

Strengthening Institutional Capacity for Effective Arbitration in Developing Economies¹

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Abstract

There is a global paradigm shift towards arbitration to resolve disputes. To resolve commercial disputes, promote foreign investment, and foster economic growth in any developing economy, there is a crucial need for effective and efficient arbitration. However, developing economies face unique challenges in establishing robust arbitration frameworks, ranging from weak institutional capacity to inadequate legislation and limited expertise. The developing economies often also lack specialized arbitrations relying on inadequate court systems. All these challenges weaken the potential of arbitration. This paper examines the challenges facing arbitration institutions in developing economies and proposes methods and strategies for strengthening the institutional capacity to ensure arbitration effectiveness and efficiency. This paper highlights the importance of institutional capacity in arbitration institutions and as well demonstrates that effective arbitration institutions enhance investors' confidence, promote economic growth, and reduce disputes. This paper adopts doctrinal methodology in data collection, and in so doing, looks at relevant statutory provisions and case laws, including the world of refined authors as well as articles, online sources, and paper presentations. Key recommendations that can enhance dispute resolution, attract foreign investment, and contribute to sustainable economic growth are made and the findings made will have significant implications for policymakers, arbitration institutions, practitioners, and investors.

Keywords: Arbitration, Institutional Capacity, Developing Economies, Dispute Resolution, Foreign Investment, Economic Growth.

1.0. Introduction

Arbitration has become an essential mechanism for resolving commercial disputes worldwide, and its role is especially significant in the context of developing economies. These economies, which often rely on foreign direct investment (FDI), trade, and global partnerships, require a robust dispute resolution framework to attract investment, foster economic growth, and ensure business confidence. However, many developing countries face significant challenges in ensuring that their arbitration institutions function efficiently and impartially. Strengthening institutional capacity for effective arbitration can significantly enhance the legal and economic environment in these countries. It will not only promote arbitration practice but also enhance tourism and create a notable surge in foreign direct investment which would in turn boost the economy of developing economies.²

An improved investment climate is essential to economic growth and the eradication of poverty. Foreign businesses as well as local investors are concerned about the legal environment in which they will be operating, the security of investment and the available dispute resolution mechanism

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²Yetunde Ayobami Ojo, 'Arbitration important to socio-development agenda if West Africa says Malami' Guardian Newspaper (Lagos, 2nd December, 2022)

in the investor country and the effectiveness of the arbitral institutions.³ Some questions that usually come to the mind of any investor who wants to bring in investment in any economy especially the developing economies include: are the arbitral institutions available and affordable? Are the arbitral institutions affordable, transparent, and stable? Would any eventual award/judgment be enforced without delay?⁴ The availability of strong arbitral institutions in economies encourages foreign direct investment. Quite apart from the role in attracting foreign direct investment, strong arbitral institutions encourage and sustain high levels of local private led investment, and this attracts valuable earnings which help in the development of the economy.⁵ Trade and investment are essential to economic growth. Effective dispute resolution mechanisms encourage investment and engender economic growth. Investors lay great premium on the availability of effective dispute resolution mechanism and strong institutional capacity before parting ways with their resources. Strengthening arbitral institutions in developing economies will not only improve foreign direct investment but also offer the possibility and hope of a new economic order. Necessary reforms will improve the level of investor confidence in our dispute resolution system, laying a good record/respect for arbitration agreement and building a system noted for regular and expeditious contract enforcement will bring enormous inflow of revenue for developing economies as well.

1.1. Importance of Arbitration

Arbitration is a dispute resolution process where parties agree to submit their disputes to an impartial third-party arbitrator(s) who make a binding decision. Arbitration has often been described as an alternative form of dispute resolution where there is a deliberation as to the rights and liabilities of parties determined by a third party instead of having recourse to a court of law.⁶ The increasing interest in arbitration as a means of judicial reform has been largely because arbitration provides a forum for dispute settlement other than the already overburdened court system.⁷ In other words, arbitration is regarded as a useful reform measure primarily because it affords litigants a forum that is less formal and cumbersome with application.⁹

Arbitration goes beyond dispute resolution and extends to economic development. Arbitration is important because international trade and commerce is essential for the development of the economy of any Country.⁹ Arbitration can significantly contribute to the resolution of commercial disputes within developing economies by providing a neutral and efficient platform which is essential in addressing disputes of cross border nature while offering a preferable alternative to litigation in national courts.¹⁰

In developing economies where foreign investment inflows are crucial to employment, education, training, and infrastructure and to current and future climate adaptation and mitigation efforts,

<https://afaa.ngo/page-18659> Accessed on 2nd December 2024

³Arbitration In Africa_ The State of Arbitration in Nigeria. (A paper presented at the 2008 Colloquium of the Association For the Promotion of Arbitration in Africa held at DJEUGA Palace Hotel, Yaoundé from 14th – 15th January 2008)

⁴Metroline (Nig) Ltd v Dikko [2021] 2 NWLR (PT.1761) 422 at page 445. Paras A-F

⁵Philiph .J. McConnaughay,'The Role of Arbitration in Economic Development and the Creation of Transnational Legal Principles'. PKU Transnational Law Review, Volume 1 Issue 1

⁶Ucheagwu-Okoye Onyinye The need for Arbitration as an Alternative Dispute Resolution Mechanism in Tax Dispute Resolution in Nigeria, Journal of Legal Issues vol 2 pg 74, Mobil Oil Nigeria Ltd v FBIR (1977) ALR, Comm Law Series 1977, pt 1, pg 1

⁷Mentor Lecaj and Grant Curri, 'Advantages of International Commercial Arbitration in Resolving Commercial Contest'. Perspective of law and public administration 10(2) ,96-101,2021

⁸Bobojonov Nodirbek Ruslanbek o'g'li, 'Arbitration Trends in Central Asian Jurisdiction'. World Bulletin of Management and Law Volume 32, [March 2021]. ISSN:2749-3601

arbitration reform alone will not be a magic bullet but rather an important condition precedent to attracting such investment which will, in turn, bring economic development to developing economies.¹¹ Arbitration helps to reduce the risk associated with foreign investment principally by providing a neutral forum for the final and binding resolution of disputes. Over several decades, Arbitration has gained wide acceptance as the dispute resolution method of choice about international transactions and the attraction of foreign investment to developing economies.¹² Flexibility and other advantages that the international commercial arbitration has in resolving commercial contest has made it possible that this mechanism be one of the key factors influencing the foreign direct investment in developing economies as well as signing of many contracts involving many financial means.¹³

Some of the importance of arbitration includes the following.

a. Efficient Mechanism in Resolution of Dispute

Arbitration provides accessible and efficient mechanism for the resolution of commercial dispute unlike the traditional court proceedings which can be time consuming and costly, and, in this regard, arbitration provides an opportunity for commercial entities and companies to resolve their dispute outside the formal judicial system, with the involvement of their chosen arbitrators.¹⁴ The efficient mechanism offered by arbitration facilitates access to justice while expediting the process and saving time for the investors/companies/individuals.

b. Confidentiality

Confidentiality is an important aspect of the arbitration process because it ensures that the dispute remains confidential, and this is significantly important to internal and commercial disputes especially those with sensitive information. It is crucial to protect and maintain the confidentiality of trade secrets and sensitive information. Arbitration is always a better platform in achieving this unlike the court room system that is open for all.¹⁵ The Arbitrators are prohibited from disclosing or using the confidential information they become aware of during the arbitration process and the law also stipulates the necessary measures to maintain the confidentiality and integrity of the proceedings and information such as the appointment of expert arbitrators.¹⁶

c. Expert Involvement in Resolution of Commercial Dispute:

In certain matters, arbitration may entail the involvement of expert arbitrators who possess specialized knowledge and expertise in a particular field and these experts can be appointed specifically for the resolution of complex and technical issues. The appointment of expert

⁹Rhodes Vivour: Arbitration key to economic development. <https://shipsandports.com.ng/arbitration-key-to-economic-development-says-rhodes-vivour/>
Accessed on 2nd December 2024

¹⁰ Temitayo Ayetoto- Oladehinde: Why effective arbitration helps businesses thrive Business Day March 29 2024 <https://businessday.ng/companies/article/why-effective-arbitration-helps-businesses-thrive-okoro-legal-expert/> Accessed on 2nd December 2024

¹¹ Jason Fry, 'Arbitration and Promotion of Economic growth and investment'. European Journal of Law Reform.[2011] (13)3-4

¹²Eric. C. Schwartz, The role of international arbitration in economic development. 12 Int'l Trade &Bus.L.Rev.127(2009)

¹³ Ibid

¹⁴ Mohammed Aimal Haqmal, Sayed Akram Hashimi and Abdul Hadi Zamani, The need, development, and benefits of commercial arbitration in Afghanistan. American Journal of Business and strategic Management. ISSN 2958-3829(online) Vol.3, Issue1, PP 1-9,2024

¹⁵ Sam Noshadha and Victor Litvinenko,'Analyze and prevention ways of the Economic and Political Corruptions in Engineering of Developed States Management Systems and International Commercial Arbitration Courts as an Effective Mechanism of Anti-Corruption to Incentive Foreign Investors'.[2018]Ukr.J. Int'L.30

arbitrators is particularly relevant in cases where the resolution of dispute requires the application of specialized knowledge, expertise, and experience.¹⁷ The court system does not offer the use of experts in most cases as majority of the judges are expected to be knowledgeable in every aspect of life hence making it impossible for many of them to give sound judgment in issues concerning professional areas.

d. Flexibility

Arbitration allows parties to tailor the process to their specific needs, including choosing the arbitrators, location, and procedures. Flexibility is important in the context of international businesses where parties often come from different jurisdictions with varying legal systems.¹⁸ With arbitration, parties can choose neutral and appropriate laws to govern their contract as well as select arbitrators who have specific expertise in the areas relevant to the dispute.¹⁹ This allows arbitration to be faster and more efficient than litigation, which can often take years.

e. Preservation Of Relationship

Arbitration can help preserve business relationship as it is often less confrontational than litigation. Arbitral awards are also widely recognized and enforceable internationally, making it an attractive option for cross-border disputes.

1.2 Role of Arbitration in Developing Economies

Arbitration plays a crucial role in promoting economic development in developing economies by providing an alternative to traditional court systems that may suffer from inefficiencies, corruption, or lack of independence.

Arbitration offers a neutral forum for dispute resolution, which is especially important in contexts where parties come from different jurisdictions and may be hesitant to trust a local judicial system. Again, confidentiality in through arbitral process is particularly attractive in commercial matters where business reputation and intellectual property are at stake.

Procedurally, Arbitration offers speed and efficiency in resolving disputes more quickly than the conventional court system, an important consideration for businesses that need to minimize downtime and uncertainty. Jurisdictional limitations does not affect arbitration procedures and awards, especially those made under conventions like the New York Convention²⁰ can be easily enforced in jurisdictions that are signatories to the convention, making it an effective tool for cross-border disputes. For developing economies, effective arbitration systems can foster a more conducive business environment by reducing the risks and uncertainties associated with dispute resolution.

However, for arbitration to be effective, the institutions responsible for its administration must be capable of upholding these benefits.

1.0. Challenges in Developing Economies

Despite the significant advantages of arbitration, studies have shown that many developing economies face structural challenges that hinder the effectiveness of arbitration as a dispute

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ Mariana Hernandez-Crespo Gonstead, 'Beyond Investor-State Disputes: Intercultural Capacity Building to Optimize Negotiation, Mediation and Conflict Management'. University of St Thomas Law Journal [2021] Vol 17.2 PP 259

¹⁹ Sayed Mursall, T. Riza Zarzani2, 'The Role of arbitration in settling international Business Contract Disputes in Indonesia'.(Law Synergy Conference (LSC) Volume 1: Number 1: Month 6, Year 2024; Page 216-224 E-ISSN:3048-3530)

²⁰ Convention on the Recognition and Enforcement of Foreign Arbitral Awards New York, 1958

resolution mechanism. These include:

- a. **Weak Institutional/legal Frameworks:** Out- of – date or inadequate legal frameworks and non-supportive legal systems often create uncertainty and discourage the use of arbitration.
- b. **Underdeveloped/Insufficient Infrastructure:** Limited resources and facilities such as specialized arbitration centers can pose significant obstacles.
- c. **Limited Expertise:** A shortage of qualified and experienced arbitrators hinder effective functioning of arbitration institutions. There is a serious need for qualified professionals.
- d. **Public Perception/awareness:** Lack of awareness about the benefits and procedures of arbitration among businesses and the public also hinder the functioning of arbitration institutions.

3.0. Institutional Capacity

Institutional capacity refers to the ability of an organization or institution to effectively perform its function and achieve its objectives. In the context of arbitration, institutional capacity plays a critical role in ensuring that arbitral proceedings are conducted efficiently and in compliance with established rules and procedures. Institutional capacity in arbitration requires the ability of institutions to perform their functions effectively, efficiently, and impartially. Hence, the ability of arbitral institutions to administer cases, manage procedural and substantive matters, appoint qualified arbitrators, provide facilities for hearings, and ensure the enforcement of awards. An institution with strong capacity will also ensure that its rules are modern, transparent, and aligned with international standards, while fostering a culture of fairness and impartiality. There are key elements of institutional capacity in arbitration, these include:

- i. **Administrative Competence:** The ability of the institution to efficiently manage arbitration agreements and proceedings is important especially in areas of case administration, filing, scheduling, and communication with parties.
- ii. **Technical Expertise:** The proficiency of the institution in selecting qualified arbitrators, often with expertise in specialized sectors like construction, energy, or international trade will help in the institutional capacity in arbitration.
- iii. **Legal Infrastructure:** The legal framework within which arbitration takes place is another key element that will enhance institutional capacity in arbitration especially on areas like enforceability of arbitral awards, independence of the judiciary, and recognition of international arbitration conventions.
- iv. **Financial Resources:** The funding required to operate arbitration institutions will go a long way to promote maintaining office infrastructure, technology, and offering training programs.
- v. **Regulatory and Procedural Framework:** The set of rules and procedures,^{21,22} that govern arbitration, which should be updated periodically to reflect international best practices.

4.1. Strategies for Capacity Building for Effective Arbitration in Developing Economies With expanding Foreign Direct Investment in Africa, it has become imperative for the various arbitral institutions to increase its capacity to make the developing economies attractive for foreign investors. In addressing these challenges several strategies can be implemented to enhance the effectiveness of arbitration in developing economies which requires targeted efforts to strengthen the institutional capacity for arbitration.

- a. **Legal and Regulatory Reform:** A solid legal foundation is essential for the proper functioning

²¹ UNCITRAL Model Law

²² Arbitration and Conciliation Act 2023

of arbitration in any country. Developing economies must ensure that their arbitration laws are in line with international standards, such as the UNCITRAL Model Law²³ on International Commercial Arbitration. Aligning national arbitration laws with international norms is of essence as it enhances the credibility of the arbitration process and ensures the enforceability of award. Again, strengthening the role of the judiciary in supporting arbitration, by providing clear guidelines for court's intervention and minimizing delays in the enforcement of arbitral awards.

b. **Capacity Building and Training:** Building institutional capacity requires investment in human capital. This can be achieved through:

- i. Training Arbitrators and Legal Professionals
- ii. Encouraging Professional Development
- iii. Creating Knowledge Platforms

c. **Building Independent and Transparent Institutions:** Effective arbitration depends on the independence and transparency of arbitral institutions. Developing economies should strengthen the governance of arbitral institutions, enhance transparency, and promote international collaboration.

d. **Improving Financial and Technological Resources:** Financial constraints are a significant barrier to the growth of arbitration institutions. However, there are various ways developing countries can overcome these challenges including attracting investment both by public and private sector funding to support the development of arbitration infrastructure. Furthermore, implementation of modernize arbitration institutions by incorporating technology, such as electronic case management systems and virtual hearings, to enhance efficiency and accessibility. This will promote cost-effective arbitration process tailored to the needs of small and medium-sized enterprises (SMEs) to ensure wider participation in arbitration processes.

e. **Promoting Public Awareness and Education:** There should be initiatives to raise awareness on the benefits of arbitration through public campaigns, seminars, and partnerships with industry stakeholders. This could help in enhancing businesses in understanding the advantages of arbitration over litigation. Legal professionals should be encouraged to offer arbitration as a first option to resolve commercial disputes. Despite the prevailing legal system of a country, an integration of arbitration in the legal curriculum will ensure that arbitration is included as a core subject in law schools to equip future lawyers with the skills necessary to engage in arbitration practices. These awarenesses will promote local arbitration centers that are accessible and offer services that are customized to the needs of the local business community.

f. **Access to quality Arbitration Materials:** In some jurisdictions, there is limited access to free, high quality, and up-to-date sources of legislation, regulation, or court judgment. This can inhibit capacity building as practitioners may not be aware of all relevant requirements or recent decisions. Capacity building can be greatly facilitated by ease of access to relevant materials, which includes legislation and arbitration related court decisions: The various arbitral institutions should be funded and promoted to make essential foundational legal information available.

g. **Arbitral Centre Statistics:** Like the London Court of International Arbitration's Annual report, arbitral centers in developing economies could assist capacity building by publishing comprehensive statistics about the cases they oversee including details of case numbers, challenges to arbitrators and requests for interim relief. This data enables practitioners to assess important aspects of the arbitration process such as time and cost and this could expand knowledge and improve confidence in the process as well as showcase the excellence and experiences of the arbitral centers.²⁴

h. **Decentralization of Arbitration Services:** To make arbitration more accessible, efforts should be made to establish regional arbitration centers outside of urban areas like Abuja and Lagos,

²³ Ibid

thereby expanding the reach of arbitration to businesses in smaller cities and rural areas. These centers could serve as accessible points for dispute resolution, particularly for local businesses that may otherwise rely on lengthy court cases.

i. **Strengthening Legal and Institutional Frameworks:** Although, the Arbitration law was recently reformed from Arbitration and Conciliation Act²⁵ to Arbitration and Mediation Act²⁶ legislative reforms to clarify and strengthen the legal framework for arbitration in Nigeria are crucial. Ensuring that arbitration laws are aligned with international best practices, such as the UNCITRAL Model Law, will promote consistency and fairness. Additionally, a clearer mandate to restrict judicial interference in arbitration processes would encourage greater reliance on arbitration.

4.2 Case Studies: Nigeria as a Case Study in Strengthening Institutional Capacity for Effective Arbitration in Developing Economies.

In developing economies, such as Nigeria, the ability to resolve disputes efficiently and impartially is crucial for fostering a healthy business environment, encouraging foreign investments, and promoting economic growth. Arbitration, being a form of alternative dispute resolution (ADR), has become an increasingly popular mechanism for settling disputes outside of traditional court systems. However, the effectiveness of arbitration in many developing nations, including Nigeria, hinges on strengthening institutional capacities to ensure that arbitration processes are efficient, transparent, and globally competitive.

There has been a serious and significant development in the field of arbitration in Nigeria coupled with legislative changes which often reflects evolving global practices. To meet up with the global practices in the arbitration and mediation environment, Nigeria has come up with a new Act

'Arbitration and Mediation Act 2023 on 26th May 2023, repealing the old Arbitration and Conciliation Act of 1988 and this is a significant legal transition hence the new Act has succeeded in making some improvement upon the weaknesses and inadequacies existing in the old Act and as such aligning Nigeria's Arbitration and Mediation framework with international standards.²⁷ Consequently, the new Act not only reinforces Nigeria status as a prominent commercial hub but also demonstrates the nation's unwavering commitment to creating a conducive environment for alternative dispute resolution in accordance with contemporary global norms. Some of the key novel changes or innovations in the provision of the Act include;

a. The Act has cleared the ambiguity previously existing within section 4 and 5 of the Arbitration and Conciliation Act regarding whether granting an order for a stay of proceedings pending arbitration was a mandatory or discretionary function of the court.²⁸ However, with the emergence of S5 in the AMA, a compulsory obligation has been placed on the court to refer parties to arbitration and stay proceedings unless the Arbitration agreement is void, inoperative or incapable of being performed.

b. The AMA has introduced the concept of electronic communication to meet writing

²⁴ CDH: Capacity Building and Fostering expertise in international arbitration in Africa <https://www.cliffedekkerhofmeyr.com/news/publications/2024/practice/Dispute/dispute-resolution-alert-14-may-capacity-building-and-fostering-expertise-in-international-arbitration-in-Africa>
Accessed on 17th December 2024

²⁵ Arbitration and Conciliation Act

²⁶ Arbitration and Mediation Act 2023

²⁷ The Arbitration and Conciliation Act was in force before the UNCITRAL Model Law on International Arbitration, 2006, the UNCITRAL Model Law on International Commercial Mediation, 2018, etc. The new Act merely adopted these Model Laws thereby adopting International best Practices. See also Tiwalade Aderoju, The Nigerian Arbitration and Mediation Act : a Comparison with the Arbitration and Conciliation Act 2004 and global practices, <https://www.ibanet.org/the-nigerian-arbitration-and-mediation-act-2023> accessed last on 20th December 2024

requirement. Such electronic communication include communication made through data messages, which includes information generated, sent, received, or stored by electronic, magnetic, optical, or similar means.²⁹ Therefore, any arbitration agreement made through electronic communication that is readily accessible and can be used for future reference is considered as validly written.

d. The default number of Arbitrators under the new AMA is now one (1) as against three (3).³⁰ This is so significant, as the financial burden on the part of the parties can be reduced. This shift aligns Nigeria's arbitration framework with established global standards and in line with UNCITRAL Model law.

e. Parties can now seek interim relief under S16 of the AMA before formation of Arbitral Tribunal by applying to the court or designated institute for appointment of emergency arbitrators. This provision is designed to expedite arbitration process in Nigeria. It aligns with the arbitration procedure rules of leading global arbitral institution such as London Centre of International Arbitration and the International Chamber of Commerce (ICC).³¹

f. The Arbitration and Mediation Act permit a party to pursue the recognition and enforcement of an interim measure in a manner akin to that of an arbitral award.³²

The Arbitration and Mediation Act have introduced some other significant reforms to Nigeria's Arbitration Landscape. Notably also, the Act clarifies the computation of time within arbitral proceedings, aligning with the Supreme Court's decision in *City Engineering Nig. Ltd v Federal Housing Authority*³³. Section 34 of the AMA extends the application of Limitation of statutes to arbitral proceedings, offering added protection by excluding the commencement of arbitration and the date of the award. The Act also introduces provision for consolidating arbitral proceedings, allowing for concurrent hearings, and joinder of parties³⁴. Arbitral tribunals can now include additional parties, provided prima facie evidence exists showing that the party is bound by the arbitration agreement giving rise to the arbitration³⁵. Furthermore, the AMA permits third party funding, enhancing Nigeria's appeal as a dispute resolution hub. The Act defines third party funders³⁶ and regulates disclosure and security for costs. Under the AMA³⁷ Arbitrators are now granted immunity, except in cases of proven bad faith. This provision aims to protect arbitrators and ensure impartial decision taking. The AMA also introduces the Award Review Tribunal³⁸, allowing parties to opt for a review of their arbitral award. This mechanism permits a second tribunal to assess challenges to an award. In addition, the Act embraces mediation³⁹ as a legitimate dispute resolution mechanism, defining mediation and outline the procedures for commencement, mediator requirements, and immunity. Overall, the AMA enhance Nigeria's arbitration

²⁸. *Enyeike v Ogoloma* 14 NWLR (Pt 1107) 247 (2008), where it was held that an application seeking a stay of proceedings to enable parties refer to arbitration is not granted as a matter of course. For such application to be granted, the Applicant must have taken no step in the proceedings.

²⁹. Section 91 of AMA. The definition of electronic communication covers electronic communication such as email, text messages, social media chats and more.

³⁰. Section 7 (1), see also Section 7 (3) in cases where parties are allowed to seek resort to court or any arbitral institution to facilitate appointment process.

³¹. Article 98 LCIA Arbitration Rules, and Article 29 ICC Rules of Arbitration.

³². See Section 28 of AMA.

³³. 9 NWLR (Pt 520), 244

³⁴. see section 39(1) and (2) of the AMA 2023

³⁵. Section 40 AMA 2023. This provision aligns with principles outlined in The Uncitral Arbitration Rules 2021 which empowers an Arbitral tribunal to join a third party after considering various factors such as the legal interest of the parties, the potential conflict of interests, and the timing of the request. See also Article 17(5) of UNCITRAL Arbitration Rules

framework, promoting efficiency, transparency and enforceability.

Despite these advancements, Nigeria's arbitration landscape faces several institutional challenges, such as:

- a. **Lack of Infrastructure and Resources:** Many arbitration institutions in Nigeria lack the necessary infrastructure, technology, and human resources to handle arbitration proceedings effectively. Arbitrators, particularly in less developed regions, may not have access to up-to-date legal resources or training on international best practices.
- b. **Delays in Proceedings:** The Nigerian legal system, including its arbitration sector, is often plagued by delays, frivolous applications, and lack of knowledge on the client's representatives and judiciary. Procedural inefficiencies, combined with limited institutional support, also contribute to long and costly arbitration processes. Thus, this undermines the perceived effectiveness of arbitration as a quicker and cheaper alternative to litigation. Efficiency and effectiveness of ADR has been undermined by the Nigeria legal system as regards Arbitral processes.
- c. **Limited Awareness:** There is a significant limited awareness and accessibility to arbitration in many businesses, especially those in the informal sector, may not fully understand the arbitration process or its benefits. In addition, access to reputable arbitration institutions is often limited outside major urban centers like Lagos, Port Harcourt and Abuja thereby making it difficult for businesses across the country to engage in arbitration.
- d. **Judicial Interference:** Procedurally, judicial interference equally influences Nigerian arbitration notwithstanding the fact that Nigeria has adopted a pro-arbitration stance in its laws. The judiciary's interference in arbitration matters remains a concern. Courts sometimes override arbitral awards, creating uncertainty in the system. Additionally, there are instances where courts delay or obstruct arbitration proceedings, undermining confidence in arbitration as a dispute resolution mechanism.

4.3. Success Stories and Best Practices

The implementation of effective arbitration mechanisms in developing economies has yielded remarkable success stories. Nigeria has made significant strides in developing its arbitration framework, providing a conducive environment for effective dispute resolution.

These examples demonstrate the potential of arbitration in promoting economic growth, improving business environments, and enhancing access to justice. The Lagos Court of Arbitration (LCA)

Established in 2005, the LCA has emerged as a leading arbitration institution in Nigeria. The LCA provides a neutral and efficient forum for resolving disputes, with a focus on promoting arbitration and alternative dispute resolution (ADR) in Nigeria. The Maritime Arbitrators Association of Nigeria (MAAN). MAAN is a professional association of maritime arbitrators and mediators in Nigeria. The association promotes the use of arbitration and ADR in resolving maritime disputes, providing training and capacity-building programs for its members. Furthermore, some states in Nigeria have enacted arbitration laws to govern arbitration in their states. The principal state arbitration law is the Lagos State Arbitration Law 2009 (LSAL) which applies to all arbitrations that arise in Lagos State, except where parties have stipulated another law. This law is an enactment of the UNCITRAL Model Law and incorporates the 2006 amendments.

In a bold move to reshape how disputes are managed in Nigeria, the newly established Institute of

³⁶. Section 91 AMA 2023. This provision aligns Nigeria with Jurisdictions like Singapore and Hong kong that allow third party funding

³⁷. Section 13

³⁸. Section 56 of the AMA 2023

Alternative Dispute Resolution Development and Conflict Management of Nigeria (i-ADR Nigeria) has set its sights on reviving and integrating Africa's traditional dispute resolution systems. This initiative aims to offer a more accessible and culturally relevant alternative to the overburdened formal court system, which is often mired in delays and inefficiency. The institute inaugurated recently is designed to tackle a broad spectrum of disputes ranging from commercial and corporate conflicts to community-based issues. Its uniqueness lies in its commitment to incorporating traditional African dispute resolution practices into its curriculum, training programmes and overall approach to conflict management. African Jurisdictions have already entered several innovative and mutually beneficial initiatives to pool and share expertise and best practices and this includes sharing expertise from not only non-African established pro-arbitration African jurisdiction such as Kenya. Collaboration between dispute resolution centers e.g. in March 2024 the Nairobi Centre for International Arbitration, the Cairo Regional Centre for International Commercial Arbitration, the Kigali International Arbitration Centre (KIAC), and the Hamburg Chamber of Commerce signed a memorandum of understanding to enhance visibility, and the growth of arbitration in Africa. Collaboration between law firms in and out of Africa in formal and informal partnerships and secondments will also enhance capacity building. This includes proper and open co-counsel relationships where lawyers work as genuine and respected partners to advance client interest, sharing and pooling experience and ideas from their respective jurisdictions.⁴⁰

However, to strengthen institutional capacity for effective arbitration, developing economies can adopt the following best practices:

1. Establish a clear and concise arbitration framework: A well-drafted arbitration law is essential for providing certainty and predictability.
2. Invest in modern infrastructure: State-of-the-art facilities and technology can enhance the efficiency and effectiveness of arbitration proceedings.
3. Develop a pool of experienced professionals: Training and capacity-building programs can help develop a skilled workforce of arbitrators, mediators, and arbitration administrators.
4. Foster a neutral and impartial arbitration environment: Ensuring the independence and impartiality of arbitration institutions is crucial for maintaining trust and confidence.
5. Encourage the use of arbitration: Raising awareness about the benefits of arbitration and promoting its use can help reduce the burden on courts and improve access to justice.
6. Developing regulatory frameworks aligning with national interest and international standards is another critical strategy. Emerging economies must craft legal and regulatory environments that meet global best practices while addressing domestic priorities. This includes establishing clear and transparent legal processes for handling investment disputes and ensuring that regulations are consistent with international investment law. Reforms aimed at enhancing transparency and fairness in arbitration in developing economies are essential eg adopting measures that increase the accessibility of arbitration proceedings and provide detailed reasoning for arbitration awards can help build trust in the arbitral system and ensure that decisions are unbiased and fair. Moreover, aligning domestic regulations with international standards can help prevent conflicts and reduce the likelihood of disputes, fostering a more stable investment climate.⁴¹

By adopting these best practices and learning from success stories, developing economies can strengthen their institutional capacity for effective arbitration, ultimately promoting economic growth, stability, and prosperity.

Conclusion and Recommendation

³⁹ . Section 91(1) AMA 2023

Pasha .L. Hsieh, 'China's Development of International Economic Law, and WTO Legal Capacity Building'. Journal

Strengthening institutional capacity for effective arbitration is essential for developing economies to

enhance their business environments, attract foreign investment, and resolve commercial disputes efficiently. By addressing challenges related to legal frameworks, expertise, financial resources, and institutional governance, developing countries like Nigeria can create a robust arbitration infrastructure that supports economic growth. Through strategic reforms, capacity building, and international cooperation, these economies can foster an arbitration environment that is fair, efficient, and globally recognized. Ultimately, the success of arbitration institutions will play a pivotal role in the broader goal of sustainable economic development and global integration. Some of the few recommendations for strengthening the institutional capacity include collaborations and this entails partnering with international arbitration bodies. Government support is equally needed in terms of policy changes and funding private sector involvement, encouraging stakeholders to invest in arbitration capacity building as well encouraging businesses to adopt arbitration in resolving their commercial disputes.

⁴¹ Mubarak Opeyemi Nurudeen, Adetoyese Latilo, 'Hendrickx Oreoluwa Imosemi and Queenette Anuoluwapo Imosemi, Adaptive Strategies for investor-state arbitration: A framework for emerging economies to safeguard national interests and attract investment'. Global Journal of Research in Multidisciplinary Studie. [2024]02(01),050-067 Article DOI: <https://doi.org/10.58175/grims.2024.2.1.0039>