ENFORCEMENT OF ARBITRAL AWARDS UNDER CAMEROONIAN LAW: IMPLICATIONS AND EFFECTIVENESS

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ABSTRACT

The extent to which Cameroonian laws guarantee the recognition and enforcement of arbitral awards relating to commercial disputes is problematic. These problems result from the influx of foreign investors in Cameroon. The work, therefore, seeks to examine the various principles guiding the grant and enforcement of arbitral awards, the various types of arbitral awards, enforcement and the difficulties involved in the process. The methodology applied consists of data collection and analysis. Findings show that arbitral awards are of paramount importance as they touch on settling commercial disputes, which occur almost daily, both at national and international levels. The work draws the legislator's and law enforcement officials' attention to arbitral awards in Cameroon. From an economic perspective, arbitration, the preferred way of settling commercial disputes, is a major tool to boost the economic sector. The effective enforcement of arbitral awards will give investors and other businessmen the assurance of a legal system backing up their investments. Socially, the effective enforcement of arbitral awards in Cameroon will encourage businesspersons by assuring them of a legal system ready to secure their investments.

INTRODUCTION

To understand what is meant by an award under the New York Convention, recourse must be made to national court decisions. Article 1 of the Convention elaborates on what a foreign award is by stating that it is one made in a state other than the State where recognition and enforcement are sought and arising out of differences between persons, whether physical or legal. The award, which is the decision of the case, is rendered by the arbitral tribunal according to the procedure and the rules of law chosen and agreed upon by the parties. Arbitration awards include both awards made by arbitrators appointed for a particular case (ad hoc arbitration) and those made by permanent arbitral bodies (institutional arbitration).

Although arbitration had long been part of local law and arbitration clauses not uncommon in many contracts involving local enterprises, the concept was considered by many enterprises as a prelude rather than an alternative to litigation.[i] It was until 1999, with the adoption of the Uniform Act on Arbitration, that the practice gained the recognition it has today. It is clear that colonial experience laid the foundation for the development of Cameroonian law into a mixed legal system, that is, a system that is derived from both the civil and common law traditions and the native customary law. Until the recent introduction of OHADA in Africa, Cameroon remained an excellent example of a confused legal system characterised by outdated laws which were not only scanty in nature but also proved largely inadequate both in content and spirit to address the legal issues of modern commercial transactions. It is believed that a credible and transparent legal system applicable throughout the country will go a long way in passing the acid test that investors apply in determining where and what to invest. A uniform or harmonised system of business law, clearly formulated and transparently applied, would stymie the problems of the multiplicity of laws which may serve to confuse potential investors.[ii]

Long before laws were established, courts were organised, or judges formulated principles of law, men resorted to arbitration to resolve discord, adjust differences and settle disputes.[iii] International arbitration can be said to have been established by the United Nations Organization (UN) in 1954.

This has led to the signing of several international agreements, conventions and treaties on arbitration, such as the United Nations Convention on International Trade Law (UNCITRAL) Rule (1975), the International Centre for the Settlement of Investment Disputes (ICSID) 1996,

the United Nations Convention on Trade and Development (UNCTAD) 1964, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958; as well as international arbitral institutions such as the International Chamber of Commerce(2002), the World Trade Organization (1995), the World Intellectual Property Organization (WIPO) Arbitration and Mediation Centre, the International Court of Arbitration (1923), the Permanent Court of Arbitration(1889) just to name a few, some of which are ratified and applicable in Cameroon.[iv]

Through the years, arbitration has gained ground in Cameroon following economic growth, with the State of Cameroon making its first appearance before the ICSID in Klockner v. The State of Cameroon and *Société Camerounaise des Engrais*.[v]

ENFORCEMENT OF ARBITRAL AWARDS UNDER CAMEROONIAN LAW

Introduction

At the end of an arbitration process, an award with the same effect as a court judgement is given. An arbitral award may include the following remedies:

-Punitive damage to punish the defendant whose action is considered grossly negligent.

-An injunction restraining a person from beginning or continuing an action or compelling a person to carry out a specific right.

-Rectification, enabling the arbitral tribunal to correct mistakes that may have occurred in drafting the award in a less bureaucratic and expeditious manner.

-Specific performance, compelling a person to perform a contractual obligation.

-An order to pay money

-A declaration for parties in a continuing relationship

-Adaptation of contracts.

-Interest and cost.

A judicial process, whether arbitration or litigation, only ends when the decision of the tribunal or the court is executed. A judgment or an arbitral award which orders a party to pay damages or an order for an injunction can be spontaneously respected. The unsuccessful party can respect the award or judgment by paying the damages or respect the injunction order, as the case may be. However, the unsuccessful party may refuse to respect the decision of the tribunal or the court despite the award being final and enforceable. In this case, the beneficiary of the decision is bound to carry out forceful execution of the award, which orders the other party to respect the decision delivered.

It should be noted that a ruling granting exequatur for an award does not constitute a step in execution but simply an act susceptible to execution.[vi] The OHADA Uniform Act principally regulates the execution of judgments and arbitral awards in Cameroon on Simplified Recovery Procedure and Measures of Execution. The Cameroonian legislator has recognised four types of arbitral awards and made provisions to ease their enforcement. These are awards from the Common Court of Justice and Arbitration (CCJA), the International Centre for the Settlement of Investment Disputes (ICSID), awards governed by the Uniform Act on Arbitration (UAA) and the New York Convention[vii]. Hearings held in inter partes proceedings are generally public. However, the judge may decide on his or her own initiative or at a party's request that a hearing be conducted privately. Documents filed in legal proceedings for recognition and enforcement do not form part of the public record. Interested parties may consult such documents only by request to the President of the court.

Although the arbitral award ends the arbitration process and relieves the tribunal of its function, the arbitration can still be ceased to interpret the award or to correct its clerical errors and omissions[viii]. Where the arbitrator has omitted to rule on any part or aspect of the claim, he may do so by an additional award. In either of the above-mentioned cases, the Uniform Act provides that the application should be filed within 30 days of award notification, and the tribunal shall give its ruling within 45 days. If the tribunal can no longer be convened, the action shall be brought before the competent judge of the state party[ix].

Awards Issued by the Common Court of Justice and Arbitration

Based on the Arbitration Rules of the CCJA (hereinafter referred to as the CCJA Rules), Arbitral awards are binding and reputed "res judicata" like any decision rendered by a court in a Member State without further procedure[x]. Awards made in conformity with the CCJA Rules

of arbitration are binding with respect to the claim on the territory of each Member State as if they were rulings made by courts in that State. They may be the object of compulsory enforcement on the territory of any one of the Member States[xi]. Awards are considered to have been made at the seat of the arbitration on the date of their signature.

To enforce an award granted by the CCJA, an exequatur is required. Exequatur is the procedure that makes it possible to take measures to enforce either a judgement from a foreign court or an arbitral award that is made either within a country or abroad[xii]. A decision granting an exequatur renders the award forcefully enforceable. Only the CCJA acting as a court, is competent to grant an exequatur to a CCJA arbitral award[xiii]. As such, the application or petition is addressed to the court and the exequatur is granted or refused by a ruling of the President of the said court or by a judge delegated by the President for that purpose[xiv]. An exequatur granted by the CCJA renders the award executory in all OHADA member States. The request of exequatur can be rejected by the CCJA because of one of the following reasons[xv]:

- If the arbitrator ruled without an arbitration agreement or an agreement which is void or expired,
- If the arbitrator was without conformity to the assignment,
- If the principle of adversary is not respected and
- If the award is contrary to international public policy.

Even though a CCJA award is executory in all OHADA member States, forceful execution of a CCJA award in any Member State must be preceded by affixing or appending an executory formula on the award by an authority designated by the relevant Member State[xvi]. Exequatur gives the award a binding force in all member states. The common character of exequatur granted by the CCJA is that it does not compromise the national character of the executory clause. Article 46 of the CCJA Rules provides that a national court grant the executory clause without any other control except verifying the title's authenticity. To be more explicit, article 31 of the CCJA Rules provides that the Secretary General of the court shall deliver to the party who requests it a certified true copy of the award, deposited in conformity with article 28 on which shall figure "Exequatur Application". The national authority appointed by the State in which the exequatur is requested may rely on the true

copy of the award covered by the attestation of the Secretary General of the court and attach an executory clause such as in force in the State.

To obtain an exequatur, the arbitral award must fulfil certain formalities and be validated by a competent authority in a member state where enforcement is sought - in this case, Cameroon. To appoint a competent authority, the President of the Republic of Cameroon, by Decree no. 2002/299 of December 3 2002, designated the Registrar-in-Chief of the Supreme Court as the Cameroonian authority in charge to affix an executory formula on a CCJA arbitral award under the control of the President of the Supreme Court. However, the Registrar-in-Chief of the Supreme Court could only append an executory formula to a CCJA award when the said award is accompanied with an attestation of the exequatur issued by the Secretary General of the Common Court of Justice and Arbitration[xvii]. Once the exequatur has been granted, the applicant shall notify the Respondent of this order. The Respondent may, within 15 days from the date of notification, make an opposition which shall be heard at one of the ordinary jurisdictional sessions of the court in an adversarial procedure in accordance with its rules of procedure.

Awards Issued by the Settlement of Investment Disputes (ICSID)

Created at the seat of the World Bank in 1965, the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States led to the creation of the International Centre for the Settlement of Investment Disputes (ICSID)[xviii]. Aimed at providing conciliation and arbitration facilities for investment disputes between Member States and nationals of other Member States[xix], the centre was established as an independent institution with its status, immunities and privileges well spelt out. For the Convention to be applicable, parties to the investment contract must come from a Contracting State[xx]; the State involved must be a Contracting State and must consent. A State can consent to submit before the ICSID in advance through an investment law[xxi], a bilateral or multilateral treaty[xxii] relating to investment, while the investor can express his consent later by submitting the matter to the ICSID[xxiii].

Every Contracting State is obliged to recognise an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by that award in its territory as if it were a final judgment of a court of that State. For an award to be recognised and enforced in the territory of a Contracting State, the beneficiary must present to the competent national

authority a certified copy of the award by the Secretary General of the ICSID. Every Contracting State of the Washington Convention is required to designate the competent jurisdiction to grant an exequatur for an ICSID award to ensure forceful execution. In complying with this requirement, the Cameroonian legislator enacted Law No. 75/18 of December 18 1975, which appointed the Supreme Court of Cameroon as the competent court to grant exequatur on ICSID awards in view of their judicial execution in Cameroon

Despite having searched the registry of the Supreme Court and talked to other researchers, no evidence has been found that the Supreme Court of Cameroon has ever been solicited to grant an exequatur on an ICSID award. It is also true that the State of Cameroon is not always before the ICSID tribunal. Still, since its first appearance in Klockner v. The State of Cameroon and *Société Camerounaise des Engrais* (SOCAME)in the early 80s, the State of Cameroon has been before the ICSID tribunal at the initiative of the company Lafarge in 2002. Still, the matter was settled by the parties amicably.[xxiv]

Awards Governed by the Uniform Act on Arbitration

An arbitral award governed by the UAA is an award resulting from a proceeding made by the arbitral tribunal in an OHADA Member State, where the tribunal relied on the provisions of the UAA[xxv]. These awards have a *res judicata* effect with respect to the disputes with which they decide. The UAA provides that an arbitral award is subject to compulsory execution only by a decision of exequatur of the competent judge of the state party[xxvi] and thus regulates the procedure of the exequatur. As such, only the national court of each member state is competent to order the execution of an award. To fill in the vacuum of the '*competent judge'* referred to in Article 30 of the Uniform Act, the Cameroonian legislator enacted law No. 2003/009 of July 10 2003, designating the competent judge for exequatur. To this effect, authority is given to the President of the Court of First Instance or any magistrate delegated by him of the place of enforcement of the award or, where necessary, the residence of the Respondent/defendant.[xxvii] An exequatur is therefore obtained from the President of the Court of First Instance at the place of residence of the Respondent or where the Petitioner wants the execution of the award to take place. A beneficiary of an award can bring an action for forceful execution wherever the Respondent has assets.

The UAA provides that a party wishing to enforce an arbitral award shall establish the existence of such an award by producing an original copy of the award or a certified true copy

together with the arbitration agreement before the competent judge in the State where the enforcement is sought[xxviii]. To start an action for exequatur, the petition seizes the President of the Court of First Instance by application or by motion *ex parte*, along with documents as stated by the UAA[xxix]. Considering that not all Member States of the OHADA are French-speaking countries, the UAA further stipulates that when the documents are not written in French, the party will have to produce a translation certified by a translator registered on the list of experts established by the competent court[xxx]. To this effect, where enforcement is sought in a non-French-speaking state, the document should be translated into the country's language. In Cameroon, therefore, the document can either be in English or in French, and the courts have accepted this view as was held in *Coplexe Chemique Camerounais (CCC) c/ Societe Safic Alcam SA Company*[xxxi], where the Littoral court of Appeal did not require the award of FOSFA that was in English to be translated to French.

Before the coming of the 2003 law, the competent jurisdiction for an application for exequatur of an arbitral award in Cameroon was not the same throughout the territory. In the French-speaking regions, the President of the Court of First Instance or magistrate delegated by him was the competent forum for an application for exequatur for an arbitral award[xxxii]. In the English-speaking regions, there was no provision for exequatur applications in either the Supreme Court (Civil Procedure) Rules 1948[xxxiii] or the Magistrate Court (Civil Procedure) Ordinance 1948[xxxiv] applicable in high courts and magistrate courts (now Courts of First Instance), respectively. With this shortcoming, recourse was made to the pre-1900s laws from Britain as stipulated by Section 11 of Southern Cameroon High Court Law 1955. In this regard, the English Arbitration Act 1889 was applicable in Anglophone Cameroon. Under this Act, "Court" means the Supreme Court and includes a Judge thereof. In the Anglophone regions, this means High court. So, it was correct for an application for an exequatur to be made before any competent High Court in Anglophone Cameroon. Though the material competence for an exequatur application was determined by Justice Mokwe Edward Misime by the amount in the award in Suit no. HCF/91/M/20012002 *African Petroleum Consultants (APC) v. Société Nationale de Raffinage (SONARA)*[xxxv] , which was wrong, the High Court was still competent to hear the application. It was held by His Lordship that, since the high court was competent to hear matters where the amount of damages claimed exceeded five million francs CFA, then

the high court was competent to hear an exequatur application where the amount in the arbitral award exceeded five million francs CFA.[xxxvi]

Following the grant of the application for exequatur by the President of the Court of First Instance or a magistrate delegated by him, the executory formula is appended to the award. This is done at the behest of the Registrar-in-Chief of the Court of First Instance seized and must be signed by the magistrate and registrar-in-chief.[xxxvii] Many exequatur applications have been granted in Cameroon.[xxxviii] The ruling of a competent magistrate granting an exequatur is not subject to any appeal. On the other hand, a ruling of the competent magistrate denying an application for exequatur for an award can only be set aside by a judgment of the Common Court of Justice and Arbitration (CCJA)[xxxix]. In the case where the CCJA quashes the ruling of the court below (the CFI seized) and the exequatur is granted, the said judgment is regarded as equivalent to a CCJA award and an exequatur granted by the CCJA and enforcement of this judgment is done in Cameroon in the same manner as any other CCJA arbitral award.[xl]

Awards Governed by the New York Convention (NYC)

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, which entered into force on May 19, 1988, was established to fortify the recognition and enforcement of awards made in a place other than where enforcement is sought (foreign arbitral award)[xli]. The Convention has made no reservation under Article 1 (3) regarding reciprocity and commercial relationships. For the purpose of this study, a foreign arbitral award will mean an arbitral award rendered outside the territory of OHADA and most probably delivered using different rules of arbitration than the Uniform Act on Arbitration, which applies only where the seat of the arbitral tribunal is in one of the Member States[xlii]. The Contracting States of the New York Convention are obliged to recognise the authority of an arbitral award and to enforce the said award in conformity with conditions stated in the Convention[xliii]. In addition to arbitral awards made in another state's territory, the New York Convention also applies to arbitral awards not considered domestic awards in the State where recognition and enforcement are sought[xliv].

The recognition of foreign arbitral awards by a competent judge in a contracting State does not do away with the obligation of the State to respect the conditions of the Convention[xlv]. To fulfil this obligation, the Cameroonian legislator enacted law No. 2007/001 of April 19, 2007, establishing conditions for the enforcement of foreign judicial decisions and foreign arbitral

awards made in countries not related to Cameroon by a bilateral or multilateral judicature convention. Under such conventions[xlvi], foreign awards are recognised and enforced in accordance with the New York Convention. There is no specific limitation period applicable to the commencement of legal proceedings for the recognition and enforcement of foreign awards under Cameroonian law. It may be argued that the limitation period applicable to legal proceedings for the enforcement of judgements also applies to foreign awards[xlvii]. According to the above-mentioned Law No. 2007/001 of April 19, 2007, the competent judge must make his or her decision within thirty days of being seized. Assuming that the limitation period applicable to the enforcement of judgements under Cameroonian law also applies to foreign awards, the relevant period is 30 years from the date of the award[xlviii].

In designating the competent authority for recognising and enforcing a foreign arbitral award in Cameroon, Law No. 2007/001 of April 19. 2007, Art. 5; Law No. 2003/009 of July 10 2003, Art. 4(2) were enacted, giving competence to the President of the court of first instance or magistrate delegated by said President as the judge in charge of litigation relating to the enforcement of foreign judicial decisions and foreign arbitral awards[xlix]. Therefore, if a beneficiary of a foreign arbitral award wants to enforce such an award in Cameroon forcefully, then such a party must conform to Article 11 of the aforementioned 2007 law. The application for exequatur is to be brought before the President of the court of first instance or a magistrate delegated by him in the place of domicile or fixed assets of the Respondent in the jurisdiction of the court. The first decision granting or denying recognition and enforcement is obtained through ex parte proceedings.[l] Article 11 of the 2007 law reads:

Foreign arbitral awards are res judicata and may be recognised and made enforceable in Cameroon by the judge in charge of litigation related to the execution of judgments in accordance with the conditions provided for by relevant international agreements or, in default, in conformity with similar conditions provided for by the OHADA Uniform Act on Arbitration and Law No. 2003/009 of July 10, 2003, to designate the competent Courts mentioned in the OHADA Uniform Act on Arbitration.

An appeal or recourse against this decision granting an exequatur is done to the Supreme Court of Cameroon[li]. Generally, execution against assets may be obtained after the expiry of the time limit for filing an appeal against the first decision granting enforcement of a foreign award (one month after the decision is officially notified to the other party) or the time limit for filing an

application to set aside such an award. Execution is suspended from the time of the filing[lii]. However, it is possible to obtain provisional execution against assets in Cameroon if either the award contains an order for provisional execution or the judge grants an order for provisional execution. In such circumstances, execution against assets may be obtained as soon as the decision granting enforcement or the judge's order for provisional execution is officially notified to the other party[liii]. For an award to be recognised and enforced, the Petitioner must present the arbitral award and the arbitration agreement in evidence, and the documents cannot be supplied in bits. The award and relevant pages containing the arbitration clause must be supplied in its entirety. In respecting the conditions of the New York Convention, the Petitioner must take particular note of Article IV of the said Convention to furnish the original copy of the award or a duly certified copy of the award and an original copy of the arbitration agreement or duly certified copy of the arbitration agreement drafted in compliance of Article II of the Convention. Depending on the relevant jurisdiction within Cameroon, the Petitioner is expected to provide a translation of the documents, considering the fact that Cameroon is a bilingual country with English and French as official languages[liv]. It is necessary to provide a full translation of the documents submitted, translated by a sworn translator registered on the list of experts kept by the competent jurisdiction within Cameroon[lv]. Looking at the enforcement procedure of a foreign arbitral award by the New York Convention, it can be noted that barring little differences, this procedure is similar to that stated in Article 31 of the Uniform Act, which is presumed to have been inspired by the New York Convention. This similarity may justify why the judge relied on the Uniform Act on Arbitration provisions and the New York Convention in the case of African Petroleum Consultants (APC) v. Société Nationale de Raffinage (SONARA)[lvi].

The authority or court cannot stay legal proceedings for recognition and enforcement pending the outcome of an application to set aside or suspend the foreign award before the competent authority referred to in Article V (1)(e) of the New York Convention. However, according to the OHADA Uniform Act on Arbitration, where an application to set aside an award has been recognised by the competent court, any decision on the enforcement and recognition of that award is suspended[lvii]. If the application to set aside the award is rejected, the decision on enforcement and recognition of the award is validated[lviii]. Where recognition or enforcement is sought pursuant to the New York Convention, Article VI of the New York Convention is

applicable. Cameroon being a party to both the OHADA Treaty and the New York Convention, a party seeking the recognition and enforcement of a foreign award will have to choose the applicable law, that is, either the New York Convention or the OHADA Uniform Act on Arbitration.

Legal proceedings for recognition and enforcement against an insolvent debtor may be stayed, in the event of total insolvency, for the duration of the insolvency proceedings. A partially insolvent debtor may ask the court for a 'grace period' to pay his debt. The recovery of amounts awarded in arbitration may also be affected by restructuring plans applicable in Cameroon if the debtor is a State or State-owned corporation; in such cases, the Cameroon government systematically seeks a negotiated settlement. Hearings held in inter partes proceedings are generally public, although the judge may decide on his or her own initiative or at a party's request that a hearing shall be conducted in private. Judgments on recognition and enforcement are not published.

A party can obtain recognition and enforcement of interim or partial foreign awards if the competent judge finds that the interim or partial award is not contrary to public policy[lix]. A party can also obtain recognition and enforcement of non-monetary relief in foreign arbitral awards[lx]. The recognition and enforcement of only part of the relief granted in foreign awards can be obtained if recognition and enforcement are sought pursuant to the New York Convention, in which case Article V(1)(c) of the New York Convention applies.

Where an award has been set aside by a competent authority, it might not be enforced in accordance with Article V(1)(e) of the New York Convention. However, it may be argued that Article VII of the New York Convention allows an award that has been set aside by the authority referred to in Article V(1)(e) of the Convention to be recognised and enforced in the OHADA space, given that Article 26 of the UAA does not mention the setting aside of an award in its country of origin as a ground for refusing the recognition and enforcement of that award. French arbitration law and the Hilmarton[lxi] and Putrabali[lxii] cases inspired article 26 of the UAA. It could be argued that this case law applies within the OHADA space[lxiii].

NULLITY OF AWARDS

Arbitral awards in Cameroon are subject to annulment according to the provisions contained in Article V of the New York Convention and Article 26 of the Uniform Act on Arbitration. The Uniform Act stipulates that an application for annulment shall be admissible:

-If the arbitral tribunal has ruled without an arbitration agreement or based on a void or expired agreement.

-If the arbitral tribunal was improperly constituted or the sole arbitrator was irregularly appointed.

-If the arbitral tribunal failed to comply with its assigned mission.

-If the principle has violated a rule of international public policy of the states' signatories of the treaty.

-If the award does not state the reasons on which it is based.

Though not subject to opposition, Appeal or setting aside under the Uniform Act on Arbitration, an arbitral award is subject to a petition for annulment, which must be lodged with a competent judge in a Member State[lxiv]. Hence, it was wrong for the President of the Court of First Instance, Limbe, in the case of *National Refining Co. Ltd (SONARA) v. African Petroleum Consultants (APC) & 2 others*[lxv] to rely on the English Arbitration Act 1950 and Arbitration Law (Lagos) to set aside an arbitral award since the said laws had been repealed as they applied in Cameroon with the coming into force of the New York Convention and the Uniform Act. Before the coming into force of the Uniform Act on Arbitration and Law no. 2003/009 of July 10 2003, the procedure for the annulment of arbitral awards was not unified in the Anglophone and Francophone regions. In the Francophone region, the Court of Appeal of the envisaged area of execution was the competent court for annulment proceedings[lxvi], while the High court of the envisaged area of execution was the competent court for annulment proceedings in the Anglophone provinces.[lxvii] Hence, it was wrong for the President of the Court of First Instance, Limbe in the case of *National Refining Co. Ltd (SONARA) v. African Petroleum Consultants (APC) & two others*[lxviii] to have attributed to himself competence to annul the arbitral award in *APC v. SONARA* under Section 13(2) of Law no. 89/019 0f 29/12/1989 on Judicial Organization when the competent jurisdiction at the time was the High court in Fako Division[lxix]. SONARA again applied to the Southwest Court of Appeal to stay the execution

of the award in *Société Nationale de Raffinage (SONARA) v. African Petroleum Consultants (APC)*[lxx]. In granting the application for a stay of execution, Najeme C.J. (as she then was) also declared that there was no contract between APC and SONARA.

In other words, the award was declared unenforceable. Curiously, the sole arbitrator, Dr. Fru John Nsoh, having been presented with evidence of fraud and misrepresentation by the then Attorney General of the Southwest region, called for a session to review his decision. The arbitral tribunal held at Ibis hotel London, Heathrow, on March 18 2003, the arbitral award between *APC v. SONARA* dated 17/04/2002 was set aside. The present award was later enforced by the President of the Court of First Instance in Limbe[lxxi] , bringing to an end the execution of the previous award. In 2003 the procedure for annulment of arbitral awards was harmonised by Law no. 2003/009 of July 10 2003. In Cameroon, the competent judge to entertain an application for annulment of an award is the same judge who is competent to rule on disputes on the execution of provisionary awards.[lxxii] The competent judge mentioned in Articles 25 and 28 of the Uniform Act Arbitration is a judge of the Court of Appeal of the place of arbitration.[lxxiii] In other words, the Court of Appeal at the seat of arbitration is the competent jurisdiction. However, the Court of Appeal of the Littoral region has entertained an application for nullity or annulment at the place of execution of the award and ruled on it without any objection.[lxxiv] This goes to show that a Court of Appeal at the place of execution can be competent to hear an application for nullity.

It should be noted that though the Uniform Act talks of a competent judge, all matters subject to the jurisdiction of the Court of Appeal must be heard by three judicial officers who are members of the said court[lxxv]. A competent Court of Appeal can annul an arbitral award only when one or more of the grounds discussed in Chapter 4 are established[lxxvi]. Many applications to nullify awards in Cameroon have been rejected[lxxvii].

CONCLUSION

Arbitration has become the most preferred mechanism to solve disputes in both local and international trade. If a party does not voluntarily comply with an award, the successful party can apply for recognition and enforcement of the award to obtain the remedies. Cameroon is a major market in West and Central Africa, and most companies committed to arbitral

procedures are likely to have assets in Cameroon. As such, if a party fails to honour an award, an enforcement procedure may begin in Cameroon with a Cameroonian court. Cameroon's enforcement procedures are sufficient and comply with international standards, with the New York Convention and the UAA as the most used and important instruments for recognition and enforcement. The Cameroonian legislator has made provisions for the enforcement of awards issued by the ICSID, awards governed by the UAA, awards issued by the CCJA and awards governed by the NYC by stating the competent authority for the grant of an exequatur for each of these awards. As examined above, an arbitral award may be refused enforcement under certain grounds laid down in the Uniform Act.

ENDNOTES

[i]Ngangjoh Aissatou "The OHADA Arbitration Mechanism and the Settlement of Commercial Disputes in Cameroon" (unpublished) master thesis of the University of Yaounde II Soa, p.4.
[ii] Tumnde M. "Cameroon Offers a Contextual Approach to Understanding the OHADA Treaty Uniform Acts" in Unified Business Laws for Africa.
[iii] See generally, Keller, American Arbitration: Its History, Functions and Achievements(1948)
[iv] By Virtue of Section 45 of Law No 2008/001 of 14 April 2008 to amend and supplement the provisions of Law No 96/6 of 1996, amending the 172 Constitution of Cameroon.
[v] ICSID case No. ARB/81/2
[vi] *Tribunal de Grande Instance Paris, 8 juillet 1970, SEEE c/ République Fédérale de Yougoslavie*, JDI 1991, p. 1005.
[vii] Foreign arbitral awards
[viii] Article 22(2) of the UAA
[ix] Article 22(3)(4) of the UAA
[x] Article 27 of the CCJA Rules
[xi] Article 21 of the CCJA Rules
[xii] Dictionnaire du Droit Prive de Serge Braudo 1998 2nd Edition p.19
[xiii] Article 30 of the CCJA Rules. See also Decision no. 741 of the Cours d'Appel d'Abidjan, July 2, 2004, where the court of Appeal cancelled a judgement rendered by a court in Abidjan granting the recognition of an arbitral award rendered under the CCJA rules. It referred to Article 25 of the OHADA Treaty, which, provides that only the CCJA has jurisdiction regarding recognition of awards rendered under its rules.
[xiv] The President of the CCJA (Ndongo Fall) has granted exequatur in the following cases: 1) Banque Senegalo-Tunisiene dite BST devenue Attijari Bank Sénégal c/ 1/ Fonds Africain de Garantie et de Coopération Economique (FAGACE), (2009) Recueil de Jurisprudence no. 13 Janvier-Juin 2009, p.174; 2) Ecobank Burkina SA c/ Jossira Industrie SA, (2009) Recueil de Jurisprudence no. 13 Janvier-Juin 2009, p.175; 3) Conseil National Du Patronat Malien c/ Société Cotecna Inspection SA, (2009)
Recueil de Jurisprudence no. 13 Janvier-Juin 2009, p.178
[xv] Article 30(6) of the CCJA Rules.
[xvi] Article 31(3) of the CCJA Rules.
[xvii]*Ibid*.
[xviii]Resolution 174 of International Bank of Reconstruction and Development
[xix]Article 1(1) of the ICSID Convention.
[xx]*Ibid*.
[xxi] Section 11 of Law no. 2002/004 of 19th April 2002 to institute the Investment Charter of the Republic of Cameroon.

[xxii]Lome Convention 1995 setting up an arbitration mechanism for settling disputes between AfricanCarribean & Pacific (ACP) States and the European Union s
[xxiii] J. PAULSSON, "Arbitration without privity", (1995) ICSID Review/Foreign Investment Law Journal, , vol., no.2, p.44.
[xxiv]Case No. ARB/02/4: *Lafarge v. Republic of Cameroon*.
[xxv]The OHADA Uniform Act on Arbitration of 1999.
[xxvi]Article 30 of the UAA.
xxvii Section 4(2) of Law no. 2003/009 of 10th July 2003.
[xxviii]Article 31 (2) and (3) of the UAA.
[xxix] Section 5(2) of Law no. 2003/009 of 10th July 2003
[xxx]Article 31(3) of the UAA.
[xxxi] Arete No 061/Cc du 04 Juillet 2005(Unrepported)
[xxxii]Article 593 of the Civil and Commercial Code
[xxxiii] Cap 211 of the Federation of Nigeria
[xxxiv] Cap 124 of the Federation of Nigeria
[xxxv]Revue Camerounaise de l'Arbitrage n°18, juillet-août-septembre 2002
[xxxvi] Court is now competent to hear only matters where the damages claimed exceeds ten million francs CFA Law no. 2006/015 of 29th December 2006 on Judicial Organisation has repealed Ordinance no. 72/4 of 26th August 1972 amended by Law no. 89/019 of 29/12/1989 and the high.
[xxxvii] Section 9 of Law no. 2006/015 of 29th December 2006 on Judicial Organisation
[xxxviii] *TPI de Bafoussam, ordonnance no. 05/08 du 1 Novembre 2008;TPI de Bafoussam, ordonnance no. 68/05 du 27 Mars 2006;TPI de Bafoussam, ordonnance no. 35/05-06 du 03 Janvier 2006;TPI de Bafoussam, ordonnance no. 191/08 du 1 aout 2005;TPI de Bafoussam, ordonnance no. 113/05-06 du 30 Juin 2006*
[xxxix] Article 25(2) of the Uniform Act on Arbitration
[xl] See 3.2 above.
[xli]Cameroon ratified the Convention by Decree No. 87/1041, 24 July 1987.
[xlii]Article 1 of the Uniform Act on Arbitration.
[xliii]Article III of the New York Convention.
[xliv]Article 1(1) of the NYC.
[xlv]Article IV of the New York Convention.
[xlvi]They include a bilateral convention between Cameroon and France and the multilateral Tananarive Convention between several African countries and Cameroon.
[xlvii]Article 2262 of the Civil Code.
[xlviii] ibid
[xlix]Article 5 of law No. 2007/001 of 19 Apr. 2007 and Article 4(2) of Law No. 2003/009 of 10 July 2003.
[l]Article 5 of Law No. 2003/009 of 10 July 2003.
[li]Article 8(3) 0f Law No. 2007/001 of 19 Apr. 2007.
[lii] Article 6 of Law No. 75/16 of 8 Dec. 1975 defining procedure and organization of Supreme Court.
[liii] Law No. 92/008 of 14 Apr. 1992 setting conditions for enforcement of judicial decisions.
[liv] Article 1(3) of the 1996 Constitution
[lv]Article IV(2) of the Convention
[lvi] Suit no. HCF/91/M/20012002 Revue Camerounaise de l'Arbitrage n°18, juillet-août-septembre 2002
[lvii] Article 32 of the UAA.
[lviii] Article 33 of the UAA.
[lix]Article 597 of the Civil Procedure Code, Law No. 92/008 of 14 Apr. 1992 setting conditions for enforcement of judicial decisions.
[lx]Article 5 of Law No. 2007/001 of 19 Apr. 2007.
[lxi] ICC Award No. 5622, 1993 Rev. arb. 327; XIX Y.B. 105(1994). Société Hilmarton Ltd v. Société Omnium de traitement et de valorisation (OTV). OTV entrusted Hilmarton with a task of providing advice and coordination for a bid to obtain and perform a contract in Algeria. Hilmarton relied on ICC arbitration agreement to obtain the remaining balance of its fees. The award was declared enforceable in France even though it had been set aside in Switzerland. The Cour de Cassation affirmed the decision of the Cour d'Appel.
[lxii] French Court of Cassation case no. 05-18.053 of 29 June 2007. Société Pt Putrabali Adyamula v Société Rena Holding et Société Moguntia Est Epices. Putrabali sold a large cargo of white pepper to Rena Holding. The Cargo was lost due to a shipwreck and Rena failed to pay. Putrabali filed for arbitration. The tribunal in London issued an award in favor of Rena Holding. Putrabali appealed to London High Court, which partially annulled the award and issued a second award in favor of Putrabali. Rena Holding then sought enforcement in France of the first

award and the president of the Paris Court granted enforcement of the award. The French Court of Cassation confirmed the Court of Appeal's decision and granted the award.

[lxiii] Gaston Kenfack Douajni "Enforcement Guide"2013. Available at www.library.iccwbo.org . Accessed on the 27th of January 2023.

[lxiv] Article 28 of the Uniform Act on Arbitration

[lxv]*Suit no.LM/6M/2002 of 19/02/2002: National Refining Co. Ltd v. African Petroleum Consultants, Me Nguesson Andre & Me Soh Fonkoua Blandine* (Unreported)

[lxvi]Article 559 of the Civil and Commercial Code.

[lxvii] Section 26 of the English Arbitration Act 1889

[lxviii] Supra.

[lxix] Section 26 of the English Arbitration Act 1889. It should be noted that at this time Law no. 2003/009 of the 10th July 2003 had not been enacted

[lxx] *CASWP/51M/2002 of 21/08/2002: Société Nationale de Raffinage (SONARA) v. African Petroleum Consultants (APC)* (Unreported).

[lxxi] *Société Nationale de Raffinage (SONARA) v. African Petroleum Consultants (APC) (2004) Suit no. LM/30M/03-04 of* 30/03/2004*)* (Unreported).

[lxxii] Ibid.

[lxxiii] Section 4(1) of Law no. 2003/009 of the 10th July 2003.

[lxxiv]*Arrêt no. 061/CC du 04 Juillet 2005: Complexe Chimique Camerounais (CCC) c/ Sociéte SAFIC ALCAM SA* (Unreported).

[lxxv] Section 21(1) of Law no. 2006/015 of 29th December 2006.

[lxxvi] In *Arrêté no. 061/CC du 04 Juillet 2005: Complexes Chimique Camerounais (CCC) c/ Société SAFIC ALCAM SA*, it was established by the Court of Appeal of Littoral that there was no arbitral agreement between the parties

[lxxvii]*1) Cour d'Appel du Centre, Arrêt no. 482/CIV./05-06 du 23 aout 2006: AXA assurances SA c/ Amicale du 18,* (Unreported)*; 2) Cour d'appel du Centre, Arrêt no. 120/CIV/05-06 du 07 décembre 2005: La Société Cotonnière industrielle du Cameroun SA (CICAM) c/ La Société de Développement du Coton au Cameroun SA (SODECOTON)* (Unreported)*; 3) Cour d'appel du Centre, Arrêt no. 121/CIV/05-06 du 07 décembre 2005, CICAM c/ SODECOTON* (Unreported)*; 4) Cour d'appel du Centre, Arrêt no. 305/CIV/05-06 du 07 décembre 2005, CICAM c/ SODECOTON* (Unreported.