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# Infrastructure Projects and Dispute Resolution in Africa: What European Contractors Should Know Before Breaking Ground

As infrastructure development continues to advance across Africa, European contractors are presented with promising new opportunities. Yet, these prospects come hand in hand with complex legal and contractual challenges. Arbitration is widely regarded as the preferred method of dispute resolution, valued for its neutrality, efficiency, and international enforceability. This article explores how well-crafted contractual clauses, appropriate legal frameworks, and strategic contract management can help reduce risks and safeguard investments in African infrastructure projects.

Mit dem fortschreitenden Ausbau der Infrastruktur in Afrika eröffnen sich europäischen Auftragnehmern vielversprechende Chancen. Gleichzeitig sehen sie sich jedoch mit komplexen rechtlichen und vertraglichen Herausforderungen konfrontiert. Schiedsverfahren gelten dabei als bevorzugte Methode der Streitbeilegung, da sie Neutralität, Effizienz und internationale Durchsetzbarkeit bieten. Der Artikel beleuchtet, wie durch sorgfältig formulierte Vertragsklauseln, passende rechtliche Rahmenbedingungen und vorausschauendes Vertragsmanagement Risiken wirksam minimiert und Investitionen in afrikanische Infrastrukturprojekte nachhaltig abgesichert werden können.

## I. Introduction

[1] Africa is in the midst of a transformative infrastructure boom. From expressways in West Africa to hydropower projects in the East, the continent is striving to bridge a long-standing infrastructure gap. European contractors are increasingly part of this momentum, bringing engineering expertise and delivery capacity to some of the world's fastest-growing markets. But they are not alone. Chinese firms continue to dominate the landscape, backed by state financing under the Belt and Road Initiative. The United States is stepping up its strategic investments, while Russia is forging influence through resource-for-security arrangements in politically sensitive regions. In this crowded and competitive arena, European contractors are positioning themselves more prominently, leveraging technical know-how, sustainability credentials, and the EU's €300 billion Global Gateway investment strategy – half of which is earmarked for Africa.[1]

[2] Yet major infrastructure projects rarely come without legal and contractual complexity. European contractors must navigate a patchwork of regulatory regimes, balance competing stakeholder interests, and adapt to shifting preferences in dispute resolution. This demands legal foresight and strategic planning. This article offers practical guidance on managing these challenges by understanding the infrastructure landscape, adopting proactive dispute avoidance strategies, and ensuring that dispute resolution mechanisms are both effective and enforceable.

## II. Choosing the Right Forum: Why Arbitration Prevails

[3] When disputes arise, one of the most consequential decisions – ideally made at the time the contract is entered into and typically reflected in a dispute resolution clause – is where and how those disputes will be resolved. In several African jurisdictions, national court systems face structural and operational challenges, including case backlogs, limited judicial resources, and perceptions of partiality, particularly in matters involving public authorities or state-owned enterprises. While many judges are committed professionals, these systemic issues can undermine confidence in litigation as a reliable dispute resolution mechanism. As a result, parties may find court proceedings to be protracted, unpredictable, and less conducive to the timely and impartial resolution of complex disputes. This is especially true in the construction sector, where time-sensitive project milestones and cost implications make efficient dispute resolution essential.

[4] In response to these challenges, arbitration has emerged as a preferred alternative. It provides a neutral, flexible, and confidential forum that is often better suited to the needs of cross-border and complex infrastructure disputes. One of its key advantages is the enforceability of arbitral awards under the New York Convention,

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1) See https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/stronger-europe-world/global-gateway_en.

which has been ratified by the vast majority of African states, facilitating recognition and enforcement across borders.[2] Arbitration also empowers parties to appoint decision-makers with the appropriate legal, technical, and industry-specific expertise. Importantly, it allows for the inclusion of arbitrators who are familiar with local legal systems and cultural contexts – an often underestimated but critical factor in the African setting. Moreover, the procedural framework can be tailored to the nature and complexity of the dispute, offering greater efficiency, predictability, and party autonomy compared to traditional litigation.

[5] Leading arbitral institutions in Africa such as the Kigali International Arbitration Centre (KIAC),[3] the Cairo Regional Centre for International Commercial Arbitration (CRCICA),[4] the Lagos Court of Arbitration (LCA),[5] the Nairobi Centre for International Arbitration (NCIA),[6] the Arbitration Foundation of Southern Africa (AFSA),[7] the Mauritius International Arbitration Centre (MIAC),[8] and the Common Court of Justice and Arbitration (CCJA) for the OHADA region[9] are increasingly active in Africa-related disputes. They can be confidently designated in construction contracts as the competent arbitral institution as they have established themselves as key actors in the field and, based on both publicly available sources[10] and personal practical experience, have demonstrated remarkable development and professionalisation in recent years.

[6] This growing institutional presence aligns with broader continental initiatives aimed at strengthening Africa's dispute resolution landscape. In particular, the African Continental Free Trade Area (AfCFTA) introduces a structured dispute resolution mechanism modelled on the WTO system, incorporating consultations, panel proceedings, and appellate review. Although the AfCFTA Protocol currently applies only to state-to-state disputes, its broader ambition is to foster the localization of arbitration and reduce dependence on foreign institutions.[11] This strategic shift is reinforced by the growing promotion and development of African arbitral institutions – such as those mentioned above – which are actively working to position the continent as a competitive and credible arbitration hub.

[7] Alongside arbitration, Dispute Adjudication Boards (DABs) are also gaining traction in Africa, particularly in large-scale construction projects governed by FIDIC contracts.[12] Standing DABs offer a proactive, project-based mechanism for resolving disputes as they arise during the course of the works, helping to avoid escalation and minimize delays. Their growing use reflects a broader trend toward early, cost-effective dispute resolution methods that align with the practical realities of infrastructure delivery on the continent.

[8] While arbitration and adjudication mechanisms such as DABs have gained traction across the continent, expert determination remains relatively underutilised in Africa. Despite its potential advantages – particularly for resolving technical disputes in a cost-effective and expedited manner – its adoption has been limited.[13] This may be due to a lack of familiarity with the process, concerns about enforceability, or a preference for more formalised procedures. However, as awareness grows and parties seek more tailored dispute resolution tools, expert determination may become a more prominent feature in the African dispute resolution landscape.[14]

## III. A Well-Drafted Clause is Key to Efficient Dispute Resolution

[9] A robust dispute resolution clause is a critical instrument that can significantly influence the outcome and efficiency of a project. Poorly drafted clauses often lead to jurisdictional disputes, procedural delays, and even unenforceable awards. To avoid these pitfalls, contracts should clearly define the arbitration rules, the seat of arbitration, the number and method of appointing arbitrators, the language of proceedings, and the governing law. Increasingly, contracts in Africa incorporate multi-tiered dispute resolution mechanisms, requiring parties to engage in negotiation, mediation, dispute boards, or expert determination before initiating arbitration. Selecting the right combination of these mechanisms is essential to ensure an efficient and enforceable dispute resolution process.

[10] Among the various components of a well-drafted clause, certain choices carry particular weight in shaping the effectiveness of arbitration. Three elements stand out: the seat of arbitration, the arbitral institution (unless the parties opt for *ad hoc* proceedings), and the language of the proceedings. The seat determines the legal framework governing the arbitration and the extent of potential court intervention. While traditional seats such as Geneva, London, and Paris offer legal certainty and a strong pro-arbitration judiciary, African seats such as Kigali, Cairo and Lagos are increasingly being chosen for their cost-effectiveness, regional relevance, and growing institutional support. The choice of arbitral institution also plays a critical role, as it shapes the

2) See the list of Contracting States to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards here: https://www.newyorkconvention.org/contracting-states.
3) https://kiac.org.rw/.
4) https://crcica.org/.
5) https://lca.org.ng/ .
6) https://ncia.or.ke/.
7) https://arbitration.co.za/.
8) https://miac.mu/.
9) The Organisation for the Harmonisation of Business Law in Africa (OHADA) unites 17 West and Central African countries under a unified, modern legal framework for arbitration. Its Uniform Act on Arbitration, together with the jurisdiction of the Common Court of Justice and Arbitration (CCJA), provides enhanced legal certainty, predictability, and enforceability of arbitral awards across member states. See: https://www.ohada.org/en/ccja-at-a-glance/.
10) See, for instance, the 2024 SOAS Arbitration in Africa Survey Report at page 11, available here: file:///C:/Users/behle/Downloads/2024%20SOAS%20Arbitration%20in%20Africa%20Survey%20Report.pdf, and Bryan Miller, "Top 5 Arbitration & Mediation Centers in Africa: Recognizing Dispute Resolution Institutions", in: Legal Africa, 7 March 2025, available at: https://legalafrica.org/top-5-arbitration-mediation-centers-in-africa-recognizing-dispute-resolution-institutions/.
11) See https://au-afcfta.org/trade-areas/dispute-settlement-mechanism/ and Mark Malekela, Lukiko Lukiko & Bernd Ehle, "AfCFTA and international arbitration: A new era for dispute resolution in Africa?", in: ACICA Review, June 2025, available at: https://www.lalive.law/wp-content/uploads/2025/07/ACICA-Review-June-2025-AfCFTA-Copy.pdf.
12) Stephanie McDonald, "FIDIC Africa Conference delivers practical insights", 15 November 2018, available at: https://bowmanslaw.com/insights/fidic-africa-conference-delivers-practical-insights-2/.
13) Bernd Ehle, "Expanding the Toolbox: Expert Determination as a Mechanism for Resolving Construction Disputes in Africa", in: Africa Construction Law (ACL) Blog, 26 July 2023, available at: https://www.lalive.law/wp-content/uploads/2024/02/Expanding-the-Toolbox_-Expert-Determination-as-a-Mechanism-for-Resolving-Construction-Disputes-in-Afr.pdf.
14) Bernd Ehle, "Expanding the Toolbox: Expert Determination as a Mechanism for Resolving Construction Disputes in Africa", in: Africa Construction Law (ACL) Blog, 26 July 2023, available at: https://www.lalive.law/wp-content/uploads/2024/02/Expanding-the-Toolbox_-Expert-Determination-as-a-Mechanism-for-Resolving-Construction-Disputes-in-Afr.pdf.

procedural rules, administrative efficiency, and perceived neutrality of the process. Meanwhile, the language of arbitration – typically English or French in African contexts – affects everything from document accessibility to the conduct and efficiency of hearings. Selecting the appropriate language helps ensure procedural clarity and reduces the risk of costly misunderstandings.

[11] In addition to procedural considerations, the choice of governing law plays a pivotal role in shaping the rights and obligations of the parties. While the application of local law may be mandatory in contracts involving state entities, international lenders and private investors often prefer neutral legal systems such as Swiss, English, or OHADA law. Notably, OHADA law offers a harmonized legal framework across 17 African countries and is widely regarded as arbitration-friendly.[15] Each dispute resolution clause should be carefully tailored to the specific characteristics of the project, taking into account factors such as the geographic location, the identity and legal status of the parties, the financing structure, and the broader legal and regulatory environment. This is particularly important in joint ventures and public-private partnerships (PPPs), where multiple legal systems, jurisdictions, and stakeholder interests often converge.

## IV. Best Practices for Contract Drafting in African Construction Projects

[12] In the African context, international standard contracts – particularly those based on FIDIC – are widely used in infrastructure and construction projects. These templates offer a familiar structure for international stakeholders, but they are often modified with country-specific amendments to reflect local legal, regulatory, and commercial realities. While such adaptations are sometimes necessary, they can also introduce inconsistencies and ambiguities that become significant sources of dispute if not carefully managed.

[13] Beyond procedural clauses like dispute resolution, substantive contract provisions require equal attention. Clauses governing payment terms, variations, extensions of time, force majeure, and termination must be clearly defined and adapted to local conditions. For example, in jurisdictions with foreign exchange controls or delayed public payments, payment mechanisms and currency clauses should be drafted with particular care. Similarly, force majeure provisions should reflect region-specific risks such as political instability, civil unrest, or infrastructure-related delays.

[14] A common risk arises from the lack of harmonization between main contracts and subcontracts, particularly when local subcontractors are engaged. Discrepancies in governing law, dispute resolution mechanisms, or performance obligations can lead to fragmented enforcement and conflicting interpretations. Best practice dictates that all contractual documents – main contracts, subcontracts, and consortium agreements – be aligned in terms of key legal and commercial provisions.

[15] In international consortia involving local partners, it is essential to clearly define roles, responsibilities, and risk allocation. This includes addressing issues such as local content requirements, tax obligations, and compliance with environmental and labour regulations. Where PPPs are involved, additional care must be taken to align the contract with national PPP frameworks and procurement laws.

[16] Finally, insights drawn from arbitration experience in Africa highlight the importance of clarity and precision in contract drafting. Vague or overly general clauses often lead to procedural disputes and delays in enforcement. Tailoring each clause to the specific project – taking into account the location, financing structure, and identity of the parties – can significantly reduce legal uncertainty and the risk of costly disputes.

## V. Lessons from the Field: Dispute Resolution in Practice

[17] Real-world infrastructure projects across Africa offer valuable insights into the practical importance of well-structured dispute resolution mechanisms. These cases illustrate not only the legal complexities involved but also the broader political, commercial, and operational dynamics that shape outcomes.

### 1. Kenya – Mombasa-Nairobi Standard Gauge Railway (SGR)

[18] This flagship project, financed by Chinese loans and executed by Chinese contractors, came under legal and public scrutiny over procurement transparency and performance concerns. Although the disputes did not escalate to formal arbitration, the controversy underscored the political sensitivity of large-scale infrastructure projects and the reputational risks for both governments and contractors.[16] The case highlights the value of early dispute avoidance mechanisms, such as independent monitoring, stakeholder engagement, and clear procurement protocols, particularly in projects with high public visibility and international financing.

### 2. Cameroon – Douala Container Terminal Dispute

[19] In this high-profile case, Douala International Terminal (DIT), a joint venture between Bolloré and APM Terminals, successfully challenged its exclusion from a port concession tender through ICC arbitration. The tribunal ruled in DIT's favour, ordering the reopening of the tender and awarding EUR 58 million in damages.[17] This case demonstrates the effectiveness of international arbitration in holding public authorities accountable and upholding fair competition standards. It also illustrates the critical importance of transparency and procedural fairness in PPPs, particularly in sectors like ports and logistics where long-term concessions carry significant economic and strategic implications.

### 3. Tanzania – Hydroelectric Project Arbitration

[20] A European-led consortium involved in a major hydroelectric project invoked arbitration under a FIDIC-based EPC contract following delays and cost overruns. Thanks to a well-functioning Dispute Avoidance/Adjudication Board (DAAB) and a clearly

15) See footnote 8 above.

16) See Global Arbitration Review (GAR) article "Kenya's Court of Appeals finds SGR contract with China Road and Bridge Corporation was illegal", 29 June 2020, available at: https://www.globalconstructionreview.com/kenyas-court-appeals-finds-sgr-contract-china-brid/?utm_source=chatgpt.com.

17) See Ecofin Agency article "DIT, a subsidiary of the APMT and Bolloré groups, welcomes the ruling handed down in its favour by the ICC arbitration tribunal", 14 November 2020, available at: https://www.ecofinagency.com/finance/1411-42057-dit-a-subsidiary-of-the-apmt-and-bollore-groups-welcomes-the-ruling-handed-down-in-its-favour-by-the-icc-arbitration-tribunal?utm_source=chatgpt.com.

drafted arbitration clause, the dispute was resolved swiftly and constructively, allowing the project to proceed without major disruption. This example highlights the value of multi-tiered dispute resolution mechanisms, particularly in complex engineering projects where time and continuity are critical. It also shows how FIDIC-compliant frameworks, when properly implemented, can support efficient dispute management in African jurisdictions.[18]

## VI. Conclusion: Before You Break Ground

[21] The complexity of infrastructure projects worldwide makes disputes a frequent and often unavoidable reality. For European contractors building in Africa, the key to managing such disputes lies in prevention, preparation, and precision. Arbitration offers a powerful tool for resolving conflicts, but its effectiveness depends on the choices made long before a dispute arises.

[22] Contractors should prioritise clear and tailored dispute resolution clauses, carefully select appropriate governing laws and seats – including options within Africa – and consider the strategic use of regional arbitration institutions. Early engagement in dispute avoidance mechanisms such as negotiation, mediation, or adjudication boards can be instrumental in preventing minor disagreements from escalating into major disputes.

[23] The AfCFTA framework, though still in its early stages, represents a promising addition to Africa's dispute resolution landscape. Its harmonised approach, particularly relevant in sectors like construction and infrastructure, has the potential to enhance legal certainty and streamline enforcement across jurisdictions. For European contractors, aligning contract strategies with AfCFTA mechanisms and maintaining strong relationships with local counsel will be essential to navigating this evolving framework effectively.

[24] Africa's infrastructure boom is set to endure and presents substantial long-term opportunities. With the right legal strategy, European contractors can safeguard their investments, build lasting partnerships, and contribute meaningfully to the continent's development.

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18) Philippe Hameau, Joseph Bentley & Marc Robert, "Energy arbitration in Africa: potential sources of energy and natural resources disputes," Global Arbitration Review, 19 April 2024.