

Interviews with our Editors- Insights from Dr Rukia Baruti, Secretary General of AfAA

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A common concern for arbitration practitioners in Africa is that when it comes to African seated arbitrations, African practitioners are underrepresented. The African Arbitration Association (AfAA) was set up as a combined vision of practitioners in the region to create a platform that would encourage and create more opportunities for greater representation of African practitioners in African arbitrations.

Kluwer Arbitration Blog invited Dr. Rukia Baruti, an international arbitrator and the Secretary General of the AfAA to provide some insight into her career progression, the establishment of the AfAA and what else can be done to improve Africa as an international arbitration hub.

Dr. Baruti's key advice to fellow female practitioners is "pay it forward"- wise words for all practitioners.

1. What attracted you to disputes and arbitration?

I wouldn't say I was attracted to disputes but I was attracted to arbitration as a

dispute resolution mechanism because of its semi-formal setting (I'm not a fan of formality), flexibility in terms of where it can take place and its almost fluid nature insofar as the parties' ability to choose their own rules of procedure is concerned.

I grew up wanting a career that was "international". I did not quite know what form that would take. At one stage I thought I wanted to be a diplomat but after working in the dispute resolution department of a law firm for a while, I was naturally attracted to international arbitration.

2. There have been a number of recent developments in arbitration across the African continent. What in your view has been one of the most significant?

Without wanting to sound biased, I would say it was the establishment of the African Arbitration Association (AfAA). My view is supported by the Best Development Award that the AfAA won at the Global Arbitration Review Awards last month.

To me, the establishment of the AfAA is the most significant development in arbitration across the African continent because it came about as a result of a concerted effort by African arbitration practitioners to address their common concern that they were not getting a fair share of the arbitration work out there - especially Africa-related international arbitration work. What united us all was the frustration we all felt at the lack of acknowledgment of the pool of qualified international arbitration practitioners from or within Africa.

What made it all the more urgent was the realisation that many of us were involved in various arbitration initiatives designed to address the issue in different parts of the world in one way or another. The lack of coordination amongst us as well as a lack of awareness of each other's initiatives, resulted in a duplication of efforts leading to incoherence as to what is being offered by whom and what distinguished the initiatives. It was against this backdrop that the AfAA was formulated and I think it is the impetus we needed to approach the concern at a continental level.

3. A common concern for African practitioners is the comparative under representation of African arbitrators and counsel for that matter in arbitrations that are either seated in Africa or concern an African entity. To what extent do you think the AfAA will assist

with this concern? How would the AfAA be able to assist with this?

This is one of the main goals (if not the main goal) of the AfAA.

The AfAA would be able to assist with this by creating a globally visible platform to promote not only African arbitrators and African counsel but also African arbitral institutions and African arbitral seats. The AfAA also aims to facilitate the appointment of African arbitrators and counsel and encourage the use of African arbitration institutions.

The AfAA intends to achieve these objectives by among other things, maintaining a searchable online directory of its members consisting of African arbitration experts; promoting its members through various activities of the AfAA, including AfAA promotional initiatives, emails and materials, the AfAA website and newsletters; involving its members in AfAA's activities, including promotional roles, lecturing and participation in conferences; working with African governments and businesses to raise awareness of the existing arbitration capacity from and within Africa and encouraging African governments and businesses to appoint African arbitrators and African counsel in their arbitration cases as well including African arbitration forums in their international contracts.

4. I can see that you also sit as an international arbitrator. Have any of the cases you arbitrated had a seat in an African nation. What was the key legal issue in debate?

Only one of my arbitrations has had a seat in an African nation despite the fact that they all involved an African party. In that case there were no legal issues in debate. The issues were purely factual.

5. In your view, what more needs to be done to improve the visibility of different countries in Africa as an International Arbitration hub?

There needs to be a more proactive approach to international arbitration by African States. This includes, for example, African States demonstrating a willingness to review, update and strengthen their legislative and judicial frameworks on international arbitration. It also includes ensuring that their countries are accessible, not only in terms of means of travel but also in terms of entry requirements.

I also think it is unfortunate in circumstances where both parties are African but

end up choosing a non-African seat for their arbitration. In many ways, this hinders the development of potential African arbitration seats because there is no motivation on the part of African countries to develop one of their cities into an international arbitration hub. On the other hand, if African parties regularly chose an African seat, the incentive to develop it into an international arbitration hub in order to encourage more parties to choose it, naturally arises.

There also needs to be an open dialogue between African States and the private sector on how to promote the use of international arbitration within Africa as a means of resolving international disputes. Dialogue can be encouraged through attending and speaking at multilateral forums where African States are represented e.g. the African Union. The AfAA is well-placed to facilitate and be the platform for such dialogue. The AfAA can work closely with Heads of State to ensure they understand the importance of arbitration to the development of their countries. This understanding should lead to policies and programmes being developed and implemented which ensure that arbitration is streamlined into national governments. The AfAA can also work closely with national court Judges by providing technical assistance, which ensures that judges have an enhanced awareness of the practice of international arbitration and its application.

6. It is acknowledged that African arbitration practitioners are underrepresented in arbitration.

(a) Do you see this particularly challenging as a female arbitrator and lawyer? Do you see introducing quotas as a feasible option?

It is no secret that arbitral tribunals are male-dominated. So, while I find it particularly challenging to get appointments being African as well as female, I also see it as an opportunity to advocate for diversity in arbitration. A good example is what The Pledge has done to advocate for increased representation of women as arbitrators. Another way is the inclusion by arbitration institutions of criteria requiring diversity for making arbitral appointments. While in theory quotas may seem like a good way to address inequality in arbitration, I think in the long run imposing quotas is not going to be sustainable. I believe arbitration appointments should be based on merit but that opportunities should be offered to both males and females on an equal footing.

(b) What steps do you think need to be taken to improve the

representation of Africans in African arbitrations and particularly women?

There are so many steps that can be taken. However, I think it is important for Africans to realise that it is up to them to take these steps. So for instance, African women should make themselves more visible, more vocal and more proactive in letting others know about their expertise in arbitration. They should, for example, write arbitration articles that can get published in relevant journals and online blogs; seek out and secure speaking engagements at arbitration conferences; or get involved in capacity building initiatives or giving lectures on arbitration at seminars. These activities have seemed to work for me to a certain degree.

Furthermore, African States and African parties should be actively appointing qualified Africans in international arbitrations. This will not only build confidence in African arbitration expertise within Africa, but also outside of Africa. Lastly, those that make appointments e.g. arbitration institutions or parties, should ensure that at least one African and one female is appointed in Africa-related arbitrations. Without that, there is a danger of perceiving such arbitrations as lacking legitimacy especially if the tribunal is made up entirely of non-Africans in an African-related arbitration.

7. What would be your key advice to fellow female practitioners in the field?

My advice would be to “pay it forward” by recommending or appointing fellow female practitioners whenever an opportunity presents itself. Mentorship between female practitioners is another very good way to “pay it forward” and I would encourage it as it ensures continuity and the eventual growth of more female arbitration practitioners. There are many experienced female arbitrators out there that I am sure would be more than happy to take on a mentee. Mentorship is something that the AfAA also wants to establish, although it will not be restricted to female practitioners.

This interview is part of Kluwer Arbitration Blog’s “Interviews with Our Editors” series. Past interviews are available here.