



2020/2021
ANNUAL
CASEWORK
REPORT

"where disputes meet resolution"

ABOUT NCIA

Nairobi Centre for International Arbitration (NCIA) is Kenya's premier International Arbitration Centre located in the capital city, Nairobi. The Centre was established in 2013, and has gained a reputation as a neutral venue for the conduct of International Arbitration and other Alternative Dispute Resolution (ADR) services.

NCIA is *"where disputes meet resolution"* through access to eminent and experienced arbitrators, and mediators with diverse skills, from different nationalities and jurisdictions, and a best practice set of rules with administrative support.

In addition to its dispute administration services, NCIA hosts networking conferences, workshops, and events of interest to the arbitration and ADR Community. As a trainer, NCIA is also poised to offer training in Mediation and Arbitration with listed trainers from across the globe.

NCIA has the distinct privilege of an appointing authority under several statutory provisions in Kenya.

EXECUTIVE SUMMARY

- ❖ The Nairobi Centre for International Arbitration (NCIA) Annual Casework report gives highlights of case administration services rendered by the Centre, nature of arbitration agreements handled, number of arbitration and mediation cases facilitated in the year 2020/2021, and composition of the panel of arbitrators amongst other important key aspects in the year.
- ❖ The report focuses on case management including the number of disputes referred to the Centre for arbitration, requests referred to the Centre, representation in arbitration and mediation panels, challenges by parties to arbitrator appointment, caseload, relief sought, awards issues and other factors as regards facilitation of arbitration and ADR services by the Centre.
- ❖ As well as providing statistics on the 2020/2021 caseload, this report also includes a section the impact the COVID-19 pandemic has had at the NCIA on the administration of cases.
- ❖ The top five industry sectors reigning over the NCIA Caseload remains relatively similar in 2020/2021 with the addition of the finance and transport sectors.
- ❖ NCIA not only deals with Alternative Dispute Resolution (ADR) services, but also participates in webinar series as well as events.

Notable Achievements for the Case Management Department 2020/2021

- 1) A major milestone in the year is the Memorandum of Understanding that was signed between NCIA and Law Society of Kenya (LSK).
- 2) The Centre adopted and ratified the Virtual Hearing Guidelines 2020.
- 3) The largest single claim recorded is equivalent to USD 50million.
- 4) Developed Simplified User Guidelines for Mediation.
- 5) Revised the following Case Management Policy Documents:
 - **NCIA Code of Conduct for Arbitrators;**
 - **NCIA Code of Conduct for Mediators;**
 - **NCIA Arbitrator Panel Status Standard;**
 - **NCIA Mediator Panel Status Standard.**

WHAT WE OFFER

- ✚ **ARBITRATION-** NCIA Arbitration Rules are adaptable for use in a diverse range of contractual agreements. The Rules offer a flexible, predictable, and reliable institute administered procedures. The Centre also provides institutional support to the arbitration process including hearing facilities at the request of parties.
- ✚ **MEDIATION-** NCIA provides institutional support to the mediation process including facilities for mediation sessions at the request of parties at competitive terms. The NCIA Mediation Rules give participants in a dispute case an expeditious process where the Centre is designated for purposes of the mediation.
- ✚ **NEGOTIATION-** NCIA provides institutional support to the negotiation process including physical facilities at the request of the parties at competitive terms.
- ✚ **CONCILIATION-** NCIA provides institutional support to the conciliation process including physical facilities at the request of the parties at competitive terms.
- ✚ **ADJUDICATION-** NCIA provides institutional support to the adjudication process including physical facilities at the request of the parties at competitive terms.
- ✚ **ARBITRATION AND MEDIATION TRAINING-** NCIA provides training for continuous professional development in international commercial arbitration and mediation.
- ✚ **HIRING OF HEARING ROOM FACILITIES-** NCIA is equipped with customized hearing room facilities for arbitration, mediation and all other closed-door discussions that may be required at the request of parties to the Centre.

CASELOAD

In 2020/2021, a record number of twenty-three (23) new case filings were referred to the NCIA, all of which were referred under the NCIA Arbitration and Mediation Rules, representing an upward trend in referral of disputes in the five (5) years since inception of the Rules. The Centre has surpassed its 60th case mark.

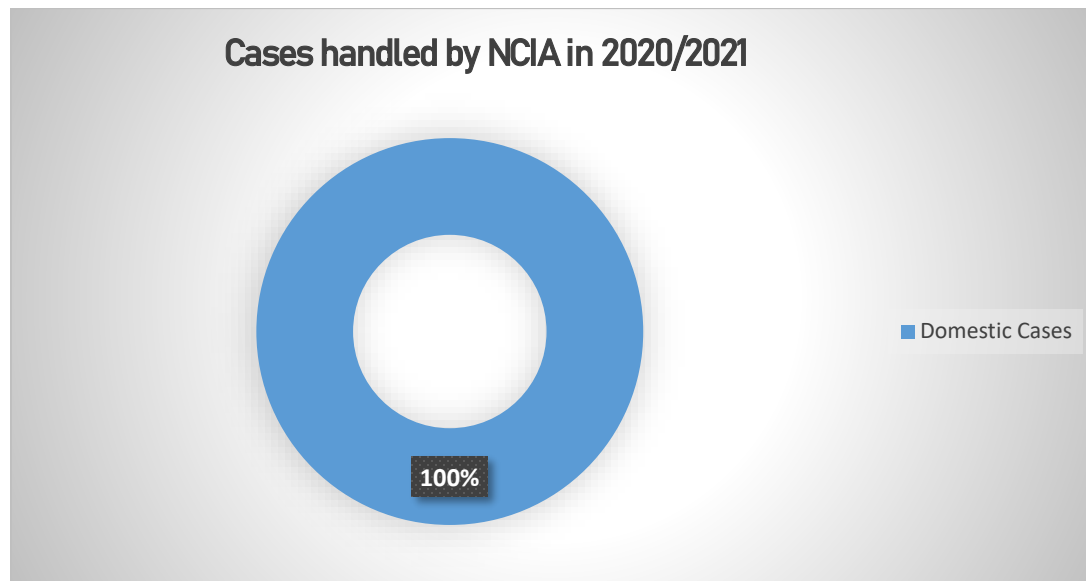
SUM IN DISPUTE

The case value has risen to Kenya Shillings twenty billion (Kes. 20,000,000,000.00) equivalent to USD 182,481,750.00 This represents a 185% growth from the previous year and a 700% over the third year of the NCIA Arbitration Rules.

The currency exchange rate adopted for the USD conversions was the rate as of 25 August 2021

GEOGRAPHICAL ORIGIN OF PARTIES

100% of all new cases filed with Nairobi Centre for International Arbitration in the financial year 2020/2021 were domestic in nature.



ARBITRATIONS BY INDUSTRY/SECTORS

Disputes emanating from the construction, commercial, agriculture, water, energy and resources, and employment sectors shared a significant portion of the caseload.

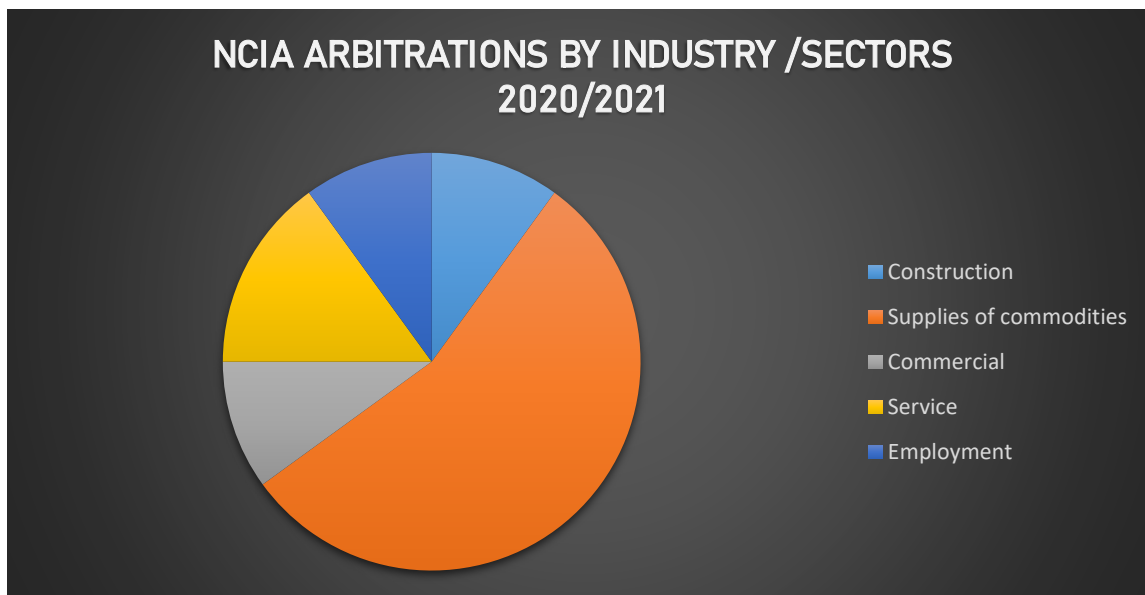
In 2017, construction disputes represented 100% of the NCIA Arbitration Rules administered caseload.

In 2018, supplies of commodities and employment disputes represented the highest portion of the NCIA arbitration caseload.

In 2019, the Centre recorded a significant increase in disputes of supplies of commodities in the agricultural sector.

In 2020, supplies of commodities in the agricultural sector disputes represented the highest portion of the NCIA arbitration caseload

In 2021, Supplies of commodities & construction disputes constituted the highest fragment of the NCIA Arbitration Caseload.

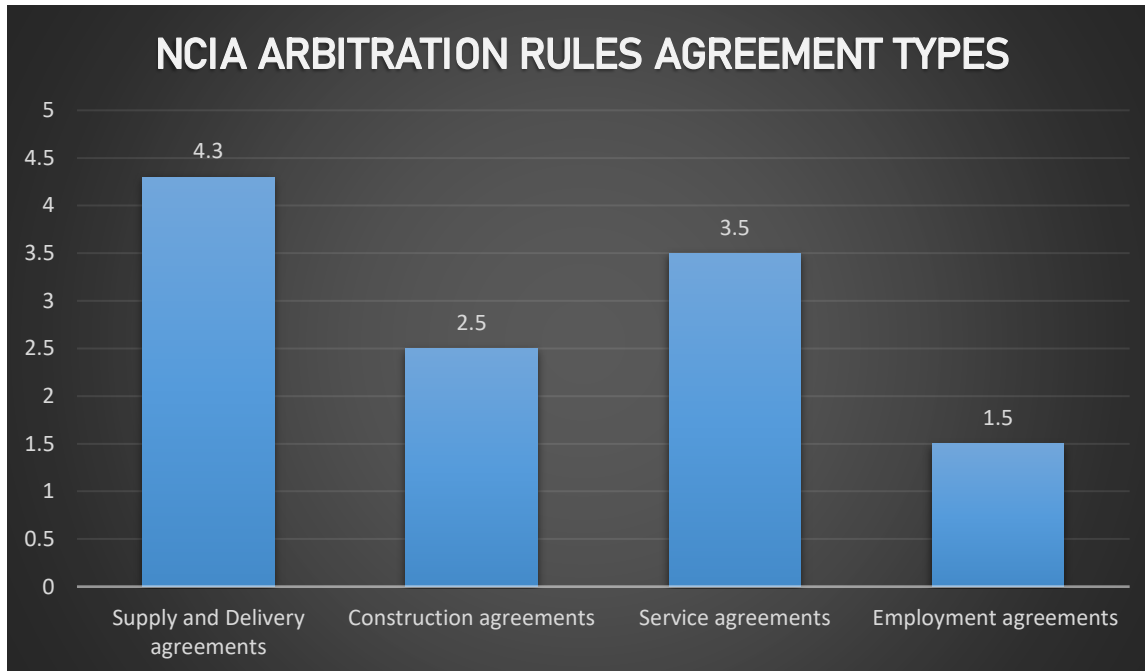


AGREEMENT TYPES

The agreements typically anticipated under the NCIA Arbitration Rules are commercial disputes. The four (4) most common agreements recorded in arbitrations referred to the Centre under the NCIA Arbitration Rules remained consistent in 2020/2021 and they include:

- ❖ **Supply and Delivery agreements.**
- ❖ **Employment agreements.**
- ❖ **Services agreements.**
- ❖ **Construction agreements.**
- ❖

The year 2020/2021 has seen a significant rise in supply and delivery agreements in the construction sector. The supply & delivery of commodities and service agreements has continued to take up an estimated 70% of the agreements.



TIME TAKEN IN ARBITRATION

The case tracker allows the case management counsel to collect and collate time management information. Trends observed during the year indicate an average case completion time scale of:

- **seven (7) to ten (10) days** for appointment of arbitrator and completion of composition of the tribunal;
- **five (5) to seven (7) days** of actual appearances for hearing before the arbitral tribunal;
- **50 -150 days** for parties to file and exchange their case pleadings, documents and submissions including requests for time scheduling, adjustment in timelines and resolution of applications;
- **one (1) month to one and half (1-1/2) months** completion of award by the tribunal; and
- **three (3) to five (5) days** average time for collection of arbitration awards by parties.

PARTIES

The NCIA arbitrations involve parties from different sectors and nationalities with cases referred from South Africa, Rwanda, and as far apart as agreements applying the laws of Hong Kong and the United Kingdom.

The Centre endeavors to be a world class Arbitration Centre and promotes equality and inclusivity in all arbitrations commenced. Further, dispute resolution services are available to all persons indiscriminately and irrespective of nationality as long as the Centre has the jurisdiction to entertain the disputes brought before it.

Additionally, the Centre promotes neutrality through its adoption of a multi-national panel of arbitrators and mediators.

ARBITRATOR APPOINTMENTS

During the course of 2020/2021, the NCIA completed a total of 15 appointments of arbitrators which represents a 10% increase from the previous year which saw the appointment of 14 arbitrators. The Centre has received a total of 23 accreditation applications expressing interest in the domestic and international arbitration and mediation panels in this financial year.

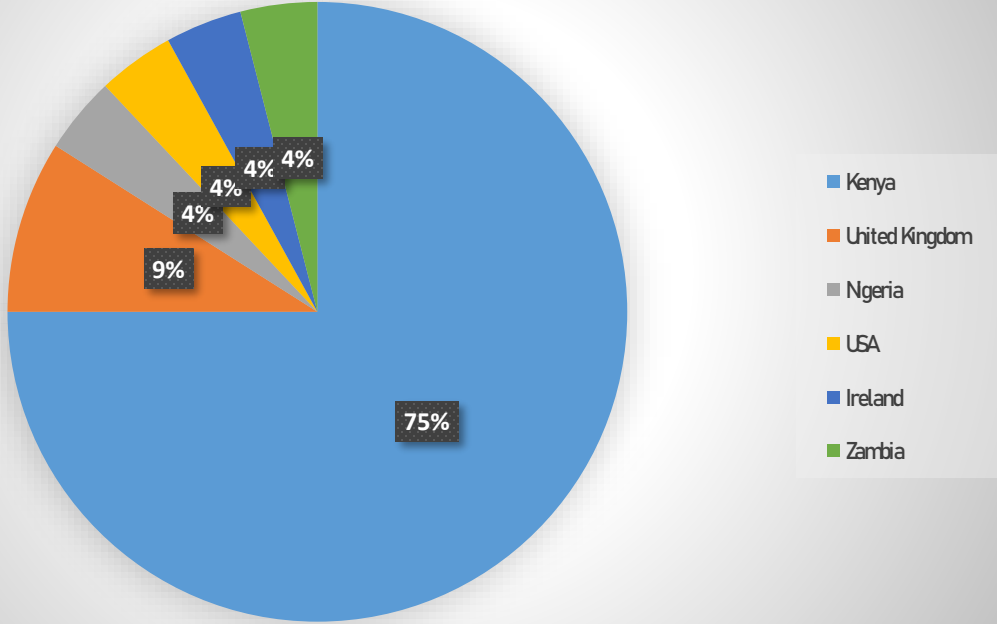
ARBITRATOR NATIONALITIES

In promoting diversity and neutrality, the Centre has empaneled arbitrators drawn from different nationalities. Arbitrator selection for the panel is undertaken throughout the year according to the panel listing standard criteria that includes qualifications, training, and experience in arbitration.

Kenyan nationals take up 75% arbitration panel seats stemming from the location of the Centre. However, the Centre aims to create a balance to reflect the character of the Centre by ensuring that the arbitrators are selected represent a broad range of nationalities from across the globe and with gender and age equity.

Some of the nationalities represented in the NCIA Arbitration and Mediation panels hold nationalities from Kenya, United Kingdom, Nigeria, United States of America, Zambia, and Ireland among other countries.

Arbitrators and Mediators Nationalities



SEAT AND APPLICABLE LAW

The year 2020/2021 has seen a majority of arbitrations maintain Nairobi as the seat of arbitration. All dispute administered by the Centre during the year have been governed by Kenyan Law.

GENDER DIVERSITY

In 2020/2021, 14% of the NCIA arbitrator appointments were women reflecting a downward trend from the previous financial year. NCIA in promoting gender diversity deliberately ensures equal access to both men and women arbitrators, regardless of their gender, ethnic and cultural background, religion, age, sexual orientation, functional ability, and political view, in matters where it is required to exercise the power of appointment.

Further, NCIA endeavors to make a contribution in promoting inclusivity and gender diversity in arbitration through its outreach scheme to young as well as experienced practitioners through hosting International Arbitration and ADR Conferences.

FIRST TIME APPOINTEES

86% of appointments made in 2020/2021 were of candidates not previously appointed. Six (6) of the appointments made in this year were made following party selection/nomination and nine (9) appointments were done by the Centre.

TOTAL NUMBER OF ARBITRATORS APPOINTED EACH YEAR TO HANDLE DISPUTES

Year	Number of Arbitrators	Appointed as Sole Arbitrators	Appointed by NCIA	Appointed by the Parties	Appointed by any other Appointing Authority
2017	3	Nil	3	Nil	Nil
2018	2	1	1	1	Nil
2019	3	1	3	2	Nil
2020	12	1	7	5	Nil
2021	3	2	2	1	Nil

MEDIATION

Mediation cases at NCIA only started to actualize in year 2020 with the first mediation case having a case value of Kshs. 5,893,646, 849.67 equivalent to USD 50 Million. This is the largest single claim ever recorded by the Centre.

Mediation is gaining popularity among cooperate entities, however there is still a great deal to be done in terms of mediation sensitization.

NCIA has recently developed **Simplified User Guidelines for Mediation** that provide a clear roadmap on how the parties and the mediator should conduct themselves.

The year 2020/2021 had nine (9) registered mediation cases,

MEDIATOR APPOINTMENTS

Since the Centre commenced on its operations, NCIA has certified a total of twenty (20) Mediators both on the Domestic and International Mediator panels. Out of the 20, only three (3) are on both the Domestic and International Mediator Panel and seventeen (17) are on the Domestic Mediator Panel. 25% of the Mediators are women. The Alternative Dispute Resolution (ADR) sphere has seen a demand for more women in the mediation process.

In the 2020/2021 financial year, only three (3) mediator appointments were made.

MEDIATOR NATIONALITIES

All the appointments done by the Centre for the Mediators have been of the Kenyan Nationality. However, NCIA actively seeks and encourages applications from candidates from diverse backgrounds and nationalities.

AWARDS

A total of three (3) awards were issued in the year 2020/2021 on diverse dates. All awards go through a thorough scrutiny before issuance to the parties. An Arbitrator is responsible for delivering the awards to the Centre.

EVENTS

The Case Management Department had the opportunity to be part of the NCIA 1ST Mediation Moot Competition, an event that drew students from different universities across the country as well as mediators, which took place from 29th to 30th June 2021 at the Kenya School of Law. The event was a significant milestone for the Centre as it presented yet another opportunity to mentor and encourage students and young professionals in the law industry to take up being Alternative Dispute Resolutions Practitioners. The winning team has secured a three-month long internship with the Case Management Department at the Centre.

CHALLENGES

Covid-19 Pandemic

The year 2020/2021 has been remarkably challenging not just for the Centre but to the World at large because of the COVID-19 pandemic. Even with the pandemic as an omnipresent backdrop, the Centre had to adopt to the “new normal” in order to continue administering the cases.

The Covid-19 Pandemic sparked a wide range of changes to the administration of arbitration and mediation. The lockdown measures that had been put in place by the government affected the logistics

with the parties and tribunals not being able to receive the arbitral materials until such a time when the measures were eased and staff allowed to work in-person again. The pandemic further revealed the department's previous ICT challenges that had not been addressed and have continued to have unwelcome repercussions. The use of technologies like "videoconferencing" and "hearing room technologies" are some of the solutions that have been proposed recurrently by the departmental staff in order to adopt to the new circumstances and boost efficiency.

The Virtual Hearing Rules adopted from the Africa Arbitration Academy by the Centre have laid the foundation to swiftly adapt to the new normal by shifting proceedings to virtual space. The Seoul Protocol on Video Conferencing in International Arbitration provides a broad-gauged framework to assist arbitration practitioners in coming up with the best practices for planning, testing and performing video conferencing in international arbitration. The Virtual Guidelines adopted by the Centre have provided the best practices to ensure that such conferencing is effective, fair and efficient.

CONSOLIDATION

There has been no consolidation of arbitral proceedings in 2020/2021.