

*The Nairobi Centre for International Arbitration Re-energized: Ensuring Credibility and Integrity,
Eliminating Conflicts of Interests, and Enforcing Standards for Posterity*

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Abstract

This paper discusses how the Nairobi Center for International Arbitration (NCIA) can be re-energized in order to strengthen access to justice through arbitration and ADR both in Kenya and globally. The paper observes that the development of NCIA has significantly contributed to the growth of arbitration in Kenya, Africa and the world at large. It examines some of the successes of NCIA. Despite its role in promoting international arbitration and ADR, the paper observes that NCIA also faces challenges that can undermine its effectiveness. The paper highlights some of the challenges facing NCIA and their impact on access to justice through arbitration and ADR. In light of underlying challenges, the paper posits that there is need to strengthen NCIA in order to revamp access to justice through arbitration and ADR. In order to achieve this dream, the paper discusses how NCIA can be re-energized by ensuring credibility and integrity, eliminating conflicts of interests, and enforcing standards.

1.0 Introduction

Arbitral institutions play a fundamental role in promoting access to justice through Appropriate Dispute Resolution (ADR) processes including arbitration. It has been observed that most international arbitration users favour institutional, rather than *ad hoc* arbitration¹. The use of institutional arbitration provides several advantages including the availability of procedural rules that govern arbitration proceedings, the presence of qualified personnel who handle case administration, assisting parties with the appointment of competent arbitrators, and review of draft awards to ensure their enforceability². Consequently, it has been observed that institutional arbitration remains more popular especially among business entities due to the procedural certainty associated with institutional affiliations³. Arbitral institutions are considered to have a good professional track record and significant experience in the administrative aspects of

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¹ International Arbitration: Which Institution?., Available at <https://www.ashurstperkinscoie.com/en/insights/quickguide-international-arbitration-which-institution/> (Accessed on 06/09/2026)

² Ibid

³ Zangh. T., 'Enforceability of Ad Hoc Arbitration Agreements in China: China's Incomplete Ad Hoc Arbitration System' *Cornell International Law Journal*, Vol. 26, 2013, pp 363-399

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arbitrations⁴. Institutional arbitration is deemed to be based on expertise, efficiency and an organised set up⁵.

Arbitral institutions therefore facilitate access to justice through arbitration by offering a set of procedural rules to guide the arbitration process. Some of the major arbitral institutions that facilitate international arbitration include the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and the Chartered Institute of Arbitrators (CI Arb). In addition, Africa boasts well established, leading international arbitration institutions which offer specialised arbitral services for a full range of international disputes⁶. It has been observed that arbitral institutions in Africa are contributing to the development of international arbitration in the continent through institutional rules and events attracting practitioners and arbitration users from the region and beyond⁷. These institutions ensure the success of arbitration proceedings through development of institutional rules on arbitration, appointment of arbitrators, marketing arbitration, offering education and training programmes for arbitrators, and enforcing codes of ethics and conduct among arbitrators⁸. Some of the major arbitral institutions in Africa include the Nairobi Centre for International Arbitration (NCIA), the Kigali International Arbitration Centre (KIAC), the Arbitration Foundation of Southern Africa, the Lagos Court of Arbitration, and the Cairo Regional Centre for International Commercial Arbitration⁹. The development of arbitral institutions both globally and in Africa is therefore vital towards enhancing access to justice through arbitration and ADR.

This paper discusses how NCIA can be re-energized in order to strengthen access to justice through arbitration and ADR both in Kenya and globally. The paper observes that the development of NCIA has significantly contributed to the growth of arbitration in Kenya, Africa and the world at large. It examines some of the successes of NCIA. Despite its role in promoting international arbitration and ADR, the paper observes that NCIA also faces challenges that can

⁴ Greenberg, S et al., *International Commercial Arbitration: An Asia-Pacific Perspective*, (Cambridge University Press, 2017), p. 27

⁵ Shah, N., & Gandhi, N., 'Arbitration: One Size Does Not Fit All: Necessity of Developing Institutional Arbitration in Developing Countries' *Journal of International Commercial Law and Technology*, Volume 6, Issue 4 (2011)

⁶ Ripley-Evans, J., & De Sousa, M., '2022 SOA Arbitration in Africa Survey Reveals a Thriving Market for Arbitration on the Continent.' Available at <https://hsfnotes.com/africa/2022/11/25/2022-soaarbitration-in-africa-survey-reveals-a-thriving-market-for-arbitration-on-the-continent/> (Accessed on 06/09/2026)

⁷ Ostrove, M., Sanderson, B., & Veronelli, A. P., 'Developments in African Arbitration' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2018/article/developments-in-african-arbitration> (Accessed on 06/09/2026)

⁸ Muigua, K., 'Strengthening Ethics in Arbitration in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2023/10/Strengthening-Ethics-in-Arbitration-in-Africa.pdf> (Accessed on 06/09/2026)

⁹ Africa Arbitration Institutions., Available at <https://africaarbitration.org/resources/africa-arbitration-institutions/> (Accessed on 06/09/2026)

undermine its effectiveness. The paper highlights some of the challenges facing NCIA and their impact on access to justice through arbitration and ADR. In light of underlying challenges, the paper posits that there is need to strengthen NCIA in order to revamp access to justice through arbitration and ADR. In order to achieve this dream, the paper discusses how NCIA can be re-energized by ensuring credibility and integrity, eliminating conflicts of interests, and enforcing standards.

2.0 Nairobi Centre for International Arbitration: Successes and Challenges

NCIA was established in 2013 pursuant to the *Nairobi Centre for International Arbitration Act*¹⁰. The functions of NCIA as stipulated under the NCIA Act include promoting, facilitating and encouraging the conduct of international commercial arbitration; administering domestic and international arbitrations as well as other ADR processes including mediation and conciliation; organizing international conferences, seminars and training programs for arbitrators and scholars; cooperating with other regional and international arbitration institutions to facilitate the growth of arbitration; ensuring training and accreditation of ADR practitioners including arbitrators and mediators; promoting public awareness on arbitration and ADR; and coordinating, in collaboration with other agencies, the formulation of national laws and policies on ADR¹¹.

Since its establishment, NCIA has played a key role in promoting the growth of both domestic and international arbitration in Kenya. The Centre provides institutional support for both domestic and international arbitration and other ADR mechanisms including mediation and conciliation¹². In particular, NCIA administers domestic and international arbitration through clear procedural guidelines with specific time-lines, and a case counsel to assist the tribunal in the collation of documents and parties in complying with the tribunal directions¹³. In order to facilitate domestic and international arbitration in Kenya, NCIA has developed *Arbitration Rules*¹⁴ to govern arbitration proceedings conducted under its auspices. The Rules seek to ensure predictability and efficiency in arbitration proceedings by governing key matters such as commencement of arbitration, appointment of the arbitral tribunal, arbitration proceedings, and costs¹⁵. They also seek to ensure integrity in arbitration and require arbitrators to adhere to ethical standards including confidentiality, impartiality, and independence¹⁶.

¹⁰ The Nairobi Centre for International Arbitration Act., Cap 49 A, Laws of Kenya., Government Printer, Nairobi

¹¹ Ibid

¹² Nairobi Centre for International Arbitration., 'About Us' Available at <https://ncia.or.ke/about-us/> (Accessed on 07/09/2026)

¹³ Ibid

¹⁴ Nairobi Centre for International Arbitration., Arbitration Rules, 2015., Available at https://ncia.or.ke/wp-content/uploads/2021/02/Final-NCIA-Revised-Rules-2019_2.pdf (Accessed on 07/09/2026)

¹⁵ Ibid

¹⁶ Ibid

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In addition, NCIA has also developed *Mediation Rules*¹⁷ to foster access to justice through mediation. The NCIA Mediation Rules seek to support both domestic and international mediation by governing various aspects including commencement of mediation proceedings, appointment of mediators, authority and representation in mediation proceedings, place and language, termination of mediation proceedings, and costs and fees¹⁸.

NCIA is therefore an important institution in facilitating access to justice in Kenya through ADR processes including arbitration and mediation. It has been observed that the Centre has played a pivotal role in promoting domestic and international arbitration in Kenya through procedural rules that govern the conduct of arbitration proceedings, training and certification programs aimed at building expertise in arbitration and mediation, accreditation of arbitrators and mediators to maintain professional standards, and providing hearing facilities for both arbitration and mediation proceedings¹⁹.

However, despite the key role it has played in enhancing access to justice through arbitration and ADR in Kenya, NCIA also faces several challenges that can undermine its effectiveness. For example, notable challenges include excessive judicial intervention in arbitration and inadequate alignment with emerging practices in international arbitration such as third-party funding which undermine the appeal of Nairobi as an appropriate seat for international arbitration²⁰. In addition, uphold ethics, integrity and best practices is a fundamental concern for the success of NCIA. For instance, it has been observed that when tribunals and counsel fail to comply with ethical practice including honesty, integrity, competence and principled and non-biased decision-making, the credibility and reputation of arbitral institutions such as NCIA can be undermined²¹. In light of the foregoing, it is imperative to re-energize NCIA, in order to bolster access to justice through arbitration and ADR in Kenya.

¹⁷ Nairobi Centre for International Arbitration (NCIA)., *Mediation Rules*, 2015., Available at https://ncia.or.ke/wp-content/uploads/2021/02/mediation_rules_2016.pdf (Accessed on 07/09/2026)

¹⁸ Ibid

¹⁹ African-German Arbitration Cooperation., 'Nairobi Centre for International Arbitration (NCIA)' Available at <https://afgac.org/partners/nairobi-centre-for-international-arbitration/> (Accessed on 07/09/2026)

²⁰ Global Arbitration Review., 'Organisation: Nairobi Centre for International Arbitration' Available at <https://globalarbitrationreview.com/organisations/nairobi-centre-for-international-arbitration> (Accessed on 07/09/2026)

²¹ Nairobi Centre for International Arbitration., 'Code of Conduct for Arbitrators, 2021.' Available at <https://ncia.or.ke/wp-content/uploads/2021/07/3.-NCIA-CODE-OF-CONDUCT-FOR-ARBITRATORS-2021.pdf> (Accessed on 07/09/2026)

3.0 Re-Energizing the Nairobi Centre for International Arbitration for Enhanced Access to Justice through Arbitration and ADR

NCIA is an important institution that facilitates the growth of arbitration and ADR in Kenya and Africa. However, in light of current concerns and challenges, it is imperative to re-energize the Centre in order to enable it perform its functions in an appropriate and effective manner. In particular, there is need to ensure credibility and integrity by complying with ethical practice. It has been correctly observed that ethics are an integral part of arbitration and ADR since they ensure respect for the rule of law, efficiency, fairness and enhanced access to justice²². In particular, when arbitral institutions uphold ethical conduct, it is possible to foster public confidence, credibility, acceptability, and legitimacy of dispute resolution processes²³. Since arbitration is final and binding in nature and therefore significantly shielded from judicial review, it has been argued that ethics and integrity ensure transparency and trust in the conduct of the arbitration proceedings towards fostering credibility and legitimacy of the process and the awards rendered²⁴. By upholding credibility and integrity in arbitration, parties gain confidence that the process will meet their expectations in relation to fairness, transparency, trust, cost-effectiveness and finality in managing disputes²⁵. It is therefore necessary for NCIA to ensure credibility and integrity. In particular, by strengthening the training and accreditation of arbitrators and mediators, it is possible to enhance credibility, accountability, efficiency and competence of institutions such as NCIA in promoting access to justice through ADR²⁶.

It is also necessary for NCIA to ensure that conflicts of interests are eliminated in arbitration and other ADR processes conducted under its auspices. It has been observed that the ethical duty to avoid conflict of interest in arbitration and other ADR processes is aimed at ensuring impartiality and preventing bias in management of disputes which could arise due to involvement by the arbitrator/mediator with the subject matter of the dispute or relationship between the arbitrator/mediator and either of the participants in the proceedings²⁷. This is in line with the principles of natural justice and the right to a fair hearing²⁸. Consequently, arbitrators and mediators have a duty to disclose all actual and potential conflicts of interest known to them and

²² Muigua. K., 'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR' Available at <https://kmco.co.ke/wp-content/uploads/2022/05/Promoting-ProfessionalConduct-Ethics-Integrity-Etiquette-in-ADR.pdf> (Accessed on 07/09/2026)

²³ Menkel-Meadow. C., 'Ethics in Alternative Dispute Resolution: New Issues, No Answers from the Adversary Conception of Lawyers' Responsibilities' Available at <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2758&context=facpub> (Accessed on 07/09/2026)

²⁴ Rajoo. D., 'Importance of Arbitrators' Ethics and Integrity in Ensuring Quality Arbitrations.' *Contemporary Asia Arbitration Journal*, Vol. 6, No. 2, pp 329-347 (2013)

²⁵ Rogers. C., 'The Ethics of International Arbitrators.' Available at https://www.international-arbitration-attorney.com/wp-content/uploads/International-Arbitration-Doctrine-49international_arbitration.pdf (Accessed on 07/09/2026)

²⁶ Muigua. K., 'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR' Op Cit

²⁷ Ibid

²⁸ Ibid

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avoid acting in cases where their judgment may be impaired due to conflict of interest²⁹. The duty to disclose all actual and potential conflicts is aimed at preventing bias in arbitration and ADR and fostering fairness and integrity of ADR processes³⁰. Arbitral institutions including NCIA have an important role to play in eliminating conflicts of interests by mandating arbitrators and mediators to disclose all actual and potential conflicts of interests known to them and declining their appointment in cases where conflicts of interests are evident³¹.

In addition, there is need for NCIA to enforce ethical and professional standards for enhanced access to justice through arbitration and ADR. For example, it has been observed that ADR institutions have a key role to play in enforcing standards such as competence, independence, integrity, impartiality, fairness and the duty to avoid conflicts of interests through challenge procedures and removal of arbitrators and mediators³². NCIA has made some progress towards fulfilling this obligation. For example, the Centre has developed a *Code of Conduct for Arbitrators*³³. The Code requires an arbitrator, when approached with an appointment, to conduct reasonable enquiries with regard to potential conflict of interest that may arise from his or her appointment for that particular matter that may affect impartiality and independence before accepting appointment³⁴. Under the Code, arbitrators are required to disclose any interest or relationship that affects impartiality or creates an unfavorable appearance of partiality or bias³⁵. In addition, the Code seeks to uphold the ethical responsibilities of honesty, trust and confidentiality and requires arbitrators to keep confidential all matters relating to the proceedings³⁶. Further, in order to ensure fairness, the Code requires arbitrators to make their decisions in a just, independent and deliberate manner³⁷.

Further, NCIA has also developed a *Code of Conduct for Mediators*³⁸. The Code sets out fundamental ethical guidelines and best practices for persons appointed to mediate disputes

²⁹ McCorkle. S., 'The Murky World of Mediation Ethics: Neutrality, Impartiality, and Conflict of Interest in State Codes of Conduct.' 23 *Conflict Resol.* Q. 165 (2005-2006)

³⁰ Muigua. K., 'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR.' Op Cit

³¹ McCorkle. S., 'The Murky World of Mediation Ethics: Neutrality, Impartiality, and Conflict of Interest in State Codes of Conduct.' Op Cit

³² Hacking. L., & Berry. S., 'Ethics in Arbitration: Party and Arbitral Misconduct.' Available at <https://www.lordhacking.com/Documentation/Hacking%20&%20Berry%20-%20Ethics%20in%20Arbitration%20April%202016.pdf> (Accessed on 07/09/2026)

³³ Nairobi Centre for International Arbitration., 'Code of Conduct for Arbitrators, 2021.' Available at <https://ncia.or.ke/wp-content/uploads/2021/07/3.-NCIA-CODE-OF-CONDUCT-FOR-ARBITRATORS-2021.pdf> (Accessed on 07/09/2026)

³⁴ Ibid, Principle 1

³⁵ Ibid, Principle 3

³⁶ Ibid, Principle 5

³⁷ Ibid, Principle 6

³⁸ Nairobi Centre for International Arbitration (NCIA), Code of Conduct for Mediators, 2021, available at <https://ncia.or.ke/wp-content/uploads/2021/07/5.-NCIA-CODE-OF-CONDUCT-FOR-MEDIATORS2021.pdf> (Accessed on 07/09/2026)

under the *NCIA Mediation Rules*³⁹. Among the fundamental ethical requirements under the NCIA Code of Conduct for Mediators is independence and impartiality⁴⁰. Before accepting an appointment to act, a prospective mediator is required to disclose anything within his or her knowledge that may materially affect the mediator's impartiality⁴¹. The Code of conduct further requires a mediator to avoid conflict of interest or the appearance of a conflict of interest during and after mediation⁴². In addition, the Code requires a mediator to ensure that he or she has requisite competence required to mediate effectively before accepting appointment⁴³. Further, the Code requires mediators to promote confidentiality, quality and fairness while conducting the mediation proceedings⁴⁴.

The NCIA Code of Conduct for Arbitrators and Code of Conduct for Mediators are therefore key instruments in promoting ethics, integrity, competence, and fairness in ADR. It is necessary for NCIA to enforce these Codes in order to ensure that ethical and professional standards are maintained for enhanced access to justice through ADR.

4.0 Conclusion

Due to the important role they play in promoting access to justice through ADR, it is imperative to strengthen ADR institutions all over the world. In particular, there is need to re-energize NCIA by ensuring credibility and integrity, eliminating conflicts of interests, and enforcing standards for posterity.

³⁹ Nairobi Centre for International Arbitration (NCIA)., *Mediation Rules*, 2015., Op Cit

⁴⁰ Nairobi Centre for International Arbitration (NCIA), *Code of Conduct for Mediators*, 2021, Op Cit

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

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