

SOAS Arbitration Report 2018 Bolsters Conversation on Arbitration in Africa

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On 2 May 2018, the maiden edition of the School of Oriental and African Studies (SOAS) Arbitration in Africa Survey was launched at the SOAS Arbitration in Africa Research Conference in Kigali, Rwanda. The survey, conducted using an online questionnaire, focused on perspectives of African arbitration practitioners in domestic and international arbitration.

The insufficiency of information on the availability of skilled African arbitration practitioners, and enquiries about the place of the African arbitration practitioner in the global arbitration arena, were some of the reasons that necessitated the survey. This survey debunks the myth that 'African arbitrators are not available or lack expertise and experience' by showing that there is a large number of arbitrators on the African continent, and they are well-trained. It serves as empirical data on the skills, expertise and experience of African arbitration practitioners that will aid future discussions and developments in the area of Arbitration and Alternative Dispute Resolution (ADR) in Africa.

Profile of the African Arbitration Practitioner

The survey, which was open for responses between 4 December 2017 and 12 February 2018, received 191 responses during the period. The first group of questions sought to understand the profession, domicile and arbitration experience of the respondents. 90.6% of the respondents to the survey are lawyers, with few representations from academics, engineers, surveyors and other professions, and the majority of the respondents are domiciled in Nigeria. 83.8% of the respondents describe themselves as arbitration practitioners acting in the capacities of counsel, arbitrator, registrar or tribunal secretary, academic, consultant and legal adviser.

Lawyers are known to be the primary professionals who engage in the resolution of disputes, though there are dispute resolvers or resolution specialists who may not necessarily be lawyers. Aside from legal practitioners, respondents to the survey could (in addition to those listed above) also have been architects, accountants, physicians and nurses. The arbitration pool is becoming increasingly diverse in terms of the specialization of arbitration practitioners.

81.7% of the respondents have undergone formal training in arbitration law and practice, while 23% studied arbitration as part of a higher degree at university. 72% of these were trained by the Chartered Institute of Arbitrators (UK) - an arbitration institution with an international network. This lends credence to the fact that Africa has a large pool of arbitrators who can serve dispute resolution needs on the international and domestic scene by applying best practices. It is essential that

arbitration practitioners have good training or first-hand experience with the process. This training, which should be continuing, is best served by membership of arbitration organizations/institutions. This affords potential and active arbitration practitioners with the opportunity to garner international best practices that are paramount for work as arbitrator, arbitration counsel or arbitral secretary.

Experience of African Arbitration and ADR Practitioners

The second group of questions analysed information to understand the experience of the respondents in arbitration in the last five years (2012-2017) which served as the reporting period. The survey also measured participation in mediation. The results show that the African arbitration practitioner also engages in other forms of dispute resolution particularly mediation with 45.5% of the respondents stating that they have acted as mediators in the last five years. 64.4% of these respondents reported that they have sat as mediators in one to five mediations over the reporting period.

The Future of Arbitration and ADR in Africa

The survey was conducted in three languages: English, Arabic and French, with the majority of responses in English. The report provides data on active participation in 19 of the 54 countries in Africa. As there are six Lusophone countries in Africa, the survey reporters expect to add Portuguese as one of the languages in future surveys in order to measure the perspectives of arbitration users in those countries and for more representative information about Arbitration in Africa.

Furthermore, only three (Benin, Cameroon and Togo) of the 17-member states of the OHADA (*Organisation pour l'harmonisation en Afrique du droit des affaires - Organisation for the Harmonization of Business Law in Africa*) are represented in the survey. For the OHADA member states, three revised laws on Arbitration and ADR came into effect in March 2018: the new Uniform Act on Arbitration Law, the revised Arbitration Rules of the Common Court of Justice and Arbitration (CCJA) and a new Uniform Act on Mediation. These developments are sure to increase the use in arbitration and ADR processes of African practitioners and on the African continent. It will be interesting to see future results from more OHADA member states.

The African Continental Free Trade Area Agreement (AfCFTA) signed by 44 out of the 55 African Union member states in April 2018 will also welcome an increase in African trade which inevitably leads to an increase in commercial disputes. The international dispute resolution community looks forward to the benefits of the South African International Arbitration Act no. 15 of 2017 and envisions the reforms that will arise from Nigeria's Arbitration and Conciliation Bill of 2017 which is currently before the National Assembly. As arbitration and ADR practitioners continue to raise awareness of ADR methods outside of litigation and parties decide to choose arbitration and ADR as methods of resolving disputes, more of this type of surveys will be needed to measure trends and shape the future of arbitration and ADR.

The survey itself has a promising future. I commend the researchers and supporters - the firm of Broderick Bozimo & Company - for taking the step to provide data in this area and encourage everyone to read the full survey report [here](#).