AND CHALLENGING ARBITRAL AWARDS

Chapter one of this work reviews arbitration and appeal against arbitral awards in two main sections, whereby the first one treats the arbitral rules of the United Nations Commission on International Trade Law (UNCITRAL) with an arbitral system inspiring almost all other arbitration systems of the world, and the second one reviews the Rwandan arbitration system.

Section 1. Review of the UNCITRAL arbitration rules

This section reviews the rationale to have chosen the review of the UNCITRAL arbitration rules as the leading arbitration system, arbitral proceedings under the UNCITRAL in general and the appeal under the UNCITRAL arbitral system, in particular.

§1. UNCITRAL arbitral rules as the mother of various arbitral systems

Within the framework to have an overview of the UNCITRAL compared to various arbitral systems, this paragraph reviews the historical background compared to other leading international arbitration systems and to the Rwandan arbitral system.

A. Historical background compared to other leading international arbitration systems

The UNCITRAL constitutes a core legal body of the United Nations (UN) system in the field of international trade law. It is a legal body with universal membership specializing in commercial law reform worldwide for over 50 years. UNCITRAL's business is the modernization and harmonization of rules on international business[25].

Among other areas of the UNCITRAL's interventions, there is arbitration, whose regulations were approved in 1976 and served for solving a wide range of claims including disputes arising between private parties in trade where no institution is included, investor-Nation disputes, Nation to Nation disputes and trade disputes conducted by arbitral institution.

In 2006, UNICITRAL opted to its rules should be amended to reflect the changes in arbitral proceedings over the last 30 years. The aim of the amendment was to enhance the

[25] UNCITRAL, About UNCITRAL, retrieved from http://www.uncitral.org/uncitral/en/about_us.html, June 02nd 2018

efficiency of arbitration under the Rules without changing the initial format of the text, its sprit of drafting design[26].

The 1976 UNCITRAL arbitral rules got replaced by the 2010 version to adapt rules to the new trends of the international business. For instance, the old rules were obliging parties to have specified in their written agreement that their disputes shall be specifically handled within the UNCITRAL arbitral rules framework. But with the new version, the agreement of parties is not required to be in writing and to specify the UNCITRAL arbitral rules as applicable rules to their disputes. Parties may have planned for arbitration without specifying UNCITRAL arbitral rules, and do this when the dispute arises. The adaptation to the new trends also includes obliging parties to submit their notices and communications through electronic means, which was not there before as the technology was not in use in 1976[27].

It is worth noting that in 2013, the UNCITRAL Rules on Transparency in Treaty-based investor-State Arbitration (the "Rules on Transparency") were adopted to comprise a set of procedural rules that provide for transparency and accessibility to the public of treaty-based investor-State arbitration. The Rules on Transparency apply in relation to disputes arising out of treaties concluded prior to 1 April 2014, when Parties to the relevant treaty, or disputing parties, agree to their application. The Rules on Transparency apply in relation to disputes arising out of treaties concluded on or after 1 April 2014 ("future treaties"), when investor-State arbitration is initiated under the UNCITRAL Arbitration Rules, unless the parties otherwise agree. The Rules on Transparency are also available for use in investor-State arbitrations initiated under rules other than the UNCITRAL Arbitration Rules, and in ad hoc proceedings. Given the link between the UNCITRAL Arbitration Rules and the application of the Rules on Transparency, a new version of the UNCITRAL Arbitration Rules (with new article 1, paragraph 4 as adopted in 2013) (the "UNCITRAL Arbitration Rules 2013"), also came into effect on 1 April 2014[28].

Most of leading arbitral systems in the world are inspired by the UNCITRAL arbitral rules and therefore have many similarities with them. This falls under the spirit of

[26] http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html

[27] Badrinath Srinivasan, UNCITRAL Arbitration Rules 2010: A Review, Christ University Law Journal, 2, 1(2013), pp. 121 – 124 [pp. 117-152]

[28] UNCITRAL, UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (effective date: 1 April 2014), accessed on http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2014Transparency, June 2nd 2018.

UNCITRAL in general to have model laws that are freely domesticated by various countries of the world[29]. These model laws include the arbitration rules which inspired specific rules that govern the Paris ICC arbitration system, the London Court of International Arbitration (LCIA), the EACJ arbitration system, the Singapore International Arbitration Centre (SIAC), and many others. Apart from the EACJ arbitration rules, these other mentioned examples have not only institutional rules based on, or inspired by the UNCITRAL Arbitration Rules, but also administer arbitral proceedings or provide administrative services under the UNCITRAL Rules, and act as an appointing authority under the UNCITRAL Rules, which explain the direct linkage of the UNCITRAL arbitration rules with other arbitral systems[30].

B. UNCITRAL arbitration rules under the Rwandan legal system

Since its creation, UNCITRAL has made a record to inspire national laws whereby its model laws including the arbitration rules got domesticated by many countries with slight adaptation to their national contexts[31].

In Rwanda, both KIAC and the Government recognizes the UNCITRAL arbitral rules. For instance, KIAC admits administering arbitration under its own rules and UNCITRAL Rules, besides the status of Rwanda as a signatory to the 1958 New York Convention on the Recognition and Enforcement of foreign Arbitral Awards[32] which enables the KIAC Arbitral awards to be enforceable in any other country signatory to the convention[33].
Through the 2014 instructions of the Ministry of Justice, the Government of Rwanda proved that it recognizes the UNCITRAL arbitration rules. When it comes to the drafting

[29]Cosmas Gabagambi, Critical analysis on the challenges facing legal and institutional frameworks on recognition and enforcement of foreign arbitral awards in Tanzania, Journal of Law, Policy and Globalization, Vol. 39, 2015, pp. 165 – 178.
[30] UNCITRAL, Status of the UNCITRAL arbitration rules, retrieved at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules_status.html (accessed on ??
[31] George A. Bermann, 'Domesticating' the New York Convention: The Impact of the Federal Arbitration Act, *Journal of International Dispute Settlement*, Volume 2, Issue 2, 1 August 2011, Pages 317–332
[32] Herbert Smith Freehills, A regional success story: the development of arbitration in Rwanda, https://www.herbertsmithfreehills.com/latest-thinking/a-regional-success-story-the-development-of-arbitration-in-rwanda
[33] KIAC, "KIAC", https://www.kiac.org.rw/spip.php?rubrique20

of an arbitration clause in contracts involving governmental institutions, among other possibilities, drafters are encouraged to model clauses of the UNCITRAL[34].

The Rwandan judicial organs have also recognized the fact that the Rwandan Law on arbitration in commercial matters is inspired by UNICTRAL model law on commercial arbitration, which falls under one of the UNCITRAL's mandate to help the world towards the modernization and harmonization of rules on international business by formulating modern, fair, and harmonized rules on commercial transactions[35].
Therefore, there is likelihood for the Rwandan arbitral system to have many similarities with the UNCITRAL arbitral rules, as forthcoming developments of the present study can illustrate it.

§2. Arbitral proceedings under UNCITRAL arbitration rules

Arbitral proceedings under UNCITRAL are mainly characterized by the consultation between the parties and the arbitral tribunal, the languages of the arbitral proceedings and means of communication, the place of arbitration, evidences administration and the award, among others.

A. Meeting between the parties and the arbitrators

It is necessary that the arbitral tribunal involves the parties in making decisions on the determination of the arbitral proceedings and, where applicable, to seek their consent. This is associated with the fact that arbitration remains a consensual mode of disputes resolution, where the consent of parties matters a lot.

Among other things to agree upon, there are time limits in which written statements, witness statements, expert reports and other evidences shall be communicated. There are also provisional dates for hearings, submissions, fees and the work plan[36].

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[34] Art. 19 of the Ministerial Instructions No 612/08.11 of 16/04/2014 setting up modalities for drafting, negotiating, requesting for opinions, signing and managing contracts, Official Gazette nº 18 of 05/05/2014

[35]Fina Bank SA vs. Mulindangabo Jacob, Commercial High Court (CHC), Case No R.COM A 0008/11/HCC of 29/04/2011 [§18], also available at http://www.judiciary.gov.rw (accessed??)

[36] UNCITRAL, *UNCITRAL Notes on Organizing Arbitral Proceedings*, Vienna, Austria, 2016, pp. 6 – 7.

B. Means of communication during arbitral proceedings

UNCITRAL arbitral system is international by nature, with likelihood to have parties from different nationalities and speaking different languages. This compels parties to choose or at least agree upon the arbitration language. Therefore, upon consent between parties, the tribunal, after its establishment, determines the language (s) that shall be used during the proceedings, as well as any other means of communication[37].

C. Place of arbitration

This is agreed upon by the parties and if it was not done after signing the mission letter with the tribunal, the latter reminds parties about it considering the circumstances of the case. Place of arbitration may mean place for hearings and place for deliberations, or place of any other arbitration matter related purposes or upon parties' common understanding[38].

D. Evidences

It is widely admitted that the success of a case in an arbitration vastly depends on the evidence that one party has been able to gather to support its claims[39]. The UNCITRAL arbitral rules also cater for evidences in general that include in a separate manner, witnesses and experts, in addition to the arbitration agreement itself and associated annexures[40].

As it is common for justice systems, in terms of evidence each party shall have the burden of proving the facts relied on to support its claim or defense. They include witnesses in general and expert witnesses in particular, who are presented by the parties to testify to the arbitral tribunal on any issue of fact. They may appear physically or through affidavits. The arbitral tribunal may also require the parties to produce documents as evidences, exhibits or other evidence within such a period of time as the arbitral tribunal

[37] Art. 19 of the UNCITRAL arbitration rules (2010 version).
[38] Art. 18 of the UNCITRAL arbitration rules (2010 version).
[39]CarineDupeyron, *Shall national courts assist arbitral tribunals in gathering evidence?*, 2016, ICCA Mauitius, p. 2 , https://www.arbitration-icca.org/media/7/27182909247527/dupeyron_carine_shall_national_courts_assist_arbitral_tribunals_in_gathering_evidence.pdf (accessed??)
[40] John D. Franchini, *International Arbitration Under the UNCITRAL Arbitration Rules: A Contractual Provision for Improvement*, 62 Fordham L. Rev. 2223 (1994), pp. 2223 – 2244.

shall determine. Evidence remains subjected to the sole sovereign appreciation of the panel, under the arbitral rules of UNCITRAL[41].

E. Arbitral award

The arbitral proceedings end in an award. Under the UNCITRAL rules, the award depends upon the composition of the tribunal. For instance, when there is more than one arbitrator, any award or other decision of the arbitral tribunal is made by a majority of the arbitrators. However, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal[42].

As it remains the character of arbitral awards, according to the UNCITRAL arbitral rules, the arbitral tribunal may make separate awards on different issues at different times, without prejudice to the principle according to which all arbitral awards are always written, final and binding on the parties[43]. Apart from parties have decided differently, the tribunal states the grounds on which the decision was taken, in terms of award motivation[44].

§3. Revisiting and challenging an arbitral award under the UNCITRAL arbitral system

The UNCITRAL arbitral rules do not use the terminology of "appeal" as such. However, it provides rooms for interpretation and correction of the award, additional awards as well as award setting aside.

A. Interpretation of the award

Arbitration errors can be corrected through the interpretation of the awards, but within the same spirit of the previous decision[45]. UNCITRAL recognizes the same procedure in that it allows the interpretation of the award within 45 days after the receipt of the request

[41] Art. 27 of the UNCITRAL arbitration rules (2010 version).
[42] Art. 33 of the UNCITRAL arbitration rules (2010 version).
[43] Tom Stilwell, *Op. Cit.*,p. 469.
[44] Art. 34 of the UNCITRAL arbitration rules (2010 version).
[45] Robert D.A. Knutson, 'The Interpretation of Arbitral Awards When is a Final Award not Final?' (1994) 11 Journal of International Arbitration, Issue 2, pp. 99–109.

which can be made by a party within 30 days after the receipt of the award. The interpretation is supposed to form part of the original award[46].

B. Correction of the award

Arbitrators can do errors in providing their awards. Therefore, some situations can lead the tribunal to correct an award, when there is a statutory authority to do so[47].
The UNCITRAL arbitral rules recognize the correction of award, whereby within 30 days after the receipt of the award, the interested party has right to request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. Such corrections are supposed to be in writing and to form part of the award[48].

However, the interpretation at a glance of the UNCITRAL arbitral rules on the correction of arbitral awards shows that the correction is limited to slight errors and might not largely impact on the previous decision as awarded to parties as a final arbitral award.

C. Additional award

As it is within appeal spirit, where the court has right to decide on matters debated on through the previous proceedings but which was not decided on[49], the UNCITRAL recognizes an additional award, which compels to address again the arbitral tribunal for further decisions; which is not similar to appeal but has a quite similar context.

According to UNCITRAL arbitral rules, "within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or

[46] Art. 37 of the UNCITRAL arbitration rules (2010 version).
[47]NKT Cables A/S v. SP Power Systems Limited, [2017] CSOH 38cited by Thomas G. Heintzman, When May An Arbitral Tribunal Correct Its Award?, accessed at http://www.constructionlawcanada.com/arbitration/when-may-an-arbitral-tribunal-correct-its-award/ (accessed??)
[48] Art. 38 of the UNCITRAL arbitration rules (2010 version).
[49] Geoffrey Samuel, A Short Introduction to the Common Law, Edward Publishing, School of Law, Sciences- Po, Paris, 2013, p. 39.

complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award"[50].

Therefore, additional award as recognized by the UNCITRAL arbitration rules is comparable to the appeal in ordinary court cases, as it touches the substance of the case, as both the appeal and additional award concern matters already decided on, with an exception to the additional award, where the attacked case is partially decided on. In other words, an arbitration award is a determination on the merits by an arbitration tribunal, and is analogous to the judgment in the Court of Law[51].

D. Award setting aside

Under the UNCITRAL arbitration rules, setting aside an arbitral award constitutes an exclusive recourse against arbitral awards before courts for procedural reasons including incapacity of the party by the time of arbitration clause or agreement, improper notices and lack of jurisdiction[52]. In any case, the setting aside does not allow the ordinary court to pronounce a verdict or interfere on its merits, but rather to send back the case to the arbitral tribunal[53]. Therefore, case setting aside does not fulfill the normal conditions of appeals, as it is well indicated well that the setting aside concerns procedural reasons without dealing with the case substance.

Section 2. Existing possibilities of appeal against arbitral awards in some legislations

This section reviews existing possibilities of appeal against arbitral awards provided in some legislations, namely UK and Kenya.

§1. Appeal against arbitral awards in the English arbitration system

Though it is by nature and commonly accepted that arbitral awards are final and binding, in England, the Arbitration Act 1996 sets out three grounds upon which it is possible to appeal against an arbitration award.

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[50] Art. 38 of the UNCITRAL arbitration rules (2010 version).

[51] Kumar Sumit, Arbitration award: its challenges and enforcement, accessed at http://www.legalservicesindia.com/article/433/Arbitral-Award-Its-Challenge-&-Enforcement.html (accessed??)

[52] Art. 34 of the UNCITRAL arbitration rules (2010 version).

[53]Swati Duggal, Setting Aside Arbitral Award: Contemporary Scenario in India, https://www.lawctopus.com/academike/arbitral-award-setting-aside/

The reading of Articles 66 – 68 of the Arbitration Act 1996 (of England) does not immediately show that there is possibility of appeal, because the articles generally regulate the challenging of arbitral awards on procedural issues, not on merits or substantive issues, which normally make an attack, an appeal, in the normal understanding of appeal. It is rather and preliminarily with the interpretation of Article 67 (3) that it can be seen that appeal is allowed in the English arbitral system. It stipulates thus:

> *On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order—*
>
> *a) confirm the award,*
>
> *b) vary the award, or*
>
> *c) set aside the award in whole or in part*[54].

If the court is allowed to vary the arbitral award, it means that it touches on its merits or substance, which is equivalent to the normal appeal against court decisions. It is worth noting that confirming an award is equivalent to the approval of the award for its enforcement, whereas setting aside is still cessation of the arbitral award[55].

However, in an open manner, parties have right to exercise an appeal, if they have chosen to recognize the right to appeal. In other words, it belongs to parties to specify in their agreement that the arbitral award will be either, "final and non-binding", or if it will be appealable[56]:

> *Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings.*
>
> *An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.*

[54] Article 67 (3) of the UK Arbitration Act 1996.
[55] Richard Marshall and Nicole Finlayson, Challenging arbitral awards, in the New Law Journal, Issue 7760 of Sept. 08th 2018, https://www.newlawjournal.co.uk/content/challenging-arbitration-awards-update
[56] Article 69 (1&2) of the UK Arbitration Act 1996.

An appeal shall not be brought under this section except—

(a) with the agreement of all the other parties to the proceedings, or

(b) with the leave of the court.

According to the common practice, the agreement to make an arbitral award appealable, can be made in terms of a clause in the mother agreement as it can be made as a clause in the arbitration agreement itself. Therefore, the right in Article 69 of the Arbitration Act 1996 (of England) is non-mandatory and may be excluded by agreement of the parties. Again, many arbitral rules in UK expressly exclude all non-mandatory rights of appeal, which means that appeal cases are limited in number[57].

§2. Appeal against arbitral awards in the Kenyan system

As it is the case for the English system, the Kenyan Arbitration law recognizes rights to parties to proceed to an appeal to the High Court and on the substance of the award, in additional to the appeal for procedural grounds, in the following terms[58]:

Where in the case of a domestic arbitration, the parties have agreed that—

(a) an application by any party may be made to a court to determine any question of law arising in the course of the arbitration; or

(b) an appeal by any party may be made to a court on any question of law arising out of the award,

such application or appeal, as the case may be, may be made to the High Court.

On an application or appeal being made to it under subsection (1) the High Court shall—

(a) determine the question of law arising;

(b) confirm, vary or set aside the arbitral award or remit the matter to the arbitral tribunal for re-consideration or,

[57] Herbert Smith, Arbitration awards in UK, accessible at https://www.lexology.com/library/detail.aspx?g=9fe151f5-ebb4-43f8-9664-9d149170e158

[58] See Article 37 of the Kenya Arbitration Act, No 4 of 1995, published by the National Council for Law Reporting with the Authority of the Attorney-General.

where another arbitral tribunal has been appointed, to that arbitral tribunal for consideration

The Kenya Arbitration Act goes further in stipulating that "*when an arbitral award has been varied on appeal (…), the award so varied shall have effect as if it were the award of the arbitral tribunal concerned"*[59]. The appeal will remain possible if parties had agreed upon it and will be carried out on both procedural and substantive matters of the arbitral award[60].

Though the Kenyan arbitration act recognizes the appeal on merit against arbitral awards, the High Court cannot on its own initiative decide to invite parties to provide their means of defense on the merit, if they have not included this in their claim[61]. This was one of the decision of the court in the case Kenya Bureau of Standards v Geo-Chem Middle East [2017] eKLR, Kenya High Court[62], though the ways in which a party can access the appellate jurisdiction of courts, on merit, in a matter arising from an arbitral process are recognized by the Kenyan High Court[63].

The UNCITRAL arbitration rules can be adapted to the national will and context as it has been the case for the English and Kenyan systems which diverted on the appeal possibility level, whereas UNCITRAL had not provided for that possibility. The following section discusses the status of the Rwanda's arbitration system as compared to the UNCITRAL and both appeal possibility examples of England and Kenya.

Section 3. Rwanda's arbitration system

This section reviews the arbitration system in Rwanda in terms of both the legal and the institutional frameworks, with support from some case law.

[59] Article 37 (5) of the Kenya Arbitration Act, 1995.
[60] EcroneOmulloh, Enforceability of Arbitral Awards in Kenya, http://www.lexgroupafrica.com/enforceability-of-arbitral-awards-in-kenya/
[61] Claire Mwangi, The role of Kenya courts in arbitration, enabling or contraining?, LL.M dissertation, University of Nairobi, 2014, pp. 4, 6, 48 and 50.
[62] Accessed at http://kenyalaw.org/caselaw/cases/view/137022, on Oct. 2nd 2018
[63] Kenyatta International Convention Centre v Greenstar Systems Limited [2018] eKLR, Kenya High Court, accessible at http://kenyalaw.org/caselaw/cases/view/158394/

§1. Legal framework

This sub-section reviews the background of the legal framework of arbitration in Rwanda and its actual status.

A. Background and actual status

Though the Law governing arbitration in Rwanda was enacted in 2008 and though KIAC was established around 2010, arbitration got introduced in Rwanda in 2002 when the Government of Rwanda through the Ministry of Commerce and Industry (MINICOM) and the World Bank, and Traders, among others, created an arbitration center named "*Centre d'arbitrage et d'expertise du Rwanda* (CAER ASBL)"[64].

In 2004, the Law n°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure recognized powers to courts to amend an arbitral award, though there was no law regulating arbitration itself, by that time. Arbitration clauses in commercial contracts or agreements to refer disputes to arbitral tribunals, as well as arbitral proceedings themselves, were based on commercial best practices; apart from the request for setting aside an arbitral award which was assigned to the courts[65].

In 2007, the amendment of the Law n°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which came together with the introduction of commercial courts in Rwanda[66], transferred arbitration cases together with other commercial matters to commercial courts; provided that the parties to arbitration in commercial matters have agreed upon referring their disputes to the arbitral tribunal[67].

It is in 2008 that the Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters was enacted[68], and in 2011, KIAC was established[69], one year before the publications of its arbitration rules.[70]

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[64]Uwantege Diane, *Arbitration and other alternative ways of dispute resolution in Rwanda with the special reference to Comparative Law*, LL.M Thesis, University of Rwanda, School of Law, 2016, p. 18 (unpublished).

[65]Fina Bank SA vs. Mulindangabo Jacob, Commercial High Court (CHC), Case No R.COM A 0008/11/HCC of 29/04/2011

[66] Organic Law N° 59/2007 of 16/12/2007 establishing the commercial courts and determining their organization, functioning and jurisdiction, Official Gazette No 05 of 01st March 2008.

[67] Article 351 *septies* of the Law N° 45/2007 of 11/09/2007 modifying and complementing law n° 18/2004 of 20 June 2004 relating to the civil, commercial, labour and administrative procedure, Official Gazette No 05 of 01st March 2008.

[68] See OG special no of 06 March 2008

B. Revisiting and challenging an arbitral award under the Rwandan system

This point discusses how the Rwandan legal system recognizes possibility of challenging or revisiting an arbitral award through correction, interpretation, additional award and the award setting aside. It often brings in some comparative aspects with the UNCITRAL arbitral rules.

1. Review of an arbitral award

The review of an arbitral award is recognized by the Rwandan legal system as follows:

> *A party, with notice to the other party, may request, within thirty (30) days of receipt of the award, the arbitral tribunal to review the award when it appears that this award has been rendered by fraud or on basis of false documents or false testimonies. If the arbitral tribunal considers the request to be justified, it shall review the award in a period not exceeding fifteen (15) days*[71].

The direct analysis of conditions under which review of arbitral award is accepted reveals that it has similarities with some means of appeal recognized in the courts system, as it touches on the merit of the arbitral award in a substantive manner – fraud or false documents or false testimonies; rather than procedural manner, which is a condition for other modes of challenging an arbitral award[72].

It is worth mentioning that the UNCITRAL does not have the review of an arbitral award in a similar manner as allowing a party on the basis of fraud or false documents or false testimonies. This can at least be the basis for setting aside an arbitral award[73].

2. Correction of an arbitral award

The correction of an arbitral award is recognized by the Rwandan legal system as follows[74]:

> *Within thirty (30) days of receipt of the award, unless the parties agreed on another period of time, a party, after informing another party, may apply to the arbitral*

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[69] Law n° 51/2010 of 10/01/2010 establishing the Kigali International Arbitration Centre and determining its organization, functioning and competence, Official Gazette n° 09 bis of 28/02/2011

[70] Ministerial Order n° 16/012 of 15/05/2012 determining arbitration rules of Kigali International Arbitration Center, Official Gazette n°22 bis of 28 May 2012.

[71] Art. 45 (§1) of the Law n° 005/2008 of 14/02/2008, aforementioned.

[72] See the comparative analysis in Chapter 2, section 2 of the present study

[73] AnchitOswal, Impact Of Fraud On Arbitral Award: Indian Supreme Court At Divergence, accessible at https://www.khaitanco.com/PublicationsDocs/SCCOnlineBlog-KCOCoverage1Feb18Anchit.pdf (accessed??)

[74] See Art. 45 (§2-4) of the Law n° 005/2008 of 14/02/2008, aforementioned.

tribunal requesting for correction for any errors in the award in computation, any clerical or typographical errors or any errors of a similar nature;

If the arbitral tribunal considers the request to be justified, it shall make the correction within thirty (30) days of receipt of the request.

The correction of an arbitral award as provided for by the Rwandan legal system resembles the UNCITRAL arbitral rules position[75], as it touches only on the procedural side of the matter, as this is limited to errors in computation and in drafting, without questioning the substance.

3. Interpretation of an arbitral award

The Rwandan legal system recognizes the interpretation of an arbitral award is recognized by the Rwandan legal system as follows[76]:

Within thirty (30) days of receipt of the award, unless the parties agreed on another period of time, one of the parties, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall give the interpretation within thirty (30) days of receipt of the request. The interpretation shall form part of the award (…).

The interpretation of an award is also more procedural than touching on the merits of the award, as the interpretation is done in the spirit of the previous award[77], without diverting from it.

4. Additional award

According to Article 45 (§5) of the Rwandan arbitral law:

Unless otherwise agreed by the parties, one of the parties, with notice to the other party, may request, within thirty (30) days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral

[75] See supra?????
[76] See Art. 45 (§2-4) of the Law n° 005/2008 of 14/02/2008, aforementioned.
[77] ICC International Court of Arbitration (2014), Note on correction and interpretation of arbitral awards, accessed at https://shop.americanbar.org/PersonifyImages/ProductFiles/242046982/Fresh%20off%20the%20Press.pdf

proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within thirty (30) days[78].

As the legal provision illustrates it, the additional award is not about contesting the award itself; it is rather reminding the arbitral tribunal about the previously discussed issues but which did not get any position from the tribunal.

5. Setting aside an arbitral award

There is a way the setting aside an arbitral award is understood. Again, there are conditions under which this is accepted.

a. Understanding the setting aside of an arbitral award

In all systems, arbitral award was made binding on the parties. However, Courts were reserved the right to interfere with the functioning of arbitral tribunals through objecting their awards, based on grounds set by the Law. This is what is understood by setting aside an arbitral award[79].

Under the Rwandan legal system, setting aside an arbitral award was defined as cassation of the award[80], which also means objecting the award. This is normally accompanied by a court decision to either completely reject the case itself or to keep it while meeting procedural rules which were violated, depending upon the ground of the setting aside[81].

b. Grounds for the setting aside of an arbitral award

Quite similarly to the grounds found in the UNCITRAL arbitration rules[82], according to Article 47 of the Law n° 005/2008 of 14/02/2008[83]:

An arbitral award decided by an arbitration may be set aside by the court (…) if:

1° the party seeking cassation furnishes proof that:

a) a party to the arbitration agreement referred to in Article 9 [of the arbitration law] was under some incapacity; or the said agreement is not valid under the Law

[78] See Art. 45 (§5) of the Law n° 005/2008 of 14/02/2008, aforementioned.
[79] LawTeacher. Setting Aside An Arbitral Award [Internet]. November 2013. [Accessed 6 September 2018]; Available from: https://www.lawteacher.net/free-law-essays/commercial-law/setting-aside-an-arbitral-award-commercial-law-essay.php?vref=1.
[80] See Art. 46 of the Law n° 005/2008 of 14/02/2008, aforementioned.
[81] Albert Jan van den Berg, "Should the Setting Aside of the Arbitral Award be Abolished", *ICSID Review*, (2014), pp. 1–26
[82] See supra???
[83] Aforementioned.???

to which the parties have subjected it or, failing any indication thereon, under the Rwandan Law;

b) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case;

c) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;

d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such an agreement is in conflict with provisions of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law;

2° the Court finds that:

a) the subject-matter of the dispute is not capable of settlement by arbitration under the Rwandan Law;

b) the award is in conflict with the public security of the Republic of Rwanda.

In addition to the invalidity of the arbitration agreement or clause in a commercial contract as a requirement for the setting aside, or the improper notice, lack of jurisdiction, irregularities in the composition of the tribunal, and the public order; there is also a required time limit, as a condition for the award to be set aside:

An application for dissolving an award decided by arbitrators shall not be made after thirty (30) days from the date on which the party making that application was notified of the award or, if a request was submitted in accordance with

Article 45 [of the arbitration law], from the day on which the arbitral tribunal pronounced the award on such a request[84].

In any case, the actual status is that there are rooms for errors of arbitrators to be corrected, though they remain limited, compared to the judicial means to attack erroneous decisions taken by judges. The Rwandan High Commercial Court, in the case FINABANK Vs. Mulindangabo Jacob, recognized the ability of arbitral tribunals to correct errors through modes determined in the arbitration Law in terms of interpretation, review and additional award done by the arbitral tribunal, and the setting aside of an arbitral award done by the court. However, the Supreme Court refuted the power of courts to act as appellate bodies on the merits of arbitral awards[85].

§2. Institutional framework

This paragraph assesses the institutional framework of arbitration in Rwanda both in the ad hoc arbitration angle and the institutional arbitration angle.

A. Ad hoc arbitration

"Ad hoc Arbitration is a proceeding that is not administered by others and requires parties to make their own arrangements for selection of arbitrators. The parties are under discretion to choose designation of rules, applicable law, procedures and administrative support. Proceedings under ad hoc arbitration are more flexible, cheaper and faster than an administered proceeding."[86]

In Rwanda, ad hoc arbitration is also recognized and the KIAC does not exclude arbitrators who want to use its premises even within the ad hoc arbitration framework, that is, those arbitrators who do not appear to the list of arbitrators organized under the KIAC rules[87]. However, ad hoc arbitration is not under a systematic control and guidance compared to institutional arbitration.

[84] See Art. 46 of the Law n° 005/2008 of 14/02/2008, aforementioned.
[85]Fina Bank SA vs. Mulindangabo Jacob, Commercial High Court (CHC), Case No R.COM A 0008/11/HCC of 29/04/2011 [§18], also available at http://www.judiciary.gov.rw
[86] X, "Ad hoc arbitration law and legal definition", https://definitions.uslegal.com/a/ad-hoc-arbitration/ (accessed on 8th October 2018).
[87]MasengoFidèle, A regional success story: the development of arbitration in Rwanda, Herbert Smith Freehills, 2017, p. 1.

B. Institutional arbitration

In Rwanda, institutional arbitration services are provided by KIAC, a centre that possesses arbitrators with a minimum of requirements that are set by KIAC rules.

1. KIAC

KIAC is the only centre that provides arbitration services through panels of domestic and international arbitrators. The decision of the Centre made under this rule shall be final and not subject to appeal[88]. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award immediately and without delay and shall be deemed to have waived their right to any form of appeal, review or recourse to any other judicial authority insofar as such waiver may be validly be made[89].

2. Arbitrators and their capacities

In order to promote quality and standards, the admission to the panel of domestic arbitrators requires some criteria. Parties to KIAC arbitrations are free to nominate their arbitrators, in accordance with the KIAC Rules. However, party-nominated arbitrators do not need to be listed on KIAC's Panels. When KIAC is called upon to appoint an arbitrator, it does so primarily from one of its panels.

According to ANNEX III to Ministerial Order N°16/012 OF 15/05/2012 determining arbitration rules of KIAC, among other minimum standards for KIAC panel of domestic arbitrators include educational degree(s) and/or professional license(s) appropriate to your field of expertise, five(5) years, minimum, post qualification experience, having undertaken a recognized course of study in the law and practice of arbitration and/or having been at least qualified Associate Membership of the Chartered Institute of Arbitrators or any comparable professional arbitration Institute.

For international arbitrators, the minimum standards for KIAC panels[90] include educational degree(s) and/or professional license(s) appropriate to your field of expertise, ten (10) years, minimum, post qualification experience or senior-level business or

[88] Art. 19 in fine, Ministerial Order No 16/012 OF 15/05/2012 determining arbitration rules of Kigali International Arbitration Center (KIAC) - Official Gazette nº22 bis of 28 May 2012

[89] Art. 39 in fine, Ministerial Order No 16/012 OF 15/05/2012 determining arbitration rules of Kigali International Arbitration Center (KIAC) - Official Gazette nº22 bis of 28 May 2012

[90] Article 2 of the ANNEX III to Ministerial Order N°16/012 OF 15/05/2012 determining arbitration rules of KIAC, Official Gazette nº22 bis of 28 May 2012

professional experience, and being fellow of Chartered Institute of Arbitrators or any comparable professional arbitration institute.

As revealed by Chapter one of this work, the UNCITRAL arbitration rules inspires almost all other arbitration systems of the world, the Rwandan system included. With regards to the challenging and revisiting of arbitral awards, both systems for instance recognize the right to parties to seek for the correction and interpretation of the arbitral award, and to request for an additional award, besides requesting for the award to be set aside, if required conditions are met. The next chapters treat legal issues in this challenging and revisiting of arbitral awards and try finding out solution mechanisms to errors that might remain uncorrected from arbitral awards, for mainly their prevention and mitigation.

CHAP II. LEGAL ISSUES IN CHALLENGING ARBITRAL AWARDS IN RWANDA

This chapter deals with legal issues in challenging arbitral awards, mainly in terms of legislation gaps, and the comparison between the existing modes of challenging an arbitral award and appeal in judicial cases.

Section 1. Legislation gaps

This section shows that the first legislation gap is the absence of the appeal mechanism against arbitral awards, together with the absence of a separate body for existing modes of challenging arbitral awards.

§1. Issues in legal qualification of appeal in arbitration matters in Rwanda

Issues in legal qualification of appeal in arbitration in Rwanda are herein highlighted basing on both the interpretation of the Law and a court case decided by a Rwandan court.

A. Highlighted issues by the analysis of the Law on arbitration

It may seem misleading to talk about 'appeal' of arbitral awards under the Rwandan arbitration law since the system does not accommodate any appeal *per se*.. The confusion stems from section 8 of chapter two of the same Law, entitled: "appeal against award", whereas articles in this section are entitled "appeal procedure - justification for the appeal and time limit for the appeal"[91].

In fact, by reading the text of articles of the arbitration law in Rwanda, one can see that the context has nothing related to appeal. For instance, according to Article 46 entitled appeal procedure: "Any appeal against a case which is not decided by the international arbitration shall mean cassation of such a case in this Law".

It is worth noting that this article defines appeal as cassation of the arbitral award, which would rather mean setting aside an arbitral award, which is not an appeal as such, because the court has no power to vary the arbitral award, but rather send back the award to be reviewed by the arbitral tribunal for further decisions[92].

[91] Article 46 – 48 of the Law No, aforementioned.

[92]BirhanuBeyeneBirhanu, Cassation review of arbitral awards: does the law authorize it?, Oromia Law Journal [Vol 2, No.2], pp. 112 – 137.

The terminology of "setting aside" is well captured in Article 47 of the Law governing arbitration in Rwanda, though the title remains "justification for the appeal", and the text of the article has no relationship with appeal in its direct meaning:

An arbitral award decided by an arbitration may be set aside by the court specified in Article 8 of this Law only if:

1° the party seeking cassation furnishes proof that:

a. *a party to the arbitration agreement referred to in Article 9 was under some incapacity; or the said agreement is not valid under the Law to which the parties have subjected it or, failing any indication thereon, under the Rwandan Law;*
b. *the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case;*
c. *the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;*
d. *the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such an agreement is in conflict with provisions of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law;*

2° the Court finds that:

a. *the subject-matter of the dispute is not capable of settlement by arbitration under the Rwandan Law;*
b. *the award is in conflict with the public security of the Republic of Rwanda.*

By reading the above text of Law, it can be seen that it is not a procedure for appeal, that it is rather the setting aside of an arbitral award, which is once again referred to as cassation, in the same text. Again, the article talks about conditions under which the setting aside is possible, which conditions are procedural, and do not touch at the

substance of the decision. They include incapacity of parties, improper notice, lack of jurisdiction, improper composition of the arbitral tribunal and the public order. The text does not talk about the content or decision of the arbitral award as such.

In the same angle, Article 48 of the Arbitration Law, though entitled "time limit for the appeal", has nothing evidencing that appeal against arbitral awards in the Rwandan Law is possible. It stipulates that:

> *An application for dissolving an award decided by arbitrators shall not be made after thirty (30) days from the date on which the party making that application was notified of the award or, if a request was submitted in accordance with Article 45, from the day on which the arbitral tribunal pronounced the award on such a request.*

The above text can lead to the conclusion that the legislator used five (5) different appellations, interchangeably, though they do not have the same meaning under legal terminologies: appeal, dissolution of an award (See Article 48), the setting aside of an award (see Article 47), annulation of an award as found in Article 49 presented below, and cassation, as found in Article 47 and the text of Article 49 (see below) which is entitled "suspension of cassation of case in arbitration". It stipulates:

> *The appeal court may, when requested by one of the parties, annul an award decided by arbitrators and, where appropriate, suspend the cassation of proceedings for a period of time it determines in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion which may eliminate the grounds for cassation of the award taken.*

The Rwandan Law on arbitration presents therefore the legal gap of not including possibilities of appeal against arbitral awards, as it is the case for the English and Kenyan system as discussed *supra*. Having in the Law the terminology of appeal, whereas it is not an appeal, as well illustrated in section 2 of the present chapter, it is an issue regarding the "legal qualification" of appeal by the Rwandan legislator.

B. The position of a Rwandan court on the possibility to appeal against an arbitral award

The absence of the possibility of appeal in its normal meaning was also remarked by a Rwandan court in the case of FINA BANK SA as an appellant and MULINDANGABO Jacob, R.COM A 0008/11/HCC of April 29th 2011 in which the Commercial High Court

dealt with an appeal against the award RA 02/RWR/10 made in December 22nd 2010 by a single arbitrator as agreed by the parties. The appeal, opposed by the Respondent, requested the Court to decide on a substantive issue in an arbitral award.

According to the facts of the case, Mr WELABE Kelvin, represented by his father MULINDABAGO Jacob (a minor), owned a property (plot n°5587 Nyabugogo-Nyarugenge) which had one of its parts – the ground floor, rented out to FINA BANK SA for 1,200,000 RWF per month as agreed and signed on 01/09/2008 by the two parties. This tenancy agreement was for five (5) years. FINA BANK SA decided to renovate the rented part in order to use it in accordance with the commercial purpose it was pursuing. In so doing, some parts of the property were demolished, a reason which made Mr. MULINDAGABO Jacob to stop FINA BANK SA carrying out the renovation works, as he thought that the demolition could also affects the remaining part of the building. MULINDAGABO Jacob told the court that he asked FINA BANK SA to restore the demolished part to prevent the demolition of the other parts, as it was also requested for by the Mayor of Kigali City, as the building had become a danger to the public. Eventually, the Mayor of Nyarugenge District wrote a letter to the owner informing that the District decided to demolish the whole building. After being informed about the decisions from the administration, the parties did not agree on the cause of the building's ruin as FINA BANK SA was arguing that, according to the experts, the building construction has some failures before the tenancy agreement was signed; and MULINDAGABO Jacob was arguing that the demolition of some parts of the building by FINA BANK destroyed the whole building. Basing on the experts' reports, in his award, the arbitrator decided that the cause of the building's destruction was the demolition of some of its parts by FINA BANK SA[93].

At the hearing, one issue that was to be framed for determination, was "whether FINA BANK's grounds of appeal could be considered as appeal against award as provided by the Law n°005/2008 on arbitration and conciliation in commercial matters". This issue was raised as a demurrer by MULINDAGABO Jacob who argued that, following the grounds of FINA BANK's appeal, the appeal was to be dismissed without going into the merits of the case because FINA BANK SA appealed the award on the grounds that the

[93] See §2 – 6 of the case Fina Bank SA vs. Mulindangabo Jacob, aforementioned.

arbitrator did not take into consideration the way the building was constructed before the signing of the tenancy agreement, basing on the fact that MULINDAGABO Jacob knew that the building had to be renovated. MULINDAGABO Jacob, on his side, argued that material damages granted to him by the arbitrator were not provided for by Articles 46 and 47 of the Law on arbitration as grounds of appeal against the award. In other words, the appeal subject-matter was the house demolition and related compensation, which are substantive, not procedural matters vis-à-vis the way the arbitral proceedings were conducted[94].

The Respondent further argued that instead of asking for the award to be set aside, FINA BANK SA made an appeal as if the arbitral award was an ordinary Court's decision, which is contrary to the Law on arbitration. Counsel for FINA BANK SA argued that in the "*Acte de mission*"(Terms of Reference) signed by the parties on 29th October 2010, they agreed that the decision that would result from the arbitration would be in first instance, which means that the parties had the right to appeal against the award. He further argued that saying that FINA BANK SA had not asked for the award to be set aside as it is provided for in Article 47 of the Law on arbitration, was not a wrong request, because they had based their arguments on the Law n°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, which was recognizing power to courts to rule on the substance of an arbitral award[95].

The court motivation of the decision came on the side of the Respondent as follows. While referring to the Law n°005/2008 on arbitration and conciliation in commercial matters, the court specified that there is just a unique way of appealing an award, which is to ask for the award to be set aside, as stipulated in article 47 which provides: « Any appeal against a case which is not decided by international arbitration shall mean cassation of such case in this Law» (…). The court hence underlined that the way of appealing an award is to ask the Court to set aside the award, which is a very different procedure from the appeal procedure in ordinary Courts[96].

[94] See §6 – 8 of the case Fina Bank SA vs. Mulindangabo Jacob, aforementioned.
[95] See §9 – 10 of the case Fina Bank SA vs. Mulindangabo Jacob, aforementioned.
[96] See §11 – 23 of the case Fina Bank SA vs. Mulindangabo Jacob, aforementioned.

Furthermore, referring to article 47 of the Law on arbitration, the court reminded that there are specific justifications which allow the award to be set aside and, in all these justifications, there is no provision for amendment of the award or "*reformation de la sentence arbitrale*" as argued by FINA BANK SA. Concerning the argument of FINA BANK SA that the parties agreed that the arbitration was the first instance, which means that there is a way for appeal before the Court, the Court motivated its decision saying that this argument can only have the sense that the parties agreed that the arbitral award can be appealed in conformity with the Law[97]. This was to reiterate that agreements of parties cannot be in contradiction with the law[98].

Concerning the argument that FINA BANK SA can appeal the arbitral award basing on the Law n°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure and ask for the award to be amended, the Court motivated its decisions in saying that this was absolutely impossible as article 67 of the Law n°005/2008 on arbitration and conciliation in commercial matters provides that: «All prior legal provisions contrary to this Law are hereby repealed». Therefore, any prior legal provision which allows appeal against arbitral award on grounds other than those provided in article 47 of the Law said above was repealed by the Arbitration Law[99].
Therefore, based on the above reasoning, the Court decided to reject the appeal because it was exercised on the merits of the arbitral award, instead of requesting for a setting aside, the only way for arbitral awards to be challenged before courts[100].

In any case, FINA BANK was thinking of another body to revisit the arbitral award, while advancing the arbitral clause text, which was referring to using arbitration in the first instance, reiterating therefore the possibility to have a second instance in a separate body. If the latter was not recognized in terms of court, there is a way to think about a separate body, even within the arbitral structure itself, in terms of second instance related revisiting of the arbitral award, as discussed in the following sub-section.

[97] Ibid.
[98] See Articles 58, 64 and 65 of the Law N° 45/2011 of 25/11/2011 governing contracts, Official Gazette nº 04bis of 23/01/2012
[99] See §11 – 23 of the case Fina Bank SA vs. Mulindangabo Jacob, aforementioned.
[100] See §24 of the case Fina Bank SA vs. Mulindangabo Jacob, aforementioned.

§2. Lack of a separate body for some modes of the revisiting of arbitral awards

As seen herein above, the Rwandan legal system recognizes possibility of revisiting an arbitral award through award review, correction and interpretation, additional award and the award setting aside[101]. Apart from the award setting aside which is wrongly referred to as "appeal", all other modes of challenging an arbitral award go back to the same arbitral tribunal with the same arbitral panel, which would be a challenge or a solution to the justice sought for.

The Law n° 005/2008 of 14/02/2008 governing arbitration in Rwanda is silent, as regards the arbitral tribunal's power to review, interpret and correct the award, provide additional award as well as to be concerned with the award which was set aside by the court. This is also the case for various laws of different legal systems. However, some precedents were set by various courts, some taking the position to bring back the award to the previous and same tribunal, some others ruling that the challenging of arbitral awards is supposed to be done before a separate arbitral tribunal[102].

If the Rwandan legislation says that the arbitral tribunal can review the award when it appears that this award has been rendered by fraud or on basis of false documents or false testimonies, it would not be fair if the same arbitral tribunal reviews the award that it rendered, considered that the same arbitral panel ignored or failed to detect the false documents or false testimonies. According to the management of KIAC, cases on the challenging of arbitral awards are very few, and the practice is that the award is taken before the previous arbitral tribunal. KIAC says that there is a double advantage in that the previous tribunal knows the case and that arbitration fees can be less heavy compared to having a new tribunal, being an ad hoc one or an institutional arbitral tribunal[103].
Though it can be an advantage of some parties on one side to go for the same arbitral tribunal, it can also be a challenge on the other side. It would therefore be better if the law becomes clear about the arbitral tribunal to go to while challenging an arbitral award. In a better way, the Law would give an alternative to parties or the party which believes to be

[101] See article 45 – 49 of the n° 005/2008 of 14/02/2008, aforementioned.
[102] Andre Yeap and Jansen Chow, Challenging an arbitral award: setting aside and consequential orders, accessed at https://eoasis.rajahtann.com/eOASIS/gn/at2.asp?pdf=/lu/pdf/2015-12-Challenging-Arbitral-Award.pdf&module=LU&topic=LU000978&sec=b&guid=800E2D3D-D739-4526-B3B3-63DC7E8E134A&email_add=submissions@lexology.com (accessed??)
[103] Interview with the Secretary General of KIAC, September 2018

aggrieved to choose between either taking the award to the previous tribunal or submitting it to a new arbitral tribunal. It remains therefore a challenge for the legal regime to lack an option on a separate body to receive the awards being challenged.

It is worth recalling that in the case of FINA Bank SA vs. Mulindangabo Jacob, as discussed herein above, FINA BANK SA's Counsel, argued that in the "*Acte de mission*" (Terms of Reference), parties had agreed that the decision that would result from the arbitration would be in first instance, which can insinuate the possibility to have a second instance, though the Rwandan arbitration Law does not provide for it[104]. Therefore, this ambiguity which can lead to such allegations of believing in a second instance, can be solved by having a clear law recognizing an appellate body within the arbitration itself, if the original spirit of not appealing against arbitral awards in courts, is maintained.

It is again worth noting that always using the same arbitral panel to review, correct, interpret an arbitral award and providing an additional award, can be sort of humiliating the panel, as if its member(s) failed to provide needed arbitral justice. If these modes of revisiting the arbitral awards are compared to opposition, third-party position and case review, appellate modes that compel parties to revert back to the previous courts that judged their cases; it is clearly stated that the cases are assigned judges different from previous judges who took the court decisions that are being challenged[105], though for case correction and interpretation, there is still possibility for the previous judges to hear the matter[106]. This would therefore be the same for arbitration, in order to provide more efficient arbitral justice.

Section 2. Demarcation between ordinary appealing procedures and the challenging of arbitral awards

Upon comparing ordinary appealing procedures and modes for the challenging of arbitral awards, some procedural and substantive differences are remarkable as discussed in this section. The comparative analysis under this section illustrates the inadmissibility of thirty-party opposition against arbitral awards, whereas it is possible for courts, and highlights existing rooms to exercise rights similar to opposition, appeal and case review.

[104] See §9 – 10 of the case Fina Bank SA vs. Mulindangabo Jacob, aforementioned.
[105] Article 103 (5o) Article 138 of the Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, Official Gazette nº Special of 29/04/2018.
[106] Article 138 of the Law No 22/2018 of 29/04/2018, aforementioned.

§1. Inadmissibility of thirty-party opposition in arbitration

According the civil procedure law, a third-party opposition is exercised by a party who was absent to the case but feels her/his rights are endangered by the related court decision ad who therefore seeks to quash or change a judgment to the benefit of the third party appealing against it, in the same court, within the time-limit set by the Law[107]. However, in different arbitration laws, there is no room for third-party opposition, while it remains possible for a third person to be aggrieved by an arbitral award.

The issue of inadmissibility of third-party opposition in arbitration was also discussed by various scholars and courts, in different jurisdictions, where the common practice is that third party claims are rejected[108]. However, the Belgian judicial system has experienced a case of admissibility of thirty-party in arbitration. In fact, the court recognized the right to third parties to attack an arbitral award. On 16 February 2017, the Constitutional Court (*Grondwettelijk Hof/Cour Constitutionnelle*) held that third parties should be entitled to lodge third party opposition against arbitral awards. In 2012, a company that was not a party to the arbitration proceedings felt aggrieved by the award and therefore initiated third party proceedings before the Brussels Court of First Instance while seeking the annulment of the award. In its first question to the Court, parties advanced the right for third parties to challenge the validity of judgments given by a civil or a criminal court by means of third-party opposition, which right was not offered to third parties to arbitral proceedings[109]. However, the Belgian Court of First Instance was uncertain on how to deal with the issue and therefore referred the matter to the CC for a preliminary ruling.

In any case, "in answering this question, the Court relied on its long-established case-law, according to which the principle of equality and non-discrimination does not preclude a difference in treatment, as long as this difference is based on objective criteria and reasonably justified. In applying this principle to the case at hand, the Court found that the fact that Article 1122 of the Judicial Code allows third parties to challenge the validity

[107] Article 161 – 168 of the Law No 22/2018 of 29/04/2018, aforementioned.
[108] Stavros Brekoulakis, The Relevance of the Interests of Third Parties in Arbitration: Taking a Closer Look at the Elephant in the Room, In Penn State Law Review, Vol. 113:4, pp. 1165 – 1188. http://pennstatelawreview.org/articles/113%20Penn%20St.%20L.%20Rev.%201165.pdf(accessed on 9th October 2018)
[109]Catherine Longeval, Mr. Quentin Declève, Third Party Opposition Against Arbitral Awards Is Admissible, According to Constitutional Court, accessed at https://www.lexgo.be/en/papers/judicial-law/civil-procedure/third-party-opposition-against-arbitral-awards-is-admissible-according-to-constitutional-court,112249.html (accessed on 02nd October 2018)

of judgments given by civil or criminal courts by means of third-party opposition but does not offer the same possibility to third parties to arbitral proceedings, relies on an objective criterion. However, the Court added that this distinction is inappropriate in the light of the purpose of the measure, because court judgments and arbitral awards have identical effects vis-à-vis third parties; and the choice to refer a case to arbitration is made by the parties to a dispute while third parties have no influence on this choice.

On this basis, the Court considered that the difference of treatment between third parties to arbitral proceedings and third parties to judicial proceedings is not justified and that Article 1122 of the Judicial Code violates the Belgian Constitution. According to the Court, third party opposition against arbitral awards should therefore be admissible."[110]
However, some view the Belgium's Constitutional Court decision to allow third parties to have the right to oppose arbitral awards in court, as a factor that can negatively impact on the choice of parties in international deals to choose Belgium as a place of arbitration, because their interests can be exposed to a court decision to allow an external person to benefit from a contract to which he/she was not a party, which is contrary to the contract privity principle[111].

Besides arbitration at national level, even in cases pertaining to international arbitration, exercising a third party opposition to arbitral awards remains internationally inadmissible. This was the case for example of the *Members of Société historique et littéraire polonaise (SHLP) v Académie polonaise des sciences et des lettres (PAU)*, in France. In this case, the French Supreme Court upheld a Paris Court of Appeal decision confirming that third parties cannot challenge an international arbitration award even if they claim that the award affected their rights[112].
According to that case, in 1893, SHPL sold a building in Paris to PAU, a Polish association, and in the years that followed, a dispute arose relating to the ownership of the building. In 2002, SHLP and PAU agreed to settle their disputes in arbitration. The

[110]Ibid.
[111]Rachel Baldwin, A year on: what has been the impact of Belgian decision allowing third-party opposition to awards? Accessed at https://globalarbitrationreview.com/article/1170427/a-year-on-what-has-been-the-impact-of-belgian-decision-allowing-third-party-opposition-to-awards (accessed on 02nd October 2018)
[112]James Clark, Third-party challenges inadmissible in international arbitration, accessed at https://uk.practicallaw.thomsonreuters.com/0-500-9241?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1(accessed on 02nd October 2018)

arbitral tribunal rendered its award in 2003 and declared that PAU was the owner of the building. Unhappy with the outcome of the dispute, a few individual members of SHLP filed a third-party challenge (*tierce opposition*) with the French courts, challenging the substance of the arbitral award. The claimants also challenged the internal procedures that led to SHLP's agreement to arbitrate disputes with PAU. They therefore asked that the court declare the arbitration agreement void, along with the resolutions of SHLP's general assembly that approved the arbitration agreement. At first instance, the court refused to annul the general assembly resolutions and confirmed that third-party challenges were not admissible in international arbitration cases. In a similar manner, before the French Supreme Court, the case confirmed that third party challenges are confined to domestic arbitration cases, and cannot be invoked by third parties in relation to international awards[113].

Though it is not a case limited to Rwanda but which is common in laws regulating arbitration, it is worth to note that the comparison between arbitration and ordinary civil procedures reveals that third parties can be aggrieved by arbitral awards without any room for justice, through the third-party opposition which is acceptable in the civil procedure.

§2. Rooms to exercise opposition, appeal and review

The civil law procedure shows that opposition seeks to have a default judgment reviewed before the same court that ruled on the previous case[114], whereas the appeal seeks to review the case before a superior court[115]. For the case review, the case is brought back to the previous court, with new evidences and reasons that include fraud[116].

Contrarily to the third-party opposition, other modes of attacking a court decision have similarities with modes of challenging arbitral awards. For instance, the arbitration law does not prevent an arbitral tribunal to deal with a case in absentia. Again, the arbitration law does not prevent a party who was absent in arbitral hearings to request for review, additional award, interpretation of an award or correction of an award[117], which have

[113] Ibid.
[114] See articles 144 – 146 of the Law No 22/2018 of 29/04/2018, aforementioned.
[115] See articles 147 – 160 of the Law No 22/2018 of 29/04/2018, aforementioned.
[116] See Articles 169 – 176 of the Law No 22/2018 of 29/04/2018, aforementioned.
[117] See Article 45 of the Law N° 005/2008 of 14/02/2008, aforementioned.

similarities with both the opposition and the case review, regardless of the prescriptive rights recognized to parties.

In the same vein, though the request for arbitral award setting aside does not concern the merit of an award[118], as discussed above; this procedure is similar to the ordinary appeal where parties go to a superior court, in terms of another instance. It is worth to recall that in some legislations, the appeal against the substance of the arbitral award is accepted – which is the case for UK and Kenya.[119]

In sum, chapter two of the present study showed that there are gaps in the Rwandan legislation as regards the challenging of arbitral awards. These are gaps which are not really strange compared to other legislations because most of countries refer to UNCITRAL model law on arbitration [120], though there are some legislations which diverted and recognized more rights to parties to arbitration including the right to exercise an appeal against an arbitral award – like UK's and Kenyan, which is however limited to legal points. The main reason to suggest the adoption of the same system by the Rwandan arbitration system is that arbitration is new in Rwanda and can be associated with some errors that would be corrected by courts, as it was wished for by FINA Bank[121]. However, even the common setting aside of an arbitral award which is comparable to appeal, is drafted with improper legislative techniques whereby one procedure has five different qualifications in the law: appeal, dissolution of an award (Article 48), the setting aside of an award (Article 47), annulation of an award, and cassation (Article 47). More alarmingly, the comparison of challenging an arbitral award with other modes of appeal for the ordinary civil procedure shows that there is no possibility for an aggrieved external person to exercise a third party opposition. All these are challenges found in the legislation and which need to be solved through means that are discussed in the 3rd chapter of this study.

[118] See Articles 46 – 49 of the Law N° 005/2008 of 14/02/2008, aforementioned.
[119] See supra?????
[120] See §18 of the case Fina Bank SA vs. Mulindangabo Jacob, aforementioned.
[121] Fina Bank SA vs. Mulindangabo Jacob, aforementioned.

CHAP III. SOLUTION MECHANISMS TO LEGAL ISSUES IN THE CHALLENGING OF ARBITRAL AWARDS

Chapter 3 suggests solution mechanisms to legal issues in the challenging of arbitral awards including legislation amendment, more awareness for parties who seek to solve their disputes through arbitration, as well as capacity building for arbitrators.

Section 1. Legislation amendment

Discussed solution mechanisms as far as the legislation amendment is concerned include amendment of the legal qualification of appeal in arbitration matters and controlling possibility of ad hoc arbitration.

§1. Amendment of provisions on the challenging of arbitral awards

The arbitration law would be amended for both drafting errors found in the Law as discussed in chapter II, and the recognition of the challenging of an arbitral award on merit.

A. Amendment for the correction of drafting errors

As discussed in Chapter II, there are drafting errors where the legislator used various terminologies, which can be interpreted differently. This is the case for instance of appeal and dissolution of an award found in Article 48, the setting aside of an award found in Article 47, the annulation of an award found in Article 49, and cassation, found in Articles 47 and 49, all under a section referred to as appeal against an award[122].

The discussion of the appeal under the Rwandan arbitration system revealed that it is not an appeal within the ordinary context of appeal, but rather the setting aside. In case the legislator would not wish to introduce the appeal in the Rwandan arbitration, it advisable to at least use one terminology instead of mixing up various terminologies that can be given different meanings, and therefore mislead justice seekers.

[122] Section 8 of the Law N° 005/2008 of 14/02/2008, aforementioned

B. Amendment for the recognition of appeal against arbitral award for the willing parties

With the examples of English and Kenyan systems, it was noted that it is possible to appeal against arbitral awards in the ordinary context of appeal, in case parties have not agreed upon the fact that the arbitral award shall be final, binding and not appealable[123].
Introducing appeal against arbitral awards would not be a problem, but rather a solution, because parties still have right to decide that the arbitral award shall be final and binding. But for parties who wish to exercise an appeal, would be given that possibility from the Law itself.

Where applicable, an innovative approach can be adopted through introducing an appellate body within the arbitration system itself instead of appealing before a court, as it is the case for community mediation, though for the latter, unsatisfied parties still have right to advance towards courts from the *Abunzi/*mediation at Cell level and Sector level[124].
This innovation would help to deal with errors that would have been made by previous arbitrators and would refer to the normal confidential and accelerated procedure known to the arbitration, without necessarily referring cases to courts with its delaying procedures.

§2. A formal control on ad hoc arbitration

The arbitration rules available in Rwanda, besides the 2008 Arbitration Law, are those ones determining arbitration rules of the Kigali International Arbitration Center.[125]In other words, though parties are not prohibited to choose KIAC arbitration rules, in case they have not mentioned it in their arbitration agreement, the ad hoc arbitration will have no formal rules to conduct an arbitration, except for the procedure provided for the general arbitration law.

In that context, a formal control on ad hoc arbitration would be introduced, through introducing detailed specific rules about how ad hoc arbitration would be conducted, in order to minimize disputes that may arise from this type of arbitration. It is clear that with

[123] Article 69 (1&2) of the UK Arbitration Act 1996 and Article 37 of the Kenya Arbitration Act, No 4 of 1995, published by the National Council for Law Reporting with the Authority of the Attorney-General.
[124] See the Law No37/2016 of 08/09/2016 determining organization, jurisdiction, competence and functioning of an *Abunzi* committee, Official Gazette n° 37bis of 12/09/2016
[125] Ministerial Order n° 16/012 of 15/05/2012 determining arbitration rules of Kigali International Arbitration Center, Official Gazette n°22 bis of 28 May 2012.

KIAC, institutional arbitration is subject to control, which is not the case for ad hoc arbitration and this can be source of unsatisfactory awards.

Moreover, conditions that are supposed to be fulfilled by arbitrators registered with KIAC, including qualifications, specializations and experience, which can at least minimize rooms for the challenging of arbitral awards are not the same conditions for arbitrators working under ad hoc arbitration[126], as there is no legal or regulatory instrument in Rwanda setting conditions to be fulfilled by ad hoc arbitrators.

It should however be understood that this study does not prevent parties to choose an ad hoc arbitrator who fulfills conditions that parties themselves have set, which conditions can even be more demanding than those ones of institutional arbitrators. This is the common situation for some international business persons who are not satisfied with any arbitral system, being national or international, and opt for an independent ad hoc arbitrator who fulfill their own conditions and refers to rules set by parties themselves while dealing with their case[127].

However, considering the infant age of arbitration in Rwanda and the fragility associated with ad hoc arbitration, some control would be exercised against the latter in order to protect the image of justice rendered through arbitration.

Section 2. More awareness raising for parties

This section shows that parties need to be made aware of the binding character of arbitral awards and of the modes of challenging an arbitral award.

§1. Awareness on the binding character of arbitral awards

As witnessed by the KIAC Secretariat[128], more awareness events and activities were organized, for members of the Private Sector Federation (PSF), the primary beneficiaries of KIAC, lawyers and governmental institutions to know more about KIAC rules and the whole process leading to the constitution of arbitral tribunals and the making of arbitral awards.

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[126] See the ANNEX III to Ministerial Order N°16/012 OF 15/05/2012 determining arbitration rules of KIAC, aforementioned.

[127] Latham and Watkins, Guide to international arbitration, accessed at https://www.lw.com/thoughtleadership/guide-to-international-arbitration-2017, on October 19th 2018

[128] Interview with KIAC secretariat in August 2018

The KIAC annual report for July 2016 – June 2017 shows that KIAC conducted intensive awareness campaigns in Rwanda targeting various stakeholders such as the Rwanda Bar Association (RBA), the judiciary and the media, as well as organizing seminars and conferences.[129] This constitutes a good achievement but the exercise still needs to be extended and oriented to the awareness on the binding character of arbitral awards for a better understanding of this dispute resolution mechanism.

A good illustration of this matter is the case of Fina Bank SA vs. Mulindangabo Jacob[130]in which an arbitral award was challenged in form of an appeal but where the Claimant was opposed the final and binding character of the arbitral award, while his lawyer was expected to know that intrinsic character of the arbitral award. This case can serve as an example for potential parties to avoid wasting their time and resources in trying to appeal against an arbitral award, unless the law changes and accepts it.

§2. Awareness on the modes of revisiting and challenging arbitral awards

As the arbitration law stands now, it is advisable that more awareness events and activities be organized for beneficiaries to be aware of rooms for interpretation and correction of the award, as well as additional awards to ensure justice efficacy to concerned parties.

As the Rwandan legal system recognizes possibility of challenging and revisiting an arbitral award through its review, correction, interpretation and additional award, and the setting aside; beneficiaries of arbitration in Rwanda need to know more about the same possibilities. Being a new system in Rwanda as it is officially still in its first decade, arbitration has its own realities that need to be deeply revealed to beneficiaries, especially members of the PSF.

The analysis of the KIAC reports revealed that awareness efforts are still limited to those who need to see their capacity built but again who have some knowledge on arbitration, like lawyers and legal advisers from various governmental institutions[131]. This said, given that PSF members are found everywhere across the country, awareness efforts on arbitration and its awards challenging need to be expanded and intensified.

[129] KIAC, Annual Report, July 2016 – June 2017, pp. 8 – 16.
[130]Fina Bank SA vs. Mulindangabo Jacob, Commercial High Court (CHC), Case No R.COM A 0008/11/HCC of 29/04/2011
[131] KIAC, Annual Report, July 2016 – June 2017, pp. 8 – 16.

Though there is a need to have more awareness raising tools and strategies in favour of parties about the binding character of arbitral awards and about the modes of challenging an arbitral award, the capacity building for arbitrators should also be strengthened in order to have good clients for arbitrators, which can provide minimum fairness to arbitration related justice seekers.

Section 3. Capacity building for arbitrators

This section discusses how the capacity building of arbitrators needs more mechanisms and how arbitration cases should be dealt with in consideration of their subject-matter value.

§1. More capacity building mechanisms

Unless otherwise agreed by the parties, it is commonly known that all arbitration proceedings are conducted in private and any records, transcripts or documents used are supposed to remain confidential, which is also the case for the Rwandan system[132].

Good progress is being done, as KIAC counts a good number of trainees in arbitration. For instance, since its effective running around 2013, after the adoption of the 2012 KIAC rules[133], some professionals had been trained in arbitration. Again, some professionals got accredited by the Chartered Institute of Arbitrators-UK. If the spirit is kept up, this can make Rwanda competitive in Africa, not only with a good number of arbitrators, but also with adequate qualifications. Moreover, KIAC started receiving international professionals from the East African Community region and beyond who want not only to be trained in Rwanda but also to operate in Rwanda[134].

Though these records are interesting, the lack of control on ad hoc arbitrators casts doubts on their capacities and their capacity development mechanisms. Again, the capacity building records talk of seminars and certification, which do not provide better skills and knowledge at the same level as on-the-job training and internship sorts of capacity building, whereby an experienced party accompanies the less experienced in the process

[132] See article 36 (in fine) of the Ministerial Order n° 16/012 of 15/05/2012, aforementioned.
[133] Ministerial Order No 16/012 OF 15/05/2012, aforementioned.
[134] KIAC, 40 arbitrators trained in commercial disputes resolution, accessed at http://www.kiac.org.rw/spip.php?article122(accessed on 02nd October 2018)

to acquire practical skills in practice, contrarily to theoretical transfer of knowledge of other modes of capacity building[135].

Therefore, regardless of the confidentiality spirit of arbitral proceedings, there is a need to build arbitrators' capacity through organizing on-job-trainings and internship sessions. And for ad hoc arbitrators, the awareness campaign needs to be expanded for them to strengthen their skills. It should be noted that the introduction of more capacity building mechanisms go together with minimizing the cost of capacity building related fees, as well as membership fees for those ones who wish to belong to institutional arbitration and acquire international arbitration certification[136].

It is also worth mentioning that the capacity building of arbitrators can be done in form of awarding a Self-Regulatory Organization (SRO) status to Rwandan arbitrators. The experience of the USA arbitration SRO proved that arbitrators become more effective and efficient with needed quality while organized under SRO[137]. This can be compared to the Rwanda Bar Association which is established by a Law while recognizing the Bar as an SRO status[138].

§2. Certified arbitrators for high value of the subject-matter

Whereas the jurisdiction of courts in civil and commercial matters depend upon the value of the subject-matter, from the Primary Court up to High Court, from the Commercial Court to the Commercial High Court and possibly up to the Supreme Court through the Court of Appeal[139]; arbitrators deal with cases regardless of their monetary value.

Though it is common within the arbitration spirit, but for a new system like the Rwandan arbitration which is still in its first decade with unpopularity within the Rwandan business industry, besides young arbitrators with limited skills, knowledge and experience; they

[135] Shauna Kelley, On-the-job training: definition, advantages and importance, accessed at https://study.com/academy/lesson/on-the-job-training-definition-advantages-importance.html (accessed on 02nd October 2018)

[136] KIAC, KIAC Call for Application to the membership courses, accessed at http://www.kiac.org.rw/IMG/pdf/call_for_application_for_ciarb_membership_course_2013_final_2092013.pdf (accessed on 02nd October 2018)

[137] SEC, Oversight of Self-Regulatory Organization Arbitration (Audit 289) August 24, 1999, accessed at https://www.sec.gov/about/oig/audit/289fin.pdf, on October 19th 2018

[138] Law N° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, Official Gazette nº 44 of 04/11/2013

[139] See the Law N°30/2018 of 02/06/2018 and the Law Nº012/2018 of 04/04/2018, aforementioned; as well as the Organic Law Nº002/2018.OL of 04/04/2018 establishing the Court of Appeal, Official Gazette nº Special of 30/05/2018

would be division of cases per the value of the subject matter in regards to cases submitted to arbitrators. As young judges start with lower courts with little value of subject matter, young arbitrators would also deal with cases with less value, and certified and experienced arbitrators, would be the one to deal with cases with higher value of subject-matter.

It is therefore unfortunate to find that in both the arbitration law[140], the law establishing KIAC[141] and in KIAC rules[142], there is nothing about the value of the subject-matter. While taking into consideration of this young age of arbitration, the Rwandan legal system can divert from the arbitration spirit and introduce its own system whereby less qualified and experienced arbitrators would deal with cases with less value and vice versa.

[140] Law n° 005/2008 of 14/02/2008, aforementioned.
[141] Law n° 51/2010 of 10/01/2010, aforementioned.
[142] Ministerial Order No 16/012 OF 15/05/2012, aforementioned.

CONCLUSION AND RECOMMENDATIONS

The study entitled“ Addressing legal issues of challenging arbitral awards under the Rwandan Law” had as objectives to deeply explore legal issues associated with challenging arbitral awards and therefore to suggest legal mechanisms that should be adopted in order to assure appropriate procedures for the challenging of arbitral awards. This conclusion chapter summarizes key findings about the same objectives and draws conclusions, before addressing recommendations to concerned key players.

With regard to the legal issues associated with the challenging of arbitral awards, the study found that the text of the 2008 arbitration law[143] has gaps related to both the qualification of procedures meant to revisit or challenge an arbitral award and the lack of a separate body for the challenging of an arbitral award. It was found that various appellations were used without considering their specific meanings. Apart from the review, correction and interpretation of the award, as well as the issuance of an additional award; whereas the common expression as found in UNCITRAL rules is setting aside an arbitral award as a result of an appeal against an arbitral award, the Law n° 005/2008 of 14/02/2008 uses instead terminologies that include appeal and dissolution of an award (Article 48), the setting aside of an award (Article 47), annulation of an award (Article 49), and cassation of an award (Articles 47 and 49), in a disorganized manner, though the sought meaning is one – “setting aside an arbitral award”.

It was also found that the Law n° 005/2008 of 14/02/2008 that governs arbitration in Rwanda does not recognize appeal against an arbitral award as such, though the same law uses the terminology of “appeal”, because the court has no right to assess the substance of the award, but rather examines if procedural conditions were met by an arbitral tribunal and parties thereto, and send back the case to arbitration if the conditions were breached, which is known as setting aside an arbitral award.

In spite of the absence of powers to judge on the merit of an appeal against an arbitral award under the Rwandan Law, the study found that in some legislations, parties have right to decide on the appeal on the substance before courts, while signing arbitral agreement or the contract with an arbitration clause as a mode of disputes resolution. This

[143] Law n° 005/2008 of 14/02/2008, aforementioned.

is the case for the English and Kenyan legal systems, as seen in Chapter 1, Section2. Therefore, it can be concluded that substantive errors of arbitrators in Rwanda can remain uncorrected because the Law still prohibits the challenging of an arbitral award on the merit.

The right to appeal is not only refused when it comes to lodging an appeal in court. But it is also prohibited within the arbitration system itself, because either the review, or the correction, or the interpretation of an arbitral award as well as the issuance of an additional award are done by the same arbitral panel; which has nothing to do with appeal principles according to which an appeal is handled by a judge who had not previously given an opinion or advice on the case before its second or third hearing[144].

It is against this background that the study concludes that the Law n° 005/2008 of 14/02/2008 that governs arbitration in Rwanda has legal gaps that need to be filled both on the drafting and content sides. For the latter, the Law needs to be amended to provide a room for unsatisfied parties to challenge arbitral awards on merit, instead of being limited to procedural issues of the arbitral award. Alternatively, the amendment would create an appellate system within the arbitration itself as it is the case for *Abunzi*mediation.

It is worth noting that the hypothesis of the present study got confirmed, in that the existing procedures similar to appeal against arbitral awards, that are, "review, correction, interpretation of award and an additional award and arbitral award cassation", can contribute to the correction of arbitration errors but are not quite enough to assure justice within arbitration framework, because the substance of arbitral awards in Rwanda cannot be revisited. This is also verified through the case Fina Bank SA vs. Mulindangabo Jacob[145], where the claimant was refused to challenge the arbitral award on merit because the Law does not allow so, whereas he was thinking that he did not get the justice he needed through arbitration.

Consequently, irregularities and challenges associated with the Law n° 005/2008 of 14/02/2008 on arbitration and other related sources of the Law of arbitration in Rwanda, as detected by the present study, made the researcher elaborate recommendations as follows:

[144] Article 103 (5°) of the Law No 22/2018 of 29/04/2018, aforementioned.
[145] Commercial High Court (CHC), Case No R.COM A 0008/11/HCC of 29/04/2011

1. **To the legislative drafting bodies and the legislator**

It is recommended to legislative drafting bodies mainly the Ministry of Justice (MoJ) and the Rwanda Law Reform Commission (RLRC) to initiate the amendment of the arbitration law in Rwanda for both the correction of drafting errors as highlighted in this study and the introduction of the challenging of arbitral awards, on merit and within either the arbitral system itself as it the case for *Abunzi* mediation, or before courts as it is for the setting aside of an arbitral award.

In the same framework, in case of the inaction by the legislative drafting bodies, in terms of the MoJ and the RLRC, the legislator is recommended to proceed with the initiation of the amendment of Law as mentioned above.

2. **To KIAC**

It is recommended to the KIAC to keep the spirit within the capacity building of arbitrators and to elaborate internal rules about allocating cases with high value of the subject-matter to arbitrators who are also highly qualified, experienced and certified.

KIAC is also recommended to intensify its awareness raising sessions so that PSF members and other interested persons be aware of the current final and binding character of arbitral awards, in case parties choose arbitration as their mode of disputes resolution.

3. **To arbitrators and parties**

It is recommended to arbitrators to keep upgrading their skills and capacities for them to minimize substantive errors in their arbitration services, as there are no means for the losing party to exercise an appeal against an arbitral award on the merit. They are also recommended to advocate for the establishment of an arbitration SRO by a Law.

For parties to contracts, it is recommended to bear in mind that in case they choose the arbitration system of Rwanda, they will be ready to accept the decision of arbitration. They are also recommended to consult their lawyers for more advice and further information before getting engaged in contracts.

All in all, the present study did not only contribute to the enrichment of the literature on the Rwandan arbitration, but also detected arrears of weaknesses in the Rwandan arbitration legislation, especially in terms of existing means of challenging an arbitral award. It is common that arbitral awards are not subjected to appeal as inspired by the

UNCITRAL model law on arbitration, but national jurisdictions still have right to adopt the model law to their realities and choices, as did Kenya and UK in allowing parties to contracts to decide if arbitral awards shall be final and binding or if they shall be appeals on merit before designated competent courts. Given that the study revealed that there is likelihood to wish for exercising an appeal on merit, before courts, though rejected by the latter; the study recommended the amendment of the Rwandan Law on arbitration for the adoption of the same procedure and the correction of errors found in the arbitration law into force.

BIBLIOGRAPHY

Legal instruments

1. Organic Law Nº002/2018.OL of 04/04/2018 establishing the Court of Appeal, Official Gazette nº Special of 30/05/2018
2. Organic Law n° 06/2012/OL of 14/09/2012 determining the organization, functioning and jurisdiction of commercial courts, Official Gazette n°45 of 05/11/2012
3. Organic Law n° 03/2012/OL of 13/06/202 determining the organization, functioning and jurisdiction of the Supreme Court, Official Gazette nº 28 of 09 July 2012
4. Organic Law n° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of Courts, as modified and complemented until June 2018 when it got repealed, OG n° SP. 10/09/2008
5. Organic Law N° 59/2007 of 16/12/2007 establishing the commercial courts and determining their organization, functioning and jurisdiction, Official Gazette No 05 of 01st March 2008.
6. Law N°30/2018 of 02/06/2018 determining the jurisdiction of courts (Official Gazette n° Special of 02/06/2018)
7. Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure (Official Gazette nº Special of 29/04/2018)
8. Law N° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, Official Gazette nº 44 of 04/11/2013
9. Law N° 45/2011 of 25/11/2011 governing contracts, Official Gazette nº 04bis of 23/01/2012
10. Law n° 51/2010 of 10/01/2010 establishing the Kigali International Arbitration Centre and determining its organization, functioning and competence, Official Gazette n° 09 *bis*of 28/02/2011
11. Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, Official Gazette (OG) special no of 06 March 2008
12. Law N° 45/2007 of 11/09/2007 modifying and complementing law n° 18/2004 of 20 June 2004 relating to the civil, commercial, labour and administrative procedure, Official Gazette No 05 of 01st March 2008.

13. Law n° 51/2010 of 10/01/2010 establishing the Kigali International Arbitration Centre and determining its organization, functioning and competence, Official Gazette n° 09 bis of 28/02/2011
14. Law Nº 30/2013 of 24/5/2013 relating to the code of criminal procedure, Official Gazette nº 27 of 08/07/2013.
15. Law No37/2016 of 08/09/2016 determining organization, jurisdiction, competence and functioning of an *Abunzi* committee, Official Gazette nº 37bis of 12/09/2016
16. Ministerial Order No 16/012 OF 15/05/2012 determining arbitration rules of Kigali International Arbitration Center (KIAC) - Official Gazette nº22 bis of 28 May 2012
17. Ministerial Instructions No 612/08.11 of 16/04/2014 setting up modalities for drafting, negotiating, requesting for opinions, signing and managing contracts, Official Gazette nº 18 of 05/05/2014

International and foreign legislation

1) UNCITRAL arbitration rules (2010 version)
2) Kenya Arbitration Act, No 4 of 1995, published by the National Council for Law Reporting with the Authority of the Attorney-General.
3) UK Arbitration Act, 1996

Case Law

1. Kenya Bureau of Standards v Geo-Chem Middle East [2017] eKLR, Kenya High Court at http://kenyalaw.org/caselaw/cases/view/137022.
2. Kenyatta International Convention Centre v Greenstar Systems Limited [2018] eKLR, Kenya High Court, accessible at http://kenyalaw.org/caselaw/cases/view/158394/
3. R. COM. AA 0006/05/CS of 14/09/2005, SOGEA-SATOM/AMSAR vs. DANDARI Vincent, Supreme Court, Kigali, Rwanda, unpublished
4. RCOMAA 0041/11/CS of 05/07/2012, Rukerikibaye Raphaël vs. Golf Course Estate ltd, Supreme Court, Kigali, Rwanda, unpublished
5. Fina Bank SA vs. Mulindangabo Jacob, Commercial High Court (CHC), Case No R.COM A 0008/11/HCC of 29/04/2011, also available at http://www.judiciary.gov.rw

Books, journals, reports and electronic references

1. Anchit, O., Impact Of Fraud On Arbitral Award: Indian Supreme Court At Divergence, accessible at https://www.khaitanco.com/PublicationsDocs/SCCOnlineBlog-KCOCoverage1Feb18Anchit.pdf
2. Badrinath, S., UNCITRAL Arbitration Rules 2010: A Review, Christ University Law Journal, 2, 1(2013), pp. 121 – 124 [pp. 117-152]
3. Baldwin, R., A year on: what has been the impact of Belgian decision allowing third-party opposition to awards? Accessed at https://globalarbitrationreview.com/article/1170427/a-year-on-what-has-been-the-impact-of-belgian-decision-allowing-third-party-opposition-to-awards
4. Birhanu, B.-B., Cassation review of arbitral awards: does the law authorize it?, Oromia Law Journal [Vol 2, No.2], pp. 112 – 137.
5. Brekoulakis, S., The Relevance of the Interests of Third Parties in Arbitration: Taking a Closer Look at the Elephant in the Room, In Penn State Law Review, Vol. 113:4, pp. 1165 – 1188. http://pennstatelawreview.org/articles/113%20Penn%20St.%20L.%20Rev.%201165.pdf
6. CIARB, *Arbitration*, accessed at https://www.ciarb.org/training-and-development/arbitration, on 13/01/2015.
7. Clark, J., Third-party challenges inadmissible in international arbitration, accessed at https://uk.practicallaw.thomsonreuters.com/0-500-9241?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1(accessed on 02nd October 2018)
8. Dupeyron, C., *Shall national courts assist arbitral tribunals in gathering evidence?*, 2016, ICCA Mauitius, p. 2 , https://www.arbitration-icca.org/media/7/27182909247527/dupeyron_carine_shall_national_courts_assist_arbitral_tribunals_in_gathering_evidence.pdf
9. Ecrone, O., Enforceability of Arbitral Awards in Kenya,http://www.lexgroupafrica.com/enforceability-of-arbitral-awards-in-kenya/

10. Franchini, J.D., *International Arbitration Under the UNCITRAL Arbitration Rules: A Contractual Provision for Improvement*, 62 Fordham L. Rev. 2223 (1994), pp. 2223 – 2244.
11. Gabagambi, C., Critical analysis on the challenges facing legal and institutional frameworks on recognition and enforcement of foreign arbitral awards in Tanzania, *Journal of Law, Policy and Globalization,* Vol. 39, 2015, pp. 165 – 178.
12. Geoffrey, S., A Short Introduction to the Common Law, Edward Publishing, School of Law, Sciences- Po, Paris, 2013, p. 39.
13. George, A. B., 'Domesticating' the New York Convention: the Impact of the Federal Arbitration Act, *Journal of International Dispute Settlement*, Volume 2, Issue 2, 1 August 2011, Pages 317–332
14. Herbert, S. F., A regional success story: the development of arbitration in Rwanda, https://www.herbertsmithfreehills.com/latest-thinking/a-regional-success-story-the-development-of-arbitration-in-rwanda
15. Herbert, S., Arbitration awards in UK, accessible at https://www.lexology.com/library/detail.aspx?g=9fe151f5-ebb4-43f8-9664-9d149170e158
16. ICC International Court of Arbitration (2014), Note on correction and interpretation of arbitral awards, accessed at https://shop.americanbar.org/PersonifyImages/ProductFiles/242046982/Fresh%20off%20the%20Press.pdf
17. Jan van den Berg, A., "Should the Setting Aside of the Arbitral Award be Abolished", *ICSID Review*, (2014), pp. 1–26
18. KIAC, "KIAC", https://www.kiac.org.rw/spip.php?rubrique20
19. KIAC, 40 arbitrators trained in commercial disputes resolution, accessed at http://www.kiac.org.rw/spip.php?article122
20. KIAC, Annual Report, July 2016 – June 2017, pp. 8 – 16.
21. KIAC, KIAC Call for Application to the membership courses, accessed at http://www.kiac.org.rw/IMG/pdf/call_for_application_for_ciarb_membership_course_2013_final_2092013.pdf
22. Kumar, S., Arbitration award: its challenges and enforcement, accessed at http://www.legalservicesindia.com/article/433/Arbitral-Award-Its-Challenge-&-Enforcement.html

23. Latham and Watkins, Guide to international arbitration, accessed at https://www.lw.com/thoughtleadership/guide-to-international-arbitration-2017
24. LawTeacher. Setting Aside An Arbitral Award [Internet]. November 2013. [Accessed 6 September 2018]; Available from: https://www.lawteacher.net/free-law-essays/commercial-law/setting-aside-an-arbitral-award-commercial-law-essay.php?vref=1.
25. Longeval, C. and Quentin, D., Third Party Opposition Against Arbitral Awards Is Admissible, According to Constitutional Court, accessed at https://www.lexgo.be/en/papers/judicial-law/civil-procedure/third-party-opposition-against-arbitral-awards-is-admissible-according-to-constitutional-court,112249.html (accessed on 02nd October 2018)
26. Marshall, R. and Finlayson, N., Challenging arbitral awards, in the New Law Journal, Issue 7760 of Sept. 08th 2018, https://www.newlawjournal.co.uk/content/challenging-arbitration-awards-update
27. Masengo, F., A regional success story: the development of arbitration in Rwanda, Herbert Smith Freehills, 2017, p. 1.
28. Mwangi, C., The role of Kenya courts in arbitration, enabling or contraining?, LL.M dissertation, University of Nairobi, 2014, pp. 4, 6, 48 and 50.
29. NKT Cables A/S v. SP Power Systems Limited, [2017] CSOH 38cited by Thomas G. Heintzman, When May An Arbitral Tribunal Correct Its Award?, accessed athttp://www.constructionlawcanada.com/arbitration/when-may-an-arbitral-tribunal-correct-its-award/
30. Robert, D. A. K., 'The Interpretation of Arbitral Awards When is a Final Award not Final?' (1994) 11 Journal of International Arbitration, Issue 2, pp. 99–109.
31. SEC, Oversight of Self-Regulatory Organization Arbitration (Audit 289) August 24, 1999, accessed at https://www.sec.gov/about/oig/audit/289fin.pdf
32. Shauna, K., On-the-job training: definition, advantages and importance, accessed at https://study.com/academy/lesson/on-the-job-training-definition-advantages-importance.html
33. Stilwell, T. "Correcting errors: imperfect awards in Texas arbitration", in *BAYLOR LAW REVIEW*, Vol. 58:2, Texas, USA,p. 469.

34. Swati, D., Setting Aside Arbitral Award: Contemporary Scenario in India, https://www.lawctopus.com/academike/arbitral-award-setting-aside/
35. Tai-Heng, C., *Finality and Justice in ICSID Arbitration*, accessed at http://www.iilj.org/research/documents/abstract.pdf.
36. UNCITRAL, About UNCITRAL, retrieved from http://www.uncitral.org/uncitral/en/about_us.html
37. UNCITRAL, Status of the UNCITRAL arbitration rules, retrieved at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules_status.html
38. UNCITRAL, *UNCITRAL Notes on Organizing Arbitral Proceedings*, Vienna, Austria, 2016, pp. 6 – 7..
39. UNCITRAL, UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (effective date: 1 April 2014), accessed on http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2014Transparency.
40. Uwantege, D., *Arbitration and other alternative ways of dispute resolution in Rwanda with the special reference to Comparative Law*, LL.M Thesis, University of Rwanda, School of Law, 2016, p. 18 (unpublished).
41. X, "Ad hoc arbitration law and legal definition", https://definitions.uslegal.com/a/ad-hoc-arbitration/.
42. Yeap, A. and Chow, J., Challenging an arbitral award: setting aside and consequential orders, accessed at https://eoasis.rajahtann.com/eOASIS/gn/at2.asp?pdf=/lu/pdf/2015-12-Challenging-Arbitral-Award.pdf&module=LU&topic=LU000978&sec=b&guid=800E2D3D-D739-4526-B3B3-63DC7E8E134A&email_add=submissions@lexology.com

Interviews

1. Interview with KIAC secretariat in August 2018
2. Interview with the Secretary General of KIAC, September 2018