

Building Arbitration Excellence in Nigeria: Institutional Roles and Strategic Reforms

NIMISORE AKANO PhD

Abstract

The determination of a jurisdiction's attractiveness as a seat of international commercial arbitration is often linked to the robustness of its legal and institutional frameworks. Modern arbitration legislation and a judiciary committed to supporting arbitral processes are widely acknowledged as indispensable elements. Yet, these alone do not suffice. Arbitral institutions play a pivotal role in shaping the practice of arbitration by providing administrative infrastructure, logistical support, and procedural innovation. Their credibility and efficiency are central to building confidence among parties and practitioners. Nigeria, as Africa's largest economy and a growing investment hub, has witnessed a surge in international commercial transactions. This development has correspondingly increased reliance on arbitration as the preferred mechanism for resolving transnational disputes. In response, numerous arbitral institutions have emerged across the country. However, the proliferation of institutions raises critical questions about whether quantity translates into quality and whether Nigeria's arbitral landscape can sustain a viable international market.

This article interrogates the role of arbitral institutions in positioning Nigeria as an attractive arbitration seat within Africa and globally. It examines institutional credibility, case management practices, and the challenges of building trust in a developing arbitration jurisdiction. The paper situates Nigeria's experience within comparative contexts, drawing lessons from established hubs such as London, Paris, and Singapore, while also considering regional competition from jurisdictions like Egypt, Kenya, and Rwanda. Ultimately, the article evaluates both opportunities and constraints facing Nigerian arbitral institutions and offers recommendations for strengthening institutional capacity, enhancing procedural efficiency, and consolidating Nigeria's reputation as a leading arbitration destination in Sub-Saharan Africa.

Introduction

International Commercial Arbitration is a process of resolving disputes arising out of international commercial contracts, as an alternative to settling disputes in court. A neutral arbitration tribunal whose decision is final and binding resolves disputes. As with international arbitration agreements,¹ the efficiency and efficacy of arbitral proceedings depend largely on a friendly-arbitration framework of modern arbitration law and a supportive and efficient judicial system. In international commercial arbitration the seat of arbitration refers to the legal jurisdiction where arbitration is formally based. The choice of an arbitration seat is crucial as it affects various aspects of the arbitration process and procedure, such as neutrality, availability of judicial support and supervision, procedural flexibility and enforcement of arbitral awards. Although, there are scarcity of surveys or studies of the direct impact of international commercial arbitration on the economic growth or revenue of a country, however, the economic implication of international commercial arbitration cannot be overemphasised. The huge amount involved in most international commercial disputes surely has economic benefits for the global economy. For instance, it was reported that the aggregate value of pending cases before the International Chamber of

¹ There can be no arbitration tribunal without an agreement from both parties to submit to arbitration, the pro-enforcement regime of an international arbitration agreement by national courts is of fundamental importance to the efficacy of arbitral process.

Commerce (ICC) Court is approximately \$255 billion.² For the London Court of International Arbitration (LCIA), the specific aggregate value of pending cases, though not explicitly stated, but the LCIA has witnessed a significant increase in high-value claims, with claims over \$20 million making up 29% of cases in 2023.³ The recent the Law Commission Consultation Paper 2022, stated in its report that an estimate of at least five thousand (5000) domestic and international arbitrations are held in England and Wales every year and these potentially are worth nothing less than £2.5b (if not higher) to the economy of the UK⁴. This has economic implications and benefits for the arbitral institution, law firms, arbitrators as well as countries (taxes that will be generated). The attraction of the economic benefits, as well as political benefits, are the key reasons that many cities in the world are competing to promote themselves as the choice seat for arbitration. Given the significance of the seat of arbitration, making the right choice of the seat of arbitration is an important decision that parties to international commercial arbitration,

² See ICC 2023 Arbitration and ADR Statistics, seen at <https://iccwbo.org/news-publications/news/icc-releases-preliminary-2023-arbitration-and-adr-statistics/> Accessed 20 December 2024.

³ See The London Court of International Arbitration (“LCIA”) Casework Report for 2023, <https://www.lcia.org/News/lcia-news-annual-report-on-2023-lcia-court-and-african-use>. Accessed 20 December 2024.

⁴ The Law Commission Consultation Paper September 2022: Review of Arbitration Act 1996 available at <https://www.lawcom.gov.uk/project/review-of-the-arbitrationact-1996-p.1.see> also Prof. Dr. Jordi Paniagua „The Economic Impact of International Commercial Arbitration paper presented at the 3rd Regional International Arbitration Conference, Sydney on March 17, 2021. Available at www.events.development.asia/systes/files/material/2021/03/202103-jordi-paniagua-presentation.pdf last assessed 24 October 2024.

corporate lawyers often, in consultation with external lawyers must make.⁵ Established seat of arbitrations, such as Paris, London, Vienna, Hong Kong, and Singapore already have the recognition and reputation of pro-arbitration jurisdictions within the international commercial arbitration community.⁶ To gain reputation as arbitration friendly jurisdictions, emerging and developing arbitration jurisdictions within the African region are also making arbitration legislative reforms to ensure that their jurisdictions are preferred seats for international commercial arbitration.⁷ Jurisdictions in Africa such as Egypt, Kenya, Uganda, Rwanda, South Africa and Nigeria, just to mention a few are all in the race to become the preferred arbitration seat in sub-Saharan Africa. The competition for these African jurisdictions to become an attractive and preferred seat is becoming intensified many of them embarking on legislative and institutional reforms. While some African Countries have either adopted Model Law or reformed their arbitration law to enhance their attractiveness as an arbitration law.⁸ Some have embarked on institutional

⁵ Loukas Mistelis, 'Seat of Arbitration and Indian Arbitration Law' (2016) 4 Indian J Arb L 1.

⁶ These cities are recognized as leading arbitration hubs due to their robust legal frameworks, experienced practitioners, and well-established arbitration institutions.

⁷ Kigali and Mauritius Arbitration are examples of showing good growth and developing their reputations as emerging African seats for international commercial arbitration. see the School of Oriental and African Studies (SOAS) Arbitration in Africa Survey 2020 Report: Top African Arbitral Centres and Seats authored by Emilia Onyema available at <https://eprints.soas.ac.uk>. Accessed 18 December 2024.

⁸ Nigeria in 2023 enacted the Arbitration and Mediation Act, which repealed the 35 years old arbitration law ACA, Ethiopia in 2021 reviewed its arbitration law through the enactment of the Arbitration and Conciliation Working Procedure Proclamation No 1237/2021.

developments by updating their arbitral institutional Rules to prioritize their flexibility and efficiency.⁹ African domestic arbitration venues are being promoted by governments in an effort to raise money and draw in foreign exchange. This is thought to increase foreign direct investment by offering a flexible, private, and impartial dispute resolution process.¹⁰ In addition, there are regional efforts in promoting arbitration, for example, the African Continental Free Trade Area (AFCFTA) agreement has increased the need for arbitration on the continent by igniting intra-African disputes. For capacity building, efforts are being made to increase the ability of arbitration institutions and practitioners throughout Africa. This covers conferences, training courses, and cooperation amongst different stakeholders.¹¹ Despite these reforms and initiatives, cross-border international commercial parties continue to prefer well-established arbitration hubs such as London and Paris because of their familiarity and perceived impartiality.¹²

⁹ Examples are, Cairo Regional Centre for International Commercial Arbitration (CCRIC) 2024; and Lagos Chamber of Commerce International Arbitration Centre (LCCIA) 2023.

¹⁰ Commonwealth A Study of International Commercial Arbitration in the Commonwealth 2019, <https://library.commonwealth.int> last accessed 10 December 2024.

¹¹ The Annual ICC African Conference event for instance, is aimed at the advancement of African arbitration and fostering international recognition of African arbitrators.

¹² Queen Mary University of London and White and Case 2021 International Arbitration Survey : Adapting Arbitration to a changing world seen at https://www.qmul.ac.uk/arbitration/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf Accessed 21 December 2024.

Nigeria, as Africa's largest economy and population, has the attractiveness to foreign investments that include the oil and gas industry, and the non-oil economy in the telecommunication and construction industries¹³. Much emphasis is focused on modern and effective arbitration legislation and a supportive national court as key factors for attracting international commercial arbitration references. The recent reform of the Nigerian arbitration law, which is set to revolutionise Nigeria's arbitration landscape with its many reforms and novel provisions to transform arbitration law and practice.¹⁴ While these are important features of an attractive seat for international arbitration, there are other factors that are equally important, especially for a developing arbitration jurisdiction like Nigeria.¹⁵

International commercial arbitrations may be conducted under the administration of an arbitral institution and pursuant to its institutional arbitration rules (institutional arbitration), or they may be subject to the arbitration rules of an arbitral institution (ad hoc arbitration). A viable arbitration institution is an important structural factor that plays a significant role in the effective and smooth resolution of commercial disputes through international commercial arbitration.

¹³ According to the World Bank, the population of Nigeria was approximately 218,541,212 in 2022 <https://data.worldbank.org> accessed 15 December 2024.

¹⁴ In May 2023, Nigeria's 35 years old Arbitration law Arbitration and Conciliation Act (ACA) 1998 was repealed and replaced with the Arbitration and Mediation Act 2023.

¹⁵ Court litigation is a pervasive feature of Nigerian commercial and civil life, the use of arbitration and other method of dispute resolution mechanisms are yet to become popular. Hence the term „developing arbitration jurisdiction“ is used in the context of the dynamic process of arbitration in Nigeria.

The role that well-established arbitration institutions play as one of the main drivers in fostering jurisdictions as a preferred arbitration seats cannot be over-emphasized.¹⁶ Nigeria boasts of many arbitration institutions,¹⁷ yet the proliferation of arbitral institutions has not yet translated to any meaningful number of international commercial arbitration references. A critical examination of some of the arbitration institutions in Nigeria and Africa, in general, will demonstrate whether the proliferation of arbitration institutions in Nigeria has had any impact on the promotion of the practice of arbitration and in making Nigeria an attractive seat for international commercial arbitration.

The article will be divided into three parts; part one examines the concept of seat and its importance in international commercial arbitration. The second part of this article is an exposition of the important role which arbitration institutions play in fostering a jurisdiction as an attractive and preferred seat of arbitration. It also analyses by way of an overview six most prominent arbitral institutions in Nigeria. Part three examines the challenges of arbitration institutions as well as the general challenges that bear weight against the reputation of Nigeria as an attractive seat for

¹⁶ A cursory look at the five top preferred seats shows the top five arbitration institutions are drivers of those seats. London has the LCIA, Hong Kong the Hong Kong International Arbitration Centre (HKIAC), Paris International Chambers of Commerce (ICC), and Singapore SIAC

¹⁷ Aside the six major notable arbitral institutions there are still pockets of arbitration centres and industry based arbitral institutions.

arbitration¹⁸ The concluding part will proffer recommendation and solutions for strengthening arbitral institutions and leveraging Nigeria's strategic location and legal reforms to bolster its reputation as an attractive arbitration seat.

2. Definition and Concepts of Seat of Arbitration:

Different terminologies used in this concept make it necessary to clarify and understand the concept and the meaning attached to it in law. This is so since the expressions „seat“ „place“ and „venue; are used differently and distinctly by different national arbitral laws and rules. The location where arbitral hearings and meetings are held does not generally connote the arbitral seat. The concept of a seat of arbitration is a legal concept and not a geographical one. It is simply the jurisdiction in which arbitration takes place legally. The difference between the geographical and legal location lies mainly in the juristic seat or place of arbitration and the location where proceedings meetings and hearings are held.¹⁹ In legal terms, the seat or place of arbitration refers to the system of law that governs the arbitration proceedings.²⁰ Place of arbitration and seat of arbitration is commonly used synonymously. Some notable authors use *situs*,²¹ *venue*²², and

¹⁸There have been instances of when judicial workers had gone on a nationwide industrial strike action, which saw the whole court system grounded to a halt.

¹⁹*Process & Industrial Developments Ltd v The Federal Republic of Nigeria* [2019] EWHC 2241 (Comm).

²⁰Gary B. Born, *International Arbitration: Cases and Materials* 28 (2nd ed. Kluwer Law 2015).

²¹William W. Park, *Arbitration of International Business Disputes: Studies in Law and Practice* (2nd edn Oxford 2012) 325.

forum to refer to the concept of seat of arbitration. The inexactness of terminology is attributable to the different expressions used by various arbitration laws,²³ arbitration rules, and institutional arbitral rules.²⁴

The UNCITRAL Model Law (as amended in 2006),²⁵ without offering any definition, uses the expression „Place of Arbitration“, whereas the Arbitration and Mediation Act (AMA) 2023 is more instructional as it uses the expression „Seat „of Arbitration and went further to define it as “*the juridical seat of the arbitration...*”²⁶

The AMA 2023 leaves no room for misconstruction or confusion as to the definition and or the purpose of the seat of arbitration, clearly defines seat of a arbitration confirms the distinction of between a seat (legal domicile) and a place of arbitration (geographical)as section32 (4) provides that:

“Notwithstanding the provisions of subsections (1) and (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate to consult among its members, for

²² The usage of venue generally, points directly to the location of where oral hearing or the location for the examination of evidence. See *Enercon GmbH v Enercon (India) Ltd* [2012] EWHC 689 (COMM).

²³ English Arbitration Act 1996, UNCITRAL Model Law (as amended in 2006), section 985, ACA 2004.

²⁴ UNCITRAL Arbitral Rules (2013) and ICC Rules 2021 adopt the use of Place to refer to the juridical location of the arbitration, while LCIA 2020 and SIAC Rules 2021 adopt the use of the terminology „seat“ as the juridical seat.

²⁵ See Art.20..

²⁶ AMA 2023 section 32(1); see also English Arbitration Act 1996 Sections 23.

hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.”

As rightly pointed out by Hill,²⁷ the UNCITRAL Model law²⁸, use of place in the context of both juridical and location,²⁹ potentially adds to the confusion on which expression is universally acceptable when referring to the juridical location of arbitration and the location of the proceedings from time to time.³⁰

The London Court of International Arbitration (LCIA) Rules 2020,³¹ adopts a clear distinction between seat and place. While it provides that parties are free to choose their seat of arbitration (legal place)³² it also recognises and provides that arbitration proceedings or meetings could be held at any convenient place in consultation by the parties.³³ The author disagrees with Jill, that the LCIA Rules are potentially confusing by the use of the term “seat with (legal place) to refer to the juridical arbitration and at the same time using place to describe the

²⁷Jonathan Hill, Determining the Seat of An International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements (2014) 63 International and Comparative Law Quarterly 517.

²⁸ UNCITRAL Model Law (with amendments adopted in 2006) Art 20(1) provides that parties are free to agree on the place of arbitration (indicating juridical seat) while 20(2) provides arbitral tribunal may meet at any „place“ it considers appropriate for hearing witnesses (indicating geographical location) see also UNICITRAL Arbitration Rules Article 18.

²⁹ The repealed ACA 2004 s. 16 (1) (2) adopts the same provision as the Model Law without any modification and uses the phrase „place“ to connote both the juridical and geographical location.

³⁰ RM Merkin, Arbitration Act 1996: An Annotated Guide (LLP 1996) 18.

³¹ Art. 16, ICC Rules 2017 art. 18. see also LCIA Rules 2020, art.16

³² Art 16.1.

³³ Art.16.3.

physical location of hearings”.³⁴ It is indeed contended that the unlike the repealed Arbitration and Conciliation Act 1988 , the AMA 2023, is in line with modern arbitration legislation and arbitral rules as it offers explicit clarification and distinguished between the juridical seat (juridical place)³⁵ and the physical location of where arbitration proceedings take place.³⁶ This is in line with the opinion of Redfern and Hunter, which states that both terminologies are often used interchangeably, but that „seat of arbitration“ is defined and designated as the legal place of the proceedings (juristic place), whereas „place of arbitration“ means the place of hearings (the place where the arbitral proceedings take place)³⁷. By way of conceptual distinction, usage of the seat as the juridical location may preclude ambiguity, but the use of „place“ to indicate both the physical and legal domicile in the same provision might bear a rather confusing and misconstrued meaning.³⁸

³⁴Jonathan Hill, Determining the Seat of An International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements (2014) 63 International and Comparative Law Quarterly 517.

³⁵ Section 32 (4) AMA provides that seat of arbitration means the juridical seat of arbitration for the purpose of the determination of the law that will govern the arbitration proceedings (curial law).

³⁶ Section 32 (3) provides that arbitral tribunal unless otherwise agreed by he parties may meet at any place it considers appropriate for hearing, taking of evidence etc.

³⁷Blackaby, N., and Partasides, C., Redfern, A., and Hunter, M, Redfern and Hunter Law and Practice of International Commercial Arbitration, (6th edn Oxford University Press 2015) .

³⁸See also *Shashoua v Sharma* [2009] EWHC 957(COMM) where the court addressed the issue of whether the selection of a venue for arbitration implies the choice of the seat of arbitration.

The use of “venue” anyway might be problematic, for example with remote hearings.³⁹ The need to distinguish the seat of arbitration from the place where hearings or meetings take place is germane, as Jill points out, “*that the variety of interpretational problems can be caused by a combination of terminological inexactness and drafting inconsistency*”.⁴⁰

The seat of arbitration is rather a legal notion connoting where the international arbitration has its legal or judicial home.⁴¹ In the case of *PT Garuda Indonesia v. Birgen Air*,⁴² the court distinguished between the place or legal seat of the arbitration, and the venue of the hearing. The court held that the seat of the arbitration remains the same place as initially agreed by the parties even though the tribunal holds meetings or even hearings in a place other than the designated place of arbitration, either for its convenience or for the convenience of the parties or their witnesses. In this case, the parties had agreed that Indonesia was the seat of arbitration, but because of political unrest hearings were held in Singapore. The Singaporean Appellate Court confirms the distinction between the place and the venue of the arbitration hearings.

³⁹ See The Law Commission Consultation Paper September 2022: Review of Arbitration Act 1996 available at <https://www.lawcom.gov.uk/project/review-of-the-arbitrationact-1996/> p115 accessed 20 November 2022.

⁴⁰ Jonathan Jill (n35) 521.

⁴¹ See *Dubai Islamic Bank PJSC v Paymentech Merchants Sers. Inc.* [2001]1All E.R (Comm)514.

⁴² [2002] 1 S. L.R 393 (CA).

In the case of *Zenith Global Merchant Limited (Zenith Global) v Zhongfu Int'l Investment (Nig.) FZE &Ors (Zhongfu)*,⁴³ Zenith Global, sought an Order of the Ogun State High Court restraining the *Zhongfu* from participating in arbitration proceedings, at the Singapore International Arbitration Centre (SIAC) in respect of a Joint Venture Agreement (JVA) between the parties. *Zenith Global* posited that *Zhongfu* is estopped from referring the matter to arbitration having waived its right by instituting an action at the Federal High Court in Abuja. *Zhongfu* responded that *Zenith's* application is struck out for lack of jurisdiction, on the ground that the Ogun State High Court is not a court in the seat of the arbitration. *Zhongfu* contended that the court, therefore, could not exercise supervisory jurisdiction and lacked sufficient jurisdictional nexus to be competent to grant the anti-arbitration injunction sought by *Zenith Global*. In determining the issue of the seat of arbitration, the court made a difference between seat and venue and held that the seat of arbitration is where arbitration has its legal domicile and symbolizes the jurisprudential connection between the arbitration process and the laws of the nation regarded as the seat. On the other hand, the venue refers to the physical or geographical place where parties have chosen for arbitration proceedings or meetings to be conducted.

The usage of seat“ of arbitration outshines place“ of arbitration, as the seat connotes a status represented by it, it gives the impression of

⁴³[2017] 7 CLRN 69.

permanency, given that in the legal sense, the seat represents the jurisprudential link between the arbitration and the national law of the jurisdiction regarded as the seat of arbitration.⁴⁴ Born supports the view that the use of the seat of arbitration is preferable: *“the better term for the legal domicile of arbitration is the arbitral seat. The term avoids arguably geographical connotation of the place of arbitration”*⁴⁵

The problem of the inconsistency in terminology by national arbitration laws and arbitral intuitional rules may well be the source of the inelegantly drafted arbitration agreement or clauses that fail to properly designate the seat of arbitration. Whereas it is typical for the terms seat and place to either be used as synonymous⁴⁶, or as a substitute, the expressions „venue and forum usually do not pose such confusion, as they straightaway connote the geographical location of arbitration. However, the expression „forum“ may be awkward in arbitration as it is closely associated and connected with the traditional court proceedings. The venue connotes a core geographical sense and gives no doubt as to the intention or meaning to be associated with it. This argument is further buttressed by Born, when he noted that, the concept of the seat of arbitration is a “legal construct” because of the legal consequences attached to the seat of

⁴⁴*Naviera Amazonica Peruana S.A. v Compania Internacional De Seguros Del Peru* [1987] EWCA Civ J1110-6, [1988] 1 Lloyd's Rep 116.

⁴⁵Gary B. Born, *International Commercial Arbitration* (3rd edn Kluwer Law 2020)

⁴⁶Some notable employs the use of „place“ of arbitration for both geographical and legal meaning, see Alain Hirsh, *The Place of Arbitration and the Lex Arbitri*, [1979] 34 Arb. J. 43; Gabrielle Kaufmann-Kohler(n126)345 A. Redfern& M. Hunter (eds) *Law and Practice of International Commercial Arbitration*.

arbitration, or the legal system, or where the arbitration is attached to or has a legal domicile.⁴⁷ The place of arbitration, on the other hand, is the physical or geographical location where arbitration may take place. While the geographical location (place) of arbitration where hearings are held and the juridical location (seat) where arbitration is tied, though related but distinct. National arbitration laws and arbitral institutional rules recognize that arbitration hearings and proceedings may be conducted outside the territory chosen as the seat of arbitration. For instance, art. 20(2) UNCITRAL Model Law provides *“Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents”*⁴⁸

In practice, it is possible to have more than a venue in more than one country, however, where parties in their arbitration agreement fail to indicate in clear terms, the choice of seat, the court in a plethora of cases⁴⁹ have held the venue to constitute the seat.⁵⁰ In *Process &*

⁴⁷ Gary G. Born (n 44).

⁴⁸ See also section 16(2) ACA 2004.

⁴⁹ *Shagang South –Asia (Hong Kong) Trading Co Ltd v Daewoo Logistics* [2015] EWHC 194 (COMM); *Enercon GmbH v Enercon (India) Ltd* [2012] EWHC 689 (COMM); *Bharat Aluminium Co vs. Kaiser Aluminium Technical Service Inc.* (2012) 9 SCC 552; *Shashoua v Sharma* [2009] EWHC 957 (Comm), [2009] 2 All E.R. (Comm) 477, *Braes of Doune Wind Farm (Scotland) Ltd v Alfred MacAlpine Business Services Ltd* [2008] EWHC 426 (TCC),

⁵⁰ David St John Sutton; Judith Gill; Matthew Gearing, „Russell on Arbitration 24 edn, Sweet & Maxwell 2015).

Industrial Developments Ltd v Nigeria,⁵¹ the issue of the legal seat arose in the enforcement proceedings before the English court. Nigeria argued that the arbitral seat was Nigeria. And the „venue“ as stated in the arbitration agreement was intended to refer only to the physical location of hearings. Nigeria further argued that since arbitral proceedings had been legally seated in Nigeria, Nigeria’s court had set aside the award rendering it incapable of enforcement in England. Conversely, *P&ID Ltd* maintained that the seat of arbitration was England and that the „venue“ in the arbitration agreement referred to the legal seat of arbitration. The English High Court in its reasoned decision dismissed Nigeria’s objection and held that the language in the arbitration clause „venue of the arbitration shall be London, England“ meant that the arbitration was legally seated in England and not merely that the proceedings would be conducted in England. The court in coming to this conclusion made a comparison between the arbitration agreement referred to as the venue of the arbitration and the language used in the ACA. Specifically, s.16 (2) ACA provides that.

“Notwithstanding subsection (1), the arbitral tribunal may, unless agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for the inspection of documents, goods or other property”.

The English court reasoned that the arbitration agreement provides that the venue of the arbitration shall be London or otherwise as

⁵¹[2019] EWHC 2241 (Comm).

agreed between parties. The agreement did not use the language in s.16 (2) ACA which states; „where the tribunal may “meet” or may “hear witnesses” experts or the parties”. The court, therefore, stated that if the reference to venues were simply where the hearing was to take place, the court held that this would have been an inconvenient provision and one which the parties would have unlikely intended. The English court rejected Nigeria’s argument that the venue, as referred to in the arbitration agreement, was in the sense as decided in Nigeria’s case of *Zenith Global*. The court further stated that the *Zenith* case was decided long after the conclusion of the agreement between the parties and therefore, cannot be used to support their argument.

It is submitted that the *P &ID* case illustrates the fundamental principle of international commercial arbitration that seat provides the legal domicile for the arbitration. The physical location of arbitration does not have the same legal significance as the judicial location. The geographical location of arbitration is decided based on the convenience of the arbitral tribunal and parties, and it does not necessarily have to be the same as the legal seat of arbitration. Additionally, the case underlines the advantages of the use of clear terms to designate the intended choice of the legal seat in the arbitration agreement to avoid unnecessary procedural disputes.

2.1 Significance of Seat of Arbitration.

Considering that the NYC and the Model Law have led to increased uniformity in law and practice among national arbitration legislatures, it then beggars the question of whether the arbitral seat has any practical importance. Nevertheless, the choice of a seat of arbitration has far-reaching significant implications for the parties to the arbitral process.⁵² The choice of a seat of arbitration in a specified country establishes a legal relationship between the arbitration on one hand and the arbitral law and the national courts of that country on the other hand. Despite the misconception that the seat of arbitration is declining in importance because most laws regulating their international arbitration laws conform with international conventions, which is significantly facilitated by the New York Convention. The choice of seat in international commercial arbitration is so important that it should not be regarded as “just another detail of a dispute resolution.”⁵³ It is an important aspect of the arbitration agreement or clause in international commercial arbitration and the parties’ choice of arbitration seat.⁵⁴ The seat continues to play vital role in international arbitration for several reasons. In the words of Born, **“...arbitral seat can have profound legal and practical consequences for the parties to an international arbitration, and**

⁵² *C v D* [2007] EWCA Civ 1282.

⁵³ Per Philips J in *Atlas Power v National Transmission* [2018] EWHC 1052 (COMM).

⁵⁴ Arbitral seat is selected by the parties, or by the arbitral tribunal in the absence of the agreement by the parties, or an arbitral institution selected by the parties and sometimes by the court. See art. UNCITRAL Model Law Art.11, section 7 ACA 2004, AA 1996 sections 16-18.

can materially alter the course and outcome of the arbitral process” (emphasis mine)⁵⁵

The seat of arbitration plays a dual role, first, it is determinative of the scope of the application of the *lex arbitri* and secondly the courts at the seat are conferred with the supervisory powers and jurisdiction to review awards⁵⁶ rendered in their territory. Generally, the seat chosen by the parties determines the national law that will direct the arbitral process and the extent to which the national courts will intervene in the arbitral process.

- a. The *lex arbitri*: One of the consequences following the selection of a seat of arbitration is that it generally determines the procedural law (*lex arbitri*) of the seat of arbitration.⁵⁷ The *lex arbitri* has been described as the totality of national law provisions that apply generally to arbitrations.⁵⁸ Therefore, the *lex arbitri* can be said to be the general framework for international commercial arbitration, this may include not only the national arbitration law but also other statutes, rules, and case laws. Although these may not particularly deal with arbitration but may relate to arbitration. For instance, the

⁵⁵ Gary G. Born (n39) 1676.

⁵⁶ Under the ACA 2004 there are no grounds for the review or appeal of an award, unlike under the English Arbitration Act where an award may be reviewed on points of law see EAA 1996 s.69

⁵⁷ It is technically possible to separate the law of the place of arbitration (*lex loci arbitri*) from the law governing arbitration (*lex arbitri*) to the extent that it is acceptable for the governing law of arbitration to be different, or arbitration proceedings “delocalized”, from the law of the “seat” of the arbitration.

⁵⁸ Alastair Henderson, *Lex Arbitri*, „Procedural Law and the Seat of Arbitration“ (2014) 26 Singapore Academy of Law Journal 886.

ACA 2004 will apply to arbitration having its seat in Nigeria. The Nigerian arbitration law will govern issues such as arbitrability of a dispute and capacity of parties, appointment, and removal of arbitrators, interim relief measures, and challenge procedure of an arbitral award (setting aside). The *lex arbitri* could also involve other statutes,⁵⁹ as well as rules and case laws, that relate to arbitration seated in Nigeria. Notwithstanding the increased uniformity in the laws and practice of international commercial arbitration owing to the adoption of the International Model Law and international conventions like the New York Convention 1958, the *lex arbitri* will vary from jurisdiction to jurisdiction. The significance of the role of the seat in international commercial arbitration is made more evident by the reason that an arbitral award can be refused recognition or enforcement where the arbitral procedure was not in accordance with the law of the country (seat) where the arbitration took place.⁶⁰ The relevance and the extent to which a *lex arbitri* involvement in the arbitral process and arbitration, is one of the main reasons why the selection of an arbitral seat is of critical importance in international commercial arbitrations. The various arbitration surveys conducted in the last ten years show that one of the most important considerations of parties in their choice of seat is the *lex arbitri* of a jurisdiction.⁶¹

⁵⁹ Examples are the Constitution of the Federal Republic of Nigeria, the Evidence Act of Nigeria and Statutes of Limitation Act.

⁶⁰ See Model Law Art. 48 (a), ACA section 52 (2) and New York Convention articles V 1(d).

⁶¹ See Arbitration surveys conducted between 2006 to 2021, by Queen Mary University of London and White and Case- 2021 International Arbitration Survey: Adapting Arbitration to a Changing World ; 2019 International Arbitration Survey:

Parties would be more inclined to select jurisdictions with modern *lex arbitri* that regulates and provides safeguards for the arbitration proceedings. It is most unlikely that parties will choose their arbitration seat jurisdictions with weak legal arbitration frameworks. Conventionally, while the choice of a seat of arbitration may determine the *Lex Arbitri*, it is also true that the *lex arbitri* of jurisdiction may also influence the choice of an arbitration seat.

b. **Supervisory Jurisdiction of the Court at the Seat of Arbitration:** In international commercial arbitration it is well established that the court at the seat of arbitration will generally have the supervisory jurisdiction over the arbitral process.⁶² The extent of the supervisory role of the court at the seat of arbitration is well defined by the domestic arbitration law of the seat. In most jurisdictions with modern arbitration regimes, the role of the court at the seat of arbitration is to be kept at the minimum as it aims to give support and when required to give assistance and supervision for the

International Construction Disputes; 2018 International Arbitration Survey: The Evolution of International Arbitration; 2016 International Dispute Resolution Survey: An insight into resolving Technology, Media and Telecoms Disputes; 2015 International Arbitration Survey 'Improvements and Innovations in International Arbitration Corporate Choices in International Arbitration: An Industry Approach; 2012 Current and Preferred Practices in the Arbitral Process: International Arbitration Survey; 2010 International Arbitration Survey „Choices in International Arbitration; Corporate Attitudes and Practices: Recognition and Enforcement of Foreign Awards; 2006 International Arbitration Study: Corporate Attitudes and Practices. Seen at <https://arbitration.qmul.ac.uk/research/>. Accessed 27 April 2022

⁶² *Minister of Finance (Incorporated) and 1 Malaysia Development Berhad v International Petroleum Investment Company and Aabar Investments PJS* [2019] EWCA Civ 2080.

effective conduct of arbitral proceedings.⁶³ Where parties have expressly selected a seat of arbitration, the effect of the agreement as to the seat of arbitration would be a strong presumption that the parties have agreed to the supervisory role of the court at the seat of arbitration. In a recent English case of *Investcom Global Limited v Plc Investments Limited*⁶⁴ the English court highlighted that the courts of the seat of arbitration as the basis for supervisory jurisdiction to grant an injunction. The case illustrates the significance of explicitly naming an arbitration seat in contracts, in order to enforce arbitration agreements and stop parallel proceedings that might jeopardize the arbitration process. In the case of *Enka Inasaat ve Sanayi AS v OOO Insurance Co Chub*⁶⁵ the English Supreme Court brought clarity to the English Law approach to determining the law governing an arbitration agreement and the English courts' supervisory role in granting anti-suit injunctions in support of arbitration. The Supreme Court ruled that if parties to a contract have not expressly or impliedly specified in their arbitration agreement, then the governing law of the contract if specified would apply. This is even if the seat of arbitration is different to the governing law of the contract. The Supreme Court further ruled that however, if the governing law of the

⁶³ For example, the UNCITRAL Model Law, limits the intervention of the court by identifying the situations in which the court is empowered to intervene, the English Arbitration Act 1996 also identifies the situations where the courts are permitted to intervene.

⁶⁴ [2024] EWHC 2505 (Comm); *SQD v. QYP* [2023] EWHC 2145 (Comm);

⁶⁵ [2020] EWCA Civ 574, see also *Minister of Finance (Inc) v International Petroleum Investment Co* (n179); *Atlas Power v National Transmission and Despatch Company Ltd* [2018] EWHC 1052; *West Tankers Inc v RAS Riunione Adriatica di Sicurtà SpA (The Front Comor)* [2007] 1 All E.R. (Comm) 794; *C v D* [2007] EWCA Civ 1282.

contract is not specified whether expressly or impliedly the arbitration agreement will be governed by the law most closely connected with the arbitration agreement. In general, that will be the law of the seat of arbitration. In essence, it is submitted that, the default position is that the chosen seat of the arbitration will govern the arbitration agreement and the court at the seat of arbitration will exercise the supporting and supervisory jurisdiction necessary to ensure that the arbitral procedure is effective. The majority of the Supreme Court held that in granting an anti-suit injunction, the English courts are seeking to uphold and enforce the parties' contractual bargain as set out in the arbitration agreement. Therefore, in principle it should make no difference whether that agreement is governed by English law or by a foreign law. The decision in the *Enka v Chubb* is now the leading authority in respect of the governing law of an arbitration agreement.

Generally, in most jurisdictions, the judicial intervention needed or required before the commencement and during the arbitral proceedings can only be made by the court at the seat of intervention. However, there are some exceptions in some jurisdictions that take a different position, in Germany, the connecting factor that determines judicial support is not the seat of arbitration but the law applicable to the arbitral proceeding.⁶⁶ However, this may not make much

⁶⁶ See Filip De Ly, *The Place of Arbitration in the Conflict of Laws of International Commercial Arbitration: An Exercise in Arbitration Planning* (Northwestern Journal of International Law & Business) Vol. 12, Issue 1 Spring, 1991.

difference, as in most cases, the law applicable to arbitral proceedings is the law of the seat.

The supervisory role of the court at the seat of arbitration is often required, before the commencement of the arbitration, for instance, where parties fail to agree on the mode for the appointment of the arbitral tribunal or an arbitrator, the court at the seat has the jurisdiction to assist in appointing the arbitral tribunal or arbitrator.⁶⁷

The courts at the seat of arbitration exercise supervisory jurisdictions, for instance, by enforcing valid arbitration agreement arbitration⁶⁸ and granting interim reliefs.⁶⁹ The court at the seat also functions as a safety valve to ensure due process and fairness in arbitration when it is called upon to intervene to decide on challenges as to the independence and impartiality of an arbitrator.⁷⁰ One of the major

⁶⁷ See Model Law Art.11; ACA 2004 section 7; English Arbitration Act 1996 section 18.

⁶⁸ See sections 4 and 5A CA 2004; Article 8 Model Law 2006; section 9 AA 1996, Article II (3) NYC 1958. See also, *Carpatsky Petroleum Corporation v PJSC Ukrnafta* [2020] EWHC 769 (Comm); *Albion Energy Ltd v Energy Investments Global BRL* [2020] EWHC 301 (Comm); *BNP Paribas v Trattamento Rifiuti Metropolitani SpA* [2019] EWCA Civ 768; *Sul América Cia Nacional de Seguros SA and Ano. v Enesa Engenharia SA and Ors* [2012] EWHC 42 (Comm)

⁶⁹ See *Investcom Global Limited v Plc Investments Limited* [2024] EWHC 2505 (Comm); *SQD v. QYP* [2023] EWHC 2145 (Comm); *Gerald Metals SA v Timis* [2016] EWHC 2327 (Ch); *Barnwell Enterprises Ltd v SCP Africa FII Investments LLC* [2013] EWHC 2517 (Comm); *Cetelem SA v Roust Holdings Ltd* [2005] EWCA Civ 610

⁷⁰ See *Halliburton Company v Chubb Bermuda Insurance Ltd* (formerly known as Ace Bermuda Insurance Ltd), [2020] UKSC 48, [2021] AC 1083; *Aldcroft v International Cotton Association Ltd*, [2017] EWHC 642 (Comm), [2018] QB 725; see also Nigerian cases, *Global Gas and Refinery Limited v Shell Petroleum Development Company (Nig) Ltd*; *Gobowen Exploration & Production Limited v. Axxis Petro Consultants Limited* (Unreported Case, Suit No. FHC/L/CS/1661/2013); *NNPC v. Total E&P Nigeria Limited & 3 Ors.* (Unreported Case Suit No. FHC/ABJ/CS/390/2018); *Shell Triana Ltd. v. U.T.B Plc.* [2009] LPELR-8922(CA).

significances of the seat of arbitration is the judicial control of the arbitral award by the court. The selection of an arbitral seat has implications on the arbitral award, particularly for annulment and review of the arbitral award. It is established in international commercial arbitration, that the court at the seat (where the award was made) will have exclusive jurisdiction over challenges in respect of an arbitral award.⁷¹ In other words, where the seat of arbitration is in Nigeria, then the competent court to set aside the arbitral award shall be the High Court in Nigeria. Under the Model Law regime, setting aside an award is permitted and once an award has been set aside it will not be enforced.⁷²

The attitude of the court at the seat towards arbitration is critical in determining whether a jurisdiction is pro -arbitration or not. It is argued that court at the seat of arbitration with supportive attitude and adherence to limited judicial intervention and interference are pointers to an arbitration friendly jurisdiction.

The role of seat of arbitration is undoubtedly significant because of the supervisory role over the arbitral process as well as the power to set aside an arbitral award. In international commercial arbitration, the question of judicial intervention remains important

⁷¹ See article 34 Model Law, sections 29 and 30 ACA 2004; section *Enka Insaat Ve Sanayi A.S v OOO Insurance Company Chubb* [2020] EWCA Civ 574.

⁷² This is in line with Article V (c) of the New York Convention, however by a rival interpretation of Art. V (1) (e) some jurisdictions like France, the court allows an annulled award to be enforced, while in some jurisdictions an arbitral award that has been set aside is a ground for refusal for enforcement of the award. See also discussions on delocalised arbitration on page 26.

2.1.2 Becoming an Attractive Seat of Arbitration- The London Principle as Yardstick

Given the significance of the seat of arbitration, making the right choice of the seat of arbitration is an important decision that parties to international commercial arbitration, corporate lawyers often, in consultation with external lawyers must make.⁷³ Established seat of arbitrations, such as Paris, London, Vienna, Hong Kong, and Singapore already have the recognition and reputation of „pro-arbitration“ or „arbitration friendly, jurisdictions within the international commercial arbitration community. The terms „pro-arbitration“ or „arbitration-friendly“, while a relevant consideration in international arbitration, are hard to define and it is difficult to agree on the precise features that make an arbitral system „pro-arbitration“ or „arbitration-friendly“.⁷⁴ Bermann states that a policy or practice can be considered „arbitration-friendly“ if it sufficiently advances arbitration“’s purpose.⁷⁵ To gain reputation as arbitration friendly jurisdictions, emerging and developing arbitration jurisdictions within the African region are making arbitration legislative reforms and policies to ensure that their jurisdictions are looked upon as arbitration friendly and consequently become preferred seats for

⁷³ Loukas Mistelis, 'Seat of Arbitration and Indian Arbitration Law' (2016) 4 Indian J Arb L 1.

⁷⁴ George A. Bermann, „What does it mean to be 'Pro-Arbitration'?“ (2018) 34 (3) Arbitration International 341. The author explains the concept of arbitration-friendliness and refers to the terms of „arbitration-friendly“ and „pro-arbitration“ interchangeably.

⁷⁵ *ibid* 342.

international commercial arbitration.⁷⁶ However, it is submitted that legal reforms, such as adopting the Model law as the arbitration legislation is not the only criteria for evaluating whether a jurisdiction is attractive to become a seat of arbitration. In choosing a seat of arbitration scholars and commentators have identified essential characteristics of an arbitration friendly jurisdiction that makes it an attractive arbitration seat that serves as guides in the choice of a seat.⁷⁷ The Chartered Institute of Arbitrators (CIARB) developed key principles known as “The London Principles.”⁷⁸ These Principles sets out ten elements for the evaluation of a „safe“ seat for the conduct of international arbitration. The word „safe“ was used in identifying several characteristics of jurisdiction that will attract arbitration.⁷⁹ These ten principles are not only a yardstick to evaluate choice seats but serve also as a blueprint for emerging and developing arbitration jurisdictions.

The characteristics as complied by the London Principles are not novel, they only summarise the well-established factors that influence

⁷⁶ Kigali and Mauritius Arbitration for examples of showing good growth and developing their reputations as emerging African seats for international commercial arbitration. see the School of Oriental and African Studies (SOAS) Arbitration in Africa Survey 2020 Report: Top African Arbitral Centres and Seats authored by Emilia Onyema available at <https://eprints.soas.ac.uk>. Accessed 18 August 2021.

⁷⁷ See Gary B. Born, International Commercial Arbitration (3rd edn Kluwer Law 2020) pp. 2205-2282.

⁷⁸ The CIARB London Centenary Principles, available at <http://www.ciarb.org/docs/default-source/ciarbdocuments/london/the-principles.pdf> last accessed 13 April 2022.

⁷⁹ Lord Peter Goldsmith, „The London principles 2015, 2015 Arbitration 81 (4) CIARB) 407-412 at 408.

the choice of an arbitral seat. The London Principles relate to the legal framework of arbitration, the judiciary, legal expertise and rights of representation, accessibility of the seat, the enforceability of arbitration agreements and arbitral awards, and immunity of arbitrators. Of the ten principles, the most critical principles to Nigeria becoming an attractive seat are highlighted below.

a. **Law:** for a jurisdiction to be safe for the conduct of arbitration, the jurisdiction must have a modern and efficient international arbitration law, which must respect parties' choice of arbitration as the method for settlement of their disputes by (a) providing the necessary framework for facilitating the fair and just resolution of disputes through the arbitration process; and (b) limiting court intervention in disputes that parties have agreed to resolve by arbitration, subject to permitting appropriate court support for the arbitration process.⁸⁰ One of the critical aspects of the selection of a seat of arbitration is a seat with supportive national arbitration law. Having a modern arbitration regulatory framework that controls the legal status and effectiveness of arbitration in a national and international legal environment, can never be over-emphasized. The Model Law has played a major role in influencing the choice of seat for international commercial arbitration, given the many jurisdictions that have adopted the Model Law as their national arbitration law.⁸¹

⁸⁰ Principle 1.

⁸¹ For international commercial arbitration, the UNCITRAL Model Law is the most important statutory instrument that has been adopted by a number of jurisdictions, the number of jurisdictions that have adopted is over 110 see https://uncitral.un.org/en/text/arbitration/modellae/commercial_arbitration/status

The attitude of the judiciary towards arbitration is one of the yardsticks in which it has been argued that jurisdictions which adopt the Model Law as the national arbitration law are more likely to meet this threshold of modern arbitration law in Principle 1.⁸² It is indeed argued that the “Model Law is a model piece of legislation and like the new York Convention a success in international persuasive legislation.”⁸³ This does not mean that the Model Law is not without its weaknesses.⁸⁴ For instance the default appointment of arbitrator under Art.11 other than providing that a court shall appoint an arbitrator where a party fails to do so within the time allowed, does not provide any statutory guidance on the criteria for the courts to make a default appointment.⁸⁵ Other jurisdictions that have not adopted the Model Law but have arbitration legislation that provides the needed legal infrastructure for an efficient arbitration process and procedure. For instance, the English Arbitration Act contains clear and effective provisions for the conduct of a fair and just resolution of disputes by arbitration.⁸⁶ The Arbitration and Mediation Act 2023

⁸² Lord Peter Goldsmith (n207) at408., see also Janet Walker, *The London Principles and their Impact on Law Reform*, (Brekoulakis (ed.) (2018) 84 (2) *Int’l J Arb, Med &Dispute Management*, pp.174-181

⁸³ Andrew Okekeifere, *Appointment and Challenge of Arbitrators under the UNCITRAL Model Law: Part 1: Agenda for improvement*” (1999) *Int’l ALR* 2(5/7) pp. 167-174.

⁸⁴ See Menon & Chao, „Reforming the Model Law Provisions on Interim Measures of Protection, (2006) 2 *Asian Int’l Arb, J* 1.

⁸⁵ Model Law Article 11 (3) (b) (c).

⁸⁶ See section 18 (2) which provides detailed directions on how the courts should deal with the application of an arbitrator where the other party fails to appoint an arbitrator.

reformed and introduced several innovations which significantly modify the legal framework of arbitration in Nigeria.

The Judiciary: Principle two of the London Principles calls for a safe and efficient seat to have an independent judiciary with expertise in international commercial arbitration and one that is respectful of the parties' choice of arbitration as their method for settlement of their disputes.⁸⁷ The legal system of a jurisdiction plays an important role in giving effect to the desires of parties to have their disputes resolved by arbitration. To this end, the courts give support and supervision as may be permitted under the national arbitration laws and international conventions. Accordingly, the effectiveness of an international arbitration process and proceedings is said to be directly linked with the quality of a judicial system.⁸⁸ According to Paulsson, "a legal system is unlikely to function very long with „good arbitration“ and „bad courts. When public justice is subverted, that subversion will ultimately reach most forms of arbitration as well. If it is perceived that the important functions of control and enforcement are no longer carried out properly by the judiciary, the arbitral process may easily be manipulated for corrupt ends."⁸⁹ To this end, a court in providing support and assistance to international arbitration should uphold the arbitration agreement between parties and provide access for the protection of due process in the arbitral proceeding, and guarantees

⁸⁷ See principle 2 London Principle.

⁸⁸ Dominique Hascher, „The Courts as Collaborators in the International Dispute Resolution Project (2015) *Arbitration International*, 81(4), 443-445

⁸⁹ Jan Paulsson, *Why Good Arbitration Cannot Compensate for Bad Courts* (2013) *J Int'l Arb* (30) 4, pp 345-369 at page 352.

the rule of law.⁹⁰ As regards expertise in international commercial arbitration, the court may not necessarily have expertise in international commercial arbitration but should be one with good knowledge and understanding of the workings of international commercial arbitration. The Nigerian courts have in some cases has highlighted pro-arbitration trends, showcasing the country's efforts to strengthen arbitration as a preferred method of dispute resolution For instance, in *NNPC v. Fung Tai Eng. Co. Ltd.*, the Supreme Court of Nigeria in this case emphasized the binding nature of arbitration agreements. It criticized the misuse of the challenge process against arbitration awards, and pointed out a troubling pattern where parties, frequently acting in bad faith, exploit the legal system to unnecessarily extend disputes and evade contractual obligations established through arbitration.⁹¹ On the other hand, there have been instances where judicial intervention has demonstrated unfriendly approach and attitude towards arbitration. Courts in Nigeria had in some instances employed legalistic justice approach in interpreting arbitration clauses. This is in contrast with the international established principle that where the parties make provision for an arbitration clause, the interpretation of the said clause should begin with the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of their contractual

⁹⁰ Dominique Hascher (n86) at page 445.

⁹¹ [2023]

relationship to be decided by an arbitral tribunal.⁹² An example of such is where the Appeal Court had looked at the form rather than substance of an arbitration agreement.⁹³ Lack of knowledge of international commercial arbitration by the courts will produce decisions that are inconsistent with global arbitration jurisprudence. For instance, a Nigerian court held that an arbitrator is obligated to recuse himself once his appointment was challenged.⁹⁴ This decision is inconsistent with international practice standards and does not have a basis in legal arbitration jurisprudence.

b. **Expert Legal Practitioners:** In terms of legal practitioners with expertise in international commercial arbitration, the issue is not the lack of legal expertise as Nigeria is recognized as having the largest number of legal practitioners and arbitrators in Africa as highlighted by the SOAS Arbitration in Africa Survey Report.⁹⁵ The availability and efficacy of legal infrastructures, like legal practitioners' services, translators, interpreters, and competent arbitration practitioners with international exposure and affiliations are available in Nigeria. However, the issue is with the ingrained litigation mentality of some of the legal practitioners in dealing with arbitration

⁹² See then English House of Lords decision in *Fiona Trust & Holding Corp v Privalov* [2008] 1 Lloyd's Rep 254, see Lord Hoffmann at Para 13.

⁹³ See *Imoukhuede v Mekwunye* (n604), compare with the decision in *Fidelity Bank Plc v Jimmy Rose Co. Ltd* [2012] 6 CLRN 82

⁹⁴ *Global Gas Refinery Ltd v Shell Petroleum Development Company* [2020(unreported)] Suit No: LD/1910GCM/2017.

⁹⁵ See SOAS Arbitration in Africa Survey Report 2018 seen at <https://eprints.soas.ac.uk/25741/1/SOAS%20Arbitration%20in%20Africa%20Survey%20Report%202018.pdf> last accessed April 27, 2022.

matters. Legal Practitioners rather than encourage the speedy court supervision of arbitration matters, apply delay tactics to protract court supervision of arbitration matters.⁹⁶

3 The Role of Arbitral Institution in Promoting a Jurisdiction Seat of Arbitration

Arbitral institutions have been at the heart of the discussions concerning the modernisation and improvement of the practice of international arbitration.⁹⁷ The findings of the survey carried out by Queen Mary University and White & Case 2021 substantiate this reality with 80% of the respondents considering that arbitral institutions are „best placed to influence the future evolution of international arbitration.“⁹⁸ International arbitration practitioners also expect the role and functions of arbitral institutions to continue to develop with the evolving needs of the arbitral practice.⁹⁹ Respondents to the QMUL 2021 as well as a similar survey in 2018 and ranked the ICC, LCIA, SIAC and HKIAC as the four most preferred arbitral institutions.¹⁰⁰

⁹⁶ The ingrained culture of litigation by some legal practitioners in representing parties either as party representatives for the court’s support of arbitration or as arbitrators forget that arbitration is another dispute resolution and not litigation. See for instance the case of *A.G Ogun State & Ors v Bond Investment & Holdings Ltd.* (2021) LPELR-54245(CA).

⁹⁷ Rémy Gerbay, *The Functions of Arbitral Institutions* (Kluwer Law International 2016) 56.

⁹⁸ QMUL 2021 (n42 29).

⁹⁹ *ibid* 23.

¹⁰⁰ *ibid* 13.

The evaluation of the preferred institutions indicated that the respondents were viewing the institutions in light of the broader international arbitration framework in which they were situated, and the legislative and professional conditions in their respective jurisdictions.¹⁰¹ The three key deliberations regarding arbitral institutions by the respondents of the 2018 survey were the „general reputation and recognition“, „high level of administration“, and „previous experience of the institution“.¹⁰² Other notable criteria included „neutrality“ and „internationalism“, particularly with regards to the institution’s ability to administer proceedings worldwide.¹⁰³ Some of the reasons for ICC’s consistent selection as the most preferred institution included its global presence and its efforts to meet the needs of the parties around the world while maintaining consistent standards of performance.¹⁰⁴

The three key factors that would make arbitral institutions more attractive, according to the 2021 survey respondents, were administrative and logistical support for virtual hearings, commitment to a more diverse pool of arbitrators, and transparency of

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ *ibid.* 14.

¹⁰⁴ *ibid.* 13-14. The ICC case statistics demonstrate how the reputation of the ICC has allowed it to serve the parties outside the territorial region of France. For example, ICC, „ICC Dispute Resolution Statistics: 2020“ (ICC, 2020) <https://library.iccwbo.org/content/dr/pdfs/2019%20Statistics_ICC_Dispute%20Resolution_901.pdf> accessed 19 April 2023; ICC, „ICC Court to open 5th Overseas Case Management Office in ADGM“ (ICC, 21 December 2020) <<https://iccwbo.org/media-wall/news-speeches/icc-court-to-open-5th-overseas-case-management-office-in-abu-dhabi-global-market>> accessed 19 April 2023.

administrative processes and decisions (such as selection of, and challenges to arbitrators).¹⁰⁵

The respondents of the 2021 survey also expressed the need for mechanisms that could improve time and cost efficiency. These mechanisms included: imposing page limits for some written submissions, especially post-hearing briefs, limiting document production, conducting procedural hearings remotely by default, and reducing the formalism of certain aspects of the proceedings.¹⁰⁶ Since the duration and cost of the proceedings are the main concerns of international arbitration practitioners, the survey suggests that every arbitral institution must consider adopting rules that will help reduce the time and cost spent on arbitral proceedings.¹⁰⁷

3.2 Arbitration Institutions in Nigeria- Quantitative or Qualitative Growth

The growing status of Nigeria as an investment destination¹⁰⁸ increased international commercial transactions. This increase in investment and trade influenced the increase in the use of arbitration as the preferred resolution mechanism for transnational commercial disputes. This in turn increased arbitration awareness in Nigeria

¹⁰⁵ QMUL 2021 (n42) 12.

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.*

¹⁰⁸ Nigeria, as Africa's largest economy and population, its attractiveness to foreign investments includes the oil and gas industry, and the non-oil economy in the telecommunication and construction industries.

resulting in the birthing of other arbitration institutions.¹⁰⁹ Nigeria has several numbers of arbitral institutions such as, the Lagos Regional Centre for International Commercial Arbitration (RCICAL), Lagos Chamber of Commerce International Arbitration Centre (LACIAC), Nigeria Institute of Chartered Arbitrators (NICArb), International Centre for Arbitration & Mediation, (ICAMA), Janada International Centre for Arbitration & Mediation, Abuja, the Maritime Arbitrators Association of Nigeria, and the Lagos Court of Arbitration (LCA). Aside from these major ones, there are still several clusters of smaller arbitral institutions in Nigeria.¹¹⁰ Generally, it would be expected that this quantity of arbitral institutions should portend a viable arbitration market for Nigeria. either as seats or appointed as arbitrators.¹¹¹ The contrary is the case, as the numbers of arbitral institutions have not resulted in any considerable number of arbitration references. It is not in numbers but in the quality of recognized arbitral institutions that will promote the use of arbitration and Nigeria as an attractive seat for international commercial arbitration. While some of the arbitration institutions are private sector-driven and are therefore independent of government regulation they provide only hearing facilities and

¹⁰⁹ The enactment of the ACA in 1988, ushered in the beginning of the drive for the awareness of arbitration law and practice in Nigeria.

¹¹⁰ Aside from these major arbitration institutions in Nigeria, there are other arbitration and ADR centres such as the Chartered Institute of Arbitrators (CIArb) UK (Nigeria Branch), Multi-Door Courthouse (MDC) Initiative, and The Lagos Multi-Door Courthouse (LMDC) with several other industry- based arbitration centres.

¹¹¹ According to ICC Statistical Report 2015, ICC Bulletin No. 1, 2016, only five cases were conducted in African jurisdiction and the number of African arbitrators appointed on international cases remains woefully small.

conferences¹¹² others are the creation of government collaboration and agreement and conduct the arbitration.

A. Regional Centre for International Commercial Arbitration, Lagos

Historically, the clamour for the internalization of Nigeria as a seat for international arbitration began a year after the adoption of Model Law in 1988, with the establishment of the Regional Centre for International Commercial Arbitration, Lagos (RCICAL) under the auspices of the Asian African Legal Consultative Organisation (AALCO).¹¹³ The objectives of the establishment of the regional centre in Lagos included amongst others, the promotion of international commercial arbitration in Asian and African regions.¹¹⁴ In establishing the Lagos centre, it was intended to attract potential users of the arbitral process arising out of the AALCO agreements to be brought to the Lagos Centre. However, this seems to have yielded

¹¹² Beyond the start-up infrastructure by the Lagos State Arbitration Law 2009, the LCA is private sector driven and independent of Lagos State Government regulations and controls.

¹¹³ The Asian African Legal Consultative Organisation (AALCO) has four regional centres Kuala-Lumpur, Cairo, Lagos and Teheran. The Lagos Centre was established to serve African countries in the South Sharan. For a detailed account of the work of the AALCO see Amazu Asouzu, *International Commercial Arbitration and African States* (CUP 2001).

¹¹⁴ Two basic objectives of the AALCO's integrated dispute settlement scheme are firstly, to establish a system under which disputes and differences arising out of transactions in which both the parties belong to the Asian-African and Pacific regions could be settled under fair, inexpensive and adequate procedures. Secondly, to encourage parties to have their arbitrations within the region where the investment made or the place of performance under an international transaction was a country within this region.

little success.¹¹⁵ There is no publicly available data on this in the annual reports provided to the AALCO by the Lagos Regional Centre. Also, there is no statistical information relating to their caseload on their website.¹¹⁶ The lack of such vital information on their website may raise questions about the strength and viability of the arbitral institution.

Aside from the RCICAL which was established in 1989, other arbitration institutions in Nigeria are relatively new arbitral institutions as they were established within the last twelve years.¹¹⁷ A detailed analysis of the six major arbitration institutions in Nigeria would require a treatise far beyond the scope of this research. However, an overview of three out of the six notable arbitral institutions would be necessary to give an insight into the capabilities of these institutions in transforming the arbitration market of Nigeria.

The number of arbitral institutions in Nigeria does not commensurate with the number of international commercial case references. RCICAL despite being in existence for more than twenty years when compared to its counterpart in Cairo, the Lagos Regional centre has not been able to achieve as much as the Cairo Centre. The increase in the caseloads of the Cairo Centre has earned it the lead position in the

¹¹⁵ There is no publicly available data on this in the annual reports provided to the AALCO by the Lagos Regional Centre. Here is no statistical information relating to their caseload on their website.

¹¹⁶ This is not peculiar to the RCICAL, all most all the Nigerian arbitral centres' website lacks any information and report as regards their caseloads established in 2012.

¹¹⁷ Examples are the LCA and LACIAC.

African Arbitral institution.¹¹⁸ Unlike the Cairo institution, the Lagos Regional centre is yet to gain itself a reputation as an experienced efficient arbitration institution within the region. It is contended that as long as the Federal Government of Nigeria is the host in charge of the centre, Lagos Regional Centre may have challenges in heading in the right direction. Though the agreement for establishing the centre, provides that the host government shall respect the independent functioning of the centre, the centre is highly under the regulation and control of the federal government. The RCICAL caters for arbitration and other ADR mechanisms for the needs of both private and public sectors of the economy in Nigeria as well as other jurisdictions in sub-Saharan Africa. In respect of promoting the use of international commercial arbitration, the main aim of the AALCO in establishing the regional centres is to function as international commercial arbitration in the Asian and African regions. It also aims to ensure that disputes emanating as a result of investment in the two regions are arbitrated within the Asian – Afro region rather than outside the regions. This gives the perception that the centre functions only for commercial disputes belonging to states of the regions under the AALCO agreement. It functions to provide its services to all nationalities, irrespective of whether the parties are nationals of member-states of the AALCO or not.

¹¹⁸ As of 31 December 2022, the total caseload filed at the Cairo Regional Centre for International Commercial Arbitration has reached 1618, and It registered 83 cases involving 29 non-Egyptian parties and 14 non-Egyptian arbitrators.. See <https://www.circa.org/news/2022/caseload/Report> accessed 7 January 2025.

b. LACIAC

The LACIAC is an independent arbitral institution with affiliation with the oldest chambers of commerce in Nigeria, the Lagos Chamber of Commerce and Industry.¹¹⁹ The LACIAC offers a dispute resolution management service including arbitration. LACIAC should have been the equivalent of what the ICC is to Paris and the global arbitration market. The centre is not on the list of top African Arbitral institutions. Nevertheless, the LACIAC aims to make Lagos, Nigeria an attractive seat for international commercial arbitration as it functions to provide a friendly centre for the management of arbitration both local and international. The centre acts as appointing authority and administers arbitration processes under its rules, the LACIAC Rules were recently revised in 2016. The LACIAC Rules 2016, also incorporates the IBA Guidelines on Party Representation in International Arbitration and the IBA Guidelines on Conflicts of Interest in International Arbitration.¹²⁰ The centre maintains and publishes on its website the list of its arbitrators and neutrals as well as its fees, but nothing on its website to show data or information about its caseload. Quality and reliable information such as the report of caseloads may make a good impression of the performance of an arbitral institution to prospective international commercial parties.

¹¹⁹ It was founded in 1888, and incorporated in 1950 as a non-profit making organization, Limited by Guarantee. The is affiliated under the auspices of the Lagos Chamber of Commerce and Industry, a foremost and premier chamber of commerce in Nigeria

¹²⁰ See Annex 1 and Annex 11 LAIAC Arbitration Rules 2016.

C. Lagos Court of Arbitration (LCA)

Of the numerous numbers of arbitral institutions, the Lagos Court of Arbitration (LCA) though comparatively new shows signs of potential growth and developing a reputation as an emerging arbitral institution in Africa. The LCA has positioned itself as a choice arbitral institution in Nigeria, as its main function is the promotion of disputes by arbitration and other ADR mechanisms. The LCA advances the cause of the promotion of Nigeria as a favourable seat of arbitration by describing Lagos as the default seat of the arbitration under its rules.¹²¹ LCA has been adjudged as one of the top five arbitral institutions in Africa,¹²² although in its twelve years of existence it has only one international commercial arbitration case. Nevertheless, the LCA is making its presence felt within the African arbitration community and beyond.¹²³ The LCA was established and created by the Lagos State Arbitration Law 2009 but started its operation in 2012 as a private sector-driven arbitral institution independent of government control.¹²⁴ The LCA arbitral centre administrative structure is modelled after the London Court of International Arbitration (LCIA) and the UNCITRAL Arbitral

¹²¹ The LCA International Centre for Arbitration is Africa's first purpose-built ADR centre and provides functional facilities for the promotion of the use of arbitration as well as other alternative dispute resolution mechanism.

¹²² See School of Oriental and African Studies (SOAS) Arbitration in African Survey Report 2020. Top African Arbitral Centres and Seats, authored by Emilia Onyema (a Reader in International Commercial Law at SOAS), available at <https://eprints.soas.ac.uk/33162/>.

¹²³ In the last five years the LCA has been collaborating with notable arbitration institutions in Africa an example is the LCIA – MIAC Centre in Mauritius in 2018.

¹²⁴ See <http://www.lagosarbitration.org/>

Rules.¹²⁵ The situation of the LCA in Lagos, Nigeria, makes it very strategic as Lagos is incontrovertibly the commercial nerve centre in Nigeria as well as within the West African sub-region. Lagos also boasts as the capital of commerce and industry accounting for over 60% of industrial and commercial activities in the country.¹²⁶

3.3 Challenges of Arbitral Institutions in Nigeria

Given the proliferation of arbitral institutions in Nigeria, it is expected that this will transform the arbitration landscape in Nigeria. However, having a viable arbitral institution that is internationally recognised and accepted is not just in numbers. Arbitral institutions in Nigeria are yet to gain regional and global reputations for the following reasons.:

Reputation and Recognition: Most of the arbitral institutions in Nigeria are young compared to the longstanding established arbitral institutions like the LCIA, ICC, and HKIAC. Aside from the fact of the age, there is more to be done to acquire a reputation that will provide confidence and trust to users. One of the key reasons that were found as important reasons why parties prefer a specific arbitral institution over the other is the general reputation and recognition of the arbitral institution.¹²⁷ World-leading arbitration institutions like

¹²⁵ The LCA has a three-tier structure like the London Court of International Arbitration (LCIA) comprising of a Board of Directors, a Secretariat, and the LCA members.

¹²⁶ Lagos State Investment Potentials available at: www.lagosstate.gov.ng/pagelinks.php?p=10 [last accessed 29 March 2022].

¹²⁷ See QMUL White & Case 2018 International Arbitration Survey, The Evolution of International Arbitration, <https://www.whitecase.com/publications/insight/2018->

the ICC, LCIA, and the AAA have been in existence for almost ten decades. For instance, The LCIA's origin can be traced back to as earlier as 1891, the oldest global arbitral institution, is one of the leading international bodies administering arbitration cases, and is the main arbitral institution in the UK.¹²⁸ Likewise, the ICC is one of the most reputable and experienced arbitral institutions for international commercial arbitration, it was established in 1923,¹²⁹ These two arbitral institutions alongside other popular and leading arbitral institutions¹³⁰ have a well-established track record for conducting and administering effective modern arbitration practice which cut across regions. SIAC and HIKAC have been able to position themselves not only as major leaders within the Asian region but also amongst the top five leaders of preferred institutions and seats.¹³¹

Another challenge of arbitral institutions in Nigeria is the quality of the judicial system as well as the arbitration legislation. According to the White & Case and Queen Mary University of London ("QMUL") '2021 International Arbitration Survey, jurisdictions with strong, modern arbitration laws and judiciaries that are supportive of the arbitral processes are two essential elements that are found in the top

[international-arbitration-survey-evolution-international-arbitration](#). The same reasons and factors were highlighted in the 2015 survey.

¹²⁸ See <https://www.lcia.org/LCIA/history.aspx>

¹²⁹ See <https://iccwbo.org/about-us/who-we-are/history/> Accessed 2 January 2025.

¹³⁰ For example, Arbitration Institute of the Stockholm Chamber of Commerce (SCC); American Arbitration Association / ICDR (AAA). Singapore International Arbitration Centre (SIAC) and the Vienna International Arbitral Centre (VIAC).

¹³¹ The 2021 Survey, SIAC moved to the second position of most preferred Arbitration Institution and seat beating Paris and Geneva see Arbitration Survey.

five arbitration seats. Interestingly, the top five arbitral institutions are also located in these top five preferred seats for arbitration. National court support for arbitration, an impartial judicial system, growth of domestic arbitration, and track record of enforcement of arbitral awards are factors of the seat that could rub off on an arbitral institution located in a jurisdiction.

Experience: Reputation and recognition can only be acquired by experience, and experience in turn is gotten by proven track records based on the perception of users. This would mean that it would take a considerable length of time before arbitration institutions in Nigeria get the reputation and experience needed to build up their following, particularly in the international commercial arbitration landscape. Countless arbitration agreements are entered into by parties in respect of international commercial arbitration, these contracts do not give rise to disputes, and the exact time when things would go wrong is not easily predictable. Whether the arbitral institutions would still be functioning as arbitration institutions to see new claims being brought as a result of international commercial transactions is another question. This is because most of these arbitration clauses are based on long-term investment and projects, particularly in the construction, oil, and gas transactions. Additionally, the timeline within which an arbitration institution with a high administrative reputation starts experiencing an increase in caseload.¹³² It is interesting to note in this

¹³² For instance, both HIAC and SIAC started their operation in 1985 and 1991 respectively. Both first built and developed their reputation within the Asian international arbitration community and have witnessed increased caseloads in the

regard that most of the arbitral institutions in Nigeria, like others in Africa, do not provide the traditional functions of administering and managing arbitration proceedings but only provide facilities for arbitration meetings like hearing rooms, conferences, and meeting¹³³ and or act as appointing authorities.¹³⁴

Viability of Arbitral Institutions: Connected to the issue of experience is the resources to manage the processes. To have a viable arbitral institution that is internationally recognised and comparable to notable international arbitral institutions is undoubtedly capital intensive. Most international commercial arbitration matters are complex in nature and may involve presentation of technical and complex documents. The conduct of such arbitral process involves use of both technical, human and financial resources for a smooth and effective conduct of the arbitration process and proceedings.

Arbitration References: Nigeria has been at the top and has a chunk size of the number of African-related disputes settled in most of the

global arbitration market which have in the last five years made them emerge as preferred arbitration institutions. See Christopher K Tahbaz, Justin R. Rassi, „The Development of Arbitral Institutions in Asia“, (2018) 13 U. Pa. Asian L. Rev. Available at: <https://scholarship.law.upenn.edu/alr/vol13/iss2/4> Accessed 18 April 2022.

¹³³ The Nigerian Institute of Chartered Arbitrators and the Chartered Institute of Arbitrators (UK) Nigerian Branch, International Centre for Arbitration & Mediation Abuja are examples of Arbitral institutions that provide only meeting and hearing room facilities for arbitration and ADR.

¹³⁴ Chartered Institute of Arbitrators (UK) Nigerian Branch does not administer arbitration proceedings but acts as appointing authority.

renowned International Arbitral Institutions. For instance, it was recorded in the LCIA Caseload Report 2023, that the proportion of parties from Africa has increased twofold. Mauritius and Nigeria remained the top two countries in the African region from which parties originated in both 2022 and 2023, the percentage of parties from each of these countries was higher in 2023.¹³⁵ Yet, Nigeria faces challenges in establishing itself as an attractive seat for international commercial arbitration. This is despite the fact the country has played a pioneering role in international commercial arbitration within the sub-Saharan African region.¹³⁶ It is interesting to note that out of the numerous arbitration institutions in Africa, only five were identified as leading arbitration institutions. The Lagos Court of Arbitration (LCA) was among the top five. The institutional structures in Nigeria have not been able to stamp their presence firmly and convincingly in the international commercial arbitration space. Their attractiveness as arbitration centres is minimal hence, they tend to attract few cases. One of the downsides of the arbitral institution in Nigeria is that most of these centres' websites lack adequate and relevant information for potentially interested parties seeking out arbitration centres to inquire about their activities. Even for research purposes, all the website of these arbitral institutions lacks adequate information compared to that of say ICC and SIAC.

¹³⁵See <https://www.pinsentmasons.com/out-law/news/lcia-statistics-show-doubling-arbitration-parties-t> accessed 11/January 2025.

¹³⁶ Nigeria was the first African country to adopt the UNCITRAL Model Law on International Commercial Arbitration in 1988.

		2016	2017	2018	2019	2020
Lagos Court of Arbitration (LCA):	Domestic Arbitrations	3	3	7	11	12
	International Arbitrations	-	-	-	1	-
Lagos Chamber of Commerce International Arbitration Centre (LACIAC):	Domestic Arbitrations	-	-	2	2	1
	International Arbitrations	-	-	1	-	-
Abuja Chamber of Commerce-Dispute Resolution Centre (ACC-DRC):	Domestic Arbitrations	-	-	1	6	4
	International Arbitrations	-	-	-	-	-

Source: Emilia Onyema, Arbitration in Africa Survey Report (2020) on Top African Arbitral Centres and Seats.¹³⁷

The above indicates the low statistics of arbitration references of Nigerian arbitral institutions in respect of attracting international

¹³⁷ Available and seen at <https://eprints.soas.ac.uk/33162/1/2020ArbitrationSurveyReport> last accessed 27 March 2022.

commercial arbitration references. The above survey may not give the exact picture of the arbitration references of these institutions. Issues with most arbitration institutions in Africa and Nigeria inclusive are lack of access to data, regarding the number of cases they have administered, credible empirical analysis of domestic arbitration considering the private and confidential nature of the arbitration. The domestic arbitration references, as shown above, are equally poor, although it has been argued that the explanation of poor domestic references is due to most of the domestic arbitration being ad hoc.¹³⁸ The writers argue that the explanation notwithstanding, it does not erase the fact of the ingrained litigation culture in Nigeria may also be a factor for the poor domestic references. The more arbitration references, the better skilled the arbitral institutions become in efficiency and reputation. It has been observed that jurisdictions that have been successful in establishing busy international arbitration centres and attracting significant international arbitration references also have vibrant domestic arbitration. This is true of jurisdictions like England (LCIA), France (ICC), and other notable arbitration destinations. This emphasises the point that attracting international commercial arbitration references requires a robust domestic arbitration sector as the two feed off each other. As earlier stated, the ingrained litigation culture is one of the challenging mitigating against the development of domestic arbitration.

¹³⁸ See Emilia Onyema, Arbitration in Africa Survey Report (2020) on Top African Arbitral Centres and Seats, available at: <https://eprints.soas.ac.uk/>

Nigeria has been at the top with a chunk size of the number of African-related disputes settled in most of the renowned International Arbitral institutions like the LCIA and the ICC. Yet in the Nigerian arbitral institution, the above data shows zero international commercial arbitration cases. The numerous arbitral institutions have not helped in establishing Nigeria as an attractive seat for international commercial arbitration. This is despite the fact the country has played a pioneering role in international commercial arbitration within the sub-Saharan African region.¹³⁹

The involvement of government in the running of arbitral institutions also impacts on arbitration references. The government's involvement gives the perception of interference and is dependent on the external influence of the government. For instance, the Federal Government of Nigeria is responsible for the appointment of the members of the RCICAL. It is the argument of the writers that though the support of the government may be required at the initial stage of the creation of the arbitral institution, however, continuous influence and control by the government will erode the independence of the arbitral institution and affect the confidence and trust of users.

Nigeria aims to become and assert itself as an attractive and preferred seat for international commercial arbitration in Sub-Saharan Africa. The rise of arbitration centres in jurisdictions such as Rwanda,

¹³⁹ Nigeria was the first country to adopt the UNCITRAL Model Law on International Commercial Arbitration in 1988.

Mauritius, Kenya, and Uganda as well as Egypt and Morocco are strong contenders in the African arbitration market. For instance, the Cairo Regional Centre for International Commercial Arbitration (CRCICA), a product of AALCO is an established and recognized arbitral institution in Africa.¹⁴⁰ Rwanda is also an example of an emerging African arbitration seat in Africa.¹⁴¹ The Federal Government of Nigeria proposed National Arbitration Policy (NAP) has proposed the creation of more arbitral centres in Abuja and Lagos. It is the argument that this proposal is unnecessary. The numerous arbitration centres in Nigeria are yet to record any considerable success in international commercial cases. Although a regional centre, RCICAL has not recorded expected success in respect of attracting arbitration references in Nigeria. The Cairo Regional Centre for International Commercial Arbitration (CRCICA) which was also established under the auspices of AALCO enjoys more reputation as one of the top five Arbitration Centres in Africa. Rather than create more arbitral institutions, existing arbitration institutions in Nigeria should create a niche in the global arbitration market and embark on the promotion and transformation of arbitration practice in Nigeria to gain regional and global recognition.

¹⁴⁰ See SOAS Arbitration Survey (n230).

¹⁴¹The Kigali International Arbitration Centre (KIAC) has been reported as more of the emerging well-established African Arbitral Centres. See White & Case, Institutional Arbitration in Africa: Opportunities and Challenges available at <https://www.whitecase.com/insight-our-thinking/institutional-arbitration-africa-opportunities-an-challenges>. Accessed 19 April 2022.

4. Conclusion

Arbitration institutions play a pivotal role in positioning a jurisdiction as a preferred and attractive seat for international commercial arbitration. The recent review of the Arbitration framework through the enactment of the Arbitration and Mediation Act 2023 fosters a robust legal framework which aligns with international best practice. However, an enhanced legal framework is not the only criteria to evaluate an attractive seat of arbitration, institutional support is also crucial in providing the necessary infrastructure, expertise, and administrative support for effective arbitration proceedings. Arbitral institutions such as the Lagos Court of Arbitration (LCA), Lagos Regional Centre for International Commercial Arbitration (RCICAL), and the Lagos Chamber of Commerce International Arbitration Centre (LACIAC), need to brace up in order to play a crucial role in enhancing the credibility of the arbitration process. To making Nigeria become an attractive seat for international commercial arbitration. The challenges faced by arbitral institutions in Nigeria in the bid to position Nigeria as an attractive seat have not received the adequate awareness and attention that they require as much emphasis are usually placed on legal framework and the courts. Therefore, for a holistic approach to the challenges of Nigeria being an attractive seat for arbitration, it is crucial that a great deal of attention is given to these challenges.. Owing to the many challenges facing several arbitration institutions, Nigeria needs a viable and internationally recognized arbitration body that can favourably compete with both

the regional and global arbitration market. To achieve this feat, Nigeria's arbitral institutions must be independent with resources to efficiently keep and maintain arbitral proceedings and processes. Critical to regional and global recognition and acceptability as an attractive seat, a safe environment, a stable political environment as well as the need to tackle the perception of corruption, especially with regards to arbitrators and the judiciary is necessary to positioning Nigerian arbitral institutions to the international level.