Introduction

I thank the International Council for Commercial Arbitration (ICCA) and by name Ms Lise Bosman, its Executive Director and Senior Legal Counsel, Permanent Court of Arbitration as well as Duncan Bagshaw and Claire de Tassigny Schuetze for the invitation to address this pre-Congress seminar on “Reflections on the Rule of Law in Modern African States”. I am delighted to be associated with the ICCA, a global non-governmental organisation accredited by the United Nations (UN) to play a major role in shaping alternative dispute resolution (ADR) mechanisms in the international commercial arena. ICCA has actively participated in preparing key instruments which arbitrators rely upon daily, including the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, the UNCITRAL Conciliation Rules and the UNCITRAL Model Law on International Commercial Arbitration. The ICCA’s mission to promote the use of arbitration, conciliation and other alternatives to resolve international commercial disputes is salutary. It is a meeting place for innovative ADR specialists to explore different ideas in their niche, having been exposed to dispute resolution methods from various corners of the world. I wish you well as you move towards the ICCA Congress planned for 2016 in Mauritius. Your biennial congress is welcome within the African Union.
We hope that the biennial congress signals the increasing number of complex commercial transactions involving African nations and African parties, which have helped catalyse economic growth in our countries. Although many African states face significant challenges, steady economic and political advances mean that our continent is increasingly “poised to become a global centre for significant economic activities”. These gains are noteworthy. However, to optimise the effect of economic growth, we must channel it towards inclusive prosperity. In order to achieve this, we must more fully realise the rule of law as a foundation of good governance.

**The rule of law: basic principles**

But what is the rule of law? I think it is the philosopher Thomas Hobbes who foreshadowed the need for the rule of law when he warned that life outside a social contract is “nasty, brutish and short”. Interestingly, there is no universally agreed definition. Albert Venn Dicey, the British jurist and constitutional theorist, is often associated with the early articulation of the rule of law principle. He argued that the protection of basic rights was the purpose of the rule of law, and that government was required to act within the law. In his view, the rule of law embodied three concepts: supremacy of the law, equality of all citizens before the law, and the principle that the rights of individuals must be established through court cases.

A distinction can be drawn between formal and substantive rule of law. A formal interpretation of the rule of law translates to, first, the existence of a

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2 Hobbes Of Man, Being the First Part of Leviathan (PF Collier & Son, New York 1909) vol. XXXIV.
3 Currie and De Waal The Bill of Rights Handbook 6 ed (Juta & Co Ltd, Cape Town 2013) at 10.
4 Mbaku above n 1 at 983.
rule-oriented legal system and, second, adherence to these rules. This approach emphasises the existence of rules rather than their substance. This school of thought considers the rules at face value: the law must be public, understandable, clear and forward-looking. As long as these elements are satisfied, the substance of the law is immaterial. The apartheid legal system was a prime example of legal positivism that had gone wrong. A legal system that fails to recognise human rights, that is undemocratic, or even unjust, can still claim to be in accordance with the rule of law.

In contrast, a substantive interpretation of the rule of law focuses not on the existence of rules, but on their content. In other words, a legal system would only comply with the rule of law if its rules were respectful of fundamental rights. The substantive nature of the law is what makes it democratic: the laws represent the will of the people, as well as the promises that they make to each other as inhabitants of the state. And in substance, the law is enacted for the public interest. The United Nation’s definition of the rule of law provides an example of the substantive approach.\(^5\)

Within the context of Africa, certain elements of the rule of law assume added significance. First, the supremacy of the law is vital. In some countries where poor governance and public corruption remains a significant challenge, establishing the supremacy of the law – that is, the binding nature of the law

\(^5\) As defined by the United Nations, and available at [http://www.un.org/en/ruleoflaw/](http://www.un.org/en/ruleoflaw/), the rule of law — “refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.”
upon every person, even high ranking officials – is crucial to combating financial malfeasance. And secondly, an independent judiciary “is an asset of inestimable value in all African states”. In some African countries, there is a discrepancy between the separation of powers laid out in the constitution and the day-to-day independence of the judiciary. Judges must be free to administer justice within the parameters of the law without fearing the consequences of their decisions. Happily in South Africa, all judges must “administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law”.

The rule of law on the African continent

Can the rule of law truly form part of the African legal landscape? The rule of law is not, as some argue, a post liberal fetish or a mere artifice to entrench domestic and global economic inequality. It is an entitlement of all Africans. It is a principle that Africans have demanded from colonial authorities and their governments time and again, and one that our citizens deserve. In the mid-1980s and early 1990s, mass demonstrations led by grassroots organisations occurred across Africa, with the purpose of ousting dictatorial regimes and implementing democratic reforms. In demanding political transformation – comprising functioning institutions, public accountability, an end to corruption, an enabling environment for economic growth, and peaceful coexistence between religious and ethnic groups – these men and women were in essence rejecting arbitrary rule by men and women in favour of the supremacy of law. Their demands are mirrored not only in the constitutions of

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7 Section 6(1) of Schedule 2 of the Constitution of the Republic of South Africa, 1996 (Constitution).
8 Mbaku above n 1 at 996.
9 Mbaku above n 1 at 996-7.
individual African nations, but in African Union protocols that apply across our continent.

It is true that some national constitutions in Africa have been influenced by the colonial legal inheritance. This criticism cannot be directed at the African Union protocols. The African Union represents an attempt to foster cooperation and unity amongst the liberated nations of our continent. Similarly, the African Union’s treaties, documents and protocols reflect the position of its member states, acting as a unified body on the global stage and also in their capacity as individual nations. And the African Union documents clearly and boldly recognise the rule of law and entrench it upon African soil.

To provide just a few examples, the preamble of the Constitutive Act of the African Union states that the member countries are determined “to ensure good governance and the rule of law”.10 Article 4(m) of the Constitutive Act states that the African Union must function in accordance with “respect for democratic principles, human rights, the rule of law and good governance”. The African Charter on Human and Peoples’ Rights entrenches the equality of all persons before the law.11 And perhaps most significantly, the African Charter on Democracy, Elections and Governance commits member states to rule of law principles. These include adherence to the “principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order”,12 the independence of the judiciary,13 and the

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10 Preamble of Constitutive Act of the African Union (Constitutive Act).
12 Article 2(2) of African Charter on Democracy, Elections and Governance (African Charter on Democracy).
13 Article 2(5) of African Charter on Democracy.
“constitutional transfer of power”.  

Clearly, as a normative matter, the rule of law has an honourable place in African legal systems.

**The rule of law in African nation states**

Africa reflects varying levels of commitment to the rule of law. While our continent as a whole has faced significant social, economic and political upheaval during the post-independence period and the decades that have followed, some countries have weathered the storm more effectively than others. In many African nations, independence was limited to political and civil rights, with the stark omission of human rights. In others, political, civil and human rights were constitutionally guaranteed but not enforced. And still others fell prey to dictatorships where substantive legal rights were almost non-existent. The case that immediately springs to mind is that of apartheid South Africa. In effect, rule of law had been replaced with rule by law. The law authorised racism and social and economic exclusion.

As we have seen, the existence of a formalistic rule of law does not guarantee respect for basic human rights. Other factors can also dilute the rule of law. Among the most important is the lack of an independent judiciary. In Zimbabwe, for example, conflict between the executive and judicial branches resulted in the early retirement of former Chief Justice Anthony Gubbay in 2001. The former Chief Justice had expressed his disapproval of the manner in

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14 Article 5 of African Charter on Democracy.
16 Id.
which land reforms were being conducted in Zimbabwe, and warned that the rule of law could not be interpreted in this way.17

Constitutionalism requires more than the mere existence of a constitution. In order for democratic government to take root, the constitution must be fully implemented. This means that its provisions must be respected by all and upheld by the courts. Where this does not occur, troubling consequences sometimes follow. In Burundi, for example, the Constitutional Court recently affirmed President Nkuruziza’s bid to run for a third presidential term, although Article 96 of Burundi’s constitution provides that the president can only serve a maximum of two terms.18 At least one justice has claimed that the court was pressured to favour the President’s bid, and the ruling has been followed by protests and civil unrest.19

While some nations face significant obstacles to realising the rule of law, others provide grounds for genuine optimism. The emergence of a democratic South Africa, for instance, has inspired countless people on our continent and around the world. Our Constitution breathed new life into the rule of law by entrenching it as a founding value.20 The rule of law is now a standard against which conduct and law can be tested in South Africa, and has both procedural and substantive elements.21 In terms of procedural compliance, legislation must be expressed in a clear, accessible and reasonably precise fashion.22

17 Devenish above n 15 at 687.
20 Section 1(c) of the Constitution.
Substantively, there must be a rational relationship between the legislation and a legitimate government purpose.\textsuperscript{23}

Botswana is also revered for its respect for the rule of law. Although the Constitution of Botswana does not expressly entrench the principle, adherence to the rule of law is undoubtedly part of Botswana’s jurisprudential makeup. In \textit{The Attorney General v Botswana Landboards and Local Authorities Workers’ Union},\textsuperscript{24} the court stated that “Botswana is . . . a country in which the rule of law is universally respected. Court orders are to be obeyed, promptly and without debate, as every Motswana knows. Disagreement can be debated later, in an appeal”.\textsuperscript{25} The Tswana Court of Appeal went further; it endorsed a South African holding that “[o]bedience to a court order is foundational to a state based on the rule of law”,\textsuperscript{26} and held that the position is the same in Botswana.

The recent Arab revolutions have been another source of inspiration on our continent. Of the countries of the Arab spring, Tunisia is often described as having the best hope for stability and progress.\textsuperscript{27} This is due in part to its new democratic constitution, promulgated in January 2014 after a two-year drafting process involving various political stakeholders. The constitution’s commitment to the rule of law is evident in its preamble, which lists among its goals the creation of a democratic “civil state founded on the law and on the sovereignty of the people” and a “political system founded on the principle of the separation and balance of powers” as well as “independence of the

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\textsuperscript{23} Id.
\textsuperscript{24} \textit{The Attorney General v Botswana Landboards and Local Authorities Workers’ Union and Others} [2013] BWCA 8.
\textsuperscript{25} Id at para 78.
\textsuperscript{26} Id at para 91. The Tswana Court of Appeal quoted the dissenting judgment of Conradie JA in the Labour Appeal Court in \textit{Modise and Others v Steve’s Spar, Blackheath} 2001 (2) SA 406 LAC at para 119.
\textsuperscript{27} Bassioumi “The ‘Arab Revolutions’ and Transitions in the Wake of the ‘Arab Spring’” (2013) 17 \textit{UCLA Journal of International Law and Foreign Affairs} 133 at 172.
\end{flushright}
judiciary”. Thanks to the prominent role of lawyers in leading the charge for political reforms following the ouster of Tunisia’s dictator, Zine El-Abidine Ben Ali, Tunisians describe the rule of law as “a known thing” within their culture – an encouraging example of activism yielding positive and lasting results.

Another Islamic state that has made significant progress in the rule of law is Egypt. But that has not always been the case. A few days after the Tunisian revolution in 2011, the Egyptians took to the streets of Cairo in protest at the government of the time. One of the main reasons for the protest was the blatant disrespect for the rule of law by the then President, Muhammad Hosni Mubarak, and his officials. One of the fruits of the revolution is the effect it has had on the promotion of the rule of law in Egypt. The 2014 Constitution of the Arab Republic of Egypt deliberately and firmly entrenched the rule of law. Right from the outset, Article 1 identifies Egypt as a democratic state based on the rule of law. Part IV of the Constitution then unpacks the rule of law in the Egyptian context, and ties in an impartial judiciary as the guarantor of rights and freedoms in the state. It does this through Article 100, which gives the powers of the judiciary teeth by providing that “[t]he State shall guarantee the means of the enforcement” of court orders.

Egypt’s 2011 revolution serves as a point of reference for the importance of the rule of law. An absent or even defective rule of law can lead to dissatisfaction within the populace. And we have seen the lengths that the people will go to

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when their leaders turn a blind eye to this essential principle. It is a lesson we should not forget.

This demand for transformation has also been demonstrated by the people of Kenya. In 2010, Kenyans adopted a modern and transformative Constitution, replacing both the 1969 Constitution and the colonial Constitution of 1963. Largely informed by the South African Bill of Rights, the 2010 Kenyan Constitution embodies a nearly five-decade long struggle to develop the country’s economic, social, political, and cultural policies. Fundamental human rights now form the core pillars of the Constitution, as intended by its drafters.

One of the greatest challenges to the rule of law is the absence of an independent judiciary. The present Kenyan Constitution provides for a financially independent judiciary and, through the reformed Judicial Services Commission, has revolutionised the appointment of judges. Thanks to newfound constitutional support for human rights principles, the judiciary in Kenya is now well-placed to flourish.

**Africa’s attraction to arbitration**

Why must Africa be attracted to arbitration? Cross-border transactions are growing in popularity in Africa. This means there is a need for alternative

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32 Articles 19 and 20 of the Kenyan Constitution mirrors the application of the Bill of Rights as found in section 39 of the South African Constitution.
33 Mutunga above n 31.
34 Id.
dispute resolution techniques that are tailored to international commercial agreements. There is no single approach to alternative dispute resolution that is prescribed across the continent. And there can be no arbitration without consent between the parties as expressed in commercial contracts. As a type of ouster clause, an arbitration clause in a contract “[protects] the integrity of the [parties], by separating [them] from the formal legal process, and thereby ensuring finality and . . . preventing . . . litigation, or interventionist judicial proceedings”. Contracting parties must select and sometimes even design arbitration packages that cater to their political, social and economic interests. At governmental level, constitutions, treaties and legislation usually regulate arbitration.

Arbitration is an amicable route to resolve disputes at both the individual and interstate levels. When applied effectively, it is considered as a display of “good commercial behaviour”. Arbitration is an attractive method of dispute resolution because of the predictability that comes with it, including who the decision-maker will be, the seat of arbitration and the rules that will be applied to reach a resolution. It also provides for expedient and cost-effective legal recourse in comparison to the vast numbers of overburdened court systems in Africa. International commercial arbitration is a hybrid legal order that encapsulates both “the authority of the local law and party autonomy”. The element of party autonomy is expressed in the agreement that the parties make to have any falling out between them settled by arbitration. The domestic law also plays a role although it is merely residual. Practice of local law is usually

36 Ontefetse Kenneth Matambo v Speaker of the National Assembly and Others [2015] BWHC 2 at para 89.
38 Id at 404.
only resorted to after “the application of transactional legal principle[s], international practices, and expressions of party autonomy”. 39

The system of international commercial arbitration is the lifeblood of cross-border trade and commercial activity. Strong commitment to arbitration by states provides a safety net for businesses and investors. It is an assurance that legal recourse will be readily available should dealings go awry. This, in turn, gives the international commercial community the confidence to engage in agreements amongst each other. The rule of law reinforces this confidence, and reassures market participants that their agreements will be respected.

**The rule of law and international commercial arbitration**

How has Africa fared in inducting arbitral mechanisms conducive to resolving commercial disputes?

Beginning with Kenya, we see that the new constitution provides for alternative dispute resolution mechanisms, stating that “mediation, arbitration and traditional dispute resolution mechanisms shall be promoted”. 40 In this way, the fundamental principle of access to justice is made available at all levels. Kenya has strengthened its arbitration laws with the incorporation of international conventions. Its Arbitration Act 41 makes clear that international arbitration awards are to be recognised as binding, and enforced in accordance with the

39 Id.
40 Article 159(2)(c) of the Constitution of Kenya.
provisions of the New York Convention and any other convention to which Kenya is a signatory.

Similarly, Uganda has also ratified the New York Convention. Its Arbitration and Conciliation Act gives life to the UNCITRAL Model Law in Uganda and covers domestic and international commercial arbitration. In contrast, arbitration law in Tanzania is less aligned with the UNCITRAL Model Law than other jurisdictions in the East African Community (EAC). Arbitration in Tanzania is governed by the Arbitration Act of 1931, itself heavily influenced by England’s now-repealed Arbitration Act of 1889. Tanzania’s leading arbitration statute has become somewhat static. This does not mean, however, that commercial arbitration in the EAC is undynamic. Far from it. Tanzania and Uganda (along with Kenya, Burundi and Rwanda) are subject to the Arbitration Rules of the East African Court of Justice of 2004. The rules enable the arbitration tribunal to decide disputes in accordance with the law chosen by the parties or, if the parties allow, in accordance with the principles of justice and fairness. If the parties fail to choose a law, then the tribunal is empowered to apply the rules of law it considers to be appropriate given all the circumstances of the dispute. Finally, the rules provide that arbitral awards must be enforced in accordance with the procedures of the country in which

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enforcement is sought. This framework imparts a degree of cross-border flexibility and dynamism to commercial arbitrations within the EAC region.

Moving on to Ghana, we see that the Alternative Dispute Resolution Act standardises commercial arbitration, mediation and customary arbitration across the country. The Act seeks to align domestic arbitration law with international arbitration principles and practice. For example, the Act provides that arbitration agreements are irrevocable, as well as being separable from other agreements of which they may form a part. The Act also obliges courts to refer claims to arbitration where, in the court’s determination, such claims are covered by a valid arbitration agreement. And the Act recognises the long-established international principle that arbitrators have the power to determine their own jurisdiction. In two key respects, however, the Act deviates from international commercial arbitration norms. First, certain categories of dispute are excluded from arbitration, including matters relating to the national or public interest, the environment, the enforcement or interpretation of the constitution, and any other matter that by law cannot be settled by an ADR method. Secondly, the Act grants Ghanaian courts significant supervisory authority over arbitration proceedings. The parties may apply to a court if they are dissatisfied with the arbitrator’s ruling on jurisdiction, or if a question of law has arisen during the arbitration proceedings.

49 Alternative Dispute Resolution Act 798 of 2010 (Act).
52 Id.
53 Id at 117.
54 Some scholars have expressed concern regarding the ambiguity of some of the matters excluded from arbitration. See Mante and Ndekugri above n 50.
55 Kirgis above n 51 at 117.
that substantially affects their rights.\textsuperscript{56} The Act thus posits commercial arbitration as “a corollary to the public legal system”\textsuperscript{57} rather than an independent private alternative, and represents an ambitious attempt to incorporate international standards with local practice.

Another attempt to merge international commercial arbitration principles with domestic law can be found in Nigeria. In 1988, Nigeria’s Federal Military Government enacted the Arbitration and Conciliation Decree (which eventually became the Arbitration and Conciliation Act).\textsuperscript{58} Prior to this enactment, Nigeria lacked a unified legal framework for commercial arbitration disputes; parties were subjected to arbitration laws that varied from state to state.\textsuperscript{59} The Decree, however, covered domestic and international commercial arbitrations throughout Nigeria and incorporated both the UNCITRAL Model Law and the New York Convention.\textsuperscript{60} The state of Lagos has recently built further upon this achievement, establishing Nigeria’s first commercial arbitration court and enacting a new arbitration law in 2009.\textsuperscript{61} Like the Decree, the Lagos law is based on the UNCITRAL Model Law but corrects certain inconsistencies. One notable example is with respect to stays of proceedings. The UNCITRAL Model Law can be read as simultaneously obliging courts to stay proceedings in favour of arbitration, while also granting them discretion to do so.\textsuperscript{62} The Lagos law is unambiguous: it requires courts to stay proceedings in matters subject to

\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} Arbitration and Conciliation Decree of 1988 (Decree).
\textsuperscript{61} Rhodes-Vivour “Recent Arbitration Related Developments in Nigeria” (2010) 76(1) Arbitration 130 at 130.
\textsuperscript{62} Id at 131.
an arbitration agreement.\textsuperscript{63} These developments herald the increasing importance of Nigeria as a local and international arbitration centre.

Moving to Francophone Africa, arbitration practices there are largely regulated within the sub-region.\textsuperscript{64} In this area, states voluntarily bind themselves to the principles embodied in the OHADA treaty,\textsuperscript{65} which seeks to harmonise business law across various West African jurisdictions. Because French civil law forms a significant component of the legal system in many Francophone African countries, the substantive laws under the OHADA regime are reasonably familiar to the citizens, judiciary and legal practitioners in this region.\textsuperscript{66}

The OHADA treaty gives life to the Common Court of Justice and Arbitration (CCJA) as an arbitration institution.\textsuperscript{67} The CCJA, as one of the five principal organs of OHADA, serves a dual role as an arbitration institution and a judicial court.\textsuperscript{68} Arbitration proceedings are governed by the Uniform Act on Arbitration, which is based on the UNCITRAL Model Law, and supersedes existing national laws on arbitration.\textsuperscript{69}

And turning to Egypt, we see that despite its turbulent history, it has adhered to the New York Convention since 1958. Egypt’s Arbitration Law 27 of 1994

\textsuperscript{63} Id.


\textsuperscript{65} OHADA is the French acronym for “Organisation pour l’Harmonisation en Afrique du Droit des Affaires” which translates into English as “Organisation for the Harmonisation of Business Law in Africa”. Some OHADA member states include Benin, Burkina Faso, Cameroon, Cote d’Ivoire and Togo.

\textsuperscript{66} Reuters above n 64.

\textsuperscript{67} Reuters above n 64 at 4.

\textsuperscript{68} Article 3 of the Traité relatif à l’harmonisation du droit des affaires en Afrique, 1997. See also Anon “OHADA” (January 2010), available at \url{http://www.nortonrosefullbright.com/files/ohada-25764.pdf}.

\textsuperscript{69} \textit{Delpech v Sotaci}, no 010/2003, CCJA 2003. See also “OHADA” above n 68.
adopted the UNCITRAL Model Law virtually wholesale. As a modern framework applicable to domestic and international arbitrations, the Arbitration Law aligns Egypt with international conventions to which it is a signatory.\(^70\) A feature of the Arbitration Law that is particularly attractive to foreign investors is that parties to arbitration may also subject their proceedings to the International Criminal Court, UNCITRAL and similar international bodies.\(^71\) The establishment of the Cairo Regional Centre for International Commercial Arbitration in 1979 is another indication of the long-standing importance of arbitration in Egypt’s economic life.

Mauritius is the most recent African country to make moves towards establishing a strong presence in the field of international arbitration. Its most effective tool in planting its roots in this field is the International Arbitration Act 37 of 2008. This Act is clear in its mission: “[t]o promote the use of Mauritius as a jurisdiction of choice in . . . international arbitration”.\(^72\) The Act applies exclusively to international arbitration.

To a large extent, the Act is patently based on the UNCITRAL Model Law:\(^73\) provisions in the Act are matched up with resembling provisions of the UNCITRAL.\(^74\) The design of international dispute resolution in Mauritius is also inspired by precedents of England, Singapore and New Zealand.\(^75\) So, the solutions that the Act proffers are drawn from international lessons but tailored

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\(^71\) Id.

\(^72\) The long title of the International Arbitration Act 37 of 2008.


\(^74\) Schedule 3 of the Act. See also Soopramanien “The International Arbitration Act of Mauritius – Addressing the Challenges and Opportunities of an Emerging International Arbitration Centre in Africa” 16(1) *International Arbitration Review* 4 at 5.

\(^75\) Id.
to the Mauritian context. To facilitate this layout, Mauritius has established dedicated supervisory bodies such as the arbitral tribunal and the Permanent Court of Arbitration. The Supreme Court also buttresses this arrangement.\textsuperscript{76} For instance, when a tribunal, Mauritian or foreign, lays down an interim measure, the Supreme Court may either recognise it as binding and enforceable in Mauritius, or reject it on the ground that the particular dispute is unresolvable by arbitration in Mauritius, or that it is against Mauritian public policy. The New York Convention also applies to the recognition and enforcement of arbitral awards. And an appeal against an order of the Supreme Court lies with the Judicial Committee of the Privy Council.

In South Africa, it remains a contested issue whether section 34 of our Constitution, which guarantees the right to access to courts, applies to private arbitration.\textsuperscript{77} The Arbitration Act of 1965, which governs arbitration in South Africa, does not distinguish between international and domestic arbitration.\textsuperscript{78} Further, South Africa has not assented to an internationally accepted model such as the UNCITRAL.\textsuperscript{79} However, we have been part of the New York Convention since 1976. And our support for international arbitration is bolstered by adherence to the Recognition and Enforcement of Foreign Arbitral Awards Act of 1977.\textsuperscript{80}

\textsuperscript{76} The Supreme Court intervenes only in limited cases. See Soopramanien above n 74 at 9.
\textsuperscript{77} See Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another [2009] ZACC 6; 2009 (4) SA 529 (CC); 2009 (6) BCLR 527 (CC).
In 1998, various reforms were proposed in a report by the South African Law Commission which included a draft arbitration Bill that was based upon the UNCITRAL Model Law. Although this draft has yet to be implemented, South Africa is committed to ensuring that arbitration awards are enforced. For example, the judgment of the Supreme Court of Appeal in Zhongji illustrated respect for arbitration agreements as a required element in promoting and encouraging international arbitration in South Africa. And the Arbitration Foundation of Southern Africa (AFSA), founded in 1996, is South Africa’s national leader in appropriate dispute resolution. There is every reason to think that international commercial arbitration will continue to thrive in the years ahead.

**Conclusion**

In conclusion, both the rule of law and international commercial arbitration have a promising future in the African Union. Although our history teaches us to be wary of potential pitfalls, there is every reason to think that the ICCA’s endeavours will bear fruit on African soil. As we have seen, African nations are active players in the global marketplace. And they will continue to develop their expertise within the international commercial arbitration domain. I applaud the ICCA in its efforts to establish a more robust presence on our continent, and am confident that they will be warmly embraced.

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81 See “South Africa” above n 78.