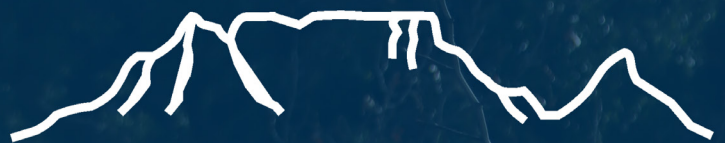


UCT Arbitration and Dispute Resolution Collected Papers

**General Editors: Lise Bosman and
Faadhil Adams**

**Published by UCT Arbitration
and Dispute Resolution Unit**



**UCT ARBITRATION AND
DISPUTE RESOLUTION UNIT**

FOREWORD TO THE UCT ARBITRATION AND DISPUTE RESOLUTION COLLECTED PAPERS SERIES, LECTURE SERIES (ADRU COLLECTED PAPERS 2025/02)

October 2025

It gives us great pleasure to publish the first lecture in the UCT Annual Arbitration Lecture Series.

This new Series aims to provide a platform for engagement with current developments in arbitration and dispute resolution, with a particular focus on African perspectives. It is intended to foster dialogue about the evolving role of arbitration across the African continent.

We were deeply honoured to welcome Funke Adekoya SAN to UCT to deliver the Inaugural Annual UCT Arbitration lecture in October 2025, as the highlight of the Second UCT Arbitration Day. A distinguished Senior Advocate of Nigeria with decades of international experience, her voice resonates among the most authoritative on the African continent.

Her lecture, titled *Representation and Reality: The Role of African Practitioners in Shaping the Future of Arbitration*, explores the persistent underrepresentation of African practitioners in international arbitration. The lecture unpacks the gap between Africa's increasing role in arbitration disputes, and the continued marginalisation of African professionals in the ranks of arbitrators and counsel.

Through an analysis of empirical data and personal experience, she offers a case for reform. Highlighting systemic and structural obstacles to inclusion, she presents a pragmatic path forward: urging African states, institutions, and practitioners to take deliberate steps to claim space, build networks, and support the next generation. Senior Advocate Adekoya calls not only for representation, but for leadership, inviting African practitioners to help shape the future of the field.

As part of the arbitration community in South Africa and the continent, we were privileged to host this lecture and to engage in a thoughtful conversation about the future of arbitral practice.

We are grateful to Senior Advocate Adekoya for delivering the Inaugural Annual UCT Arbitration Lecture and setting the standard for the Lecture Series. We hope that this initiative will continue to provide a space for meaningful exchange and reflection on the practice and direction of arbitration in Africa. Lastly, we hope that you will enjoy reading the lecture as much as we enjoyed listening to it.

With best regards,

Dr. Faadhil Adams (Faadhil.adams@uct.ac.za)

and

Adjunct Professor Lise Bosman (uctarbitration@mac.com)

Co-Directors, UCT Arbitration and Dispute Resolution Unit (ADRU)
General Editors, *UCT Arbitration and Dispute Resolution Collected Papers*

LECTURE SERIES

Inaugural UCT Annual Arbitration Lecture 2025

“Representation and Reality: The Role of African Practitioners in Shaping the Future of Arbitration”

Funke Adekoya SAN, Independent Arbitrator

Editors: Lise Bosman and Faadhil Adams

UCT ADRU Working Paper 2025/02



UCT ARBITRATION AND DISPUTE RESOLUTION COLLECTED PAPERS: LECTURE SERIES

"INAUGURAL LECTURE: LECTURE SERIES"

SECOND UCT ARBITRATION DAY
8 OCTOBER 2025

UCT ADRU Working Paper 2025/2

INAUGURAL LECTURE: UCT ARBITRATION LECTURE SERIES

REPRESENTATION AND REALITY: THE ROLE OF AFRICAN PRACTITIONERS IN SHAPING THE FUTURE OF ARBITRATION

Funke Adekoya SAN, C.Arb*

Introduction

It is a great pleasure to be with you today to discuss a subject that lies at the heart of the legitimacy and the future of international arbitration: diversity, representation, and, more specifically, the role of African practitioners in shaping the arbitral landscape. Let me begin with a simple but striking observation. Africa has been at the centre of some of the world's most high-profile disputes, particularly in investment arbitration. African states, investors, and corporations are often parties.

Yet, despite this prominence, African arbitrators account for only a tiny fraction of appointments in international cases. This gap between participation and representation is what I call the divide between "representation" and "reality". According to the LCIA Annual Case Report for 2024,¹ the percentage of disputants from Africa more than doubled to 17% in 2024, up from 8% the previous year - with the top two countries being Kenya and Nigeria. The ICC also saw an increase in the number of African parties in cases handled in 2024 as compared to 2023.² Africa is also not immune from investment arbitration disputes, as according to a review of ICSID arbitrations in relation to African States, which was published recently by a Nigerian law firm,³ of the 54 countries in Africa, 41 have had ICSID arbitrations. This represents 75.9% of the countries in Africa. As of April 2024, only 13 African countries had not been a party to an ICSID arbitration.

Nonetheless, despite Africa being a party to many investments and commercial disputes, less than 8% of international arbitrators appointed in major cases in the past decade are African.⁴ Today, I want to explore the gap between the ideal of global representation in arbitration and the reality faced by African practitioners, and how you, as the next generation, can help close that gap.

* The writer acknowledges the assistance of Ms Nneka Ofili, who helped with the background research and collation of statistics for this article.

¹ LCIA, Annual Case Report 2024, <https://www.lcia.org/media/download.aspx?MediaId=1045> accessed 9 July 2025.

² ICC Dispute Resolution 2024 statistics, https://iccwbo.org/wp-content/uploads/sites/3/2025/06/2024-statistics_ICC_Dispute-Resolution.pdf accessed 9 July 2025.

³ G.O. Sodipo & Co, 50 years of ICSID Arbitration and African States (1974-2024) Revised, November 2024, <https://gos-law.com/wp-content/uploads/2024/06/50-years-of-ICSID-Arbitration-and-African-States-1974-2024-a-G.O.-Sodipo-Report-Update.pdf>.

⁴ This is an average percentage of African appointments made by the major institutions i.e. LCIA, ICC and ICSID for the year 2024 vis a vis the total appointments made in this institution throughout the year.

Conceptual Foundation

My reference to global representation is to the extent to which the composition of arbitral panels (and the counsel engaging in legal representation before such panels) reflects diversity and inclusion across geographic locations, nationality, gender, region, race, and ethnicity. To the extent that ethnicity may sometimes be confused with racial identity, I focus on the IBA Survey on Ethnic Diversity in International Arbitration (IBA Survey), which defines ethnicity as

“the shared cultural or national heritage that characterises a group of people. The concept often involves several mostly invisible but distinguishable elements such as language, geographic origin, race, physical appearance, religion, cultural traditions and shared history.”⁵

The Survey further noted that ethnically diverse tribunals and ethnic diversity on the tribunals were used to indicate a tribunal comprising arbitrators from different nationalities/ethnicities from one another.⁶ Indeed, a truly diverse and inclusive arbitration community will require the promotion (and inclusion) of all forms of diversity – cultural, ethnic, religious, sexual orientation, and disability.⁷

Why Discuss Representation and Diversity?

When we speak of representation in arbitration, we are not simply counting heads. Representation embraces many dimensions: geography, culture, language, legal tradition, gender, and race. It is about whether the decision-makers in arbitral proceedings reflect the diversity of the parties who come before them. This matters deeply. First, it goes to the legitimacy of arbitration. A process that is dominated by one region or one perspective cannot claim to be truly global. Second, diversity improves decision-making quality. Arbitrators shaped by different traditions and experiences are more likely to bring richer and more balanced perspectives to the decision-making process. Third, it is about fair access to opportunity. If arbitration is to be a global profession, then practitioners from Africa must not merely participate as users but also have the opportunity to thrive as decision-makers and thought leaders.

Prof Emilia Onyema explains it succinctly when she said:

“The international arbitration community membership includes arbitrators, counsel, tribunal secretaries, administrators of arbitral institutions and associations, and experts. We all acknowledge that the membership of this community is not homogenous and being international or global, it by necessity, implicates the collection of individuals of different factors such as nationalities, gender, age, professional background, and ability – making for a diverse collection of peoples forming the community. Similar to any community of persons, it is the members of the community that devise, agree and perpetuate its norms, rules, principles, behaviours and cultures. In our global arbitration community, it is however not all its members that participate in developing its norms, rules, principles leading to some differences in behaviours and cultures. This is the gap and problem which has raised the discourse on diversity and inclusion.”⁸

Hence, representation and diversity are important because a system serving the needs of a particular constituency – in this case, participants in international commerce, should reflect the

⁵ International Bar Association Arbitration Committee “Study on Ethnic Diversity in International Arbitration” 2025, <https://www.ibanet.org/Ethnic-diversity-in-international-arbitration> accessed 18 June 2025.

⁶ Ibid.

⁷ DLA Piper “Diversity in institutional arbitration: what does the data say and what next?” <https://www.dlapiper.com/en/insights/publications/arbitration-matters/2024/diversity-in-institutional-arbitration-what-does-the-data-say-and-what-next> accessed 14 August 2025.

⁸ E. Onyema “African Practitioners, International Arbitration and Inclusivity” in C. Bull, L. Malintoppi, & C. Partasides (Eds.), *Arbitration's Age of Enlightenment?* Kluwer Law International (2023) available at <https://soas-repository.worktribe.com/output/387600/african-practitioners-international-arbitration-and-inclusivity> accessed 14 August 2025.

make-up of that community.⁹ As aptly queried, “how international” is “international arbitration” if the majority of tribunals are composed of Caucasian men from the Western world?¹⁰ Diversity is therefore key for the symbolic legitimacy of the arbitration process, as diverse tribunals will promote public trust in the arbitration process. As important as it is for justice to be done, we are reminded of the aphorism that “*justice must also be manifestly seen to be done.*”¹¹

Indeed, legitimacy is the bedrock of international arbitration as it results from a users’ perceptions of fairness and /or bias. As noted by a respondent in the IBA Survey:

“ethnic diversity is important to give the arbitral tribunal legitimacy. When I see a construction case where the arbitrators are three English lawyers and the project is in my region, outside Europe, that undermines legitimacy in my view.”¹²

The deliberative process by the arbitral tribunal is a crucial part of the dispute resolution process; therefore, the diversity of views available is fundamental for a fair process and outcome.¹³ Further still, diversity goes to enforcement and compliance. Parties are expected to comply with awards passed by tribunals. As noted by another respondent in the IBA Survey, “ethnic diversity contributes to better decision making and acceptance of the tribunal’s decision”;¹⁴ the parties’ acceptance of the decision/awards rendered is directly related to the parties’ trust and faith in both the arbitrators and the arbitral process itself; any perceived lack of legitimacy may weigh heavily on the award and its voluntary enforcement.¹⁵ The IBA Survey concluded, however, that a balanced and diverse tribunal remained an elusive goal, with 68% of respondents noting that arbitral tribunals lack ethnic diversity, and some stating that there is still a long way to go in achieving truly diverse tribunals.¹⁶

It has also been said that “diversity creates representation”.¹⁷ This speaks to both the symbolic and the practical value of inclusion in key roles by acting as arbitrators, counsel, tribunal secretaries and at levels of institutional leadership. This is aptly demonstrated in the famous Jay-Z trademark case, where having commenced an arbitration under the American Arbitration Association (AAA) Rules, Jay-Z was unable to identify a single African American on the pool of arbitrators provided to him by the AAA. Jay-Z applied to the New York Court to stay proceedings, complaining that AAA had failed to provide diverse and representative arbitrators, had violated his constitutional rights to equal protection and equal access (among other things). In response, the AAA agreed to a series of steps to ensure more diverse candidates would be available for the matter. The AAA made available an additional eighteen (18) African American individuals for the case at hand and pledged to take measures to improve diversity in their arbitrator lists.¹⁸

The reality, however, has long been sobering. International appointments remain concentrated in the hands of a small circle of repeat players, mostly from Europe and North America. Institutions, though international in name, have historically looked inward to familiar networks

⁹ International Arbitration Survey: Diversity on Arbitral Tribunals; Are We Getting There? Available at https://www.bclplaw.com/a/web/150194/FINAL-Arbitration_Survey_Report.pdf accessed 14 August 2025

¹⁰ K. Duggal & A. Lee, “A 360-Degree, Kaleidoscopic View of Diversity and Inclusion (or Lack Thereof) in International Arbitration” (2022) *The American Review of International Arbitration* Vol. 33 No. 1, available at <https://aria.law.columbia.edu/issues/33-1/a-360-degree-kaleidoscopic-view-of-diversity-and-inclusion-or-lack-thereof-in-international-arbitration-vol-33-no-1/> accessed 14 August 2025.

¹¹ Ibid.

¹² IBA Survey (n 9) at pg 18.

¹³ International Arbitration Survey (n 12) at pg 3.

¹⁴ IBA Survey (n 9).

¹⁵ Duggal & Lee (n 10).

¹⁶ IBA Survey (n 9).

¹⁷ IBA Survey (n 9).

¹⁸ *Carter et al v Iconix Brand Group et al*, No.655894/2018, case summary available at Lexology <https://www.lexology.com/library/detail.aspx?g=43292f9b-a32b-4cda-a6e3-aa451a6c805b> accessed 27 August 2025.

when selecting arbitrators. The result is that although many African practitioners are trained in international commercial arbitration, they are still grossly underrepresented in the practice of international arbitration. The 2018 SOAS Arbitration in Africa Survey found that over the reporting period, 82.2% of respondents did not sit as arbitrators in international arbitration; and 59.2% of respondents did not act as counsel in international arbitration.¹⁹ The low number of African arbitrators being appointed is confirmed by the ICC Dispute Resolution Statistics 2024, which indicate that only 58 out of a total of 1020 arbitrators appointed in 2024 were from Africa despite the ICC having administered a total of 194 cases involving an African party.²⁰ If each African party had nominated one African arbitrator, the figures would have reflected at least 194 arbitrators appointed, instead of 58.

Why does this gap persist? There are several reasons. First, the repeat-player problem: institutions and parties often prefer to appoint the same names, citing “experience” and “reliability”, even when many equally capable professionals exist. Second, visibility and access to networks: global arbitration appointments often flow through professional circles in Europe, North America, and a handful of Asian centres. African practitioners outside those circles struggle to gain visibility. Third, perceptions and biases: questions of neutrality sometimes work unfairly against African arbitrators. Ironically, the fact that an arbitrator comes from the same region as the parties can be seen as a disadvantage, even though local insight can enrich the process.

Therefore, representation needs to go beyond creating a diverse pool of arbitrators to actually ensuring appointments. As aptly stated by Andres Tapia, the President of Diversity Best Practices, a preeminent diversity and inclusion think tank, and consultancy and former Chief Diversity Officer of AON Hewitt, “Diversity is the mix, inclusion is making the mix work”. Or to quote Verna Myers, another diversity specialist, “Diversity is being invited to the party. Inclusion is being asked to dance”.

The issue is not just about allowing underrepresented groups to enter the system but creating opportunities for them to thrive.²¹ In 2024, the LCIA recorded that the percentage of parties from Africa represented the second highest proportion of parties in its arbitrations, as the group constituted 17% of the cases registered in 2024.²² Recent figures show that in 2024, ICSID administered 10 cases involving an African state but the number of African arbitrators appointed for the entire year was 19.²³ Although 19 African arbitrator appointments is paltry compared to the total number of arbitrators across all regions appointed through the year, against a backdrop of 10 African-related disputes, it gives a sense of the possibilities that exist. Confirming the growing engagement by African State parties in ICSID arbitrations, on 27 August 2025, the International Centre for Settlement of Investment Disputes (ICSID) published its caseload statistics for the 2025 fiscal year (1 July 2024 to 30 June 2025, FY 2025); based on cases registered and administered by ICSID as of 30 June 2025. Sub-Saharan African States were the most frequent respondents in ICSID cases, accounting for 24% of all filings (16 cases). This is where the role of States comes in. In light of their increasing involvement in international

¹⁹ SOAS Arbitration in Africa Survey: Domestic and International Arbitration: perspective from African Arbitration Practitioners (2018) available at <https://soas-repository.worktribe.com/js/pdfjs/web/viewer.html?file=https://soas-repository.worktribe.com/previewfile/387876/SOAS%20Arbitration%20in%20Africa%20Survey%20Report%202018.pdf> accessed 14 August 2025.

²⁰ ICC Statistics (2024)

²¹ Duggal & Lee (n 10)

²² LCIA, Annual Case Report 2024, *supra*.

²³ The ICSID Caseload Statistics, 2025 available at <https://icsid.worldbank.org/sites/default/files/publications/20251%20ENG%20The%20ICSID%20caseload%20Statistics%20%28Issue%202025-1%29.pdf> pg 9 accessed 18 June 2025.

arbitration, especially investor-state arbitration, African States parties can ensure diversity of representation by appointing African arbitrators for cases that involve them.

Another area where African States can contribute to a more representative perception of Africa in the context of international arbitration is by ensuring that the seat of arbitrations in which it is involved stays on the African continent. Unfortunately, most commercial parties involved in international commercial disputes in Africa (including the African parties) choose a foreign country as the seat of arbitration. Turning again to the 2024 ICC Statistics, although arbitrations filed in 2024 were seated in 107 cities across 62 countries or independent territories, only 12.9% of African countries were selected as the arbitral seat (8 countries out of the 62)²⁴ In fact, the recent White & Case and Queen Mary University of London ("QMUL") 2025 International Arbitration Survey revealed that 60% of Africans who participated in the poll chose London as the preferred seat of arbitration.²⁵ This needs to change. African States need to insist in arbitration clauses that the seat be fixed in Africa (though not necessarily in the country of the investment); and beyond insisting, African countries seeking to be selected as preferred seats must also position themselves as an acceptable location for arbitration proceedings. In this respect, the CI Arb "Safe Seat" Principles provide adequate guidelines.

Reality Check: Where Are We Now?

To quote the Sodipo report again describing a 50-year period:

"of the cases evaluated in which arbitrators had been appointed, including the annulment and resubmission proceedings, a total of 271 Arbitrators were appointed in cases involving African state parties. Of the total number of arbitrators, only 40 representing 14.76% were Africans. The number of female arbitrators appointed was low. Of the 271 total arbitrators appointed for the ICSID cases, only 31 representing 11.43% were females. Worse still, only 4 females were Africans, this represents 12.9% of the females that served as Arbitrators in ICSID Arbitrations against African states in 4 years."²⁶

Unfortunately, this shows that not much progress has been made, as 68% of respondents in the IBA 2025 Survey found arbitral tribunals to be lacking ethnic diversity and 45% rated tribunals as "somewhat lacking" in diversity. Many of these respondents also expressed views, primarily negative, on the current state of ethnic diversity on arbitral tribunals. For instance, a few survey respondents commented that while tribunals are slowly becoming more diverse, *"there is still a long way to go"*. Another commented that ethnic diversity is *"still a pending topic in most jurisdictions"*.

As already noted above, in 2024, of 204 appointments made by the LCIA, only 11 were Africans, whilst for the ICC, only 58 out of a total of 1020 arbitrators appointed in 2024 were from Africa, despite it having administered 194 cases with African parties. Nonetheless, for ICSID, 19 African arbitrator appointments were made, which covered all of the 10 cases administered by ICSID having African parties.²⁷ Whilst it is acknowledged that the recent years have seen some progress in ensuring diversity of representation when appointments are made by these arbitral

²⁴ 2024 ICC Statistics (n 4).

²⁵ "2025 International Arbitration Survey – The Path forward: Realities and Opportunities in Arbitration" – Queen Mary University of London, in partnership with White & Case LLP. Available at <https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf> accessed 19 June 2025.

²⁶ Sodipo et al. (n 3).

²⁷ The ICSID Caseload Statistics, 2025 available at <https://icsid.worldbank.org/sites/default/files/publications/2025-1%20ENG%20-%20The%20ICSID%20Caseload%20Statistics%20%28Issue%202025-1%29.pdf> at page 18 - accessed 18 June 2025.

institutions, there is undoubtedly a lot of work that needs to be done by the parties themselves, as they are responsible for the majority of arbitrator appointments.

Barriers to Participation

Without a doubt, a fundamental barrier to more global participation in the arbitration process is the concept of party autonomy, i.e., the ability of parties to choose their arbitrators. This is a fundamental cornerstone of arbitration. Nomination by the parties is the major stumbling block to increased global representation. There are many reasons for this barrier, including: (1) the supposed lack of exposure and/or the unavailability of sufficient information about diverse arbitrators or experienced arbitration counsel; (2) the impact of unconscious bias; and (3) the confidentiality of many arbitrations.²⁸

Parties quite often choose arbitrators on the basis of background, experience and word of mouth. Counsel who should provide guidance to parties often emphasise the importance of experience on the basis that an experienced arbitrator is likely to be better prepared to conduct proceedings and produce a satisfactory award. This in turn makes it challenging for new entrants to gain traction in the market.²⁹ Further still, the confidentiality of arbitration, especially high profile international commercial arbitrations, means that there is less information available in the public domain with which to make informed choices. This invariably results in the appointment of repeat players and the appointment from a small circle of elite arbitrators. As aptly pointed out by Duggal & Lee: "ADR is perceived as a 'gated' community. The field seems closed to outsiders since many ADR activities occur behind closed doors, and it is hard to see what is going on inside".³⁰

Because arbitration is perceived to have restricted access, there are also barriers related to career paths and access to information about the field, the walls around the field seem impenetrable for all, and especially for young individuals in underrepresented racial and ethnic groups who might be interested in pursuing a career in the field.³¹ As a result, there is a lack of visibility and global exposure for African practitioners. This also results in a lack of access to networks and mentoring opportunities for African practitioners to hone their skills and knowledge in the field.

There is also the existence of implicit bias and system exclusion. For instance, the typical profile of an arbitrator of choice would be someone considered senior in academia, a leader in an industry sector or a senior partner in a law firm. In many of these sectors, there is a history of inequality, with very few women or ethnic minorities holding these positions.³² By way of example, a survey of U.S. law firms demonstrated that out of 25.5% of minority graduates, only 7.33% are partners at major law firms. This makes it difficult for ethnic minorities to establish themselves due to limited opportunities. Hence, the issue here is, not just a lack of diversity, but societal or systemic practices in some of these economic sectors that exclude ethnic minorities or women or make it more difficult for them to enter the potential pool from which arbitrators are selected. Until these underrepresented groups occupy leadership roles in greater numbers, the "pool" will remain the same. Only by making lasting and effective changes that promote diversity and inclusion at all levels of career progression can we hope to positively influence the makeup of arbitral tribunals in the medium to longer term.³³

²⁸ Duggal & Lee (n 10) pg 2.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Duggal & Lee (n 10).

Efforts to Promote more Balanced Representation

It is not all doom and gloom, however, as the international arbitration community is itself making efforts to address the historical underrepresentation of racially diverse arbitrators and counsel. Steps in the right direction include initiatives like Racial Equality for Arbitration Lawyers (REAL) – a group of global lawyers working in international arbitration striving to achieve racial diversity for underrepresented groups³⁴, and the “African Promise”, a pledge that aims to tackle the under-representation of African arbitrators, especially in Africa-related arbitrations, which was set up in 2019.³⁵ The African Arbitration Academy (AfAA), founded in 2019 by Dr. Abayomi Okubote, is a premier training initiative designed to meet the growing demand for enhanced arbitration expertise in Africa. It offers African practitioners a platform to explore current trends and developments in international arbitration. The Academy’s primary mission is to deliver specialised training to emerging arbitration professionals in Africa, equipping them with essential skills to thrive in the global arbitration community.³⁶ The Academy has since grown tremendously, having positioned itself as a leader in transforming the legal framework of arbitration across Africa.³⁷ The Arbitration and Dispute Resolution Unit (ADRU) of the University of Cape Town is a recent addition in this area, as it seeks to provide specialised training for African practitioners interested in making a career in the area of international dispute resolution.

To provide a platform where information about African arbitrators can be easily accessed, the African Arbitration Association provides on its website the African Arbitration Atlas, which is a directory of African Arbitrators.³⁸

The American Arbitration Association (AAA) Diversity, Equity and Inclusion Initiative now employs an algorithm in its case-management system to provide parties with a list of potential arbitrators that is at least 30% diverse.³⁹ Focusing specifically on increasing the representation of women, the Equal Representation in Arbitration (ERA) Pledge was set up in 2015,⁴⁰ as well as the ArbitralWomen Initiative – set up to champion women in ADR by amplifying their voices and recognising their contributions.⁴¹

Further, many arbitral institutions are making efforts to promote greater inclusion within their institutions. The ICC has taken steps to encourage diversity in the selection of arbitrators. In November 2022, it included standard language in its model letters to parties and co-arbitrators, encouraging diversity to be considered when proposing arbitrators. This includes but is not limited to racial, ethnic, cultural, generational and gender diversity.⁴² In 2023, the ICCA and IBA published its ICCA-IBA Arbitration Committee Conference Diversity Checklist, which aims to encourage and foster diversity, equity, and inclusion of speakers and delegates when conferences are organized globally.⁴³ Following from this, the LCIA unveiled its Equality,

³⁴ See REAL, <https://letsgetrealarbitration.org/#>

³⁵ See <https://onyema-arbitration.co.uk/the-african-promise-2/>

³⁶ Freshfields hosts Africa Arbitration Academy for Sixth Consecutive Year, <https://riskandcompliance.freshfields.com/post/102kzdb/freshfields-hosts-africa-arbitration-academy-for-sixthconsecutiveyear#:~:text=Founded%20in%202019%20by%20Dr,and%20developments%20in%20international%20arbitration> accessed 3 September 2025.

³⁷ M. Kusi “Africa Arbitration Academy: Shaping the Future of Arbitration in Africa” March 2025, <https://legalafrica.org/africa-arbitration-academy-shaping-the-future-of-arbitration-in-africa/> accessed 3 September 2025.

³⁸ See <https://africanarbitrationatlas.org/arbitrator-directory/>.

³⁹ See <https://www.adr.org/inclusion/>.

⁴⁰ See <https://www.arbitrationpledge.com>

⁴¹ See <https://arbitralwomen.org/about-us/who-we-are>.

⁴² See <https://iccwbo.org/news-publications/news/icc-acts-to-encourage-diversity-in-selection-of-arbitrators/>

⁴³ See https://cdn.arbitration-icca.org/s3fs-public/document/media_document/IBA%20AC%20-%20ICCA%20Conference%20Diversity%20Checklist.pdf.

Diversity and Inclusion Initiative in May 2024⁴⁴ and published its Guidelines in December 2024.⁴⁵ The Initiative aims to model a sustainable approach to driving cultural change within the sector by advocating for equality and diversity at all stages of arbitration.

Shaping the Future: What Can Be Done – Pathways for Emerging African Practitioners

International arbitration has become a central mechanism for resolving commercial and investment disputes worldwide. For young African practitioners, this presents both a challenge and a wealth of opportunities. The challenge lies in navigating a field traditionally dominated by European and North American practitioners and institutions. Yet the opportunities are immense: Africa's growing role in global trade, natural resources, and infrastructure development has made the continent a significant arena for arbitration. The task before emerging African practitioners is to build the skills, networks, and visibility needed to chart successful careers in this increasingly internationalised profession.

The first step is education. Formal postgraduate programs in arbitration and dispute resolution offered by leading institutions such as SOAS, University of London, the Geneva Graduate Institute, and the Geneva MIDS program, provide deep grounding in theory and practice. In this respect, the University of Cape Town's ADRU seeks to position itself into a homegrown alternative to the MIDS programme, ensuring that young practitioners can have access to the same type of training, at a lower cost.

Professional training pathways, such as membership and fellowship with the Chartered Institute of Arbitrators (CI Arb), or participation in the ICC Advanced Arbitration Academy, offer structured qualifications that are recognised across the world. Regionally, the Africa Arbitration Academy provides bespoke training tailored to African realities, ensuring that young lawyers are equipped to handle cases arising out of the continent's unique legal and commercial contexts.

Young practitioners and students have a role to play in shaping the future by actively participating in available programs and opportunities created for them. It means preparing yourselves to step into this space. Join international moot competitions such as the Vis Moot or the FDI Moot. Publish articles, even short commentaries, to showcase your voice. Join networks like Young ICCA, CI Arb Young Members, and the African Arbitration Association. Find mentors who will guide you, but also build your own peer networks that will grow with you. It is your peers who will be in place to appoint you as counsel or nominate you as a party-appointed arbitrator when the time comes. Representation will not be handed over as a gift; it will be claimed by those who prepare, those who persist, and those who seize available opportunities. As Shirley Chisholm said, *"If they don't give you a seat at the table, bring a folding chair"*.

Law firms also must ensure that diverse lawyers are given the same opportunities as their counterparts, including the ability to make mistakes and learn from them. If firms are not promoting their lawyers equally, the chances of being in the spotlight and securing a partnership will not be equal. Having a good support network is also key to securing one's first arbitration appointment. Law firms are in a good position to provide that support network and other networking opportunities that are usually restricted to the "white, male" profile.⁴⁶ Law firms also have a responsibility to educate their clients on the importance of diversity on an arbitral panel and encourage them to appoint more diverse arbitrators, especially for smaller and less complex disputes.

⁴⁴ See <https://www.lcia.org/News/lcia-unveils-new-equality-diversity-and-inclusion-initiative.aspx>.

⁴⁵ See <https://www.lcia.org/media/download.aspx?MediaId=1004>.

⁴⁶ Duggal & Lee (n 10).

Conclusion

The increased participation in international trade by African countries reflects both significant advances and persistent challenges. The continent has witnessed substantial growth in foreign direct investment, resulting in increased involvement in arbitration disputes. Yet, the continuing underrepresentation of Africans in the international arbitration arena, whether as arbitrators or as counsel, is the present reality.

Global representation in arbitration is not an aspirational ideal but a foundational element of arbitral legitimacy that supports the enforceability of arbitral awards. For arbitration to maintain credibility as a truly international dispute resolution mechanism, the composition of tribunals must reflect the constituencies they serve. The disparity between the number of African parties to arbitral proceedings and the number of African counsel and arbitrators appointed illustrates the urgent need for deliberate reform.

Addressing this imbalance requires coordinated action by multiple stakeholders. Arbitral institutions have broadened their appointment practices and promote inclusivity in meaningful ways; it is left to African parties to do their part. African parties, whether commercial entities or state parties must leverage their roles as frequent users of arbitration to insist on African participation in proceedings by appointing African counsel and arbitrators; and law firms must actively cultivate and promote diverse talent. Furthermore, sustained investment in training, mentorship, and institutional development is critical to building a pipeline of African practitioners equipped to engage in complex international disputes. The goal is not that Africans should be appointed as arbitrators and counsel in African disputes, but that Africans should be appointed as arbitrators or to provide legal representation, irrespective of the nationality of the disputing parties

In conclusion, the future of international arbitration depends on the extent to which it embodies the diversity of its global constituency. Ensuring African representation is not simply a matter of equity; it is essential to the legitimacy, credibility, and sustainability of the arbitral process. Only by embedding diversity at every level can international arbitration evolve into a system that is genuinely reflective of, and responsive to, the global community it serves.

International arbitration is a dynamic, demanding, and rewarding field. For emerging African practitioners, the path is not without obstacles, but the opportunities are vast. By pursuing structured education, engaging in mentorship, seeking practical exposure, specialising strategically, and building visibility, young lawyers can position themselves to contribute not only to their own careers but to the development of arbitration on the continent. The future of international arbitration will be shaped by those who prepare diligently today, and African students have every reason to seize that future with confidence.

So, I conclude with this thought: representation is not just about being present at the table. It is about shaping the table itself: designing the processes, influencing the standards, and ultimately defining the future of arbitration. African practitioners have the capacity, the expertise, and the vision to lead in this space. The question I leave with you is this: What will the future of arbitration look like if African practitioners do not simply participate, but actually lead?

