THE ROLE OF EXISTING ARBITRAL INSTITUTIONS IN AFRICA AND THEIR CONTINUED RELEVANCE TO SOCIO-ECONOMIC DEVELOPMENT IN AFRICA

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PREAMBLE

Arbitration/ADR, as a private alternative mechanism for the resolution of dispute between parties, has legal, social and economic implications on the economy of any nation. In other words, where arbitration is made accessible in the resolution of domestic and international disputes, its legal, socio-economic impact on the economy of any country on the continent of Africa is undisputable.

The potentiality of reputable arbitral institutions in Africa although, not a lone factor, offer a recognisable window for the attraction of increased commercial and investment activities in almost all African countries. Africa holds a huge resources market for primary, secondary and tertiary economic activities amidst a dynamic demographic factors necessary for socio-economic growth and development.

The use of arbitration/ADR for the settlement of disputes across Africa has been on the rise with amazing rapidity and therefore, the significance and relevance of arbitral institutions to the increased commercial and investment flows into and within national jurisdictions in Africa can no longer be underestimated.

The potentiality of this beneficial scenario underscored the fundamental criterion why newer arbitral institutions have dotted the entire length and breadth of Africa in recent years. The establishment of these arbitral institution may vary in terms of whether it is owned by government, private individuals or group of individuals. It may also be established by a company, domestic organisation or an international organisation. The object of these arbitral institutions maybe for profit or non-profit or maybe intended to serve the general spectrum of commercial and investment activities or specialized aspects, e.g. Maritime, construction, aviation etc.

Arbitration or indeed arbitral institutions exist in the context and fabric of societal ecosystem, the question of their role and continued relevance to socio economic development In Africa is the sole of this discourse.

The role of an existing arbitral institutions is a direct function of its mode of establishment, ownership and control. In other words, whoever establishes and controls the institution and for what purpose, determines how the arbitral institution operates in the service delivery of its intended objects or roles. The bottom line is either promotion of capacity building in arbitration and providing access to parties to facilitate the
disputes resolution in intra and inter boundaries transactions across Africa. For instance, the Regional Centre for International Commercial Arbitration Lagos- Nigeria as an arbitral institution of international character, established by the Asian-African Legal Consultative organisation (AALCO), (a Forty- eight member-state inter-governmental organisation). Pursuant to its program in the economic field, launched its integrated scheme for the settlement of disputes in economic and commercial transactions in 1978. The objectives of the centre as a non-profit making institution are to promote international commercial arbitration especially the adoption and use of UNCITRAL Model Law and Rules in the region; to coordinate and assist existing arbitral institutions in the region; conduct institutional and assist ad-hoc arbitration; enforce and assist to enforce arbitral awards and maintain a register of international panel of arbitrators etc. The Host Government Nigeria, recognised the centre’s independent status like other International Organisations and have accorded diplomatic immunities and privileges for all its staff, activities, properties and records, thus making the Centre a unique arbitral institution in the global family of arbitration institutions.

RULES OF EXISTING ARBITRAL INSTITUTIONS IN AFRICA

The emergence of various arbitral institutions in Africa intends to reverse the trend where domestic and international transactions and the ensuing disputes are shipped to the shores of foreign land outside of Africa for resolution and in turn, the awards are imported back to African states and entities to liquidate the debts. To promote modern arbitration culture and adoption and use of UNCITRAL Model Laws and Rules in the resolution of domestic and international commercial and investment disputes; Increase capacity building and awareness in the employment of our arbitrators/practitioners for dispute settlement on the continent; Creating various arbitration institutions to provide a wider horizon for access to justice in arbitration/ADR dispute settlement within the continent so as to absorb the pressure the African Continental Free Trade Agreement (AfCFTA) may foist on existing arbitral institutions. The roles of existing arbitral institutions in Africa can be broadly categorized in terms of:

1. Promotion of Arbitration and other Alternative Dispute Resolution (A.D.R.) methods in the settlement of disputes arising from commercial and investment transactions within Africa.
2. Providing modern arbitration Rules that meet the concerns and flexible enough to accommodate the varied interest of the users i.e. those in commerce, investors, practitioners, visa-a-vis public policy requirements of different national jurisdictions.
3. Providing modern infrastructures and facilities made available for easy access to key players and stakeholders of the economic activities across Africa.
4. Encouraging the promotion and appointment of African arbitrators and practitioners in the conduct of both the institutional and ad-hoc arbitrations thus
involving women and young arbitrators for the overall best interest beneficial to
Africa.
5. Arbitral institutions also encourage capacity building of arbitrators/practitioners
and other allied services in both general commercial and specialized aspects of
arbitration including investment arbitration.

CONTINUED RELEVANCE TO SOCIO-ECONOMIC DEVELOPMENT

As earlier stated, arbitral institutions exists and operates in the context and fabric of
socio-political cum economic ecosystem. In other words, arbitral institution do not exist
and operate in isolation and therefore, their continued relevance and remarkable
contribution to socio economic growth and development of the African continent
requires a collective responsibility of individual states, arbitral institutions, arbitrators,
arbitration stakeholders and users etc.

STATE ROLE

For any arbitral institution(s) continued relevance to the socio economic growth and
development of emerging economies in Africa, the state has a key predictable role to
play in putting in place what I called the “Three Arbitration Friendlys”

- Arbitration friendly national policy
- Arbitration friendly legislative framework
- Arbitration friendly judicial system

NATIONAL POLICY

There must be put in place, a government driven arbitration friendly national policy that
prescribes guidelines that recognise and accept arbitration/ADR as a necessary tool for
dispute resolution as integral part for ease of doing business. The policy guidelines that
address the concerns on public policy issues, that offers assurance to investors and
entities engaged in commerce and investments, which empower arbitral institutions
providing infrastructure and funding (where applicable). A public policy guideline that
widens access to justice for investors and clients. Also, a policy guideline that commit
the legal structure and legal system to recognise and support arbitration for dispute
resolution in intra and inter boarder investment and commercial disputes.

LEGAL STRUCTURE

An arbitration friendly legal structure that ensure a legislative frame work which
provides a stable and transparent regulatory certainty the investors and traders need;
that allows all parties equal treatment and free choice of their own counsel in the event
of disputes, which of course meets international standards based on the United Nations
Commission on international trade law and rules, in line with international best practice.

JUDICIAL SYSTEM

As a corollary, the judicial system of any jurisdiction is considered arbitration friendly,
where it recognise and accept arbitration as appropriate mechanism for dispute
resolution, which is often preferred by international and domestic investors and entities in commerce.

A judiciary that has enhanced capacity building in modern arbitration so can demonstrates in practical terms the capacity for an efficient, transparent process and impartial decision on challenge to arbitral awards and upholds the New York Convention 1958 and play a supportive role for arbitration, thereby create confidence in investors’ concerns as a safe seat for dispute resolution in line with international best market practice.

ARBITRAL INSTITUTIONS

Arbitral institutions remain relevant to economic activities across jurisdictions in Africa in remarkable ways and their capacity and capability are better enhanced where;

1. Their municipal statute grant the institution adequate funding and independence (where applicable) to operate without interference from the government or other entities.
2. Administering the institution professionally by way of adoption of modern UNICITRAL Rules, standard infrastructure, good facilities and deployment of modern technology in the delivery of international standard services in line with best practice. Arbitral institutions that administer modern Rules and deliver quality services and facilities as well as ensure the fairness and integrity of the arbitration process become the cynosure of entities in commerce, investors, arbitrators and other users whose tertiary economic activities impacts the economy of African states.

ARBITRATORS

Arbitrators are persons vested with quasi-judicial authority by Rules of the arbitral institutions and the agreement of parties to resolve the controversy. The resolution of the controversy/dispute remain the soul of arbitration dispute settlement mechanism, hence they can support or mar the continued relevance of arbitral institutions’ contribution to the socio economic development of Africa.

Article 14 of the Washington convention of 1965, defined Arbitrators to be “persons of high moral character and recognised competence in the field of law, commerce, industry and finance who may be relied upon to exercise independent judgement”. Arbitrators must demonstrate high degree of honesty, professionalism and competence devoid of corrupt tendencies, ensure the integrity of the process according to the Rules of any arbitral institution and render a good reasoned award. This, in no small measure enhance arbitral institutions continued relevance as a tertiary economic function to the domestic economy of that jurisdiction in Africa.
STAKEHOLDERS AND USERS

These are the broad spectrum of arbitration practitioners and other persons or bodies or parties engaged in economic activities and services relating to commerce, industry and investment.

The users and stakeholders of arbitration for instance, the legal practitioners render professional advice and services in the arbitral process to parties and must be done according to the Rules of the arbitral institutions with a high sense of integrity and professionalism devoid of corrupt tendencies that affect or likely to affect the integrity of the arbitral process. The users, in most cases, are the parties to the dispute, they often make appointment of the arbitrators. They give expert opinion or could even be witnesses or render other allied services as secretaries, transcribers, translators etc. The activities of the stakeholders and users in any given arbitral institution is clearly an economic activity relevant to the economy of any jurisdiction in Africa. The increased patronage of arbitral institutions in Africa by our arbitrators, stakeholders and users remained a major contributory factor to the socio economic development of the African continent.

ARBITRAL INSTITUTIONS CONTRIBUTION TO SOCIO ECONOMIC DEVELOPMENT

Every arbitral institution is a functional unit of tertiary economic activity integral to the socio economic development as it renders the provision of services which facilitates the primary and secondary activities of the economy of African states. Whether it is a foreign direct or local investments or commercial business in any form of combinations, all lead to socio-economic development. As stated earlier, Africa holds potentially huge market for primary, secondary and tertiary including quaternary economic activities amidst a dynamic demographic factors. Development therefore entails the deployment of resources and technology to create improvements in people’s quality of life and standard of living across Africa, which is often determined by economic, social and demographic indicators of the economy at the macro level e.g. GNI, GNP, and GDP (the discussion of these socio-economic indices is beyond the scope of the paper). So, for purpose of this discourse, a brief highlight of relevant contributions of arbitral institutions to the socio-economic development in Africa is significant to further underscore the imperative of arbitration/ADR as a necessary lubricant in the machinery of dispute resolution in trade, commerce and investments in the threshold of ease of doing business in Africa vis-a-vis the emerging multi-lateral African Continental free trade area (AfCFTA).
ECONOMIC BENEFITS

ATTRACTION AND SUBSTANCE OF FOREIGN AND LOCAL INVESTMENTS

The inflow of foreign investments brings in funds and foreign exchange which drives the economy of African states. In addition, local investors and entities in commerce also play a significant role in boosting their local economy because they equally render useful productive services moving the economy forward. Investors/traders especially the ones from foreign jurisdictions do not have confidence to do much of business on the continent due to the challenges posed by; in some cases, political instability and of course mostly the judicial process of African states such as long delays, high cost of litigation, corruption, over bearing influence of government and other entities in tampering judicial process/decisions. Therefore, the emergence of arbitral institutions on the continent has created a level playing field to both the foreign and local investors. These institutions opened the window of access to justice in the settling of disputes faster, under institutional Rules that conform to international standard and administered according to best practice devoid of unnecessary influence and secured by party autonomy. Services rendered by these arbitral institution has to a great undisputable extent galvanised confidence in the commercial and investment market in Africa as investors and traders remained assured that the business environment is friendly and safe. The sustenance of foreign direct investment and funding of primary and secondary economic activities impact positively on the socio-economic growth and development in Africa.

SUSTAINING ECONOMIC ACTIVITIES OF BUSINESSES

As earlier noted, arbitral institutions are functional units of tertiary economic activities as the services they provide at the micro level of the economy attracts people to the locality of these institutions where arbitrations are held. These persons/visitors and other entities pay visa fees and transport fares. They equally patronize local hotels, insurance companies, shops, restaurants, business centres, and tourist sites. Arbitrators’ fees and institutional charges are paid and payment for facilities etc. impact the economy positively because such monies go directly to the hand of citizens, coffers of business entities and government.

CREATION OF EMPLOYMENT/JOBS:

Any functional business entity must hire staff to carry out its operations and arbitral institutions enjoys no exception. These arbitration settlements attract persons and business entities to these arbitral institutions to have their dispute resolved and these
create employment to staff and jobs to other bodies or persons who also feed into
the administration of these arbitral institutions who provide services such as
transcribers, translators, expert witness, caterers, business centres/cafes etc. These
of course contribute substantially to the socio-economic well-being and quality of
life of the local communities across jurisdictions in Africa.

ENHANCING AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

Having launched the African continental free trade area (AfCFTA), it is expected
that this African multilateral platform will accelerate a single harmonized and well-
coordinated continental markets for goods and services and free movement in
commerce, investments and persons; widened intra and inter African trade
facilitation across the regional economic communities (RECs) and jurisdictions in
Africa. AfCFTA commercial and investments market covers 55 national
jurisdictions with a projected market of more than 1.2 billion people and a combined
Gross Domestic Product (GDP) of over $3.4 trillion. This no doubt, usher in increase
volume of commercial and investment transactions on the continent and its attendant
increase in disputes. This is where the arbitral institutions that have numerously
dotted the landscape of Africa, has cardinal roles to provide the requisite machinery
of service in the efficient and well-reasoned resolution of these disputes devoid of
interference, unprofessional conduct and corruption in order to secure investors and
traders confidence in continuing doing business for socio-economic growth and
development in Africa.

TRANSPARENCY IN THE AFRICAN ARBITRATION SYSTEM.

Closely related to the above scenario, is that many African countries are parties to
various bilateral and multilateral investment treaties and agreements most of which
involves foreign investors. These treaties and agreements attracts foreign
investments in the primary and secondary economic activities of the economy of
African states and therefore, the creation of inviolable economic and arbitration
friendly policies will definitely aid foreign direct investment, ease of doing business
vis a vis access to fair, efficient and well-reasoned settlement of these disputes
administered by arbitral institutions on and within the continent for the overall socio-
economic prosperity of Africa and its people. In other words, the relevance of
arbitral institutions to the socio economic growth and development of Africa rest on
a sustainable demonstration of capacity to handle commercial and investment
disputes that are domiciled and resolved on the continent in an efficient, transparent
and cost effective arbitration Rules that conform to international standard and in line
with best practice. This in no small measure, will create transparency and sustained
confidence of investors, smoothened trade and attract investments to galvanise
socio-economic development.
PROJECTING CAPACITY OF AFRICAN ARBITRATORS AND ARBITRATION.

As noted earlier, establishment of arbitral institutions on the continent is to reverse the trend of exporting disputes resolution to foreign ports and in turn, import the awards to the shores of Africa for the liquidation of the awards debts. The tendency is that most government officials and professionals prefer foreign lands for arbitration to satisfy their pecuniary interest and benefit to the detriment of their home country’s economy. Surprisingly, even experienced arbitrators will often make reference to the Rules of foreign arbitral institutions feigning ignorance of our arbitral institution Rules. This attitude need be stopped, to allow our arbitral institutions in Africa to continue to attract arbitral disputes, administer them efficiently and transparently by African arbitrators/counsels of all gender and turnout a well-reasoned award. This inward looking and use of our arbitrators/counsels in our arbitral institutions dispute resolution process has a remarkable prospect of substantial income to our people and revenue to the economy of that jurisdiction in Africa.

In addition, most arbitral institutions have been consistent in capacity building thereby giving a strong voice and standing to Africa in arbitration. The chartered institute of arbitrators (Nigeria) branch is undisputedly the foremost leader on the continent of Africa. This CIarb Nigeria has singularly and often hold quarterly, biannual and annual trainings, events and conferences including sometimes seminars, town hall discussions, moot and mock competitions and induction of members etc. these capacity building activities impacts positively on knowledge transfer and immensely advance the profile and capacity of African arbitration practitioners for strategic engagement in any aspect of arbitration including specialized and structurally complex arbitration anywhere across Africa and globally. This is a clearly remarkable outstanding leadership role done by the Chartered Institute Arbitrators Nigeria on the toga of honour of capacity building and advanced knowledge transfer in international commercial and investment arbitration/Alternative Dispute Resolution (ADR) that has greatly aided the socio-economic development of Africa and its people on the global stage.

Thank you for listening.

ENDNOTES:
1. AALCO Website: http://www.aalco.int
3. Domestic and International Arbitration: Perspectives from the African Arbitration Practitioners by the London University Schools of Oriental African Studies (SOAS)


5. Overview of Economic and Social Development in Africa by the United Nation Economic Commission for Africa (UNECA)