

<https://doi.org/10.22363/2313-2337-2025-29-3-733-746>

EDN: ARYCQL

Research Article / Научная статья

Virtual arbitration and mediation in Rwanda and Republic of South Africa: Challenges, opportunities, and implications for African jurisdictions and international cooperation

Ekaterina P. Rusakova^{1,2}, Tatyana A. Chernysheva¹

¹ RUDN University, Moscow, Russian Federation

² Vladivostok State University, Vladivostok, Russian Federation

✉ rusakova-ep@rudn.ru

Abstract. Digitalization has become a defining factor in the development of economies and societies in the 21st century, and African countries are no exception. Despite significant challenges – including widespread poverty, limited electricity and internet access, and low incomes – many nations have managed to enhance their investment attractiveness while safeguarding the rights and interests of citizens and businesses. This article examines the regulatory frameworks of the Kigali International Arbitration Center and the Arbitration Foundation of South Africa, focusing on procedural aspects of virtual arbitration and mediation. Particular attention is given to the challenges and opportunities for strengthening international cooperation in alternative dispute resolution in Rwanda and the Republic of South Africa. The study employs comparative analysis to assess the development of virtual arbitration and mediation, as well as causal and systemic analysis to identify the main advantages and disadvantages of integrating innovative technologies into alternative dispute resolution mechanisms. Based on dialectical methods, the article proposes directions for further improving digitalization in African countries.

Key words: virtual process, alternative dispute resolution, arbitration, mediation, Africa, Rwanda, South Africa

Conflict of interest. The authors declare no conflict of interest.

The authors' contribution: *Rusakova E.P.* – section 1, analysis, conclusion; *Chernysheva T.A.* – introduction, general part, section 2. Both authors reviewed and approved the final version of the article.

Funding. The research was supported by Russian Science Foundation Grant No. 24-28-01022, <https://rscf.ru/project/24-28-01022/>

Received: 01st June 2025

Accepted: 15th July 2025

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For citation:

Rusakova, E.P., Chernysheva, T.A. (2025) Virtual arbitration and mediation in Rwanda and republic of South Africa: Challenges, opportunities, and implications for African jurisdictions and international cooperation. *RUDN Journal of Law*. 29 (3), 733–746. <https://doi.org/10.22363/2313-2337-2025-29-3-733-746>

Особенности и перспективы развития виртуального арбитража и медиации в Руанде и Южно-Африканской Республике: новый фактор развития Африканских юрисдикций и укрепления международного сотрудничества

Е.П. Русакова^{1,2}  , Т.А. Чернышева¹ 

¹ Российский университет дружбы народов, г. Москва, Российская Федерация

² Владивостокский государственный университет, г. Владивосток, Российская Федерация
 rusakova-ep@rudn.ru

Аннотация. На сегодняшний день процессы цифровизации стали определяющим фактором XXI века в развитии экономики, общества и государств. Страны африканского континента не стали исключением. Несмотря на сдерживающие факторы, одни из которых выражаются в бедности населения, недостаточности электричества, покрытия сети Интернет, низком уровне дохода, многие страны смогли найти путь не только обеспечения привлекательности своих государств для инвестиций, но также гарантировать защиту прав и законных интересов граждан и хозяйствующих субъектов. В статье рассматриваются регламенты Кигалийского международного арбитражного центра и Арбитражного фонда Южной Африки. Анализируются процессуальные аспекты проведения виртуального арбитража и процедуры медиации. Особое внимание уделяется проблемам и возможностям укрепления международного сотрудничества в сфере альтернативного разрешения споров в Руанде и Южно-Африканской Республике. В рамках исследования использовался метод сравнительного анализа, с помощью которого проводилось сопоставление уровня развития виртуального арбитража и медиации, а методы причинно-следственного и системного анализа, позволили выделить основные позитивные и негативные аспекты интегрирования инновационных технологий в механизмы альтернативного разрешения споров. На основании диалектических методов познания процесса цифровизации были сформулированы направления по совершенствованию данного процесса в странах Африки.

Ключевые слова: виртуальный процесс, альтернативное разрешение споров, арбитраж, медиация, Африка, Руанда, ЮАР

Конфликт интересов. Авторы заявляют об отсутствии конфликта интересов.

Вклад авторов: Русакова Е.П. – раздел 1, анализ, заключение; Чернышева Т.А. – введение, общая часть, раздел 2. Оба автора ознакомились с окончательной версией статьи и одобрили ее.

Финансирование. Исследование поддержано грантом Российского научного фонда № 24-28-01022, <https://rscf.ru/project/24-28-01022/>

Поступила в редакцию: 01 июня 2025 г.

Принята к печати: 15 июля 2025 г.

Для цитирования:

Русакова Е.П., Чернышева Т.А. Особенности и перспективы развития виртуального арбитража и медиации в Руанде и Южно-Африканской Республике: новый фактор развития Африканских юрисдикций и укрепления международного сотрудничества // RUDN Journal of Law. 2025. Т. 29. № 3. С. 733–746. <https://doi.org/10.22363/2313-2337-2025-29-3-733-746>

The trajectory of digital development in Africa

The international community today is increasingly focused on digitalization across both public and private sectors. While advanced economies lead in digital development, less developed countries experience delays in adopting these processes. This uneven digital penetration affects the opportunities states provide their citizens. Importantly, digitalization is becoming a key driver of new digital partnerships and increased investment flows for cross-border projects.

African states possess significant economic potential (Ermakova et al., 2020:148). However, economic challenges such as population decline, delayed investments in electricity infrastructure, limited internet coverage, and digital literacy have hindered progress in digital rights and public service delivery.

Despite these challenges, Africa has seen notable advances in multilateral cooperation and investment in innovative business initiatives (Miashchanava, 2022:83). For example:

- MainOne, a Nigerian telecom provider, delivers network solutions across West Africa, while its subsidiary MDX-i offers hybrid cloud services with virtual servers¹.
- Kuda, a Nigerian fintech startup, is developing a digital bank with account opening, debit card, and lending services².
- In Rwanda, Zipline collaborates with the government to use drones for delivering blood and medicine to remote areas³.
- Kenya hosts WaystoCap, a platform⁴ offering cost-effective trading, financing and insurance solutions for African companies.
- The Democratic Republic of Congo is implementing blockchain technology to track the entire cobalt supply chain – from bush mines to end products like smartphones and electric vehicles.

¹ Africa. Business Communities. MainOne investment in West Africa's internet infrastructure reaches \$400 million. URL: [https://africabusinesscommunities.com/tech/tech-news/mainone-investment-in-west-africas-internet-infrastructure-reaches-\\$400-million/](https://africabusinesscommunities.com/tech/tech-news/mainone-investment-in-west-africas-internet-infrastructure-reaches-$400-million/) (date of access: 25.03.2025).

² RBC. Drones with medicines and sberknizhki "in digital": how IT is developing in Africa. URL: <https://trends.rbc.ru/trends/industry/62beb75b9a79476aa6fc78da> (date of access: 25.03.2025).

³ Red Spring. Medical problems of Rwandans will be solved with the help of drones. URL: <https://rossaprimavera.ru/news/2a0fb42e> (date of access: 25.03.2025).

⁴ Incubate Africa. Kenya's Sokowatch, Asoko Insight, WaystoCap, TousFacteurs & MaxAB raise funding from Morocco-based Outlierz Ventures. URL: <https://incubateafrica.net/kenyas-sokowatch-asoko-insight-waystocap-tousfacteurs-maxab-raise-funding-from-morocco-based-outlierz-ventures/> (date of access: 25.03.2025).

Integrating digital technologies into dispute resolution mechanisms

To ensure proper legal regulation of the development and implementation of innovative technologies, including artificial intelligence, robotic complexes and autonomous digital algorithms within the judicial system, it is essential to establish a comprehensive regulatory and value framework. We propose that this framework be based on a three-tiered regulatory system:

1. International and regional regulations, which form the foundational legal framework;
2. National legislation and local regulations, which specify general provisions tailored to the specifics of the national legal field;
3. Ethical norms, professional standards and principles, which serve as unwritten rules defining the moral boundaries for the use of digital technologies in the judiciary.

The proposed triad of regulatory frameworks is designed to provide systematic legal support for the digitalization of public relations, establish a reliable methodological foundation for the development of digital jurisprudence, and create common standards for the use of modern technologies in judicial activities. Special attention should be given to developing clear legal definitions and fundamental principles that will underpin the formation of digital legal relations in society and guide the evolution of legal regulation in the digitalization of legal proceedings.

Turning to the legal sector, it is noteworthy that countries such as South Africa, Ghana, Rwanda, and Kenya have developed electronic court document management systems that simplify tracking of applications, complaints, and other documents for lawyers and litigants (Soloviev & Yastrebov, 2024:32). Additionally, South Africa, Nigeria, Egypt, Kenya (Rusakova 2020:20), and Ghana are actively developing legislation on digital evidence and its evaluation by judges (Rusakova & Falkina, 2024:55). *Pro-bono* digital service delivery is also advancing in Uganda (Rusakova & Chernysheva, 2024:618), alongside initiatives such as JSDS Case Management Version 2.0 and the Tanzania Advocates Management System (TAMS), which support training and professional development for Tanzanian advocates and lawyers (Bashilov, 2024:66). To enhance transparency in government contracting, South Africa has launched the HiveOnline project based on blockchain technology⁵.

The global SARS-CoV-2 pandemic (Rusakova & Frolova, 2022:190) acted as a significant catalyst, accelerating the adoption of digital technologies in judicial systems and human rights protection mechanisms across Africa. This led to a marked virtualization of relevant procedures and processes.

For the international community, particularly Russia and the CIS countries, African states have long been priority partners in international relations. Today, several African countries have become strategically important partners for the Russian Federation in navigating political and economic pressures from unfriendly states. This has spurred increased international projects in education, digital services⁶, geological exploration (e.g., the Luashe project for developing the Luele diamond pipe near the Katoka deposit with

⁵ Red Social Innovation. Hiveonline – a start-up that facilitates access to micro-credit for African farmers. URL: <https://red-social-innovation.com/en/solution/hiveonline-start-up-facilitates-access-microcredit-african-farmers/> (date of access: 25.03.2025).

⁶ World Bank Group. From Connectivity to Services: Digital Transformation in Africa. URL: <https://www.worldbank.org/en/results/2023/06/26/from-connectivity-to-services-digital-transformation-in-africa> (date of access: 25.03.2025).

estimated reserves of 350 million carats), offshore projects of Chevron and Lukoil in Nigeria, manganese ore mining in South Africa, and more.

Undoubtedly, the improvement of the investment climate in African countries has led to an increase in litigation among major companies, including those with state participation. It is important to note that African jurisdictions are becoming not only attractive for Russian businesses but also economically necessary⁷ (Ermakova et al., 2020:150). For example, following the imposition of unilateral restrictive measures against the Russian Federation, several Russian TV channels faced blocking of their media content. The estimated damages amounted to \$20 decillion, prompting these channels to file claims against Google, the parent company of YouTube⁸.

Since recovering such funds from Google within the Russian Federation is impossible, the jurisdiction of the Republic of South Africa was chosen, as it is not listed among the “unfriendly” states. Therefore, there is a high probability that a judgment by Russian courts could be enforced in South Africa (Begichev, 2024:425). It is also worth noting the active development of economic relations within BRICS, of which South Africa is a full member (Berman, 2022:40).

Meanwhile, Rwanda’s GDP has grown over the last twenty years from \$1.7 billion to \$13.3 billion, with an economic growth rate of 8%. Given Rwanda’s expanding international partnerships, exploring alternative dispute resolution mechanisms in a virtual format appears necessary to enable large international investors to protect their interests effectively.

Rwanda: Kigali International Arbitration Center (KIAC)

The Kigali International Arbitration Center (KIAC) has been the sole institution in Rwanda supporting the development of alternative dispute resolution mechanisms since 2012. While promoting international arbitration in the region, KIAC also offers mediation services and provides administrative and technical assistance for ad hoc arbitration upon parties’ request. Mediation at KIAC is conducted under the KIAC Mediation Rules (2015)⁹, and international arbitration is governed by the 2012 KIAC Rules¹⁰ (hereinafter referred to as the KIAC Regulations).

KIAC is recognized as one of Africa’s leading arbitration centers, partly due to the strong statutory grounds for setting aside arbitral awards under Law No. 005/2008 on Arbitration and Conciliation in Commercial Matters. These grounds have been consistently upheld by Rwandan courts in challenges to KIAC arbitral awards.

For instance, in May 2021, Rwandan Courts confirmed an arbitral award by rejecting the Rwandan Tax Authority’s challenge. The Tax Authority claimed its right to defense was violated when its request to summon witnesses was denied. However, the court ruled it lacked jurisdiction to review the award on the merits and noted the request was submitted

⁷ Ermakova, E. P., Inshakova, E., Frolova, E. E., Shakirov S. S. (2020). Supporting inclusive growth and sustainable development in Africa: Sustainability in Infrastructure Development. Vol. 1, 147–161.

⁸ Forbes. Why Russian channels are suing Google in South Africa and whether they will be able to recover undecillions. URL: <https://www.forbes.ru/mneniya/524230-pocemu-rossijskie-kanaly-sudatsa-s-google-v-uar-udatsa-li-im-vzyskat-undecilliony?ysclid=m8rcbhgc2653500213> (date of access: 25.03.2025).

⁹ Kigali International Arbitration Center. Arbitration rules. URL: <https://kiac.org.rw/rules-and-law/arbitration-rules/> (date of access: 25.03.2025).

¹⁰ Kigali International Arbitration Centre. Arbitration rules. URL: <https://kiac.org.rw/rules-and-law/arbitration-rules/> (date of access: 25.03.2025).

six months after the evidentiary deadline, justifying its rejection. Such support reinforces confidence in arbitration as an effective dispute resolution mechanism¹¹.

Notably, Article 28(1) of the KIAC Rules imposes an imperative obligation on both the arbitral tribunal and parties to ensure proceedings are optimized in terms of time and resources, considering the case's complexity and its socio-economic significance. This provision embodies the principle of procedural economy, a cornerstone of modern arbitration practice.

Paragraph 4 of Article 28 of the KIAC Rules mandates an in-person preliminary meeting immediately after the arbitral tribunal's formation. This measure aims to minimize procedural default risks and establish a unified process trajectory, thereby avoiding delays and strengthening procedural discipline.

In accordance with Article 23(2) of the Rules, the arbitral tribunal has discretionary power to determine the geographical location of the hearing, underscoring the flexibility of arbitration procedures. However, a legal fiction is established: regardless of the actual venue, procedural actions are deemed to have occurred at the arbitration institution's location. This is crucial for resolving conflicts in defining the *lex arbitri* and the place of adjudication, correlating with the doctrine of the "legal seat of arbitration".

Additionally, Paragraph 2 of Article 35 of the KIAC Rules outlines a two-level mechanism for establishing factual circumstances: mandatory examination of written evidence and optional oral arguments. While the arbitral tribunal must consider written submissions, oral hearings become mandatory only upon request. Nevertheless, the tribunal retains the right to initiate them *ex officio*, balancing the principle of party autonomy with the tribunal's power to manage the process.

Article 36(3) of the Rules of Procedure guarantees equal procedural opportunities for parties to participate personally or through authorized representatives, aligning with international fair trial standards and the principle of equality of arms. This provision ensures non-discrimination in access to justice and upholds procedural fairness.

Thus, the KIAC Rules currently provide exclusively for in-person participation of parties or their representatives and do not explicitly allow for virtual hearings.

Regarding the language of arbitration, Article 26 of the KIAC Rules states that, unless otherwise agreed by the parties, the arbitral tribunal determines the language(s) of the arbitration, considering all relevant circumstances, including the contract's language.

The KIAC Rules also establish imperative requirements for linguistic conformity of documents, obliging parties to provide materials in the language of the proceedings. If documents are submitted in another language, the arbitral tribunal or the Secretariat may request translations, ensuring procedural fairness and equitable access to evidence. This provision aligns with generally recognized standards of equality of arms, ensuring the language barrier does not impede effective rights protection.

Of particular interest is the institution of the emergency arbitrator, introduced by the KIAC Rules to optimize the resolution of urgent disputes. According to Article 4(2) of Annex 1, interaction with the emergency arbitrator can take place both in person (physically present at a geographically convenient location) and through remote technologies, including videoconferencing. This flexibility reflects the principle of technological neutrality and aims to minimize time costs without compromising procedural integrity.

¹¹ Hogan Lovells. Looking at 10 years of the Kigali International Arbitration Centre. URL: <https://www.hoganlovells.com/en/publications/looking-at-10-years-of-the-kigali-international-arbitration-centre> (date of access: 25.03.2025).

At the same time, Article 35 of Annex 1 establishes a strict procedural timeframe: the emergency arbitrator must develop a case schedule within 48 hours of accepting the proceedings, guided by the principles of proportionality and urgency, in line with the doctrine of effective remedies.

Conflict-of-laws issues regarding the place of arbitration are resolved through the parties' autonomy of will. If the parties agree on the arbitration location, it is recognized as the place of emergency arbitration, thus establishing legal certainty. In the absence of such an agreement, jurisdiction defaults to the arbitration institution under Article 23 (1) of the KIAC Rules, ensuring subsidiary regulation and preventing procedural gaps. Regardless of the interaction format (offline or online), the emergency arbitrator must strictly adhere to the principles of impartiality and due process, guaranteeing parties equal opportunities to present their positions, including the right to oral arguments if requested, and prohibiting unilateral (*ex parte*) communications.

Given these provisions and the fact that the KIAC Rules have not been amended since the institution began its work, virtual hearings in international arbitration are currently possible only through the involvement of an emergency arbitrator.

Turning to mediation, Part 3, Article 8 of the KIAC Mediation Rules states that the mediator shall conduct the procedure in a manner they deem appropriate, considering the case circumstances, the parties' wishes, and the need for a prompt resolution. The mediator has no authority to impose a settlement on the parties.

According to Article 8.5 of the KIAC Mediation Rules, the mediator retains the right to choose the interaction format with the parties, including holding joint (plenary) or separate (caucus) meetings with the parties and/or their representatives. This provision embodies the principle of procedural flexibility, a cornerstone of mediation doctrine, ensuring the process adapts to the unique characteristics of each conflict.

This authority enables the mediator to optimize the communication strategies, minimize escalation of disputes, and create conditions for confidential dialogue in "closed" sessions. At the same time, maintaining mediator neutrality and respecting the principle of voluntariness remain essential to prevent abuse of discretionary powers.

Thus, it appears that mediation procedures can be conducted in a virtual format.

Undoubtedly, the development of virtualization of alternative dispute resolution mechanisms across the African continent have been significantly influenced by the pandemic. For example, in 2023 (January-December), KIAC registered 22 companies. Of the total disputes, 78% were domestic, while 22% (230 cases from 24 countries) were international, involving participants from Rwanda, Kenya, China, Luxembourg, Mauritius, and other countries¹². KIAC also provided logistical support in three arbitration cases and registered two mediation cases, one of which was successfully concluded.

It is worth noting that the increased interest of international companies in arbitration has been closely linked to the availability of fully virtual proceedings (where parties may appear in person or send representatives to specially equipped rooms), despite the fact that the KIAC Rules and KIAC Mediation Rules have not yet been amended to explicitly reflect these formats¹³.

¹² Kigali International Arbitration Centre (KIAC). KIAC 2023 IN A NUTSHELL. URL: <https://kiac.org.rw/kiac-2023-in-a-nutshell/> (date of access: 25.03.2025).

¹³ There has been an increase in the number of hearings conducted virtually. In 2023, 27% of hearings were hybrid, and 12% were purely virtual. Combined, hybrid and virtual hearings accounted for 39%, of all hearings, up from 36% in 2022.

Republic of South Africa: Arbitration Foundation of South Africa (AFSA International)

The Arbitration Foundation of South Africa (AFSA) was established in June 1996 with the primary aim of resolving domestic disputes within the country. Since 2017, AFSA has also handled disputes involving foreign elements. International arbitration in South Africa is governed by the International Arbitration Act No. 15 of 2017, which incorporates the UNCITRAL Model Law on International Commercial Arbitration.

According to AFSA statistics from 2013 to 2023, the financial sector accounted for 33% of all cases before AFSA. Disputes in the energy and natural resources sector comprised 20%, industry and manufacturing 12%, and raw materials and trade 10%, making these the second most arbitrated sectors¹⁴.

AFSA regulates international commercial arbitration through the AFSA International Arbitration Rules (the AFSA Rules). Similar to KIAC, AFSA also offers mediation services governed by the AFSA Mediation Rules.

South African national courts support alternative dispute resolution by upholding principles such as the autonomy of the arbitration agreement, severability, and competence-competence.

The autonomy of the arbitration agreement was reaffirmed by the Supreme Court of Appeal of South Africa in the May 17, 2022¹⁵ (“Tee Que case”). The Court emphasized that court proceedings cannot commence if the parties have an arbitration agreement that has not been declared null and void by the Court.

In 2023, Lukoil PJSC, Russia’s largest energy company, applied to the KwaZulu-Natal High Court (Justice. S. Bezuidenhout) to resolve a dispute over the return of Lukoil Marine Lubricants DMCC goods by Natal Energy Resources and Commodities¹⁶. The Court upheld the existence of the arbitration clause despite the original distribution and sales contract lacking one. This was because the parties subsequently entered into additional agreements concerning storage and sale of goods, which included an arbitration clause specifying dispute resolution in London under English law (Kudryavtseva, 2023: 66). Consequently, the KwaZulu-Natal High Court stayed the court proceedings pending the outcome of the arbitration in England.

It is worth noting that the Supreme Court of Appeal has previously rejected the principle of severability, as seen in *Namasthethu Electrical (Pty) Ltd v City of Cape Town and Another* (201/19)¹⁷. In that case, the court held that the arbitration clause did not apply to disputes arising from a contract concluded through fraudulent misrepresentation.

South African national courts are increasingly adopting a pro-arbitration stance, consistently recognizing the legitimacy and autonomy of arbitration clauses and applying the principle of severability (Hatta Ishaini Wahyu Utomo, 2023: 2957).

¹⁴ Chambers and Partners. International Arbitration 2024. URL: <https://practiceguides.chambers.com/practice-guides/international-arbitration-2024/south-africa> (date of access: 25.03.2025).

¹⁵ Tee Que Trading Services (Pty) Ltd v Oracle Corporation South Africa (Pty) Ltd and Another (No 065/2021) [2022] ZASCA 68 (May 17, 2022).

¹⁶ South African Legal Information Institute (SAFLII). Lukoil Marine Lubricants DMCC v Natal Energy Resources and Commodities (Pty) Ltd (12583/21P) [2023] ZAKZPHC 31 (March 16, 2023). – Text: electronic. URL: <https://www.saflii.org/za/cases/ZAKZPHC/2023/31.html> (date of reference: 25.03.2025).

¹⁷ White’s case. South African High Court confirms that South Africa is a pro-arbitration jurisdiction. – Text: electronic. URL: <https://www.whitecase.com/insight-alert/high-court-south-africa-affirms-south-africa-pro-arbitration-jurisdiction> (date of reference: 25.03.2025).

Regarding the digitalization of AFSA arbitration, the AFSA Rules in force until June 1, 2021 did not explicitly provide for virtual hearings. However, due to the SARS-CoV-2 pandemic and the need to ensure safety and prevent virus spread, the Rules were revised and the updated AFSA Rules came into effect on June 1, 2021¹⁸. These revisions introduced provisions for joining third parties to arbitration hearing, appointment of emergency arbitrators, early dismissal of claims or defenses, and virtual proceedings, among other updates.

It is noteworthy that even before the new Rules were adopted, virtual hearings were conducted using platforms such as Zoom and Microsoft Teams¹⁹.

Article 21(6) of the AFSA Rules grants the arbitral tribunal discretionary authority to determine the hearing format, allowing for both in-person participation and the use of remote technologies (videoconferencing, telephone, or a combination thereof). This reflects the principle of technological neutrality, enabling adaptation to case-specific circumstances such as geographical remoteness, urgency, or force majeure. The tribunal is also empowered to issue binding instructions on interpreting oral statements and recording hearings, underscoring its role in ensuring procedural certainty and minimizing misunderstandings.

Similarly, Article 15(5) of the AFSA Rules details the tribunal's authority to manage the evidentiary process. The tribunal may, upon party request or on its own initiative (with reasonable opportunity for parties to respond), assess the admissibility, relevance, and weight of evidence, including factual data and expert opinions. It also sets the timing and procedural parameters for presenting evidence, balancing party autonomy with procedural economy.

Thus, a two-tier regulatory framework emerges: flexibility in hearing formats (Article 21(6)) optimizes access to justice and reduces costs, aligning with the doctrine of procedural efficiency; while strict evidentiary control (Article 15(5)) ensures due process, prevents abuse, and guarantees equality of arms.

Article 18(1) of the AFSA Rules provides that parties may agree in writing on the place of arbitration. If the parties have not agreed on the place of arbitration, Article 18(2) allows the arbitral tribunal to decide the location, taking into account all relative circumstances.

It should be noted that Article 18(3) of the AFSA Rules grants the arbitral tribunal discretionary authority to determine the geographical location of hearings, allowing them to be held either at a place agreed upon by the parties or at another location chosen by the tribunal at its discretion. This provision reflects the principle of procedural autonomy, ensuring that the arbitration process adapts to the practical needs of the parties – such as participant accessibility and reduction of transaction costs.

At the same time, the Rules establish a legal fiction: even if the hearing takes place outside the official seat of arbitration, the proceedings are deemed to have occurred at the official seat, and all procedural acts, including the arbitral award, are legally attributed to that location.

¹⁸ AFSA. Revision of AFSA International Arbitration Rules. – Text: electronic. URL: <https://arbitration.co.za/international-arbitration/revision-old/> (date of reference: 25.03.2025).

¹⁹ Stephenson Harwood International Arbitration. AFSA's new international arbitration rules set new standards for arbitration in Africa. – Text: electronic. URL: <https://www.arbitrationhub.com/insight/new-afsa-international-arbitration-rules-set-new-standard-arbitration-africa> (date of reference: 25.03.2025).

This approach addresses two key issues:

First, it harmonizes with international standards, such as Article 20(1) of the UNCITRAL Model Law, which recognizes the right of arbitrators to choose the location of hearings without altering the legal seat of arbitration. Second, it maintains legal certainty regarding applicable law, the jurisdiction of state courts, and the enforcement of decisions, thereby avoiding conflicts that could arise from “splitting” the procedure. By fixing the seat of arbitration as the only legally significant locus, compliance with the imperatives of the *lex arbitri* is ensured, including requirements for the form and content of the award. As a result, not only hybrid arbitration but also full-cycle arbitration – with evidence, pleadings, and electronic filing of commencement documents in a virtual format – appears feasible.

With respect to the language of arbitration, Article 20 of the AFSA Rules provides that unless the parties agree otherwise, English shall be the language of the arbitration. However, it should be noted that the current AFSA Mediation Rules do not regulate the virtual form of mediation. Analyzing the above, it is clear that virtual hearings at both KIAC and AFSA offer several advantages, including:

- Cost reduction: Minimizes expenses for transportation and accommodation of parties/representatives.

- Accessibility: Enables global participation in dispute resolution from any location.

Nevertheless, there are also negative aspects in the legal regulation of alternative dispute resolution mechanisms in a virtual format. One of the main concerns is the security and confidentiality of case information transmitted via platforms such as Zoom, MS Teams, or Web Ex in AFSA proceedings (Rusakova & Chernysheva, 2024:17). To address these concerns, AFSA published the Remote Hearing Protocol (RHP), which provides parties with detailed guidance on conducting virtual hearings, particularly regarding the presentation of expert and factual testimony²⁰. Under the RHP, both witnesses and experts are expected to testify from specially equipped rooms with multiple monitors and cameras to ensure visibility. In cases where such technology is unavailable, only the witness (and interpreter, if necessary), technical assistants and party representatives may be present in the remote hearing room. The arbitral tribunal also has the authority to require a witness to provide a 360-degree video view of the premises to ensure no unauthorized third parties are preset, thereby upholding transparency and independence in the arbitration process.

Despite these measures, a systemic challenge in African arbitration remains the technological inequality among parties, stemming from unequal access to digital infrastructure. This disparity creates risks of violating the principle of procedural equality. To mitigate these risks, compensatory mechanisms such as technical briefings, the establishment of virtual hearing centers, and the development of standardized protocols are necessary to reduce dependence on the parties' individual resources. Failure to reach consensus on the virtualization of proceedings may result in challenges to arbitral awards in state courts, a problem exacerbated by regulatory gaps such as the lack of clear rules on confidentiality when using remote technologies, uncertainty regarding party consent for virtual proceedings, and insufficient safeguards to address technological inequalities.

These legal shortcomings could be addressed by incorporating the 2020 African Arbitration Academy Virtual Hearings Protocol, which sets uniform standards for online hearings into the AFSA and KIAC Rules, or by KIAC developing its own protocol that

²⁰ CDH. South Africa moves forward with AFSA's virtual hearing protocol. URL: <https://www.cliffedekkerhofmeyr.com/en/news/publications/2021/Dispute/dispute-resolution-alert-9-march-South-Africa-zooming-forward-with-the-AFSA-virtual-hearing-protocol.html> (date of access: 25.03.2025).

incorporates best practices from the 2020 Protocol, including mechanisms for participant verification, data protection, and balancing the technological capabilities of the parties (Vlasenko, 2025:149).

Thus, harmonizing procedural regulations with technological realities is imperative for African arbitration institutions. This not only minimizes annulment risks but also enhances confidence in regional arbitration systems amid global jurisdictional competition²¹.

The 2020 Virtual Hearing Protocol requires parties to agree on both the virtual hearing process and the specific platform used (Subashin, 2023:2468). Critically, Clause 2.1.5 mandates at least one backup ISP and an alternative virtual platform to address technical failures. Where parties lack necessary technology (Clause 2.1.6), institutions or centers across Africa can provide reliable virtual hearing facilities with required hardware, software and stable connectivity (Ermakova, 2019: 264; Frolova, 2023:480).

The Protocol further establishes technical standards requiring verified internet connectivity and outline minimum cybersecurity requirements in Annex I. When scheduling virtual hearings (Clause 3.1.2), tribunals must consider:

- (i) Participant time zones;
- (ii) Remote locations and tribunal co-location feasibility;
- (iii) Methods for preserving evidence integrity;
- (iv) Participant identification protocols;
- (v) Use of demonstrative tools with universal access.

These criteria collectively ensure fairness and a comprehensive assessment of the situation, enabling equitable awards.

In the context of ensuring the procedural legitimacy of virtual hearings, paragraph 2.3.1 of the 2020 Virtual Hearings Protocol establishes the imperative of concluding a Preliminary Agreement on virtual hearings between the parties prior to the commencement of proceedings. This provision aims to minimize the risk of challenges to arbitral awards in cases where mutual consent or explicit procedural rules for remote technologies are absent.

The need for such an agreement arises from the doctrinal requirement of procedural fairness, which excludes the unilateral imposition of a hearing format that could create an imbalance in the parties' capabilities. The obligation to reach prior agreement on a virtual format serves as a preventive measure against abuse of the right to challenge decisions on grounds of violation of the principle of equality of arms (Article 18 of the UNCITRAL Model Law) or non-compliance with the imperatives of *lex arbitri*.

Critically, the Protocol clarifies that the absence of direct regulation in the arbitration rules does not relieve the parties from the obligation to reach consensus on the technical and procedural aspects of virtualization, which aligns with the generally recognized standards of party autonomy in international arbitration.

However, the Virtual Hearing Protocol 2020 also empowers the arbitral tribunal to order virtual evidence hearing when necessary and appropriate, following party consultation.

Thus, implementing the provisions of the 2020 Protocol in the practice of AFSA and KIAC will not only formalize the procedure for concluding a Preliminary Agreement but also create legal certainty regarding evidence admissibility obtained during virtual hearings. This aligns with the global trend toward digitalization of the arbitration process while balancing flexibility and procedural guarantees.

²¹ Baker McKenzie. Developing an Innovative Protocol for Virtual Arbitration Hearings in Africa. URL: <https://www.globalarbitrationnews.com/2020/06/25/innovative-protocol-developed-for-virtual-arbitration-hearings-in-africa/> (date of access: 25.03.2025).

Conclusion

Given the above, it can be argued that the digital footprint has significantly influenced the virtualization of dispute resolution in Rwanda and South Africa. However, there remains a pressing need to regulate virtual hearings, testimony, provision and exchange of evidence, as well as the roles of experts and interpreters. Addressing these gaps is best achieved by applying the recommendations of the African Arbitration Academy as outlined in the 2020 Protocol on Virtual Hearings. Additionally, new platforms should be developed or existing videoconferencing systems extended to facilitate hearings involving investors and business project representatives from the Russian Federation.

The challenges of establishing virtual arbitration and mediation highlight unsolved issues and obstacles to integrating advanced technology into alternative dispute resolution mechanisms. These challenges also expose conflicts between existing legal institutions and the digitalization process. The risks associated with digital transformation must be understood as potential negative consequences for both the state and society if the digital agenda is implemented without adequate legal framework. This study underscores these threats and risks to enable their prevention, guide preventive measures, and provide an optimal development path in this area.

For many African countries, digital inequality, digital divide, lack of digital trust, underdeveloped IT infrastructure, and unstable internet access in remote areas remain significant barriers to integrating advanced technology into alternative dispute resolution mechanisms.

References / Список литературы

- Bashilov, B.I. (2024) Digitalization of Judicial Proceedings in African Countries: State and Paths of Development. *Herald of Perm University. Legal Sciences*. (4 (66)), 615–624. (in Russian) <https://www.doi.org/10.17072/1995-4190-2024-66-615-624>
- Башилов Б.И. Цифровизация судопроизводства в странах Африки: состояние и пути развития // Вестник Пермского университета. Юридические науки. № 4 (66). 615–624. <https://www.doi.org/10.17072/1995-4190-2024-66-615-624>
- Begichev, A.V. (2024) The relationship between notarial and judicial procedures for securing evidence in the digital age. *Legal support for Russia's sovereignty: Problems and prospects: Collection of reports of the XXIV International Scientific and Practical Conference and the XXIV International Scientific and Practical Conference of the Law Faculty of Moscow State University. Lomonosov within the framework of the XIII Moscow Legal Week. In 4 parts, Moscow, November 21–24, 2023*. Moscow, Publishing Center of O.E. Kutafin University (MSAL), pp. 424–426. EDN PKVXRE (in Russian).
- Бегичев А.В. Соотношение нотариальной и судебной процедуры обеспечения доказательств в цифровую эпоху // Правовое обеспечение суверенитета России: проблемы и перспективы: сборник докладов XXIV Международной научно-практической конф. и XXIV Межд. науч-практической конференции Юридического факультета МГУ им. М.В. Ломоносова в рамках XIII Моск. юридической недели: в 4 частях, Москва, 21–24 ноября 2023 года. М. : Издательский центр Университета имени О.Е. Кутафина (МГЮА), 2024. С. 424–426. EDN: PKVXRE.
- Berman, A.M. (2022) Problems of recognition and enforcement of foreign arbitration awards on the territory of the Russian Federation. *Eurasian Law Journal*. (10 (173)), 39–42. (in Russian). EDN: UVCERK
- Берман А.М. Проблемы признания и приведения в исполнение иностранных арбитражных решений на территории Российской Федерации // Евразийский юридический журнал. 2022. № 10 (173). С. 39–42. EDN: UVCERK.

- Frolova, E.E. & Kupchina, E.V. (2023) Digital tools for protecting intellectual property rights: On the example of blockchain and artificial intelligence. *Bulletin of Perm University. Legal sciences*. (61), 479–498. (in Russian). <https://www.doi.org/10.17072/1995-4190-2023-61-479-498>
Фролова Е.Е., Купчина Е.В. Цифровые инструменты защиты прав на интеллектуальную собственность: на примере блокчейн и искусственного интеллекта // Вестник Пермского университета. Юридические науки. 2023. № 61. С. 479–498. <https://www.doi.org/10.17072/1995-4190-2023-61-479-498>.
- Ermakova, E.P. (2019) *Civil Process, Arbitration, and Mediation in the Countries of North Africa (Algeria and Egypt)*. Moscow, Infotropic Media Publ. (in Russian).
Ермакова Е.П. Гражданский процесс, арбитраж и медиация в странах Северной Африки (Алжир и Египет). М. : Инфотропик Медиа, 2019. 264 с.
- Ermakova, E. P., Inshakova, E., Frolova, E. E. & Shakirov, S. Sh. (2020) Supporting inclusive growth and sustainable development in Africa: Sustainability in Infrastructure Development. 1, 147–161 (in Russian).
Ермакова Е. П., Иншакова Е. Е., Фролова Е. Е., Шакиров С.Ш. Поддержка инклюзивного роста и устойчивого развития в Африке: устойчивость в развитии инфраструктуры. 2020. Т. 1. С. 147–161.
- Frolova, E.E., Inshakova, A.O., Ermakova, E.P. & Shakirov, S.Sh. (2020) *The Impact of Colonial Heritage and Other Factors on Evolution of Legal Regulation of Civil Justice, Arbitration, and Mediation in the West African States Included in the ECOWAS*. Supporting inclusive growth and sustainable development in Africa: Sustainability in Infrastructure Development. 1, pp. 131–146 (in Russian).
Фролова Е.Е., Иншакова А.О., Ермакова Е.П., Шакиров С.Ш. Влияние колониального наследия и других факторов на эволюцию правового регулирования гражданского правосудия, арбитража и медиации в западноафриканских государствах, входящих в ЭКО-ВАС // Поддержка инклюзивного роста и устойчивого развития в Африке: устойчивость в развитии инфраструктуры. 2020. Т. 1. С. 131–146.
- Kudryavtseva, E.V. (2023) Judicial management of the case and the adversarial model of English civil proceedings. *Legislation*. (5), 65–68. (In Russian). https://www.doi.org/10.58741/16818695_2023_5_65 EDN: INTGGM
Кудрявцева Е.В. Судебное управление делом и состязательная модель английского гражданского судопроизводства // Законодательство. 2023. № 5. С. 65–68, https://www.doi.org/10.58741/16818695_2023_5_65 EDN: INTGGM
- Hatta Isnaini Wahyu Utomo (2023). Legal certainty on the binding power of arbitration clauses in resolution of trade disputes. *Russian Law Journal*, 11 (5), 1–5.
- Miashchanava, M.V. (2022) International Cooperation in the Field of Economic and Legal Regulation of End-To-End Technologies. *Smart Innovation, Systems and Technologies*, 254, 79–91, https://www.doi.org/10.1007/978-981-16-4621-8_7 EDN: APLKFT (in Russian).
Мяцанава М.В. Международное сотрудничество в области экономического и правового регулирования сквозных технологий // Умные инновации, системы и технологии. 2022. Т. 254. С. 79–91. https://www.doi.org/10.1007/978-981-16-4621-8_7 EDN: APLKFT
- Rusakova, E.P. (2020) Alternative Dispute Resolution in Kenya. *Supporting inclusive growth and sustainable development in Africa: Sustainability in Infrastructure Development*. 1, 17–25 (in Russian).
Русакова Е.П. Альтернативное разрешение споров в Кении // Поддержка инклюзивного роста и устойчивого развития в Африке: устойчивое развитие инфраструктуры. 2020. Т. 1. С. 17–25.
- Rusakova, E.P. & Falkina, G.Yu. (2024) Legal Regulation of Electronic Evidence in Africa. Gaps in Russian Legislation. *Law journal*. (17 (5)), 53–60. (in Russian) <https://www.doi.org/10.33693/2072-3164-2024-17-5-053-060>

- Русакова Е.П., Фалькина Г.Ю. Правовое регулирование электронных доказательств в странах Африки // Пробелы в российском законодательстве. 2024. № 17 (5). С. 53–60. <https://www.doi.org/10.33693/2072-3164-2024-17-5-053-060>
- Rusakova, E.P. & Frolova, E.E. (2022) Procedural Standards for Civil Proceedings in China's Internet Courts. *Smart Innovation, Systems and Technologies*. 288, 187–192. https://www.doi.org/10.1007/978-981-16-9808-8_20
- Rusakova, E. & Chernysheva, T. (2024) The Development of Digital Notary Production as a New Opportunity for Transparency of the Digital Process and Civil Turnover in African Countries: Using the Example of Nigeria. *Russian Law Journal*. 11 (1), 8–29.
- Subhashini, S. (2023) The use of ADR in resolving disputes related to social media and online platforms. *Russian Law Journal*. 11 (3), 2462–2473. <https://doi.org/10.52783/rlj.v11i3.2139>
- Soloviev, A.A. & Yastrebov, O.A. (2024) *African models of organization and functioning of the judiciary: Algeria, Botswana, Ghana, Egypt, Kenya, Lesotho, Malawi, Morocco, Namibia, Nigeria, Swaziland (Eswatini), Tanzania, Tunisia, South Africa, Zambia, Zimbabwe*. Second edition, corrected and supplemented. Moscow, RUDN Publ. (in Russian).
Соловьев А.А., Ястребов О.А. Африканские модели организации и функционирования органов судейского сообщества: Алжир, Ботсвана, Гана, Египет, Замбия, Зимбабве, Кения, Лесото, Малави, Марокко, Намибия, Нигерия, Свазиленд (Эсватини), Танзания, Тунис, ЮАР. 2-е изд., испр. и доп. М. : РУДН, 2024. 464 с.
- Vlasenko, N.A. (2025) On the Theory of Legal Experimentology. *Legal technique*. (19), 148–151. (in Russian) EDN: LFQNHZ.
Власенко Н.А. О теории юридической экспериментологии // Юридическая техника. 2025. № 19. С. 148–151. EDN: LFQNHZ.

About the authors:

Ekaterina P. Rusakova – Doctor of Legal Sciences, Full Professor of the Department of Civil Law and Procedure and Private International Law, Law Institute, RUDN University; 6 Miklukho-Maklaya str., Moscow, 117198, Russian Federation

ORCID: 0000-0001-6488-0754, SPIN-code: 5995-0005

e-mail: rusakova-ep@rudn.ru

Tatyana A. Chernysheva – Intern researcher at the Department of Civil Law and Process and Private International Law, Law Institute, RUDN University; 6 Miklukho-Maklaya str., Moscow, 117198, Russian Federation

ORCID: 0009-0009-4230-5965

e-mail: tatyanchernysheva7@mail.ru

Сведения об авторах:

Русакова Екатерина Петровна – доктор юридических наук, доцент, профессор кафедры гражданского права и процесса и международного частного права, юридический институт, Российский университет дружбы народов; 117198, Российская Федерация, г. Москва, ул. Миклухо-Маклая, д. 6

ORCID: 0000-0001-6488-0754, SPIN-код: 5995-0005

e-mail: rusakova-ep@rudn.ru

Чернышева Татьяна Анатольевна – стажер-исследователь кафедры гражданского права и процесса и международного частного права, юридический институт, Российский университет дружбы народов; 117198, Российская Федерация, г. Москва, ул. Миклухо-Маклая, д. 6

ORCID: 0009-0009-4230-5965

e-mail: tatyanchernysheva7@mail.ru