



HERBERT
SMITH
FREEHILLS

A REGIONAL SUCCESS STORY: THE DEVELOPMENT OF ARBITRATION IN RWANDA

01 February 2017 | Africa Group

Legal Briefings - By **Dr Fidèle Masengo, Secretary General of the Kigali International Arbitration Centre**

A dialogue with Dr Fidèle Masengo, Secretary General of the Kigali International Arbitration Centre.

Arbitration has been a relatively recent arrival in Rwanda. In 2003, Rwanda's courts had a huge backlog of cases as the country struggled to come to terms with, and seek reconciliation following, the genocide. At that time, Rwanda was also looking to attract greater foreign investment and increase investor confidence. The Ministry of Justice therefore established a commission to look at the question of commercial justice and how to ensure the backlog of cases through the Rwandan courts did not affect investors' access to justice.

In 2007 the Commercial Courts were established and in 2008 a new Arbitration Law based on the UNCITRAL model law was proposed

Over the next ten years, Rwanda's justice system underwent huge change. In 2007 the Commercial Courts were established and in 2008 a new Arbitration Law based on the UNCITRAL Model Law was proposed. Rwanda also ratified the New York Convention. The aim was to ensure that commercial parties in Rwanda would be able to access an alternative way to resolve their disputes. In 2010 the Rwandan government passed an act of Parliament establishing an independent body tasked with promoting Rwanda as a venue of efficient arbitration services and a centre of excellence for research and training of professionals in ADR. That independent body was to become the Kigali International Arbitration Centre (**KIAC**). Arbitration had truly arrived in Rwanda.

Since May 2012, KIAC has become fully operational. The Centre has acquired its purpose-built facility, with modern hearing rooms, well-equipped with IT and video conference facilities. The Centre is available for use for arbitrations organised under the KIAC rules or for ad-hoc arbitrations and also for mediations. However, despite strong Government impetus behind the project, in order for arbitration to be an effective means of dispute resolution, there needed to be a huge push to get all possible stakeholders on board. Branches of the Chartered Institute of Arbitration in Nigeria and Kenya were invited to train arbitrators in Rwanda. Rwanda now has over 300 trained arbitrators, many of whom are members or associate members of the CI Arb. The Rwandan judiciary, particularly those in the Commercial Courts, were trained in arbitration and the court's role in the arbitration process. KIAC also launched a campaign to speak to Rwanda's business community in all sectors of the economy about the potential use of arbitration.

This government-led push to promote the efficient resolution of commercial disputes, both in the courts and through arbitration was coupled with an aggressive policy to build an investor-friendly environment and to promote Rwanda as a place to do business in East Africa. Rwanda is now ranked second in Africa in the World Bank's Ease of Doing Business rankings for 2016, behind Mauritius, but ahead of South Africa.

ARBITRATING AT THE KIGALI INTERNATIONAL ARBITRATION CENTRE

KIAC's management and organisation is very similar to that of many arbitral institutions. It has a Board of seven Directors, four of whom are from Rwanda and three are international members. KIAC also has a Secretariat that oversees the day-to-day case management. The arbitration rules for KIAC will look pretty familiar to anyone who has been involved in an ICC Arbitration as they draw heavily on the 2012 ICC Rules.

KIAC is also very conscious of the need for the arbitral tribunal to be representative of the user parties. When a case is registered, the case manager will provide the details of the case to the Secretary General who then sends out the first letter to the parties. If the parties themselves have not nominated an arbitrator, the Secretary General will propose a particular candidate from either KIAC's domestic or international panel of arbitrators as appropriate. A committee of the Board of Directors will then consider the proposal and either query the choice or confirm the appointment. In the event that an international arbitrator is being considered, the committee of the Board of Directors will be formed by a majority of KIAC's international directors.

We have some excellent lawyers on the continent who need to experience sitting with respected international arbitrators so they get the necessary training to be able to sit independently

Once the tribunal has been confirmed, that tribunal then takes over the process with the background support of the Secretariat. KIAC does carry out some limited scrutiny of the Award before the Award is finally issued to the Parties.

REAL GROWTH IN USERS

KIAC has had 52 cases since it was established in 2012 but that statistic doesn't really show the whole picture. In the first year from July 2012 - June 2013, there were 5 cases; in the second year, 12; in the third, 11 and in the fourth 12. But in the last six months alone, we have already received 12 cases. This sign of growth is very encouraging.

All of these cases have been seated in Rwanda but they are certainly not all domestic. Almost one third of the cases have involved international parties, with 12 countries, including the US, Pakistan, Italy, South Africa, Kenya and Senegal. In all of these international cases, well-known international arbitrators have been appointed. The cases have come from a wide variety of sectors from construction and engineering to infrastructure and services.

Given that all 52 of the cases have had a Rwandan seat, it has also presented an opportunity to see how effective the training of the Rwandan judiciary has been. None of the awards issued by KIAC has been set aside in the Rwandan courts - again a hugely encouraging sign.

“WE NEED A NUMBER OF STRONG, RESPECTED SEATS OF ARBITRATION AND ARBITRAL INSTITUTIONS ACROSS THE CONTINENT” DR FIDÈLE MASENGO

ARBITRATION ACROSS THE AFRICAN CONTINENT

Arbitration in Africa faces some challenges.

The main challenges are ones of trust. Various governments across Africa recognise that there is potential to become the dispute resolution leader for the continent. But some governments also struggle with the idea of establishing a dispute resolution body which is truly independent. Many retain some sort of governmental control, often where the Attorney General appoints the key figures at the arbitral institution. Local lawyers and users will struggle to trust those institutions and will question their independence, particularly if they do not have full confidence in the government that established it. They also worry that if the institution is not independent, they cannot have full trust in the local arbitrators or in the courts' support of arbitration. They worry that the arbitration will simply end up being re-litigated.

You cannot convince investors to come and arbitrate in your country if you cannot demonstrate that you have the trust of your own business people. There are not many well-established arbitral institutions on the African continent and few have a large international caseload. But a good reference point has to be whether or not the institution has a strong and growing domestic caseload as that signifies trust and acceptance in the local community. There are some centres in Africa that have been established for some time but have not yet administered a single case, domestic or international. That is a good signal that something isn't quite working.

Africa also doesn't have many established and recognised arbitrators. You need experience of sitting as an arbitrator and you need to develop a reputation as an arbitrator in order to become established. Here, Africa does struggle. We have some excellent lawyers on the continent who need the experience of sitting with respected international arbitrators so that they get the necessary training to be able to sit independently. In Rwanda, we are now gradually developing these skills in our arbitrators as we get more cases with international parties and arbitrators, but it will take time.

Africa also faces the challenge of sheer scale. We need a number of strong, respected seats of arbitration and arbitral institutions across the continent.

But with these challenges come opportunities, particularly for jurisdictions that manage to ensure that arbitration has the trust of their local business communities and can start to develop a track record. Hopefully Rwanda is well on its way to demonstrating that.

Dr Masengo was speaking with Vanessa Naish, Professional Support Consultant, Herbert Smith Freehills.

ABOUT THE AUTHORS

Dr Fidèle Masengo is a Board member of the Kigali International Arbitration Centre (**KIAC**) and KIAC Secretary General.

Dr Masengo has served in various key legal positions in Rwanda, most notably in the Rwandan Ministry of Justice as the Director of Public Prosecution Services and Relations with the courts (from 1999 to 2001) and as the Director of the Administration of Justice (from 2001 to September 2004). Dr Masengo also served as Legal Adviser and long term consultant for Rwanda Utilities Regulatory Agency and worked for the USAID-LAND Project in Rwanda.

Dr Masengo holds a Bachelor's Degree from the National University of Rwanda (1999), a Master's Degree in Economic Law from Catholic University of Louvain La Neuve-Belgium (2003) and a PhD in Law from the University of Antwerp-Belgium (February 2010). He lectures in law at a number of universities in Rwanda, and speaks extensively on arbitration.

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2022