



4th Annual Conference of the AfAA

“INTERNATIONAL ARBITRATION IN AFRICA: TRANSITIONS AND NEW PERSPECTIVES”

Thursday, 12 – Saturday, 14 October 2023

Cape Sun Hotel
Cape Town, South Africa

PROGRAMME COMMITTEE

Co-chairs:

Sylvie Bebohi Ebongo
Lise Bosman

Members:

Hamid Abdulkareem
Erin Cronjé
Jackwell Feris
Dalia Hussein
Matilda Idun-Donkor
Mouhamed Kebe
Clement Mkiva
Suzanne Rattray
Sofia Vale
Daniel Wilmot

DAY 1 - THURSDAY, 12 OCTOBER 2023
REGISTRATION (09:30 – 18:00)
ANNUAL GENERAL MEETING (14:00 – 16:00)
RECEPTION (Cape Town Aquarium, V&A Waterfront) (19:00 to 21:00)
WELCOME FROM DR. GASTON KENFACK DOUAJNI (AFAA PRESIDENT)
DAY 2 – FRIDAY, 13 OCTOBER 2023
<i>Introduction to Theme and Programme</i> (09:00 – 09:10) Sylvie Bebohi and Lise Bosman (Programme Co-chairs)

Welcome to Cape Town and Introduction of Judge Wallis

(09:10 – 09:15)

Vlad Movshovich (Chair of Host Committee)

KEYNOTE ADDRESS BY JUDGE MALCOLM WALLIS (SOUTH AFRICAN SUPREME COURT OF APPEAL)

(09:15 – 09:45)

Morning Session 1

(09:45 – 11:15)

Panel 1 – An introspective into African arbitration: where do we stand today and what may be the transitions and new perspectives of tomorrow?

As a taster for the Conference ahead and to set its tone, this Panel will review the current state of arbitration in Africa, and how it may (or should) continue to develop in the future as it continues to go from success to success.

Topics the panel may consider include:

- Appraisal of the current status of arbitration across the leading African seats, including current caseload, types of disputes, and opportunities for future development.
- A review of key legal developments within African jurisdictions, emphasising significant African contributions in the form of arbitration jurisprudence and attitudes of courts.
- Assessing which African States are more openly “pro-arbitration”, and whether sufficient efforts are being made to develop internationally-competitive arbitration hubs.
- The barriers to arbitration and the opportunities for African arbitration to lead the way.
- The training and succession planning measures being put in place on the Continent – are the stars of the future getting sufficient opportunity/experience and exposure in order to shine?

Moderators:

Hamid Abdulkareem, 3Crowns, Nigeria/UK

Daniel Wilmot, Stewarts, UK

Speakers:

Short keynote: Diamana Diawara, Director, Arbitration and ADRA for Africa, ICC, France

Panelists:

Aisha Abdallah, Partner/Director at ALN Academy, Kenya

Adewale Olawoyin, Partner at Olawoyin & Olawoyin, Nigeria

Nania Owusu-Ankomah, Partner at Bentsi-Enchill Letsa & Ankomah, Ghana

Luche Joubert, Head of Legal Services at Remgro, South Africa

Jonathan Ripley-Evans, Partner at Herbert Smith Freehills, South Africa

COFFEE BREAK

(11:15 – 11:45)

Morning Session 2

(11:45 – 13:00)

Panel 2 – New forms of dispute resolution in Africa: where do we go from here?

This panel will explore current and emerging forms of dispute resolution and dispute avoidance across Africa, aiming to fill a dispute resolution toolbox that is responsive to the evolving realities of practice in Africa. Panellists will:

- Identify and provide a brief explanation of the range of ADR mechanisms being practiced on the African continent (including conciliation and mediation, commercial arbitration and Dispute Adjudication Boards).
- Consider which dispute resolution mechanisms are suitable and effective for specific types of disputes.
- Interrogate the potential benefits of dispute avoidance and effective dispute management in investor-State disputes.
- Propose a way forward for innovative dispute resolution in Africa by: (i) identifying which dispute resolution mechanisms should be promoted on the continent and why, and (ii) setting out how disputes can be avoided and/or managed.

Moderator:

Suzanne Rattray, Director, Rankin Engineering Consultants, Zambia

Speakers:

Bobson Coulibaly, Partner at SCP Yanogo Bobson, DRC

Salma El-Nashar, Senior Associate at Khodeir & Partners, Egypt

Tumisang Mongae, Partner at DLA Piper, South Africa

Belinda Scriba, Partner at Cliffe Dekker Hofmeyr Inc, South Africa

LUNCH

(13:00 – 14:30)

Afternoon Session 1

(14:30 – 15:45)

Panel 3 – Our evolution into new categories of disputes arising from future industries: are African practitioners ready?

This panel will discuss the new and evolving industries in which Africa will play a critical role, the inevitable disputes that will develop from these evolving industries, and how those disputes can be resolved. The panel will broadly consider:

- Climate change-related disputes: the role of arbitration and ADR:
 - Energy transition in Africa: from fossil fuels to clean energy – are disputes inevitable?
 - Decarbonising hard to abate sectors: managing, avoiding, mitigating and resolving disputes on the road to Net Zero.

- Environmental, Social and Governance (ESG) & Africa: the potential rise of disputes relating to ESG compliance from the perspective of: government and policy-makers, developers, investors and financiers.
- Resolving disputes arising through robotics and artificial intelligence.
- The panel may also address Fintech and/or NFT disputes should there be interest from potential speakers.

Moderator:

Jackwell Feris, Director at Cliffe Dekker Hofmeyr

Speakers:

Pierre Burger, Director at Werksmans Attorneys, South Africa

Uche Ofodile, Senior Fellow and Endowed Chair Holder at Harvard University and University of Arkansas School of Law, US (Nigeria)

Natasha Peter, Partner at Trinity International, France/UK

Gadi Ndahumba, Chief Legal Counsel at African Legal Support Facility, South Africa

COFFEE BREAK

(15:45 – 16:15)

Afternoon Session 2

(16:15 – 17:30)

Panel 4 – Creating African arbitral institutions of the future: best practices.

The panel will address perspectives from pertinent African arbitral institutions, aiming to offer users (clients and counsel) insights from the institutional standpoint. Issues addressed in this panel may be revived in Panel 8, which addresses the users' perspectives. In particular, the panel will explore:

- The role of arbitral institutions in dispute and case management, including management of time and costs, and in taking decisions on issues such as challenge and removal of arbitrators, preliminary dismissal for manifest lack of jurisdiction, and ensuring independence and impartiality of arbitrators.
- Adaptation of arbitral institutions in a changing arbitration landscape, such as:
 - Data and document management, data protection and cyber security, and their relevance to Africa in a post-Covid (hybrid) environment. Are African users of arbitration sufficiently well prepared for this aspect of arbitration?
 - Artificial intelligence and new challenges or opportunities for arbitral institutions.
- The extent to which arbitral institutions should be liable. This discussion should address whether institutions enjoy immunity or liability according to their governing instruments and the position of the courts at the seat of the institution.
- Insights on best practices from arbitral institutions in Africa.

Moderator:

Sami Houerbi, Ifriqya Arbitration Forum, Tunisia

Speakers:

Tunde Fagbohunlu, Senior Partner at Aluko and Oyeboode, Nigeria

Dalia Hussein, Deputy Director of CRCICA, Egypt

Victor Mugabe, KIAC, Rwanda [dependent on obtaining visa]

Lyna Laure Amana Priso, Arbitrator and Permanent Committee Member at CMAG, Cameroon

Datuk Sundra Rajoo, Director, Asia International Arbitration Centre (AIAC), Malaysia

Svetlana Vasileva, Secretary General at AFSA International and CAJAC, South Africa

Balla Galma Godana, Permanent Court of Arbitration Representative in Mauritius

PRESENTATION OF AWARDS (Cape Sun Hotel)

(17:30 to 18:30)

DAY 3 – SATURDAY, 14 OCTOBER 2022

Morning Session 1

(09:00 – 10:15)

Panel 5 – The implementation of AfCFTA and ISDS

In light of the operationalisation of the AfCFTA on 1 January 2021 (pursuant to the entry into force of the AfCFTA Agreement on 30 May 2019) and the adoption of the AfCFTA Investment Protocol by the AU in February 2023, with its potential to impact ISDS, the panel will explore the following topics:

- Challenges of investment claims in Africa, primarily the challenges faced by African states in ISDS, in matters of transparency, huge (adverse) awards, and challenges by investors to legitimate public policies adopted by States.
- Evolving positions of African states on ISDS, including the evolving positions taken by African States at domestic, regional and bilateral level vis-a vis ISDS by amending their domestic rules, BITs, and regional dispute mechanisms (such as SADC, COMESA, ECOWAS, etc).
- The AfCFTA Investment Protocol and the proposed investor-state dispute settlement Annex being negotiated amongst AU member states, and the future of investment claims in Africa, including how the Protocol and Annex might influence the future of investment claims in the continent.

Moderator:

Mouhamed Kebe, Managing Partner, GENI & KEBE Lawyers, Senegal/ Ivory Coast

Speakers:

Rose Rameau, Professor of International Law & International Arbitration and Independent Arbitrator at Georgia State University College of Law and Rameau International Law, US

Mohamed Shelbaya, Partner at Gaillard Banifatemi in Paris, Egypt

Tochukwu Anaenugwu, Senior Associate at Aluko & Oyeboode, Nigeria

Agnieszka Zarówna, Senior Associate at White & Case, London/Poland

COFFEE BREAK

(10:15 – 10:45)

Morning Session 2

(10:45 – 12:00)

Panel 6 – Effective Enforcement of Arbitral Awards in Africa: Achievements and Challenges

Ultimately, every successful litigant wants to be able to enforce the arbitral award it obtains. Arbitration in Africa will not take root and succeed if awards rendered cannot be enforced. This panel will address challenges to the effective enforcement of arbitral awards in African and will also consider measures taken by African states to ensure the enforceability of arbitral awards in multiple States. Panel 6 will deal with the following subtopics:

- Thinking of the end from the beginning: What can be done during the contract formation period to ensure that an arbitral award subsequently obtained in respect of a transaction will not be adjudged unenforceable?
- Is there specific know-how needed for enforcement of arbitral awards in Africa?
- African experiences in enforcement from key jurisdictions on the continent, including enforcement under the New York Convention, UNCITRAL Model Law, OHADA Treaty and ICSID Convention.
- Immunity from execution in Africa, a cause of concern for investor: how to deal with state immunity.

Moderator(s) and speaker introductions:

Matilda Idun-Donkor, Reindorf Chambers/ DLA Piper Africa, Ghana

Sofia Vale, Independent Arbitrator, Luanda, Angola

Speakers:

Tarek Badawy, Partner at Meysan Partners, Egypt

Yasmine Lahlou, Partner at Chaffetz Lindsey LLP, US

Bilshan Nursimulu, Partner at Orison Legal, Mauritius

David Unterhalter, Judge on the South African Supreme Court of Appeal, South Africa

LUNCH

(12:00 – 13:30)

Afternoon Session 1

(13:30 – 14:45)

Panel 7 – Diversity and inclusion: from the ground-up

This panel will explore topics of diversity, inclusion and capacity-building at all levels and across various role-players in the arbitration community in greater, tangible detail, with a view to engaging the attendees in an interactive and thought-provoking manner. Panellists are encouraged to explore solutions to the inevitable challenges, and the participants will be invited to do the same. The panel will discuss:

- The current status of diversity and inclusion for different role-players in arbitration (using statistical or other hard data, if available), namely representation in the field by African counsel and law firms, African tribunal secretaries and African arbitrators.
- Effective and sustainable implementation to achieve the critical goals associated with diversity and inclusion. The panel will discuss in this sub-topic:
 - Challenging perception biases, not only from outside of Africa but from within. For example, many African or Africa-based parties, including States and arbitral institutions, have appointed foreign / magic circle firms over local counsel who arguably have matched expertise and resources. The panel should ventilate what role-players are doing day-to-day, or what they would do when faced with opportunities and choices.
 - Capacity-building as key. How do we generate experience and training/ toolkits on international arbitration to match existing competences, to (i) raise profiles for possible African appointments, (ii) enable Africans to take on roles in a way that is credible and sustainable so that Africans can challenge inevitable perception biases, and (iii) how can we build capacity effectively from the ground up rather than a “top-down” approach focusing on tribunals.
 - Actionable changes in arbitration policy so far and prospective implementation in practice. The panellists will explore what institutions and arbitration users are doing to support these developments, using audience polling. The panel will consider some of the current policies and how to give them (more) impact (such as inclusion of provisions in Procedural Order No. 1 / Terms of Reference, appointments and selections, team compositions etc.).

Moderator and speaker introductions:

Sylvie Bebohi Ebongo, HBE Avocats, Cameroon/France
 Erin Cronjé, De Brauw, Netherlands/South Africa

Speakers:

Madeleine Kimei, iResolve and TiArb, Tanzania
 Ranna Musa, Associate at Stephenson Harwood Middle East LLP, Dubai/Sudan
 Lerisha Naidu, Managing Partner at Baker McKenzie, South Africa
 Jamsheed Peeroo, Barrister and Arbitrator at 36 Stone, Mauritius

COFFEE BREAK

(14:45 – 15:15)

Afternoon Session 2

(15:15 – 16:30)

Panel 8 – The users’ perspectives: what do corporations, States and their counsel expect?

This panel aims to synthesize issues addressed by earlier panels, with a focus on what arbitration users expect. As arbitral practices transition and new perspective develop, the requirements and expectations of the users should be given paramountcy to ensure that arbitration and alternative dispute resolution remain fit for purpose. To make a proper assessment of the needs of users, consideration should be given to the different needs and interests of users prior to arbitral proceedings

and their behaviour in the midst of arbitral proceedings, as these two scenarios may not always be matched. In order to draw out these issues, the panel will address:

- Perspectives on suitability of the process (i.e. the appointment of arbitrators, duration, costs).
- Perspectives on innovative solutions (i.e. ascertaining arbitrator's caseload and availability, use of technology and IA, feedback on performance of arbitrators).
- Perspectives on best practices (should arbitrators suggest ADR, expedited procedures and summary dismissal, publication of awards).
- Perspectives on challenges (due process paranoia, an internal appeal mechanism, efficiency of the courts).

Moderator:

Clement Mkiva, Partner at Bowmans, South Africa

Speakers:

Samuel Alemayehu, Ethiopian Mediation and Arbitration Center, Ethiopia

Sopi Patricia Kakou, Partner at AHEAD

Benjamin Sanderson, Of Counsel at DLA Piper and Global Practice Manager for International Arbitration

**CLOSING KEYNOTE ADDRESS BY PROFESSOR RAYMOND RANJEVA (FORMER JUDGE OF
INTERNATIONAL COURT OF JUSTICE)**

***Closing Remarks (Njeri Kariuki, AfAA Vice-President)
Invitation to 2024 Conference in West Africa (Sylvie Bebohi)***
(16:30 – 17:00)

**CONFERENCE DINNER
(Cape Sun)**
(20:00 – 23:00)