

Kluwer Arbitration Blog

The 2020 SOAS Arbitration In Africa Survey Confirms African Institutions And Seats To Be A Force To Reckon With

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The biennial [2020 Arbitration in Africa Survey Report](#) (2020 Survey), which is the second in the series, is focused on top African arbitral centres and seats. It identifies the top and busiest arbitral centres in Africa. The survey was commissioned by the School of Oriental and African Studies (SOAS) and sponsored by the law firm of Broderick Bozimo & Co, Abuja and the African Legal Support Facility (ALSF). An online questionnaire composed of a combination of 27 closed and open questions was circulated broadly within the international arbitration community for completion. The questionnaire was supplemented by a very short focused quantitative analysis based on three broad questions targeted only at arbitration centres operating in Africa. With the maiden edition of the survey confirming that African arbitrators are skilled and possess sufficient expertise, this survey sought to investigate the suitability of African arbitral institutions as well as Africa cities as seats of arbitration. This was in consideration of previous suggestions that African parties prefer arbitral institutions outside the continent.

The 2020 Survey recorded 350 responses from 34 countries across the continent, Asia, Middle East, North America, and Europe. The majority of the respondents have experience in arbitration on the continent in one capacity or the other. The majority of the respondents were from Africa specifically from South Africa, Nigeria, and Egypt. A quantitative analysis targeted at arbitration centres operating in Africa was further deployed to supplement the findings from the survey. The arbitral centres were ranked based on the arbitration cases they have administered and their outreach to other centres. The reporting period for the survey was 2010-2019.

Summary of Findings

91 arbitration centres or organisations were identified as operating on the continent. However, not all of them were found to administer arbitration cases. For instance, the Libyan Centre for International Commercial Arbitration has only administered 4 mediations since its inception. Users of arbitration centres identified that, the key qualities that the centres should possess include; convenient location, conducive hearing facilities, recording equipment, clear rules, language diversity, case management, and neutrality. Respondents further reiterated on a list of facilities that an African centre should provide as an international arbitration centre. Some of these included; location, experienced panels, use of diverse languages, modern rules, modern technology, independence, and knowledge of African socio-cultural context.

Arbitration Foundation of South Africa (AFSA), Cairo Regional Centre for International Commercial Arbitration (CRCICA), and Ouagadougou Arbitration and Mediation & Conciliation Centre (OAMCC) are some of the institutions with the highest number of cases under their own rules since their inception. The Centres have administered 4,134, 1,408, 181 cases respectively. Other institutions in the top 10 are Common Court of Justice and Arbitration, OHADA (CCJA), Kigali International Arbitration Centre (KIAC), Tanzania Institute of Arbitrators (TIArb), Nairobi Centre for International Arbitration (NCIA), and Centre de Mediation et D'Arbitrage de Niamey (CMAN). In terms of administering ad hoc arbitration cases, International Centre for Arbitration and Mediation Abuja (ICAMA) is the standout institution. CRCICA is ranked as the leading arbitration centre on the continent in terms of outward vision and engagement. In addition to CRCICA and AFSA, the other institutions that have been highly ranked by the respondents in this regard are KIAC, Lagos Court of Arbitration (LCA), and the NCIA.

Majority of the respondents expressed the will to recommend African arbitral centres to users of arbitration. These are very important and indicative identifications that African arbitral centres can adopt to increase their suitability to users. Not surprising, with the present COVID-19 pandemic and the rise of virtual hearings, technology stands out as seemingly one of the crucial factors that can help African centres to ultimately measure up to centres outside Africa. Additionally, almost half of the respondents also indicated that they have participated in ad hoc arbitration in Africa.

With regards to the issue of seat, the 2020 Survey identifies the major cities on the African continent that host arbitration cases whether ad hoc or institutional. Johannesburg, Lagos, Cairo, Cape Town, and Durban are ranked as the top five in this regard. The popularity of these seats is largely for reasons provided in the preceding paragraphs with regards to suitability of centres and what the users find to be the most important in a centre. Additional reasons include: arbitration friendly laws and jurisdictions, economic hubs of the continent, multilingual cities, political stabilities, and security.

Finally, respondents shared what they found most rewarding as well as what they found most troubling when participating in arbitration in Africa. Expedious disposal of disputes, parties' acceptance of award, cost effectiveness of ICC arbitration in Africa, linguistical considerations, as well as procedural flexibility are some of the rewarding aspects that were noted by the participants. Appointment of non-expert arbitrators, cost of arbitration, enforcement of award, unclear text of local laws on arbitration, frequent recourse to courts during the proceedings, and repeated appointment of some arbitrators are some of the troubling issues identified by the respondents.

Comments

Increasingly, African countries have joined the race to establish arbitral centres and ultimately market themselves as attractive seats of international arbitration. With the discussions on the legitimacy of arbitration, African countries have not only contributed to the debate but also showcased their expertise.

With regards to African arbitral centres boosting their prospects to administer international arbitration, a couple of important things stand out from the findings of the 2020 Survey. Technological equipment, having clear rules of arbitration, cost effectiveness, language diversity, being an economic hub and reputation are the most emphasised desirable features. Relationship

and cooperation between centres also comes across as an attractive feature. Perhaps another interesting consideration that was observed is a centre's knowledge of African socio-cultural context. Finally, a crucial factor that cannot be downplayed is the centre's independence from control, mostly by the government. Even in the midst of a host of challenges pointed out, these are the most important features that African arbitral centres can work on in order to remain attractive seats for international arbitration. It is noteworthy that these features are in tandem with what is expected of an international arbitration centre.

East African centres (*Kigali International Arbitration Centre, Nairobi Centre for International Arbitration and Tanzania Institute of Arbitrators*) featured in the top seven centres in Africa in terms of cases administered and MOUs with other arbitration centres. Whereas this isn't a dismal performance, compared to their counterparts in Egypt and South Africa, there's certainly need to market these institutions and popularize them to users in and outside Africa. In the top 20 seats and cities, only Kigali and Nairobi featured from East Africa. This should prompt the region to look at the factors that make the preferred cities and seats more favourable as they look to borrow best practices.

It is therefore, imperative for African arbitral centres to adopt modern technology and keep up with other centres around the globe. The *Africa Arbitration Academy Protocol on Virtual Hearings* is a good example of innovation in this regard. This is specifically relevant during the current global restrictions of physical movements when virtual hearings are increasingly in demand. These centres should also put mechanisms in place to have staff and members who have diverse language backgrounds. They should revise their costs to weed out unnecessary financial burdens on their users and most importantly they should work on their image and visibility to establish a positive reputation. This includes making their data and statistics publicly available and easily accessible. African arbitral centres should also step up their efforts to continue signing cooperation MoUs among themselves and with other centres around the world. This will enable them to borrow best practices from these institutions and to build relationships that will foster cooperation. Most importantly, these centres must strive to have clear and comprehensive flexible rules of arbitration that also guarantees their independence. As they continue to adopt these recommendations and address the challenges, some of which have been set out in the survey, these centres will continue to rise and measure to eminent centres around the world. Ultimately, Africa will be an attractive seat of international arbitration just like other parts of the world that already boast this status.

Conclusion

The survey's findings confirm that African parties have faith in arbitral institutions on the continent with 88% of the respondents confirming that they would recommend African arbitral centres. Further, it demonstrates that African arbitral centres enjoy strong reputation from both users within and outside their locations with the respondents lauding their professionalism, efficiency and support facilities. This is certainly a good start as the continent's centres seeks to assert their rightful place amongst other institutions globally.

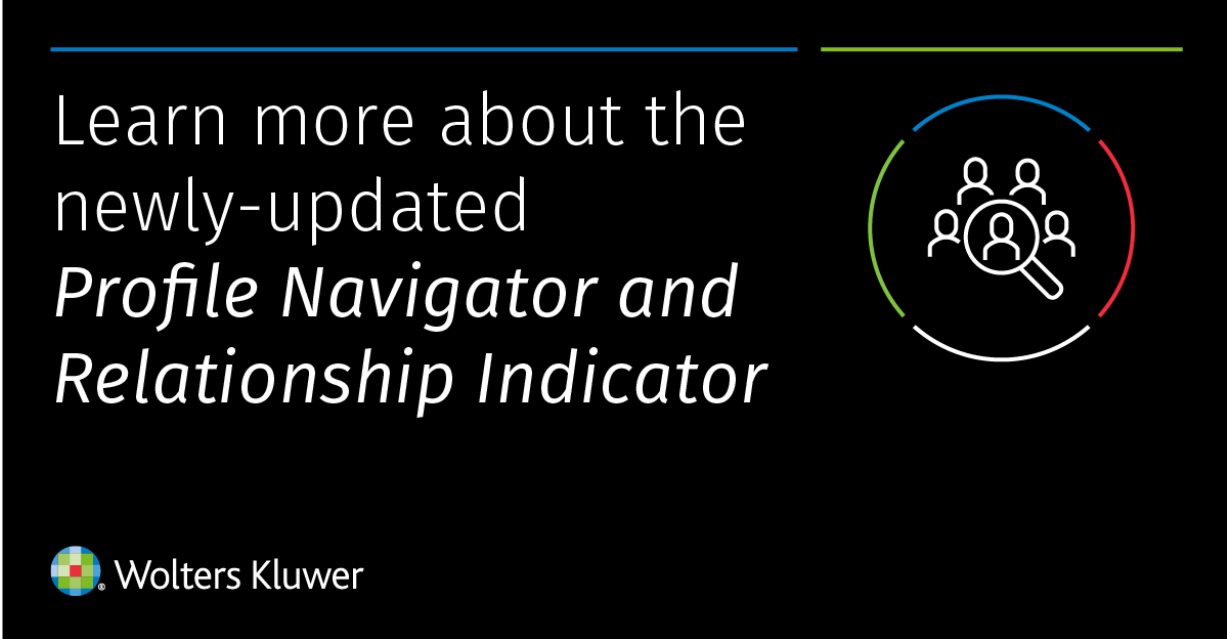

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