EFFECTIVENESS AND REMEDIES OF ARBITRAL AWARDS UNDER THE OHADA SYSTEM IN THE LIGHT OF OTHER LEGAL SYSTEMS

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ABSTRACT

Arbitral justice becomes a universal phenomenon requiring the involvement of all economic and legal players in developed and developing countries. OHADA is a common law that aims to secure legal security for regional and foreign economic agents by offering a vast economic space. As economic interdependence increases, business disputes are more likely. This article examines the OHADA system in the international commercial arbitration field especially in the recognition, enforcement and the remedies of the arbitral awards in the light of other legal systems like the UNCITRAL Model Law, New York Convention, Inter-American Commercial Arbitration Commission (IACAC), American Arbitration Association (AAA) and International Chamber of Commerce (ICC).

Keywords: Arbitral awards, arbitration, exequatur, OHADA, UAA, CCJA Rules, remedies, effectiveness and res judicata

INTRODUCTION

With the growth of international trade[i], arbitration has emerged as the preferred remedy for resolving private international commercial disputes[ii]. Arbitration is an important tool in alternative dispute resolution[iii]. It is defined as a binding resolution of a dispute through the ruling of one or more individuals, appointed by the parties[iv]. It has long been the dispute resolution method of choice in the construction, energy and insurance fields. It is used in the areas of banking, intellectual property, financial service sectors and complex commercial disputes[v]. At a fundamental level, parties use international arbitration to resolve disputes using an arbitrator[vi]. By selecting arbitration, parties effectively waive their rights to litigation.

When entering into a contract for any significant value, the parties will generally want to ensure that any dispute that might arise under the contract in the future will be dealt with efficiently, rapidly and confidentially[vii]. If the parties are from different countries, each of them will also generally prefer disputes to be dealt with by a neutral body rather than by the national courts of the other party. These considerations led to the popularity of arbitration clauses, particularly in international contracts.

This article covers only arbitration. Arbitration allows parties to have their disputes settles by a private tribunal consisting of a sole arbitrator or a panel of arbitrators, who may be chosen by the parties themselves. The proceedings are confidential and may be more rapid than proceedings before the normal courts[viii]. They result in an arbitral award, which, as a general rule, will be final and binding, subject only to limited appeals, and which on certain conditions will be easily enforceable if the losing party does not comply with it spontaneously.

Arbitration[ix]may be either institutional, that is, conducted under the auspices of an arbitration centre that administers the arbitration in accordance with its own rules, or ad hoc, that is, conducted without the assistance of an arbitration centre and in accordance with any rules that the parties or the arbitral tribunal may choose to apply, subject to any mandatory rules laid down by the applicable law.

At its meeting on 23 and 24 November 2017 in Conakry (Guinea), the OHADA Council of Ministers adopted major texts that boost the Organisation's normative arsenal on alternative dispute resolution. These new OHADA instruments on arbitration update the laws in force.

They aim to enhance transparency, swiftness and efficiency of arbitral proceedings of the CCJA arbitration centre. These new texts are likely to strengthen the confidence of local and foreign investors, and to significantly improve the business climate in the OHADA space. OHADA[x]has created two different sets of legislation applicable to arbitration[xi]:

- The new Uniform Act on the Law of Arbitration [xii](hereinafter referred to as UAA) which lays down basic rules which are applicable to any arbitration where the seat of the arbitral tribunal is in one of the Member States. The UAA is based on the UNCITRAL model law. It supersedes existing national laws on arbitration but is subject to provisions of national laws which do not conflict with the UAA.
- The Revised Rules of Arbitration of the Common Court of Justice and Arbitration (CCJA)[xiii]which provides for institutional arbitration under the auspices of the Common Court of Justice and Arbitration, in accordance with the CCJA's own Rules of Arbitration (Hereinafter referred to as the CCJA Rules);

If a contractual arbitration clause[xiv] simply provides for arbitration under the UAA, there will be no institutional framework but the UAA will govern certain matters relating to the proceedings. On the other hand, if the clause states the party's agreement to arbitration under the OHADA Treaty or the CCJA Rules, this will establish an institutional frame work for the arbitration, akin to providing, for example, for arbitration under the auspices of the International Chamber of Commerce (ICC)[xv]. Finally, a clause might provide for arbitration in one of the Member States in accordance with institutional rules other than those of the CCJA, in which case the UAA would apply to matters not regulated by such rules.

In addition to the question of whether the arbitral proceeding will be administered by the CCJA or by another institution, or whether they will be ad hoc, there are further essential differences between arbitration under the UAA and arbitration under the Treaty and the CCJA Rules, as shall be observed subsequently mostly in respect of the enforcement and remedies of arbitral awards. It will be interesting to analyse the recognition, enforcement and later the remedies of arbitral awards.

THE EFFECTIVENESS OF ARBITRAL AWARDS

We will expose the legal basis and then analyse the enforcement of arbitral awards.

Legal basis

The OHADA signatory states[xvi]are predominantly of the civil law legal tradition. OHADA operates a uniform law regime which upon adoption becomes automatically applicable in all its member states[xvii]. The UAA Law, which provides basic rules that are applicable to any arbitration (ad hoc or institutional) where the seat of the arbitral tribunal is in a Member State; and the OHADA Treaty which provides for arbitration under the auspices of the Common Court of Justice and Arbitration and in accordance with the CCJA Rules of Arbitration. The Common Court of Justice and Arbitration has final jurisdiction on matters pertaining to OHADA Uniform Acts[xviii].

Recognition and Enforcement of awards within any OHADA contracting states are governed by article 25 of the OHADA UAA which recognises a valid award as final and binding on the parties with res judicata effect and is accorded the same status as a judgment of a national court in all OHADA member states[xix]. As a preliminary point, some OHADA member states are also parties to the New York Convention[xx]. In such states, it is for the enforcing party to choose which legal regime to ground his application on[xxi]. In those OHADA states that are not parties to the New York Convention, enforcement and recognition can only be sought under the provisions of the Arbitration Law[xxii].

For the enforcement of an arbitral award under the OHADA legal system, the first step is to obtain exequatur of the award by establishing the existence of the award and the arbitration agreement on which it is based. The party[xxiii] seeking exequatur of the award shall produce the original award and arbitration agreement or authenticated copies of both the award and arbitration agreement[xxiv]to the competent court, which will then grant exequatur of the arbitral award and enter that as the judgment of the court for enforcement purposes[xxv].

The second step is that the documents (that is the award and arbitration agreement) if they are not in the French language, must be translated into French. This requirement must be interpreted as being conditional on French being the language of the national court before which exequatur and enforcement is sought. This is necessarily so since the official language

of some OHADA member states is not French and a court speaks its own language[xxvi]. The application for exequatur and enforcement under the Arbitration Law requires the other party to be put on notice. The only ground on which a request for exequatur and enforcement of the arbitral award shall be refused is where the 'award is manifestly contrary to international public policy of the member states'[xxvii]. There is no time limit when recognition and enforcement of an arbitral award may be sought under the OHADA Arbitration Law before the courts of a member state[xxviii].

Enforcement of OHADA legal system arbitral awards and foreign awards

The efficiency of the award is assessed according to the exequatur. Article 25 of the Treaty of OHADA compares the arbitral award to a real judicial decision that has full and rightful authority at the international level. In practice, the two levels in the enforcement of arbitral awards under OHADA, according to whether the parties agreed to settle their differences in accordance with rules they have chosen or allowed the arbitrators to choose[xxix], and subject to the mandatory provisions of the UAA[xxx], or the parties agreed to refer their dispute for settlement to the CCJA Arbitration Centre[xxxi].

- **The enforcement of Awards under the UAA**

Recognition and enforcement are important because arbitrators do not have judges' imperium[xxxii]to enforce the award and arbitral awards do not automatically have a certification showing that it is enforceable[xxxiii].Although arbitration is consensual and depends on parties' choice, States still have control and monopoly for recognition and enforcement of decisions[xxxiv].Under the UAA rules, an award becomes enforceable through a recognition procedure[xxxv].

Under the UAA, an award becomes enforceable through a recognition procedure. To be enforceable, the award must be submitted to the competent national court judge[xxxvi]that is the court in the State where enforcement is sought. Unlike the CCJA which has a two-tier procedure for the recognition of arbitral awards, here the parties only have to submit their request for recognition (exequatur) to the competent national judge. As soon as the award has been recognised it becomes enforceable[xxxvii].

The documentary requirements are the same as those provided for in the New York Convention. The original of the award or certified copies thereof and the original arbitration agreement or duly certified copies thereof. There is only one ground for the refusal of recognition or enforcement of an award; 'that the award is manifestly contrary to a rule of international public policy of a Member State[xxxviii]'. Recognition of the award can be denied if the award is manifestly contrary to international public policy[xxxix]. Article 32 of the UAA allows the award-creditor to apply to the CCJA for the ruling refusing the exequatur to be set aside[xl].

It however does not extend the same privilege to the award-debtor. The ruling granting the exequatur is not subject to appeal. These accords with the fundamental principle that arbitral awards should, subject to limited exceptions, be regarded as binding and enforceable. Article 32, however, departs from this principle by equating the procedure for setting aside to recourse against an enforcement order. This article lays down a short limitation period of one month for the filing of the application and must be read in conjunction with articles 27 and 28. In effect the setting aside of an application can be made in two phases. The first phase is after the award is rendered and even after application for recognition and enforcement is made but before enforcement is ordered. The second phase is after enforcement is ordered but within one month as from the date of notification of the enforcement order[xli].

It is important to point out that the new UAA[xlii]revised rules of arbitration. As to the effectiveness of arbitral awards, the parties can now expressly waive their right to file an application to set aside an arbitral award (save where this would be counter to international public policy)[xliii], and thereby becomes one of the rare texts as provided in French international arbitration law[xliv]allowing such waiver, subject to international public policy.

It also sets strict time limitations to the proceedings against awards, which must be started within a month after the award is rendered[xlv]. The State court must rule on the challenge within 3 months, failing which the claim can be brought within fifteen (15) days before the Common Court which must issue its ruling within six (6) months.

Under article 28, unless provisional execution has been ordered by the arbitral tribunal, the application to set-aside has the effect of staying the execution of the award until a decision is

made on the application. This article refers to an award that has been recognised and is ready for enforcement and leaves no room for judicial discretion.

Another innovation in terms of exequatur (enforceability), relates to the fact that if the national court has failed to issue a decision 15 days after such request was referred, exequatur is deemed to have been granted[xlvi]. In this case, the party seeking enforcement must ask the head Registrar or competent authority of the relevant State to have the enforceability statement added to the award[xlvii]. There is provision for direct appeal to the CCJA of decisions declining exequatur. A decision granting exequatur cannot be appealed[xlviii].

Under article 33, the refusal of the application for setting aside is tantamount to recognition of the award and decision granting the exequatur[xlix]. In other words, the rejection of a request to set an award aside has the same effect as the recognition of an arbitral award and the confirmation of an exequatur decision.

Finally, article 34 recognises and gives effect to foreign awards, which have been made pursuant to rules other than those provided by the Uniform Act. This provision enshrines and gives effect to the principle that international arbitral awards must be regarded as binding and enforceable irrespective of the country in which they were made[l]. It allows the enforcement of awards under the New York Convention[li]. This provision is rather ambiguous, and it does not specify whether the national court concerned is the court in the Member State where the award was issued or in the Member State where enforcement is sought, which may not be the same. However, it should doubtless be assumed that it is the court in the state where enforcement is sought that is intended, as judgment of a national court in one Member State cannot have extra-territorial effect in another Member State.

The party applying for an enforcement order must produce an original of the award and of the arbitration agreement or certified copies of these documents. As compared to what was obtained in the past where, if the documents were not in French, a translation into French must also be produced, certified by a translator registered with the court[lii]. Today, given that there were member states with English, Spanish and Portuguese as their official languages, the recent amendments of the Treaty[liii]recognise all the four languages as the working languages of the Treaty[liv] although it has not been very effective. Hence, in Cameroon, documents

accompanying an application for exequatur can be either in French or English and the courts have accepted this view[lv].

At this level of our analysis, some issues merit clarification for a better edification on the enforcement of arbitral awards under the UAA. It was noticed that the UAA has similar provisions with the UNCITRAL Model Law and the New York Convention especially concerning grounds on which enforcement will be refused if the award is contrary to public policy and documentary requirement for enforcement. A question might still arise on which two documents will be applicable in case a State as Cameroon[lvi]which is an OHADA Member State and a contracting party to the New York Convention[lvii]. Article VII of the New York Convention gives a solution by providing that the provisions of the Convention "shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into the Contracting State". This provision establishes that the UAA will be applicable, as it might be considered as a multilateral agreement between the OHADA Member States and it provides for the recognition and enforcement of arbitral award[lviii]. The New York Convention will nevertheless be applicable every time parties choose other arbitration rules than the UAA to be applicable to their dispute.

Also, the new article 30 of the UAA sets out two main principles: a very general one for all those who are familiar with international arbitration law and another, more innovative, one aimed at thwarting judicial practices that delay the enforceability of arbitral awards. If the resumption of the provisions of former article 31 of the UAA of 1999 was not a big surprise, confirming that exequatur is denied to any award obviously in breach of an international public policy rule, it is noteworthy that it is no longer a requirement that such international public policy rule be shared by all OHADA Member States. The removal of this requirement seems appropriate since the extent of the limitation was difficult to understand in practice. Nonetheless the key point in this regard remains jurisprudence, since the consistency of the international public policy issue will be clarified on a case-by-case basis in future judgments ruled by the CCJA on the matter[lix].

In an innovative way, the new article 30 attempts to overcome these difficulties litigants may face when trying to enforce an arbitral award in an OHADA Member State. Indeed, the exequatur procedures are sometimes incredibly and needlessly long and complex, which

reduces the effectiveness of the award and could be seen as a State judge taking revenge on an arbitral proceeding that removed the dispute resolution from his jurisdiction. From now OHADA permits the possibility of a tacit exequatur, which is undoubtedly a novel concept.

It would, however, be naïve to assume too readily that this will solve the problems of enforceability of arbitral awards. First, although the recognition of a tacit exequatur meets a legitimate need on the part of litigants, the fifty (15) days timeline over which it is deemed to have been granted by the court is too short taking into consideration the objective days functioning of some courts within the OHADA region. The judicial staff as well as litigants will also be affected by this. It is common sense that a rule perceived as unreasonable is rarely applied without some resistance. Secondly, the State judge may take time in exercising his discretion to assess whether a request for an exequatur is admissible, thus delaying the achievement of enforcement. Finally, the issuance of the enforcement formula by the Court Clerk could prove a new source of delay in case of tacit exequatur and become a cause of frustration for the parties struggling to enforce an arbitral award.

- **The enforcement[lx] of Awards under the CCJA[lxi] Rules**

Under article 21 of the Treaty, a dispute may be submitted to CCJA rules where one of the parties is domiciled or has its usual place of residence in one of the Member States; or the contract has been or is to be performed, in whole or in part, on the territory of one or more Member States. This arbitral role is exercised in two phases, recourse against the award and enforcement. The relevant provisions are article 25 of the Treaty and articles 27 to 33 of the CCJA Rules of Arbitration. Article 27 of the Rules of Arbitration (which is identical to the first part of article 25 of the Treaty), enunciates the conclusive or res judicata effect of arbitral awards. It sets forth the principle that awards made pursuant to the provisions of the Rules are binding and enforceable in all the Member States of OHADA. Awards are enforced by an order of exequatur issued by the CCJA[lxii].

The arbitral awards made under the auspices of the CCJA have the same authority as judgments rendered by national courts, and are enforceable throughout OHADA territory. The enforcement is ordered by the President of the CCJA or a judge to whom the matter has been assigned[lxiii].The CCJA is the only one to have jurisdiction on recognition of awards rendered under its rules[lxiv]. This procedure is not contradictory[lxv]. But, the enforcement will

not be ordered where an application has been filed, challenging the validity of the award[lxvi]. Recognition can only be denied on the following grounds[lxvii]:

- There was no arbitration agreement or it was null or expired;

- In making the award, the arbitrator went beyond the powers conferred to him/her[lxviii];

- The adversarial principle was not respected[lxix];

- The award is against international public policy[lxx].

Once recognition is granted for an award, it is valid in every OHADA Member State. It is therefore not required of a party seeking enforcement of the award in any of the Member States to obtain its recognition in that Member State. It does not matter where the seat of arbitration was, as long as the award was made based on the CCJA rules. This is an original procedure created by OHADA. By instituting res judicata of arbitral awards under the CCJA rules in every Member State, OHADA has established a regional recognition of awards[lxxi].This is a great advantage for the party seeking enforcement of the award in case the other party has assets in more than one OHADA Member State[lxxii].

According to the CCJA Rules[lxxiii], only the CCJA acting as a court is competent to grant an exequatur to a CCJA arbitral award. In this case, 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[lxxiv].

If the President of the Court or judge to whom the matter has been assigned grants the application for enforcement, the order of *exequatur* must be served on the award debtor. The award-debtor is allowed a period of 15 days, as from the date of service, within which to file an objection[lxxv]. The full bench of the Court will render a decision on the objection, after full hearing conducted in accordance with its rules of procedure. The Secretary-General of the Court delivers to the party that requests it a certified copy of the award with a certification attesting that it has been recognised by the Court. The certification also attests that the award has become final, given that no opposition was filed against the award within fifteen days of its notification to parties, or the Court denied a request for denial of recognition[lxxvi].Competent national courts in any Member State in which enforcement is sought, given the certification

attesting recognition of the award by the Court, shall add a certification for enforcement on the award[lxxvii].

The procedure for enforcement of arbitral awards under the UAA and CCJA Rules would appear to have been designed to protect the interest of the parties and any third party whose rights have been infringed. There is patent incoherence in the drafting of the provisions, particularly the intertwining of recognition and setting aside or challenging proceedings which could lead to inconsistent understanding and interpretation.

The revised CCJA Arbitration Rules have highlighted a good number of innovations in relation to arbitration and disputes resolution within the OHADA area. As to what concerns arbitral awards we note the following:

The CCJA has been given broader powers in terms of scrutiny of draft awards. The powers are now quite similar to those of the ICC International Court of Arbitration. Like the ICC, the court can suggest purely formal changes, and now may also draw the tribunal's attention to claims that do not appear in the draft, or to the lack of reasons or an apparent contradiction in the reasoning, but cannot, however, propose a line of reasoning or substantive solution to the dispute[lxxviii]. The court has one month to complete its scrutiny of the draft award[lxxix].

An award must now be reasoned, and the consent of the parties is no longer adequate to waive this requirement[lxxx]. The failure to provide reasons for the award now qualifies as a ground for setting the award aside[lxxxi], as well as an improperly constituted tribunal or improperly appointed sole arbitrator[lxxxii].

In the interests of accelerating procedure, the CCJA now hands down its decision on setting awards aside within six (6) months of receiving the referral[lxxxiii]. Decisions on exequatur are issued by the CCJA President (or a judge with specifically delegated authority) no more than fifteen (15) days after the request has been filed[lxxxiv], in line with the Uniform Act. For awards on interim or conservatory measures, the time frame is three (3) days[lxxxv]. The grounds for setting awards aside are now the same as those in the UAA. This should avoid conflicts between review of awards issued under CCJA rules and review of awards issued within the scope of the UAA but not under CCJA rules. Lastly, under the revised rules, the CCJA President's decision to grant exequatur can no longer be appealed on any basis[lxxxvi].

Arbitral awards made based on the CCJA rules are binding and are reputed res judicata, like any judicial decision (judgment) rendered by a court in a Member State, allowing awards to be enforced in any Member State without further procedure[lxxxvii]. Awards do not have this quality under the IACAC rules and the AAA rules and need to be given res judicata in the national court where recognition is sought.

- **Enforcement of International award**

The UAA sets forth that the arbitral awards are recognised by the Member States. Article 34 made provision for the recognition of arbitral awards based on rules other than those of the UAA. These grounds are similar in certain respects to those found in article 34 of the Model Law. The decision setting aside the award may itself be quashed by the CCJA.

Whereas article 28 of the UAA allows the arbitral tribunal to order provisional enforcement of its award, there is no such provision under the Model Law. Article 31 provides that recognition and enforcement shall be refused if the "award is manifestly contrary to a rule of international public policy of the member States"[lxxxviii].Arbitration instruments (national laws and treaties) uniformly permit the non-recognition of arbitral awards on the ground that they violate public policy[lxxxix].

By providing for international public policy, it should be assumed that it is the case of an international arbitration and not a local arbitration, as the public policy of the concerned State would-be applicable for local arbitration. In the case of international arbitration, two meanings can be given to international public policy: for matters governed by the UAA, a regional public policy can be applied as the UAA is common to all Member States. In case the matter is not governed by the UAA, the international public policy to be applied is the one provided by the private international law rules of the State in which recognition is sought[xc].

For the denial of the recognition of an arbitral award, the UNCITRAL Model Law has provided for the same requirements as the ones for an application to set aside an arbitral award. The only requirement that is added is when “the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made.” The same requirements are found in article V of the New York Convention[xci].

The OHADA Treaty, CCJA Rules and UAA talk of 'international public policy'. There is a traditional distinction between domestic public policy and international public policy in Civil Law systems, from whence OHADA got its inspiration. The concept of international public policy is supranational in character, hence its use in OHADA legislation. The distinction between the two is considered to be of prime importance in international commercial arbitration.

THE REMEDIES TO THE AWARDS

Arbitral awards cover a range of remedies such as monetary compensation, punitive damages, specific performance and restitution, injunctions, declaratory reliefs, rectification, adaptation of contracts, interest and costs[xcii]. The successful party in an arbitration proceeding expects the award to be performed without delay. However, it may happen that the beneficiary of an award has to forcefully execute it for him to enjoy the fruit of the award[xciii].

Ordinary appeals are not available. A party may contest the validity of the award on a limited number of grounds. The only grounds upon which such proceedings may be based are the following:

- There was no arbitration agreement, or the arbitration agreement was null and void or had expired by the time the tribunal gave its award;
- The arbitral tribunal was improperly constituted;
- The arbitral tribunal failed to comply with its terms of reference;
- There was a lack of due process in the proceedings;
- The award does not contain reasoning; or
- The arbitral tribunal has violated a rule of international public policy[xciv] of Member States.

The appeals shall not constitute a dilatory measure to avoid immediate enforcement of an award rendered by an arbitral tribunal. Under article 25 of the UAA, recourse against the award is not the exclusive right of the award debtor and the setting aside procedure is not the exclusive means of recourse against an award. However the other procedures of recourse contained in article 25 are not brought before the court that has jurisdiction to set aside the award but are

laid before the arbitral tribunal. A third party who was not called and who has suffered harm as a result of the award may file an objection before the arbitral tribunal. Again, an application for review of the award may be made where a new fact is discovered which could have a decisive influence provided that such new fact was unknown to the arbitral tribunal and the party making the application at the time the award was rendered. The inclusion of these two other means of recourse is salutary as they may serve to protect the rights of third parties and to make the resulting award more justifiable, credible and acceptable.

The UAA[xcv]allows the setting aside application to be filed even after the award has been declared enforceable, though this must be done within one month as from the date of notification. Furthermore, and this is even more striking, under the UAA[xcvi], the setting aside of an award does not constitute a bar to the institution of fresh proceedings. An award debtor who wants to resist recognition and delay enforcement will simply initiate fresh arbitration proceedings, even though he knows full well that he has a frivolous claim and has little or no chance of success. It is difficult to see how an invalid arbitration agreement can be rendered valid by the simple initiation of fresh proceedings, unless the parties decide to enter into another agreement.

The articles 29, 32 and 33 of the CCJA Rules also are applied. Article 28 of the Rules requires that the original of the award be deposited with the Secretary General of the CCJA. Article 29 provides that a party who intends to challenge the recognition of an arbitral award and its res judicata effect must institute proceedings by way of an application before the CCJA. The national courts are completely excluded from the entire process. The wording of article 29 lends credence to the view that the award creditor needs not produce documentary evidence of the award and provides that the challenge to the validity of the award can only be made if the parties have not agreed otherwise, that is, renounced their right to challenge the award in the arbitration agreement. This provision which is not found in the UAA reinforces the principle of party autonomy, which of course is qualified by the mandatory requirements of the arbitral situs. The CCJA Rules equate challenge to the recognition of an award which is akin to a request for refusal of recognition or enforcement filed by the party against whom recognition is invoked. Article 30 of the CCJA Rules set out the grounds for refusal of recognition or challenge of the validity of an award which are: absence of arbitration agreement, or agreement invalid or has expired; the tribunal has rendered an award on matters that are beyond the scope

of the submission to arbitration; the principle of equality of arms was not respected[xcvii]; the tribunal has infringed a rule of international public policy of the Member States. The CCJA Rules lay down a limitation period of two (2) months from the date of notification of the award for the filing of the application to challenge the recognition or validity of the award. In addition to the provisions relating to challenge of the award, the CCJA Rules contain provisions relating to review and 3rd party objection[xcviii] identical to the provisions of article 25 para 5 of the UAA.

After observing the various controversies surrounding the validity of an arbitral award under the UAA and the CCJA Rules, the question still remains as to how do we obtain the remedies in an award? An arbitration process only comes to an end when the decision of the tribunal is executed. 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 by paying the damages or respect the injunction order as the case may be. However, it may happen that the unsuccessful party may refuse to respect the decision of the tribunal despite the fact that the award is 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[xcix]. It should be noted that a ruling granting exequatur for an award does not constitute a step in execution but simply an act which is susceptible to execution[c].

To obtain the remedy in an award by forceful execution can be very difficult in Cameroon and other OHADA Member States where the unsuccessful party is a State agency[ci] due to immunity from execution[cii]. This immunity, however, is not absolute since the unquestionable debts due State Corporation and State enterprises by a third party can be used to set off creditors of State corporations and State enterprises[ciii]. Despite this fact, State corporations have still refused to honour their obligations by invoking their immunity. This was the situation in the case of *African Petroleum Consultants (APC) v. Société National de Raffinage (SONARA)*[civ], where based on the ruling of the court granting an exequatur to an arbitral award, APC served on Shell Cameroun SA (debtors of SONARA) on the 29 and 30 May 2002 a saisie-attribution (seizure order) to pay the sum contained in the award. This seizure having not been complied with, APC then seised the Fako High Court, Buea and a ruling was delivered on the 13th of August 2002 ordering Shell Cameroun SA to comply with the seizure and pay the sum contained in the award to APC[cv]. This ruling and the execution of this ruling was however, set aside by the Court of First Instance, Limbe on the 19/08/2002[cvi].

Though it has been postulated by many authors that a State Corporation which has submitted itself to arbitration must respect the decision of the arbitral tribunal and comply with the said award, this has not been the case[cvii]. These State agencies have used all measures to resist the execution of court decisions by especially invoking their immunity[cviii].

CONCLUSION

Under the OHADA system**,** enforcement mechanism works well in general. It may be said that the current enforcement mechanism can guarantee that foreign arbitral awards will be recognised and enforced effectively. This is a fair and significant way to accelerate mutual benefits between foreign investors and the host country in OHADA's system. The Organisation for Harmonisation of Business law in Africa has created a reliable arbitration forum and international arbitration institutions capable of monitoring complex arbitration proceedings with competence, confidentiality and impartiality. Both CCJA rules and UAA compose the new arbitration framework created by OHADA in Africa, which provides rules and procedures for foreign and local investors who are interested in investing in the OHADA zone.

We have a new international commercial arbitration reference in Africa which provides both ad hoc and institutional arbitration. The Common Court of Justice and Arbitration has been assigned the role of a regional arbitration, which provides for modern and original arbitration rules within the OHADA area. The OHADA UAA was adopted as the municipal law replacing OHADA Member States' national laws on arbitration and provides with arbitration rules that meet the standard of international commercial arbitration in the world. The recognition and enforcement of foreign judgments is a common problem for most countries. So, keeping the pace with the international community and making gradual efforts to improve the recognition and enforcement situation of foreign judgments are vital for the developing countries like OHADA's Member States. The importance of recognition and enforcement of foreign judgments, in the business world, can influence foreign parties' decision about to cooperate with OHADA's system.

It was also interesting to have noticed that the OHADA arbitration system concords with other legal systems which facilitate the recognition and enforcement of foreign awards within and

out of the OHADA zone. For instance, enforcement of an arbitral award will be refused if the award is contrary to a rule of international public policy under article 31 of the UAA, article 35(2) of the UNCITRAL Model Law and article IV of the New York Convention. The documentary requirement for enforcements is the same as those provided for in the New York Convention.

Also, the recognition of arbitral award under UAA article 34 is similar to that of article 34 of the Model Law. The CCJA has been given broader powers in terms of scrutiny of draft awards. The powers are now quite similar to those of the ICC International Court of Arbitration.

Furthermore, for the denial of the recognition of an arbitral award, the UNCITRAL Model Law has provided for the same requirements as the ones for an application to set aside an arbitral award as those of the UAA. The same requirements are found in article V of the New York Convention.

However, some disparities could also be observed. For instance, whereas article 28 of the UAA allows the arbitral tribunal to order provisional enforcement of its awards, there is no such provision under the Model law.

Also, arbitral awards made based on the CCJA rules are binding and are reputed res judicata, like any judicial decision (judgment) rendered by a court in a Member State, allowing awards to be enforced in any Member State without further procedure. Awards do not have this quality under the IACAC rules and the AAA rules and need to be given res judicata in the national court where recognition is sought.

From the foregoing, some observations are made to highlight any advantages that could benefit OHADA and help improve international commercial arbitration in Africa as well as specific advantages provided by OHADA which can be used to improve other commercial arbitration forums.

Firstly, the scope of application of the CCJA rules is limited to matters connected to the OHADA area and therefore prevents parties located in different parts of the world with no connection with OHADA to benefit from the CCJA rules. This is understandable, as the primary goal of the drafters of the OHADA legislation was to provide investors and business entities with modern and competitive norms within the area. However, after improving its rules

and gaining the necessary experience, it will be beneficial for the CCJA to open its arbitration forum to parties from all parts of the world and provide its expertise as an international commercial arbitration institution.

Secondly, under the CCJA rules, the Court has a dual role: it operates as an administrative institution monitoring the arbitration process and also acts as a Court in some instances. As a jurisdiction, it may inter alia, review the award drafts before the arbitral tribunal renders its decision and verify that the awards comply with the CCJA rules. After the awards are rendered, the Court is also competent for recognition and enforcement of the same awards in OHADA Member States. By conferring this role to the CCJA, OHADA has therefore created a regional recognition of arbitral awards in the area, as parties are not required to seek recognition and enforcement of the awards in each Member State. This is an original procedure instituted by OHADA, which eases the enforcement of foreign arbitral awards.

Also, having the same Uniform Act on Arbitration as arbitration law in all OHADA Member States allows OHADA seventeen states to have common and modern arbitration legislation and share best practices in arbitration. Having a common legislation also ease business in the region for investors operating in more than one country in the area, as the rules are the same in the Member State. As the scope of application of the Uniform Act is determined by the seat of arbitration being in a Member States, this approach is also useful for parties from one Member States which prefer to establish their seat of arbitration in a different Member State for logistical and financial reasons. The UAA gives them the opportunity to apply rules they are already familiar with in a different Member State.

Furthermore, the UAA provides that the recognition of an award can be denied if the award is manifestly contrary to international public policy. International public policy may be defined here as a regional public policy, the UAA being the common legislation on arbitration for all Member States, and can therefore be construed as general principles of morality accepted by OHADA Member States.

Finally and in the form of a recommendation, the possible delay in the enforcement of an arbitral award in case of tacit exequatur or otherwise, illustrates a major deficiency in the legal system set up by OHADA, namely the absence of a Uniform Act harmonising the commercial procedures within the Member States. Such an Act would have the merit of unifying the

litigation both formally and substantively and thus allow the CCJA to exercise its full jurisdiction without the result that procedural rules, because they come under national laws, leave national judges with the possibility of indirectly counteracting the effects of harmonised substantive law.

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ENDNOTES

[i] See Thomas, Carbonneau. "Rendering Arbitral Awards with reasons: The Elaboration of Common Law of International Transactions", *23 Colum.J. Transnat'l L*, 1985, p.1.

[ii] Without arbitration or other alternative dispute resolution mechanisms, such as conciliation or mediation, which are now also starting to flourish in the international sector, the only recourse for parties to an international commercial contract in the event of a dispute is to litigate before national courts. Attempts at negotiation in all likelihood would fail, given the breakdown of contractual relationship. Recourse to national court adjudication is also problematic given the usual choice of forum and choice of law problems.

[iii] See Mark, Movsesian. "International Commercial Arbitration and International Courts", *18 Duke Journal of Comparative and International Law*, 2008, pp. 423-448.

[iv] See Christian, Buhring-Uhle, Lars, Kirchhoff and Matthias, Scherer. *Arbitration and Mediation in International Business*, 2nd Revised edition, Kluwer Law International,.2006, p. 64.

[v] Note, 'Revised ICC Rules Reflect the Fundamental Role that Arbitration Now Plays in Business' Hogan Lovells 12 September 2011http://www.lexology.com/library, consulted on the 03/01/2022, at 8pm.
[vi] See Philippe, Kahn. "Les principes généraux du droit devant les arbitres du commerce international", *116 J.D.I. 305*, 1989, p. 325; see also Andreas, Lowenfeld. *Lex Mercatoria: An Arbitrator's View*, in LEX MERCATORIA AND ARBITRATION 71 (T.E. Carbonneau ed., rev. ed. 1998).
[vii]Boris, Martor et al. *(200*7), *Business Law in Africa: OHADA and the Harmonization Process*, 2nd ed., GMB Publishing Ltd., 2007, p. 259.

[viii] See Survey 'International Arbitration: Corporate Attitudes and Practices' Queen Mary School of International Arbitration and Price Waterhouse Coopers, (2006) 2. ('Queen Mary survey). Procedural flexibility means the ability to modify the rules of arbitration to suit the needs of the parties and their dispute. Often arbitration institutions offer flexible rules and if the parties are having an ad hoc arbitration, they can customize their own rules.
[ix] Arbitration is an alternative to conventional litigation (alternative dispute resolution) used primarily for disputes of a commercial nature. See Thomas E Carbonneau, Arbitration in a nutshell, 2nd edition, (West, 2009.)
[x]Organization for Harmonization of Business Law in Africa.
[xi]Article 21 of OHADA Treaty on the Harmonisation in Africa of Business Law, signed in Port Louis on 17 October 1993, as revised in QUEBEC ON 17 October 2008.
[xii]Uniform Act of 23 November 2017 on the Law of arbitration.
[xiii]Arbitration Rules of the CCJA of 23 November 2017
[xiv] Thomas, Carbonneau. "The Exercise of Contract Freedom in Making of Arbitration Agreements", Vanderbilt *Journal of Transnational Law*, Vol. 36, 2003, p. 1189.
[xv] Okezie, Chukwumerije. *Choice of Law in International Commercial Arbitration*, Westport, Connecticut: Quorum Books, 1994. p.30.
[xvi]There are currently 17 OHADA Member states: Benin, Burkina-Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, the Democratic Republic of Congo, Equatorial Guinea, Gabon, Guinea (Conakry), Guinea (Bissau), Côte D´Ivoire, Mali, Niger, Senegal and Togo.
[xvii] Mamoudou, Samassekou. "Effectiveness and Remedies of Arbitration Awards in OHADA's System and in the People's Republic of China", *Journal of Politics and Law*, Vol. 4, No. 1, 2011, p. 66.
[xviii] Ibid p.67
[xix]See articles 20 and 31 OHADA Arbitration Law which details what should be contained in the award which shall be reasoned, in writing and duly signed.
[xx]These are: Benin republic, Burkina Faso, Cameroon, Central Africa Republic, Gabon, Guinea, Mali, Niger, and Senegal.
[xxi]. This is because article 34 preserves the obligations of its member states under such conventions.
[xxii]. These states are: Chad, Comoros, Congo Brazzaville, Equatorial Guinea, Guinea Bissau, and Togo
[xxiii] See Michal, Malacka. "Party Autonomy in the Procedure of Appointing Arbitrators", International *and Comparative Law Review*, vol. 17, no. 2, 2017, pp.93-95.
[xxiv]These are the same documents required under article IV of the New York Convention.
[xxv]See articles 30 and 31 OHADA Arbitration Act.
[xxvi]Spanish is the official language of Equatorial Guinea; Portuguese is the official language of Guinea Bissau while Cameroon is both French and English.
[xxvii] See article 31.
[xxviii] See Jonathan, Bashi Rudahindwa. "International Commercial Arbitration in Africa: The Organisation for Harmonisation of Business Law in Africa (OHADA) sets the tone" LLM thesis, Indiana University School of Law-Indianapolis, 2011, p. 55.

[xxix] Which could be the rules of any arbitration institution or other rules adopted for the purpose
[xxx] See article 10 of the Treaty which establishes the direct applicability of the Uniform Acts. See also the CCJA opinion of April 30th, 2001, in which the Court considers that article 10 of the Treaty establishes the direct and

mandatory applicability of the Uniform Acts and their supremacy on any former or posterior provision of Member States national laws. See also article 35 of the UAA which provides that the UAA is the arbitration law for all OHADA Member States.

[xxxi] Provisions on the arbitration provided by the CCJA are found in Title IV (articles 21 to 26) of the OHADA Treaty.

[xxxii] See Jonathan, Bashi Rudahindwa. "International Commercial Arbitration in Africa: The Organisation for Harmonisation of Business Law in Africa (OHADA) sets the tone" supra p. 61.

[xxxiv]Ibid at p.6.

[xxxv]This two-tier procedure for the enforcement of arbitral awards is found in article 30 of the UAA.

[xxxvi] This two-tier procedure for the enforcement of arbitral awards is found in article 30 of the UAA

[xxxvii]This derives from the language of article 30 of the UAA which provides that an award becomes enforceable as soon as recognition has been granted by the competent national judge. The CCJA rules, however, have provided for the recognition of the arbitral awards by the CCJA (article 30 CCJA rules) and the enforcement by a competent national judge (article 31 CCJA rules). The CCJA procedure is nonetheless advantageous, as the recognition granted by the CCJA is valid in all OHADA Member States, which is not the case for the UAA recognition by a national judge.

[xxxviii]Enforcement will be refused only if the award is clearly contrary to a rule of international public policy of the Member States (article 31). Again, Article 31 of the UAA provides that the party requesting recognition of an arbitral award must submit those documents to the judge. If the documents are not in French, the party must also provide for a translated copy done by a certified translator recognized by the national court. Similar provisions are found in article 35 (2) of the UNCITRAL Model Law and in article IV of the New York Convention.

[xxxix] Article 31 para 4. By providing for international public policy, it should be assumed that it is the case of an international arbitration and not a local arbitration, as the public policy of the concerned State would be applicable for local arbitration. In the case of international arbitration, two meanings can be given to international public policy: for matters governed by the UAA, a regional public policy can be applied as the UAA is common to all Member States. In case the matter is not governed by the UAA, the international public policy to be applied is the one provided by the private international law rules of the State in which recognition is sought. This idea is developed in Joseph Issa-Sayegh et al., OHADA: Traite et actes uniformes commentes et annotes, at p. 145. For the denial of the recognition of an arbitral award, the UNCITRAL Model Law has provided for the same requirements as the ones for an application to set aside an arbitral award. The only requirement that is added is when "the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made." The same requirements are found in article V of the New York Convention.

[xl]Any judgment refusing enforcement is subject to appeal before the CCJA. On the other hand, if an enforcement order is given, this is not subject to no appeals whatsoever, other than in the context of setting-aside proceedings against the award, which are deemed also to be appeal against the enforcement order (article 32). Again, the same provision provides that although the *exequatur* decision is final and binding, the submission of an action for nullity of an arbitral award can be construed as an appeal against the *exequatur* decision.

[xli] Yuko, Nishitani. "Party Autonomy in Contemporary Private International Law: The Hague Principles on Choice of Law and East Asia", published in*: Japanese Yearbook of International Law*, Vol. 59, 2016, p.13.

[xlii] The texts of November 2017 are the latest expression of the rationale underlying the creation of OHADA. OHADA updates its law on arbitration and implements a new act on mediation

[xliii] See article 25 para 3.

[xliv] French Code of Civil Procedure, section 1522.

[xlv] Rules of arbitration, section 27.

[xlvi] See article 31 para 5

[xlvii] See article 31 para 6

[xlviii] See article 32 para 2

[xlix]If such proceedings fail, both the award and the enforcement order are validated (article 33).

[l]Provision is also made for the recognition of arbitral awards issued on rules other than those of the UA (article 34). This would appear to mean foreign arbitral awards, that is, those which the seat of the tribunal was not in one of the Member States. Article 34 states that such awards are recognized in the Member States in accordance with any international conventions that may be applicable or, failing any such convention, in accordance with the provisions of the UA.

[li]The UAA, as the municipal law of all OHADA Member States, has provided for situations where parties may choose other arbitration rules to be applied to their dispute. Article 34 of the UAA rules has provided that that appropriate international conventions should be applied to the recognition and enforcement of arbitral awards rendered under other arbitration rules. The UAA rules on recognition and enforcement or arbitral awards will apply in case there is no applicable international convention. The same idea is developed by Richard Boivin and Pierre Pic in Arbitrage international en Afrique: quelques observations sur l'OHADA, at 7 (Revue Générale de Droit de l'Université d'Ottawa, 2002) (hereinafter Richard Boivin et al. L'arbitrage international en Afrique). The authors discuss the application of other international conventions to arbitral awards rendered under other arbitration rules.

The authors also point out a problem that night arise as article 34 of the UAA rules only provides for the recognition buts no provision on the enforcement of such awards. Enforcement is however also covered as the provisions of article 34 have to be read with the provisions of article 30 which provides that an award is enforceable as soon as it has been granted recognition by the competent national judge. Enforcement of such awards is therefore implied in the provisions of article 34.

[lii] This requirement is not practical since member States like Cameroon have English and French as their official languages while Equatorial Guinea and Guinea Bissau have Spanish and Portuguese as their official languages respectively.

[liii] It should be noted that the OHADA Treaty was amended in 2008 to include more languages (English, French and Portuguese) other than French only as its working language.

[liv] See article 42 of the Treaty.

[lv] In the case of Arrêt no. 061/CC du 04 Juillet 2005: Complexe Chimique Camerounaise (CCC) C/Société Safic Alcam SA (Unreported), the Court of Appeal of Littoral did not require the arbitral award of FOSFA International that was in English to be translated into French.

[lvi] Cameroon is one of the major business markets in West and Central Africa, several companies committed to arbitral procedures are likely to have assets in Cameroon. This means that if a party fails to honour an award, an enforcement procedure may begin within a Cameroonian court. The enforcement procedures in Cameroon are sufficient and do comply with international standards. The most used and important instruments for recognition and enforcement are the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and the Uniform Act on Arbitration 2017 in the OHADA territory, to which Cameroon is a signatory State.

[lvii] See Albert, Jan van den Berg. "The New York Convention of 1958: An Overview", *Yearbook Vol. XXVIII*, also available at http://www.kluwerarbitration.com, 2003, pp. 2-3.

[lviii] This idea derives from the provisions of article VII para 1 of the New York Convention.

[lix] Assuming the court will be seized of such cases much more than it has been so far

[lx] Available at www.ohada.com/jurisprudence/php.

[lxi] The CCJA located in Abidjan, Ivory Coast is the Supreme Court of the OHADA member States in commercial matters and at the same time a centre for international arbitration.

[lxii]*See* Decision nº 741 of the Cour d'appel d'Abidjan (Court of appeals of Abidjan) July 2nd, 2004. In its decision, the Court of appeals cancels a judgment rendered by the Court of Abidjan granting recognition of an arbitral award rendered under the CCJA rules and refers to article 25 of the OHADA Treaty which provides that the CCJA is the only court to have jurisdiction regarding recognition of awards rendered under its rules.

[lxiii] See article 30.2 CCJA Rules.

[lxiv] See Decision n|741 of the Cour d'appel d'Abidjan (Court of appeals of Abidjan) July 2nd, 2004. In its decision, the Court of appeal cancelled a judgment rendered by the Court of Abidjan granting recognition of an arbitral

award rendered under the CCJA rules and referred to article 25 of the OHADA Treaty which provides that the CCJA is the only court to have jurisdiction regarding recognition of awards rendered under its rules.

[lxv] Article 30, para 30.1 and 30.2.

[lxvi] See article 30.3 CCJA Rules.

[lxvii] These grounds are found in article 30, para 30.5 of the CCJA rules.

[lxviii] The arbitrator went beyond the powers that were conferred to him/her by parties in the arbitration agreement or decided on matters that were not covered by the arbitration agreement.

[lxix] One of the parties was not given the chance to challenge the other party's arguments.

[lxx]As explained in Winnie, Ma. "Public Policy in the judicial enforcement of arbitral awards: lessons for and from Australia", SJD, ePublications@bond, Faculty of Law, 2005, international public policy comprises the fundamental rules of natural law, the principles of universal justice, jus cogens(or peremptory norms)in public international law, and the general principles of morality accepted by civilised nations. In this particular case, international public policy may refer to general principles of morality accepted by OHADA Member States.

[lxxi] See Jacques, M'Bosso. "Le fonctionnement du Centre d'Arbitrage CCJA et le déroulement de la procédure arbitrale", *Revue Camerounaise de droit, n° spécial*, 2001, p. 8.

[lxxii] See Richard, Boivin et al." L'arbitrage international en Afrique : quelques observations sur l'OHADA", *Revue générale de droit* , Volume 32, numéro 4, 2002, p. 11.

[lxxiii] See article 30

[lxxiv] The President of the CCJA (Ndongo Fall) has granted exequatur in the following cases: 1) Banque Senegalo-Tunisienne dite BST devenue Attijari Bank Sénégal c/ 1/Fonds de Garantie et de Coopération Economique (FAGACE), (2009) Recueil de Jurisprudence no. 13 Janvier-Juin 2009, p. 174; 2) Ecpbank 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.

[lxxv] See article 30.3 CCJA Rules supra.

[lxxvi] The procedure to obtain recognition of an award is found at article 31, para 31.1.

[lxxvii] See article 31. This provision establishes a uniform recognition mechanism for all OHADA Member States, which is monitored by the CCJA.

[lxxviii] Article 23.2 para 1

[lxxix] See article 23.2 para 2

[lxxx]See article 22.1 para 2

[lxxxi]See article 29.2 (f)

[lxxxii]See article 29.2 (b)

[lxxxiii] See article 29.4 para 3

[lxxxiv] Article 30.2 para 1

[lxxxv] See article 30.2 para 5

[lxxxvi]See article 30.4

[lxxxvii]See article 27 of the CCJA Rules

[lxxxviii]Article 31 para 4.

[lxxxix]See Wilson, Levi Onyeisi Odoe, "Party Autonomy and Enforceability of Arbitration Agreements and Award as the Basis of Arbitration" (January 2014) Thesis Submitted for the Degree of Doctor of Philosophy at the University of Leicester, 2014, p. 48.

[xc]This idea is developed in Joseph, Issa-Sayegh et al. OHADA, Traité et Actes Uniformes Commentés et Annotés, Juriscope, Paris, 2014, p. 145.

[xci] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards was adopted by a diplomatic conference on the 10th June 1958.

[xcii] See Michael, Schneider. "Nom-Monetary Relief in International Arbitration: Principles and Arbitration Practice", ©*JurisNet, LL* www.jurispub.com, 2011, pp. 3-48.

[xciii] See Bernard, Taylor Ndeugwe Tumnde. "The Enforcement of Arbitral Awards in Cameroon: Enforcement Difficulties and Possible Solutions" *LAP LAMBERT Academic Publishing*, 2012, p.2.

[xciv]As explained in Winnie, Ma. supra Public Policy in the judicial enforcement of arbitral awards: lessons for and from Australia, SJD, ePublications@bond, Faculty of Law, international public policy comprises the fundamental rules of natural law, the principles of universal justice, jus cogens(or peremptory norms)in public international law, and the general principles of morality accepted by civilized nations. In this particular case, international public policy may refer to general principles of morality accepted by OHADA Member States.

[xcv]See article 27.
[xcvi]See article 29.
[xcvii]Party unable to present his case.
[xcviii]See articles 32 and 33.
[xcix]Uniform Act on Simplified Recovery Procedure and Measures of Execution is the main legislation for forceful execution in Cameroon and other OHADA member States.
[c] Tribunal de Grande Instance Paris, 8 Juillet 1970, SEEE c/ République Fédérale de Yougoslavie, JDI 1991, p.1005.
[ci]Public and semi-public companies in Cameroon are governed by Law nº 99/016 of 22nd December 1999 on the status of the public and Para public sector commercial establishments and companies.
[cii] Article 30(1) of OHADA Uniform Act on Simplified Recovery Procedures and Measures of Execution
[ciii] Article 30(2) of OHADA Uniform Act on Simplified Recovery Procedures and Measures of Execution
[civ]Suit no. HCF/91/M/2001-2002 delivered on the 15th May 2002.
[cv] African Petroleum Consultants (APC) v. Société National de Raffinage (SONARA), (2002) Suit no. HCF/91/M/2001-2002 delivered on the 13th August 2002(unreported)
[cvi]LM/6M/2002: National Refining Co.Ltd v. African Petroleum Consultants, Me Nguesson Andre & Me Soh Fonkoua Blandine (unreported)
[cvii]See Bernard Taylor Ndeugwe Tumnde. "The Enforcement of Arbitral Awards in Cameroon: Enforcement Difficulties and Possible Solutions" supra p.22.
[cviii] Judgement no. 39 of 13 November 1998:L'Office Nationale des Ports du Cameroun (ONPC) c/Societe de Fournitures Industrielles du Cameroun (SFIC) ; Université de Dschang c/Tonye Dieudonné et BICEC, Revue Camerounaise de l'Arbitrage no. 18 Juillet-Aout-Septembre 2002. In all these cases the courts set aside the seizures due to the fact that property seized belonged to the public company which has immunity against such seizures.