Kluwer Arbitration Blog

Interviews with our Editors – In Conversation with Dr Emilia Onyema, Senior Lecturer at SOAS

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Dr Emilia Onyema, Senior Lecturer at SOAS

A common concern for parties when opting for an African country as a seat of arbitration is the extent of judicial intervention in the arbitration. Whilst certain African national courts have swayed back and forth between exercising sovereignty and upholding party autonomy in arbitration there is a positive inkling that African national courts are more keen to recognize arbitration agreements and take a more "supportive" approach to arbitration.

Kluwer Arbitration Blog invited Dr Emilia Onyema, senior lecturer at SOAS in the UK, pioneer of the SOAS Arbitration in Africa Conferences and editor of the recently published book *Rethinking the Role of African National Courts in Arbitration*, to share her experience as an academic in arbitration and share her insight on African national courts and arbitration.

1. What attracted you to disputes and arbitration?

The fact that disputes can be resolved by professionals outside of the court system with the time saving this entailed.

2. There have been a number of recent developments across the African continent. What in your view has been one of the most significant developments in arbitration in Africa to increase its appeal as a seat in international arbitration?

Africa is a continent of 54 independent states of different hues. It is more apt to look at developments across each state or group of states (*e.g.* the OHADA region). When we talk of seat of arbitration, we generally look at specific cities. For me, one of the most significant developments across the continent as it relates to arbitration, is the momentum our SOAS Arbitration in Africa conferences have generated. Our conference series has provided the opportunity for an identifiable community of African arbitration practitioners to meet and engage with each other in an African city annually. The conferences have held in various African cities: Addis Ababa, Lagos, Cairo, Kigali, and Arusha with Douala, Accra, Nairobi and Cape Town in tow to host the conference in the next years.

3. In your view, what more needs to be done to improve the visibility of different countries in Africa as an international arbitration hub?

Continued promotion or publicising of what is already happening in the different and major states (and cities such as Cairo, Casablanca, Johannesburg, Cape Town, Kigali, Nairobi, Addis Ababa, Abidjan, Lagos, Accra, Abuja, etc.). This include the growth of a vibrant arbitration community in these states, engagement of the judiciaries of the states, modern arbitration laws and the existence of viable arbitration centres that administer arbitration references in these cities.

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

a. Do you see this particularly challenging as a female arbitrator and academic?

Arbitration is still dominated by males (whatever their colour/race) but female arbitration practitioners are beginning to make an inroad. In my opinion, the break comes when a female is given that first opportunity to sit as arbitrator. We generally excel and this opens the door to more appointments. As an academic, I (in similar fashion to other academics) have an added advantage of being ‘perceived’ as having greater expertise of a subject and analytical skills. I must add that such perception is not misplaced. Being female (and an academic) gives me the opportunity to bring different skills to the arbitral tribunal.

b. What steps do you think need to be taken to improve the representation of Africans in African arbitrations?

If I can rephrase this question; fairness and equality demand not just that African arbitrators are considered for appointment in Africa-related disputes (though this is a minimum) but that the best candidates are appointed for any dispute regardless of gender, race, nationality, etc. This is the goal. I must mention that there are African arbitrators who sit over disputes that have no connection to Africa. My first arbitration in which I sat as arbitrator had no connection to Africa. However, this is not the norm. To answer your question, I agree with the qualitative comments to this question from our SOAS Arbitration in Africa survey report 2018: "change the narrative which leads to the negative perception of African arbitration practitioners (as lacking in expertise) and one way to do this is for those who have had positive experience of African counsel, expert, tribunal secretary, institution, or arbitrator to also say so". The second is for Africans to appoint Africans as counsel and arbitrator. The third for me is the growth of the domestic arbitration market in African states. It is at the domestic level that aspiring arbitrators can gain experience and help develop an arbitration consciousness among the domestic and intra-African businesses, in particular, the small and medium enterprises. This is a fertile 'disputes mine' waiting to be exploited.

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

Excel at your primary profession and be the best you can be at your job while continuing to seek that appointment. It will come. And remember that arbitration is a marathon race. Finally, enjoy your job/career pursuits. Life, surely, is more than getting appointed an arbitrator.

6. You recently edited a book *Rethinking the Role of African National Courts in Arbitration* where you also write about the Role of African Courts and Judges in Arbitration. What do you think African national courts can do to make them more arbitration friendly?

The first for me is for the courts/judges to understand the arbitration process and its relationship with the courts. This requires continued dialogue between both professions. The second is to have a clear understanding of what we mean by 'arbitration-friendly'. This does not mean that a judge basically rubber stamps all arbitration related issues before her. In my view, being arbitration friendly refers to judges deferring to arbitrators within the provisions of their laws. For example, it is not for a judge to annul an award simply because s/he disagrees with the decision of the arbitrator.

7. Do you think a balance can be struck between national sovereignty amongst African nations and party autonomy in choosing arbitration as an alternative dispute resolution mechanism?

Yes and this is already evident in the number of African states that are parties to various international investment agreements, for example, containing arbitration clauses; those that have ratified the ICSID Convention, and conclude arbitration agreements in commercial transactions whether with foreign or domestic entities. Therefore, as an alternative process, I can confidently claim that African states recognize and themselves, use arbitration. There are still economic sectors in different jurisdictions which need to be opened up to arbitration – this is work in progress.

Participation in the arbitration process, as parties, in my opinion is not the problem. For me, the gap is in African states and their entities accepting the outcomes of arbitrations they participate in and as good citizens, paying up on valid awards.

8. During arbitration, a party may seek to obtain an interim measure such as an attachment against the other. Such measures are often sought on an urgent basis. Do you see that the African courts are equipped to adequately deal with such interim measures during an arbitration? Have you come across any practical examples?

National courts in African states have experience of granting urgent applications and in most common law jurisdictions on an ex parte basis. In my view, most courts in African states will grant interim measures in support of arbitration: the question is whether they will grant this to arbitrations seated outside their jurisdiction and the speed of granting such applications. For cases on this see Part II of Rethinking the Role of African National Courts in Arbitration (edited by Emilia Onyema) and published by Wolters Kluwer, 2018.

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

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