

Enforcing Mediated Agreements and the Singapore Convention: The African Experience

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Table of Contents

Abstract..... 3

1.0 Introduction..... 3

2.0 Overview of the Singapore Convention 6

3.0 Enforcing Mediated Agreements and the Singapore Convention: Challenges and Prospects for Africa 10

4.0 Conclusion 16

References 19

Enforcing Mediated Agreements and the Singapore Convention: The African Experience

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Abstract

Mediation has become a key process for managing disputes at the global stage due to its ability to allow parties to negotiate business solutions without being constrained by law or contract. The suitability of mediation at the global stage has further been enhanced by the adoption of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) which provides a harmonized legal framework for enforcing mediated agreements. This paper critically appraises the African experience in enforcing mediated agreements under the Singapore Convention. The paper argues that the Singapore Convention has enhanced the practice of international commercial mediation by providing a harmonized legal framework for enforcing mediated agreements. The paper critically discusses the progress made and challenges being faced in enforcing mediated agreements under the Singapore Convention in Africa. In addition, the paper suggests reforms towards enhancing the process of enforcing mediated agreements under the Singapore Convention in Africa for the growth of international commercial mediation.

1.0 Introduction

Mediation involves the intervention in a dispute or negotiation by an acceptable, impartial and neutral third party to assist disputing parties in voluntarily reaching their own mutually acceptable resolution of the issues in dispute¹. Mediation can also be understood as a method of conflict management where conflicting parties gather to seek

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¹ Moore. C., 'The Mediation Process: Practical Strategies for Resolving Conflict' (Jossey-Bass Publishers, San Francisco, 1996), p. 14

solutions to the conflict, with the assistance of a third party who facilitates discussions and the flow of information, and thus aiding in the process of reaching an agreement². The United Nations defines mediation as a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements³.

It has been noted that mediation is usually a continuation of the negotiation process since it arises where parties to a conflict have attempted negotiations, but have reached a deadlock⁴. Parties therefore involve a third party known as a mediator to assist them continue with the negotiations and ultimately break the deadlock⁵. The premise of mediation is that in the right environment, parties to a conflict can improve their relationships and move towards cooperation⁶. It has been noted that a mediator does not have authoritative decision-making power⁷. A mediator facilitates communication, promotes understanding, focuses the parties on their interests, and uses creative problem solving to enable the parties to reach their own mutually acceptable agreement⁸.

Mediation has certain key attributes which makes it an ideal process in managing disputes. Its key features include informality, flexibility, efficiency, confidentiality, party autonomy and the ability to promote expeditious and cost- effective management of disputes⁹. Mediation also has the ability to preserve relationships and provides parties with a wide range of solutions¹⁰. In addition, mediation has the potential to address the

² Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

³ United Nations., 'Basics of Mediation: Concepts and Definitions.' Available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/Basics%20of%20Mediation.pdf> (Accessed on 12/07/2024)

⁴ Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' Op Cit

⁵ Ibid

⁶ United Nations., 'Basics of Mediation: Concepts and Definitions.' Op Cit

⁷ Moore. C., 'The Mediation Process: Practical Strategies for Resolving Conflict' Op Cit

⁸ Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' Op Cit

⁹ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

¹⁰ Ibid

root causes of conflicts therefore negating the need for future conflict or conflict management¹¹.

Due its advantages, mediation alongside other Alternative Dispute Resolution (ADR) processes is now being widely embraced in managing disputes at both the national and global levels¹². It has been noted that the use of the mediation process is growing globally¹³. At the global stage, mediation allows parties to negotiate business solutions without being constrained by law or contract¹⁴. The suitability of mediation at the global stage has been enhanced by the adoption of the *United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention)*¹⁵. The development of the Singapore Convention was necessitated by challenges facing the practice of international commercial mediation where the trend has been that the outcome of a mediation is treated as a contractual agreement enforced as such and not as an award as in the case of arbitration¹⁶. This approach had several drawbacks since one party could pull out of such an agreement and seek court intervention over the underlying dispute as if the mediation never took place¹⁷. The Singapore Convention aims at enhancing the practice of international commercial mediation by building a bridge that would enable

¹¹ Ibid

¹² Ibid

¹³ International Centre for Dispute Resolution., 'International Mediation' Available at <https://www.icdr.org/services/international-mediation#:~:text=Use%20of%20the%20mediation%20process,a%20high%20percentage%20of%20settlement.> (Accessed on 12/07/2024)

¹⁴ Ibid

¹⁵ United Nations Convention on International Settlement Agreements Resulting from Mediation., Available at https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf (Accessed on 12/07/2024)

¹⁶ Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' available at <http://kmco.co.ke/wpcontent/uploads/2019/12/The-Singapore-Convention-on-International-Settlement-AgreementsResulting-from-Mediation-Kariuki-Muigua-December-2019.pdf> (Accessed on 12/07/2024)

¹⁷ Ibid

acceptability of international settlement agreements across states with different legal, social and economic systems¹⁸.

This paper critically appraises the African experience in enforcing mediated agreements under the Singapore Convention. The paper argues that the Singapore Convention has enhanced the practice of international commercial mediation by providing a harmonized legal framework for enforcing mediated agreements. The paper critically discusses the progress made and challenges being faced in enforcing mediated agreements under the Singapore Convention in Africa. In addition, the paper suggests reforms towards enhancing the process of enforcing mediated agreements under the Singapore Convention in Africa for the growth of international commercial mediation.

2.0 Overview of the Singapore Convention

Parties to the Singapore Convention recognize the value of mediation as an ideal process for amicable settlement of commercial disputes¹⁹. The Singapore Convention acknowledges that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by states²⁰. According to the Singapore Convention, the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to states with different legal, social and economic systems would contribute to the development of harmonious international economic relations²¹.

¹⁸ Singapore Convention., Op Cit

¹⁹ Ibid, Preamble

²⁰ Ibid

²¹ Ibid

The Singapore Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute (“settlement agreement”) which, at the time of its conclusion, is international²². For a settlement agreement to be considered international under the Singapore Convention: at least two parties to the settlement agreement have their places of business in different states²³; and the state in which the parties to the settlement agreement have their places of business must be different from either the state in which a substantial part of the obligations under the settlement agreement is performed²⁴; or the state with which the subject matter of the settlement agreement is most closely connected²⁵. It has been noted that these provisions are aimed at encouraging cross border mediation and provides parties with an alternative to arbitration which has for many years been the main dispute resolution mechanism for international commercial disputes²⁶.

The Singapore Convention does not apply to settlement agreements flowing from certain disputes including those relating to family, inheritance or employment law²⁷. Further, the Singapore Convention does not also apply to settlement agreements that have been approved by a court or concluded in the course of proceedings before a court²⁸; that are enforceable as a judgment in the State of that court²⁹; and that have been recorded and are enforceable as an arbitral award³⁰.

In order to enhance enforcement of settlement agreements, the Singapore Convention sets out certain requirements to be fulfilled by parties. A party relying on a settlement

²² Ibid, article 1 (1)

²³ Ibid, article 1 (a)

²⁴ Ibid, article 1 (b) (i)

²⁵ Ibid, article 1 (b) (ii)

²⁶ IK. Zafar, ‘The Singapore Mediation Convention, 2019’, available at https://www.academia.edu/40289206/The_Singapore_Mediation_Convention (Accessed on 12/07/2024)

²⁷ Singapore Convention, article 1 (2) (b)

²⁸ Ibid, article 1 (3) (a) (i)

²⁹ Ibid, article 1 (3) (a) (ii)

³⁰ Ibid, article 1 (3) (b)

agreement under the Singapore Convention is required to supply to the competent authority of the state party to the Convention where relief is sought: the settlement agreement signed by the parties³¹; and evidence that the settlement agreement resulted from mediation such as the mediator's signature on the settlement agreement, a document signed by the mediator indicating that the mediation was carried out, and an attestation by the institution that administered the mediation³².

Grant of relief under the Singapore Convention is not absolute and the competent authority of the party to the Singapore Convention where relief is sought may refuse to grant such relief in certain circumstances. These include where a party to the settlement agreement was under some incapacity³³; the settlement agreement sought to be relied upon is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it³⁴; the settlement agreement is not binding or is not final according to its terms³⁵; the settlement agreement has been subsequently modified³⁶; where the obligations in the settlement agreement have been performed or are not clear and comprehensible³⁷; where granting relief would be contrary to the terms of the settlement agreement; where there was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement³⁸; and where there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement³⁹. A competent authority of the state party to the convention may also refuse to grant relief if it finds that: granting relief would be contrary

³¹ Ibid, article 4 (1) (a)

³² Ibid, article 4 (1) (b)

³³ Singapore Convention, article 5 (1)

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

to the public policy of that party⁴⁰; or the subject matter of the dispute is not capable of settlement by mediation under the law of that party⁴¹.

The Singapore Convention is complemented by the *United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation*⁴², which was developed by UNCITRAL in parallel to the Singapore Convention. The Model Law is designed to assist States in reforming and modernizing their laws on mediation procedure⁴³. It provides uniform rules in respect of the mediation process and aims at encouraging the use of mediation and ensuring greater predictability and certainty in its use⁴⁴. Development of the Model Law alongside the Singapore Convention provides States with flexibility in implementing the cross-border enforcement mechanism and achieving a comprehensive legal framework on mediation⁴⁵. Countries therefore have the option of either adopting the Singapore Convention or the Model Law as stand-alone legal instruments or both as complementary instruments in order to facilitate a comprehensive legal framework on mediation⁴⁶.

⁴⁰ Ibid, article 5 (2) (a)

⁴¹ Ibid, article 5 (2) (b)

⁴² UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation., Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/22-01363_mediation_guide_e_ebook_rev.pdf (Accessed on 12/07/2024)

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ United Nation., 'The United Nations "Singapore Convention on Mediation" opens for signature in Singapore' Available at <https://unis.unvienna.org/unis/en/pressrels/2019/unisl278.html> (Accessed on 12/07/2024)

⁴⁶ Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

3.0 Enforcing Mediated Agreements and the Singapore Convention: Challenges and Prospects for Africa

The Singapore Convention has been described as the missing piece in the international dispute resolution framework⁴⁷. Adoption of the Convention is expected to enhance cross-border enforceability of mediated agreements⁴⁸. The Singapore Convention is expected to have similar benefits for mediation as an international dispute resolution mechanism in the same way the New York Convention has had for arbitration⁴⁹. The *New York Convention*⁵⁰ was adopted for purposes of providing a harmonized legal framework for the recognition and enforcement of foreign arbitral awards and has had tremendous impact and success on the growth and practice of international commercial arbitration. It has been asserted that the Singapore Convention has the potential of having such an impact on the practice of international commercial mediation⁵¹. Further, it has been opined that the Singapore Convention has great ability to bolster the use of mediation as a method for resolving cross-border commercial disputes⁵². The Singapore Convention is therefore an important step forward in the promotion of mediation as a tool for the resolution of international disputes since it paves the way for settlements reached by mediation to be recognised internationally⁵³. The Convention allows parties to rely on mediated agreements and enforce them across borders following simplified procedures⁵⁴. The Singapore Convention also has the potential to increase the visibility of mediation

⁴⁷ Nairobi Centre for International Arbitration., 'NCIA & the Singapore Convention in the Context of the AfCFTA' Available at <https://ncia.or.ke/wp-content/uploads/2022/12/NCIA-AND-THE-SINGAPORE-CONVENTION-IN-THE-CONTEXT-OF-THE-AfCFTA.pdf> (Accessed on 12/07/2024)

⁴⁸ Ibid

⁴⁹ IK. Zafar, 'The Singapore Mediation Convention, 2019' Op Cit

⁵⁰ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), available at www.newyorkconvention.org/english (Accessed on 12/07/2024)

⁵¹ IK. Zafar, 'The Singapore Mediation Convention, 2019' Op Cit

⁵² Nairobi Centre for International Arbitration., 'NCIA & the Singapore Convention in the Context of the AfCFTA' Op Cit

⁵³ The Singapore Convention on Mediation., Available at <https://www.linklaters.com/en/insights/publications/commercial-mediation-a-global-review/global-guide-commercial-mediation/the-singapore-convention-on-mediation> (Accessed on 12/07/2024)

⁵⁴ Singapore Convention., Op Cit

and encourage its use as an international dispute resolution mechanism, moving past the more commonly used routes of arbitration and litigation⁵⁵.

Enforcing mediated agreements is a key theme under the Singapore Convention. The Convention unifies the framework for enforcing mediated settlement agreements related to international commercial matters⁵⁶. It has been noted that states that ratify the Singapore Convention are obliged to enforce settlement agreements resulting from mediation under their own domestic rules, yet via a streamlined procedures, as envisaged under the Convention⁵⁷. The Singapore Convention provides a process for the direct enforcement of cross-border settlement agreement between parties resulting from mediation⁵⁸. Parties to the Convention are required to enforce settlement agreements in accordance with their rules of procedure⁵⁹. It has been noted that this provision allows parties to formulate their own rules of procedure suitable to national or local circumstances for purposes of effective enforcement of mediated agreements⁶⁰. The Singapore Convention ultimately aims to facilitate international trade by rendering mediation an efficient and entrusted method for resolving disputes, alongside arbitration and litigation⁶¹.

The Singapore Convention holds immense promise for mediation in Africa⁶². Mediation alongside other ADR processes has been utilized in managing conflicts in Africa for many centuries⁶³. Conflict management in Africa has since time immemorial taken the form of

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ 2018 Singapore Convention on Mediation., Available at <https://www.acerislaw.com/2018-singapore-convention-on-mediation/> (Accessed on 12/07/2024)

⁵⁸ Singapore Convention., Op Cit

⁵⁹ Ibid, article 3 (1)

⁶⁰ Muigua. K., 'Adopting the Singapore Convention in Kenya: Insight and Analysis' Available at <https://kmco.co.ke/wp-content/uploads/2020/09/Adopting-the-Singapore-Convention-in-Kenya-Insight-and-Analysis-15th-Sept.pdf> (Accessed on 12/07/2024)

⁶¹ 2018 Singapore Convention on Mediation., Op Cit

⁶² Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

⁶³ Muigua. K., 'Resolving Conflicts through Mediation in Kenya' Op Cit

informal negotiation, mediation, reconciliation and arbitration⁶⁴. These processes are well suited within the concept of justice in Africa including its key objectives of creating consensus, facilitating reconciliation, fostering peace, harmony and cohesion and giving prominence to communal needs over individual needs⁶⁵. Mediation therefore holds a special place in Africa. Mediation has been described as a major intervention tool in Africa⁶⁶. It has been used to prevent and resolve many violent conflicts in the continent⁶⁷. Mediation alongside other ADR techniques are often considered ‘Appropriate’ and not ‘Alternative’ in the administration of justice⁶⁸.

The growth of mediation in Africa has permeated into the commercial space. It has been noted that Africa needs to create more awareness around mediation as an appropriate way to settle commercial disputes by tapping into its historical roots in the continent⁶⁹. With economic growth in Africa and rising investment in recent years, many African states are fast becoming ideal investment destinations⁷⁰. This has resulted in higher volume in inter-state investment originating from economic powers in Europe, Asia, and growth in intra-state investment in Africa⁷¹. These developments have led to a demand for legal frameworks that protect investments and offer robust investor-state dispute

⁶⁴ Kariuki. F., ‘Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.’ Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successeschallenges-and-opportunities-1.pdf> (Accessed on 13/07/2024)

⁶⁵ Muigua. K., ‘Alternative Dispute Resolution and Access to Justice in Kenya.’ Glenwood Publishers Limited, 2015

⁶⁶ Tiekü. T. K., ‘Lessons learned from mediation by an African regional Organization’ Available at https://peacemaker.un.org/sites/peacemaker.un.org/files/LessonsLearnedfromMediationbyanAfricanRegionalOrg_Tiekü2011.pdf (Accessed on 13/07/2024)

⁶⁷ Ibid

⁶⁸ Muigua. K., ‘Reframing Conflict Management in the East African Community: Moving from Alternative to ‘Appropriate’ Dispute Resolution’ Available at <https://kmco.co.ke/wp-content/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Moving-from-Alternative-to-Appropriate-Dispute-Resolution-1.pdf> (Accessed on 13/07/2024)

⁶⁹ ALN Africa., ‘Africa’s Growing Dispute Resolution Landscape’ Available at <https://aln.africa/wp-content/uploads/2023/06/Africas-Growing-Dispute-Resolution-Landscape.pdf> (Accessed on 13/07/2024)

⁷⁰ Ng, J., & Iyodu, B. (2019). ‘After the CFTA : Could African states seize the opportunities of the Singapore Convention on Mediation?’ *Africa Current Issues*, (2019) 5.

⁷¹ Ibid

resolution mechanisms⁷². In addition, development of the African Continental Free Trade Area (AfCFTA) is appropriately designed to deepen economic integration, foster trade and investment, enhance the mobility of capital and labour, support industrialization, and the development of a dynamic services sector in Africa⁷³. In light of these developments, it has become imperative to adopt effective dispute management processes to deal with commercial disputes that flow from the increased business and investment activities in Africa.

The Singapore Convention alongside the Model Law will permit enforcement of mediated settlement agreements in signatory countries⁷⁴. In addition, it has been opined that African states that ratify the Convention and incorporate its key provisions in their existing domestic laws on mediation will greatly streamline the processes for international businesses looking for entry points into the continent but are concerned about relationship preservation or enforceability of settlements⁷⁵. Adopting the Singapore Convention is therefore key in strengthening domestic mediation environments in Africa⁷⁶. It is also key in helping African countries reap from the full benefits of the AfCFTA and other regional and continental agreements⁷⁷. The Agreement establishing the AfCFTA envisions the use of mediation in managing commercial disputes in the continent⁷⁸. It has been noted that while the AfCFTA provides for mediation as a mode of dispute resolution, it is silent as regards its binding nature as

⁷² Ibid

⁷³ United Nations., 'Africa's Free Trade on Track, More Efforts Needed.' Available at [https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of,day\)%2C%20according%20to%20UNCTAD](https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of,day)%2C%20according%20to%20UNCTAD) (Accessed on 13/07/2024)

⁷⁴ Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the Singapore Convention on Mediation?' Op Cit

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ African Union., 'Agreement Establishing the African Continental Free Trade Area.' Available at https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf (Accessed on 13/07/2024)

envisioned by the Singapore Convention⁷⁹. However, should more African state parties who are signatories to the AfCFTA be also signatories to the Singapore Convention, an avenue for establishing binding, enforceable and recognized international mediation settlement agreements will have been established⁸⁰. The Singapore Convention is therefore suitable in enforcing mediated agreements within the context of the AfCFTA which is key in boosting Intra-African trade⁸¹.

One of the key challenges related to mediation as a dispute resolution mechanism has always been in the inability to enforce the agreements that flow from the mediation process in the event of non-compliance by parties⁸². Further, it has been noted that certain circumstances, accepting to and engaging the process of mediation is confronted by this singular challenge from the outset⁸³. This concern is particularly heightened with respect to commercial mediation where there is need to enforce mediated agreements in order to protect business interests⁸⁴. The Singapore Convention therefore provides governments and business entities in Africa and across the globe, an opportunity to engage in and utilize another mechanism for resolution of international commercial transactions without necessarily resorting to arbitration⁸⁵. By guaranteeing enforcement of mediated agreements, the Singapore Convention will enhance the growth of commercial mediation in Africa⁸⁶.

It has been noted that there is there is inadequacy of an efficient and harmonised framework for cross-border enforcement of settlement agreements resulting from

⁷⁹ Mediation: Challenges and Prospects for African States' Op Cit

⁷⁹ Nairobi Centre for International Arbitration., 'NCIA & the Singapore Convention in the Context of the AfCFTA' Op Cit

⁸⁰ Ibid

⁸¹ Ibid

⁸² African Arbitration Association., 'The Singapore Mediation Convention: A Game Changer for Mediation in Cross-Border Disputes?' Available at <https://afaa.ngo/page-18097/10399137> (Accessed on 13/07/2024)

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

mediation which is a major challenge to the use of mediation within the commercial community in Africa⁸⁷. There have been concerns among the business community in Africa that any settlement agreement arrived upon in mediation is not immediately executable should one or the other breach the terms of the agreement⁸⁸. On the other hand in arbitration and litigation there is an award or an order obliging the parties to comply, failing which there are court sanctioned consequences⁸⁹. These concerns have resulted in the underutilization of mediation in managing commercial disputes in Africa⁹⁰. However, the African experience shows that mediation is a useful tool in managing disputes⁹¹. It is vital in preserving relationships which is very key in the business world⁹². Further, if successful, mediation is much more efficient than litigation and arbitration – saving not only money, but also time, and the dispute is settled by the parties themselves and not a third-party arbitrator or judicial officer⁹³. In addition, mediation also eases the burden placed on courts by reducing the number of disputes they need to adjudicate therefore enhancing access to justice⁹⁴.

Adopting and implementing the Singapore Convention can therefore enhance the Africa experience with mediation by streamlining the enforcement of mediated agreements⁹⁵. It is therefore imperative for all African countries to adopt and implement the Singapore Convention in order to boost international commercial mediation in the continent⁹⁶. However, the Singapore Convention can create some challenges in enforcing mediated

⁸⁷ Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

⁸⁸ CDH., 'International Dispute Resolution in Africa' Available at <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/news/publications/2022/Practice/Dispute/Downloads/International-Dispute-Resolution-in-Africa-22-June-2022.pdf> (Accessed on 13/07/2024)

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Muigua. K., 'Resolving Conflicts through Mediation in Kenya' Op Cit

⁹² Ibid

⁹³ CDH., 'International Dispute Resolution in Africa' Op Cit

⁹⁴ Ibid

⁹⁵ Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

⁹⁶ Ibid

agreements in Africa. It has been noted that since the signatory states are permitted to enforce settlement agreements in accordance with their respective local rules, this could create a lot of uncertainty which could cause a lot of hindrances to the Convention's success and hinder effective enforcement of mediated agreements⁹⁷. It is imperative to address such challenges in order to boost the Africa experience in enforcing mediated agreements under the Singapore Convention.

4.0 Conclusion

It is imperative for all African countries to adopt and implement the Singapore Convention in order to enhance the African experience on enforcing mediated agreements. Embracing the Singapore Convention will facilitate the growth of international commerce and promote the use of international mediation around the world especially in Africa as evidenced in international arbitration⁹⁸. It will also boost trade and investments in Africa including Intra-African trade by providing a robust investor-state dispute resolution mechanism through international commercial mediation⁹⁹. At the moment only a few African countries have adopted the Singapore Convention¹⁰⁰. It is vital for all countries to adopt and implement the Singapore Convention in order to boost the growth of international commercial mediation in the continent through effective enforcement of mediated agreements.

Further, it is necessary for all African countries to enact domestic legislations on mediation to not only give effect to the Singapore Convention but to also capture Africa's

⁹⁷ VIA Mediation Centre., 'Singapore Convention on Mediation: Viability & Challenges' Available at <https://viamediationcentre.org/readnews/MzA1/Singapore-Convention-on-Mediation-Viability-Challenges#:~:text=The%20Convention%20does%20not%20state,lot%20of%20confusion%20and%20uncertainty>. (Accessed on 13/07/2024)

⁹⁸ Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

⁹⁹ Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the Singapore Convention on Mediation?' Op Cit

¹⁰⁰ Singapore Convention on Mediation., 'Jurisdictions' Available <https://www.singaporeconvention.org/jurisdictions> (Accessed on 13/07/2024)

view on mediation¹⁰¹. It has been correctly opined that there is a need to set up legal and institutional frameworks at national levels in order to facilitate the uptake and practice of mediation in Africa¹⁰². The legal frameworks should among other things, provide for who should act as the competent authority for the purposes of enforcing mediated agreements under the Singapore Convention¹⁰³. Further, in institutionalizing mediation for purposes of the Singapore it is imperative to preserve its key attributes such as flexibility, informality, privacy and confidentiality¹⁰⁴. For African countries to fully benefit from the Singapore Convention it is necessary to have both regulatory (including domestic laws and policies on mediation) and institutional (courts, judiciary, mediation practitioners, and mediation institutions) frameworks in place¹⁰⁵. African countries should also consider establishing regional institutional frameworks on mediation in order to boost trade and commerce in the continent and further enable it to benefit from the AfCFTA and other regional agreements through appropriate dispute resolution processes¹⁰⁶. Strengthening legal, policy, and institutional frameworks is thus key in bolstering the African experience on enforcing mediated agreements under the Singapore Convention.

Further, in order to capture the African perspective on mediation, African countries can consider adopting the Singapore Convention with necessary modifications that reflect their local circumstances¹⁰⁷. For example, African countries can consider adopting the Convention with necessary modifications to allow for the conduct of mediation

¹⁰¹ Nairobi Centre for International Arbitration., 'NCIA & the Singapore Convention in the Context of the AfCFTA' Op Cit

¹⁰² Muigua. K., 'The Singapore Convention on International Settlement Agreements Resulting from Mediation: Challenges and Prospects for African States' Op Cit

¹⁰³ Ibid

¹⁰⁴ Muigua. K., 'Fusion of Mediation and Other ADR Mechanisms with Modern Dispute Resolution in Kenya: Prospects and Challenges.' Available at <http://kmco.co.ke/wpcontent/uploads/2022/11/Fusion-of-Mediation-and-Other-ADR-Mechanisms-with-Modern-DisputeResolution-in-Kenya-Prospects-and-Challenges.pdf> (Accessed on 13/07/2024)

¹⁰⁵ Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the Singapore Convention on Mediation?' Op Cit

¹⁰⁶ Ibid

¹⁰⁷ Muigua. K., 'Adopting the Singapore Convention in Kenya: Insight and Analysis' Op Cit

proceedings in local languages¹⁰⁸. This will be key in enhancing the African experience on mediation.

As other regions are taking the lead in international commercial mediation, African states should follow suit by developing their regulatory and institutional frameworks to match current developments in the international commercial mediation landscape, narrowing gaps, harmonising policy and practice, and building skills¹⁰⁹. The Singapore Convention is a much welcome idea in the mediation landscape in Africa. It is imperative for all Africa countries to adopt and implement the Convention in order to boost the African experience in mediation through an effective framework for enforcing mediated agreements.

¹⁰⁸ Ibid

¹⁰⁹ Ng, J., & Iyodu, B. (2019). 'After the CFTA : Could African states seize the opportunities of the Singapore Convention on Mediation?' Op Cit

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