

SOAS Arbitration in Africa Conference Series 2015-2018

This is the fourth conference in the series of four identified themes in our research project on transforming and enhancing the use of arbitration as the dispute resolution of choice within the African continent. The four year research project itself is titled 'Creating a Sustainable Culture of Arbitration as a mechanism for Commercial Dispute Resolution in Africa'. The primary purpose of this research project is to "increase the visibility (of arbitration practitioners in Africa) and the viability of arbitration in the domestic, intra-Africa and international dispute resolution market". This goal has been pursued through the conference series and conference *Discussion Papers* which have aided our "knowledge sharing between researchers and academics, arbitration practitioners, and arbitration institutions outside and within the continent".¹

Our first conference interrogated the role of arbitration institutions in supporting the development of arbitration in Africa and was hosted by the Office of the General Counsel of the African Union Commission in 2015.² It was apt to commence the conference series with the centres that administer arbitration in Africa. This is because prior to our conference series, there was no definitive list of the centres that operate on the continent.³ We produced the first of such lists which has been built on by other organisations such as ICCA.⁴ In addition, our Addis Ababa conference pulled together Africans engaged in arbitration in the same location in Africa and new relationships were formed. It is particularly gratifying that these relationships continue and have led to additional training and appointments for some colleagues. Some of these arbitration centres contributed to the edited collection by Dr Emilia Onyema, *Transformation of Arbitration in Africa: The Role of Arbitral Institutions*, (Kluwer Wolters, 2016).

Our second conference was hosted by the Lagos Court of Arbitration and it focused on the role of judges and courts in the promotion and viability of arbitration in Africa. The conference papers and discussions critically examined the disposition of various African courts towards arbitration.⁵ Our Lagos conference was particularly interesting because several judges from different African countries, including the Chief Justice of Zambia, Her Ladyship, Justice Irene Mambilima, and Justice John Okoro of the Nigerian Supreme Court, were in attendance. The judges in attendance fully participated by listening to our arbitration practitioners and sharing from their own experiences.

Some of the successes recorded following our Lagos Conference include: (1) from Nigeria, a new Chief Justice Onnoghen, who wrote a letter admonishing the judges in Nigeria to honour arbitration agreements. (2) Judges in the various African countries continuing to receive different levels of

¹ Addis Ababa Conference Paper available at: <http://eprints.soas.ac.uk/20421/> page 23.

² Our Addis Ababa conference held on 23 July 2015 and the conference papers are available for download at: <http://eprints.soas.ac.uk/20421/> (Addis Ababa Conference Paper)

³ The list of arbitral centres in Africa are available at: <https://www.researcharbitrationafrica.com/arbitration-institutions-in-africa> (accessed 16 April 2018).

⁴ Link to enhanced list of arbitration centres in Africa on ICCA's website: http://www.arbitration-icca.org/media/9/32588234375195/list_of_arbitration_institutions_in_africa_-_emilia_updated.pdf (accessed 16 April 2018).

⁵ Our Lagos conference held from 22-24 June 2016 and the Conference Booklet is available for download at: <http://eprints.soas.ac.uk/22727/> (Lagos Conference Paper)

training in arbitration. (3) The continued and intensified engagement of the African arbitration community with judges and attorneys-general and other government agencies. (4) The many arbitration conferences that the continent now hosts. These have all contributed to the more supportive judiciaries we now have across the continent. African judges now exhibit in their arbitration connected decisions, better understanding of the role of arbitration in their jurisdictions.

We are very proud that our conference series contributed to these engagements which collectively are leading to change in behaviour towards arbitration across the continent. This change in behaviour and attitude of national judiciaries in several African countries is interrogated in the most recent publication edited by Dr Emilia Onyema, *Rethinking the Role of African national Courts in Arbitration* (Kluwer Wolters, 2018) which features detailed analysis (with commentaries) of arbitration related decisions from eight prominent African jurisdictions.⁶

In 2017, our third conference was hosted by the Cairo Regional Centre for International Commercial Arbitration (CRCICA).⁷ This conference examined the role of the legislative and executive arms of African governments in the development of arbitration. In addition to interrogating the substantive content of the arbitration laws of various African countries and the engagement of UNCITRAL with African states in this regard; the conference also examined the attitude of African governments towards investment arbitration; and non-legal factors relevant to making African countries attractive seats and venues for intra-Africa and Africa-connected international disputes. Extending our interrogation to such non-legal factors was, “to provide a holistic discussion of the gaps which need to be filled to produce a sustainable environment that will attract disputes for resolution on the continent”.

Our Cairo conference was particularly special because it celebrated the engagement of North African countries with those of sub-Sahara Africa. This meant we interacted as a united African continent. This conference added the Arabic language to our conference languages which had hitherto being held in the English and French languages. Finally, it was at our Cairo conference that in response to a challenge thrown by Dr Emilia Onyema, Dr Nagla Nassar of NasserLaw, Cairo accepted to host one African candidate for a one month internship in Cairo. This offer attracted 82 applicants from 22 countries (10 of which were African countries). Ms Ossasiuwa Edomwande was chosen to spend one month in Cairo. Ms Edomwande, in her Report after the internship at NasserLaw, noted that,

I was exposed to precedents and processes, learning more about how an arbitral panel thinks while it resolves disputes that come before it. I learnt more about the arbitration process, particularly how counsel and arbitrators work together to prepare for final hearings and how final awards are drafted.

She also spent some time at CRCICA, visited many of the ancient sites in Egypt which were organised by NasserLaw for her. In this way, she also learnt about the cultures and history of Egypt. She highly recommends the internship, “to anyone who has an interest in international arbitration especially on the African Continent”.

⁶ These jurisdictions are: Ghana, Egypt, Kenya, Mauritius, Nigeria, Rwanda, South Africa, and Sudan.

⁷ Our Cairo conference held from 3-5 April 2017 and the conference Booklet is available for download at: <http://eprints.soas.ac.uk/24243/> (Cairo Conference Paper)

Our fourth and last conference in this series is co-hosted by the Kigali International Arbitration Centre (KIAC) in Rwanda.⁸ Our choice of Rwanda was to ensure we also took our message of 'arbitration in Africa' to the Eastern (and as far South as possible) part of the continent. This was particularly important since we started at the home of the African continent, the Africa Union Commission, went to West Africa (Lagos) and North Africa (Cairo). Our 2018 Kigali conference will examine the fourth identified stakeholder in the development of arbitration in Africa: the arbitration practitioner. It will particularly identify the arbitration practitioner and the various roles open to such individual in the arbitral process. Having identified the roles and their occupants, attendees at this conference will explore how such role occupants can support the development of arbitration in Africa.

At this Kigali conference, we shall launch the Report from our maiden edition of our SOAS Arbitration in Africa survey, *Domestic and International Arbitration: Perspectives from African Arbitration Practitioners*. This survey focused on collecting original data from African arbitration practitioners on their experiences in various aspects of arbitration. The Report from this survey (in addition to the publications from this conference) will be our legacy and contribution to the discourse on arbitration in Africa and its development.

Appreciation

Since we embarked on this project in 2015, we have had strong support from all those who have attended our conferences in Addis Ababa, Lagos, Cairo and Kigali. A number of these people have attended all four conferences while most have attended three or two. Such multiple attendance, for us, speaks to the value of the deliberations and content of our conferences to our attendees.

We have also enjoyed tremendous financial support from various organisations, firms and individuals at all our conferences. We thank: Faculty of Law and Social Sciences SOAS University of London; International Centre for Arbitration and Mediation Abuja (ICAMA); Stephenson Harwood LLP, London; Foley Hoag LLP, Washington D.C; Lagos Chamber of Commerce International Arbitration Centre (LACIAC); African Union Commission; Wilmer Cutler Pickering Hale and Dorr LP, London; Lagos Court of Arbitration (LCA); Ajumogobia & Okeke, Lagos; White & Case LLP, Paris; Aluko & Oyebode, Lagos; G. Elias & Co, Lagos; Sofunde Osakwe Ogundipe and Belgore, Lagos; Templars, Lagos; Royal Heritage, Lagos; Mrs Kate Emuchay; Cairo Regional Centre for International Commercial Arbitration (CRCICA); Youseff & Partners Attorneys, Cairo; Shahid Law Firm, Cairo; Jones Day, London; TMS Law Firm, Cairo; Shalakany Law Office, Cairo; Nour & Selim in association with Al Tamimi & Company, Cairo; Matouk Bassiouny, Cairo; Kigali International Arbitration Centre; Ms Alexandria (Xander) Kerr Meise; Baker McKenzie Habib Al Mulla, Dubai; APAA Afrique; Mayer Brown LLP, London; Mitchell, Silberberg & Knupp LLP, Washington D.C.; Shearman & Sterling LLP, London; APAA Afrique; and Bayo Ojo & Co, Abuja.

The administrative team at each of our conference co-host Centres (African Union Commission, Lagos Court of Arbitration, Cairo Regional Centre for International Commercial Arbitration; and Kigali International Arbitration Centre); and our administrators at the School of Law and the Faculty of Law and Social Sciences, SOAS University of London; all have our admiration for their professionalism and excellence in the execution of their tasks.

⁸ Our Kigali conference hold from 2-4 May 2018.

We thank our media partners over the period: AILA, OHADA; ILFA; I-Arb; and TDM.

We thank all our keynote speakers, moderators, contributors, comperes, rapporteurs and attendees.

We believe that engagement on arbitration in Africa will continue to grow and there will be more exciting and interesting conferences on arbitration in the continent each year which we shall continue to contribute to and support.

Dr Emilia Onyema

SOAS Kigali Arbitration in Africa Conference 2-4 May 2018

The Role of Arbitration Practitioners in the Development of Arbitration in Africa

Aim of the conference

This conference primarily aims to examine how African arbitration practitioners can better support the development of both domestic and international arbitration in their individual countries, regions and collectively across the African continent.

Format of the conference

The deliberations at this conference will be conducted in the form of open forum discussions. This will ensure that many voices can contribute freely in the discussions. Some colleagues have been requested to attend the conference prepared to kick off the discussions during each session. There will also be a debate of young arbitration practitioners versus more experienced arbitration practitioners which will give us a glimpse into the future direction of arbitral practice with reference to Africa.

Venue for the conference

This fourth SOAS Arbitration in Africa conference is co-hosted with the Kigali International Arbitration Centre (KIAC)⁹ and holds here at the Radisson Blu Hotel and Convention Centre, Kigali.

Outline of the conference sessions

Each session is structured to interrogate particular roles (and their occupants) in arbitration. Each session will also interrogate how the particular role and its occupants can contribute to the development of arbitration in Africa. A special session is dedicated to celebrate the achievements of some of our world class arbitrators who are all Africans.

Session 1 will focus on the role of the arbitration practitioner as an administrator of an arbitral centre. This session will explore the skills required to run a successful arbitration centre in Africa; the challenges of the centres in Africa and how the administrators deal with such challenges; their plans for growth; and tips for budding practitioners who wish to pursue a career through arbitration centres. The session will also examine issues of particular interests to attendees such as: the criteria they apply in selecting and enlisting possible arbitrators on their panels; the issues they take into consideration in appointing arbitrators; the factors they take into consideration in deciding arbitrator challenge; their plans in growing their domestic arbitration market; their contribution to the development, understanding and practice of arbitration in their jurisdiction or region (eg providing internships; trainings; workshops; seminars, etc); and concrete examples of how the practices of the institution have improved since the first SOAS Arbitration in Africa conference in Addis Ababa.

This session will be **moderated by Ms Alexander Kerr Meise**, Partner, Mitchell Silberberg & Knupp LLP, Washington D.C. Xander will be joined by: Dr Fidele Masengo of KIAC; Dr Ismail Selim of CRCICA; Mr Narcisse Aka of OHADA, CCJA; Ms Khawla Ezatagui of the Libya International Arbitration Centre and Ms Marie-Camille Pitton of Aceris Law (formerly of ICC).

⁹ Kigali International Arbitration Centre: <http://www.kiac.org.rw/>

Session 2 will examine the topical and central issue of **race and gender** in the appointment of arbitrators in international arbitration. This session will particularly examine the difficulties (or advantages) that these attributes pose in obtaining appointment as arbitrator and suggest measures for those wishing to be appointed and those making such appointments. The session will also explore issues of diversity in domestic arbitration. The need for the appointment of more women and younger arbitrators in African domestic arbitration references. This session will be **moderated by Ms Ndanga Kamau**, formerly of LCIA-MIAC, Mauritius. Ndanga will be joined by Mrs Doyin Rhodes-Vivour of DRV Law, Lagos; Dr Stuart Dutson of Simmons & Simmons LLP, London; Paul Ngotho, Nairobi; Dr Sylvie Bebohi Ebongo of APAA, Cameroon; Mr Isaiah Bozimo of Broderick Bozimo & Co, Abuja; and Ms Lise Bosman of the PCA (The Hague).

Session 3 will feature a debate between aspiring and experienced arbitration practitioners with four on each side to examine arbitrator appointment: the difficulties of getting the first appointment and strategies to overcoming the different hurdles; marketing strategies that will be within the accepted norm; dealing with arbitrator disclosure issues and challenge; continuous professional development matters; preferences for sitting ad hoc or institutional; interviewing of arbitrators; participating as counsel or tribunal secretary as a route into sitting as arbitrator; need for specialisation, etc. The debate will be **moderated by Mr Babajide O. Ogundipe** of Sofunde, Osakwe, Ogundipe and Belgore, Lagos. The debaters are: For more experienced practitioners: Mr Babatunde Fagbohunlu, SAN of Aluko & Oyebode, Lagos; Mr Kwadwo Sarkodie of Mayer Brown LLP, London; Ms Njeri Kariuki of NK Law, Nairobi; and Mr Mouhamed Kebe of GSK Law, Dakar. For the younger practitioners: Ms Chinenye Onyeamaizu of Abuja; Dr Sally El Sawah, of Cairo/Paris; Mr Tsegaye Laurendeau of Shearman & Sterling LLP, London; and Ms Rose Rameau of Accra/Geneva.

Session 4 will focus on academics, students, researchers and trainers in the law and practice of arbitration. This panel will discuss the interaction between the academic and professional stages of arbitration training; content of their training materials; teaching of arbitration/ADR in universities (as Undergraduate or Postgraduate module); whether we should form a group of arbitration/ADR academics and trainers across the continent to promote the culture of arbitration and to provide standardised training materials; whether we should compile a list of qualified trainers and provide trainers workshops in the Arabic, English, French and Portuguese languages; whether the training should include a practical element such as time spent understudying an arbitrator (a mentoring scheme) and targeted internship programmes. This session will be **moderated by Prof Walid Ben Hamida** of University of Paris-Saclay (Evry University). Walid will be joined by Dr Achille Ngwanza of University of Paris Sud II; Ms Yasmin Sabeh of Bahrain Polytechnic; Mrs Sola Adegbonmire of CIARB, Nigeria; and Mr Ike Ehiribe of CIARB London and visiting lecturer, SOAS University of London.

Session 5 will explore **other roles available for practitioners in arbitration**. These roles are: tribunal secretary; expert witness and counsel. This session will explore questions on the role of counsel in arbitration; the viability of co-counsel schemes across the continent and globally; marketing by counsel; counsel setting up boutique arbitration practices; issues of ethics of counsel in arbitration; the importance of the role of the tribunal secretary; internships; mentoring; specialisation; expert witness; among others. The open forum will be **moderated by Mr Baiju Vasani**, Partner Jones Day, and Senior Fellow, SOAS University of London; and **Mr Duncan Bagshaw**, a barrister and member of the international arbitration and Africa groups at Stephenson Harwood LLP, London.

Session 6 will feature an open discussion by seasoned African arbitrators who will share their experiences and tips from their practices over the years. **Chief Bayo C. Ojo**, SAN (Nigeria) will be in **conversation** with: Mrs Funke Adekoya, SAN (AELEX, Lagos); Dr Nagla Nassar (NassarLaw, Cairo); Prof David Butler (formerly of University of Stellenbosch, South Africa); Prof Paul Idornigie, SAN (Nigerian Institute of Advanced Legal Studies, Abuja); Prof Edward Torgbor (Chartered Arbitrator and Professor of Law, Ghana/Kenya); and Dr Gaston Kenfack Douajni (Arbitrator, Professor of Law, former Chair of UNCITRAL & Founder of APAA).

SOAS Arbitration in Africa Survey

The Report from the maiden edition of the SOAS Arbitration in Africa survey will be launched at the Welcome Reception on the evening of 2 May 2018 by Dr Emilia Onyema (the author of the Report) and Mr Isaiah Bozimo, whose law firm (Broderick Bozimo and Company, Abuja) co-funded the survey and Report. Mr Christophe von Krause of White & Case LLP, Paris will give a response to the Report.

Keynote Speaker

The conference **keynote address** will be given by Prof (Dr) Mohamed S. Abdel Wahab, Founding Partner & Head of the International Arbitration, Construction, Oil & Gas and Project Finance Groups of Zulficar Partners, Cairo. Mohamed is the Chair of Private International law and Professor of International Arbitration at Cairo University; Vice President of the ICC International Court of Arbitration; Court Member of the LCIA; President of LCIA's Arab Users' Council; Court member of the CIMAC, Vice President of the IBA Arbitration Committee; Member of the CIArb's Practice and Standards Committee; Member of the CRCICA Advisory Committee; Member of AAA-ICDR International Advisory Committee; and Member of the SIAC African Users' Council's Committee. Mohamed has sat as arbitrator in well over 170 cases under the arbitration rules of all the major arbitration centres. According to *Who's Who Legal*, Mohamed is, 'a star arbitration practitioner'. In 2017, Mohamed was selected to feature in the *GAR Global Guide for Future Leaders in International Arbitration* and the *GAR Guide on Thought Leaders in International Arbitration*. In 2018, Mohamed was awarded the 2018 ASA (Arbitration Association of Switzerland) prize for advocacy in international commercial arbitration.

Networking

Our conferences have garnered a reputation for providing excellent networking opportunities for attendees and this remains the same with this conference which will include several evening receptions and a closing dinner in addition to opportunities to network during the tea and lunch breaks.

Conference website

All information relevant to the main research project and all the connected conferences are available online at: <http://www.researcharbitrationafrica.com/>

Languages

The conference proceedings shall be conducted in the English and French languages with simultaneous translation. However, the *Discussion Paper* is published in three languages (Arabic, English and French) on the conference website. The translations are by: Dr Jean-Alain Penda (French) and Mr Ahmed Bannaga (Arabic).

SOAS Kigali Arbitration in Africa Conference 2018

Programme

02 May 2018: Arrivals

1200-1600: Registration at Radisson Blu

Anchor person: Ms Joyce Williams of Armooh-Williams, PLLC, Alexandria, Virginia

Rapporteurs: Dr Jean-Alain Penda and Dr Prince N.C. Olokotor

1800-2000: Welcome reception for delegates at Radisson Blu sponsored by Shearman & Sterling LLP London

Launch of SOAS Arbitration in Africa Report by Dr Emilia Onyema (SOAS) & Mr Isaiah Bozimo (Broderick Bozimo & Co, Abuja). **Response** by Mr Christophe von Krause, Partner and Head, Africa Arbitration Practice, White & Case LLP, Paris

Day 1: 03 May 2018

Conference Format: Open Forum Discussion

Languages: English/French

0830-0930: Registration and welcome

0930-0945: Welcome by Dr Fidele Masengo, KIAC

0945-1000: SOAS Arbitration in Africa Project by Dr Emilia Onyema, SOAS

1020-1040: Keynote address by Prof (Dr) Mohamed S. Abdel Wahab, Zulficar Partners, Cairo

1040-1055: Tea/Coffee Break sponsored by SOAS University of London; and Stephenson Harwood LLP

Group Photo

1100-1245: **Session 1** will focus on the role of the **arbitration practitioner as an administrator** of an arbitral centre. This session will be **moderated by Ms Alexander Kerr Meise**, Partner, Mitchell Silberberg & Knupp LLP, Washington D.C.; Dr Fidele Masengo of KIAC; Dr Ismail Selim of CRCICA; Mr Narcisse Aka of OHADA, CCJA; Ms Khawla Ezatagui of the Libya International Arbitration Centre and Ms Marie-Camille Pitton of Aceris Law (formerly of ICC) will kick-off the discussions.

1300-1400: Lunch sponsored by White & Case LLP, Paris

1410-1610: **Session 2** will examine the central issue of **race and gender** in the appointment of arbitrators in international arbitration. This session will particularly examine the difficulties (or advantages) that these attributes pose in obtaining appointment as arbitrator and suggest measures for those wishing to be appointed and those making such appointments. This session will be **moderated by Ms Ndanga Kamau**, formerly of LCIA-MIAC, Mauritius. Ndanga will be joined by Mrs Doyin Rhodes-Vivour of DRV Law, Lagos; Dr Stuart Dutson of Simmons & Simmons LLP, London; Paul

Ngotho, Nairobi; Dr Sylvie Bebohi Ebongo of APAA, Cameroon; Mr Isaiah Bozimo of Broderick Bozimo & Co, Abuja; and Ms Lise Bosman of the PCA (The Hague).

1610-1630: Tea/coffee break sponsored by Baker Mckenzie Habib Al Mulla; and APAA Afrique

1630-1815: **Session 3** will take the form of a **debate** between four more experienced (Mr Babatunde Fagbohunlu, SAN of Aluko & Oyebode, Lagos; Mr Kwadwo Sarkodie of Mayer Brown LLP, London; Ms Njeri Kariuki of NK Law, Nairobi; and Mr Mouhamed Kebe of GSK Law, Dakar) and four younger (Ms Chinenye Onyeamaizu of Abuja; Dr Sally El Sawah, of Cairo/Paris; Mr Tsegaye Laurendeau of Shearman & Sterling LLP, London; and Ms Rose Rameau of Accra/Geneva) arbitration practitioners. This debate will be **moderated by Mr Babajide O. Ogundipe**, of Sofunde, Osakwe, Ogundipe and Belgore, Lagos.

1815-1900: **Drinks Reception** & Signing of Memorandum of Understanding between Cairo Regional Centre for International Commercial Arbitration (CRCICA) and Kigali International Centre for Arbitration (KIAC): sponsored by KIAC and CRCICA

Day 2: 04 May 2018

Conference Format: Open Forum Discussion

Languages: English/French

0900-1100: **Session 4** will focus on **teachers and trainers** in the law and practice of arbitration. This session will be **moderated by Prof Walid Ben Hamida** of University of Paris-Saclay (Evry University). Walid will be joined by Dr Achille Ngwanza of University Paris Sud II; Ms Yasmin Sabeh of Bahrain Polytechnic; Mrs Sola Adegbonmire of CI Arb, Nigeria; and Mr Ike Ehiribe of CI Arb London.

1100-1120: Tea/coffee break sponsored by Sofunde, Osakwe, Ogundipe & Belgore, Lagos;

1130-1320: **Session 5** will explore **other roles available for practitioners in arbitration**. These roles are: tribunal secretary; expert witness and as counsel. The open discussion will be **moderated by Mr Baiju Vasani**, Partner Jones Day, and Senior Fellow, SOAS University of London; and **Mr Duncan Bagshaw**, a barrister and member of the international arbitration and Africa groups at Stephenson Harwood LLP, London.

1330-1430: Lunch sponsored by Mayer Brown LLP, London; and Mitchell Silberberg & Knupp LLP, Washington D.C.

1435-1630: **Session 6** will feature an open discussion by seasoned African arbitrators who will share their experiences and tips from their practice. **Chief Bayo C. Ojo**, SAN (Nigeria) will be **in conversation** with: Mrs Funke Adekoya, SAN (AELEX, Lagos); Dr Nagla Nassar (NassarLaw, Cairo); Prof David Butler (formerly of University of Stellenbosch, South Africa); Prof Paul Idornigie, SAN (Nigerian Institute of Advanced Legal Studies, Abuja); Prof Edward Torgbor (Chartered Arbitrator and Professor of Law, Ghana/Kenya); and Dr Gaston Kenfack Douajni (Arbitrator, Professor of Law, former Chair of UNCITRAL & Founder of APAA).

1640-1700: Close

1900-2100: Closing dinner at Radisson Blu sponsored by Bayo Ojo & Co, Abuja

The Role of Arbitration Practitioners in the Development of Arbitration in Africa

Discussion Paper

Dr Emilia Onyema

Introduction

This fourth conference in the SOAS Arbitration in Africa series interrogates the role of arbitration practitioners in the development of arbitration in Africa. The focus of this conference therefore, is the 'arbitration practitioner'. The key question that arises is who is an arbitration practitioner? The answer to this question will lead to examining the roles open to such practitioners in the arbitral process to enable a discussion on how the roles and their occupants can contribute to the development of arbitration in Africa.

The Arbitration Practitioner

A very broad description of an arbitration practitioner is any individual who participates, as a professional, in the determination of the dispute between the disputants in an arbitral reference. This description will encompass the many functions or roles open to individuals as participants in the arbitral process such as: arbitrator, counsel, tribunal secretary, and administrator of an arbitration centre. An expanded description can include an expert (in arbitration) witness (primarily relevant in litigation) and academics and trainers who research and teach arbitration and facilitate the formation of the arbitration practitioner. I shall adopt the expanded description and refer to these practitioners as the 'arbitration community'.

This broad based description implies that an arbitration practitioner needs to be an individual and not a legal entity. To this end, an institution, such as the KIAC or CRCICA, as a legal entity, cannot be an arbitration practitioner. It is therefore the individuals that, in a professional capacity, perform certain key functions that enable the arbitration reference to achieve its core purpose of dispute resolution, that are of primary relevance. The disputing parties or disputants are indispensable to any arbitration reference being the very reason there is an arbitration in the first place. However, the disputants are not 'practitioners' because their function or role in the arbitration is not to facilitate the resolution of their dispute. The disputants are the beneficiaries of the performance of the roles or functions of arbitration practitioners in any reference.

The Role of the Arbitration Practitioner in Arbitration

This being the case, it is useful to very briefly explore the roles occupied by these arbitration practitioners. The arbitrator is the most important arbitration practitioner because s/he determines the dispute between the disputants. The arbitrator is only second in importance to the disputants themselves, without who there will be no arbitration. This is because there cannot be any arbitration without the decision makers, the arbitrators or arbitral tribunal.

The administrator of the arbitration has over the years gained prominence in arbitration especially with the growth of institutional arbitration. Arbitration centres or institutions are run or managed by individuals. Broadly speaking, the primary function of the institution is to assure the smooth management of the arbitral reference. Institutions execute this task through efficient management

of the arbitral hearing which includes all participants in the process. It is therefore important that the individuals that manage arbitration centres understand the process and their clientele to provide them with efficient support and service. It can therefore be concluded that the very existence and continued survival of arbitration centres rests on the availability of disputes to be arbitrated, either under their bespoke arbitration rules or other rules, using their facilities. Thus, one of the most important tasks of arbitration centres is the generation of this workload for themselves and the other arbitration practitioners.

Counsel, who basically represents the interest of the disputants and presents the case of a particular disputant to the arbitrators for decision, participate in the arbitration as part of the legal services they provide to the disputants. Most counsel in arbitration therefore, provide the same services they provide to their clients in litigation. However, where counsel acts as legal advisors or transactional lawyers, they assume an even more important function as it relates to arbitration. They support the arbitral process by ensuring the inclusion of a valid arbitration agreement in the contractual documentation between the parties, even prior to the dispute arising. It is the conclusion of the arbitration agreement that generates the workload for arbitration practitioners.

The tribunal secretary is also becoming more popular. The individual who occupies this role acts as registrar to assist the arbitrator in the administration and other tasks relevant to the arbitral reference.

An expert in arbitration may be required to provide a national court with expert evidence on various aspects of arbitration usually under a particular law or legal system.

These participants are relevant in both domestic and international arbitration. There are several other individuals who may render various services for the smooth operation of the arbitration but most of such services may not be indispensable to the attainment of the core purpose of arbitration. Some of such individuals are the different staff of arbitration centres, translators and transcribers, etc.

The final group of arbitration practitioners are the academics and trainers who impart knowledge of arbitration to the various groups of practitioners. The vast majority of those who teach arbitration as an academic subject and those who conduct training for professional practice are themselves active as arbitrators, counsel, tribunal secretary or administrators.

I note the importance of judges to the efficient operation of the arbitral jurisdiction. However, judges are not (strictly speaking) members of this arbitration community. This is because judges operate outside of the arbitration community though their action affects the community and its activities.

It is helpful (particularly for budding arbitration enthusiasts) to note the different roles open to arbitration practitioners. The vast majority of arbitration practitioners combine two or more of these roles (e.g. sitting as arbitrator and teaching or appearing as counsel) in their practice. Each arbitration practitioner's role is legitimate and relevant to the operation of an efficient arbitration community in any jurisdiction, region and globally. It is for each practitioner to determine the role(s) they wish to pursue in their arbitral practice.

Identifying a professional community of persons raises several other issues such as ethics, community values and their enforcement, entry requirements and their operation, and standard setting in the community. These issues are not discussed in this short paper but may arise for discussion at the conference.

Participation of the Arbitration Practitioner in the development of Arbitration in Africa

It is self-evident that the 'golden thread' that binds the arbitration community together is the availability of disputes to be arbitrated. The task of generating arbitration work therefore falls on all members of the arbitral community. In addition, it is for each member of the community to abide by any community values or norms which have been generated or evolved, and which will keep the community attractive to users (disputants). This again is to ensure the continued survival of the community. It therefore means that each member of this community need to participate in and support the development of arbitration as an accepted dispute resolution process within the larger community from which its core commodity (disputes) will be generated. Therefore, all members of the community, in their respective roles, need to promote arbitration as a dispute resolution process and ensure that disputants conclude effective and valid arbitration agreements.

There are various ways individual groups in this community can support the development of arbitration in Africa. Some suggestions include:

Academics/trainers: need to develop qualitative curriculum that meets international standards, with a goal of equipping students and trainees with sound knowledge of arbitration, ability to think analytically and independently; excellent oral and written communication skills; ethics, and professionalism.

Arbitrators: should be trained to develop the ability to think analytically and independently; have excellent oral and written communication skills; ethics and professionalism; and ability to get along with other people and cultures.

Counsel: should extend their professional ethics and expertise from litigation to arbitration.

Tribunal secretary: should support the arbitrator within their mandate and act with professionalism.

Administrators: should put efficient systems in place to provide excellent professional services to the disputants and members of the arbitration community.

What makes Africa special in Arbitration?

As our SOAS Arbitration in Africa survey Report has found, the vast majority of African arbitration practitioners are under-represented in both domestic and international arbitration. Therefore, the vast majority of African arbitration practitioners are not fully participating in the different arbitral roles mentioned above. This finding is in addition to arbitration flight from the continent as has been noted by many commentators. However, according to the views of Respondents, domestic arbitration is growing in Africa. This view is supported by statistics from arbitration institutions such as ICC, LCIA, and ICSID, for which there is an increase in the number of African parties (as disputants) in international arbitration references under their auspices.

All these data therefore mean that Africa is a growth area for arbitration, both domestic and international. It is this growth prediction that makes Africa special in arbitration. There will be plenty of work generated for all categories of arbitration practitioners. The key question for each practitioner is whether they will participate in the distribution of this work. If yes, the capacity they wish to participate and how they will ensure their participation.

Summary

This fourth SOAS Arbitration in Africa conference aptly engages with these questions to prepare each attendee for the great possibilities that Africa holds for arbitration practitioners; enable each attendee think through how they can fully participate in this growth; and ways in which attendees can engage in the development of arbitration in Africa as the dispute resolution of choice in their different countries.