

ANALAYTICAL STUDY OF THE CHALLENGES AND SOLUTIONS IN THE ENFORCEMENT OF ARBITRAL AWARDS UNDER INTERNATIONAL INVESTMENT AGREEMENTS IN DEVELOPING ECONOMIES

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Abstract

In order to foster a stable investment climate in developing economies, the enforcement of arbitral awards under International Investment Agreements (IIAs) is crucial. However, the reliability and predictability of arbitration as a dispute resolution mechanism is undermined due to the unique challenges such as inconsistent legal frameworks, lack of judicial independence, political interference, and economic constraints in these countries. While focusing on the legal, political and economic aspects of enforcement of arbitral awards, this study covers a case-based analytical methodology to investigate these systemic barriers across various jurisdictions. This research encompasses a systematic framework to identify key obstacles, including procedural irregularities, judicial hesitancy, and the misuse of public policy exceptions.

Important conclusions drawn by the research shows that strengthening enforcement mechanisms requires the creation of specialized arbitration courts, anti-corruption initiatives, and the harmonization of domestic laws with international standards. Furthermore, regional cooperation and increased transparency in arbitration processes are emphasized as successful strategies for mitigating enforcement disparities. The recommendations in the study aims to empower policymakers and legal reformers to establish a predictable and stable legal framework that increases investor confidence and promotes economic growth. By bridging gaps in existing literature, this study underscores the importance of continuous reforms and international cooperation in arbitration frameworks. Future avenues include integrating advanced technologies to expedite enforcement and exploring the role of regional arbitration councils in standardizing procedures. These efforts are significant for transforming developing economies into more appealing destinations for foreign investment and ensuring the credibility of IIAs in international arbitration.

INTRODUCTION

Arbitral awards under International Investment Agreements (IIAs) have become critical tools for fostering a stable investment climate in developing economies. Their importance is especially pronounced in the context of developing economies,

where investment flows are crucial for economic growth. Arbitral awards provide a legal foundation that ensures foreign investors have recourse in case of disputes, thereby enhancing investor confidence. However, the effectiveness of international

arbitration heavily relies on the enforceability of these awards (Hoellering, 1995). Without predictable enforcement, the value of arbitration as a mechanism for dispute resolution diminishes. This study underscores how the enforcement of arbitral agreements and awards remains inconsistent, especially in developing economies, where varying legal frameworks, political and economic instability can impede the enforcement process and deter foreign investment.

For developing countries, the enforceability of arbitral awards faces unique challenges. Issues such as judicial independence, legislative alignment with international arbitration standards, and corruption often hinder enforcement. Additionally, political and economic instability, alongside nationalistic inclinations toward protecting sovereignty, frequently influences judicial decisions. These challenges obstruct the pathway to a consistent enforcement process and create unpredictability, making foreign investors hesitant to engage in arbitration as a reliable dispute resolution tool within these regions.

Research Objectives

The objectives of this research are twofold: to dissect the enforcement challenges unique to developing economies and to identify unresolved legal questions that arise from these enforcement inconsistencies. By focusing on these objectives, this study seeks to bridge the knowledge gap regarding enforcement mechanisms and examine how developing economies could foster a more predictable legal landscape for arbitral awards under IIAs.

Methodology

This study adopts a case-based analytical approach to investigate the unique challenges in enforcing arbitral awards under International Investment Agreements (IIAs) within developing economies. The case-based approach allows for a detailed examination of enforcement challenges across diverse jurisdictions, making it possible to identify recurring patterns and systemic issues unique to developing economies. By focusing on specific cases, the study captures the nuances of how political, economic, and legal factors influence arbitration outcomes in various contexts, providing a more

granular understanding of the barriers to enforcement. Cases were selected based on their relevance to frequent enforcement issues, such as inconsistent legal frameworks, limitations on judicial independence, political interventions, and significant economic constraints. This selection highlights the systemic barriers that affect arbitration outcomes in these regions.

The analysis framework is structured around four criteria: (1) alignment between national laws and international arbitration standards, (2) judicial conduct and practices in handling arbitral awards, (3) transparency and accessibility within enforcement procedures, and (4) the influence of political and economic pressures on judicial independence and consequently on the enforcement of arbitral awards under IIAs. By examining these cases through this lens, the study identifies recurring patterns and provides a basis for recommending policy and legal reforms.

Through this structured analysis, the study aims to offer insights that can inform practical reforms in developing economies, promoting a more stable and reliable framework for enforcement of arbitral awards and thereby fostering a more favorable investment climate.

1. LEGAL AND INSTITUTIONAL BARRIERS

1.1 Inconsistent Legal Frameworks

The inconsistencies in national legal systems that cause issues with the process of the execution of the arbitral awards is one of the main issues. Currently, many African nations have adopted the UNCITRAL Model Law and ratified the New York Convention but their legislation and judicial perception regarding arbitration are still archaic and unfavorable (Abdallah & Esmail, 2021). For instance, countries such as Botswana, Lesotho, South African, Swaziland, Namibia and Malawi are still operating under the old outdated legislation which originated from the 1950s without conforming to the international arbitration standards (Duckworth & Squire Patton Boggs, 2017). This misalignment is especially pronounced within the East African Community (EAC), where member states operate under varied legal traditions: Kenya, Uganda, and Tanzania have adopted the system of common law while Rwanda and Burundi have adopted civil law system (Kariuki, n.d.). This legal

fragmentation poses a problem in the enforcement of arbitral awards (Omoke, 2009).

The variation of legal frameworks within the area of arbitration even in those countries that are the parties to New York Convention and have ratified the Model Law hinders the implementation of arbitral awards. For instance, the time allowed to set aside an award differ greatly, as Uganda provides only one month ((Arbitration and Conciliation Act 2000 (Uganda), s 34) and Kenya a three month period for such an application (Arbitration Act 1995 (Kenya), s 35(3)). Such a situation leads to procedural vagueness and results in slowing down of the enforcement process (Muigua, 2015). Furthermore, public policy exceptions in various countries are very vague and hence, often not clearly defined, which gives the courts significant margin to avoid the enforcement of the foreign awards (Lexology, 2012).

1.2 Judicial Independence and Expertise

The judicial independence and expertise affect the execution of arbitral awards in another way. This is more evident in South Asia and especially Pakistan and India where judiciary plays a very important role regarding arbitration. Pertaining to Pakistan, the historical experience confirmed that intervention of judiciary has affected the execution of the arbitral awards. One such case is Hub Power Company Ltd. v. Pakistan WAPDA (The Hub Power Company Limited v Pakistan WAPDA, 2000) the significance of the international arbitration was denied by the Supreme Court of Pakistan, annulling the ICC arbitration award on the grounds of public policy (Iqbal, 2022). It shows dubiousness towards the enforcement (Kabiraji, 2001). In the same way, in SGS Societe Generale de Surveillance S.A. v Islamic Republic of Pakistan (Societe Generale de Surveillance S.A. v Islamic Republic of Pakistan, 2002), the Supreme Court of Pakistan stayed ICSID arbitration proceedings and held that the Washington Convention was not a part of Pakistani law. These interfering actions are a manifestation of a larger trend of judicial hesitance that hinder the international arbitration and its predictability in case of disputes.

Despite the Indian courts' adherence to the principle of compliance with the foreign awards, cases like

Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. and Renuagar Power Co. Ltd. v. General Electric Co. (Renuagar Power Co. Ltd v General Electric Co., 1994) exemplify how the judiciary introduce additional reasons such as error of law, fundamental policy of Indian law, justice and morality for annulling the awards beyond those listed in the Arbitration and Conciliation Act of 1996 (Jujavarapu, 2007). The incorporation of procedural illegality, particularly the 'patent illegality,' in annulment as seen in Oil & Natural Gas Corporation v. Saw Pipes Ltd. (Oil and Natural Gas Corporation Ltd v Saw Pipes Ltd, 2003) goes in opposite direction to the Act's objective of modernization and internationalization of arbitration law and adds to the uncertainty in the enforcement process (Sattar, 2011).

1.3 Enforcement Procedures

The enforcement issue has become more difficult by the New York Convention's lack of consistent enforcement procedures. Although the Convention requires that arbitral awards are considered as final and enforceable in contracting states (New York Convention, 1958, art. III), the details of enforcement procedures remain with national courts (UNCITRAL, 2016). This causes irregularities in the procedural norms that the courts of each country follow, which in turn causes irregularities in the acceptance and execution of awards (Gaillard & Siino, 2023).

These UNCITRAL Model Law provides general guidelines to address these discrepancies, but its adoption varies significantly across jurisdictions, which lead to unpredictable enforcement practices (Akinsola, 2024). For instance, BRICS countries demonstrate different interpretations of the "public policy" exception, resulting in inconsistent outcomes (Bansal & Aggarwal, 2017). In response, India has been urged to establish a streamlined legal procedure specifically for enforcing investment arbitral awards, aiming to reduce legal barriers and also to speed up the enforcement process (Aatreya, 2019). Likewise, BRICS countries have been advised to set up inter-regional arbitration councils to standardize their practices regarding the public policy exception, thereby minimizing discrepancies in national laws (Bansal & Aggarwal, 2017).

Additionally, there are ongoing proposals for a Supplementary Convention or a model law addressing procedural elements of the New York Convention to resolve procedural disparities (Eskiyörük, 2010).

In the Economic Community of West African States Treaty (ECOWAS), comprising 15 member countries, uniform enforcement mechanisms are lacking as enforcement relies on each jurisdiction's legal system (Duckworth & Squire Patton Boggs, 2017). Challenges such as inconsistent legal frameworks, problems with judicial independence, and non-harmonized procedures negatively impact the enforcement of arbitral awards. Addressing these barriers through legal reform and enhancing judicial support could significantly advance arbitration as an effective dispute resolution method in these regions.

2. POLITICAL AND ECONOMIC FACTORS

2.1 Political Instability and Government

Interference

Political instability and government interferences are major challenges towards the enforcement of arbitral awards in developing economies. Political interference, especially in judicial appointments, as seen in Yemen, where judges are often politically appointed, hinders necessary judiciary reforms (Veen, 2014) and obstructs the execution of international arbitral awards (Bawazir, Latif, & Hussain, 2018). Similar disruptions in Pakistan such as political instability and governmental intervention have disrupted the enforcement of arbitral awards. Notable cases such as HUBCO and SGS proves so, when during dictatorial regime, Supreme Court refused to enforce arbitral awards (Mir, 2016), indicating how state interests can manipulate court judgments.

In Venezuela, political interference has greatly affected arbitration processes. As a contracting party to the ICSID and the New York Conventions (Peláez Pier et. al., 2009), Venezuela has repudiated these treaties and shown its unwillingness to respect arbitral awards. Political unrest, such as Hugo Chávez's nationalization of Venezuela's oil sector, has led to substantial arbitration disputes where tribunals have found that Venezuela acted illegally (i.e., inadequate compensation) and in bad faith (for example, by not engaging in meaningful

negotiations), which further impeded the process of arbitration (Reuters, 2012). Cases like *OI European Group B.V. vs Bolivarian Republic of Venezuela* and *Rusoro Mining Limited vs Venezuela* shows that it become difficult to enforce arbitral awards against sovereign states during political instability.

2.2 Economic Constraints

The enforcement of arbitral awards needs a robust legal framework and financial resources to support the judiciary and other relevant institutions. This is not available in most developing countries hence they are unable to enforce arbitral awards effectively. Developing countries face extensive challenges when it comes to implementing legal and judicial reforms, largely due to limited financial resources (Rendak & Eastman, 2004). For instance, underpaid judges are frequently exposed to tribal pressures and bribery, which further weakens the enforcement process. Although specialized courts exist, judges sometimes lack training and experience in commercial and financial law (United States Department of State, 2023).

International financial institutions such as the World Bank, Inter-American Development Bank (IDB) and Asian Development Bank (ADB) have all made significant financing for judicial reform projects, highlighting the importance of good governance in promoting economic growth (Wiratraman, 2006). The United States Agency for International Development (USAID) has funded in judicial reform programs (Messick, 1999) to build a team of qualified mediators/arbitrators and improve the enforcement of arbitral awards. The *ConocoPhillips v Venezuela* arbitration decision shows a circumstance in which the tribunal had to deal with inflation-related issues when calculating damages. While the claimant argued for oil prices to be tied to U.S. inflation rates, the respondents suggested a flat rate. The tribunal acknowledged the problem of calculating inflation when costs are in multiple currencies and thus maintained that each currency's inflation rate must be determined individually (*ConocoPhillips v. Venezuela*, 2019).

Despite the undoubted increase of arbitration in Sub-Saharan Africa, there are still several obstacles that impede its full implementation, including high costs, corruption, and state-led procedures that often

disadvantage investors (Kouassi, 2022). For example, in Ghana, a fragile legal system leads to increased transaction costs (Messick, 1999), impacting the enforceability of arbitral awards. The enforcement of arbitral awards in Sub-Saharan Africa raises several problems and potential hazards for investors, which comprises that expenses of enforcing an arbitral award differs heavily across states, and in certain jurisdictions, courts are likely reluctant to enforce arbitral awards that are unfavorable to the overall interests of the government (Duckworth & Squire Patton Boggs, 2017).

2.3 Balancing Sovereignty and International Obligations

In today's global landscape, states are increasingly tasked with finding a balance between upholding arbitral awards and preserving their national sovereignty. This balance is particularly important for developing economies, which must adopt a consistent approach to arbitration policies and procedures. An important step in achieving this balance is to align national legal frameworks with international standards, such as those set by the New York Convention and the ICSID Convention. States have to negotiate this through diplomatic channels, legal study, and strategic bargaining that allow them to keep their national sovereignty and honour their international commitments.

Bilateral agreements offer a pathway toward harmonizing domestic legislation with global norms. By participating in international arbitral institutions, building institutional capacity, and strengthening legal frameworks, developing economies can create a conducive environment for the fair and effective enforcement of arbitral awards. Ultimately, this approach empowers these nations to uphold their sovereign rights while showing commitment to global arbitration standards, thus fostering a more predictable and balanced legal environment for foreign investment.

3. CORRUPTION AND TRANSPARENCY ISSUES

3.1 Influence of Corruption

Corruption seriously affects the enforcement of arbitral awards by tainting judicial and administrative processes. This often results in decisions that favor

local interests over international investors, undermining trust and reliability in enforcement. As a consequence, foreign investors may be deterred, and the rule of law is weakened (Meshel, 2013). For example, in *World Duty Free Co. Ltd. v. Republic of Kenya* case (2006), the tribunal accepted Kenya's argument about corruption, which meant the country could avoid being held accountable for alleged breaches of investment protection. This decision overlooked how it could hurt Kenya's efforts to fight corruption and attract foreign investment—both important for the country's growth (Meshel, 2013).

Nigeria provides a clear example of how corruption affects the enforcement of arbitral awards. Despite its commitment to international conventions like the New York Convention, Nigeria faces significant challenges in the enforcement due to corruption (Aderoju, 2023). The country's judiciary and law enforcement are often involved in corrupt practices, which influence legal outcomes (Okonkwo, 2018). Reports suggest that judicial decisions in Nigeria may be influenced by bribes that hinder or delay the enforcement of arbitral awards (Okogba, 2024). This widespread corruption not only disrupts the enforcement of awards but also damages Nigeria's standing as a reliable destination for foreign investment (United States Department of State, 2023).

3.2 Transparency in Arbitration

Transparency is crucial for maintaining trust in arbitration. Without sufficient transparency, there can be concerns about bias and unfairness that can hurt the system's credibility. This issue has become increasingly important in recent investment arbitration cases, such as *Biwater Gauff v. Tanzania* (2008) where transparency concerns were notably highlighted. Transparency in arbitration is primarily achieved through the public disclosure of decisions and pleadings, yet this transparency often conflicts with the need for confidentiality - a core characteristic of arbitration (Reinisch & Knahr, 2007). In international investment arbitration, transparency is critical for good governance and public trust (European Commission, 2001).

Following steps can be taken in order to improve transparency in arbitration. Firstly, it is very

important that all arbitral decisions and awards are published (Lew, 1982). The decision by the Biwater Tribunal to make its procedural orders available to the public is one major step toward greater transparency (Biwater Gauff v United Republic of Tanzania, 2006, para. 164). Secondly, transparency mandates should be introduced in the rules governing arbitration and in investment treaties so as to institutionalize openness as a formal expectation (Reinisch & Knahr, 2007). Thirdly, databases should be created where one can find all arbitral awards and decisions so that after they have been used by a given generation of students in a given jurisdiction they do not gather dust but are open to further scrutiny and contribution which will bring out the best in the substantive investment law (Poorooye & Feehily, 2017). Fourthly, redaction of sensitive business information in the publication of the same transparency enhances propriety interests which would otherwise have been compromised (OECD Investment Committee, 2005). Together, these actions improve arbitration procedures' transparency, fostering equity and public trust in the process. By building a more transparent system, arbitration can better align with the principles of good governance and contribute to a stable investment climate.

4. CASE STUDIES AND LEGAL PRECEDENTS

4.1 Success Stories

Mauritius is a prime example of a country that has successfully established a strong legal framework for enforcing arbitral awards. Mauritius has established a robust legal structure that facilitates the execution of foreign arbitral awards (The Global Legal Post, 2024), as evidenced by its signature on the New York Convention. The country's judicial decisions often reflect international standards, showing a clear commitment to upholding these standards. This positive legal environment has made Mauritius a favorable choice for international arbitration, boosting its standing as a trustworthy platform for resolving conflicts (International Centre for Settlement of Investment Disputes [ICSID], 2022).

Mauritius has demonstrated the effectiveness of its legal system in enforcing international arbitral awards, as exemplified by the case of Pueblo Holding Ltd vs. Emirates Trading Agency LLC (2023). In this case, two partial awards were rendered in London,

granting substantial sums to Pueblo. When the respondent defaulted, Pueblo sought enforcement by attaching shares in Mauritian companies held by the respondent. A provisional order for recognition and enforcement under the 2013 Supreme Court (International Arbitration Claims) Rules was issued by the Chief Justice on 3rd May 2018. Despite initial objections, including a claim that the application was time-barred under Article 156 of the Code of Civil Procedure, the court upheld the enforceability of the awards. The court determined that the recognition and enforcement of arbitral awards were not restricted by domestic limitation periods, in line with Article III of the New York Convention and Section 4B of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001, which specifically exempt arbitral awards from such limitations.

This decision was supported by the goals and background of the 2001 Act, demonstrating a clear commitment to enforcing arbitral awards. The court also pointed out that international arbitration is distinct from domestic procedures and operates independently of local restrictions (Chambers and Partners, 2023). This demonstrates Mauritius' strong legal framework and support for international arbitration, setting a positive example for other developing countries.

4.2 Challenges and Failures

International arbitration for investment disputes in developing economies is subject to many problems. For example, despite being a party to the International Centre for Settlement of Investment Disputes Convention (ICSID), Argentina has struggled to uphold its obligations, especially during the period of economic crisis. A series of investment claims arose (Peterson, 2009) following the 2001 financial crisis, along with Argentina's continued non-compliance with ICSID awards (Schreuer, 2009). Argentina's enforcement challenges were due to several reasons. The economic recovery efforts superseded international obligations (Goodman, 2007) following the financial crisis and sometimes the courts have been unwilling to enforce arbitral awards on grounds of public policy exception or other domestic legal doctrines (Baldwin, Kantor, & Nolan, 2006). The case of CMS Gas Transmission

Co. v. Republic of Argentina (2005) is a good example of enforcement challenges. In 2005, CMS was awarded significant damages by an ICSID tribunal against Argentina. However, enforcing this award proved complex (Bernasconi-Osterwalder & Johnson, 2011). Argentina challenged the decision, claiming that the tribunal had erred. The Ad Hoc Committee agreed with Argentina that tribunal had committed a legal error, but it disagreed that this was a manifest abuse of powers. Although the annulment committee didn't overturn the award, it did stay enforcement during the annulment proceedings (CMS Gas Transmission Co v. Argentina, 2006). This delay highlighted the difficulties in enforcing arbitral awards.

This case shows the broader issues foreign investors encounter in Argentina, where public policy exceptions and judicial reviews are often used to hinder enforcement (Fabio, 2020). This creates legal uncertainty and damages the country's reputation as a reliable investment destination. Argentina's noncompliance with the ICSID system has led to criticism of the role of annulment committees in the system (Waibel, 2007). Some experts believe that these committees should be more involved in ensuring compliance after an award is issued by providing clearer guidelines and assurances, which might help resolve enforcement problems in countries like Argentina (Lin, 2012).

4.3 Legal Precedents

In developing economies, the enforcement of arbitral awards often depends on how legal precedents are interpreted and applied. One significant problem is with calling in public policy exceptions which significantly differ from jurisdiction to jurisdiction (IBA Subcommittee on Recognition and Enforcement of Arbitral Awards, 2015). Public policy has been used as a final resort by Russia in delaying or refusing to recognize foreign arbitral award enforcement (Tapola, 2006). This inconsistency undermines the effectiveness of international arbitration in these regions.

The Yukos v The Russian Federation (2014) case epitomizes these difficulties. Yukos Universal Limited and other former Yukos Oil Company shareholders brought claims against the Russian Federation under the Energy Charter Treaty (ECT)

for indirect expropriation. In 2014, the tribunal decided that the Russian Federation's actions were essentially a form of nationalization or expropriation, violating Article 13 of the ECT (Gibson, 2015). Consequently, Yukos shareholders received an award of over \$50 billion (Yukos v The Russian Federation, 2014, para. 1827), which stands as one of the largest arbitration awards ever given (Simkin, 2015).

Even with this significant ruling, enforcing it was problematic. The Russian Federation sought to overturn the award, and in 2016, a Dutch district court nullified it, stating that the tribunal lacked jurisdiction (Bermann, 2016). This case highlights the difficulties in enforcing arbitral awards, especially against states. These kind of outcomes emphasizes the need for more reliable legal practices and clearer guidelines to improve enforcement, especially in developing countries.

5. UNRESOLVED LEGAL QUESTIONS

Unresolved legal questions in relation to enforcement of arbitral awards under international investment agreements (IIAs) present pertinent issues for developing economies. These questions relate to standardizing enforcement procedures, regional organizations' involvement and a balance between sovereignty and international obligations.

5.1 Standardization of Enforcement Procedures

Harmonizing enforcement standards for arbitral awards in developing countries is difficult due to various legal and practical obstacles. The differences in national laws about recognizing and enforcing these awards create a complicated situation, which can lead to unpredictable and inconsistent outcomes (United Nations Conference on Trade and Development, 2003). The New York Convention, while providing a general framework for recognizing and enforcing foreign arbitral awards (United Nations, 2016), has been interpreted and applied differently across various jurisdictions (Klink, 2023). For instance, courts in different states have disagreed on whether the same combination of facts fits a New York Convention's ground for setting aside, there is a known risk that an award may be enforceable in one jurisdiction but not in another (Lim, Ho, & Paparinskis, 2018). These differences reduce the

predictability and reliability of arbitration as a way to resolve disputes (Downes & Penhoet, 1999).

In India, several issues have affected uniformity, such as problems with interpretation, disputes over jurisdiction, simultaneous actions in different courts, and lengthy delays (Kachwaha, 2008). These challenges also reflect broader global issues, where varying domestic laws complicate the consistent interpretation of international agreements. Some other practical problems may exist such as judicial capacity to enforce awards and willingness of courts to do so, conflicts between national law and international norms. The way forward involves making changes in legislation, promoting cooperation between countries and specialized training for judges along with developing appropriate mechanisms that would deal only with execution matters.

5.2 Role of Regional Organizations

Regional organizations play an essential role in enforcing arbitral awards by promoting uniform laws and encouraging cooperation among member states. For example, the African Union (AU) and the Association of Southeast Asian Nations (ASEAN) assist their members in creating and adopting consistent arbitration standards and practices. The Gulf Cooperation Council (GCC) is an example of how regional organizations have gone towards uniform arbitration laws that would help enhance the enforcement of foreign arbitral awards among member states (Almutawa & Maniruzzaman, 2015).

The legal authority of regional organizations is typically derived from treaties and agreements among member states. The GCC's move to establish an arbitration law is as a result of the mutual understanding that exists between member states since its inception (Almutawa & Maniruzzaman, 2015). Similarly, uniform arbitration laws for regional economic communities in Africa, such as OHADA, are drawn up by the organization of African unified law on behalf of its member states with a view of ensuring that they adhere to enhancing the enforceability of arbitral awards within the region (OHADA, 2015).

5.3 Sovereignty vs. International Obligations

Balancing national sovereignty with international commitments poses a significant challenge in enforcing arbitral awards. States often find it difficult to fulfill their international obligations while also maintaining their own policies and interests (Al-Adba, 2014). This issue becomes apparent when arbitration decisions demand actions that conflict with a state's internal policies or economic priorities (Schill, Malintoppi, Reinisch, Schreuer, & Sinclair, 2022).

Moreover, this conflict becomes especially significant when states invoke public policy exceptions to refuse enforcement of arbitral awards, as allowed under the New York Convention (Cassimatis, 2019). In Russia, the traditional concept of sovereignty inherited from Soviet legal scholarship implicitly leads to the contemporary Russian legal doctrine, that decisions of foreign courts, private arbitral tribunals and 'international organizations' are not 'obligatory' for Russian courts (Antonov, 2012). The Yukos Oil case is landmark because in it Russia claimed sovereignty as a ground for non-enforcement of a foreign arbitral award (Anderson, 2024). However, recent rulings by Russian commercial courts suggest a potential shift, indicating a cautious but notable evolution in the judiciary's approach to international arbitration (Antonov, 2012).

Prioritizing national sovereignty over international obligations can lead to various legal issues. It might reduce the effectiveness of international investment agreements (IIAs) and deter foreign investors if they feel there's a higher risk of non-enforcement. For instance, with intra-EU ICSID awards, the European Commission has contended that enforcing these awards amounts to illegal state aid (European Commission, 2015), even though the ICSID Convention demands that they be enforced without condition (ICSID, Art. 54(1)). Balancing these concerns requires making sure enforcement is both effective and respectful of national sovereignty and legal norms.

6. PROPOSED SOLUTIONS AND REFORMS

6.1 Strengthening Legal Frameworks

For developing economies to strengthen their arbitration frameworks, substantial legal reforms must be put in place. Key recommendations include

aligning national laws with international standards such as the New York Convention and the ICSID Convention. It can ensure the predictability and enforceability of arbitral awards. The enforcement process can be improved by setting up specialized arbitration courts with judges who are skilled in arbitration and commercial law. Various countries such as Israel, France, Dubai, Australia, among others have these courts that are better equipped to handle complicated arbitration cases hence speeding up resolution process and improving efficiency. The training of judges and legal practitioners in international arbitration laws and practices is very essential in enabling them to acquire more insight so as to be able to carry out the proceedings justly and effectively. Simplifying legal procedures to reduce delays and bureaucratic hurdles could go a long way towards increasing speed and efficiency of the arbitration process. In the same regard, applying cross-jurisdictional standardization of public policy exceptions would assist in preventing the national courts' description of foreign arbitration awards as 'sham' (Basirat & Haqmal, 2023). That way, measures like these could help foster a favourable setting to enforce arbitral awards, much to the benefits of the foreign investors and the improvement of the third world economies.

Kenya's legal reforms demonstrate how updating legal frameworks can improve arbitration. The introduction of the Arbitration Act in 1995, based on the UNCITRAL Model Law (Ohaga, Ogutu, & Akinyi, n.d.), was a key move towards modernizing the country's arbitration system. Additionally, setting up the Nairobi Centre for International Arbitration (NCIA) has provided a dedicated body for managing arbitration cases (Nairobi Centre for International Arbitration Act, 2013). These developments have made Kenya a more attractive destination for arbitration in Africa, leading to an increase in arbitration cases (Ndolo & Liu, 2020) and greater confidence from international investors (Webadmin, 2023). The NCIA's efforts in training and supporting local arbitrators and judges have further strengthened Kenya's arbitration capabilities (Nairobi Centre for International Arbitration, 2017).

6.2 International Support and Collaboration

International organizations have a major impact on how arbitral awards are enforced in developing countries by providing essential support like funding, training or any other technical support. A neutral venue for arbitration and procedural advice is provided by the International Centre for Settlement of Investment Disputes (ICSID) (Kinneer, 2023). Similarly, United Nations Commission on International Trade Law (UNCITRAL) helps countries update their arbitration laws to match global standards (United Nations, 2007). This support helps nations modernize their legal systems and make enforcing arbitral awards more effective (Akinsola, 2024). Similarly, the World Bank and the Asian Development Bank back judicial reform projects, emphasizing how strong governance can contribute to economic growth (Aldwin, 2023).

ICSID plays a key role in helping developing countries by providing a neutral platform for settling investment disputes, which is essential for drawing in foreign investors. It offers resources and technical support to help these countries build robust legal systems for managing complex arbitration cases (Kinneer, 2023). For example, ICSID has assisted African nations in adopting effective practices for investment arbitration, which has made them more attractive to global investors. (Cannu, 2018)

6.3 Anti-Corruption Measures

The enforcement of arbitral awards in developing economies is greatly impeded by the vice of corruption. It is important to have effective anti-corruption mechanisms that will ensure the integrity of the arbitration process. For this reason, there should be an autonomous body dealing with corruption cases so that it can be able to investigate them without any influence from outside forces (Cannu, 2018). In Brazil, for instance, the Federal Controller General's Office (CGU) has been instrumental in carrying out audits and investigations on instances of corruption, which has increased oversight over public administration (Seabra, 2018). This way, strict penalties against corruption offenses serve as a deterrent to engage in corrupt practices (Kiener-Manu, n.d.). In Brazil's Clean Company Act of 2013, companies involved in corrupt activities were meted out severe punishments

including heavy fines and exclusion from public contracts (Prado, Carson, & Correa, 2015). Such legal frameworks are intended to outweigh potential benefits that may arise from engaging in these vices, hence they help to dissuade offenders from participating.

The Operation Car Wash (Lava Jato) approach in Brazil to fight corruption offers useful lessons for other developing economies (Jones & da Silva Pereira Neto, 2021). It involved the conviction of many public officials and private companies involved in widespread corruption, thus demonstrating that the country's anti-corruption efforts were effective (Moro, 2018). The success of this operation made clear the necessity of a multi-faceted approach to combating corruption. It teaches that while better regulations and their enforcement are necessary, they are often insufficient in isolation. To address entrenched corruption and collusion effectively, cooperation among anti-corruption agencies, competition authorities, and procurement regulators is crucial, as this coordination reduces opportunities for and incentives to engage in corrupt practices (Jones & da Silva Pereira Neto, 2021).

In view of this, there is also need for developing nations to ensure strong measures against corruption such as establishing independent agencies, imposing harsh penalties, and encouraging transparency, if they wish to improve on the implementation of arbitral awards in their countries. Brazil's successful fight against corruption epitomized by Operation Car Wash has offered other states a benchmark on how to make their arbitration frameworks more credible and transparent.

6.4 Enhancing Transparency

It is important to increase the legitimacy and accountability of the arbitration process, especially in investor-state disputes by enhancing transparency. Several important steps can be taken in order to accomplish this.

First of all, such rules and practices are to be applied where the arbitration proceedings are disclosed and documented. For instance, UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration avails that the key documents must be published United Nations, 2014, Art. 3), and the hearings to be conducted openly, thus making the

procedural framework transparent. Secondly, incorporating transparency clauses directly into investment treaties can reinforce this. Reflecting this commitment, the European Commission has affirmed that all future investment agreements between EU Member States and third countries will incorporate such provisions, demonstrating an institutional emphasis in Investor State Dispute Settlement (Calamita, 2014).

Other measures aimed at ensuring transparency are publishing of complete, unsanitized arbitral awards as well as allowing amicus curiae participation. For instance, North American Free Trade Agreement (NAFTA) tribunals have instituted open hearings and acceptance of amici briefs thereby broadening the perspectives used during proceedings and ensuring fairness as well as openness (Organisation for Economic Co-operation and Development, 2005). This requirement to publish all documents relating to arbitration such as pleadings, submissions and awards accords with these transparency rules, and is important for making sure that the arbitration process is subjected to public scrutiny (United Nations Commission on International Trade Law, 2014, Art. 3).

Another way through which transparency in arbitration proceedings can be done is by allowing them to be performed publicly so as to enable the public to have a greater oversight over what is being done and also enhance public trust (Theodorakis, 2015, pp. 103, 112). In this regards, when arbitrators, counsel, or even parties themselves know that their actions could be seen by any member of the public then it shall bring about an urge for high ethical conduct (Poorooye & Feehily, 2017, p. 314). There is also increased perceived fairness in allowing third party participation via submission of amicus curiae briefs by adding different viewpoints (VanDuzer, 2007; Organisation for Economic Co-operation and Development, 2005).

Achieving transparency in arbitration can be facilitated by adopting regulations like UNCITRAL Transparency Rules, introducing transparency clauses into investment treaties as well as ensuring document publication, open hearings and enabling involvement from third parties.

CONCLUSION

This study has systematically documented and analyzed the obstacles to enforcing arbitral awards in developing economies, revealing key challenges such as inconsistent legal systems, political interference, and economic constraints. Through an in-depth examination, it has become clear that judicial independence, robust enforcement procedures, and a strong stance against corruption are crucial for reliable enforcement of these awards. The recommended strategies of aligning domestic laws with international standards, establishing specialized arbitration courts, and ongoing judicial education address these challenges effectively and are essential for creating a predictable legal environment that enhances investor confidence.

The findings from this study contribute to existing literature by providing detailed insights into the specific challenges faced in the enforcement of arbitral awards in developing countries. This study is distinct in its comprehensive examination of how political and economic realities intersect with legal frameworks to impact enforcement outcomes, offering actionable recommendations for both policymakers and legal reformers.

For policymakers, the establishment of well-defined and consistent enforcement mechanisms, as proposed in this study, is likely to make these economies more attractive to foreign investors by ensuring reliable legal protection and predictable dispute resolution processes. Investors, on the other hand, can leverage the insights from this analysis to make more informed decisions, benefiting from an improved understanding of the regional legal landscapes.

Future research should continue to explore innovative approaches to improving arbitration practices, such as integrating advanced technologies to enhance the transparency and efficiency of enforcement processes. Investigating the role of regional arbitration councils could also shed light on how to achieve more standardized enforcement practices across various legal jurisdictions. These efforts will help in further reducing the discrepancies in arbitration enforcement and support the development of more uniform legal practices across borders.

This investigation underscores the critical need for continuous reforms and international collaboration to improve arbitration frameworks in developing countries, thereby making them more viable and enforceable. Enhancing legal predictability and judicial reliability remains paramount for cultivating a stable investment environment conducive to sustainable economic growth.

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