

Institution: SOAS University of London		
Unit of Assessment: 18 - Law		
Title of case study: Dispute resolution in Africa: building arbitration capacity		
Period when the underpinning research was undertaken: 2014–2018		
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:
Dr Emilia Onyema	Reader in International Commercial Law	2007–present
Period when the claimed impact occurred: 2018 – 31 July 2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Research conducted at SOAS on arbitration within African States and by Africans internationally raised the visibility of African arbitrators and fuelled collaborations between key stakeholders. Even though a growing number of claims involving African parties are brought to arbitration, statistics show that a very limited number of Africans act as international arbitrators, including in Africa-connected disputes. Dr Onyema's research and the series of conferences she led – all held in African countries – inspired domestic and international arbitration-related organisations to implement changes in their appointment practices, thereby increasing opportunities for African arbitration practitioners both in and outside Africa.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Arbitration is a legal mechanism for the resolution of disputes outside the courts. Parties involved refer the dispute to one or more persons (the 'arbitrators', or 'arbitral tribunal') whose decision has the same force as the judgement of a court. Arbitration is a private process and the details are usually not published; it is primarily used in commercial disputes between parties, such as between two companies or between a government and a company, from different countries. Official statistics from the International Chamber of Commerce (ICC) and the International Centre for the Settlement of Investment Disputes (ICSID) show that even though a growing number of claims involving African parties are brought to arbitration, a very limited number of Africans act as international arbitrators, even in Africa-connected disputes.</p> <p>Since 2014, Dr Emilia Onyema (Reader in International Commercial Law at SOAS from 2007) has conducted research to investigate the use of arbitration in African States and the depth of the participation of Africans in international arbitration [3.1, 3.2]. Through conducting research at the library at the Institute of Advanced Legal Studies, Onyema explored available data on the role of Africa (as seat, arbitral centres and arbitrators) in international arbitration. The review showed very low participation of Africa in international arbitration references [3.3, 3.5]. There was no empirical evidence of the reasons for this low participation, but the general perception was that this was the result of: (1) lack of arbitration expertise in Africa; (2) unsupportive courts that are hostile towards arbitration; and (3) poor legal infrastructure.</p> <p>To further interrogate these issues and fill the information gap, Onyema designed a four-year conference-based research project, which aimed at understanding the reality of arbitration-related resources (and gaps) in Africa, and to increase the visibility of African arbitration practitioners. Each conference focused on interrogating the role of one major arbitration stakeholder (arbitral centres, courts/judges, states, practitioners) in Africa. The first conference (African Union, Addis Ababa – Ethiopia) explored the role of arbitration centres. The information collected at the event allowed Onyema to publish a list of 71 arbitration centres operating in 39 different African</p>		

countries. It was the first time such a list – which was made publicly available – had been published. The second conference (Lagos Court of Arbitration – Nigeria, 2016) explored the role of judges and national courts and critically examined their disposition towards arbitration. It found that jurisdictions whose laws and courts pursue a cooperative interaction between arbitration and litigation are generally perceived as being supportive of arbitration; and that this perception alone attracts international arbitration disputes, with its economic benefits. However, jurisdictions where judges are perceived to needlessly interfere with the arbitral process do not attract international arbitration disputes. Therefore, countries wishing to attract more international arbitration disputes need to modernize their arbitration-related laws and their judges need to be supportive of the arbitral process [3.4].

The third conference (Cairo Regional Centre for International Commercial Arbitration, CRCICA – Egypt, 2017) examined the substantive content of arbitration laws of various African countries and the attitude of African governments towards arbitration. It also looked at non-legal factors relevant to making African countries attractive venues for international arbitration. This conference found that various African governments understand the need to modernise their arbitration laws and align to the UNCITRAL Model Law of International Commercial Arbitration. Governments also agreed on the need to appoint more African counsel and arbitrators and build their internal legal capacities. The fourth conference (Kigali International Arbitration Centre – Rwanda, 2018) focused on arbitration practitioners (lawyers and arbitration experts) and their capacities to meet the needs of disputants in international disputes. Onyema launched the Report from the Arbitration in Africa Survey [3.7], which focused on collecting original data from African arbitration practitioners on their experiences in international arbitration. 82% of the 191 African arbitration practitioners that responded did not sit as an arbitrator in international arbitration between 2012 and 2017; 59% did not act as counsel in international arbitration. Respondents blamed poor perception of African arbitration practitioners by their foreign colleagues, bias by those appointing arbitrators in favour of foreign counsel, and the fact that Africans were not appointing fellow Africans as arbitrators [3.5, 3.7]. These responses provided empirical evidence of the general perceptions for the low participation of Africans in international arbitration. Onyema's research activities thus demonstrated that African practitioners need to continue to develop their arbitration skills through the growth of the domestic arbitration markets in Africa, and to appoint each other more systematically.

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

- 3.1 Onyema, E. (2014). 'Regional Arbitration Institution for ECOWAS: Lessons from OHADA Common Court of Justice and Arbitration'. *International Arbitration Law Review*, 5, pp. 99–111. Available on request. **Peer-reviewed**
- 3.2 Onyema, E. (2016). 'Arbitration Institutions in Africa'. In: E. Onyema, ed., *The Transformation of Arbitration in Africa: The Role of Arbitral Institutions*. London: Kluwer Law International, pp. 15–43. ISBN: 9789041167293. Available on request. **Peer-reviewed**
- 3.3 Onyema, E. (2017). 'The Jurisdictional Tensions Between Domestic Courts and Arbitral Tribunals'. In: A. Menaker, ed., *International Arbitration and the Rule of Law: Contribution and Conformity* (ICCA Congress Series No19). London: Kluwer Law International, pp. 481–500. ISBN: 9789041194459. Available on request. **Peer-reviewed**
- 3.4 Onyema, E. (2018). 'The Role of African Courts and Judges in Arbitration'. In: E. Onyema, ed., *Rethinking the Role of African National Courts in Arbitration*. London: Kluwer Law International, pp. 3–37. ISBN: 9789041190420. Available on request. **Peer-reviewed**
- 3.5 Onyema, E. (2020). 'African Participation in the ICSID System: Appointment and Disqualification of Arbitrators'. *ICSID Review: Foreign Investment Law Journal*, pp 365-387 <https://doi.org/10.1093/icsidreview/siz008> **Peer-reviewed**
- 3.6 Onyema, E. (2020). 'Reimagining the Framework for Resolving Intra-African Commercial Disputes in the Context of the African Continental Free Trade Area Agreement'. *World Trade Review*, pp. 446-468 <https://doi.org/10.1017/S1474745619000132> **Peer-reviewed**
- 3.7 Onyema, E. (2018). *SOAS Arbitration in Africa Survey Report. Domestic and International Arbitration: Perspectives from African Arbitration Practitioners*. London: SOAS University of London. <http://eprints.soas.ac.uk/25741/>

4. Details of the impact (indicative maximum 750 words)

The SOAS Arbitration in Africa conference series organised by Onyema brought together Africans and non-Africans involved in arbitration in Africa, providing them with a shared space to gather more information on arbitration in Africa, unpack challenges, and explore possible remedial actions including mutual support and regional collaboration. The conferences and the research were praised for making ‘a significant contribution to the development of arbitration in Africa and for evolving the mindset within and beyond Africa over the last five years’ [5.1]. The conferences raised the visibility of and opportunities for African arbitrators in Africa and outside the continent. In 2019, the President of the East African Community Court, Justice Dr Emmanuel Ugirashebuja, remarked that the SOAS conference series ‘have created a forum that fosters cooperation, collaboration and effective interchange of ideas amongst the African arbitration practitioners and even those beyond Africa’ [5.10 p203].

Building networks and regional collaboration to enable arbitration to thrive in Africa

Throughout the 4-year research and conferences, Africans engaged in arbitration were brought together to cooperate and form new relationships. The director of CRCICA indicated that ‘SOAS Project is the source and CRCICA will faithfully support the values of the SOAS Project to permit Africa and Africans the place they deserve in the international arbitral justice’ [5.2 p3]. As a result of the Arbitration in Africa survey [3.7], Onyema (along with Dr Stuart Dutton of Simmons and Simmons, LLP), designed the African Promise – a pledge which mirrored the Equal Representation Pledge for the promotion of women in international arbitration. Many African arbitration practitioners agreed to adopt this pledge with the goal to ‘Improve the profile and representation of African arbitrators especially in arbitrations connected to Africa’ and to ensure that ‘African arbitrators are appointed as arbitrators on an equal opportunity basis.’ As of 29 July 2020, the Promise had 320 signatures [5.3a]. To increase inclusiveness, the International Council for Commercial Arbitration (ICCA) further expanded the list of African arbitration centres compiled by Onyema [5.3b, 5.7 p1].

Following the 2017 Cairo conference (177 participants), ICCA also led a process that culminated in 2018 with the formation of the African Arbitration Association (AfAA). AfAA was created as the continent’s promotional body for international arbitration to support the development of international arbitration in Africa, and to promote its members and their activities in international arbitration and international dispute resolution [5.11]. Onyema actively participated in the AfAA formation and is a member of its Board of Directors. The CRCICA considered AfAA as ‘the ideal platform to overcome the observed lack of confidence in arbitration in Africa by allowing African practitioners to become more familiar with one another’ [5.2 p3]. AfAA won the Global Arbitration Review (GAR) 2019 Award for ‘Best Development’ in arbitration [5.4c].

Cooperation between national and regional arbitration centres across Africa also flourished thanks to the research project efforts. Two bilateral MoUs were signed – between CRCICA and KIAC (Kigali International Arbitration Centre), and between CRCICA and the Nairobi Centre for International Arbitration – to provide a framework whereby the 2 arbitral institutions can develop a mutually beneficial relationship through the provisions on seminars, conferences and capacity-building activities, and through exchange of information and collaboration in research as well as exchange of visits [5.2, 5.4a, 5.4b]. CRCICA also committed to increase the presence of non-Egyptian African speakers in their conferences and workshops, as well as the number of non-Egyptian Africans in their Board of Trustees, nominating new Trustees from Cameroun, Nigeria and Tunisia [5.2 p2]. Africans have the majority of board positions at KIAC in Rwanda [5.15].

The attitudes and behaviours of African countries, governments, courts and judges towards arbitration also started to change. Engagement of the African arbitration community with judges and attorneys-general and other government agencies improved. The Global Practice Manager for International Arbitration, noted that ‘On the role of the courts, we all stand indebted to Dr Emilia Onyema for her work . . . has advanced immeasurably our collective knowledge of the views of national courts on arbitration and dispelled many of the myths which have perpetuated for too long.’ [5.12]. Following the Lagos conference (2016, 115 participants), the Chief Justice of Nigeria

Walter Samuel Nkanu Onnoghen wrote a letter admonishing the judges in Nigeria to honour arbitration agreements [5.5].

Increasing the number of and opportunities for Africans active in domestic and international arbitration

The research was fundamental to increase capacity-building initiatives, development and career growth opportunities for arbitration practitioners in Africa – which led to a growing number of African arbitrators being appointed in key positions. Following the 2017 Cairo conference, in response to one of the challenges faced by young African arbitrators and highlighted by the research, a senior partner at Nassar Law, Cairo accepted to host one African candidate for a one-month internship in Cairo. This offer attracted 82 applicants; a female applicant from Nigeria, was chosen. She said of her experience, ‘I was exposed to precedents and processes, learning more about how an arbitral panel thinks while it resolves disputes that come before it. I learnt more about the arbitration process, particularly how counsel and arbitrators work together to prepare for final hearings and how final awards are drafted’ [5.13]. Young practitioners attending the 2018 Kigali conference (250 participants) identified the unaffordability of arbitration conference attendance for themselves and African students as a hindrance to their career development. This led to the creation of the Arbitration Fund for African Students (AFAS) which was launched at the 2019 Arusha conference to fund African students to participate in international arbitration-related moots and conferences, as well as to provide a website with arbitration-related educational information [5.6]. Six African students applied to obtain funds to attend a commercial arbitration moot in Vienna in the first round in late 2019, though the event was cancelled as a result of COVID-19 [5.14].

Arbitration centres in Africa began to increase the number of African arbitrators they appointed. For example, CRCICA appointed more arbitrators from different African states such as Nigeria, Sudan and Tunisia. The Centre made it a point to include more and more non-Egyptian African arbitrators in the lists proposed to the parties under its ‘identical list procedure’ used to appoint sole and presiding arbitrators [5.2 p3]. In 2018, the Centre appointed 20 non-Egyptian arbitrators, and a further 4 the following year. In 2019, the Centre registered the second highest number of cases in its history: 82 new cases were filed, compared to 77 and 65 in 2018 and 2017 respectively [5.4d p2 and p1]. KIAC also received ‘a record’ 33 cases from July 2019 to June 2020, with over a third classed as international in nature, which KIAC noted as ‘a statement of confidence that Rwanda is playing a key role in positioning Africa on the market of international arbitration, as well as its global appeal to users from diverse legal systems and cultures’ [5.4f p2].

In May 2016, ICCA established a Working Group on African Arbitral Practice intended to consolidate the impact of the first ICCA Congress held in Africa (2016 ICCA Mauritius Congress). The Working Group hosted a ‘Consultative Workshop for African Arbitral Initiatives’ in May 2016 in Mauritius, which was attended by Onyema and where her research was shared with over 40 representatives of African arbitral institutes, practitioners and capacity-building initiatives active on the continent. The ICCA stated that the research proved ‘a strong motivation for participants to agree to work together in sharing resources and entering into collaborative arrangements’ [5.7 p1]. ICCA organised more consultative workshops as side events to the SOAS-led conferences in Egypt, Nigeria and Rwanda. Thanks to the expanded list of African arbitration centres from the 2015 Addis Ababa conference (61 participants), ICCA identified potential partners in Africa for Africa-related projects [5.7. p1 and p2]. The ICCA Executive Body affirmed its commitment to advance the practice of arbitration in Africa, through ICCA projects such as the Young ICCA workshops, the distribution of complimentary publications to African arbitral institutes, and the creation of access to opportunities for African arbitrators at ICCA Congresses [5.7 p2]. Before cancellation due to COVID-19, the 2020 Edinburgh ICCA Congress had planned to host 7 Africans as speakers, with Babatunde Fagbohunlu from Nigeria as a member of its programming committee [5.4e]. Other conferences also raised the visibility of and opportunities for African arbitrators outside Africa: the International Centre for the Settlement of Investment Dispute (ICSID) – the world’s leading institution devoted to international investment dispute settlement – reacted to the global discourse on diversity in international arbitration by both nominating and appointing more Africans onto their Tribunals between 2015 and 2019, rising from 34 to 51 [5.8]. For example,

in December 2019 the ICSID constituted a panel with 2 Africans as arbitrators: Nigerian Christopher Adebayo Ojo, appointed by the claimant, and Gérard Niyungeko from Burundi, appointed by the respondent [5.9].

5. Sources to corroborate the impact (indicative maximum of 10 references)

- 5.1. Letter from Mr Isaiah Bozimo of Roderick Bozimo & Co
- 5.2. Letter from the Director, Cairo Regional Centre for International Commercial Arbitration (CRCICA)
- 5.3 The African Promise
 - a) The African Promise, Sept 2019 <https://researcharbitrationafrica.com/the-african-promise/>
 - b) List of Arbitral Institutions in Africa, the International Council for Commercial Arbitration (ICCA) https://www.arbitration-icca.org/media/8/63288270366591/list_of_arbitral_institutes_regional_ordering_oct_2016_new.pdf
- 5.4. News file
 - a) CRCICA and KIAC Conclude Memorandum of Understanding, African Arbitration Association, August 2018 <https://afaa.ngo/page-18118>
 - b) CRCICA AND NCIA MOU SIGNING, IARB, Sept 2019 <https://www.iarbafrica.com/en/news-list/17-news/1091-crcica-and-ncia-mou-signing>
 - c) African Arbitration Association takes home the GAR Award for Best Development, April 2019 <https://www.arbitration-icca.org/news/2019/430/african-arbitration-association-takes-home-the-gar-award-for-best-development.html>
 - d) CRCICA News webpage – Caseload 2019 – CRCICA Records Highest Number of cases, Dec 2019
 - e) ICCA News webpage: ICCA announces 2020 Congress Programme theme and Programme Committee, 2018
 - f) Member News webpage: African Arbitration Association – KIAC gains international recognition, Sept 2020
- 5.5. Practice Direction issued by Chief Justice of Nigeria, 26 May 2017.
- 5.6. Arbitration Fund for African Students (AFAS), Oct 2019 <https://researcharbitrationafrica.com/arbitration-fund-for-african-students/>
- 5.7. Letter from Executive Director at ICCA and Board Member of AfAA.
- 5.8. ICSID statistics, arbitrators by nationality – compiled 2015–2019 - top sheet and data
- 5.9. Case details - Richard N. Westbury, Paul D. Hinks and Symbion Power Tanzania Limited v. United Republic of Tanzania (ICSID Case No. ARB/19/17) <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/19/17>
- 5.10. Closing remarks of Justice Dr Emmanuel Ugirashebuja, at the 2019 SOAS African Arbitration Centre in Arusha, Tanzania, 14 February 2019. <https://researcharbitrationafrica.com/files/conferences/2019%20Arusha%20Conference%20Booklet.pdf>
- 5.11. Constitution of the African Arbitration Association, September 2018 https://afaa.ngo/resources/Documents/AfAA_FINAL%20CONSTITUTION_28%20Sept%202018.pdf
- 5.12. Email from the Global Practice Manager for International Arbitration.
- 5.13. Internship report, September 2017
- 5.14. AFAS, signed half-year report and accounts for 2019–2020.
- 5.15. Email from KIAC