

## **Fifth SOAS Arbitration in Africa Conference Series**

### **SOAS Khartoum/Arusha Arbitration in Africa Conference in Partnership with Bannaga & Fadlabi LLP (Sudan) and African Institute of International Law (Arusha)**

**International Convention Centre, Arusha, 12-14 February 2019**

#### **Best Practices in Arbitration and ADR in Africa**

##### **Synopsis**

This is the fifth in the SOAS Arbitration in Africa conference series. This Khartoum/Arusha conference is special because it is the first following the four year conferences on Arbitration in Africa which formed part of the research project on transforming and enhancing the use of arbitration as the dispute resolution of choice within the African continent. As noted in the *Kigali Conference Discussion Paper*, the four year research project itself is titled 'Creating a Sustainable Culture of Arbitration as a mechanism for Commercial Dispute Resolution in Africa'. The relevance of the research project and a summary of the conference series was also noted in the Kigali Paper.

This Khartoum/Arusha conference starts a new era as one legacy of this research project. Following a unanimous call by participants at the Kigali conference for the continuation of this conference series, we decided to re-purpose the series while retaining its substantive content and engagement. The new purpose of this conference series will be to work with nascent local arbitration communities in African states that do not have major international arbitration experience, in projecting their state and arbitration. In this way, this conference series, along with its following of attendees that it has developed over the four year period, will fully support such communities and states in the development of arbitration. In this way, the practice of arbitration can spread across various regions of the continent to create the much needed awareness, education, engagement, networking and development in this field of the law and study.

We at SOAS, will work with the local organising committees in preparing the program and resource persons for the conference. The local organising committee will bear the burden of organising the conference. This collaboration is open to any group of arbitration enthusiasts and practitioners in any African country. We also hope to introduce new speakers especially more women and younger practitioners onto our panels. Finally, we hope to draw in discussions on non-adjudicatory dispute resolution processes, primarily mediation and their development in Africa.

At our Kigali 2018 Arbitration in Africa Conference, I suggested the need for a Fund to which African students can apply to enable them attend and participate in arbitration related moots and conferences. After the Kigali conference, a group of us (Dr Emilia Onyema, Dr Chrispas Nyombi, Ms Yasmin Sebah, Prof Walid Ben Hamida, Ms Eunice Shang-Simpson, Prof Tom Mortimer and Mr Joseph Otoo) discussed the format for the Fund and formed the "Arbitration Fund for African

Students” (AFAS) which we shall launch at this 2019 conference. The Fund will be registered as a Charity under the laws of England & Wales. The trustees of this Fund are: Dr Emilia Onyema, Dr Chrispas Nyombi, Ms Yasmin Sebah, Prof Walid Ben Hamida, Ms Eunice Shang-Simpson, Mr Joseph Otoo and Prof Tom Mortimer. We shall circulate more information about the AFAS in due course and via our website at: <https://www.researcharbitrationafrica.com/>

### **Aims of the conference**

This conference builds on the foundations laid in our previous four conferences. It will explore best practices in arbitration and ADR in Africa. It primarily aims to identify the best practices in the law and practice of domestic and international arbitration. This will draw from different regions of the continent and internationally in a comparative manner.

### **Format of this conference**

We hope that all attendees will have the opportunity to contribute in the discussions at our conferences. The panels will therefore ensure that there is enough opportunity for audience participation. **Day 1** of the conference will focus on commercial arbitration while the discussions on **Day 2** will focus on investment law and arbitration and ADR.

### **Venue for the conference**

This SOAS 2019 Arbitration in Africa conference will be co-hosted by the law firm of Bannaga & Fadlabi LLP (Khartoum) and the African Institute of International Law (Arusha). The conference sessions will hold at the Arusha International Convention Centre.

### **Live Music**

At the opening dinner, there will be Egyptian music on the lute by Abdallah El Nokaly, Associate at Al Tamimi LLP, Cairo. The dinner is sponsored by Mitchell Silberberg & Knupp LLP, Los Angeles, California.

### **Outline of the conference sessions**

Each panel is chaired by a moderator and speakers/discussants.

**Panel 1** is titled: **Africa’s Experience in Adopting UNCITRAL Model Law on Arbitration**. The panel will examine the experience of the 11 African states that have adopted the Model Law and provide a recommendation on whether other African countries should adopt or adapt the Model Law from their own experience. The speakers will focus in particular on peculiarities from their own jurisdictions and interpretation of their courts and the courts of other Model Law jurisdictions.

This panel will be **moderated by Ms Esine Okudzeto**. Esine will be joined by Mr Kizito Beyou; Ms Nejri Kariuki; Dr Sylvie Bebohi; Mr Hamid Abdulkareem and Mr Tayeb Hassabo. Njeri will speak on the experience of Kenya and why Kenya adopted the Model Law. Kizito will speak on the law of Ghana and why Ghana did not adopt the Model Law. Tayeb will speak on the law of Sudan, another jurisdiction that did not adopt the Model Law. Hamid will speak on the law of Nigeria whose current law is based on the Model Law but undergoing revision. Sylvie will speak on the recently revised OHADA uniform arbitration law. The panel will explore from these various laws whether we need to draft a specific model law on arbitration and ADR for African states to adopt/adapt.

**Panel 2** is titled: **Africa’s Experience in adopting UNCITRAL Arbitration Rules**. The panel will discuss the impact of the UNICTRAL Arbitration Rules in regulating arbitration in Africa. Representatives of

some of the arbitral centres in Africa will share their experience of administering arbitration references under their rules. They shall focus in particular on the provisions which have been very difficult for them to apply. In particular, the panel will also explore whether from their experience, we need to draft a model set of arbitration rules for the use of African centres.

This panel will be chaired by **Mr Babajide Ogundipe**. Babajide will be joined by Dr Selim Ismail (Cairo RCICA); Fidele Masengo (Kigali IAC); and Dr Marie-Andree Ngwe (GICAM). Ismail will share the experience of the Cairo Regional Centre and also draw examples from other AALCO Regional Centres across Africa. Fidele will speak on the experience of the Kigali Centre; and Marie-Andree will provide a counter view from the rules of GICAM Centre which are influenced by the ICC Rules.

**Panel 3** is titled: **Enforcement of Arbitral Awards in Africa**. This panel will discuss developments in different African jurisdictions on the enforcement of arbitral awards under the New York Convention or their national laws through an analysis of recent important cases.

This panel will be chaired by **Dr Nagla Nassar**. Nagla will be joined by Mr Ahmed Bannaga; Dr Babatunde Ajibade; Mr Shane Voigt; Mr Kamau Karori; and Mr Tim Taylor. Ahmed will speak on recent decisions from the Sudanese courts. Babatunde will speak on recent decisions from the Nigerian courts. Shane will speak on decisions from the South African courts. Kamau will speak on recent decisions from the Kenyan courts. Tim will speak on his experience of enforcing awards in different African jurisdictions.

This will bring Day 1 deliberations to a close.

**Day 2** will start with **Panel 4** titled: **The African Continental Free Trade Area Explained**. This panel will explore various issues that arise from the recently signed African Continental Free Trade Area Agreement with particular focus on dispute resolution. A lead paper will be delivered followed by responses from the discussants.

This panel will be chaired by **Mr Sola Ephraim-Oluwanuga, mni**. Sola will be joined by Mr Adetola Onayemi; Prof Idrissa Bachir Talfi; Ms Leyou Tameru; and Mr Gerald Afadani. Adetola will give the lead paper on the “African Continental Free Trade Area Agreement as it relates to dispute settlement and arbitration”. Idrissa, Leyou and Gerald will discuss the paper exploring the possible impact of the AfCFTA on the OHADA, ECOWAS and IGAD regions.

**Panel 5** is titled: **African States, Foreign and Domestic Investments**. This panel will discuss the experience of African states and their push to attract foreign investments. It will discuss the role of domestic investors and how they can be better incentivised and protected; and finally discuss what will attract foreign investors to African states.

This panel will be chaired by **Amb. Sani Mohammed**. Sani will be joined by Mr Bobby Banson; Dr Achille Ngwanza; and Ms Xander Meise. Bobby will speak on the experience of Ghana and West African states. Achille will speak on the experience of the OHADA region. Xander will give the perspective of an advisor to foreign investors on what will attract them to African states.

**Panel 6** is titled: **Africa’s Engagement with ISDS**. This panel will discuss the cases African states and investors have been involved in ISDS to determine a trend and suggest how their success rates can

improve; and explore other dispute resolution mechanisms that may serve these parties better especially where all parties are African. It will also engage with the Pan-African Investment Code.

This panel will be chaired by **Dr Emilia Onyema**. Emilia will be joined by Dr Chrispas Nyombi; Prof Paul Idornigie; Dr Mostfa Bek El Behbety; Prof Makane Moise Mbengue; and Prof (Dr) Mohamed S. Abdel-Wahab. Mostafa will discuss Egypt's experience of ISDS and the remedial actions taken by the state. Paul will explore the response under the Nigeria-Morocco BIT. Makane will speak on ISDS in the context of the negotiations of the future Investment Chapter of the AfCTA: Battles and Challenges. Chrispas will explore the need for a Pan-African Investment Court. Mohamed will explore the future trajectory for Africa in the current debates around ISDS.

**Panel 7** is titled: **Culture of Arbitration and Institution Building in Africa**. This panel will explore issues of culture and its impact on the development of arbitration in Africa.

This panel will be chaired by **Mr Thierry Gakuba Ngoga**. Thierry will be joined by Mr Olisa Agbakoba; Mr Edward Fashole-Luke, II; Ms Eunice Shang-Simpson; and Mr Abdallah El Nokaly. Olisa will give the lead paper on "Culture of arbitration and institution building in Africa". Eunice, Edward and Abdallah will discuss the paper.

**Panel 8** is titled: **The modernisation of other ADR Processes in Africa**. This panel is novel in our conferences because it explores issues of non-adjudicatory ADR processes in the resolution of commercial disputes in Africa.

This panel will be chaired by **Ms Suzanne Rattray**. Suzanne will be joined by Prof Hiro Aragaki; Mrs Caroline Etuk; and Ms Madeline Kimei. Hiro will speak on mediation law reform in Africa. Caroline will discuss court annexed ADR services; and Madeline will speak on online dispute resolution from the perspective of 'ODR4Africa'.

To finish off the day and the conference, we shall launch AFAS.

This brings the two days to a close.

## **Keynote Speaker**

The conference **keynote address** will be given by Mrs Olufunke Adekoya, SAN. Mrs Adekoya will explore the "Business Case for Arbitration in Africa".

There will be **welcome addresses** from the co-hosts and the Secretary-General of the Asia-Africa Legal Consultative Organisation (AALCO), H.E. Prof. (Dr) Kennedy Gastorn.

## **Conference website**

All information relevant to the main research project and all the connected conferences are available online at: <http://www.researcharbitrationafrica.com/>

## **Languages**

The conference proceedings shall be conducted in the English and French languages with simultaneous translation. The *Discussion Paper* is published in the English language on the conference website.

**Appreciation**

We thank the members of the organising team in Khartoum and Arusha. We thank our sponsors: School of Law, SOAS University of London; Aztan Law Firm; Mitchell, Silberberg & Knupp Law Firm; Bannaga & Fadlabi LLP, Cairo Regional Centre for International Commercial Arbitration; Mrs Kate Emuchay; and Dr Emilia Onyema.

We also thank our media partners: AfAA, AILA, APAA, I-Arb; TDM

We thank all our keynote speakers, moderators, contributors, comperes, rapporteurs and attendees.

For our SOAS 2020 Arbitration in Africa conference, we shall be hosted by our French speaking/OHADA colleagues in Cameroon. We shall circulate information on the conference in due course.

Dr Emilia Onyema

SOAS Arbitration in Africa Conference Convenor

# Program

## Day 0: Tuesday 12 February 2019

1730-1830: Registration of attendees at Arusha International Convention Centre

1830-2000: Welcome dinner with Egyptian music on the lute by Abdallah El Nokaly at African Tulip Hotel [<http://www.theafricantulip.com/>] Dinner sponsored by Mitchell Sliberberg & Knupp LLP (Los Angeles, California)

**Anchor person:** Ms Ilham Kabbouri

**Conference languages:** English and French

## Day 1: Wednesday 13 February 2019

[The primary focus of discussions will be commercial arbitration]

0800-0915: Registration of attendees at International Convention Centre, Arusha

0920-0930: Welcome by Anchor person: Ms Ilham Kabbouri, Hogan Lovells LLP

0930-0940: Welcome by Dr Emilia Onyema (SOAS University of London)

0940-0950: Welcome by Mr Ahmed Bannaga (Bannaga & Fadlabi LLP, co-host, Sudan)

0950-1000: Welcome by Ambassador Sani Mohammed (African Institute of International Law, co-host, Arusha)

1000-1010: Welcome by H.E. Prof Dr Kennedy Gastorn, Secretary-General, Asian-African Legal Consultative Organisation (AALCO).

1030-1100: Keynote Address on “The Business Case for Arbitration in Africa” by Mrs Olufunke Adekoya, SAN, AELEX Lagos

### 1100-1130: Group Photo and Tea Break

**1140-1250: Panel 1: Africa’s Experience in Adopting UNCITRAL Model Law on Arbitration** [This panel will examine the experience of the 11 African states that have adopted the Model Law and provide a recommendation whether other African countries should adopt or adapt the Model Law from their own experience. The panel will focus in particular with peculiarities from their own jurisdiction and interpretation of their courts and the courts of other Model Law jurisdictions]

**Chair:** Ms Esine Okudzeto, Sam Okudzeto & Co, Accra.

### Speakers:

Mr Kizito Beyou will speak on the experience of Ghana and why Ghana did not adopt the Model Law wholesale in its 2010 ADR Act.

Ms Njeri Kariuki will speak on the experience of Kenya and why Kenya adopted the Model Law wholesale in its 1995 Arbitration Act and 2010 Constitution.

Dr Sylvie Bebohi will speak (via skype) on the experience of OHADA and its revised arbitration law.

Mr Hamid Abdulkareem will speak on the experience of Nigeria and the proposed amendments to its arbitration law.

Mr Tayeb Hassabo will speak on the Sudanese Arbitration Law

## **1300-1420: LUNCH**

### **1430-1530: Panel 2: Africa's Experience in adopting UNCITRAL Arbitration Rules**

[Arbitration centres will share their experience of administering arbitration references under the UNCITRAL and their bespoke rules. They shall focus in particular on the provisions which have been very difficult for them to apply]

**Chair:** Mr Babjide Ogundipe, Sofunde, Osakwe, Ogundipe and Belgore Law Firm

#### **Speakers:**

Dr Ismail Selim, Director-General, Cairo Regional Centre for International Commercial Arbitration (CRCICA)

Dr Fidele Masengo, Secretary-General, Kigali International Arbitration Centre (KIAC)

Dr Marie-Andree Ngwe, Secretary-General, Groupement Inter-patronal du Cameroun (GICAM)

1535-1555: Tea Break sponsored by Aztan Law Firm (Sudan, South Sudan & Nairobi)

### **1600-1715: Panel 3: Enforcement of Arbitral Awards in Africa**

[This panel will discuss developments in their jurisdictions on the enforcement of arbitral awards under the NYC or their national laws through an analysis of recent important cases. The foreign speakers will share from their own experience of enforcing awards/judgements in African jurisdictions]

**Chair:** Dr Nagla Nassar, NassarLaw, Cairo

#### **Speakers:**

Mr Ahmed Bannaga on the view from Sudan

Dr Babatunde Ajibade, SAN on the view from Nigeria

Mr Shane Voigt on the view from South Africa

Mr Kamau Karori on the view from Kenya

Mr Tim Taylor, QC on the view from outside Africa

## **END of DAY 1**

### **Day 2: Thursday 14 February 2019**

[The primary focus of discussions will be investment, investment arbitration and ADR]

### **0900-1000: Panel 4: The African Continental Free Trade Area Explained**

**Chair:** Mr Sola Ephraim-Oluwanuga, mni

**Lead paper:** Mr Adetola Onayemi on the African Continental Free Trade Area Agreement as it relates to dispute settlement and arbitration.

**Discussants:**

Prof Idrissa Bachir Talfi  
Ms Leyou Tameru  
Mr Gerald Afadani

**1005-1110: Panel 5: African States, Foreign and Domestic Investments**

[This panel will discuss the experience of African states and their push to attract foreign investments. It will discuss the role of domestic investors and how they can be better incentivised and protected; and finally discuss what will attract foreign investors to African States.]

**Chair:** Ambassador Sani Mohammed, African Institute of International Law

**Speakers:**

Mr Bobby Banson on the experience of West African states.  
Dr Achille Ngwanza on the experience of the OHADA region  
Ms Xander Meise from the perspective of advisor to foreign investors on what will attract them to African States.

1115-1130: Tea Break sponsored by the Cairo Regional Centre for International Commercial Arbitration

**1135-1250: Panel 6: Africa's Engagement with Investor State Dispute Settlement (ISDS)**

[This panel will discuss the cases African states and investors have been involved in ISDS to determine a trend and suggest how their success rates can improve; and explore other dispute resolution mechanisms that may serve these parties better especially where all parties are African. It will also engage with the Pan-African Investment Code.]

**Chair:** Dr Emilia Onyema, SOAS University of London

**Speakers:**

Dr Chrispas Nyombi on the need for a Pan-African Investment Court  
Prof Paul Idornigie, SAN on the Nigerian-Morocco BIT  
Dr Mostfa Bek El Behbety on Egypt's experience of ISDS and its remedial action.  
Prof Makane Moise Mbengue on ISDS challenges in the context of the negotiations of the future Investment Chapter of the AfCTA.  
Prof Mohamed S. AbdelWahab on the future trajectory for Africa in ISDS

**1300-1420: LUNCH****1430-1540: Panel 7: Culture of Arbitration and Institution Building in Africa**

**Chair:** Mr Thierry Gakuba Ngoga, Legal Line Partners, Kigali

**Lead Paper:** Mr Olisa Agbakoba, SAN on the Culture of Arbitration and Building Institutions in Africa.

**Discussants:**

Mr Edward Fashole-Luke, II

Ms Eunice Shang-Simpson

Mr Abdallah El Nokaly

1540-1555: Tea Break

**1600-1700: Panel 8: The modernisation of other ADR Processes in Africa**

[This panel will engage with mediation and negotiation in dispute resolution]

**Chair:** Ms Suzanne Rattray, Rankin Engineering Consultants, Lusaka

**Speakers:**

Prof Hiro Aragaki on mediation law reform in Africa

Mrs Caroline Etuk on court annexed ADR services (multidoor courthouse)

Ms Madeline Kimei on Online Dispute Resolution or “ODR4Africa”

**1705-1730: Launch of Arbitration Fund for African Students (AFAS)** by Dr Emilia Onyema; Dr Chrispas Nyombi; Ms Yasmin Sebah and Ms Eunice Shang-Simpson.

**1900-2100: Closing dinner at Mount Meru Hotel [<https://www.mountmeruhotel.co.tz/>]**