Interviews with Our Editors: In Conversation with Ndanga Kamau, Vice President of the ICC International Court of Arbitration and President of the ICC Africa Commission

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Ndanga Kamau is a Vice President of the International Chamber of Commerce (ICC) International Court of Arbitration and the President of the ICC Africa Commission. She is an international lawyer who specialises in international dispute settlement and international law. She sits as arbitrator and represents clients in international disputes. She also provides consultancy work and teaches as independent/adjunct lecturer. Ndanga holds an LLM in International Dispute Settlement from the University of Geneva/Graduate Institute, postgraduate diplomas in law from City Law School/Inns of Court School of law, and a degree in Economics from the University of Cape Town.

Welcome to the Kluwer Arbitration Blog, Ndanga! This will be a great opportunity to learn more about you, your trajectory, and your experience in international arbitration. Thank you for your time.

1. **Let us begin with your personal trajectory. How did you become interested in international arbitration?**

My interest in international arbitration was nurtured while trying to sit, and sometimes stand, unobtrusively in the back of various conference rooms in the late 2000s! In between my studies in London, I spent a year as an intern at the British Institute of International and Comparative Law (BIICL). One of the perks of a BIICL internship was that interns could attend the Institute's rich programme of events for free. Speakers at these events were leading experts in international dispute resolution and international law, drawn from private practice, academia, government, institutions, and international courts. It was at one of these events that I first encountered an agreement to arbitrate.

I went on to do the MIDS programme in Geneva, which covered international dispute resolution more broadly – negotiations, WTO, ICJ, commercial arbitration, investment arbitration, and WIPO. I maintain this broad interest in international dispute resolution.

2. **Turning to your work on international arbitration in Africa, are there discernible trends in how international arbitration is developing on the continent? Please feel free (actually, please do!) to bring nuances and distinctions in trends you see in different Sub-Saharan African regions and jurisdictions.**

It is difficult to discern any trends in a region that contains such diverse countries. But, with that caveat, I would make four generalisations.

Firstly, states in the region are increasingly committed to modernising their legal and institutional frameworks for international dispute resolution – this year alone, Ethiopia and Sierra Leone have ratified the New York Convention, and Tanzania has enacted a new international arbitration law.

Secondly, African stakeholders are becoming more sophisticated and assertive.

They are calling for the use of African seats, for the engagement of African counsel, and for the appointment of African arbitrators in international disputes.

Thirdly, there is more intra-Africa collaboration, especially between the younger generation of lawyers. These pan-African exchanges can only increase as African states start to implement the African Continental Free Trade Agreement (AfCFTA) in 2021.

Finally, there is considerable interest in Africa from the international arbitration community outside the continent.

3. **In a recent webinar, you shared your passion about 'the development of affordable, accessible, efficient and inclusive dispute resolution systems in the world, particularly in Africa'. How can we achieve this in a world disrupted by Covid-19?**

If I may focus on Africa, I think that the disruption caused by Covid-19 has given us the impetus to think about how we can leverage technology for dispute resolution. Now is the time for all stakeholders to invest in multi-year plans to ensure better connectivity across the continent.

4. **In the same webinar, you suggested that we should broaden the data points that we rely on when talking about and measuring diversity. Could you elaborate a bit more on this?**

You may have been listening too attentively to the webinar! I suppose I was making two broad points.

The first was that to achieve diversity and inclusion in international arbitration, we must look beyond gender, and do that in a way that does not prioritise one category of diversity over another – I think this has already started.

The second was that we may be guilty of overemphasising arbitral appointments as a proxy for diversity and inclusion in our field. We focus on data on arbitral appointments to tell us how well (or badly) we are doing on diversity and inclusion, but we should really be looking at data from the full field – in-house counsel,

counsel in law firms, barristers, counsel in arbitral institutions, academics, *etc*. We can only achieve diversity and inclusion in international arbitration if we achieve it across the board, not just in arbitral appointments. More than that, it is unlikely that we can achieve diversity in arbitral appointments without first achieving it in these other areas.

5. **Among the many interesting projects you are involved with, you are currently an observer in the UNCITRAL Working Group III on Investor-State Dispute Settlement Reform. From your perspective, how are African states approaching ISDS reform?**

As can be expected from a continent with 54 countries, there is great diversity in the way in which African states are approaching ISDS reform. There are states which have been vocal about dismantling the current system, others that are actively working to reform the system, and many others which do not have a discernible position. As African states prepare to negotiate the Investment Protocol of the African Continental Free Trade Agreement (AfCFTA), these differences will impact the outcome of their negotiations.

At UNCITRAL Working Group III, which is mandated with procedural reform, it has been striking to see the increase in attendance by African states between the first session in late 2017 and the last in-person session in January 2020. I think it would enrich the discussions to have more active participation by African delegations during the sessions and I am working with others to support that participation.

Separately, on substantive reform, African states are actively reforming their investment laws and international investment instruments (IIAs) – at bilateral and regional levels. The reforms are generally aimed at rebalancing rights and obligations between investors and states, eliminating overly broad provisions, and linking investment to sustainable development.

In the coming years, I expect to see more assertiveness from African states on ISDS reform. But, in the short term, I anticipate that some reform ambitions will be tempered by the urgent need for foreign direct investment (FDI) to rebuild African economies in a post-pandemic world.

6. **What would have surprised your younger self about a career in international dispute resolution?**

That international dispute resolution is more than just law – it is history, culture, politics, economics, international relations, and much more besides. This confluence of disciplines is part of what makes the work so rewarding.

Many thanks, Ndanga!

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