

# The Role of Arbitration for a Trustworthy Mediterranean Area

**Why an effective arbitration regime matters for foreign  
investors and traders?**

**Milan, November 13, 2012**

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# An effective commercial arbitration regime matters for foreign investors

- Complex commercial contracts require reliable, flexible dispute resolution mechanisms.
  - Arbitration (and other alternative dispute resolution mechanisms) give commercial parties considerable autonomy to create systems tailored to their disputes.
  - The characteristics of arbitration – confidentiality, flexible procedures, party autonomy and easy enforcement – cater to businesses' concerns in dispute resolutions.
- Foreign investors often prefer to have alternatives to court litigation.
  - Domestic litigation can be slow and ineffective.
  - Even if courts treat foreign companies fairly, domestic firms have an advantage over foreign investors, as they are more familiar with court procedures and can use their own lawyers and language.
  - Foreign firms view well-established, predictable arbitration regime as mitigating risk by providing legal security to investors (including assurance of contract enforcement rights, due process and access to justice).

# An effective commercial arbitration regime contributes to improving the rule of law

- A good arbitration framework (including arbitration laws and institutions) contributes indirectly to the rule of law:
  - Accessibility of laws and institutions: online, English translation
  - Training (certification of arbitrations – and also mediators and conciliators)
  - Importance of ethics (impartiality and independence of arbitrators)
  - Necessity of a judicial support to the arbitration process, both during arbitration proceedings and when it comes to the recognition and enforcement of arbitral awards (in that sense, arbitration is not a parallel system but, clearly, depends on the country's judicial system and institution)

# World Bank Group's initiative on Foreign Investment: Indicators and Analysis

- WBG's initiative on Foreign Direct Investment focuses on regulations related to foreign direct investment around the world and presents quantitative indicators on economies' laws, regulations, and practices affecting how foreign companies:
  - invest across sectors,
  - start businesses and access industrial land,
  - hire skilled expatriates,
  - convert and transfer currencies,
  - and arbitrate and mediate their commercial disputes.

# How do we measure the ease of arbitrating & mediating disputes in MENA?

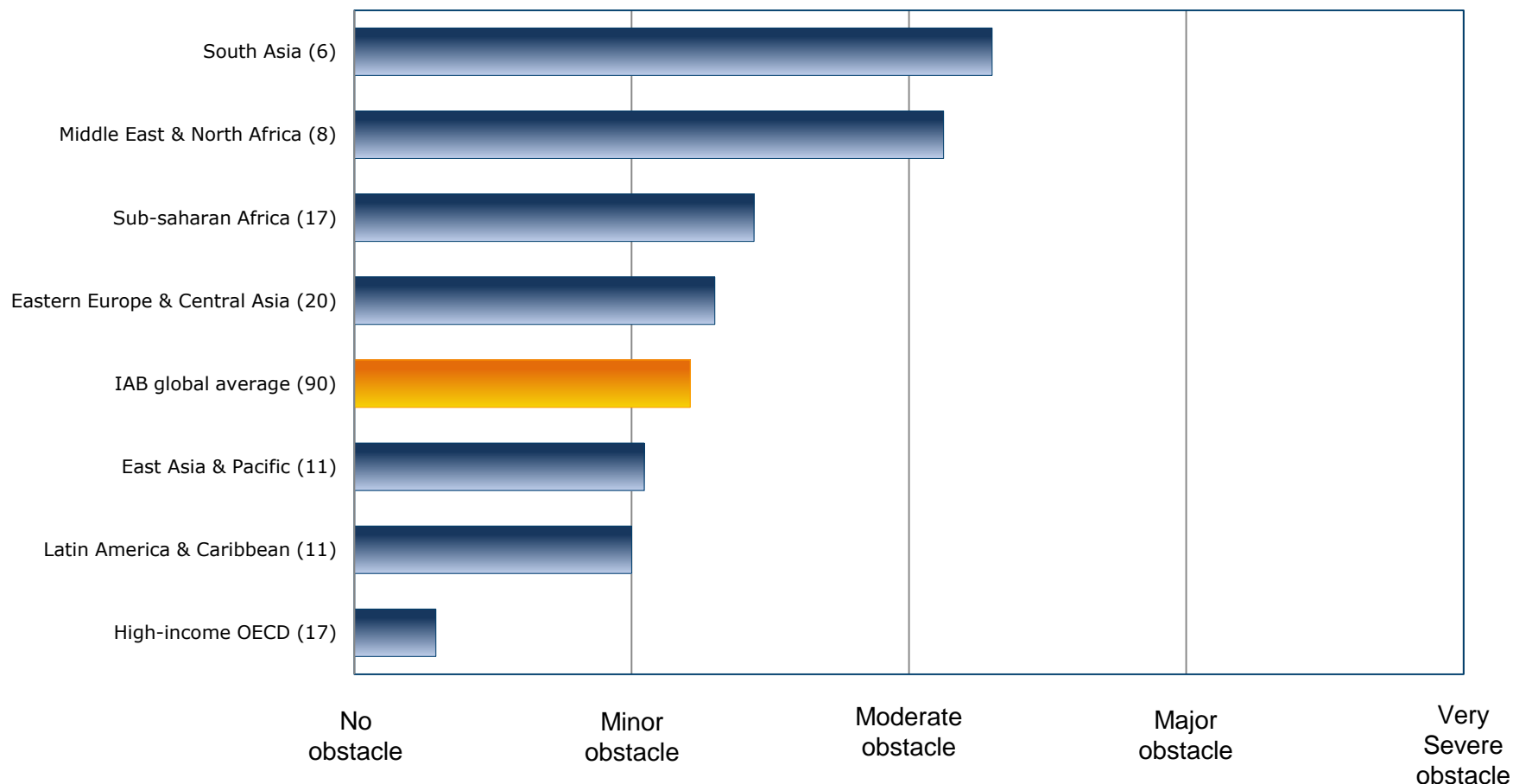
- In each economy that we are covering (more than 100 worldwide), we approach a small number of local arbitration practitioners and prestigious arbitration and mediation institutions and ask them about:
  - the strength of the legal and institutional framework and practice related to Alternative Dispute Resolution (ADR),
  - the ease of initiating and resolving commercial disputes involving foreign-owned companies through ADR in their country.

# Our geographical coverage in MENA

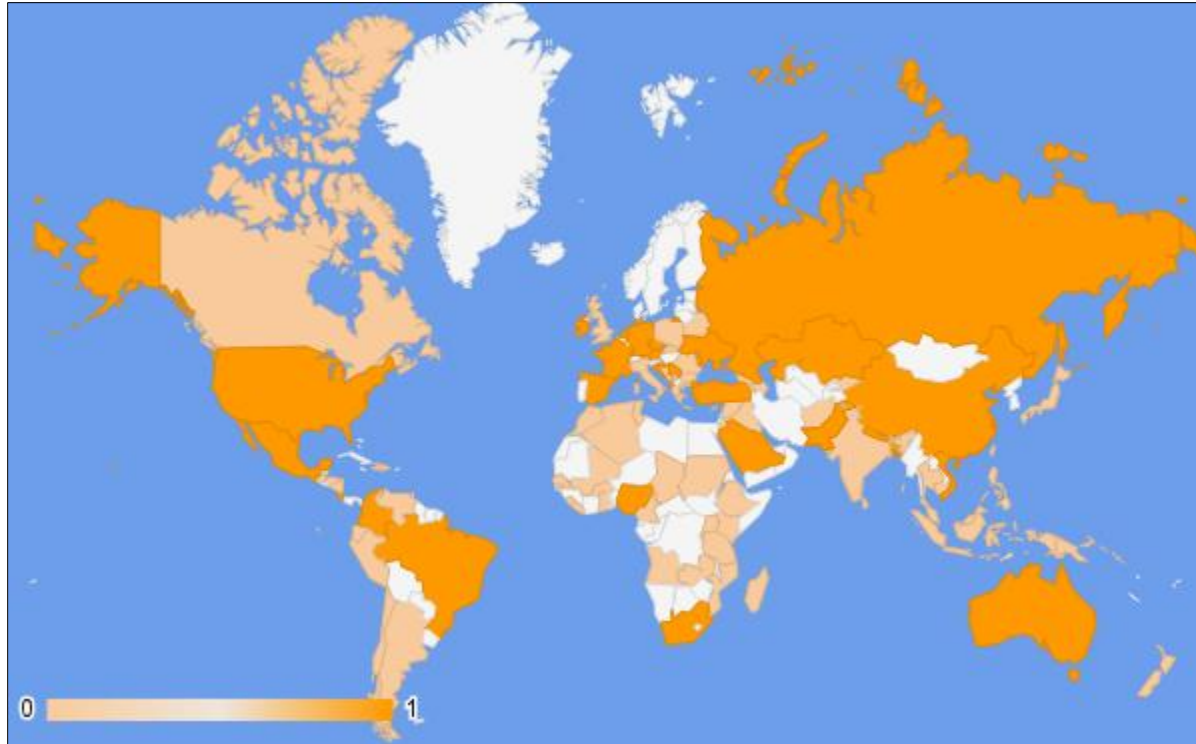
- Algeria
- Egypt
- Saudi Arabia
- Morocco
- Iraq
- Jordan
- Tunisia
- Yemen

# In MENA, arbitration laws are perceived as a moderate obstacle to foreign investment

THE EXTENT TO WHICH A COUNTRY'S ARBITRATION REGIME IS AN OBSTACLE TO FDI, BY REGION



# In 2011 and 2012, arbitration laws have been revised in 33 countries, among which Saudi Arabia in the MENA region



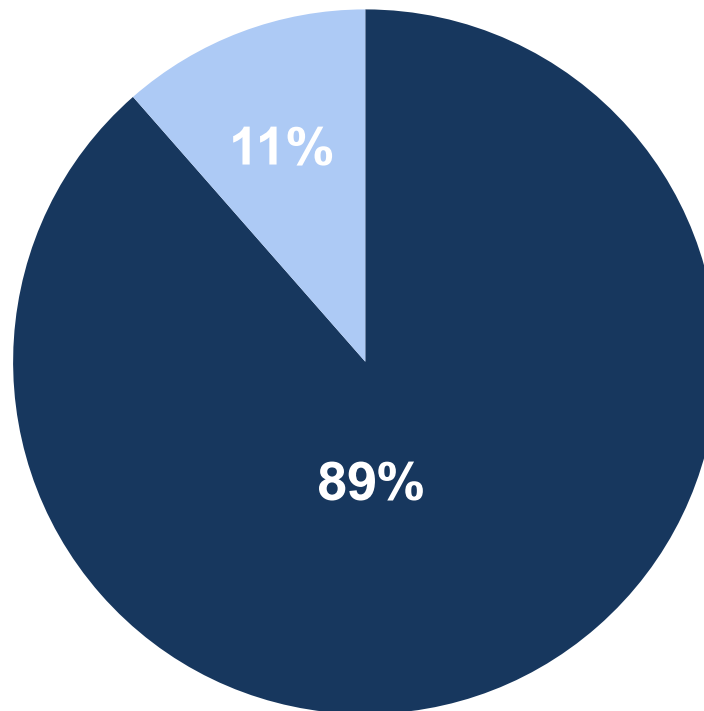
Countries colored in bright orange have revised their arbitration legal framework in 2011 or 2012. These countries are: Albania, Australia, Austria, Bangladesh, Brazil, Brunei Darussalam, China, Colombia, Congo, Dem. Rep., Costa Rica, Croatia, Czech Republic, France, Germany, Hong Kong (China), Ireland, Kazakhstan, Mexico, Moldova, Nepal, Netherlands, Nigeria, Pakistan, Russian Federation, **Saudi Arabia**, Serbia, Singapore, South Africa, Spain, Turkey, Ukraine, United States, and Vietnam.



# 89% countries have a consolidated law encompassing all aspects of commercial arbitration

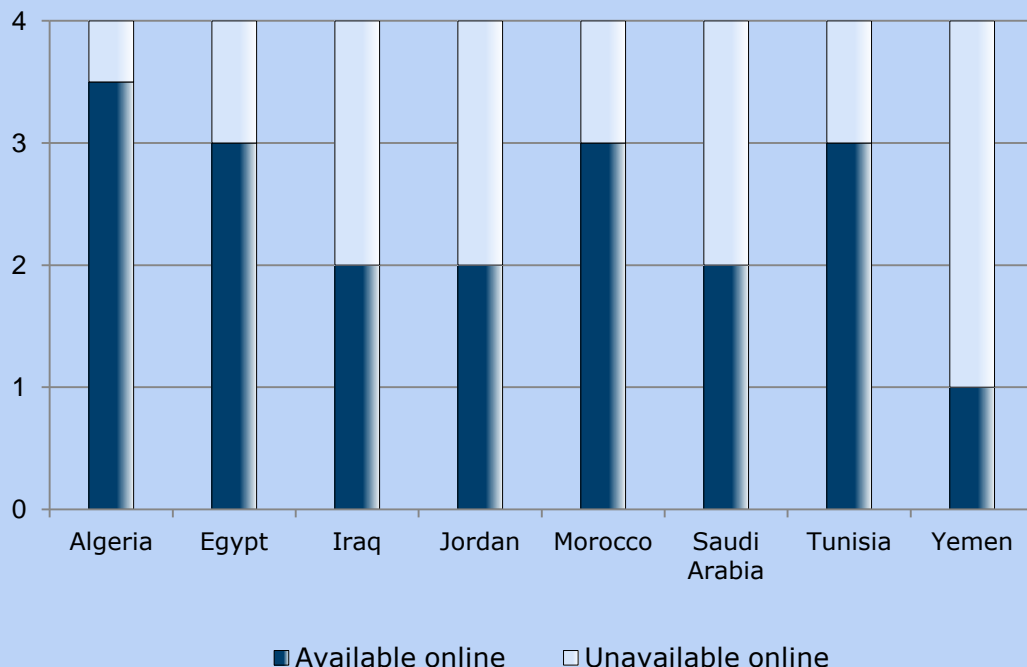
## Arbitration Laws

- Countries with a consolidated law encompassing substantially all aspects of commercial arbitration.
- Countries with a consolidated law encompassing substantially all aspects of commercial arbitration but with scattered provisions in different laws or other legislative instruments.



# MENA countries have laws on arbitration, but they are not easily accessible online

## ONLINE ACCESSIBILITY



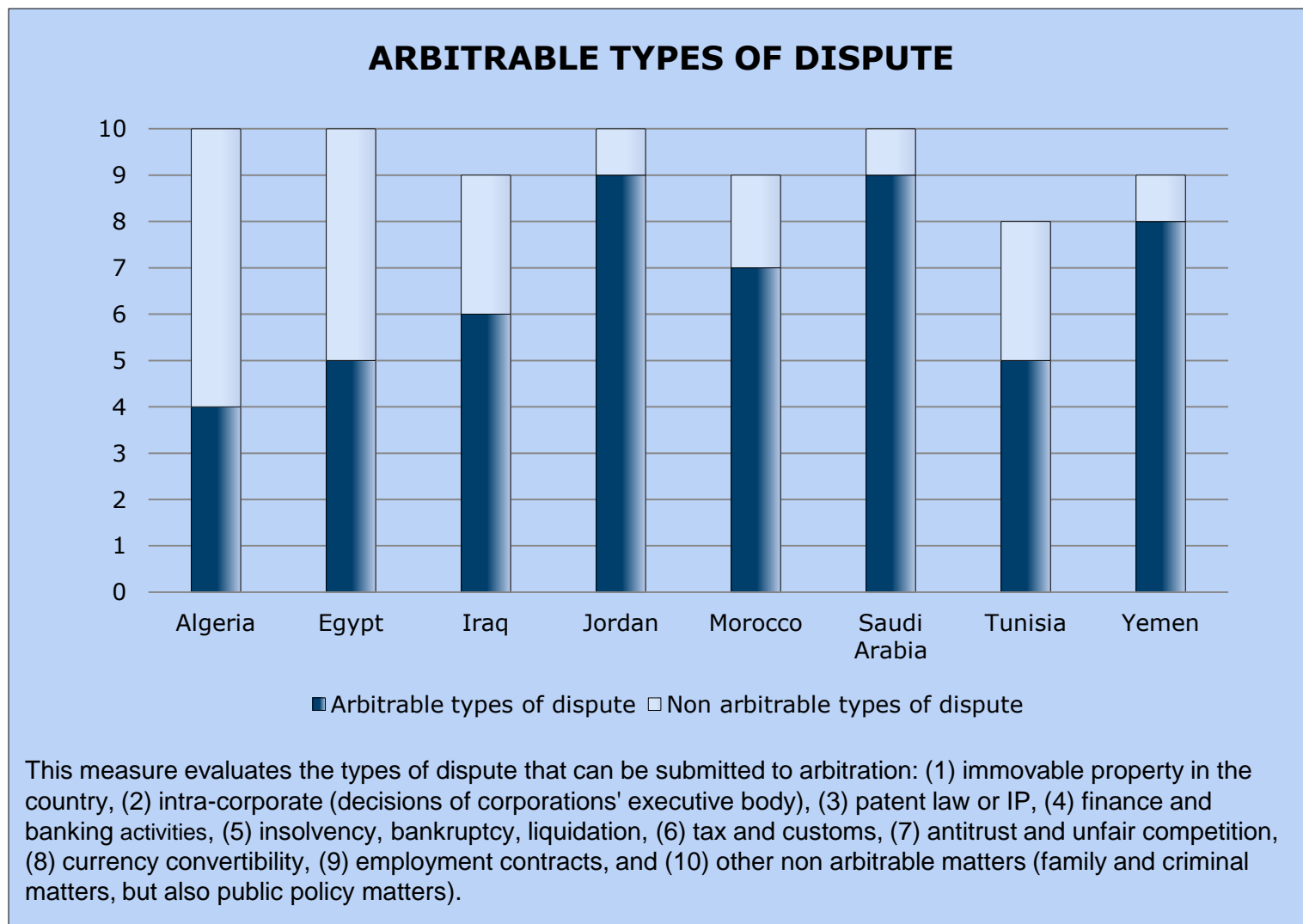
This chart assesses whether there is : (1) a government-supported website on arbitration; (2) a government-supported website on mediation and conciliation; (3) an official website for the main arbitration institution, and (4) other sources of information available online (including private initiatives).

**Is there fast-track arbitration in MENA?**

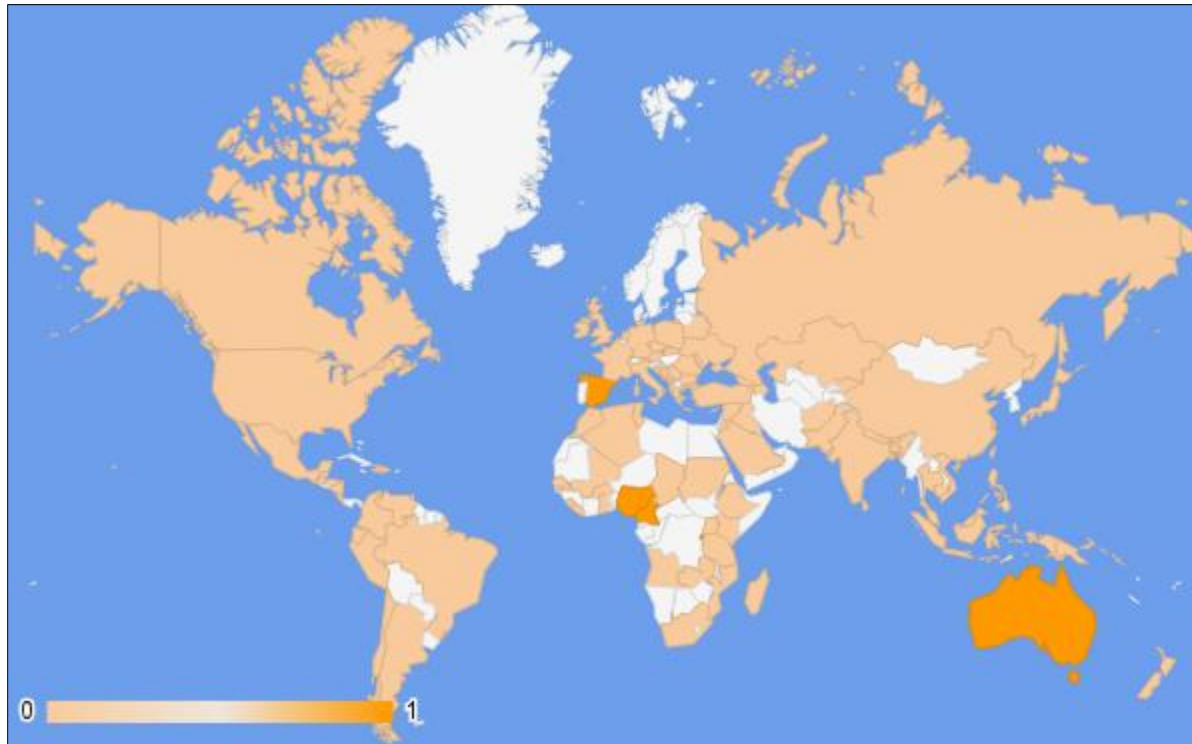
**Is there online arbitration in MENA?**

Apart for Yemen where fast-track arbitration can be found, none of the MENA countries observed here offer either online ADR or fast-track arbitration.

# In MENA, Jordan and Saudi Arabia have the least number of restrictions on the types of disputes that can be submitted to arbitration



# In 2011 and 2012, at least 6 arbitration institutions have been created in the world but none in the MENA region



The darkest countries on this map are those where an arbitration institution was created in 2011 or 2012. These countries are: Australia, Cameroon, Congo, Dem. Rep., Nigeria, Rwanda, and Spain (**no MENA countries**).

# In the MENA region, countries have arbitration institutions and most offer conciliation and mediation services

| Countries           | Arbitration Institution  | Mediation and Conciliation | Own Rules  | Other Rules                                    |
|---------------------|--|----------------------------|------------|--|
| <b>Algeria</b>      | The Conciliation and Arbitration Centre of the Algerian Chamber of Commerce and Industry | <b>Yes</b>                 | <b>Yes</b> |  |
| <b>Egypt</b>        | Cairo Regional Centre for International Commercial Arbitration (CRCICA)                  | <b>Yes</b>                 | <b>Yes</b> |  |
| <b>Iraq</b>         | The Najaf Center for International Commercial Arbitration/ Najaf Chamber of Commerce     | No                         | <b>Yes</b> |  |
| <b>Jordan</b>       | The Jordanian Arbitration Association  | -                          | <b>Yes</b> |  |
| <b>Morocco</b>      | The Moroccan Court of Arbitration  | <b>Yes</b>                 | <b>Yes</b> |  |
| <b>Saudi Arabia</b> | The Riyadh Chamber of Commerce   | No                         | No         | KSA Arbitration Act & Implementing Regulations |
| <b>Tunisia</b>      | The Tunis Centre for Conciliation and Arbitration (CCAT)                                 | <b>Yes</b>                 | <b>Yes</b> |  |
| <b>Yemen</b>        | The Yemen Center for Conciliation and Arbitration (YCCA)                                 | -                          | <b>Yes</b> |  |

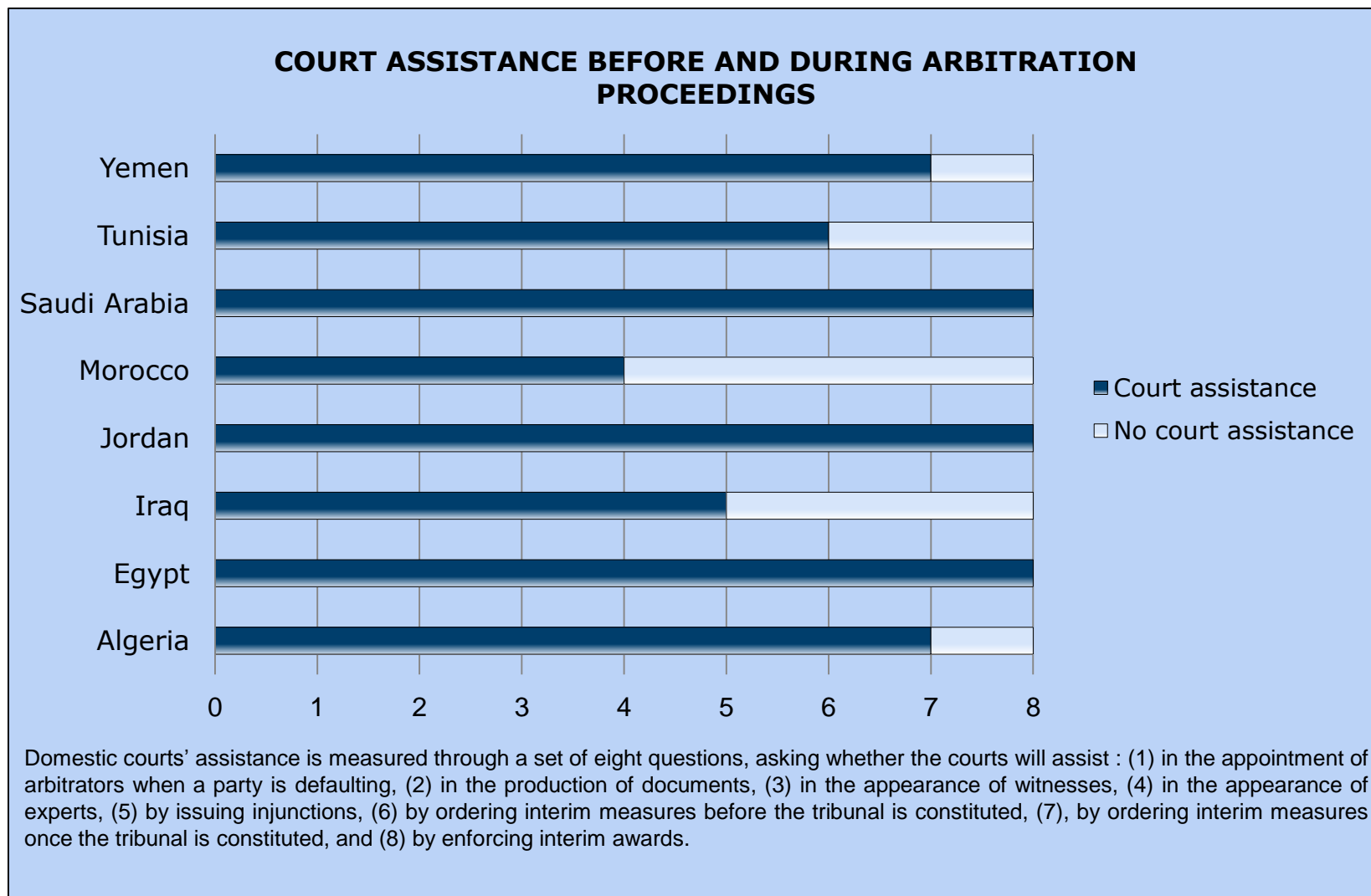
# Arbitration institutions in MENA: ease of access for parties (roster, number of arbitrators, and online accessibility)

| Arbitration Institution  | Roster of arbitrators |                                   |                     | Available online  |                   |                     |
|--|-----------------------|-----------------------------------|---------------------|-------------------|-------------------|---------------------|
|  | Number of arbitrators | Percentage of foreign arbitrators | Percentage of women | Rules             | Model clause      | Administrative fees |
| The Conciliation and Arbitration Centre of the Algerian Chamber of Commerce and Industry | <i>No data</i>        | <i>No data</i>                    | <i>No data</i>      | No                | <b>Yes</b>        | No                  |
| Cairo Regional Centre for International Commercial Arbitration (CRCICA)                  | <b>500-700</b>        | <b>25-40%</b>                     | <b>10%</b>          | <b>Yes</b>        | <b>Yes</b>        | <b>Yes</b>          |
| The Najaf Center for International Commercial Arbitration/ Najaf Chamber of Commerce     | 40                    | 0                                 | 5%                  | <b>Yes</b>        | <b>Yes</b>        | <b>Yes</b>          |
| The Jordanian Arbitration Association  | 130                   | 0                                 | 0                   | <i>No website</i> | <i>No website</i> | <i>No website</i>   |
| The Moroccan Court of Arbitration  | 15-30                 | 10%                               | <b>10%</b>          | <b>Yes</b>        | <b>Yes</b>        | <b>Yes</b>          |
| The Riyadh Chamber of Commerce   | <b>300 +</b>          | 0                                 | 0                   | No                | No                | No                  |
| The Centre de Conciliation et d'arbitrage de Tunis (CCAT)                                | <i>No roster</i>      | <i>No roster</i>                  | <i>No roster</i>    | <b>Yes</b>        | <b>Yes</b>        | <b>Yes</b>          |
| The Yemen Center for Conciliation & Arbitration (YCCA)                                   | 200                   | <i>No data</i>                    | <i>No data</i>      | <b>Yes</b>        | <b>Yes</b>        | No                  |

# Time of arbitration proceedings and enforcement proceedings of foreign arbitral awards in MENA

| MENA Countries      | Length of arbitration proceedings   | Length of recognition and enforcement proceedings |
|---------------------|---|---|
| <b>Algeria</b>      | <i>No data</i>  | <i>No data</i>                                    |
| <b>Egypt</b>        | 9½ to 22 months for a domestic arbitration, and 14½ to 24 months for an international arbitration | From 4 to 10 months                               |
| <b>Iraq</b>         | 2½ years for a commercial arbitration   | <i>No data</i>                                    |
| <b>Jordan</b>       | Legal maximum of 12 months for both domestic and international arbitration                        | From 13 to 19 months                              |
| <b>Morocco</b>      | 3 to 8 months for a domestic arbitration, and 4 to 9½ months for an international arbitration     | An average of 2 months                            |
| <b>Saudi Arabia</b> | Legal maximum of 12 months for both domestic and international arbitration                        | From 5 to 32 months                               |
| <b>Tunisia</b>      | 3 to 9 months for both domestic and international arbitration.                                    | <i>No data</i>                                    |
| <b>Yemen</b>        | An average of 9 months  | <i>No data</i>                                    |

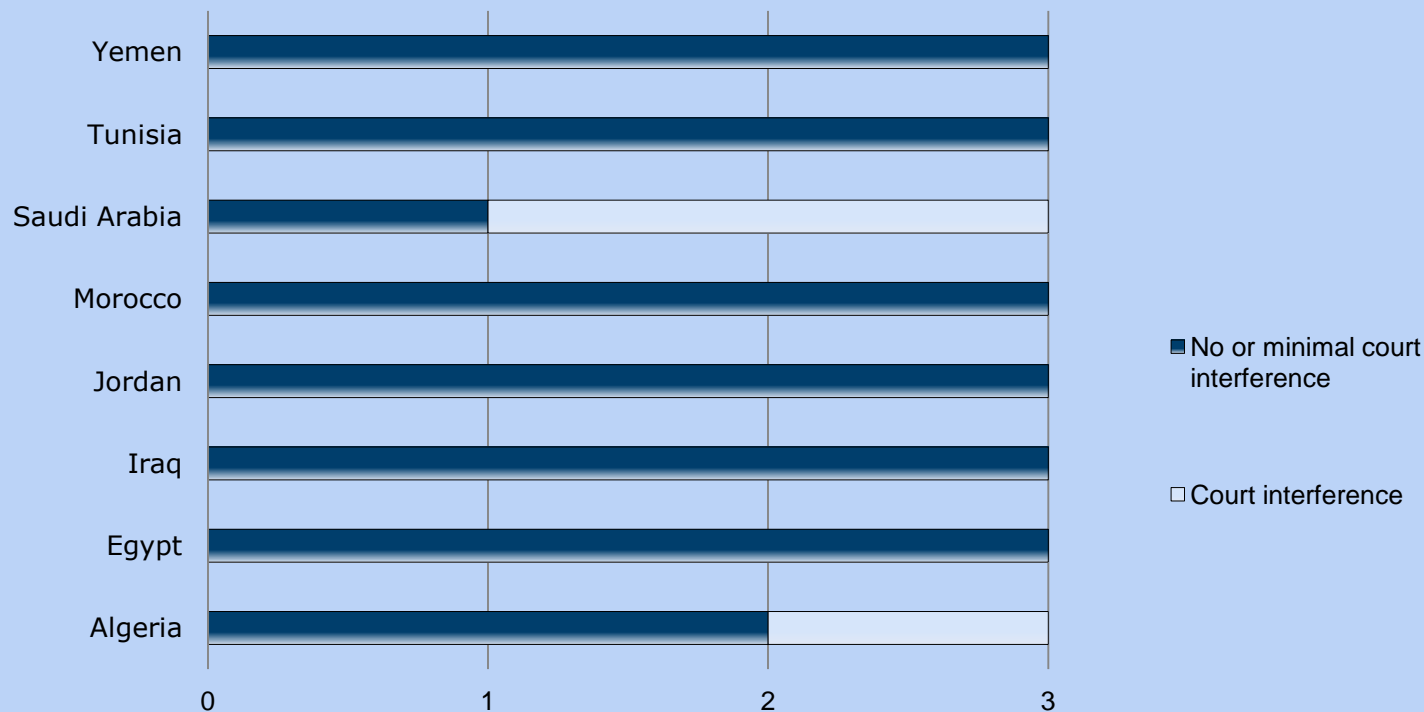
# Conduct of arbitration proceedings in the MENA region: Moroccan domestic courts are the least supportive of the arbitration process





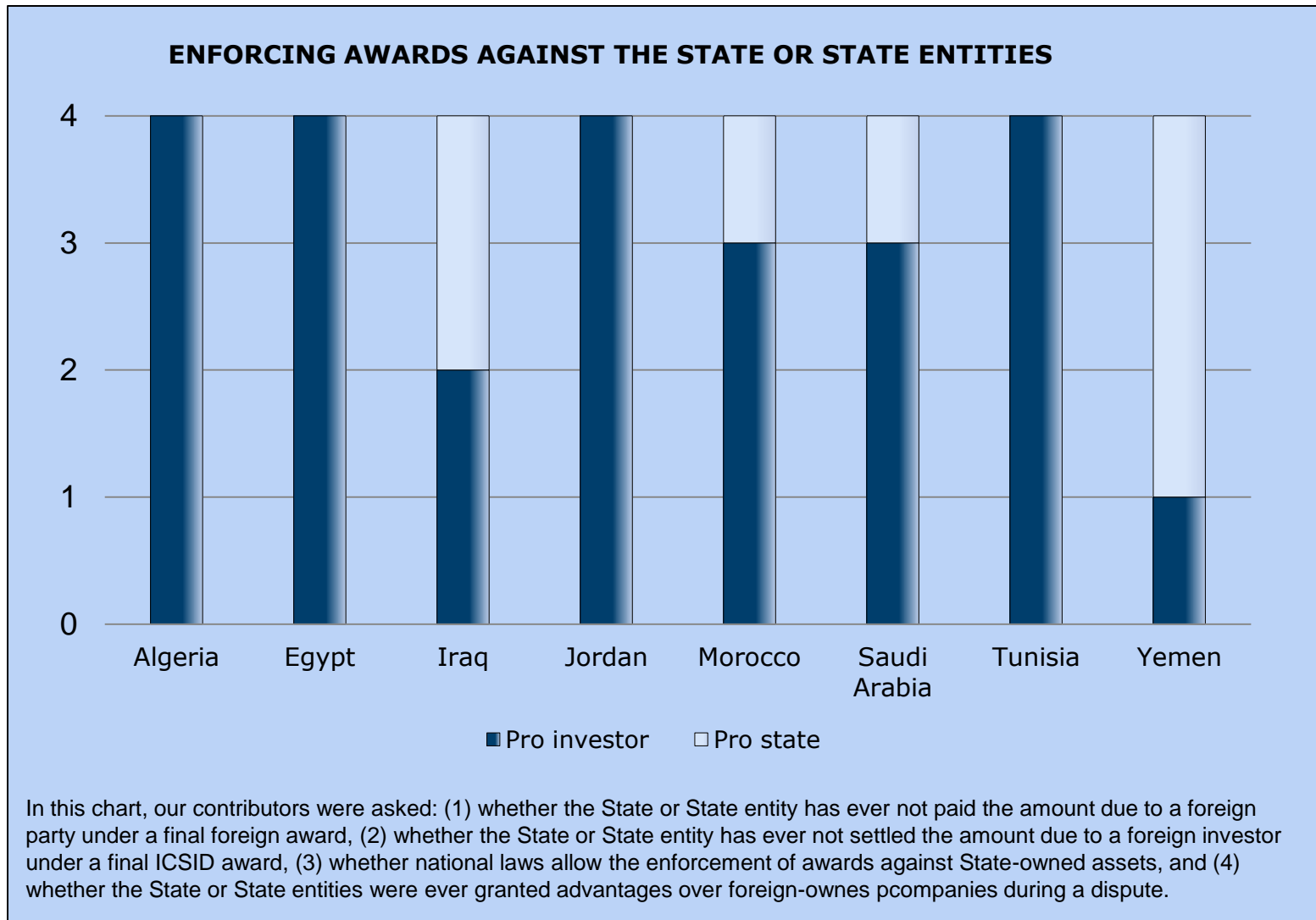
# Conduct of arbitration proceedings in the MENA region: Saudi Arabia and Algeria's domestic courts are noted by our contributors as interfering the most in arbitrations

## COURT INTERFERENCE IN ARBITRATION



Domestic courts' interference with arbitration is measured through questions asking: (1) whether courts carry out only a *prima facie* control of the validity of the arbitration agreement when asked about the enforceability of the arbitration clause; (2) whether courts would reject a case when there is a valid arbitration agreement; and (3) whether the principle of *kompetenz-kompetenz* is recognized.

# Enforcement of arbitral awards in the MENA region: our contributors have indicated difficulties in enforcing arbitral awards against Yemen and Iraq



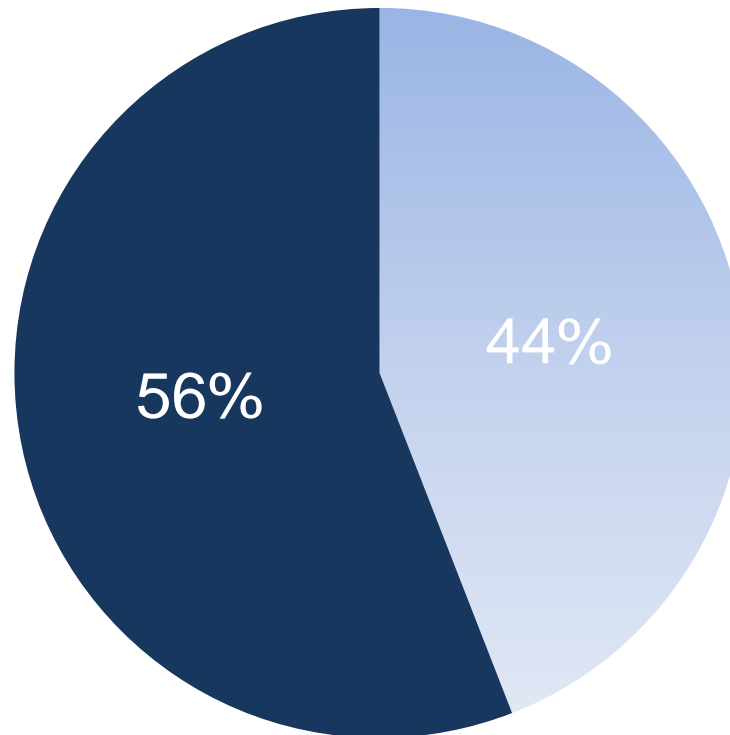
# MENA countries and international conventions related to arbitration

- Iraq and Yemen are the only ones that have not yet ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- Iraq is the only one that is not a signatory to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

# Arbitration... and also mediation and conciliation: only 44% countries have a consolidated law encompassing all aspects of commercial mediation or conciliation

## Mediation or Conciliation Laws

- Countries with a consolidated law encompassing substantially all aspects of commercial mediation or conciliation.
- Countries without a consolidated law encompassing substantially all aspects of commercial mediation or conciliation.



# Mediation and conciliation in the MENA region needs to be improved

| Countries    | Consolidated Law on Mediation or Conciliation | Law on Judicial Referral to Mediation or Conciliation | Arbitration Institution offering Mediation or Conciliation | Specialized Institution offering Mediation or Conciliation | Does the mediation agreement have the legal power of a court order? |
|--------------|---|---|--|--|---|
| Algeria      | Yes   | Yes   | Yes  | -----  | No  |
| Egypt        | No  | No  | Yes  | -----  | Yes   |
| Iraq         | No  | No  | No   | No   | No  |
| Jordan       | Yes   | Yes   | No data  | Yes  | No  |
| Morocco      | Yes   | No  | Yes  | -----  | No  |
| Saudi Arabia | No  | No  | No   | No   | No  |
| Tunisia      | No  | No  | Yes  | -----  | No  |
| Yemen        | No  | No  | No data  | No data  | Yes   |

# Thank you!

- Fore more information:

- <http://wbi.worldbank.org/aboutus/global-indicators>

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