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Effective Utililization of Arbitrators and Arbitration Institutions in Africa by Appointors

Abstract

This paper critically analyses the effective utilisation by appointors involved in both regional and international arbitration of arbitrators and arbitration institutions in the continent. It suggests ways arbitrators and arbitration institutions in the continent can make themselves more available to relevant appointors. I hope to showcase the huge potentials for arbitration within the continent through an examination of these issues. This is with a view to attracting more regional and international arbitration references to the continent and the appointment of African arbitrators, especially in those arbitration references affecting or emanating from the continent. I very boldly dare to suggest that we (Africans) must appoint skilled African arbitrators and use competent arbitration institutions within the continent for us to see the growth and development of arbitration jurisprudence and knowledge which would then make us more competitive on the global arbitration stage. In effect it is for arbitrators and arbitration institutions to facilitate the growth of arbitration in the continent.

Background

Africa is a continent made up of 53 countries.[1] These countries have varied (though similar in certain respects) historical development. In the legal field, there are various legal systems and traditions operating within the continent. There is the various customary laws, laws based on certain faiths for example Islamic or Sharia and Africa traditional religions, received laws for example, the common law (English speaking countries with historical and colonial ties to England), the civil law (French speaking countries with historical and colonial ties to France and Belgium), the Dutch and Roman laws for example in South Africa. In most African countries there is a combination of some of these laws and legal regimes existing and cohabiting side by side.[2] Pursuant to the remit of this paper arbitration laws that apply to cross border or international transactions in various African countries fall with the formal part of the various legal systems. This implies that there are various statutory provisions governing arbitration in most African states.[3] This paper is limited in that it is beyond

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[1] See http://geography.about.com/library/maps/blrafrica.htm

[2] See Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, page 380-492 (2nd ed., CUP 2006)

[3] This effectively implicates the relevance of court decisions from these various jurisdictions.

its scope to examine the entire 53 countries in the continent. I shall however draw examples from various jurisdictions in the continent. To be representative and concise, I have decided to examine the OHADA arbitration regime (16 African countries that are primarily Francophone with a Uniform Arbitration Law) and the UNCITRAL Model Law on International Commercial Arbitration[4] which has influenced the arbitration laws of 54 territories while its arbitration rules has influenced the arbitration rules of many arbitration institutions within and outside the continent. These two instruments have undergone some reviews in recent times to align them to current arbitral practice.[5] They also serve as benchmarks and a reference point for a modern international arbitration regime.[6] One of the most valued advantages of arbitration in international dispute resolution mechanisms is the recognition and enforcement regime of arbitral awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which was sponsored by UNCITRAL in 1958 and has been adopted by 142 countries in all continents of the world.[7] The effect of this is the assurance that your final arbitral award will be enforced in at least one of these jurisdictions (where your opponent has assets on which enforcement can be levied). There are eighteen African countries party to the New York Convention listed in Table 1 below.

Outline

To achieve this task, I have divided this paper into four sections. I will give a very short picture of what the global arbitral landscape is at present emphasising those relevant to the African continent in section one to give us a clear view of where things stand. In section two, I will examine the nature of those who appoint arbitrators and choose arbitration institutions (to whom this paper is primarily directed) and highlight the qualities or attributes that influence their choices in this regard. In section three I will examine how arbitrators of African origin can enhance their profile and be more marketable to these appointors. In section four I will briefly examine the role of some institutions within the continent and draw a conclusion which effectively calls for appointors to make more use of skilled arbitrators and competent arbitration institutions and centres from the continent.

1. Global Dispute Resolution Landscape

Arbitration as a private means of dispute resolution is an alternative to litigation before national courts. In my view arbitration is also distinguishable from other alternative private mechanisms of dispute resolution which terminate in non-binding and non-self enforcing outcomes. These mechanisms are aptly grouped as alternative dispute resolution mechanisms (ADR) which include mediation, conciliation, early

[4] UNCITRAL Model Law on International Commercial Arbitration 1985 has been adopted by the following important African states: Egypt, Nigeria, Tunisia, Uganda, Zambia and Zimbabwe available at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html visited May 2008

[5] The draft of the revised UNCITRAL Arbitration Rules prepared at the 48th session of the Arbitration Working Group (February 2008) is available at http://daccessdds.un.org/doc/UNDOC/LTD/V07/885/92/PDF/V0788592.pdf?OpenElement visited May 2008

[6] In addition to these is the UNCITRAL Notes on Organising Arbitral Proceedings 1996 for guidance in preparing for arbitral proceedings.

[7] For text and more information see http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html visited May 2008

neutral evaluation.[8] The fourth edition of Redfern & Hunter opens with the assertion that, 'International arbitration has become the established method of determining commercial disputes'. [9] Various reasons have been proffered for this, including neutrality, fear of lack of independence of national courts, lack of familiarity with national court procedures, Thus for any commercial enterprise involved in any form of cross border transaction, whether within the continent (for example a sale of goods between a trader in Lagos (Nigeria) and his supplier in Cotonou (Benin) or outside the continent (between the Chinese manufacturer and his Burkinabe counterpart) arbitration as a dispute resolution mechanism is relevant.

The international arbitration calendar is very busy and there are always arbitration related conferences, workshops, colloquium and surgeries going on in one or more cities of the world at any given time. These are independent of the organised arbitration curriculum taught in various institutions of higher education all over the world, completion of which leads to the award of a free standing (or in combination with other subjects) diploma or degree in dispute resolution. Some arbitration associations also have organised courses in arbitration, successful completion of which leads to some form of recognition within the organisation, recognised globally. An example of this is the courses and various status awarded by the Chartered Institute of Arbitrators. This particularly is quite popular within the continent.

According to *Kluwer Arbitration Services* there are well over 200 arbitration institutions all over the world [10] with nine African countries, excluding OHADA listed. [11] There are various types of arbitration institutions some are independent organisations while some are attached to a chamber of commerce and yet others are part of a trade or professional association. The common denominator is that they all administer arbitration references to varying degrees. In addition, some have drafted and administer arbitrations under the auspices of their own arbitration rules while others administer arbitration references under the UNCITRAL Arbitration Rules.

Thus currently, arbitration occupies centre stage in the global dispute resolution market. There is a lot of developmental work in arbitration law, rules, practice and procedure with available and accessible training to which the African arbitration practitioner is well poised to fully participate in.

2. Appointors

I have drawn a picture that shows the potentials and trend in the global arbitral landscape to which arbitrators and arbitration institutions within the African continent can fully participate. I now turn to examine those who appoint arbitrators and choose arbitration institutions – the primary users of arbitral services. The first and obvious

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[8] For a general overview of public law dispute resolution mechanisms see J.G. Merrills, *International Dispute Settlement* (4th edition, CUP 2005) and for private dispute resolution processes see S. Roberts & M. Palmer, *Dispute Processes: ADR and the Primary Forms of Decision-Making* (2nd edition CUP 2005)

[9] A. Redfern, M. Hunter, N. Blackaby & C. Partasides, *Law and Practice of International Commercial Arbitration* (4th edition, Thomson Sweet & Maxwell 2004) at page 1

[10] Accessible at http://www.kluwerarbitration.com/arbitration/NationalOrganizations.aspx visited May 2008

[11] The African countries listed are: Burkina Faso, Egypt, Ivory Coast, Mauritius, Morocco, Nigeria, South Africa, Tunisia and Zimbabwe. There are arbitration institutions in many more African countries which are not listed.

group are parties to arbitration agreements themselves.[12] These may be physical[13] or legal persons.[14] The second group of appointors are arbitration institutions,[15] other individuals occupying specific offices acting as appointing authorities[16] and national courts.[17] From available statistics[18], we can see evidence that disputing parties themselves make most appointments.[19] This is especially true in three member arbitral tribunals where each disputing party (or group of parties) either appoint directly (or nominate for the appointment by the institution) one party-appointed arbitrator. This in effect means that in a simple two party dispute, the parties themselves appoint two arbitrators with the third being either appointed by the institution, the two party-appointed arbitrators, appointing authority or national court.[20] In a sole arbitrator tribunal, the general trend in arbitration laws and rules is for the parties to jointly appoint and where they do not agree on a candidate, the institution, appointing authority or national court then appoints.[21] Thus clearly potential parties have the opportunity to make more appointments than arbitration institutions, appointing authorities and national courts. This exercise assists the arbitrator aspiring for appointment to know who or where to target in marketing his/her skills in this regard.

Parties to arbitration agreements have the sole preserve of nominating or agreeing on the form of arbitration reference to opt for.[22] This can either be ad hoc or institutional. If the parties opt for ad hoc arbitration, they do not necessarily need to agree on a set of arbitration rules, thereby leaving the arbitral procedure to the discretion of the arbitrators. They may however agree on an appointing authority to assist with arbitrator appointment issues if any difficulties arise. Arbitration institutions in the continent act as appointing authorities and so their services can be used for this

[12] See for example article 5 OHADA Uniform Law on Arbitration 1999; article 11 UNCITRAL Model Law on International Commercial Arbitration 1985 (amended 2006) (Model Law); articles 5-8 Cairo Regional Centre Rules 2007.
[13] Individuals
[14] Corporate persons, including companies and governmental agencies
[15] See article 3 of the Arbitration Rules of the CCJA; The ICC for example gets proposals from its national committees in accordance with article 9(3) & (6) of the ICC Arbitration Rules 1998. There are ICC national committees in 13 African countries: Algeria, Burkina Faso, Cameroon, Egypt, Ghana, Madagascar, Morocco, Nigeria, Senegal, Tanzania, Togo, Tunisia and South Africa available at http://www.iccwbo.org/id2616/index.html visited October 2007
[16] An example is the Secretary General of the Permanent Court of Arbitration at The Hague designated under article 7(2) (b) UNCITRAL Arbitration rules 1976
[17] See article 5(b) OHADA Uniform Law on Arbitration and section 18(3) (d) English Arbitration Act 1996;
[18] I was unable to get statistics from any of the arbitration institutions within the continent I had requested these from and so will rely on statistics form the ICC, Swiss Chambers and LCIA which are in the public domain and very possibly representative of the trend in the relevant aspects of this presentation in which they are used.
[19] An example is the 2006 Statistics of the LCIA where a total of 175 arbitrators were appointed. Of these, parties directly nominated 101 individuals while the LCIA court directly appointed 74 arbitrators – available at http://www.lcia.org/NEWS_folder/documents/DGReview2007.pdf visited May 2008
[20] See for example article 5(a) OHADA Uniform Law on Arbitration; article 11(3) (a) UNCITRAL Model Law; section 16(5) English Arbitration Act; article 3.1 CCJA Rules; article 7 Cairo RC Rules; article 5.4 LCIA Rules
[21] See for example article 5(b) OHADA Uniform Law on Arbitration; article 11(3) (b) UNCITRAL Model Law; section 16(3) English Arbitration Act; article 3.1 CCJA Rules; article 6 Cairo RC Rules.
[22] An example in support of this assertion can be seen in the preamble to the LCIA Rules on its recommended clause which addresses 'contracting parties'.

purpose.[23] Parties may equally agree on a set of arbitration rules for example the UNCITRAL Arbitration Rules or the CPR Non-Administered Arbitration Rules.[24] However, we are here concerned with the appointment of arbitration institutions to administer the arbitration reference under their arbitration rules and for a fee. Institutions become involved in the arbitral reference when parties having agreed to arbitrate under their auspices either nominate a particular institution in their arbitration clause or submission agreement and take steps to notify the institution when a covered dispute eventuates of this nomination, which the relevant institution accepts. This procedure of offer and acceptance is crucial since the arbitration institution can reject its appointment by the parties to administer the arbitral reference.[25]

Having established the importance of disputing parties to arbitration with special relevance to the appointment of arbitrators and arbitration institutions, I will briefly examine what knowledge of the arbitral process this very important category of participants possess. It is very difficult to make any anecdotal assumptions here because of the dearth of relevant data. However, parties are primarily commercial or industry or trade people and so may not know very much about arbitration. They will however make use of their advisers which in this regard are primarily their external and in-house lawyers (those gathered here today). It is for such advisers to inform this group of primary appointors of what powers they have in relation to the appointment of arbitrators and arbitration institutions. Such advice must of necessity start with the need to include a valid and effective arbitration agreement in their contracts[26] and the appointment of arbitrators.[27]

Of course parties are involved in many more aspects of the arbitration reference but these can be supplemented by arbitration rules.[28] However, there can be no consensual arbitration without a valid arbitration agreement while the appointment of arbitrators is one of the greatest powers disputing parties possess, here they have a say and can determine what they want. Once the arbitral tribunal is constituted and the arbitration reference commences, most other powers exercisable effectively devolve on the arbitrators.

Thus arbitration practitioners need to market potential parties which, basically include *any* physical or legal persons involved in commercial transactions. The other appointors to be marketed are arbitration institutions, appointing authorities and possibly national judges. Arbitration institutions equally need to market this group to ensure they know of their existence and the services they render.

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[23] For example see the services rendered by the Cairo RC at http://www.crcica.org.eg/services.html visited May 2008

[24] These CPR Rules are sponsored by the International Institute for Conflict Prevention and Resolution effective from November 1 2007 and available at http://www.cpradr.org/pdfs/arb_nonad_rules07.pdf visited May 2008

[25] As an example, in 2007 the Swiss Chambers rejected 5 arbitral references as reported at https://www.sccam.org/sa/download/statistics_2007.pdf visited May 2008

[26] Inclusion of an arbitration agreement ensures the arbitral reference can commence in the first place so that institutions and arbitrators become involved in the process.

[27] This relate to the factors parties need to consider in appointing arbitrators.

[28] An example is the parties agreeing on witness statements and order of hearing.

3. Arbitrators

I now turn to arbitrators and what they require to attract appointment for effective utilization of their skills. I must clarify at the outset that I am examining the role of arbitrators of African origin[29] in the regional and global arbitration field. I start from the premise that arbitrators of African origin are under-utilized in the regional and international arbitration circuit. We all know that our arbitrators are not appointed to sit on international arbitral panels deciding multi-million and multi-billion dollar disputes even where one or more party is African (either State or company). So how do we fix this gap is the question I hope to address in this section. I will therefore examine what qualities/skills parties look for when appointing arbitrators, what training is available for arbitrators within and outside the continent and the relevance of the most popular training scheme in the continent (that provided by the Chartered Institute of Arbitrators) to arbitrators getting appointments.

It is generally agreed that parties take the following factors into consideration: reputation of the appointee in the international arbitration community (gathered primarily through informal means); expertise of the arbitrator (primarily in the subject matter or substantive law of the dispute), knowledge of relevant language (which equates to knowledge of two or more European languages or Chinese[30] being the principal languages of parties who generate enough business and therefore disputes); knowledge of applicable law (implying qualification and practice in more than two jurisdictions) and recommendation of external counsel (which may be particularly relevant in the continent).[31] There is much to be said for each of these factors,[32] however the question I wish to address is: how does the average African arbitration practitioner acquire or demonstrate the acquisition of these factors to ensure he or she gets appointed by disputing parties and other appointors? The first thing to note is that there appears to be a correlation between the nationalities of arbitrators and parties who appoint them. Drawing from the 2006 ICC Statistical Report for example there were 54 UK parties with 74 arbitrators of UK nationality appointed.[33] In the case of Africa, there were 81 parties from Africa with 26 arbitrators of African origin all appointed by the parties (see the list under table 2 below).[34] Thus where a huge number of disputes is generated by nationals of a particular country then arbitrators of that nationality also enjoy more appointments. However this assertion appears incorrect in relation to Africa since there does not appear to be a corresponding correlation between arbitral disputes involving African parties (81) and the number of African arbitrators (26) appointed. The relevant question becomes why is this so?

It is quite clear that most arbitrators are appointed by the disputing parties themselves. The ICC Statistics provide some useful numbers here as well. In 2006 the ICC

[29] Those Africans that live outside the continent have the same opportunities as any other arbitration practitioner where they reside. The views expressed here are directed primarily at those arbitration practitioners residing in the continent.

[30] Cantonese or Mandarin is particularly relevant to African countries with the increase in China's economic activities within the continent.

[31] See Loukas Mistelis, 'International Arbitration: Corporate Attitudes and Practices, 12 Perceptions Tested: Myths, Data and Analysis' 15 *American Review of International Arbitration* (2004) at 525

[32] See Emilia Onyema, Empirically Determined Factors in Appointing International Arbitrators', 73(2) *Arbitration* (2007) at 199

[33] In the case of Swiss parties, there were 60 while 152 arbitrators of Swiss nationality were appointed - see pages 10 & 12 of the Report

[34] ICC 2006 Statistical Report, 18(1) *ICC Bulletin* (2007) at page 10

appointed 949 arbitrators. 689 (of the 949) arbitrators were nominated by the parties for confirmation and appointment by the ICC.[35] If we assume that these figures from the ICC is representative of other arbitration institutions, the question then can be modified to why do disputing parties not appoint arbitrators of African origin? This question is especially important where the arbitral reference involves African parties, that is, where both parties are Africans or one of the parties is African. The thrust of this paper is that African parties will have to start appointing skilled African arbitrators. This is for the simple reason that Africa needs relevant skilled manpower to compete in the regional and global arbitration sector. If this is not done, how then do we hope our arbitration practitioners will acquire the necessary knowledge and practical skills imperative and needed in current arbitral practice? We know that our private commercial sector and governments generate enough work-load in this area because of their active involvement in cross border commercial transactions. We must start from the basics which is the drafting of commercial contracts and in particular of the arbitration clause (or a submission agreement) which will ensure that when a dispute covered by the agreement eventuates, same will be referred to arbitration. This implies that it is imperative that we understand and appreciate the relevance of arbitration to our commercial life, familiarise ourselves with the arbitration mechanism and encourage our commercial people to include the necessary clauses in their contracts. There are practitioners here who advice such clients and draft these contracts on behalf of their clients, who themselves are still sceptical or fail to appreciate the importance or relevance of opting for arbitration as a means of resolving disputes that may eventuate, and so do not bother advising their clients of this option. Arbitral appointments start from this very basis – there has to be an arbitration agreement in existence before we can begin to speak of appointing arbitrators.

To achieve this, we must continue our efforts to create and maintain awareness of arbitration as a dispute resolution mechanism. Arbitration has proven over the years to be quite flexible and so properly suited for the resolution of commercial (and other[36]) disputes. Some of the methods through which this awareness can be created and maintained include conferences, seminars, workshops, to which these series hold a very special place. However we need to do more. These gatherings are attended by primarily lawyers and those who already know something tangible about the mechanism of arbitration. However we also need to become imaginative and think of ways of getting this message across to the primary end users. I have one suggestion that cuts across the continent – we can target small-medium scale businesses and industries whose business interests are predominantly within the continent – from one African country to the other. These small and medium scale businesses can generate loads of disputes. We need to ask ourselves how many of such transactions are covered by a valid contract, properly drafted ad how many include arbitration clauses? We have largely ignored this group and they can and will generate huge businesses for arbitration practitioners. To attract this category of commercial people we can tailor a seminar, workshop, lunch meeting or whatever we choose to label such meetings, invite them or go to them and market arbitration (and other ADR processes) to them. In this manner we give them the tools, inform them of the processes and then when the need arises they can choose whether it is something they want to opt for or

[35] ICC 2006 Statistical report at page 8. The ICC court itself appointed 260 arbitrators with 239 of these proposed by 41of its national committees

[36] For example trade and investment disputes involving state entities

not – but at least we give them the opportunity of knowing they actually have an array of dispute resolution processes to choose from, but especially of arbitration which would yield a binding and enforceable outcome just like a court judgment. This target group will be more familiar with their own lawyers who will most likely also be in the continent and they will use them.

I will now briefly examine what training is available to arbitration practitioners in the continent. It is obvious that to attain an international standard in the training of arbitrators the same training requirements will apply to any aspiring arbitrator regardless of their origin or where they reside in the world. Generally, there are arbitration specific workshops, seminars, trainings available on the continent in different countries and locations.[37] I will examine one provider of arbitration training in the continent, that of the Chartered Institute of Arbitrators.[38] The Chartered Institute of Arbitrators is a global body for dispute resolution processes and has a large membership base within the continent as evidenced by the statistics obtained from the Chartered Institute headquarters in Table 3 below. The Institute offers associate and membership courses by the Kenya (in Kenya and Zambia), Nigeria (in Nigeria and Ghana) and Cairo branches while for obvious reasons it is a bit quiet in Zimbabwe now.[39] The list of membership of the Institute in the continent (see Table 3 below) is testimony of the interest in arbitration in the continent, the direct consequence of which is the need for continued training in both the academic and practical aspects of arbitration law and practice. There are specific capacity building and training seminars organised by the branches of the Institute within the continent and by the headquarters of the Institute which is open to attendance by all members of the Institute.[40] At various arbitration seminars and conferences all over the world, there are usually participants from the African continent both as participants and resource persons. Thus, arbitration practitioners within the continent have access to adequate information on these conferences, trainings and seminars wherever they are being held in the world.[41] It is therefore established that these information based training abound and are accessible to arbitration practitioners in the continent. Continent specific trainings are equally available with the organisation of conferences examining issues specific to the continent such as this one.

[37] It is acknowledged that one of the peculiarities of mobility within the continent is that in some cases you would have to fly into Europe to connect from one African country to another. However it is outside the remit of this paper to analyse the cross border transportation network within the continent.
[38] The numbers of Africans taking various examinations of the Chartered Institute of Arbitrators is a testimony to the popularity of the Institute and her programmes in the continent.
[39] Further details of these services can be obtained from the Chartered Institute of Arbitrators at http://www.arbitrators.org/Institute/Index.asp
[40] Some may argue that the cost of attendance at these seminars may hinder some attendees but that is a necessary fact of life. The relevant point made here is the availability of seminars of international standard organised by a body so recognised globally. There are seminars, workshops and trainings provided by various arbitration institutions and organisations like the ICC, LCIA, AAA, Cairo and Kuala Lumpur Regional Centres and OHADA
[41] This is due primarily to internet access and notification of these various conferences, seminars and workshops on the web. The role of education institutions (for example the School of International Arbitration at Queen Mary and The School of Oriental & African Studies both of the University of London) cannot be underestimated. Each year an increasing number of students from the continent go to universities in Europe and North America for postgraduate courses, take courses in arbitration, make friends and keep informed of happenings in the global arbitral community through this medium.

Practical training in the finer arts of arbitrating may be a little less available and accessible. However this is not peculiar to the continent but a difficulty experienced by all aspiring arbitrators globally.[42] This is for the simple reason that to acquire this sort of experience, you need to get appointed as arbitrator or at least work with somebody who gets appointed as arbitrator. Other ways of getting this practical exposure to arbitral practice include acting as counsel or as secretary to the arbitral tribunal.[43] These are various avenues of exposing aspiring arbitration practitioners to the practical aspect of arbitration (the how-to phase of arbitration). Another way is through mentoring. The Chartered Institute of Arbitrators discontinued its pupillage scheme in December 2007 but the group *Arbitralwomen*[44] provides such services to its members. The mechanism of training through mentoring has much to commend it for experiential learning but number of placements and regularity of placements are difficulties encountered in such schemes and this may be especially difficult within the continent. What appears to be practicable and accessible is working in a firm that has an active arbitration practice and getting appointments as arbitral tribunal secretary. There is absence of data on how regularly arbitral tribunal secretaries are appointed by arbitral panels sitting in the continent. However, the point has been made that this is a very useful and practical method of training aspiring arbitrators and exposing them to the practical workings of arbitration and this is available within the continent and should therefore be further explored.

It is trite that acquisition of knowledge (which is what arbitrators get from most of these workshops, seminars, conferences and trainings) in the law and practice of arbitration alone does not make for a good arbitrator – this must be translated into practice to give prospective clients assurances of requisite competence of the arbitrators seeking appointment. Such experience is acquired by actually doing – and so having done the various courses and acquired the various titles and appendages,[45] with the cost implication associated with such achievements, it is imperative that the arbitration practitioner seeks and obtains appointments to consolidate these achievements and make the appendages useful and financially beneficial to him or her.[46] The goal is to equip aspiring arbitrators in the continent to be the best arbitrator for the job for which he or she is nominated or appointed.

4. Arbitration Institutions/Centres in Africa

My next discourse is on the effective utilization of arbitration institutions in the continent. In the section on appointors above it was identified that parties to the arbitration agreement are the relevant targets for arbitration institutions. In Table 4 below I have provided a list of some arbitration institutions and centres in different countries within the continent whose services disputing parties can use.[47] In this section I will look at the very bare minimum tools an arbitration institution or centre

[42] See Stephen Jagusch, 'Starting out as an Arbitrator: How to get Appointments and What to do When you get them" 71 *Arbitration* (2005) 329 – every aspiring arbitrator should read this article.
[43] See Emilia Onyema, "The Role of the International Arbitral Tribunal Secretary" 9 *Vindobona Journal* (2005) 99; 2(3) *Transnational Dispute Management* (2005)
[44] See their website at http://www.arbitralwomen.org/ visited May 2008
[45] Examples of these are MCIarb (for members) and FCIArb (for fellows) of the Chartered Institute of Arbitrators.
[46] In addition to all these make some money for all your investment!
[47] This list is not exhaustive especially since there are lots more arbitration institutions and centres within the continent without any information about their existence or services on the internet making knowledge of their existence and services almost non-existent.

needs to have in place to effectively compete in the business of providing arbitration administration. These tools include:

- modern arbitration rules
- modern and efficient administrative and technological facilities
- Security and safety of documents
- Expertise within its staff
- Some serious degree of permanence

Table 4 below gives examples of arbitration centres and institutions within the continent which administer arbitrations.[48] Contractual parties in concluding their arbitration agreements can nominate to arbitrate any eventuating dispute under the arbitration rules of these institutions/centres. The relationship between parties opting for institutional arbitration and nominating institutions/centres within the continent to administer their dispute is contractual. The implication of this is that the institution/centre which is paid for its services enters into a contractual relationship with the disputing parties to administer their arbitral reference in accordance with its arbitration rules. This raises issues of contractual rights and obligations between disputing parties and arbitration institutions/centres, along with remedies for possible breaches.

The institutions and centres listed below in Table 4 all have their own arbitration rules tailored specifically to the effective disposition of the types of cases they administer and all very much modelled after the UNCITRAL Arbitration Rules, making most of their provisions very familiar. These institutions and centres are continually updating their technological and administrative facilities including training their staff and employing professionally qualified staff to deal with their case load. The same can confidently be said for security and safety of arbitrators and documents.[49] The degree of permanence is unpredictable especially as most of these institutions and centres are still relatively very young in comparison to their European, American or Asian counterparts.

There is no empirical data to confirm how often disputing parties from Africa utilise the services of these arbitration institutions/centres within the continent. For research purposes it is very useful where such data is available and easily accessible. The hope again is for these institutions/centres to make their existence and work known to relevant interests within and outside the continent and for parties from within (and outside) the continent to make use of their services.

Conclusion

This paper commenced from the thesis that arbitrators and arbitration institutions within the continent are not effectively utilized and do not feature noticeably in the global arbitral market. It proffered various reasons for this state of affairs and tried to answer some relevant questions raised in the course of this analysis. This paper has proposed that African parties need to regularly appoint skilled arbitrators of African

[48] These institutions/centres are situated in major African cities including all the very popular ones such as, Cairo, Algiers, Cotonou, Ouagadougou, Douala, Abidjan, Lagos, Tripoli, Dakar and Johannesburg.
[49] In this regard, the African-Asian Legal Consultative Committee regional centres (Cairo and Lagos) enjoy the status of inter-governmental organisation with necessary immunities and privileges. For a detailed account of the work of the AALCC see Amazu Asouzu, *International Commercial Arbitration and African States* (CUP 2001) from page 53

origin and use arbitration institutions/centres within the continent. This paper also examined the reasons why disputing parties appoint relatively few arbitrators of African origin and concluded that arbitration practitioners in the continent have access to and regularly attend arbitration training events within and outside the continent, so that they do not lack knowledge of the law of arbitration. However it was identified that more needs to be done in the area of experiential learning or training for the development of relevant skills. It was suggested that schemes such as mentoring and appointment of aspiring arbitrators as tribunal secretaries may be useful in this regard. It was asserted that all these efforts will ensure the continued availability of experts in this area within the continent.

It has been established in this paper that there are huge commercial cross border transactions between parties within the continent itself which category of potential appointors will need to be marketed. It has also been identified that there is a healthy number of arbitration institutions and centres within the continent whose existence and services are hardly known with the effect that they are severely under utilized. These organisations again need to get more involved in marketing themselves making their existence and services known to commercial persons within and outside the continent. I hope I have been able to show that there is a direct relationship between the choice of arbitration as the means of dispute resolution to the workload of arbitration institutions and centres, and appointment of arbitrators. The net effect or result is that for effective utilization of arbitrators and arbitration institutions/centres in Africa, disputing parties must enter into arbitration agreements nominating to arbitrate under the auspices of such institutions and appoint such arbitrators.

Tables

Table 1: African countries signatories to the New York Convention 1958 as at 5 May 2008[50]

No	Name of Country	Entry into Force
1	Algeria	8 May 1989
2	Benin	14 August 1974
3	Botswana	19 March 1972
4	Burkina Faso	21 June 1987
5	Cameroon	19 May 1988
6	Central African Republic	13 January 1963
7	Cote d'Ivoire	2 May 1988
8	Djibouti	27 June 1977
9	Egypt	7 June 1959
10	Gabon	15 March 2007
11	Ghana	8 June 1968
12	Guinea	23 April 1991
13	Kenya	11 May 1989
14	Liberia	15 December 2005
15	Madagascar	14 October 1962
16	Mali	7 December 1994
17	Mauritius	30 April 1997
18	Morocco	7 June 1959
19	Mozambique	9 September 1998
20	Niger	12 January 1965
21	Nigeria	15 June 1970
22	Senegal	15 January 1996
23	South Africa	1 August 1976
24	Tunisia	15 October 1967
25	Uganda	12 May 1992
26	United Republic of Tanzania	12 January 1965
27	Zambia	12 June 2002
28	Zimbabwe	28 December 1994

[50] Source UNCITRAL at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html visited October 2007

Table 2: African arbitrators and parties appointed in ICC arbitrations in 2006[51]

No	Country	Arbitrators	Comments from the Report
1	Algeria	3	Appointed as co-arbitrators
2	Egypt	4	2 co-arbitrators and 2 chairmen
3	Nigeria	3	Appointed as co-arbitrators
4	Sao Tome & Principe	1	Co-arbitrator
5	South Africa	6	4 co-arbitrators and 2 chairmen
6	Sudan	1	Co-arbitrator
7	Togo	3	1 sole-arbitrator and 2 co-arbitrators
8	Tunisia	6	2 sole arbitrators, 2 co-arbitrators and 2 chairmen

Table 3: List of membership of the Chartered Institute of Arbitrators in Africa as at October 2007[52]

No	**Country**	**No of Members**
1	Botswana	6
2	Egypt	40
3	Ethiopia	2
4	Ghana	26
5	Ivory Coast	1
6	Kenya	246
7	Lesotho	1
8	Malawi	2
9	Mauritius	20
10	Namibia	1
11	Nigeria	595
12	South Africa (proposed)	33
13	Sudan	5
14	Swaziland	1
15	Tanzania	15
16	Uganda	17
17	Zambia	69
18	Zimbabwe	36
Total		**1,216**

[51] See ICC 2006 Statistical report at page 10. It is not clear from the Report if these arbitrators were appointed by the parties themselves, on recommendation of a national committee or directly by the ICC court.

[52] Data provided by the membership secretary of the Chartered Institute of Arbitrators as at October 2007.

Table 4: Some Arbitration Centres/Institutions in Africa.[53]

No	Institution/Centre	Country
1	Annaba Mediation & Arbitration Centre	Algeria
2	Mediation & Arbitration centre of the Algerian Chamber of Commerce & Industry	Algeria
3	Arbitration, Mediation and Conciliation Centre of the Chamber of Commerce & Industry of Benin	Benin Republic
4	Conciliation and Arbitration Chamber of the Cotton Inter-professional Association of Cotonou	Benin Republic
5	Ouagadougou Arbitration, Mediation & Conciliation Centre of the Chamber of Commerce & Industry	Burkina Faso
6	GICAM Arbitration Centre Douala	Cameroon
7	Congo Arbitration Centre	Democratic Republic of Congo
8	Cairo Regional Centre for International Commercial Arbitration	Egypt
9	Addis Ababa Chamber & Sectoral Association	Ethiopia
10	Ghana Arbitration Centre	Ghana
11	Court of Arbitration of Ivory Coast	Ivory Coast
12	Joint Court of Justice & Arbitration of OHADA	Ivory Coast
13	The Directorate of Dispute Prevention & resolution	Lesotho
14	Libyan Center for Mediation & Arbitration	Libya
15	Arbitration Centre of Madagascar	Madagascar
16	Mali's Conciliation & Arbitration Centre	Mali
17	Permanent Court for Arbitration at the Mauritius Chamber of Commerce & Industry	Mauritius
18	Agadir Conciliation & Arbitration Centre	Morocco
19	Rabat International Mediation & Arbitration Centre	Morocco
20	Maritime Arbitration Chamber	Morocco
21	Lagos Regional Centre for International Commercial Arbitration	Nigeria
22	Arbitration Centre of the Dakar's Chamber of Commerce, Industry and Agriculture	Senegal
23	Dakar Arbitration & Mediation Centre	Senegal
24	Arbitration Foundation of Southern Africa	South Africa
25	Commission for Conciliation, Mediation and Arbitration	South Africa
26	Association of Arbitrators	South Africa
27	Conciliation, Mediation and Arbitration Commission	Swaziland
28	Center for Conciliation and Arbitration of Tunis	Tunisia
29	Commercial Arbitration Centre in Harare	Zimbabwe

[53] This list does not include ICC National Offices located in various African countries. See http://www.jurisint.org/en/ctr/1_1_1.html and http://www.kluwerarbitration.com/arbitration/NationalOrganizations.aspx visited May 2008