

Institution: Canterbury Christ Church University		
Unit of Assessment: UoA18 (Law)		
Title of case study: ICS18.02 Developing the capacity for International Investment Regulation in Africa		
Period when the underpinning research was undertaken: 2014-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Chrispas Nyombi	Reader in International Commercial Law	2016-Present
Tom Mortimer	Director of Law	2015-2020
Narissa Ramsundar	Senior Lecturer in Law	2018-Present
Period when the claimed impact occurred: 2016-2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact <p>Research conducted at Canterbury Christ Church University has impacted on national and regional investment regulation by:</p> <ul style="list-style-type: none"> • Informing new national and international legislation including Uganda's Investment Code Act 2019 and Human Organ Donation and Tissue Transplant Bill 2020; the creation of an Arbitration Code for the Intergovernmental Authority on Development's (IGAD) Arbitration and Mediation Centre; and creation of the East African Community Investment Policy and Strategy. • Instilling a new strategy for investment treaty negotiations through research-informed training of government officials leading to changes in investment-treaty making in Uganda and Africa generally. • Influencing education and policy actors beyond Africa leading to the creation of the UK charity Arbitration Fund for African Students (AFAS) and informing ongoing investment policy reform at the United Nations Commission for International Trade Law (UNCITRAL). 		
2. Underpinning research <p>Nyombi and Mortimer's 2019 book 'the International Investment Policy of the IGAD Member States' [R1], brought together recommendations arising from a number of original works [R2-R7]. The book examined the investment policy of the IGAD Member States and found a heavy emphasis on following foreign templates and regulatory approaches without regard to the interests of the local population and context. The research found that the investment policies in the IGAD region remained localised and the International Investment Agreements (IIAs), in particular, Bilateral Investment Treaties (BITs), belonged to the first generation (concluded between the 1950s and early 2000s) without corresponding protections against social, economic and environmental impact of foreign investments on these African States. However, the challenges posed by the lack of protections is not an issue for the IGAD Member States only, it is continental, as reflected in Nyombi & Mortimer's work within the EAC, and global, as reflected in their engagements in the United Nations Commission for International Trade Law reform processes.</p> <p>As a result of this body of research, they made a number of recommendations, underpinned by prior research, that should underlie the design of a modern investment regulatory system, plus a number of characteristics that all regulators should follow:</p>		

- **Recommendation 1** Placing sustainable development at the heart of the agreement [R4]. This recommendation was adopted in the Uganda Investment Code Act 2019, following a review of investment laws in Uganda (the Investment Code Act 1991), and contained in the East African Community (**EAC**) Investment Policy and Strategy. This research as well as the proposal for a Pan-African court in Rethinking the Role of African National Courts in Arbitration [R3], found that the international arbitration system continues to be inconsistent, particularly in the appointment of Africans to international tribunals and thereby recommending African solutions to African problems, mainly through capacity building.
- **Recommendation 2** Incorporation of the Most Favoured Nation (**MFN**) and National Treatment provisions but with exceptions such as protection of infant industries and preserving national regulatory space [R6].
- **Recommendation 3** The inclusion of performance requirements for foreign multinationals, with the aim of promoting domestic and local content [R4].
- **Recommendation 4** Environmental protection and the social well-being of the host State reflected in the International Investment Agreements (IIAs), through rights and obligations on both foreign investors and host States [R1, R4].
- **Recommendation 5** Consideration of new models in dispute settlement such as the European Union (**EU**) proposed Investment Court system and Pan-African Investment Court [R2, R5].

The underpinning research involved the examination of investment policies within the IGAD and direct engagement with Member States, particularly with the Republic of Uganda which had commissioned an inquiry into its investment and trade policy in order to ensure sustainable economic development. The research also surfaced through engagement with other regional blocks such as the EAC with the aim of devising policy in order to promote regional economic integration. Other underpinning research that informed or led to impact includes the book, "Principles of Company Law in Uganda" (published in 2014), which captured changes to corporate law including the Companies Act 2012, Insolvency Act 2011 and Partnership Act 2010 [R7].

3. References to the research (indicative maximum of six references)

R1. Chrispas Nyombi & Tom Mortimer, "The International Investment Policy of the IGAD Member States: The Republic of Uganda" (Wildy, Simmonds & Hill Publishing, 2019).

R2. Chrispas Nyombi & Tom Mortimer, "Rebalancing International Investment Agreements in favour of host states: Towards a World Investment Court" (2019) Journal of Business Law. Issue3, pp.200-222.

R3. Chrispas Nyombi, "Towards a New World Economic Order: Proposal for a Pan-African Investment Court?" in Emilia Onyema "Rethinking the Role of African National Courts in Arbitration" (Kluwer Law International, 2018) ISBN: 9789041190420.

R4. Chrispas Nyombi, Tom Mortimer & Narissa Ramsundar, "The Morocco-Nigeria BIT: Towards a new generation of intra-African BITs" (2018) International Company and Commercial Law Review, Vol 29(2), pp.69-80.

R5. Chrispas Nyombi "A case for a Regional Investment Court for Africa" (2018) North Carolina Journal of International Law, Vol 43(1) pp. 67-96.

R6. Chrispas Nyombi & Tom Mortimer, "Tackling the legitimacy crisis in international investment law through progressive treaty-making practices" (2017) International Arbitration Law Review, Vol, 20(5), pp.162-174.

R7. Chrispas Nyombi & Alexander Kibandama, "Principles of Company Law in Uganda" (LawAfrica Publishers, Nairobi, Kenya, 2014)

Indicators of Quality

These publications were accepted into journals or by publishers with established peer review processes.

4. Details of the impact

Informing new national and international legislation

1, The research led to the enactment of the Investment Code Act 2019 [S1] in Uganda with obligations for companies that are licensed to exploit scarce resources to protect the environment. The legislation also permits the licensing body 'reasonable access to monitor the operations of the business enterprise'. The Director General of the Uganda Investment Authority (**UIA**) states that "As an Institution we have benefitted in a number of ways from Dr Nyombi's research and expertise", including a significant shift in the prioritisation of various interests so that "there is no longer a focus on protecting the investor but a balance has to be struck where local communities, the environment and infant industries are protected, in order to achieve sustainable development" [S2]. The new provisions were a result of a number of recommendations, underpinned by Nyombi and Mortimer's prior research [R4] and later contained in the 2019 book [R1], that recommends emphasis on sustainable development, protection of infant industries and placing obligations on foreign investors (Recommendations 1-4).

2, The research informed the inclusion of several provisions of the Human Organ Donation and Tissue Transplant Bill 2020 [S3], currently before the Ugandan Parliament. This Bill includes provisions aimed at regulating the conduct of public and private sector organisations to avoid organ trafficking and commercialisation of organ donation and tissue transplantation. A testimonial from Uganda UK Health Alliance states that "It was through his research that a number of stakeholders in Uganda including the Uganda Law Reform Commission, the Uganda Investment Authority, the Ministry of Health, The Ministry of Foreign Affairs, the East African Community, the IGAD and the Ministry of Finance Planning and Economic Development, engaged Dr Nyombi to support legislative reform in a bid to boost trade and investment in Uganda" [S3]. The testimonial details how the CCCU research on investment and company regulatory approaches was relied on to inform the drafting of provisions in the Bill [S4] such as; a) Regulation of conduct of donation and transplant activities; b) Acquisition of organs, cells and tissues; and c) Prevention of organ trafficking. These provisions draw on their research on sustainable development (Recommendation 1) and the inclusion of investor obligations towards local communities and the environment (Recommendations 2-4) as well as earlier work on corporate structures [R7]. Once this law is enacted, Uganda will have a regulatory framework that permits health centres and hospitals to undertake legal organ transplants as well as legal protection against human rights abuse through illegal organ harvesting.

3, "Dr Nyombi contributed to the creation of an arbitration code for an IGAD [Intergovernmental Authority on Development] Arbitration and Mediation Centre largely through his expertise and research" to handle regional commercial and investment disputes [S6]. The IGAD is an eight-country (Djibouti, Eritrea, Ethiopia, Somalia, Sudan, South Sudan, Kenya & Uganda) trade bloc in Africa, covering a population of over 230,000,000 people and Gross Domestic Product (**GDP**) of over USD195,000,000,000. The Arbitration and Mediation Centre is significant because of Djibouti's strategic geography, lying on the Red Sea between Asia and Africa, thereby making it an important trade hub for both continents. It is also significant because it lays the foundations for an Arbitration Appeals Board [**AAB**], where "Dr Nyombi's research informed the discussions over [its] inclusion" [S6], with the potential to steer investment policy in a new direction while strengthening regional trade and cooperation among Member States of the trade-bloc. Nyombi & Mortimer's research on investment courts [R2, R3] advocates for the inclusion of an integrated appeals system, a view also shared by Members of the Task Force (including Nyombi) hence the consensus on the inclusion of an appeals system. The Centre is currently being constituted, with work delayed by COVID-19.

4, The research informed the creation of an East African Community Investment Policy and Strategy, negotiated and drafted by the representatives of the 6 EAC Partner States: The Republic of Burundi, Kenya, Rwanda, South Sudan, The United Republic of Tanzania, and The Republic of Uganda, covering a population of over 177,000,000 people and GDP of over

USD190,000,000,000. This is intended to modernise and streamline policy to improve cooperation on trade and investment in the region. Nyombi was appointed by the Uganda Ministry of East African Community Affairs “due to his research into international investment policy in the region” as part of a team of experts to negotiate and draft the EAC Investment Policy and Strategy [S5]. He successfully advised the 6 Partner States to include investor obligations in order to safeguard the interests of national states and strive towards sustainable development, as reflected in Recommendations 1-4, meaning that future investors in the region would have corresponding obligations towards the environment and national interests, such as protection of labour [S5]. This has been sent to the Council of Ministers for approval and scheduled to be finalised and take effect in 2021 (delayed due to COVID-19).

Instilling a new strategy for investment treaty negotiations

Following enactment of the new Investment Code Act 2019 (see above), the UIA commissioned a review of international investment agreements to ensure alignment with core recommendations from Nyombi & Mortimer’s research (Recommendations 1-4). As a result, the UIA asked Nyombi to provide training officials from the Ministry of Foreign Affairs, Ministry of Trade, Solicitor General, Ministry of Finance Planning and Economic Development, Ministry of East African Community Affairs and Law Reform Commission in October 2019 [S2]. Nyombi’s training drew on his research on investment treaty drafting, placing emphasis on sustainable development and a move away from the first towards second generation investment agreements (Recommendation 1-5), that reflects African realities and support national interests. The goal of the training was to create awareness and upskill government bodies responsible for negotiating and drafting investment laws. This is significant given Uganda’s emerging oil and gas sector. As a result, the 5 recommendations have been embedded in ongoing efforts to renegotiate existing BITs [S2] in Uganda, including Uganda-The Netherlands BIT.

Influencing education and policy actors beyond Africa

The research contributed to the establishment of an Arbitration Fund for African Students (**AFAS**) [S7]. Through their research [R3], scholars and practitioners including Nyombi (Chairperson of AFAS), Tom Mortimer (Committee Member) and Prof. Emilia Onyema (SOAS University and Founder of AFAS), concluded that the international arbitration system continues to be inconsistent, particularly in the appointment of Africans to international tribunals and thereby recommending African solutions to African problems, mainly through capacity building. AFAS is a UK registered Charitable Incorporated Organisation (**CIO**) constituted in 2019 for the purpose of capacity building by advancing education in the knowledge, skills, techniques, use and methods of arbitration in Africa. The recently filed 6 months report details the 7 applications for funding AFAS received (mostly to attend the Willem C. Vis International Commercial Arbitration Moot in Vienna) and GBP6,000 that was earmarked to be given out to the successful applicants; the moot was cancelled due to COVID. The charity has recently expanded further into the provision of education content including also important case translations and summaries from francophone countries as well as early career mentoring initiatives.

Last but not least, the impact of Nyombi & Mortimer’s research has gone beyond national, regional and continental borders, onto the United Nations. In 2019, Nyombi was invited by the Secretary of the United Nations Commission for International Trade Law (UNCITRAL) to the third Inter-sessional Regional Meeting on Investor-State Dispute Settlement (**ISDS**) Reform due to his research, knowledge and engagement in regional investment policy, with his research on Multilateral Investment Courts being cited in the United Nations Economic Commission for Africa’s (**UNECA**) report on regional integration in Africa. He contributed to the High-Level discussion, on behalf of the two Economic Communities (the IGAD and EAC), with the outcomes forming part of the deliberations of the UNCITRAL’s Working Group III. Nyombi advised the Commission and African States to pursue a hybrid system consistent with the Multilateral Investment Court rather than completely dismantling the arbitration system or retaining the status quo [S8]. These deliberations were taken on board by the Commission and published [S9] in order to inform the global community on the direction of the ongoing reform activity.

5. Sources to corroborate the impact

- S1. Investment Code Act 2019
- S2. Testimonial from the Director General of the Uganda Investment Authority [UIA]
- S3. Testimonial from the Uganda UK Health Alliance
- S4. Testimonial from the Uganda Ministry of Health
- S5. Testimonial from the Uganda Ministry of East African Community Affairs
- S6. Testimonial from Baiju Vasani, the Head of the Intergovernmental Authority on Development (IGAD) Arbitration Code drafting Task Force
- S7. Testimonial from the Arbitration Fund for African Students [AFAS] Committee
- S8. Testimonial from the United Nations Commission for International Trade Law [UNCITRAL] Secretariat
- S9. UNCITRAL Working Group III (Investor-State Dispute Settlement Reform) Thirty-eighth session report (pdf available on request)