



NIGERIA'S ARBITRATION AND MEDIATION ACT 2023: REFORM, CONTINUITY, AND THE QUEST FOR SDG 16

David Tarh-Akong Eyongndi ¹, Garvin Ufuoma Oyibodoro ², Anselm Uchechukwu Abonyi ³, Agbaovwe Emmanuel Oturuhoyi ⁴, and Olasupo Bada ⁵

1. LL.B, (Hons) UNICAL, BL (NLS, Kano) LL.M, Ph.D (Unibadan) Associate Professor, College of Law, Bowen University, Nigeria. Email: eyongndi18@gmail.com or david.eyongndi@bowen.edu.ng
2. LL.B, LL.M, BL, Ph.D, Lecturer, Department of Private Law, Delta State University, Nigeria. Email: garvinesquire@gmail.com.
3. LL.B, LL.M, Ph.D, BL, Department of Commercial and Property Law, Faculty of Law, Chukwuemeka Emeka Odumegwu Ojukwu University, Nigeria. Email: barristeruchechukwu2002@gmail.com
4. LL.B, LL.M, Ph.D, BL, Lecturer, Department of Business Law, Faculty of Law, Lagos State University.
5. B.SC. (Hons), LL.B, BL, LL.M, PhD Candidate at the School of Law and Security Studies, Babcock University, Ilishan, Ogun State, Nigeria olasupobada@gmail.com

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Abstract:

Given the rise in disputes arising from domestic and trans-border commercial and contractual agreements and the inherent challenges associated with litigation in resolving them, in 1988, Nigeria enacted the Arbitration and Conciliation Act (ACA 1988) styled after the United Nations Committee on International Trade Law (UNCITRAL Model Law). After several years, many developments in the field of Alternative Disputes Resolution (ADR) have rendered the ACA, 1988 incapable of matching-up; therefore, resulting in clamour for its overhaul. The National Assembly in response, enacted the Arbitration and Mediation Act 2023 (AMA 2023). This paper adopts doctrinal method in interrogating whether the AMA 2023 in comparison to the erstwhile ACA 1988, is a revolutionary legislation or a mere revision regarding the law and practice of arbitration. The article, on comparative basis, gauged the innovations introduced by the AMA 2023 against the laws in jurisdictions like Ghana, South Africa, Kenya, Hong Kong and Singapore aimed at gleaned reciprocal lessons for Nigeria. The scope of this inquiry is limited to the arbitration provisions of the AMA 2023. The article observed that, ADR is an enabler of the Sustainable Development Goal 16 (SDG16) centred on peace, justice, strong institution which the erstwhile ACA 1988 could not optimally achieve hence, it inquires whether the AMA 2023 promotes SDG 16. The article found that a survey of the AMA 2023 in comparison with the ACA 1988, it contains novel provisions such as provision of immunity for arbitrator, consolidation and joinder of parties, emergency arbitrator, enlarged limitation period, gender neutral language, etc., making it a progressive or revolutionary legislative reform. Also, the article argues that AMA 2023 is a catalyst for the actualisation of SDG 16 in Nigeria through purposive adoption and application. The article also found that, in comparison to Ghana, Kenya, Hong Kong, Singapore and South Africa, the AMA 2023 fails to cater adequately for third-party funding (TPF), has no provision on customary law arbitration (CLA) and creates too much procedural fragmentation. It is therefore recommended that the AMA 2023 be revised to mainstream customary law arbitration, reduce procedural fragmentation and provide guidelines for the regulation of TPF in compliance with global developments thereby making the AMA 2023 attractive for selection as *lex arbitri*.

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1. INTRODUCTION

As industrial and commercial activities increased in Nigeria from the 1970s through the 1980s, there was a sharp rise in domestic and trans-border contractual engagements, resulting in the creation of domestic and international contracts.¹ As it is expected, considering the varied interests involved in these contracts, disputes result therefrom.² The traditional forum for settling these commercial/contractual disputes is through litigation.³ Due to the inherent challenges associated with litigation such as undue formalities/rigidity, unnecessary adjournments, relative expensive nature of the proceedings, inability to foster relationships, etc., litigation soon proved inefficient and unsuitable for the settlement of commercial/contractual disputes where relationship fostering is important.⁴ To address these aforementioned challenges of litigation, creating an alternative means of settling domestic/trans-border commercial/contractual disputes became imminent and expedient. Thus, in 1988, Nigeria enacted the Arbitration and Conciliation Act, 1988, patterned after the United Nations Commission on International Trade Law (i.e. the UNCITRAL Model Law), wherein Alternative Dispute Resolution (ADR) mechanisms, such as arbitration, mediation, negotiation, etc., were mainstreamed into Nigeria's dispute resolution system as complimentary to orthodox litigation.⁵

¹ O Orojo and MA Agomo, *Law and Practice of Arbitration and Conciliation in Nigeria*, (Lagos: Mbeyi & Associates Limited, 1999) 4.

² E Akpata, *The Nigerian Arbitration Law in Focus* (Lagos: West African Book Publishers Ltd., 1997) 3.

³ SO Oweazim, "The Status and Impact of a *Functus Officio* Arbitrator in Settlement of Disputes" (2017) 4(1) *NJP&IL* 171.

⁴ EO Ezike, "Developing a Statutory Framework for ADR in Nigeria" (2011-2011) 10 *TNJR*, 248-266.

⁵ GC Nwakoby, "The Courts and Arbitral Process in Nigeria", (2017) 4(1) *Unizik LJ*, 31

Thus, the ACA 1988 became the substantive legal framework on ADR practice and management in Nigeria.⁶ Owing to several developments in the field of ADR, especially arbitration, over the years, the provisions of the ACA 1988 were adjudged obsolete and inadequate to keep pace with evolving trends in ADR practice.⁷ This led to clamouring for its overhaul in order to bring Nigeria's ADR regulatory framework up-to-speed with global developments and reposition Nigeria in the comity of the arbitral world. In response to this yearning, the Nigerian National Assembly, after wide consultations with stakeholders in ADR, enacted the Arbitration and Mediation Act 2023, which has become the current ADR federal legislation in Nigeria.⁸ Undisputedly, the Sustainable Development Goal 16 (SDG16) which focuses on peace, justice, strong institution has a nexus with ADR and its attainment promotes access to justice, builds strong institutions and harmonious business co-existence. The question is: when the provisions of the new law are holistically examined, to what extent does the AMA 2023 in comparison to the erstwhile ACA1988 promotes the attainment of SDG 16?

The aim of the paper is to review the arbitration provisions of the AMA 2023 to ascertain whether it is a revolutionary legislative reform or a mere revision based on developments in the ADR world. The paper probes whether the AMA 2023 promotes the actualisation of SDG16 in Nigeria and role of stakeholders in the operation and implementation of the law. The paper adopts doctrinal method relying on primary sources such as the AMA 2023, ACA 1988, Ghana Arbitration Act 2010, caselaw and secondary sources like the UNCITRAL Model Law, journal articles, online materials, and textbooks. The data were subjected to content and jurisprudential analysis. Doctrinal legal research method centres on

⁶ OM Abimbola, "Prospects in Arbitration: An Overview" *Diverse Issues In Nigerian Law, Essays in Honour of Hon. Justice Okanola Akintunde Boade*, IA Olatunbosun, and L Luqman., (Eds.) (Ibadan: Zenith Publishers, 2013) 27.

⁷ AE Akeredolu, and DT Eyongndi, "Mediation under the Nigerian Arbitration and Mediation Act 2023: Any Gains for Mediation of Family Disputes at the Ondo State Family High Court" in I Eyo, Ed, *Treatises ion Adjudication, Law and Contemporary Issues: A Book in Honour of Hon. Justice Ita Mbaba* (Uyo: Robertminder International Ltd., 2025) 33.

⁸ The Arbitration and Mediation Act, 2023 was signed into law on the on May 26, 2023 by President Mohammadu Buhari.

library-based analysis of legal texts (statutes, cases, commentaries) to identify, interpret, and apply rules, often using hermeneutic and logical methods for "black letter law."⁹ Majeed, Hilal, and Khan¹⁰ have opined that doctrinal method of legal research is used to explain legal principles and doctrines aimed at discovering new facts by examining the legal material.¹¹ However, it recent times, it is increasingly being blended with non-doctrinal approaches (sociological, economic, empirical) for a richer understanding, adapting methods to the research question for descriptive, normative, or explanatory goals.¹²

Doctrinal research is concerned with analysis of the legal doctrine and how it has been developed and applied.¹³ This method was selected because of its suitability in aiding the exegesis of literature relevant to the inquiry in Nigeria in comparison with what is obtainable in jurisdictions like Ghana, South Africa, Kenya, Singapore and Hong-Kong thereby drawing mutually beneficial lessons.

This paper is divided into seven sections. Section one contains the introduction. Section two examines the layout of the AMA, 2023 and the nuances of arbitration. Section three examines the provisions of the AMA 2023 vis-à-vis the ACA 1988 aimed at answering the question: is the AMA 2023 new wine in old skin or not? Section four is a reflection on further improvement of the AMA 2023. Section five examines how the AMA 2023 promotes the actualisation of SDG 16. Section six contains the conclusion and seven contains recommendations.

⁹ T Hutchinson and N Duncan, (2012). Defining and describing what we do: Doctrinal Legal Research. *Deakin L. Rev.*, 17, 83

¹⁰ N Majeed, A Hilal, and A Nawaz Khan "Doctrinal Research in Law: Meaning, Scope and Methodology" (2023) 12(4), *BBE* 559-563.

¹¹ VM Gawas, "Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development" (2017) 3(5) *IJL*, 128-130.

¹² K Mohammed "Combining Methods in Legal Research" (2016) 11(21) *The Social sciences*, 5191-5198.

¹³ R Singh, *Legal Research Methodology*, 1st Edn, (India: LexisNexis, 2013) 3.

2. EXPLICATING THE NUANCES OF ARBITRATION AS AN AMICABLE DISPUTE RESOLUTION MECHANISM

Before adumbrating on the nuances of arbitration, it is apposite to make a preliminary observation. In the categorisation of disputes resolution mechanisms, it is a tripod divided into litigation, ADR and arbitration.¹⁴ Although, formerly, arbitration was subsumed in ADR at its miniature stage, but today, arbitration has evolved to the extent that it has acquired an independent status and stature which has made it distinct from ADR.¹⁵

Regarding the meaning of ADR, Akeredolu and Eyongndi¹⁶ have opined that ADR is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to full-scale court proceedings. The term could refer to anything from facilitative settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini-trials that look and feel very much like a courtroom process.¹⁷ Arbitration is the settlement of a dispute between two or more parties in a judicial manner by a neutral third party appointed by them known as arbitrator or arbitral tribunal whose decision is final and binding upon the parties.¹⁸

Arbitration entails the voluntary submission of a dispute by the disputants pursuant to an agreement reached either before or after the occurrence of the dispute wherein a neutral third party or parties (i.e. an arbitrator or arbitral tribunal) sits, the parties themselves or through their counsel present their case in a judicial manner whereof the arbitrator or arbitral

¹⁴ AI Chukwuemerie, “An Overview of Arbitration and the Alternative Dispute Resolution Methods (ADRs)” *A Journal of the Civil Litigation Committee of the Nigerian Bar Association*, (2010) 102.

¹⁵ *Ibid.* 109.

¹⁶ AE Akeredolu and DT Eyongndi, “A Review of the Mediation Provisions of the Nigerian Arbitration and Mediation Bill 2022” in AE Akeredolu, AA Olawoyin, and T Aderemi, Eds. *From Ivory Tower to Hallowed Halls of Justice: Reflections and Essays in Honour of Hon. Justice (Prof.) MA Owoade, JCA* (Lagos: LawLexis International, 2022) 213.

¹⁷ *Ibid.*

¹⁸ DT Eyongndi, “Espousing the Conundrum of Finality and Bindingness of Arbitral Awards” (2018) 2(2) *UniMaid Journal of Private and Property Law*, 151-152.

tribunal renders a final and binding decision known as an award in resolution of the dispute. Thus, by its characteristic nature, ordinarily, arbitration is voluntary and consensual hence, Eyongndi and Imosemi¹⁹ have espoused on the impropriety of mandatory arbitration whether in commercial or employment contracts.

The basis upon which arbitration takes place is the existence of a written arbitration agreement voluntarily entered into by the parties either before or after the disputes have arisen. The award of the arbitrator or tribunal is final and binding on the disputants and their privies.²⁰ The arbitration agreement contains the terms and conditions of the arbitration. An arbitration agreement is separate and distinct from the main contract pursuant to which it was made hence, the nullity of the main contract or a part thereof, does not affect the validity of the arbitration agreement.²¹ For an arbitration clause to be valid, it is required to be in writing either in black and white or electronically. Arbitration can be either institutional or *ad hoc*.²² Where it is hosted by an arbitral institution, it is the former, but where it is not, it is *ad hoc*. The finality of an arbitral award does not mean it cannot be set aside as there exist several grounds for which an award could be set aside by a court of competent jurisdiction.

3. PERISCOPING THE INNOVATIVE PROVISIONS OF THE AMA, 2023

The point has been underscored that the AMA 2023 was enacted due to perceived inadequacies of the ACA 1988. This section of the paper, while giving an overview of the AMA 2023 concentrates on Part I of the AMA which deals with arbitration by highlighting what is considered as innovative provisions in comparison with the erstwhile ACA 1988. The

¹⁹ DT Eyongndi, and A Imosemi, “The Proprietary of Mandatory Arbitration in Nigeria vis-à-vis the Doctrine of Voluntariness: The Imperativeness of Charting a new Course” (2023)11(1) *IJPL* 52-74.

²⁰ *K.S.U.D.B. v Fanz Construction Co. Ltd.* [1990] 4 NWLR (Pt. 142) 1..

²¹ DT Eyongndi & A Imosemi, S “The Proprietary of Mandatory Arbitration in Nigeria vis-à-vis the Doctrine of Voluntariness: The Imperativeness of Charting a new Course” (2023)11(1) *International Journal of private Law* 52-74.

²² Eyongndi (note 24) 158.

Nigerian Arbitration and Mediation Act (AMA 2023) was signed into law by President Muhammadu Buhari on 26th May 2023. The Act repealed the Arbitration and Conciliation Act 1988 and is divided into two parts. While Part I of the Act deals with arbitration, Part II deals with mediation (and settlement agreements resulting from the same). Many of the changes in the AMA, 2023 reflect the UNCITRAL Model Laws (the “Model Law”) in respect of arbitration and mediation.²³

The Act comprises of ninety-two sections, with sixty-five on arbitration and twenty-six on mediation. Annexed to the Act is the Arbitration Rules and a Schedule. It is instructive to note that the AMA 2023 is the first legislative attempt to establish a legal framework for mediation in Nigeria. Under the erstwhile ACA 1988, it was conciliation that was catered for while mediation was regulated by the Rules of the institution under which it was being undertaken or by the agreement of the parties moderated by the mediator. It should be stated that the analysis undertaken in this section of the paper is on comparative basis comparing the provisions of Nigeria’s AMA 2023 with similar legislation in Ghana, Kenya, South Africa, Hong-Kong and Singapore.

The justification for selecting these jurisdictions as comparative compass centres on the fact that firstly, they are commonwealth jurisdictions with similar legal history and tradition like Nigeria. Also, Ghana like Nigeria, are both in the West Africa sub-region sharing economic affinity. Furthermore, Ghana’s arbitration legal framework which was reviewed in 2010 greatly influenced Nigeria and both jurisdictions are developing economies. For South Africa and Kenya, while Nigeria is considered the fastest growing economy in the West Africa sub-region, South Africa and Kenya are leading in the Southern and Eastern Africa respectively and have strong political and socio-economic ties with Nigeria. Singapore and Hong Kong are selected because, apart from being commonwealth jurisdictions like Nigeria, in terms of economic growth, they shared the same antecedent with Nigeria but have transformed from being growing economies to developed economies with well-regulated arbitration practice, positioned as global arbitration hub hence, Nigeria can learn

²³ AE Akeredolu, and DT Eyongndi (note 16) 219.

from their experiences. The comparative variables include legislative density, mainstreaming of technology in arbitration, court support of arbitration, regulatory support, funding accessibility, and Customary Law Arbitration (CLA), protection of arbitration/arbitrators from external influences. Some of the innovations introduced by the AMA 2023 regarding the practice of arbitration are hereunder discussed.

3.1 Introduction of Objectives

The AMA 2023, unlike the ACA 1988, has in its section 1, provided the objectives of the Act. The objectives of the AMA 2023, enshrined in section 1 include to promote fair resolution of disputes by an impartial tribunal without unnecessary delay and expense. To this end, parties and stakeholders (i.e. the court, appointing authorities, and arbitral institutions) in an arbitration shall ensure that everything necessary is done to ensure proper and expeditious conduct of arbitral proceedings. By the foregoing, the AMA 2023 discourages a situation in which dilatory tactics are adopted to needlessly prolong arbitral proceedings, or anything to be done or left undone that would attract extra expense to a disputant. The parties and the arbitrator/tribunal must ensure that the proceedings are smooth, effective and cost appropriate.²⁴ Another objective is that arbitration shall be tailored in a way and manner that the parties are at liberty to determine its nuances with corresponding obligation of promoting peaceful existence and protection of public interest. The objective is a statutory fortification and amplification of the doctrine of party autonomy in ADR. By the foregoing objective, subject to mandatory rules of the forum, parties are at liberty to determine the incidence of an arbitration. The inclusion of objectives in the AMA 2023 makes it an improvement over the ACA 1988 and as well as the Kenya Arbitration Act, 1995 and Ghana Alternative Disputes Resolution Act 2010 which do not contain objectives.

²⁴ AA Olawoyin, “Charting New Waters with Familiar Landmarks the Changing Face of Arbitration Law and Practice in Nigeria” (2009) 26(3) *Journal of International Arbitration*, 373 – 404.

The objectives of a legislation serve as a guardrail/signpost in the adoption and use of the legislation by operators. It can be safely asserted that just as a torchlight helps make clear and brighten the path of a sojourner especially on a narrow path, the objectives of a legislation enables the court/tribunal and indeed everyone operating or effectuating it, to bear in mind what the legislation aim is; making it clear and unambiguous as a light to its interpretation thereby enabling the attainment of the stated aim and objective of the legislation.²⁵ Objective in a legislation limits the ambits of discretion in the utilisation of the legislation by adjudicators.

As a result, where during an arbitral proceeding, a party seeks to take an action or make an omission that has the potential of resulting in unnecessary delay or exposing a party to unjustifiable expenses, the tribunal/arbitrator will be inclined to prevent such in furtherance of the objective. The introduction of objectives in the AMA 2023, is a highpoint which makes the Act radical different and potentially useful than the erstwhile ACA, 1988.

3.2 Clarification of the Writing Requirement of an Arbitration Agreement

Under the ACA 1988, an arbitration agreement was mandatorily required to be in writing²⁶ either in a document signed by the parties, in an exchange of letters, telex or telegram, or other means of communication which provide a record of the arbitration agreement, or in an exchange of points of defence wherein the existence of the arbitration agreement is alleged. However, the issue was: when is an arbitration agreement considered to be in writing, thereby complying with the ACA 1988? The ACA did not specify the format in which the writing would take, although it could be and has been argued that both hard and soft versions of writing are contemplated.²⁷

²⁵ CH Fulda “Objectives in the Field of Legislation: What have they been? What should they be?” (1953) 6(1) *JLE* 11-17.

²⁶ Section 1 ACA 2004.

²⁷ PO Idornigie, “Overview of ADR in Nigeria” (2007) 73(1) *Arbitration: The International*

The draftsmen of the AMA 2023 set out to clarify this writing requirement debacle. Thus, section 2(1) of AMA 2023,²⁸ while regurgitating the writing requirement states when the writing requirement is met. Thus, by virtue of section 2(4) of the AMA 2023, the writing requirement is met in either of these three instances i.e. the agreement is in electronic communication as defined under section 91 of the Act and the information contained in it is accessible to be useable for subsequent reference. It is also met if it is written in exchange of point of claim and defence, or reference to a contract of a written arbitration clause constitutes an arbitration clause in writing. Thus, the AMA 2023 has made it clear that for an arbitration agreement to be in writing, it could be either in electronic format or the usual traditional ink type or pen written on a sheet of paper or any other writing material. Thus, the AMA 2023 has given perspective and clarity to the writing requirement thereby making the issue beyond contestation as to what it means. Section 2(4) of the AMA 2023 is *pari materia* with sections 2(1) of the Ghana ADR Act 2010 (GADRA 2010) and 4(1) of the Kenya Arbitration Act 1995 (KAA 1995) which provides that an arbitration agreement could be a clause in the main contract or in a separate document. While sections 3 and 4 of the GADRA 2010 and 3 of the KAA, 1995 contain similar provisions to that of section 2(4) of the AMA 2023 regarding the format in which an arbitration clause could take, unlike the AMA 2023, they do not clearly state that writing shall be either in soft or hard copy. This notwithstanding, a purposive reading/application of the provisions, conclusive shows that the intendment is that the writing requirement is met if the arbitration agreement is written electronically or through the traditional black and white format.

3.3 Provision of Immunity for Arbitrators

One of the distinctiveness of litigation is the availability of judicial immunity to judges. In Nigeria, by virtue of section 188 of the Evidence Act²⁹ no judicial officer can be compelled to answer any question as to his

Journal of Arbitration, Mediation and Dispute Management, 73-76.

²⁸ Arbitration and Mediation Act, 2023.

²⁹ Evidence Act, 2011.

own conduct in court or as to anything which came to his knowledge in court while sitting in his capacity as such a judge. By this, a judicial officer is protected over acts/omission done in his official capacity in good faith.

Under the ACA 1988, there is no provision for immunity for arbitrator/tribunal or personnel of arbitral institutions providing arbitration services. Thus, these arbitral stakeholders had to implicitly access immunity by necessary implication considering that they function in a *quasi-judicial* manner.³⁰ Thus, where an arbitrator/tribunal is appointed/constituted, they effectuate their office being mindful of the fact that their actions/omissions are not expressly immune under the ACA. This of course, creates justified apprehension and can fetter the discretion of the arbitrator/tribunal although, this might constrain them to act with caution.

Commendably, section 13 of the AMA 2023 has addressed this concern by making immunity available to an arbitrator, appointing authority and arbitral institution. As a result, they are not liable for anything done/omitted in the discharge or purported discharge of their functions unless their action/function is shown to have been done in bad faith.³¹ The implication of the foregoing is that, in the course of effectuating the office of an arbitrator/tribunal, the arbitrator/ appointing authority/arbitral institution, its personnel, are immune from liability for their acts/omissions unless they were done in bad faith. This, of course, affords arbitrators a reasonable level of assurance to act dispassionately without being ‘extremely’ careful, like walking on eggshells under the ACA, 1988.

Section 13 of the AMA 2023 is fashioned after sections 16B of the GADRA 2010 and 23 (1) of the KAA, 1995 which bequeaths immunity to arbitrator,³² persons employed by them for the purpose of the proceedings.

³⁰ CE Ibe, “Commercial Arbitration Practice in Nigeria: The Scope and Extent of Party Autonomy and Derogations therefrom in Arbitral Proceedings under the Nigerian Arbitration and Conciliation Act” (2009) 1(1) *Journal of Commercial and Property Law*, 1.

³¹ See section 13(1), AMA 2023.

³² F Kariuki, “Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities” <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successeschallenges-and-opportunities-1.pdf> Accessed 27 November, 2025.

Under the laws of these three jurisdictions, only acts/omissions made with due authority and in good faith are immune. Thus, it is not sufficient that an act or omission was made in good faith, but it must fall within the due authority of the arbitrator to be covered. Also, liabilities acquired due to resignation or withdrawal are not immune.³³

Under the AMA 2023 an arbitrator can effectuate the office without the concerns associated with lack of immunity. This does not however mean that an arbitrator can dispense with accountability and professionalism while arbitrating. At all material times, an arbitrator is bound to observe the highest standard of professionalism and decorum in effectuating the office. What the provision has done is to bolster the confidence of the arbitrator/tribunal to act without underlying apprehension especially that of a level not expected of an umpire and has not by any way, removed the obligation of professionalism, and ethical disposition, imposed on an arbitrator.

3.4 Appointment of Emergency Arbitrator

Where a dispute has occurred, a party may need an emergency relief either before or after filing a request for the dispute to be referred to arbitration but before the constitution of the tribunal or appointment of an arbitrator is done. Under the ACA 1988, such a party is left with only the option of applying to the court through an *ex parte* motion seeking for the relief. This is so notwithstanding the peculiarities of court proceedings which are characteristically prone to unforeseen delay. This situation can negatively impact on the effectiveness and efficiency of arbitration or become a leeway for avoidable court intervention in the process.

To address this shortcoming of the ACA 1988, the AMA 2023, made provision for the appointment of an emergency arbitrator to deal with emergency reliefs which may arise before the actual appointment or constitution of an arbitrator or tribunal. Thus, a party who requires

³³ E Onyema, "The new Ghana ADR Act 2010: A Critical Overview" (2012) 28(1) *Arbitration International*, 101-124.

emergency relief may, concurrent with or following the filing of a request for the dispute to be referred to arbitration but before the appointment/constitution of an arbitrator/tribunal, submit an application for the appointment of an emergency arbitrator to an arbitration institution designated by the parties in their arbitration agreement. Where no arbitration institution was specified by the parties in the arbitration agreement, a party desiring the appointment or constitution of the tribunal can make an application to the court for the appointment.³⁴ In making the appointment, application either to the designated arbitration institution or the court, the applicant shall ensure that sufficient copies of the application are made available and at least a copy shall be availed the emergency arbitrator and every party who shall be notified of the proceedings too.³⁵ An application for the appointment of an emergency arbitrator shall clearly state the relief sought, the names, address and details of each party, a description of the situation that gave rise to the application. These details which the applicant's application must disclosed are necessary to: enable the appointing authority to determine the merit of the application, the reason the applicant needs the emergency relief on an urgent basis that cannot await the actual appointment/constitution of an arbitrator/tribunal, the reason the applicant is entitled to the relief being sought.³⁶

Considering the urgency of the nature of the application for appointment, the appointing authority shall ensure that the emergency arbitrator is appointed within two business days after the date the application is received.³⁷ The emergency arbitration meetings can be conducted onsite or virtual. The emergency arbitrator shall act impartial and in good faith in the execution of his office and its decision is binding and enforceable between the parties like the final award.³⁸ This novel provision enables a party to get interim emergency reliefs which if not gotten at that stage,

³⁴ See section 16(1) of the AMA, 2023.

³⁵ *Ibid.* section 16(2) of the AMA, 2023.

³⁶ *Ibid.* section 16(3).

³⁷ See section 16(5) of the AMA, 2023.

³⁸ S Luqman, "A New Dawn: Arbitration and Mediation Act 2023: What it Brings to the Table" <https://www.linkedin.com/pulse/new-dawn-arbitration-mediation-act-2023-what-brings-table-sirajo-mimvf> accessed 22 January, 2025.

may render the outcome of the actual proceedings nugatory or makes taking advantage of the outcome cumbersome or more tedious. This provision is both a sword and a shield and could operate like litigation's Mareva injunction.

3.5 Application of Limitation Period

The limitation period is the period within which an aggrieved party must initiate legal proceedings to ventilate a grievance; otherwise, the cause of action becomes statute-barred, robbing the court of jurisdiction to adjudicate over it.³⁹ Under the ACA 1988, the limitation period within which an arbitral award must be enforced was six years from the time the cause of action accrued pursuant to section 7(1) of the Limitation Act 2004 since the ACA had none. This prescription, had exposed arbitration to severe hardship and served as a major drawback considering the slow proclivities in the general dispute settlement system of Nigeria.⁴⁰ Thus, where an unscrupulous party, wishes to frustrate an award, all that needs to be done is to take undue advantage of the gaps or weaknesses in Nigeria's justice administration system to ensure that six years had lapsed from the time the cause of action accrued till when the enforcement is being sought. Based on the foregoing, Eyongndi⁴¹ has argued that there was a need to address the genuine concerns raised by the position under the ACA, 1988 regarding when time starts to count for limitation period for the enforcement of arbitration award.

To address the challenge of countenancing the period from when the cause of action arose to when the award was rendered in computation of the limitation period, the AMA 2023 has been proactive. It unambiguously provide that, in computing the time prescribed by a statute of limitation

³⁹ *City Engineering Nig. Ltd. v. Federal Housing Authority* [1997] 9 NWLR (Pt.520) 224.

⁴⁰ DT Eyongndi, JI Ebokpo, "The Principle of Taking s Step in the Proceedings under Nigerian Arbitration and Conciliation Act: The Need for Delineation" (2018) 7(3) *Port-Harcourt Law Journal* 123-124.

⁴¹ DT Eyongndi, "Enforcement of Arbitral Awards in Nigeria and the Jigsaw of Limitation Period: The Need for Compliance with Global Best Practices" (2021) 15(1) *Mizan Law Review*, 107-138.

for commencement of judicial/arbitral or other proceedings in respect of a dispute which was the subject matter of an award or a part thereof which the court orders to be set aside or declared to be of no effect, the period between the commencement of the arbitration and the date the order/award was rendered shall be excluded.⁴² By the foregoing provision, the period from which the cause of action accrued and the date when the award, which is being sought to be enforced was made shall not be counted in computing the limitation period. This will help bolster the confidence of disputants who resort to arbitration and as well as promote its growth and development by allaying the reasonable and justifiable fears of foreigners who might be intending to seek for enforcement of awards in Nigeria after arbitrating.

3.6 Sanctioning of Third Party Funding

According to Onibokun and Sodipo,⁴³ Third Party Funding (TPF) ensures that a legal dispute is pursued and that a party to a dispute who has a good claim is not denied justice simply because that party lacks the finance. The practice is in vogue where a party, who is not directly involved in a dispute, and without prior interest in the lawsuit, offers financial support to a party for the purpose of initiating or defending a matter in court or before an Arbitration Tribunal. The financial assistance may also be for continuing or completing the lawsuit or arbitral proceeding.⁴⁴ Thus, TPF operate on the basis that a neutral third party who has no real connection with the dispute, makes funds available to a party to the dispute in its prosecution with the aim of benefiting therefrom.⁴⁵ Conversely, where the funded party is unsuccessful, the funder risk losing the funds provided.

⁴² See section 34(1) (2) and (4) of the AMA, 2023.

⁴³ A Onibokun and B Sodipo, “An Evaluation of Third-Party Funding in Commercial Arbitration. *The Journal of Sustainable Development, Law and Policy*” (2024) 15(1) *JSDLP* 263-285.

⁴⁴ *Ibid.* 268.

⁴⁵ DT Eyongndi, and FN Opara, “Arbitrating During and Post Covid-19: Nigeria and the Imperativeness of Adopting a Legal Framework on Third-Party Funding: Lessons from Selected Jurisdictions” (2022) 6(1) *SLJ*181-211.

In Nigeria, TPF either in litigation or arbitration, suffers gravely as the common law doctrine of maintenance and champerty⁴⁶ disallow it. In exacerbating this, the ACA 1988, had no provision on the application or otherwise of TPF in Nigeria. This made it difficult, if not impossible, for parties that may be financially weak to prosecute their cause through arbitration, owing to paucity of funds, as funders were unsure of the legality/propriety of TPF in Nigeria and would not risk it.⁴⁷ The advent of Covid-19 and its debilitating impacts on the financial fortunes of persons/businesses in Nigeria; would make resort to TPF of arbitration compelling but the lack of clarity on the state of the law, according to Eyongndi and Opara⁴⁸ was a challenge, therefore requiring legislative intervention to address it. Unlike the situation in Nigeria, some common law jurisdictions have embraced TPF. For instance, the English Court of Appeal in 2005 held that TPF obtained to enable a party to access the court to ventilate his claim without which access to court would have been denied was not champertous.⁴⁹ In *Essar Oilfields Services Ltd v. Norscot Rig Management Pvt Ltd (Essar Oilfields)*,⁵⁰ the Commercial Court held that an arbitrator, in awarding costs incurred by a successful party to arbitral proceedings, can award costs covering a third-party funder engaged by the successful party to ensure that the proceedings took place. In 2011, the UK Civil Justice Council made a Code of Conduct for TPF to regulate its practice, thereby insulating it from potential abuses by users.

Hong Kong like the UK has embraced TPF making it a global arbitration hub. Thus, courts in Hong Kong have held that TPF would be allowed where it seeks to preserve the right of access to court or in insolvency proceedings.⁵¹ After an extensive consultation by the government with industry stakeholders on how TPF could be utilised as a business and

⁴⁶ Onibokun and Sodipo (note 43) 273.

⁴⁷ G Omoaka, S Nweke-Eze and O Odunsi, “Third-Party Funding in Nigeria-seated Arbitration Proceedings” www.ibanet.org/third-party-funding-Nigeria-arb-proceedings accessed 18 June 2025.

⁴⁸ Eyongndi and Opara (note 45) 181-211.

⁴⁹ *Arkin v. Borchard Lines Ltd.* (2005) EWCA Civ. 655.

⁵⁰ [2016] EWHC 2361.

⁵¹ *Akai Holdings Ltd (in compulsory liquidation) & Ors v. Ho Wing On Christopher & Ors*. 2009 5 HKLRD K2 (CFI).

development booster, the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance (Order No 6) was enacted in 2017. In 2016, the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Centre released a public consultation on the Guidelines for TPF for arbitration as an anti-abuse regulatory framework.

Similarly, Singapore in 2017 joined the league of pro-arbitration jurisdictions where TPF is allowed as the Singaporean Parliament, enacted the Civil Law (Amendment) Bill, 2016 and the Civil Law (Third Party Funding) Regulation 2016. Section 5A of the law abolished the applicability of the doctrines of champerty and maintenance as torts under Singaporean law making TPF legal and well-regulated. The South African Court in *Price Waterhouse Coopers Inc. & Others v National Potato Co-Operative Limited*⁵² approved a TPF by holding that a contract where a party made funds available to another to prosecute a case in return for profit based on freedom of contract and the constitutional right of access to court enshrined in section 34 of the 1996 Republic of South Africa Constitution was valid and enforceable. Thus, Nigeria taking a cue from these pro-arbitration jurisdictions, under sections 50, 51 62 and 91 of the AMA 2023, have mainstreamed TPF in arbitration in Nigeria thereby removing the dissuading factors of maintenance and champerty. Hence, where an arbitrator/tribunal is fixing the cost of arbitration in an award, it shall take cognisance of the cost of obtaining TPF and a funder could be an artificial or natural person. Section 61 of the AMA 2023 has abolished the torts of maintenance and champerty to arbitrations seated in Nigeria and by section 62(1), a party who has accessed TPF, shall disclose, in writing to the other party, arbitrator/tribunal and arbitrating institution of the full details of the funder. Notably, unlike Singapore, the AMA, 2023 has no TPF use and anti-abuse regulatory framework which is its major setback.

⁵² [2015] ZACA 2.

3.7 Clarification of the Condition for Stay of Proceedings

Under the ACA 1988, the province of section 5 thereof where imprecise; generated controversy on the issue of stay of proceedings.⁵³ The dominant requirement by section 5(1) of the ACA 1988, was that stay of proceedings will be granted where a party, in disregard of an arbitration agreement; institutes legal proceedings and the defendant, upon entering appearance and without taking any step in the proceedings, apply for stay of the proceedings for referral to arbitration.⁵⁴ However, what amounts to ‘not taking a step in the proceedings’ was imprecise thereby creating real confusion.⁵⁵

Addressing this quagmire, section 5 (1) of the AMA, 2023 has clearly provided the prerequisites/preconditions for stay of proceedings. Hence, a court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if any of the parties request, not later than when submitting their first statement on the substance of the dispute, refer the party to arbitration unless it finds that the agreement to arbitrate is void, inoperative or incapable of being performed. Unlike the condition of “not taking any step in the proceedings” under the ACA 1988 which is nebulous and subject to multiple interpretation, the prerequisites/preconditions of “not later than when submitting their first statement on the substance of the dispute” is more precise and direct.⁵⁶ Thus, a party who is desirous of applying for a stay of proceedings under the AMA 2023 now knows with firm precision, the stage of the proceedings to do so and the conditions upon which the application can be refused and not left at large but pigeonholed into the tripod: of that the court finds that the agreement to arbitrate is void, inoperative or incapable of being performed. To this end, the discretionary power of the court is admirably restricted.

⁵³ *Sande v Abdulullahi* [1989] 4 NWLR (Pt. 116) 387.

⁵⁴ *K.S.U.U.B v Fanz Construction Ltd.* [1990] 4 NWLR (Pt. 142) 1, *M. V. Lupex v N. O. C.* [2003] 15 NWLR (Pt. 844) 469.2

⁵⁵ *Fawehinmi Construction Co. Ltd v O.A.U.* [1998] 6 NWLR (Pt. 553) 171.

⁵⁶ *Confidence Insurance Ltd. v. Trustees of O.S.C.E* 1999] 2 NWLR (591) 373.

3.8 Use of Gender Sensitive/Balanced Language

It is apposite to state that the AMA 2023 is s gender sensitive/balanced legislation unlike the ACA 1988 which used gender insensitive pronoun by referring to a sole arbitrator as “he.” For instance, section 10(1) (a) (b) (c) of the ACA 1988 provides grounds for the termination of the mandate of an arbitrator due to failure or impossibility to act and where either of this happens preventing an arbitrator from acting, the pronouns used for the incapacitated arbitrator are “his” and “he.” One may wonder whether the draftsmen of the ACA1988 never expected that females would aspire to or rise to become arbitrators despite the general defence that the reference to a masculine pronoun in a statute, includes feminine.

The AMA 2023 on the other hand, uses gender-balanced pronouns such as he/she or his/her in reference to an arbitrator as contained in section 10(1) (a) (b) of the Act. While the general attitude is that in a statute, reference to he and him invariably includes she and her, this medieval approach is a perpetuation of patriarchy and its insensitivity to gender equality and equity. In fact, the new trend in legislative drafting and even conventional writing, is use of gender-neutral pronouns and words thereby giving prominence to both sexes. The AMA 2023 has advanced gender neutrality in arbitration law and practice and it is expected that stakeholders and operators of the legislation; will be cautious and gracious in their interactions with the Act to foreground this position aimed at advancing gender equality/equity in Nigeria where there is deep rooted patriarchy to the chagrin of females.

3.9 Creation of Arbitral Award Review Tribunal

Under the ACA 1988, where a party is dissatisfied with an award, the only recourse is to apply to the court to set aside the award on certain statutorily provided grounds.⁵⁷ However, the AMA 2023 has made it possible for parties to agree that where either of them is dissatisfied with an award, recourse will be first had to a review tribunal instead of going to

⁵⁷ Section 29 and 30 of the ACA, 1988.

court to set aside the award. Thus, by section 56(1) thereof, the party to an arbitral proceeding may provide in their agreement that an application to review an arbitral award on grounds set out in section 55(1) (which are for setting aside of an award), shall be made to an Award Review Tribunal (ART). Therefore, where the parties have so agreed, they are refrained from applying to the court to set aside an award unless and until the review is concluded. The ART from the date of its composition, shall render its decision within sixty days.⁵⁸ Where an application for enforcement of an award is made during the pendency of the ART, the application will only be heard when the ART has rendered its decision. Where the ART, in its decision, set aside the award in whole or part, an aggrieved party is allowed to apply to the court to set it aside on justifiable grounds.

This mechanism affords the parties an opportunity to review an award without recourse to the court and thereby insulating arbitration from court intervention as the same is practicable. It does not in any way also, prejudice the right of the party to set aside an award via the court. One very important fact to note under this provision is that an Award Review Tribunal has the power exercisable by the High Court in an instance where a party seeks to set aside an award under section 55(3) of the Act (note: an award can only be set aside pursuant to section 55(3) and (4), however, while section 55(3) sets out the ground under which an award may be set aside, section 55(4) provides for the time within which an application must be made either to the High Court or to the Award Review Tribunal.⁵⁹ This simply means, where a party under an agreement which provides for an Award Review Tribunal approaches a High Court for review of the award, instead of filing a Notice of Challenge under section 56 of the Act, the High Court will lack the jurisdiction to hear the application for review.⁶⁰

Notably, sections 34 ACA 1988 and 64 (1) AMA 2023 have limited the intervention of the court in arbitration to the extent provided by the laws and affirmed by the court in *Statoil v. N.N.PC*.⁶¹ Thus, except as expressly

⁵⁸ Section 56(6) of the AMA, 2023.

⁵⁹ Luqman (note 55).

⁶⁰ *Ibid.*

⁶¹ (2013) 14 NWLR (Pt. 1373) 1 at 29D – G.

permitted under both laws, the court lacks the *vires* to interfere in arbitral proceedings and any such unpermitted interference, will be regarded as usurpation of the power of arbitrator/tribunal and therefore null and void as was held in *Ras Pal Gazi Contr. Co. Ltd. v. F.C.D.A*⁶² An issue that may agitate the mind is pursuant to section 1(3) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, whether section 64 (1) AMA 2023 is not an affront to section 6 (1) of the Constitution as it seems to oust the jurisdiction of the court? The limitation of the court in interference with arbitration creates no real tension between the judicial power of the court and arbitration but an admixture aimed at cheaper and speedily justice delivery. Section 64 (1) of the AMA 2023 has not taken away the power of the court to intervene in arbitration but modulated it in recognition of the right to fair hearing enshrined in section 36 of the CFRN 1999 which provides that the determination of the civil obligation of a party could either be by the court or tribunal. Thus, where a party has elected to arbitrate, the power of the court to interfere is automatically limited by the AMA which is the principal substantive law regulating arbitration. In fact, it is in recognition and approval of this position that the Court of Appeal and Supreme Court have sanctioned sections 4 and 5 of the ACA, 1988 requiring stay of proceedings to refer parties to arbitration.

4. SOME CONCERNS IN THE AMA 2023 FOR FURTHER LEGISLATIVE ATTENTION

Extrapolating from the analysis above, there is no doubt that the AMA 2023 has revolutionised the law and regulation of arbitration in Nigeria capable of positively impacting its practice. This notwithstanding, a keen observation will reveal that there are legitimate concerns needing attention for holistic improvement of the Act. For instance, while the AMA 2023 has jettisoned the sequestering device of maintenance and champerty in arbitration in Nigeria, thereby opening a new vista in the utilisation of the TPF of arbitration (and by extension, other ADR mechanisms where possible), the draftsmen and the legislature alike, failed to recognise the

⁶² (2008) FWLR (Pt. 58) 2027 (SC); (2001) 10 NWLR (Pt. 722) 559.s

imminent possibility of abuse of TPF in the absence of strict regulation. One would have expected the AMA 2023 to lay down either within the Act or as an annexure (i.e. schedule), rules and regulations guiding the adoption and use of TPF in arbitration, as it has been developed in jurisdictions like Hong Kong, Singapore and France, to forestall possible abuse.⁶³ In fact, South Africa is blazing the trail on this in Africa. The Arbitration Foundation of South Africa, pursuant to South African International Arbitration Act, 2017, published a revised set of the International Arbitration Rules, 2021. The Rules which aligned with international best practices is comparable to that of other popular arbitral institutions such as the International Court of Arbitration of the International Chambers of Commerce and the London Court of International Arbitration introducing several noteworthy innovations including expedited arbitration procedures in certain cases, summary judgment type procedures, the availability of urgent interim relief procedures, confidentiality and virtual hearings.⁶⁴ Article 27 of the Rules, governs TPF of arbitration in South Africa by laying down salient operational guides and guardrails to be observed by the funder and the funded party.⁶⁵ Once the funding arrangement is concluded, the identity of the funder must be disclosed to the other parties to the arbitration as well as the arbitral tribunal and the AFSA Secretariat.⁶⁶ The disclosure required is to promote transparency of the process by affording the parties the opportunity to assess the suitability of a funder and to register an objection if need be.

⁶³ Eyongndi and Opara (note 45) 181-211.

⁶⁴ BMC Sanz-Pastor, “Adapting Disclosure Obligations to the Realities of Modern Third-Party Funding” (2019) 6(1) *BCDR International Arbitration Review*, 5-26.

⁶⁵ B McKenzie, “South Africa: Third-party funding in international arbitration – A South African Perspective with Lessons from Singapore” <https://insightplus.bakermckenzie.com/bm/dispute-resolution/south-africa-third-party-funding-in-international-arbitration-a-south-african-perspective-with-lessons-from-singapore> accessed 31 October, 2025.

⁶⁶ R Shein and T Herdoldt “South Africa: Third party funding under the new AFSA International Arbitration Rules” <https://bowmanslaw.com/insights/south-africa-third-party-funding-under-the-new-afsa-international-arbitration-rules/> accessed 31 October, 2025.

In fact, while the AMA 2023 could have laid down somewhat general guidelines, arbitration institutions in Nigeria, should have been mandated to develop robust and comprehensive mechanisms for the regulation of TPF for institutional arbitration offered by them. While it is acknowledged that some arbitration institutions in Nigeria may by hindsight, put in place a regulatory TPF architecture in compliance with best practices, making it a matter of legal prescription is better. Thus, there is the need to think with the AMA, 2023 to take care of this omission. While the AMA 2023 has done away with the legislative uncertainty that had trailed TPF under the ACA 1988, in Ghana, the ADR Act 2010, failed to explicitly make provisions for TPF in arbitration just as it was in Nigeria under the ACA 1988. Thus, a party resorting to TPF in Ghana, while not expressly prohibited, must proceed with utmost caution bearing in mind the common law ethical inhibition.

Also, considering the clamour for internationalisation and modernisation of customary arbitration which is home grown, one would naturally expect that in 2023, a legislation on arbitration will take into account customary law arbitration.⁶⁷ The potential of customary law arbitration in impacting the legal and socio-economic landscape of Nigeria cannot be overemphasised.⁶⁸ The AMA 2023 while it is noted that it deals principally with commercial arbitration (domestic/international), ought to have recognised the indigenous Nigerian element by mainstreaming Customary Law Arbitration (CLA) which is adopted by indigenous Nigeria traders with some commercial stake in the regulation of their business affairs.⁶⁹ There is no gainsaying that customary commercial traders with high financial premium in remote and semi remote towns in various parts of Nigeria particularly the South East, whom CLA is an integral part of their life. being indigenous to them, would not resort to it

⁶⁷ AA Daibu, "Traditional Justice Systems in the Nigerian Administration of Justice: Lessons from Kenya" (2023) 10(1) *JCLA*, 133-168.

⁶⁸ AI Chukwuemerie, *Internationalising African CLA in the World Legal Scene: Dismantling Obstacles, Embracing Prospects*, An Inaugural Lecture delivered 29th May, 2024 at Rivers State University, Nigeria) 99-106.

⁶⁹ MM Akanbi, LA Abdulrauf, and AA Daibu, "Customary Arbitration in Nigeria: A Review of Extant Judicial Parameters and the need for Paradigm Shift" (2015) 6(1) *JSDLP*, 199-221.

in settling their disputes arising from commercial transaction not styled in English form.⁷⁰ The adoption of CLA is not limited to persons in rural and semi-rural places in Nigeria. Adherents of customary practices residing in cosmopolitan cities such as Lagos, Abuja, Port-Harcourt, Ibadan and Kano would readily resort to CLA in resolving their disputes including commercial than contemporary dispute settlement means. CLA is a likely means such adherents would resort to especially the adherents of the Igbo-customary apprenticeship practice. Thus, making provision in the AMA 2023 for CLA would have been catering the need of such segment of Nigeria.

This omission of customary law arbitration under the AMA 2023 is inexcusable when compared to what had been done by Ghana. Part 3 of the GADRA 2010 comprising of sections 89 to 113 deals with customary arbitration. It makes provisions for matters such as qualification of customary arbitrators,⁷¹ agreement to submit to customary arbitration,⁷² rules of customary arbitration,⁷³ resignation of a customary arbitrator, reference by the court to customary arbitration,⁷⁴ death of a customary arbitrator,⁷⁵ grounds for challenging a customary arbitrator, etc.⁷⁶ By including provisions on customary arbitration, the GADR Act 2010 has given statutory regulation to customary arbitration further bolstering confidence in its potentials to settle disputes of commercial nature. Ekhtor and Richards⁷⁷ have argued that customary arbitration has remained a relevant lever in the dispute resolution circle in Nigeria, experiencing several contemporary developments which have been acknowledged by the Supreme Court especially the sanctioning of traditional-oath taking as a prerequisite for the validity of a customary law

⁷⁰ *Ojibah v Ojibah* (1991) LPELR-2374 (SC).

⁷¹ Section 92 GADRA, 2010.

⁷² *Ibid.* Section 90.

⁷³ *Ibid.* Section 100.

⁷⁴ *Ibid.* Section 101.

⁷⁵ *Ibid.* Section 102.

⁷⁶ *Ibid.* Section 99(1)

⁷⁷ EO Ekhtor and NU Richards “The Continuing Relevance of Customary Arbitration in Nigeria: Critical Evaluation of Contemporary Developments” (2024) 32(2) *AJICL* 165–184.

arbitration.⁷⁸ Considering the fact that the Supreme Court, have acknowledged the effectiveness of CLA in dispute settlement hinged on traditional oath-taking as an acceptable practice of dispute resolution in Nigeria, it will be laudable for the legislature to mainstream customary law arbitration into the AMA, 2023.

While we recognise the fact that CLA has been statutorily formalised in Ghana and the same should be done in Nigeria to internationalise and formalise it for enhanced regulation and protection, we are not unmindful of the concerns of formalising customary arbitration, conflict between customary and statutory norms, and the challenges of enforcing customary arbitration awards. While these concerns subsist, they are surmountable. Regarding enforcement of CLA awards, the courts in Ghana and Nigeria have through judicial improvisation, streamlined the conditions which must be met for such an award to be valid and therefore enforceable as seen in the cases of *Onyenge v Ebere*,⁷⁹ and *Republic v Arbitration Committee of the Central Regional House of Chiefs*.⁸⁰ The fact that there is already judicial support for CLA in Nigeria, the challenge of enforcement of award is not potent. Also, in Nigeria, the law is clear on how conflict between customary and statutory norms under internal conflict of law are to be resolved thus, formalising CLA by mainstreaming it into the provisions of the AMA 2023 like it has been done in Ghana portends no issue(s). The internal conflict of law rule will serve as a guide for the legislature to mainstream CLA and a guardrail to the court in adjudication in the event of a conflict. It should be noted that formalising CLA is not an attempt of diluting its originality or exporting it into the mould of international arbitration but simply at exercised aimed at bolstering it by providing enhanced protection, regulation and fortification by standardising its practice for effectiveness and efficiency.

Though it can be argued that the provisions of ACA 1988 are straightforward and shorter compared to AMA 2023 which is bulky, the bulkiness of the AMA 2023 is contingent on the fact that it is more detailed

⁷⁸ *Umeadi v. Chibunze* (2020) 10 NWLR (Pt.1733) 405, 412.

⁷⁹ [2004] All FWLR (Pt 219) 981.

⁸⁰ (2017) JELR 64755 (CA).

and descriptive making it elaborate than the ACA 1988.⁸¹ The AMA is detailed and has been couched in such a manner that it removes all sorts of ambiguities. No doubt, the AMA 2023 is an ambitious, well-crafted, and forward-looking piece of legislation with the potential of radically revolutionising the law and practice of arbitration in Nigeria. The law in Nigeria, is the prophecy of what the court says and not necessarily what is contained in the statute books. One daunting challenge confronting the AMA 2023 is the fact that its provisions, unlike the ACA 1988, are yet to be subjected to the scrutiny of judicial interpretation to gauge their legislative potency. The pronouncement by a court of law is the interpretation of a statute and at times it might be slightly different from the exact wordings of the legislation. However, the wordings of AMA are quite clear and mostly free from ambiguity, therefore, we are of the view that the courts will interpret such provisions literally and their meaning will not defer from what is contained in the Act.⁸²

Like every new legislation, the AMA, 2023 is going to be used by stakeholders in arbitration. One of the ways it can be optimally deployed is for the would-be users to acquaint themselves with its provisions and seek ways to use it optimally. There is therefore a need for capacity building of arbitrators, judges, lawyers, staff of arbitral institutions, experts in amicable dispute resolution and generally, arbitration enthusiasts. In fact, the Nigerian universities curriculum on Alternative Dispute Resolution both at the undergraduate and postgraduate levels must be updated by mainstreaming the AMA 2023. The Nigerian Bar Association and its affiliates, the Chartered Institute of Arbitration, etc. must engage in aggressive sensitisation and capacity building of its members bearing in mind the innovations ushered into arbitration by the AMA 2023. One is hopeful that with the optimal utilisation of the AMA 2023, the law and practice of arbitration will now be compliant with international best practices resulting in Nigeria being chosen as seat of arbitration by prudent businessmen who often choose arbitration as their preferred means of settling their commercial and commercial disputes.

⁸¹ Luqman (note 64).

⁸² *Ibid.*

5. AMA 2023 AS A HARBINGER FOR THE REALISATION OF SDG 16

The United Nations in 2015, adopted the 2030 Agenda for sustainable development comprises of 17 Sustainable development goals which is a shared blueprint for peace and prosperity for people and the planet.⁸³ Goal 16 focuses on peace, justice and strong institutions.⁸⁴ This goal, is germane in Nigeria and its attainment is fraught with myriad challenges. Varied matters have been used as harbinger for the realisation of SDG16⁸⁵ in different jurisdictions but our goal here is to advance arbitration via the instrumentality of the AMA 2023 as a pathfinder.⁸⁶ This has demonstrated the potentials of arbitration achieving SDG 16 using Kenya as a template. Litigation as a means to access to justice has proven to be inadequate, more expensive and time consuming hence, the emergence of ADR.⁸⁷ Oniemola and Tasie⁸⁸ have examined how the Constitution of the Federal Republic of Nigeria¹⁹⁹⁹ enhances the achievement of the SDG concluding that Chapter 2 thereof is the harbinger however, Chapter 4, particularly section 36(1) aids the realisation of SDG 16 through ADR (arbitration). The question is: considering the innovations introduced by the AMA 2023, to what extent does this supports the attainment of access to justice, build strong institutions and invariably promotes wholesale peaceful contractual and commercial coexistence? This section of the paper

⁸³ CC Ajibo, N Itanyi, E Okiche, I Chime, S Mosanya, and F Nwodo “Sustainable Development Enforcement Conundrum in Nigeria: challenges and way forward” (2021) 47(2) *CLB*, 195-213.

⁸⁴ RD Nanima, “Towards the Realisation of SDG 16.3 on Access to Justice: Contextualising the Role of the ACERWC” (2021) 22(3) *ESR Review* 4-9.

⁸⁵ EE Anenene, and O Oyewole “Towards ensuring the Realization of Sustainable Development Goal 16 by Governments in Nigeria: The Role of the Archives” (2019) 1 *Comma*, 29-36.

⁸⁶ K Muigua, “Green Arbitration: Aligning Arbitration with Sustainable Development” <https://kmco.co.ke/wp-content/uploads/2023/04/Green-Arbitration-Aligning-Arbitration-with-Sustainable-Development-Kariuki-Muigua-April-2023.pdf> Accessed 21 January, 2026.

⁸⁷ BA Omar NMA Abdullah, “Obstacles to Disputes when Resorting to Litigation through traditional and Electronic Arbitration in Iraq” (2025) 5 *Journal of Lifestyle and SDGs Review*, 1-19.

⁸⁸ PK Oniemola, and T Oyinkan “Engendering Constitutional Realization of Sustainable Development in Nigeria” (2020) 13(1) *LDR*, 159-191.

examines this question by highlighting how provisions of the AMA promote SDG16.

One of the notable ways the AMA 2023 promotes the actualisation of SDG 16 is the fact that it has improved the plight of the people relying on it especially indigent or poor litigants/disputants to access justice. Also, the AMA 2023 is reflective of the quest to promote rule of law and virile institutions in Nigeria as envisioned in the SDG 16. These twin potentials of the AMA in relation to the actualisation of SDG 16 is apparent when the novel provisions of section 1 are critically examined. Section 1(1) contains the objective that the AMA 2023 shall promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense. By promoting expeditious and less expensive resolution of disputes, coupled with the provision of TPF (which indigent disputants can resort to), has improved their plight at accessing quicker and relatively cheap resolution of their dispute thereby bolstering access to justice. Under the ACA 1988, the possibility that a party who has opted for arbitration may not follow through due to impecuniosity existed.⁸⁹ This is because where a party is unable to personally fund an arbitration, the ACA makes no provision for alternative funding which is exacerbated by the fact that common law frowns at a third party who has not personal connection to a dispute to advance funds for its adjudication. Under the ACA 1988 regime, champerty and maintenance operates to obviate third party funding hence, the state of the law on its propriety had remained unsettled even though arbitration ought to facilitate speedy access to justice by affording disputants quicker and less rancorous resolution of disputes.

The fact that the AMA 2023 in comparison to the ACA 1988 is a revolutionary legislation capable of promoting the attainment of SDG 16 can easily be gleaned from certain innovative and expansive provisions of the Act. One of the strengths of arbitration or ADR generally is expedition

⁸⁹ T Aderoju, "The Nigerian Arbitration and Mediation Act 2023: A Comparison with the Arbitration and Conciliation Act 2004 and Global Practices" <https://www.ibanet.org/the-nigerian-arbitration-and-mediation-act-2023#:~:text=The%20Arbitration%20and%20Mediation%20Act%20of%202023%20has%20established%20a,awards%20and%20mediation%20settlement%20agreements.> Accessed 20 January 2026.

of access to justice as noted by Suliati.⁹⁰ Thus, sections 50, 51(1), 61, 62 and 91 of the AMA 2023, have mainstreamed TPF in arbitration in Nigeria by abolishing the common law doctrines of champerty and maintenance which are adverse to TPF, obligates a beneficiary of TPF to make full disclosure of the same to the other party, and empowers the arbitrator/tribunal in fixing cost, to have recourse to the funding received. By this provision, disputants who ordinarily would have been unable to follow through with the arbitration due to financial constraints thereby impeding their access to justice, can have recourse to TPF to prevent such. This has been made possible in Nigeria by the provisions of the AMA 2023 which were absent under the erstwhile ACA1988. By making access to TPF available in a “regulated” manner, a party to an arbitration who is unable to fund the proceedings, can avoid non-participation on account of impecuniosity through TPF. Thus, TPF under the AMA 2023 makes access to justice possible and invariably bolster the institution of arbitration as a dispute resolution medium which is an integral aspect of SDG16.

Furthermore, under the ACA 1988, limitation of period for the enforcement of an arbitral award was from the time the cause of action accrued and not when the award was rendered.⁹¹ The injustice of this provision is apparent as unscrupulous party could explore dilatory tactics to frustrate the enforcement of an arbitral award thereby impugning justice and weakening the institution of arbitration which is inimical to the achievement of SDG16.⁹² Mindful of this challenge and the need to bolster the institution of arbitration and promote speedy justice delivery, the AMA 2023 provides that in computing time for limitation period for the enforcement of an arbitral award, time will begin to count from the date the award was rendered opposed to when the cause of action accrued.⁹³ These provisions of the AMA 2023 build strong institution by fortifying the institution of arbitration and its outcome hence, it garners public

⁹⁰ AE Al Sulaiti, *The Potential Role of Alternative Dispute Resolution for Intellectual Property Disputes in Qatar* (2025) 20(11) *JIPPL & P*, 724–731

⁹¹ Section 7(1) of the Limitation Act, 2004.

⁹² *City Engineering Nig. Ltd. v. Federal Housing Authority* [1997] 9 NWLR (Pt.520) 224.

⁹³ See section 34(1) (2) and (4) of the AMA, 2023.

confidence in the prospect of arbitration being used to settle dispute and the afterwards enforcement of its award. This outcome positively impacts the attainment of SDG16.

Furthermore, under the ACA 1988, arbitrators effectuated their office with extra caution almost liken to walking on eggshells. The reason for this cautious approach is the lack of immunity for arbitrators, institutions offering arbitration services and their staff. This situation subjects arbitration to scrutiny and apprehension as the conduct of these stakeholders during the proceedings are not statutorily safeguarded. This of course, has the potential of undermining the institution of arbitration as the arbitrator, institution and staff had no safety net or guardrail. However, under the AMA 2023, this abnormality has been taken care of. Section 13 of the AMA 2023 copiously provides immunity for arbitrators, arbitral institutions and their staff for their acts/omission made during proceedings once they are made in good faith. Thus, once any of these stakeholders abides by the dictates of good faith to act or make an omission, they have no reason to be apprehensive whether they might be exposed to any disability. Just as parliamentary and judicial immunity aids legislators and judges/justices effectuate their office by bringing to bear their experience, expertise, skills and knowledge without the fear of excessive scrutiny or apprehension, this has now been extended to arbitrators by the AMA 2023.

Also, the hitherto confusion under the ACA 1988 regarding when a court can grant a stay of proceedings requiring parties who have elected to arbitrate to do so where either of them, in disregard to the agreement to arbitrate has filed a suit in court has now been resolved.⁹⁴ Under the former regime, uncertainty had arisen as to the limits and applicability of sections 4 and 5 of the ACA 1988. This uncertainty was exacerbated by the uninhibited latitude to which courts can intervene in arbitral

⁹⁴ DT Eyongndi, and OA Oluwadayisi, “An Appraisal of Section 34 of Arbitration and Conciliation Act and the Role of the Court in Arbitral Proceedings in Nigeria” (2018) 5 *JJIL* 102-118.

proceedings.⁹⁵ Thus, section 5(1) of the AMA 2023 has in precise and concise terms provided when and how a stay of proceedings will be sought and granted. As a result, parties and their legal representatives now know what the law requires if they are applying for stay of proceedings. This legal certainty which makes accessing justice through arbitration less cumbersome does not only promote justice delivery, but it has also insulated arbitration from the vagaries associated with legal uncertainties. The cumulative effect of this is the enhancement and fortification of arbitration as an institution which encapsulates SDG16.

From the foregoing, it is apparent that arbitration under the AMA 2023, can be a strategy for the actualisation of SDG16 in Nigeria unlike the erstwhile ACA 1988 which did not significantly promote sustainable development and allied issues. However, the AMA 2023 has significantly taken care of the identified shortcomings which hampered the effectiveness and efficiency of the ACA 1988. The imperativeness of attaining the SDGs remains unquestionable as postulated by Oniemola and Tasie⁹⁶ and hence AMA 2023 holds tremendous potentials in aiding the realisation of SDG 16 in Nigeria. In a nutshell, the objectives of the AMA 2023 especially making arbitration less expensive and time-saving, its TPF recognition and promotion which enables indigent disputants with good claims to arbitrate through alternative funding, provision of immunity for arbitrators, the making available of an Arbitration Review Tribunal (ART) which prevents unwarranted court interference, elongated and more realistic limitation period, delineated court interference structure, provision of interim relief and their unconditional enforcement, etc. are innovations contained in the law which are capable of bolstering arbitration towards the actual realisation of SDG16. It must be noted that strong institutions which is one of the fundamentals of SDG16 are not value neutral. Expectedly, dispute-resolution frameworks such as arbitration within the prism of AMA 2023 increasingly converge with

⁹⁵ DT Eyangndi, “Statoil (Nig.) Ltd. & Anor. v. FIRS & Anor. Balancing the Doctrine of Non-Interventionism and the Need to Protect Public Interest in Arbitration” (2018) 3(3) *Miyetti Quarterly Law Review*, 71-96.

⁹⁶ PK Oniemola, and OC Tasie, “Towards concrete legislative measures for sustainable development in Nigeria” (2019) 45(2) *CLB*, 321-344.

substantive justice outcomes (environmental, social, economic, etc.) in achieving SDG 16.⁹⁷

Importantly, the adoption of the National Policy on Arbitration and Alternative Dispute Resolution (ADR) published in July 2024 is a booster to the efficiency of the AMA 2023. The policy which aims to transform Nigeria to a centre for excellence in arbitration and ADR in Africa and beyond is a welcome development. The Policy also aims to decongest the Nigerian courts by fostering a judicial culture that supports arbitration and ADR while promoting public awareness of its benefits⁹⁸ Its Paragraph 6.0 that deals with selection criteria for arbitrator prescribing expertise and requisite subject matter knowledge as pre-conditions for appointment, insulates arbitration from incompetent practitioners. The fact that the Policy clearly delineate the role of the courts in arbitration and ADR strengthening section 64(1), AMA 2023 and encourages the creation of specialised courts and divisions including small claim commercial court, as well as the expansion and strengthening of ADR Centres to promote the fair and expeditious resolution of disputes aids access to court and promote strong institutions.⁹⁹

Despite the laudability of the Policy, it lacks a corresponding implementation framework to ensure its optimally harnessing thereby achieving its objectives. Idigbe and others have argued that a multidimensional implementation approach is required to ensure that the policy's objectives materialise into tangible improvements in Nigeria's arbitration landscape.¹⁰⁰ They recommend a tripod efficient

⁹⁷ OM Lalude, DO Akindipe, S Abiri-Franklin, and S Osho "Examining the Banjul Charter as An Instrument For The Realization Of Environmental Justice In Trade And Investment Agreements" (2026) 17(1) *JSDL* 580–599.

⁹⁸ G Omoka, SU Nweke-Eze, C Ogbu, "National Policy on Arbitration and ADR 2024: A Positive Step for Nigeria?" <https://www.templars-law.com/knowledge-centre/national-policy-on-arbitration-and-adr-2024-a-positive-step-for-nigeria/> Accessed 21 January, 2026.

⁹⁹ A Idigbe, T Nnamani, O Ogunbadewa, S Ofuasia and H Abdulsalam "A Critique of the Nigerian National Policy on Arbitration" <https://punuka.com/a-critique-of-the-nigerian-national-policy-on-arbitration/> Accessed 20 January, 2026.

¹⁰⁰ *Ibid.*

implementation model consisting of - well-defined action plan outlining clear responsibilities and execution strategies; a robust set of implementation measures that address capacity building, and a dynamic review mechanism to ensure periodic assessment and adaptation to emerging trends.¹⁰¹ While the Policy provides a five year review window, considering the dynamic and fast-changing pace of practices in the arbitration/ADR world a more effective approach would be for the policy owner to conduct quarterly reviews and ensure data-driven reviews of the policy's implementation. Omoaka, Nweke-Eze and Ogbu have hinted that the success of the Policy would require stakeholders working collaboratively to overcome infrastructural limitations and scepticism from foreign investors and broaden access to justice.

6. RECOMMENDATIONS

Based on the findings above, it is recommended that the AMA 2023 be reviewed to include provisions regulating the adoption/use of TPF of arbitration in Nigeria as obtainable in Singapore. Furthermore, in the proposed amendment, provisions should be made to mainstream CLA into the Act as it is the case in Ghana., This is important because it is high time we started paying the requisite attention that CLA requires. Its propensity of being adopted beyond its traditional realm of customary transaction by indigenous Nigerian traders/businessmen cannot be overlooked anymore.

Moreover, too much fragmentation has been identified as one of the issues with the AMA 2023, its ART and interim relief procedure should be reviewed for simplicity. Expectedly, sooner than later, disputes will arise from the use of the AMA, 2023 as *lex arbitri* by contracting parties, the courts are enjoined to tenaciously hold unto the objectives of the Act and the need to make Nigeria's arbitration compliant to international best practices.

¹⁰¹ Omoaka, *et al* (note 126)

Additionally, the FGN should ensure that a robust implementation architecture is put in place to ensure the effective implementation of the National Policy on Arbitration and ADR. In doing this, the government should ensure that a well-defined action plan, a robust set of implementation measures. Moreover, the Policy should be reviewed by substituting the provided five-year review window with a quarterly data-driven assessment and adaptation by industry users based on emerging fast-paced developments in the arbitration world to ensure its up-to-date effectiveness and efficiency.

7. CONCLUSION

Currently in Nigeria, the AMA 2023 is the extant federal legislation regulating arbitration. On a comparative basis with the erstwhile ACA 1988, the AMA, 2023 is an ambitious legislation containing several novel provisions that are digital compliant, time and cost efficient with the ability to introduce several radical changes in arbitration in Nigeria. The objectives of the Act are a testament of the intendment of the legislature aimed at seamless, cost effective and delay free arbitrating in Nigeria. Its elaborate/comprehensive provisions is an improvement aimed at taking care of ambiguity and vagueness contained in its predecessor. While the Act can be regarded as a revolutionary legislation to the extent that it makes provisions for a lot of matters including provision of immunity for arbitrators, use of gender neutral tone/language, arbitral award review panel, expanded limitation period for the enforcement of awards, introduction of objective clause, recognition of third-party funding, consolidation/joinder of parties, etc. requires further tinkering. It contains no provisions for CLA, regulation of TPF, and creates too much procedural fragmentation, being issues militating against its revolutionary mien. As a new legislation, it thrust on stakeholders who are the primary users, the obligation to acquaint themselves with its provisions for optimal utilisation.