Solid footing for Africa's Next Leap: sustainable investment, good governance and … mooting?

By:

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April 25, 2020

"Sub-Saharan Africa's opportunities are vast, and its challenges persistent."

Who disagrees with this old chestnut? One of the challenges will be regulating foreign trade and investment. This has two dimensions, domestic and international. Ideally, these two should work in harmony. The domestic dimension means laws on contracts, corporations, employment, health and safety, environment, food standards, direct and indirect taxation that effectively further the aspirations of each African country's people. The international dimension means WTO-compliant trade agreements and investment treaties to foster desirable trade and investment. There is growing awareness, especially in Africa, that "desirable" should mean more than maximum short-term monetary gain, but also, perhaps even more so, promote local employment, health, and environment concerns.

National markets are held together by shared values and confidence in certain minimum standards. But in the new global market, people do not yet have that confidence.

To synchronise these two dimensions takes skilled domestic and international lawyers, not only as academics or practitioners, but also as judges, government advisers, and legislators. Legal expertise becomes even more critical when some facet or the other of the domestic and international dimensions are in conflict, whether because they are not aligned on paper or in actual practice. These lawyers must help manage and mitigate the resulting disputes and if that fails, to litigate diligently and skilfully their adjudication in court or arbitration, or perhaps to counsel their resolution through mediation.

And while now Africa as a whole is still largely a capital importer, there already are significant capital flows among African states. As Africa rises, its investments will also increasingly go into other continents, so investment protection advocacy skills will need to be seen less and less in a purely defensive posture.

African universities do not lack wise and dedicated professors of international economic law or talented students. There is, however, room to improve the opportunities for students to experience the practical application of what their professors teach them, that is, “Learning by doing”.

The Jessup Moot and Vis Moot have demonstrated the value of mooting for law students aspiring to careers in public international law or international commercial, in particular sale of goods law. Few, however, rise to arguing before the ICJ and the CISG is an important and common, but narrow, subject matter. Those who want to round out their prospects (and themselves) can also avail themselves of the WTO moot for international trade law or the FDI Moot for international investor State arbitration.

Regardless of which moot we look at, African universities are under-represented. The Vis, Jessup and WTO moots are held in Vienna, Washington, DC, and Geneva respectively. The FDI Moot venue rotates, e.g. 2018 Stockholm, 2019 Miami, 2020 Seoul, 2021 London, and so on. These venues are

long journeys for most African moot teams and not known to be cities that are especially easy on visitors' wallets. Nevertheless, African teams are starting to have their successes: in June 2019 aStrathmore University team won the WTO Moot, that is, they became world champions. In 2018, two Kenyan universities and one Ethiopian university made it to the Global rounds of the 2018 FDI Moot in Stockholm, one reaching 7th place; and again in 2019, two African teams made the FDI Moot Globals, one reaching the Round of 16 and only being eliminated by the eventual 2019 Global champion, St Petersburg State University. These students have great possibilities ahead of them, commensurate with their immense talents and hard work.

Mooting refines your analytical skills, polishes your writing, sharpens your rhetorical abilities, and teaches you to "read" people - your opponents and the adjudicators. In international competitions, students learn to do this cross-culturally.

People from different parts of the world can respond to the same story if it says something to them about their own history and their own experience.

And "mooters" gain life-experiences, not just inside the hearing room. They make contacts, even friends, from far flung places that are so similar yet different from their homes.

So, how can we help African teams become more involved in international mooting? I see two angles: (1) video-conferencing and (2) "solidarity".

By "solidarity", I mean African institutions helping each other. This recalls the spirit of harambee and ujamaa. This may start with pooling resources, i.e. teaching resources, coaching resources, financial resources and students, for a joint team among two or three universities (where moot rules permit that as in the FDI Moot). That kind of sharing can evolve into a national round as interest grows, to pool resources for the national champions to go the next level in the Region or to the Global rounds, to attract national supporters and sponsors to help that champion with the travel burden. Because we believe African universities can help each other this way, and can overcome their natural national institutional rivalries, the FDI Moot has encouraged national rounds in Kenya, South Africa, Ethiopia, Nigeria and Ghana. We are working with partners

in each country, and as they become surer we step back, as we have done with Kenya where the FDI Moot has basically run itself with great success for several years now. I also see long term possibilities here: if mooting in Africa grows, its gravity will pull more mooting to Africa. A few FDI Moot teams from Europe have already participated on a “pre-moot” (non-competitive) basis in past African Regionals. As more African national rounds proliferate, pressure will also build to one day host the FDI Moot Globals in Africa. That may not be in the next 3 or even 5 years, but I am confident its time will come.

Video conferencing obviates most need for travel. That is clear. Technical and infrastructure obstacles are becoming fewer and smaller: stable bandwidth in more and more African cities, wide availability of adequate PCs, webcams, and mics. Some universities have top-notch telepresence facilities, as do many national arbitration centres. Today’s students grow up with video-chatting and learn very quickly to convert that into a professional demeanour for video-conference hearings. Video-conferencing a moot hearing also does not entail some of the concerns that video-conferencing a real hearing or witness examination might. It is true that much of the networking and social dimension of a moot is lost with video-conference hearings, but who knows – someday we may come up with a palliative for that. Since 2019, the FDI Moot has conducted its All Africa Regional via video-conference. Three Crowns, Wilmer Hale, and IATL have supported this virtual All Africa Regional with generous cash prizes to help the AAR winners travel to the Globals. In addition to the teams from Africa competing for the financial support to travel to the FDI Moot Globals, video-conferencing has allowed us to bring in arbitrators from every corner of the world, from Buenos Aires to Seoul, from Durban to Vancouver. This certainly has served to enrich the experience. And, as we now witness the alarming spread of covid-19 and related travel warnings, video-conference hearings can offer a means to the wheels justice turning not only for moot arbitration competitions.

“Africa’s riches” include its law students, and Africa has the means to unleash that resource for its own benefit and the world’s. To close the circle and exhort the law students and young lawyers of Africa: seize the opportunities, face the challenges, and remember, Nelson Mandela’s words; I never lose. I either win or learn.

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