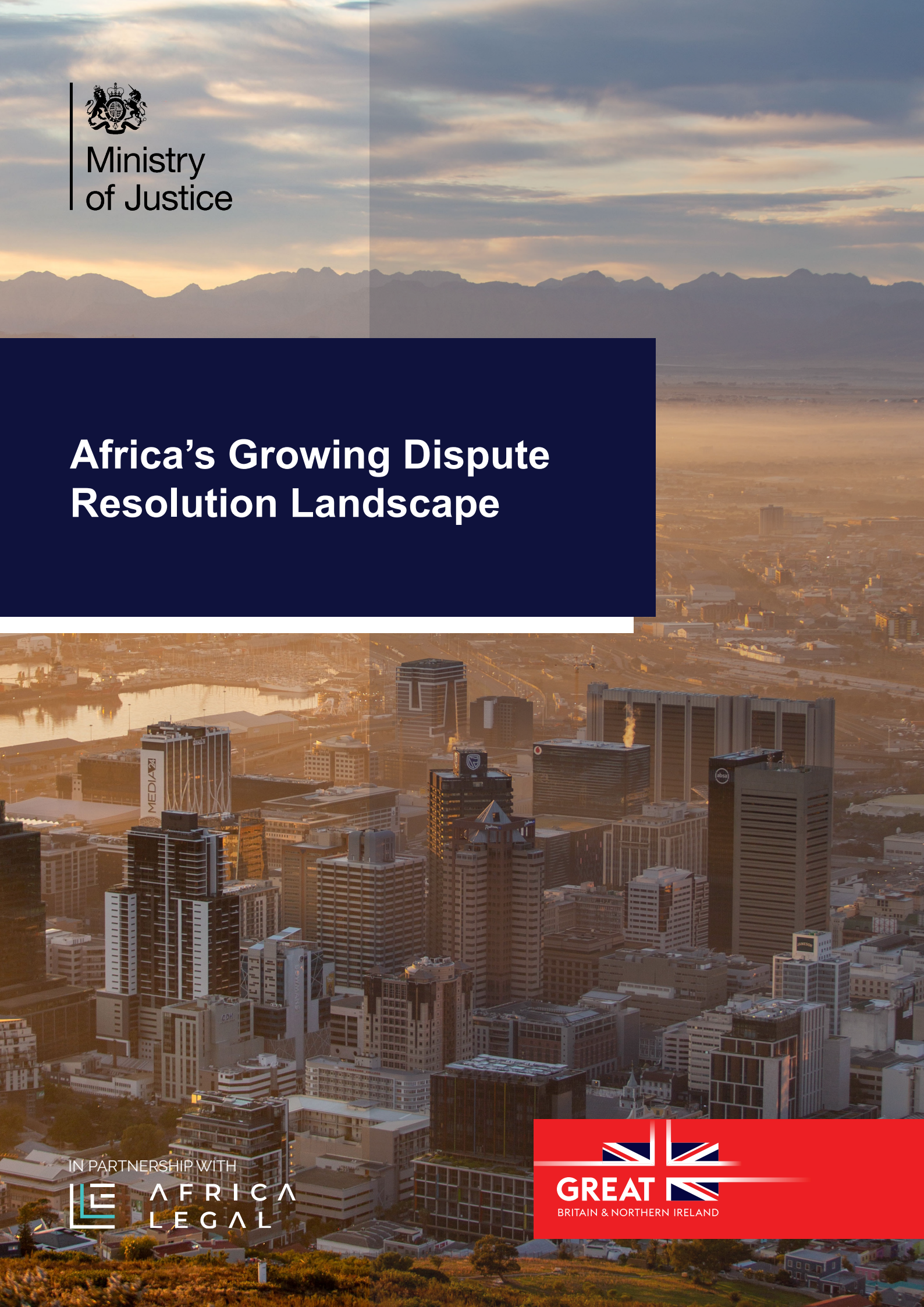
Ministry of Justice

Africa's Growing Dispute Resolution Landscape



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Executive Summary

Over the past two years the UK Ministry of Justice (MOJ) and GREAT Legal Services have worked on a number of projects with Africa Legal to better understand, interact with and support Africa's diverse, vibrant and innovative legal sector. These projects have included joint conferences, research reports, and the development of an e-learning programme. So far two free online courses have been launched, with a third on the way.

The MOJ is committed to facilitating greater engagement between the UK and African legal sectors on a long-term basis to deliver vital opportunities for learning, collaboration and networking between the regions.

As we gather for London International Disputes Week (LIDW), it is an opportune moment to examine the progress and challenges faced by Africa in the realm of alternative dispute resolution (ADR). This research report, compiled by Africa Legal for the MOJ, comes at a critical time, shedding light on the continent's evolving landscape as it increasingly adopts arbitration and mediation as viable alternatives to traditional litigation.

In this report, we provide an in-depth analysis of Africa's growing ADR landscape and the significance of its development, against the backdrop of LIDW. As a platform for discussing key issues and trends in international dispute resolution, LIDW provides an ideal setting for understanding the complexities that Africa faces as it endeavours to establish itself as a serious ADR player.

The research outlines the progress made in recent years, highlighting the establishment of arbitration centres across the continent, and the growing adoption of mediation in various jurisdictions. It also addresses the challenges that hinder the development of ADR in Africa, and the opportunities for increased partnerships with the UK legal sector.

As the world's focus shifts to Africa's potential in trade and investment, the importance of understanding and supporting the growth of its ADR capabilities cannot be overstated. This research offers valuable insights for practitioners, policymakers and stakeholders as they navigate the complex world of international dispute resolution and work to strengthen Africa's position in this domain.

Our aim is for this research to spark meaningful conversations during LIDW and to contribute to the ongoing efforts to bolster Africa's capacity to effectively manage and resolve disputes, fostering a more robust, efficient, and equitable dispute resolution ecosystem on the continent.

"Africa is an exciting, evolving and growing legal market and we're delighted to be supporting work that brings UK and African practitioners together against the backdrop of London International Disputes Week," commented Simon Barrett, Director of Communications, UK Ministry of Justice. "Insight gathered for this report provides useful context for discussions that shine a light on some of the barriers experienced by practitioners, and can shift the dial on what needs to change to better integrate learning between multiple jurisdictions."

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Introduction: Growing Africa's reputation as a serious ADR player

Africa's dispute resolution landscape has long been dominated by litigation, but the use of alternative mechanisms such as arbitration and mediation is becoming more prevalent.

South Africa, Kenya, Nigeria, Egypt and Rwanda all have established arbitration centres, with Cairo and Johannesburg considered the most popular arbitral seats on the continent, according to a 2020 survey run by the SOAS University of London.

Mediation is also starting to gain traction in countries such as Kenya, which recently introduced mandatory court-annexed mediation as part of its broader alternative dispute resolution framework. This gives the courts discretionary powers to send certain disputes to a mediator and will help to reduce backlogs in the court system.

Despite these moves, the growth of arbitration and mediation on the continent faces challenges. An Africa Legal poll posed to the continent's legal community for London International Disputes Week found that 48% of the more than 100 respondents believe the biggest obstacle to resolving disputes through arbitration in Africa is inadequate legal enforcement, with parties often concerned that any arbitral awards will be ignored. Just over a fifth (22%) believe party resistance is the next biggest obstacle, with disputants often wanting to use arbitral seats and venues outside Africa. A further 16% cited a lack of qualified arbitrators, while 12% said local centres are typically underfunded.

Investor–state mining disputes commonly arise in Africa. Out of 37 global mining arbitration cases in 2021, just under half (15) involved African activities, according to international legal data provider Jus Mundi. A number of disputes on the continent have arisen from African states introducing new regulations to gain more control over mining projects and to pocket a bigger share of the profits, prompting investors to file for arbitration, Jus Mundi noted.

These disputes often end up being contested outside Africa, with London being the most popular seat for mining-related arbitration, according to Jus Mundi. Even when African disputes involve two African parties, the cases tend to be subject to either the International Chamber of Commerce (ICC) or London Court of International Arbitration (LCIA) rules, and arbitration takes place in centres such as Paris, London and Singapore.

African arbitrators say this limits their opportunities, stunting the development of the continent's arbitration landscape. For this reason, African arbitrators are seeking closer collaboration among regional centres to increase appointment opportunities.

Given the fact that so many commercial contracts are subject to English law, African practitioners find they still need to engage with the UK dispute resolution community if they want to be involved in international arbitration.

The Africa Legal poll found that 58% of respondents believe it is very important for African arbitrators to have a strong understanding of English law and UK dispute resolution infrastructure, while 25% said it is somewhat important and 13% said it is not important.

Michael Strain, a partner at law firm Bowmans, commented: “If the underlying agreement to which the dispute relates is governed by English law, then it is essential to be English law-qualified in order to properly advise in relation to any such international arbitration.”

Many African practitioners see the value of engaging with the UK dispute resolution community. Joke Aliu, managing partner at Aluko & Oyebode, says that even if there are no UK parties involved, disputants will often seek to have cases seated in the UK because it is a neutral venue with a proven track record for dealing with complex disputes.

“English law remains one of the UK’s greatest exports,” she said.

As inbound investment into Africa continues to grow (foreign direct investment inflows hit $83bn in 2021, according to the UN’s World Investment Report) and the Africa Continental Free Trade Area agreement increases the volume of cross-border trade, international disputes are likely to rise. The Africa Legal poll found that half of the respondents believe investment-related and commercial disputes are the most promising growth area for arbitration in Africa.

A boom in infrastructure and energy projects is also likely to be a strong growth area, the respondents said (21% for each), with 8% also citing the potential for intellectual property-related disputes.

While the ICC and LCIA are still likely to dominate when it comes to international disputes involving Africa, the ever-increasing volume of trade and investment on the continent means there is likely to be a growing acceptance of disputes being resolved on the ground as local arbitral seats become more established.

Contributing firms

In order to gain insight into the real situation on the ground for this report, Africa Legal spoke to leading disputes lawyers from eight firms that are either based in Africa or deal with African ADR cases on a regular basis. We thank them for their time and willingness to shed light on the challenges and opportunities facing the increasing use of arbitration and mediation as viable alternatives to traditional litigation in Africa.

ALN ALUKO & OYEBODE

ALN KENYA Anjarwalla & Khanna

DLA PIPER AFRICA

TRIPLEOKLAW ADVOCATES

BOWMANS

HERBERT SMITH FREEHILLS

RPC

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Expert Insights

Africa Legal interviewed eight leading disputes lawyers either based in Africa or who typically work on Africa-related matters, to discuss key trends that are impacting the development of the continent's alternative dispute resolution landscape.

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The race is on to become Africa's top arbitration hub

Several jurisdictions are vying to be the go-to arbitration centre in Africa, says Aluko & Oyebode managing partner Joke Aliu.

A number of African countries, including Nigeria, are in a race to become known as the hub of arbitration on the continent, says Joke Aliu, managing partner at Aluko & Oyebode in Abuja, Nigeria.

"There is a desire to create an environment and a legal structure that keeps the resolution of disputes that arise in Africa, or are connected to Africa, in Africa," said Aliu. "We're seeing a number of jurisdictions make revisions and amendments to current arbitration laws to ensure they are reflective of current realities and are comparable to countries like the US and the UK."

For example, Nigeria is in the process of enacting a new arbitration and conciliation act, while Sierra Leone passed a new arbitration law, she said.

This push to strengthen the arbitration and broader dispute resolution backdrop is being driven by the need to improve access to justice and encourage foreign direct investment so that investors feel comfortable in the event that a dispute arises.

"Investors want to know if our courts respect arbitration agreements and they also want to know whether the courts of the relevant jurisdiction have a reputation for providing the needed and timely support for arbitration proceedings," said Aliu.

While the needs of African arbitrators are not dissimilar to the needs of those elsewhere – they want certainty and consistency in laws and decisions, and good institutional support – African arbitrators also want more inclusivity in appointments, particularly with regard to international arbitration related to Africa, she noted.

For now, litigation remains the default mechanism for handling local disputes, so Africa also needs to better promote arbitration and other forms of alternative dispute resolution (ADR) so that there is awareness that litigation need not be the first port of call to resolve disagreements, explained Aliu.

Africa is also likely to continue having a fair level of engagement with the UK dispute resolution sector, at least in the short-to-medium term, she says.

"The question is, what happens in the long term and what degree of influence would the UK continue to have?" Aliu asked. "That's a bit of a tricky question because a lot depends on the reform efforts being driven on the continent and the supporting infrastructure for those reforms – it's not enough to have good arbitral institutions on the continent, there must be a proper supportive framework and infrastructure to drive the market."

That supportive framework includes considerations such as the ease of travel, whether there is good hotel accommodation near the ADR centres, and how safe the jurisdiction is, she says.

Despite those unknowns, Aliu is optimistic about the future and Africa's ability to continue making progress on its arbitration capabilities.

"I definitely see a rise in the use of arbitration and other ADR mechanisms," she said. "The African Continental Free Trade Area agreement and its focus on fostering continental economic integration through trade will result in more intra-African disputes. That will help the continent's institutions gain more experience, compel the continent to pay the required attention to supporting infrastructure, and in turn increase the level of comfort with Africa as a seat for arbitration."

Governments seek to keep African disputes in Africa

While arbitral seats often remain outside the continent, some African countries are increasingly being seen as a viable choice for arbitration venues, says ALN Kenya partner Aisha Abdallah.

African governments are increasingly concerned about arbitration costs and perceptions that they won't be treated fairly by arbitration centres outside the continent, says Aisha Abdallah, a partner at ALN Kenya.

"There is a political desire to repatriate disputes to Africa and ensure that at least between African parties, they can agree to house their disputes in a neutral seat within the continent," said Abdallah. "That can result in significant cost savings and give reassurance that parties won't face bias against them for being African."

With this in mind, African governments and parties are seeking more choice and flexibility when it comes to arbitration seats and venues. While the seat might be a traditional institution such as the London Court of International Arbitration (LCIA) or the International Chamber of Commerce (ICC), there is an increasing trend for the venue to be in Africa. So, for example, while the LCIA would facilitate the intervention, the actual arbitration may be conducted in, say, Nairobi, Abdallah said.

This is spurring hope for greater cooperation between regional arbitration centres across the continent to avoid competing with each other. Some jurisdictions are also seeking to move away from traditional established Western centres and forming agreements with China, she explained.

"Chinese investment in Africa is only growing, so it follows that if you give it enough time, disputes will start to come out of those transactions," said Abdallah.

In addition, there has been an increasing push towards mediation as a way to cut costs. Kenya, for instance, is seeking to adopt a national ADR policy that encourages parties to look at more cost-effective ways of resolving disputes, including mediation, which could also help decongest the courts.

"There is a real awareness that cost savings in disputes have a direct link to economic growth and the ability to attract foreign direct investment," she said.

Abdallah has also seen the amount of international arbitration and ADR work at her firm grow in recent years as clients become more comfortable appointing an African firm to handle cross-border disputes.

"Before, there was a perception that you could never use an indigenous African firm; if you weren't using a big South African firm, then you would go to London or Paris," she said. "So the work was always there, it's just that we never got it."

One reason for this ADR growth is because ALN's corporate team is heavily involved in negotiating contracts, so when disputes arise, the firm better understands the background of the contracts and can work seamlessly with the disputes team to resolve them, potentially saving the client time and money, says Abdallah.

Because many large contracts in Kenya are based on English law, ALN will typically appoint English arbitrators to work on the cases, in part because there is a genuine concern by some clients that a local arbitrator may be compromised by one of the parties. However, those appointments are rarely reciprocated, with much of the work only flowing in one direction, something Abdallah says needs to change.

"We often have very good working relationships across borders. However, sometimes we find that certain lawyers do not value the relationship," Abdallah said. "If there's a dispute or contract governed by an African law, you find that certain UK professionals may go out of their way to minimise the role of African counsel. There is sometimes a lack of professional respect – either because of anecdotal evidence or often just because of ignorance about professional standards."

ALN KENYA
Anjarwalla & Khanna

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Greater awareness needed to promote mediation

The traditional way of settling community disputes can translate to the business world, says DLA Piper Africa partner Milly Jalega Odari.

Africa needs to create more awareness around mediation as an alternative way to settle commercial disputes by tapping into its historical roots, says Milly Jalega Odari, a partner at DLA Piper Africa in Nairobi, Kenya.

“Most Africans are not really aware of mediation as a form of dispute resolution,” Jalega Odari said, “but if you look at the historical aspects of our culture, we have disputes being resolved by a council of elders, and parties being called to sit together to try to resolve the problem. Mediation is an avenue that people may feel more attuned to because historically most of our disputes were resolved that way, so I feel there needs to be a bigger awareness campaign.”

Aside from the cultural association, one reason mediation is likely to appeal is that the outcome is driven by the parties themselves – nothing is imposed as there would be in an arbitral decision or in a court judgement, she explained.

“It’s a negotiated settlement so parties have more buy-in when it comes to the final outcome,” Jalega Odari said. “There’s also flexibility in the format – it can deal with simple disputes or complex disputes, but all parties will have fully participated in generating the final outcome.”

To be sure, there are challenges with mediation. First, unlike arbitration and litigation, there are no standardised mediation guidelines to follow, so different mediators will apply different approaches, she said, which means mediation proceedings might not be consistent.

The non-binding nature of mediation might also deter some people, particularly if one of the parties is not serious about resolving the dispute, she added.

In addition, Africa’s arbitration backdrop suffers an awareness problem on the international stage, with African arbitrators frequently overlooked for appointments.

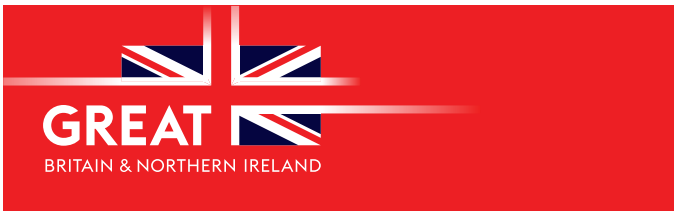
“When it comes to international arbitration, you get tribunals selected by African parties that are in most instances composed of non-Africans,” said Jalega Odari. “So, you get Africans appointing non-African arbitrators to handle their disputes. That already puts African arbitrators at a disadvantage because they are not first in mind.”

Part of the problem is that there is not a properly maintained and updated arbitrator database on the continent, which makes it difficult for experienced African arbitrators to be considered for appointment to international tribunals, she said.

“In addition, African states are never preferred seats, so it limits opportunities for arbitration practitioners in Africa, and therefore curtails the enhancement of jurisprudence,” Jalega Odari commented.

These circumstances have spurred greater cooperation among African arbitrators to focus on regional growth to improve the arbitration backdrop and increase potential appointment opportunities.

“That is why you now see the setting up of regional arbitration centres in Africa with a view to expanding the reach of the arbitrators beyond their respective countries,” said Jalega Odari. “We now have arbitration centres in Nairobi, Kigali, Cairo – all of which have been useful in bringing together African arbitrators in fora not limited to their specific countries.”



Kenya leads the way on African mediation framework

Kenya is looking to encourage more disputants to consider mediation before resorting to litigation, says John Ohaga, managing partner at TripleOKLaw.

Africa's mediation backdrop remains undeveloped in many countries across the continent, but one jurisdiction that is taking steps to increase the number of disputes resolved through mediation is Kenya.

John Ohaga, managing partner at TripleOKLaw in Nairobi, Kenya, has been helping to develop the country's alternative dispute resolution framework, which has introduced mandatory court-annexed mediation as a way to try and settle disputes before they go to litigation.

"The way that that works is when you file a suit in any of the divisions of our courts, whether it's a commercial division or employment or land or family succession, our mediation registrar has the discretion to track your suit to mediation, and you will then be obligated to attempt mediation," explained Ohaga.

The philosophy behind that approach is to educate the legal profession and clients on mediation and its potential benefits, while also trying to foster a culture where you would automatically go to mediation before you go to litigation, he said.

"We have found that this has led to an increasing interest in mediation, to the point where parties are asking to go to mediation even without the registrar requiring them to go," Ohaga noted.

He says this has started to break down some of the initial scepticism about mediation among lawyers and clients. Lawyers, for instance, were initially resistant because they were fretting that it would potentially reduce their revenue. Claimants were also initially hesitant about their cases being tracked to mediation given that they were already in conflict with the opposing party and were counting on a judge or magistrate to rule on their case.

Aside from efforts to educate the public and the legal profession on the benefits of mediation, seeing tangible results has also helped to sway opinion. Ohaga, for instance, was responsible for mediating a hugely disruptive dispute between doctors and the government, that had descended into a nationwide strike over poor working conditions and pay. After the strike intensified and several union representatives were jailed for contempt of court, Ohaga was appointed mediator and the dispute was eventually resolved to the satisfaction of both parties.

The success of Kenya's mediation framework – which was created by studying best practices in other countries and assessing what works and what doesn't – has encouraged other African nations, including Zambia and South Sudan, to look to Kenya for guidance on setting up their own mediation programmes.

"There's a great interest in how to learn the lessons from the challenges we've had to encounter and how we try to overcome those, so they can then not suffer the teething pains that we've had," said Ohaga.

Kenya is now seeking to pass specific legislation around mediation so that it can be a standalone dispute resolution forum, rather than it being dependent on civil procedure rules and the courts sending parties to mediation, Ohaga explained.

"We think that will trigger a lot of interest across the continent," he said. "Over the next five years I think there will be a significant spread of mediation in Africa."

More support needed to build capacity

Some UK institutions could help African ADR practitioners by offering training and development programmes, says Cecil Kuyo, a partner at Bowmans.

Africa must focus on bolstering its arbitral institutions following a rise in the number of arbitration centres over the past few years, says Cecil Kuyo, a partner at Bowmans in Kenya.

“Now it’s about strengthening them rather than coming up with more so that they become vibrant centres that disputants choose as appointing authorities,” Kuyo said.

He believes practitioners must also continue building confidence among foreign investors to consider using African institutions for arbitral proceedings.

“That is a trend that is gaining traction as people are becoming more and more comfortable with African jurisdictions as arbitral seats,” said Kuyo. “We’re seeing hubs such as Lagos, Nairobi, Johannesburg and Cairo continue to develop; each of those jurisdictions have robust arbitral institutions to drive that forward.”

However, several obstacles are potentially hindering African arbitrators from advancing the continent’s alternative dispute resolution landscape. The first is technology, says Kuyo.

“The use of technology in the average arbitral proceeding setup is quite nuanced and specialised, so that has been a problem, as the uptick of firms and practitioners using these technological developments has not been great,” he noted.

The continent also suffers from capacity issues, says Kuyo.

“Practitioners like me have always had a problem because there is a perception of a lack of exposure, so clients think we don’t have the capacity to handle big-ticket arbitral disputes,” he said.

This impediment could be solved, he says, by increasing capacity-building opportunities to develop more experienced practitioners who could handle those types of disputes, for instance by better promoting local arbitration conferences.

“We only hear about Paris Arbitration Week and the London edition; you don’t hear about the Lagos edition or the Nairobi edition,” Kuyo said.

The UK government and legal institutions could also support capacity building in Africa by offering training and development opportunities. Even relatively small efforts, such as a roadshow where UK practitioners jet in to offer two or three days of intensive training, would help, he commented.

African countries also need to engage more actively with other jurisdictions to help grow their local arbitration capabilities.

“We are a global village now – we cannot afford to stay within ourselves; we need to open up, both to invite people here and also to go out into the world, to hear about experiences and learn new practices so that we can come back and implement them here in our local jurisdictions,” said Kuyo.

He feels that if African countries can do that, the future of the continent’s arbitration community is bright.

“We are going to see more robust African arbitral institutions; they are going to flex their muscles more, and whether it is through member engagement or whether it is through collaborations with international law firms, we are going to see greater development of these institutions,” he said.

Investors are also going to become more comfortable about embedding African institutions as appointing authorities in transactional documents, says Kuyo.

“Previously it has always been the default to go to the LCIA or the ICC, but I see a move towards African arbitral institutions because our national courts are also quite accommodative and supportive of arbitration,” Kuyo noted.

“I also think that there may be an increase in African arbitration practitioners on the international scene even as we build capacity within our jurisdictions, so I think the faces of arbitration tribunals may change over the next couple of years.”

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UK lawyers can help boost confidence

The UK dispute resolution community has a role to play in reassuring businesses that arbitration is a reliable process to settle disputes in Africa, says Herbert Smith Freehills' global arbitration head, Paula Hodges.

UK lawyers can support growth in African arbitration by reassuring international clients doing business on the continent that arbitration provides a neutral dispute resolution process, says Paula Hodges, head of Herbert Smith Freehills' global arbitration practice.

"Clients may be reluctant to agree to contracts if they are subject to the jurisdiction of local courts, and so arbitration can be presented as the most neutral option," Hodges said. "In terms of enforcement of any arbitral award, it's often smoother than if you have a court judgement, therefore it helps promote Africa as a good place to do business and allows local arbitrator practitioners to get more business and experience."

UK lawyers can also help by participating in African arbitration conferences on the continent to better understand local issues and culture, Hodges said. The broader arbitration community could also invite African practitioners to speak at conferences globally, she added. This will raise their profile.

Some jurisdictions, such as Nigeria, stipulate that if a claim is subject to local law, then the lead lawyer must be from that jurisdiction. In Nigeria, that rule came into effect while Hodges was midway through a case.

"We had to swap roles, so the Nigerian senior counsel did all the advocacy, with us taking the support role," she said. "It was quite challenging, but we had a great working relationship – and our client won.

Hodges believes UK lawyers working on African-related arbitration cases should always seek to engage counsel on the ground in Africa regardless of any local rules.

"Working alongside local counsel is really important, even if the decision is subject to English law, because there will always be regulatory issues and other procedural considerations, and local counsel understands those nuances," said Hodges.

Working with the UK dispute resolution community can also bring benefits to African arbitrators, she noted.

"In African jurisdictions where English law has had a significant impact on the development of that nation's law – such as South Africa, Nigeria and Ghana – the local courts often follow English law precedent," Hodges explained.

"By engaging with the UK dispute resolution infrastructure, the practitioners in those countries will keep up with developments that could well impact disputes under their own law. Also, if African practitioners want to practise arbitration on a global level, it's good to know about English law and dispute resolution in London, given that so many arbitrations take place in London and are subject to English law."

In the coming years, Hodges believes arbitration will continue to play a role in helping companies gain confidence about doing business in African jurisdictions, providing reassurance that they have a neutral dispute resolution process at hand if something goes wrong.

The UK also potentially has a role to play in the future of African arbitration by providing training to local judges about how to support arbitral proceedings, she said. "That will also give international companies more confidence in having arbitration proceedings take place in Africa and will build mutual trust between the UK and local practitioners."

HERBERT SMITH FREEHILLS

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Partnerships can strengthen African arbitration

Continuing to strengthen ties between the UK and African arbitration communities will help advance the continent's disputes landscape and the international arbitration community as a whole, says RPC's head of international arbitration, Shai Wade.

UK lawyers can play an important role in promoting African arbitration by building partnerships on the continent, says Shai Wade, partner and head of international arbitration at RPC, based in London.

"The way we at RPC promote the practice of arbitration in Africa is by working closely with our colleagues in Africa," said Wade. "We promote through action. When we have a case involving an African state, we don't presume to know the national law, we don't presume to work in a more professional or better way than our colleagues on the ground – we work with them as part of a unified team. And when we have a suitable case, we appoint arbitrators from the relevant African jurisdiction if that's appropriate."

UK firms also need to ensure those partnerships are equal. Wade says all too often African lawyers feel like they are undervalued or not treated with the same respect as lawyers from other jurisdictions.

"If you treat your African co-counsel differently to the way you treat, say, your Swiss, French or Singaporean co-counsels, you're not going to get the best out of your relationships," he commented.

Sometimes African clients themselves are reluctant to appoint African arbitrators or leading counsel, something Wade has direct experience of.

"In some cases, I have come across a strong preference amongst clients, and sometimes the law firms they work with, to appear before English arbitrators or to work with English leading counsel as opposed to locally trained lawyers," he said. "That's an obstacle you sometimes come up against, but if there is, for example, a Nigerian law question, a respected Nigerian lawyer will often be better suited to the case than a known French arbitration doyen or English KC."

Another challenge the arbitration community faces in the UK is the lack of geographical proximity and the lack of networking opportunities that could help UK dispute resolution lawyers deepen ties with a broader community of African practitioners.

"It is easy to meet people who are in our normal circles, but we need to make a conscious effort to reach out to those who are not within our circles," Wade emphasised. "That is why we make a point to travel to jurisdictions all over Africa so that we can form relationships and get to know arbitration lawyers from across the continent in, say, the DRC, Kenyan, South African, Nigerian or Egyptian arbitration circles."

While Africa has a growing line-up of international arbitrators, Wade warns that repatriating African disputes will be a slow process. A key feature of international business is that parties prefer a neutral dispute resolution venue over local seats – a characteristic that is not unique to African disputes.

"There's now a fraternity of African international arbitrators that is very well accepted and respected around the world, but it is still difficult to imagine that there will be very quick growth in arbitrations seated in African jurisdictions even where the disputes involve parties from different African states," he said. "The process has begun but will likely take some years yet."

The UK, therefore, is likely to continue playing a central role in many international arbitration cases related to Africa.

"England and English law are seen as relatively neutral and stable frameworks within which to contract and conduct disputes," noted Wade. "If you are trading internationally, then there are a few choices that are universally accepted as fair and neutral legal choices, and England, both in terms of the substantive law and in terms of the venue for dispute resolution, is a leader amongst them."

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Infrastructure boom will support African arbitration growth

The UK needs to play a bigger role in Africa as the market grows over the next few decades, says Hefin Rees KC.

The massive increase in construction and infrastructure projects in Africa and the disputes that arise out of them is fuelling the growth of arbitration on the continent, says Hefin Rees KC, a barrister at Three Verulam Buildings (3VB) in London.

“It’s not just building roads and bridges, it’s the energy supply as well, so those are massive projects which are all driving arbitration in Africa,” noted Rees. “There are increasing commercial disputes as well, and with the introduction of the African Continental Free Trade Area, that will likely increase pan-African arbitration.”

With that increase in disputes, international and African arbitrators will, understandably, need more support to help with this increased workload in arbitral proceedings on the continent. For instance, 3VB’s International Advisory and Dispute Resolution Unit has been undertaking a range of capacity-building work in Uganda and in other countries throughout Africa, including offering training programmes.

“The local courts across Africa need to be assisted in becoming more accustomed to arbitration awards so that they are more arbitration friendly,” said Rees. “They need to be assisted to know more about arbitration on an international scale and why the New York Convention is so important and effective in the enforcement of awards. If they had more training like that, it would improve the confidence in arbitration in Africa, because the local court system is sometimes key to enforcement and that is what the international commercial world and companies who invest in Africa want.”

European institutions also need to do more to support African arbitrations, for instance by increasing the diversity of arbitral panels so they include African arbitrators and therefore better reflect the parties involved, he said.

While the UK plays an important role in African disputes – either because contracts reference English law or because the arbitral seat is in London – Rees believes the UK must do more to cement that role in future.

“It’s very important, because a lot of disputes – especially construction disputes – are bound by English law,” he said. “It’s also important for UK institutions like the Chartered Institute of Arbitrators (CIArb) to have more of an influence in Africa. We need to reach out to help support new branches of CIArb to be established throughout Africa.”

Rees says this is necessary because UK influence is at risk of declining given the flow of investment into Africa from other parts of the world.

“A huge factor in the future of arbitration in Africa is China, because they’re getting more and more involved in all aspects of investment – not just in infrastructure, but also in mining and other investments,” said Rees. “A lot of the future of arbitration is connected with who’s actually the investor, and China is by far the largest.”

Disputes are also more likely to be handled on the ground in the future, but the growth in Africa’s domestic market will still present opportunities for UK dispute resolution practitioners, says Rees.

“Africa will no doubt improve the regional institutions of arbitration so they can deal with their disputes more locally, and that should be encouraged,” he said. “But there’s a lot of opportunity for the UK to get involved; it’s a huge market and it’s only going to get bigger and bigger in the next 10 to 15 years, so the UK has to get involved even more than they are currently.”

Conclusion

In conclusion, this compendium underscores the significant shift in Africa's legal sector and its broader economic and strategic position in the world. As the continent evolves, there is a great deal of scope for the UK to be an active partner in Africa's continued development as it seeks to pull in global resources to find the solutions that best fit the economic growth model for each nation.

A critical aspect to consider in the UK-Africa relationship is the need for reciprocity and equal standing between African practitioners and their international counterparts. Long-term, substantive relationships must be prioritised over short-term gains, to ensure the UK does not lose out to competitors such as China.

If African nations work together to build on their collective significance and power, they will improve their market recognition and build their profiles as serious players in the ADR space. The UK Ministry of Justice believes the UK has an important role to play in supporting the strengthening of arbitral seats across Africa.

English law can serve as a valuable tool in this endeavour, fostering collaboration and mutual growth, and the UK Ministry of Justice is committed to reinforcing a robust and fruitful partnership between the legal sectors of the two regions.

This report serves as a catalyst for meaningful dialogue and collaboration during LIDW, which will contribute to the ongoing efforts to strengthen Africa's capacity to effectively manage and resolve disputes. By working together, the UK and Africa can foster a more robust, efficient, and equitable dispute resolution ecosystem, benefitting both regions and the international community at large.

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