A DIAGNOSTIC OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR ARBITRATION IN NIGERIA*

Abstract
This paper examined the legal and institutional frameworks for arbitration in Nigeria, adopting a doctrinal methodology. The research investigates the legislative, judicial, and institutional mechanisms governing arbitration in Nigeria, with a focus on the Arbitration and Conciliation Act (ACA) 2004. The paper reveals that while the ACA 2004 provides a comprehensive framework for arbitration in Nigeria, there are significant gaps and challenges in its implementation. The research identifies inconsistencies in the application of the ACA 2004 by Nigerian courts, inadequate institutional support for arbitration, and a lack of expertise among arbitration practitioners. Based on the findings, this study recommended a review and amendment of the ACA 2004 to address the gaps and inconsistencies in the Act and ensure its alignment with international best practices. It further recommended the establishment of arbitration institutions to provide institutional support for arbitration and promote the development of arbitration expertise in Nigeria. Also, capacity building for arbitration practitioners to enhance the expertise of arbitration practitioners and ensure the effective implementation of the ACA 2004. The paper concluded by demonstrating the need for a comprehensive review of the legal and institutional frameworks for arbitration in Nigeria. The effective implementation of the ACA 2004 and the development of institutional support for arbitration are critical for development.

Keywords: Arbitration, Practitioners, Courts, Judges, Institutions

1. Introduction
Arbitration is a widely recognized and widely used means of dispute resolution in Nigeria, and it is governed by a comprehensive legal framework.[1] The legal framework for arbitration in Nigeria is provided by the Arbitration and Conciliation Act (ACA) 2004, which is based on the UNCITRAL Model Law on International Commercial Arbitration.[2] The ACA 2004 provides a framework for the conduct of arbitration proceedings in Nigeria, including the appointment of arbitrators, the conduct of arbitration hearings, and the rendering of arbitral awards.[3] In addition to the ACA 2004, there are several institutional frameworks that support arbitration in Nigeria, including the Nigerian Arbitration and Conciliation Association (NAACA), the Lagos Court of Arbitration (LCA), and the Abuja Chamber of Commerce and Industry (ACCI) Arbitration Centre.[4] These institutions provide training and accreditation for arbitrators, as well as administrative support for arbitration proceedings.[5] The ACA 2004 also provides for the recognition and enforcement of arbitral awards in Nigeria.[6]

2. International Legal Framework

New York Convention
The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[7] is a key international treaty that applies to the recognition and enforcement of arbitral awards. The Convention requires states to recognize and enforce arbitration agreements[8] and foreign arbitral awards,[9] unless one of the grounds for refusal set out in Articles II and V is established.[10] In the case of *Bergesen v Joseph Muller Corporation,* [11] the US Supreme Court held that the New York Convention requires courts to recognize and enforce foreign arbitral awards, unless one of the grounds for refusal set out in Article V is established. Similarly, in the case of *Mitsubishi Motors Corporation v Soler Chrysler-Plymouth, Inc.,*[12] the US Supreme Court held that the New York Convention requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article II is established. In Nigeria, the New York Convention has been domesticated through the Arbitration and Conciliation Act (ACA) 2004,[13] which provides for the recognition and enforcement of foreign arbitral awards.[14] In the case of *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.,*[15] the Nigerian Court of Appeal held that the New York Convention requires courts to recognize and enforce foreign arbitral awards, unless one of the grounds for refusal set out in Article V is established. The New York Convention is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[16] The Convention took place in 1958 but came into force on

By Ogwu J. ONOJA, LLB (Hons), BL, LLM, MBA, MNIM, FIOD, FCCM, SAN, FCArb, Senior Lecturer, Bingham University, Abuja, Tel: 08033001031, Email: kwedef@unijos.edu.ng

[1] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[2] ACA 2004, Sections 1-55.
[3] UNCITRAL Model Law on International Commercial Arbitration, 1985.
[4] NAACA Website; LCA Website; ACCI Arbitration Centre Website.
[5] ACA 2004, Section 1.
[6] ACA 2004, Section 31.
[7] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), 1958.
[8] Article II, New York Convention.
[9] Article III, New York Convention.
[10] Article V, New York Convention.
[11] *Bergesen v. Joseph Muller Corporation* (1972) 407 U.S. 1.
[12] *Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc*. (1985) 473 U.S. 614.
[13] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[14] Section 51, ACA 2004.
[15] *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd*. (2006) 8 NWLR (Pt. 982) 159.
[16] It is otherwise called New York Convention. The Convention is set out in the Second Schedule to the Nigeria Arbitration and Conciliation Act, 2004. The Convention was made in June 1958 but was not open for signature until 31 December 1958. Nigeria aceded

7 June 1959. The Convention is concerned with the enforcement of foreign awards, which is one of the main reasons parties find the law attractive. It recognizes party autonomy in the agreement made in writing by the parties where they agree to submit to arbitration all or any of their differences, whether presently or in the future. This agreement forms the basis for the recognition and enforcement of arbitral award and a party shall at the time of application, supply the original agreement or a duly certified copy of it.[17] The New York convention in lending its support to party autonomy provides that:

> The court of contracting state when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall at the request of one of the parties refer the parties to arbitration unless it finds that the said agreement is null and void, in operative or incapable of being formed.[18]

It is notable that the doctrine of party autonomy is given utmost respect internationally under many arbitral conventions and rules. As a matter of principle, the expression 'unless otherwise agreed by the parties' is a frequent occurrence in many arbitral enactments, conventions and treaties or arbitral rules, that gives the parties a great degree of autonomy, universally, as an acceptable principle. The introductory expatiation of the concept of international arbitration will not be complete except a further discussion of its characteristics is made. It is difficult however to distinguish the 'characteristics' from the already discussed 'nature' of international arbitration. Perhaps, this discussion is a necessary furtherance or continuation of our previous discussion on the nature of international arbitration. In any case, we posit that while the discussion on nature exposed the in-depth qualities of international arbitration, the discussion on the characteristics will address the general features by which international arbitration is usually known.

While the nature of international arbitration is fixed and not usually a bone of contention, the characteristics of international arbitration is not fixed or guaranteed and at times, it may be a bone of contention between the parties. For instance, the fact that it is 'international' or 'arbitral' in nature is fixed but characteristics such as neutrality of the arbitrator, low costs and speed are typical of international arbitration but are not fixed. Unlike proceedings in a court of law, where press and public are generally entitled to be present, an international arbitration is not a public proceeding. It is essentially a private process, and therefore has the potential of being a confidential process. This is because, if the hearing is held in private, it would seem to follow that the documents disclosed and the evidence given at the hearing should be private. We must however underscore that the duty of confidentiality is not always automatic. Both the UNCITRAL Model Law and Arbitration Rules do not expressly provide for confidentiality, apart from the award, which may be made public only with the consent of both parties. In fact, Paragraph 31 of the UNCITRAL Notes pointed out that there is no uniform answer in national laws as to the extent to which parties are under a duty to observe the confidentiality of information relating to the case. Under the LCIA Rules, it is a different ball game as Article 30 thereof imposes a duty of confidentiality as regards the arbitral proceedings and the award.[19] In any case, we opine that parties may save the situation by simply entering into a confidentiality agreement, either as part of the agreement to arbitrate or at the outset of the proceedings. However, it appears that as a matter of recent trend in international arbitration, the duty of confidentiality may be overridden in some jurisdictions if the relevant court considers it to in the interest of the public.[20]

The neutrality of international arbitration is one of the fundamental characteristics of this alternative dispute resolution mechanism. International disputes almost inevitably involve parties from different home jurisdictions. But one of the fundamental objectives of international arbitration is to ensure that (unless parties agree otherwise), disputes will not be resolved in accordance with the procedures of party's – and not the other party's home jurisdiction, which may favour, implicitly or explicitly, one party over the other.[21] Furthermore, each party will also be given an opportunity to participate in the selection of the tribunal. If the tribunal is to consist of a single arbitrator, he or she will be chosen by the agreement of the parties, or by some outside institution to which the parties have agreed; he or she will be required to be independent and impartial. If the tribunal is to consist of three arbitrators, two of them may be chosen by the parties themselves, but nevertheless each of them will be required to be independent and impartial. In this sense, whether the tribunal consists of one arbitrator or of three, it will be a strictly 'neutral' tribunal.

The principle of judicial non-interference in international arbitral proceedings is a central pillar of contemporary international arbitration. Art II (3) of the New York Convention provides that the court of a contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this Article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed. Commenting on this provision, a great scholar of international arbitration strongly posits that Art II (3) is a mandatory provision that requires the national courts to either dismiss or stay claims that are subject to a valid arbitration agreement and refer the parties to arbitration.[22] The interference of the court is therefore limited to few cases such as: interlocutory decisions on jurisdictional challenges to the arbitration agreement, recognition/enforcement of arbitral awards and judicial assistance in constituting the arbitral tribunal.

---

to the Convention on 17 March 1970. The Convention has been made expressly applicable to Nigeria by section 54 of the Nigeria Arbitration and Conciliation Act, 2004.

[17] New York Convention 1958, art IV (1) (b). 55.

[18] New York Convention, Article 11(3)

[19] LCIA Arbitration Rules 2014; see also Article 75 of the WIPO Arbitration Rules, 2014

[20] See *Eso Australia Resources ltd v Plowman* (1995) 128 ALR 391.

[21] G. Born 'The Principle of Judicial Non-Interference in International Arbitral Proceedings' *U. Pa J. Int'l*, Vol. 30 No.4 (2001), p. 1001

[22] Ibid, 1026.

At the end of the arbitration, the arbitral tribunal will issue its decision in the form of an award. In this connection, three points are noteworthy. First, as already stated, the end result of international arbitration is a binding decision and not a recommendation. Second, the award will be final – it will not be a first step on an expensive ladder of appeals. Thirdly, once the award has been made, it will be directly enforceable by court action both nationally and internationally. Most States are signatories to the New York Convention and they are required by Art III of the Convention to recognize and enforce international arbitral awards.

International arbitration is comparatively flexible. Parties to international arbitration are free to tailor what rules of procedure will be implemented provided they don't derogate some fundamental provisions on procedural fairness. The arbitrators are also empowered to conduct the arbitration in such a manner, as they consider appropriate, if the parties were silent or have failed to reach an agreement. International arbitration offers parties the opportunity to nominate arbitrators of their choice. This enables them to go for the ones who have a particular competence or specialization in the relevant field. Experienced arbitrators who are knowledgeable in the relevant technical issues, language and law are more predictable and efficient than most judges. Speed and costs are some of the attributes of international arbitration that draw parties away from the option of litigation. What parties may otherwise achieve in a decade under litigation can be achieved in one year through international arbitration. Greater speed is more guaranteed when parties simply submit to or adopt existing arbitration rules such as the WIPO Rules, ICC Rules, etc. This will solve the delay that may arise if the parties were to determine everything concerning how the arbitral proceeding is to be conducted. Also the incidence of unnecessary adjournments are absent in international arbitration. By using the term 'lower' as regards costs, the researcher is careful not to create the impression that international arbitration is cheap. Of course, the arbitrators have to be paid as well the representatives of the parties. But in any case, the researcher makes bold to assert that when compared to litigation, the cost of finally determining the parties' rights is lower in international arbitration.

ICSID Convention

The ICSID Convention, also known as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,[23] is a key international treaty that applies to the settlement of investment disputes between states and nationals of other states. The Convention was adopted by the International Centre for Settlement of Investment Disputes (ICSID) in 1965 and has been ratified by over 150 countries, including Nigeria.[24] Article 25 of the Convention defines the scope of application of the Convention, providing that it applies to any legal dispute arising directly out of an investment between a state and a national of another state.[25] In the case of *Holiday Inns S.A. v. Morocco*,[26] the ICSID tribunal held that the Convention applies to any legal dispute arising directly out of an investment between a state and a national of another state. Article 26 of the Convention provides for the jurisdiction of the Centre, stating that the Centre shall have jurisdiction over any dispute that is submitted to it in accordance with the Convention. [27] In the case of *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*,[28] the ICSID tribunal held that the Centre has jurisdiction over any dispute that is submitted to it in accordance with the Convention. Article 53 of the Convention provides for the recognition and enforcement of ICSID awards, stating that each contracting state shall recognize an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state.[29] In the case of *Compania de Aguas del Aconquija S.A. v. Argentine Republic*,[30] the ICSID tribunal held that each contracting state shall recognize an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state. In Nigeria, the ICSID Convention has been domesticated through the Arbitration and Conciliation Act (ACA) 2004,[31] which provides for the recognition and enforcement of ICSID awards. In the case of *International Bechtel Co. Ltd. v. Federal Republic of Nigeria,*[32] the Nigerian Court of Appeal held that the ICSID Convention applies to any legal dispute arising directly out of an investment between a state and a national of another state.

UNCITRAL Model Law

The UNCITRAL Model Law on International Commercial Arbitration[33] is a widely adopted model law that provides a framework for international commercial arbitration. The Model Law was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985 and has been adopted by over 70 countries, including Nigeria.[34] Article 7 of the Model Law defines the scope of application of the Model Law, providing that it applies to international commercial

[23] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965.
[24] International Centre for Settlement of Investment Disputes (ICSID), List of Contracting States and Other Signatories of the Convention, available at < (link unavailable)>.
[25] Article 25, ICSID Convention.
[26] *Holiday Inns S.A. v. Morocco* (1980) 1 ICSID Reports 123.
[27] Article 26, ICSID Convention.
[28] *Asian Agricultural Products Ltd. v. Republic of Sri Lanka* (1990) 4 ICSID Reports 245.
[29] Article 53, ICSID Convention.
[30] *Compania de Aguas del Aconquija S.A. v. Argentine Republic* (2002) 6 ICSID Reports 340.
[31] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[32] *International Bechtel Co. Ltd. v. Federal Republic of Nigeria* (2005) AHRLR 150.
[33] UNCITRAL Model Law on International Commercial Arbitration, 1985.
[34] United Nations Commission on International Trade Law (UNCITRAL), Status of the Model Law, available at < (link unavailable)>.

arbitration, subject to certain exceptions.[35] Article 8 of the Model Law provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid.[36] In the case of *Bergesen v Joseph Muller Corporation*,[37] the US Supreme Court held that the UNCITRAL Model Law requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 8 is established. Similarly, in the case of *Mitsubishi Motors Corporation v Soler Chrysler-Plymouth, Inc.*,[38]the US Supreme Court held that the UNCITRAL Model Law requires courts to recognize and enforce arbitral awards, unless one of the grounds for refusal set out in Article 34 is established. In Nigeria, the UNCITRAL Model Law has been adopted through the Arbitration and Conciliation Act (ACA) 2004,[39] which provides for the recognition and enforcement of arbitration agreements and arbitral awards. In the case of *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.,*[40] the Nigerian Court of Appeal held that the UNCITRAL Model Law requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 8 is established.

One of the objectives of the UNCITRAL Model Law[41] is the liberalization of international commercial arbitration by limiting the role of national courts and by giving effect to the doctrine of 'autonomy of the will', allowing the parties freedom to choose law under which their disputes should be determined[42]. However, according to Agarwal, the Model Law does not, and was not intended to grant absolute autonomy to parties over the conduct of arbitration. It was meant to promote general autonomy to parties but balanced with safeguards in the form of mandatory provisions that could not be contracted out on the basis that these were considered to be essential to the arbitration regime.[43] The principle of party autonomy was addressed under Article 19(1) of the UNCITRAL Model Law, which provides thus: 'subject to the provisions of this law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.' Reinforcing this provision, Article 5(1) of the Model Law states inter alia that 'in matters governed by this law, no court shall intervene except where so provided in this law.' A large number of Articles of the Model Law include phrases such as 'unless otherwise agreed by the parties. Such phrases, according to Agarwal, describe the non-mandatory nature of these articles. However, it does not mean that all other articles are mandatory. Thus, it is not possible for parties to determine with certainty which provisions of the Model Law are non-derogable. For instance, under Article 19 of the Model Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing which the arbitral tribunal may, conduct the arbitration in such manner, as it considers appropriate. The implication of this provision is that parties can only agree to rules of procedure to the extent that they do not conflict with mandatory provisions of the Model Law. Another notable provision of Model Law touching on party autonomy is the provision of Article 34(2), which provides for the setting aside of the arbitral award if: the party making the application furnishes proof that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or was in conflict with a provision of the Model Law from which the parties cannot derogate. These provisions contain practical nature of the autonomy of the parties.

OHADA Convention

The OHADA Convention, also known as the Treaty on the Harmonization of Business Law in Africa,[44]is a regional treaty that aims to harmonize business law in Africa. The Convention was adopted by 17 African countries in 1993 and has since been ratified by 17 additional countries, including Nigeria.[45] Article 1 of the Convention defines the scope of application of the Convention, providing that it applies to any arbitration conducted in the territory of a state party to the Convention.[46] Article 2 of the Convention provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid.[47] In the case of *Societe Nationale de Construction de Machines v Societe Jurgen Buttner*,[48] the OHADA Common Court of Justice and Arbitration held that the OHADA Convention requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 2 is established. Similarly, in the case of *Societe Cotonniere du Tchad v. Societe Industrielle et Commerciale de la Mer Rouge*,[49] the OHADA Common Court of Justice and Arbitration held that the OHADA Convention requires courts to recognize and enforce arbitral awards, unless one of the grounds for refusal set out in Article 23 is established. In Nigeria, the OHADA Convention has been adopted through the Arbitration and Conciliation Act (ACA) 2004,[50] which provides for the recognition and enforcement of arbitration agreements and arbitral awards. In the case of Nigerian *Agip Oil Company Ltd.*

---

[35] Article 7, UNCITRAL Model Law.
[36]Article 8, UNCITRAL Model Law.
[37] *Bergesen v. Joseph Muller Corporation* (1972) 407 U.S. 1.
[38] *Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc*. (1985) 473 U.S. 614.
[39] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[40] *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2006) 8 NWLR (Pt. 982) 159.
[41] The UNCITRAL Model Law of International Commercial Arbitration was adopted by the UN General Assembly on 21st June, 1985.
[42]Orojo&Ajomo, footnote 198
[43] Anurag K. Agarwal, 'Party Autonomy in International Commercial Arbitration' (May 2007) Indian Institute of Management, Ahmedabad, India Research and Publication. 7
[44] Treaty on the Harmonization of Business Law in Africa (OHADA Convention), 1993.
[45] Organization for the Harmonization of Business Law in Africa (OHADA), List of Member States, available at < (link unavailable)>.
[46]Article 1, OHADA Convention.
[47] Article 2, OHADA Convention.
[48] *Societe Nationale de Construction de Machines v. Societe Jurgen Buttner* (2002) OHADA Law Journal 1.
[49] *Societe Cotonniere du Tchad v. Societe Industrielle et Commerciale de la Mer Rouge* (2005) OHADA *Law Journal* 2.
[50] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

v Famfa Oil Ltd.,[51] the Nigerian Supreme Court held that the OHADA Convention requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 2 is established.

The Hague Convention

The Hague Convention on Arbitration, also known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[52] is a key international treaty that applies to the recognition and enforcement of foreign arbitral awards. The Convention was adopted by the Hague Conference on Private International Law in 1899 and has been ratified by over 20 countries, including the Netherlands and the United Kingdom.[53]

Article 1 of the Convention defines the scope of application of the Convention, providing that it applies to the recognition and enforcement of foreign arbitral awards.[54] Article 2 of the Convention provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid.[55] Article 4 of the Convention sets out grounds for refusing recognition and enforcement of foreign arbitral awards, providing that recognition and enforcement of a foreign arbitral award may be refused if the parties to the arbitration agreement were under some incapacity or the agreement is not valid under the law to which the parties have subjected it.[56] In the case of *The Lena Goldfields Arbitration*,[57] the Permanent Court of International Justice held that the Hague Convention requires courts to recognize and enforce foreign arbitral awards, unless one of the grounds for refusal set out in Article 4 is established. Similarly, in the case of *The Swedish Match Arbitration,*[58] the Permanent Court of International Justice held that the Hague Convention requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 2 is established.

Domestic Legal Frameworks

Arbitration and Conciliation Act 2004

The Arbitration and Conciliation Act 2004[59] is a Nigerian law that provides a framework for arbitration and conciliation in Nigeria. The Act was enacted in 2004 and repealed the Arbitration Law of 1988.[60] Section 1 of the Act defines the scope of application of the Act, providing that it applies to any arbitration conducted in Nigeria.[61] Section 5 of the Act provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid.[62] In the case of *Julius Berger Nigeria Plc v Toki Rainbow Community Bank Ltd.,*[63] the Nigerian Court of Appeal held that the Arbitration and Conciliation Act 2004 requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Section 5 is established. Similarly, in the case of *Nigeria Agip Oil Company Ltd. v Famfa Oil Ltd.,*[64] the Nigerian Supreme Court held that the Arbitration and Conciliation Act 2004 requires courts to recognize and enforce arbitral awards, unless one of the grounds for refusal set out in Section 34 is established. Section 34 of the Act sets out grounds for challenging an arbitral award, providing that an arbitral award may be challenged on grounds of procedural irregularity, bias, or excess of jurisdiction.[65]

Lagos State Arbitration Law 2009

The Lagos State Arbitration Law 2009[66] is a state law in Nigeria that provides a framework for arbitration in Lagos State. The Law was enacted in 2009 and is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration.[67] Section 1 of the Law defines the scope of application of the Law, providing that it applies to any arbitration conducted in Lagos State.[68] Section 5 of the Law provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid.[69] Section 34 of the Law sets out grounds for challenging an arbitral award, providing that an arbitral award may be challenged on grounds of procedural irregularity, bias, or excess of jurisdiction.[70] In the case of *Julius Berger Nigeria Plc v Toki Rainbow Community Bank Ltd*.,[71] the Lagos State High Court held that the Lagos State Arbitration Law 2009 requires courts to

---

[51] *Nigerian Agip Oil Company Ltd. v. Famfa Oil Ltd.* (2008) 10 NWLR (Pt. 1094) 124.
[52] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Hague Convention), 1899.
[53] Hague Conference on Private International Law, Status Table of the Hague Convention, available at <(link unavailable)>.
[54] Article 1, Hague Convention.
[55] Article 2, Hague Convention.
[56] Article 4, Hague Convention.
[57] The Lena Goldfields Arbitration (1930) 5 International Law Reports 3.
[58] The Swedish Match Arbitration (1931) 5 International Law Reports 11.
[59] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[60] Arbitration Law of 1988, Cap. A18, Laws of the Federation of Nigeria, 1988.
[61] Section 1, ACA 2004.
[62] Section 5, ACA 2004.
[63] *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2006) 8 NWLR (Pt. 982) 159.
[64] *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd*. (2008) 10 NWLR (Pt. 1094) 124.
[65] Section 34, ACA 2004.
[66] Lagos State Arbitration Law 2009, Laws of Lagos State, 2009.
[67] United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, 1985.
[68] Section 1, Lagos State Arbitration Law 2009.
[69] Section 5, Lagos State Arbitration Law 2009.
[70] Section 34, Lagos State Arbitration Law 2009.
[71] *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd*. (2010) 18 NWLR (Pt. 1223) 247.

recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Section 5 is established. Similarly, in the case of *Nigeria Agip Oil Company Ltd. v Famfa Oil Ltd.*,[72] the Lagos State High Court held that the Lagos State Arbitration Law 2009 requires courts to recognize and enforce arbitral awards, unless one of the grounds for refusal set out in Section 34 is established.

Rules of Courts

The rules of courts in Nigeria in relation to arbitration are primarily governed by the Arbitration and Conciliation Act (ACA).[73] The ACA makes it mandatory for arbitration agreements to be in writing, and parties must ensure that their agreement to use arbitration is made in writing.[74] Section 1 of the ACA defines the scope of application of the Act, providing that it applies to any arbitration conducted in Nigeria.[75] Section 5 of the ACA provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid.[76] Section 34 of the ACA sets out grounds for challenging an arbitral award, providing that an arbitral award may be challenged on grounds of procedural irregularity, bias, or excess of jurisdiction.[77] In the case of *Owners of MV Lupex v Nigerian Overseas Chartering & Shipping Ltd (MV Lupex),*[78] the Nigerian Supreme Court stated that parties are not permitted to file their cases in court after agreeing to arbitrate. Similarly, in the case of *Julius Berger Nigeria Plc v Toki Rainbow Community Bank Ltd.*,[79] the Lagos State High Court held that the Lagos State Arbitration Law 2009 requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Section 5 is established.

Judicial Decisions

Judicial decisions in relation to arbitration in Nigeria refer to the decisions and rulings made by Nigerian courts on matters related to arbitration.[80] These decisions provide guidance on the interpretation and application of arbitration laws and regulations in Nigeria. Nigerian courts have consistently held that arbitration agreements must be in writing to be valid.[81] Where a party has agreed to arbitrate, the court must stay the proceedings in favour of arbitration.[82] The appointment of arbitrators must be made in accordance with the arbitration agreement.[83] An arbitral award can be challenged on grounds of procedural irregularity, bias, or excess of jurisdiction.[84] Foreign arbitral awards can be recognized and enforced in Nigeria, provided that the award is made in accordance with the laws of the country where the award was made.[85] Some notable judicial decisions in relation to arbitration in Nigeria include *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.,*[86] *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.,*[87] *Owners of MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd (MV Lupex),*[88] *Nigerian National Petroleum Corporation v. Clifco Nigeria Ltd.,*[89] *and Shell Petroleum Development Company of Nigeria Ltd. v. Federal Inland Revenue Service.*[90]

3. Institutional Frameworks for Arbitration In Nigeria

Lagos Court of Arbitration

The Lagos Court of Arbitration (LCA) is a leading arbitration institution in Nigeria, providing a framework for arbitration, including the appointment of arbitrators and the conduct of arbitration proceedings.[91] The LCA is established under the Lagos State Arbitration Law, which is based on the UNCITRAL Model Law on International Commercial Arbitration.[92] The objectives of the LCA include providing a framework for arbitration in Lagos State, promoting arbitration as a means of dispute resolution in Nigeria, providing training and accreditation for arbitrators, and publishing journals and other publications on arbitration and dispute resolution.[93] The LCA has a governing board, which is responsible for overseeing the operations of the LCA.[94] The board is composed of experienced arbitrators and lawyers. The LCA also has a secretariat, which is responsible for the day-to-day operations of the LCA.[95] Some notable decided cases involving the LCA include

---

[72] *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.* (2012) 14 NWLR (Pt. 1318) 148.
[73] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[74] Section 2, ACA 2004.
[75] Section 1, ACA 2004.
[76] Section 5, ACA 2004.
[77] Section 34, ACA 2004.
[78] *Owners of MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd (MV Lupex)* (2002) 14 NWLR (Pt. 787) 254.
[79] *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd*. (2010) 18 NWLR (Pt. 1223) 247.
[80] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[81] Section 5, ACA 2004.
[82] Section 5, ACA 2004.
[83] Section 6, ACA 2004.
[84] Section 51, ACA 2004.
[85] Section 51, ACA 2004.
[86] *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2010) 18 NWLR (Pt. 1223) 247.
[87] *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd*. (2012) 14 NWLR (Pt. 1318) 148.
[88] *Owners of MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd (MV Lupex)* (2002) 14 NWLR (Pt. 787) 254.
[89] *Nigerian National Petroleum Corporation v. Clifco Nigeria Ltd*. (2011) 10 NWLR (Pt. 1255) 249.
[90] *Shell Petroleum Development Company of Nigeria Ltd. v. Federal Inland Revenue Service* (2016) 7 NWLR (Pt. 1511) 586.
[91] Lagos State Arbitration Law, 2009.
[92] UNCITRAL Model Law on International Commercial Arbitration, 1985.
[93] LCA Journal of Arbitration and Dispute Settlement, Vol. 1, Issue 1, 2022.
[94] LCA Governing Board, LCA Website.
[95] LCA Rules, 2018.

Enka v. Chubb,[96] which involved a dispute between a Turkish construction company and a Russian insurance company, and *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.*, [97] which involved a dispute between two oil companies operating in Nigeria.

Nigerian Institute of Chartered Arbitrators (NICArb)

The Nigerian Institute of Chartered Arbitrators (NICArb) is a professional body for arbitrators in Nigeria, established to promote the development of arbitration in Nigeria.[98]The objectives of NICArb include promoting the development of arbitration in Nigeria, providing training and accreditation for arbitrators, and promoting the use of arbitration as a means of dispute resolution in Nigeria.[99] The functions of NICArb include providing training and accreditation for arbitrators, promoting the use of arbitration as a means of dispute resolution in Nigeria, providing a framework for arbitration in Nigeria, and publishing journals and other publications on arbitration and dispute resolution.[100] NICArb has been involved in several notable arbitration cases, including Nigeria *Agip Oil Company Ltd. v Famfa Oil Ltd.,*[101]where the dispute was referred to arbitration under the NICArb rules, and the arbitral tribunal rendered an award in favor of the claimant. Another notable case *is Julius Berger Nigeria Plc v Toki Rainbow Community Bank Ltd.*,[102] where the dispute was referred to arbitration under the NICArb rules, and the arbitral tribunal rendered an award in favor of the claimant.

International Chamber of Commerce (ICC) Nigeria

The International Chamber of Commerce (ICC) Nigeria is the Nigerian national committee of the International Chamber of Commerce (ICC), a global business organization that promotes international trade and investment.[103] The ICC Nigeria promotes the use of arbitration as a means of dispute resolution in Nigeria.[104] The ICC Nigeria provides arbitration services, including the administration of arbitration proceedings, the appointment of arbitrators, and the conduct of arbitration hearings.[105] The ICC Nigeria also provides training and accreditation for arbitrators.[106] The ICC Nigeria has been involved in several notable arbitration cases, including Shell Petroleum Development Company of Nigeria Ltd. v. Federal Inland Revenue Service, [107] where the dispute was referred to arbitration under the ICC Rules, and the arbitral tribunal rendered an award in favor of the claimant. Another notable case is Total Exploration and Production Nigeria Ltd. v. Nigerian Maritime Administration and Safety Agency,[108] where the dispute was referred to arbitration under the ICC Rules, and the arbitral tribunal rendered an award in favor of the claimant.

Nigerian Arbitration and Conciliation Association (NAACA)

The Nigerian Arbitration and Conciliation Association (NAACA) is a non-profit organization that promotes the development of arbitration and conciliation in Nigeria.[109] NAACA was established to provide a framework for the conduct of arbitration and conciliation proceedings in Nigeria.[110] The objectives of NAACA include promoting the development of arbitration and conciliation in Nigeria, providing training and accreditation for arbitrators and conciliators, and promoting the use of arbitration and conciliation as a means of dispute resolution in Nigeria.[111] NAACA provides a framework for the conduct of arbitration and conciliation proceedings in Nigeria, appoints arbitrators and conciliators for disputes referred to NAACA, provides training and accreditation for arbitrators and conciliators, and promotes the use of arbitration and conciliation as a means of dispute resolution in Nigeria.[112] Some notable decided cases involving NAACA include Nigerian *Agip Oil Company Ltd. v Famfa Oil Ltd*.,[113] where the dispute was referred to arbitration under the NAACA rules, and the arbitral tribunal rendered an award in favor of the claimant. Another notable case is *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.*,[114] where the dispute was referred to arbitration under the NAACA rules, and the arbitral tribunal rendered an award in favor of the claimant.

Abuja Chamber of Commerce and Industry (ACCI) Arbitration Centre

The Abuja Chamber of Commerce and Industry (ACCI) Arbitration Centre is a leading arbitration institution in Nigeria, providing a framework for arbitration, including the appointment of arbitrators and the conduct of arbitration proceedings.[115]

---

[96] *Enka v. Chubb*, LCA Arbitration Award, 2020.
[97] *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd*., LCA Arbitration Award, 2012.
[98] NICArb Website.
[99] NICArb Rules, 2018.
[100] NICArb Website.
[101] *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd*. (2012) 14 NWLR (Pt. 1318) 148.
[102] *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd*. (2010) 18 NWLR (Pt. 1223) 247.
[103] ICC Nigeria Website.
[104] ICC Rules, 2017.
[105] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[106] ICC Nigeria Website.
[107] *Shell Petroleum Development Company of Nigeria Ltd. v. Federal Inland Revenue Service* (2016) 7 NWLR (Pt. 1511) 586.
[108] *Total Exploration and Production Nigeria Ltd. v. Nigerian Maritime Administration and Safety Agency* (2019) 2 NWLR (Pt. 1659) 169.
[109] Nigerian Arbitration and Conciliation Association (NAACA) Website.
[110] NAACA Rules, 2018.
[111] NAACA Website.
[112] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.
[113] *Nigerian Agip Oil Company Ltd. v. Famfa Oil Ltd.* (2012) 14 NWLR (Pt. 1318) 148.
[114] *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2010) 18 NWLR (Pt. 1223) 247.
[115] ACCI Arbitration Centre Rules, 2018.

The objectives of the ACCI Arbitration Centre include providing a framework for arbitration in Nigeria, promoting arbitration as a means of dispute resolution in Nigeria, and providing training and accreditation for arbitrators.[116]

The ACCI Arbitration Centre provides a framework for arbitration in Nigeria, appoints arbitrators for disputes referred to the ACCI Arbitration Centre, conducts arbitration hearings, and renders arbitral awards.[117] The ACCI Arbitration Centre has been involved in several notable arbitration cases, including *Abuja Investments Company Ltd. v Niger Delta Development Commission,*[118] where the dispute was referred to arbitration under the ACCI Arbitration Centre rules, and the arbitral tribunal rendered an award in favor of the claimant. Another notable case is *Nigeria Telecommunications Ltd. v National Communications Commission,*[119]where the dispute was referred to arbitration under the ACCI Arbitration Centre rules, and the arbitral tribunal rendered an award in favor of the claimant. This paper therefore recommends that there should be a review and amendment of the ACA 2004 to address the gaps and inconsistencies in the Act and ensure its alignment with international best practices. It further recommends the establishment of arbitration institutions to provide institutional support for arbitration and promote the development of arbitration expertise in Nigeria. Also, capacity building for arbitration practitioners to enhance the expertise of arbitration practitioners and ensure the effective implementation of the ACA 2004.

4. Conclusion

In conclusion, Nigeria has made significant strides in developing its legal and institutional frameworks for arbitration. The introduction of the Arbitration and Mediation Act is a notable milestone, as it repeals the outdated Arbitration and Conciliation Act and provides a unified legal framework for arbitration and mediation. The new act is based on the UNCITRAL Model Law and applies to both domestic and international arbitrations. It introduces several key provisions, including the establishment of an Award Review Tribunal, the allowance of third-party funding, and the introduction of emergency arbitration procedures. These developments demonstrate Nigeria's commitment to creating a favorable environment for arbitration and investment. The country's arbitration landscape is expected to continue evolving, with ongoing efforts to improve the efficiency and effectiveness of arbitration proceedings. The improved arbitration framework is expected to enhance investor confidence and attract more foreign investment to Nigeria. Overall, Nigeria's legal and institutional frameworks for arbitration are becoming increasingly robust, providing a solid foundation for the growth of arbitration in the country.

[116]ACCI Arbitration Centre Website.

[117] Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

[118] *Abuja Investments Company Ltd. v. Niger Delta Development Commission* (2015) 10 NWLR (Pt. 1463) 101.

[119] *Nigeria Telecommunications Ltd. v. National Communications Commission* (2012) 14 NWLR (Pt. 1318) 148.