REFLECTIONS ON THE NIGERIA Vs PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED (P&ID)

OHIO OMIUNU*

OLUDARA AKANMIDU†

Following an unprecedented ruling by an English High Court on an application in the Nigeria v Process & Industrial Developments Limited (P&ID) case granting Nigeria an extension in time to bring challenges under sections 67 and 68(2)(g) of the English Arbitration Act 1996 ("the 1996 Act"), this article reflects on the implication of the public policy elements of fraud relied on by Nigeria. The article interrogates the reasoning behind the Court's decision, especially pertaining to the allegations of fraud in the procurement of the underlying contract - a Gas Supply and Processing Agreement ('GSPA'). The article also explores some economic justice themes arising from Nigeria's reliance on fraud as a basis for challenging the arbitration award. Drawing on a recent decision of the Mozambique Constitutional Council over illegally procured sovereign debts, it argues that there are parallels and opportunities for learning, especially as it pertains to the role of civil society organisations (CSOs) in holding public officials accountable and exposing odious deals with corrupt foreign conspirators. The reflection concludes with some thoughts on an ongoing debate that has gained traction due to the Nigeria v P&ID case that adopting a national arbitration policy is a viable option for reducing African countries' dependence on foreign courts and arbitration tribunals as a forum for settling disputes with foreign investors.

I. BACKGROUND CONTEXT

A protracted legal dispute between Nigeria and Process & Industrial Developments Limited (P&ID) over a purported repudiation by Nigeria of a Gas Supply and Processing

* Associate Professor/Reader in Law, De Montfort University, Leciester, United Kingdom.
† Senior Lecturer in Law, De Montfort University, Leciester, United Kingdom.

Agreement ("GSPA") entered into on the 11th of January 2010 has attracted significant attention in both domestic and international media.[3]

Based on the terms of the GSPA, Nigeria was required to arrange for the supply of wet gas (natural gas) to P&ID's gas processing facility which it intended to build in Nigeria. In return, P&ID would process the wet gas and return approximately 85% of it to the Government in the form of lean gas. This arrangement required the Government to construct pipelines and arrange facilities for transporting the wet gas to P&ID's facilities. The Government did not meet its part of the agreement for three years.

Viewing this failure as a repudiation of the contract, in March 2013, P&ID commenced an arbitration action against the Government before a London tribunal. In July 2015 the tribunal decided that the Government had repudiated the agreement by failing to meet its obligations. In 2017, the tribunal awarded damages in favour of P&ID to the sum of $6.597 billion with interest at the rate of 7% starting from the 20th of March 2013. The sum which now stands at about $10 billion is said to be one of highest arbitral awards known to date. As noted by Akanmidu in her Explainer piece, published in *The Conversation*, this Award poses a significant threat to the nation's economy as it amounts to about 20% of the country's foreign reserves.[4]

The recent developments in the case follow a judgment for enforcement of the arbitral Award granted by a London High Court in August 2019. Following that, in December 2019, Nigeria applied to the Court for an extension of time to challenge the initial arbitral Award issued by the London tribunal. Nigeria's case was that it has a *prima facie* case of fraud against P&ID, which justifies the extension of time required to challenge the arbitral Award. Nigeria's primary argument was that P&ID fraudulently obtained the GSPA by paying bribes to Nigerian government officials. Secondly, it argued that Mr Quinn (the former chairman of P &ID) gave perjured evidence to the tribunal to give the impression that P&ID was capable and willing to perform the GSPA. Finally, Nigeria alleged that its counsel in the arbitration dishonestly failed to challenge Mr Quinn's false evidence. It argued that the arbitration counsel for Nigeria had colluded with P &ID to defend the case thinly such that the tribunal would find in favour of P &ID. Overall, it argued that the GSPA was obtained by fraud as part of a larger scheme to defraud Nigeria.

In an interesting turn of events, on the 4th of September 2020, the High Court granted Nigeria an unprecedented extension of time to bring challenges under sections 67 and 68(2)(g) of the English Arbitration Act 1996 ("the 1996 Act").[5] The ruling on the application for extension of time by the English High Court case raises several important issues, some of which have been addressed in several explainers and commentaries.[6]

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[3] *See* TVC News Nigeria, *P&ID Fine: Another Crucial Win Against The Vulture-Fund Backed Firm - AGF Malami,* (Sept. 16, 2019), https://www.youtube.com/watch?v=O85KgXNop-s&feature=youtu.be. *See also* BBC, *Nigerian Government ordered to pay $9bn to private gas firm,* (Aug. 16, 2019), https://www.bbc.co.uk/news/world-africa-49377517.

[4] *See* Oludara Akanmidu, *Explainer: how Nigeria got hit with a $9.6 billion judgment debt in London,* The Conversation, (Sept. 10, 2019), https://theconversation.com/explainer-how-nigeria-got-hit-with-a-9-6-billion-judgment-debt-in-london-122740); and The Nation, *$9.6bn Judgment: Fraudulent target on our foreign reserve – FG,* (Aug. 30, 2019), https://thenationonlineng.net/9-6bn-judgment-fraudulent-target-on-our-foreign-reserve-fg/

[5] *See* the Federal Republic of Nigeria v. Process & Industrial Developments Limited [2020] EWHC 2379 (Comm) (hereinafter Nigeria v P&ID).

[6] *See* Chizaram Uzodinma, *Balancing the Principle of Finality of Arbitration Awards and the Public Policy of Censuring Illegality: The Case of Nigeria v. P&ID*, Afronomicslaw.org, (Oct. 7, 2020),

In this piece, we focus on the broader significance of the *prima facie* case put forward by Nigeria that *"the GSPA, the arbitration clause in the GSPA and the awards were procured as the result of a massive fraud perpetrated by P&ID.'* Nigeria further argued that *'to deny them the opportunity to challenge the Final Award would involve the English court being used as an unwitting vehicle of the fraud."* In the first part, we reflect on the importance of the fraud allegations in the reasoning of the English High Court. In the second part, we explore some economic justice themes arising from Nigeria's reliance on fraud as a basis for challenging the arbitration award. In particular, we argue that the investigation by the Nigerian Government into allegations of fraud in the procurement of the GSPA contract is a "knee jerk" reaction motivated by a growing realisation that the US$ 10 billion awards may be enforced against Nigeria.

More importantly, drawing on a recent decision by the Mozambique Constitutional Council, it is argued that there are parallels and opportunities for learning, especially as it pertains to the role of civil society organisations (CSOs) in holding public officials accountable and exposing odious deals with corrupt foreign conspirators.[7] The reflection ends with some thoughts on an ongoing debate among practitioners about Nigeria adopting a national arbitration policy. The calls for a national arbitration policy have gained traction due to the latest twist in the Nigeria v P&ID case. The article situates this debate within the broader argument about African countries' dependence on foreign courts and arbitration tribunals as a forum for settling disputes with foreign investors.

II. THE IMPORTANCE OF FRAUD AND PUBLIC POLICY CONSIDERATIONS IN THE NIGERIA V P&ID OUTCOME.

Section 68 (2) (g) of the 1996 Act has fraud and public policy considerations as criteria for challenging an arbitration award for serious irregularity. However, Nigeria's significant delay in bringing this challenge within time (28 days) was a significant hurdle to surmount. This is especially so, considering that speed and finality are deemed essential features of London arbitration.[8] Indeed P& ID argued that given the length of time since the final Award was issued, it would be "unprecedented" for the courts to grant the extension of time requested by Nigeria.[9]

The English Courts have generally been less inclined to grant extensions,[10] even in cases involving fraud. For example, Uzodinma points out that *"…of the 8 cases cited by counsel (in the Nigeria v P&ID case) involving an application for extension of time to challenge an award where fraud was alleged, 5 of*

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https://www.afronomicslaw.org/2020/10/06/balancing-the-principle-of-finality-of-arbitration-awards-and-the-public-policy-of-censuring-illegality-the-case-of-nigeria-v-pid/ (Uzodinma highlights the judgment's *"…contribution to jurisprudence on determining the point at which an allegation of illegality will be allowed to threaten the finality of an award"*).

[7] *See* James T. Gathii, *Introduction: Sovereign Debt Under Domestic and Foreign Law: Lessons from the Mozambique Constitutional Council Decision of May 8, 2020*, Afronomicslaw.org, (Aug. 3, 2020), https://www.afronomicslaw.org/2020/08/03/introduction-sovereign-debt-under-domestic-and-foreign-law-lessons-from-the-mozambique-constitutional-council-decision-of-may-8-2020/

[8] *See* Justice Eder, *Challenges to Arbitral Awards at the Seat,* Mauritius International Arbitration Conference, (Dec. 15, 2014), https://www.judiciary.uk/wp-content/uploads/2015/10/Eder-Speech-Dec-2014.pdf *See also*, Terna Bahrain Holding Company WLL v Bin Kamil Al Shamsi [2012] EWHC 3283 (Comm), [2013] 1 Lloyd's Rep 86 par 27 (per Popplewell J).

[9] Nigeria v P&ID, *Supra* note 4, at para 261-263

[10] *See* AOOT Kalmneft v Glencore [2001] 2 All ER (Comm) 577, [2002] 1 Lloyd's Rep 128 (per Colman J at para 52).

them were refused either because the applicant was aware of the fraud and/or the fraud allegation was weak."[11] These statistics underscore the significance of the decision reached by Cranston J in this case.

Navigating the Kalmneft factors

Drawing on the seven *Kalmneft* factors used as a test to determine whether to extend time limits for challenging an arbitration award[12], Cranston J appears to have been swayed by factor vii. This particular *Kalmneft factor* stipulates that the courts should take into consideration *"whether, in the broadest sense, it would be unfair to the applicant for him to be denied the opportunity of having the application determined."*[13]

Nigeria's application would perhaps have had an unfavourable outcome if it was premised on the "so-called" primary *Kalmneft* factors, i.e. factors (i)–(iii) discussed by the Court of Appeal in *Nagusina Naviera v Allied Maritime Inc.*[14] However, while not fully discrediting *Nagusina*, Cranston J agreeing with the judgment of Carr J in *Ali Allawi v The Islamic Republic of Pakistan,*[15] noted that the weight to be given to each *Kalmneft* factor needs to vary with context. Hence the first three factors are not necessarily of greater significance than the others. Overall, the Court's decision in this application was based on the fact that Nigeria successfully established a "strong *prima facie* case" that the GSPA was procured by fraud.

This outcome raises further issues about the role of fraud in arbitration law. Although fraud is an established ground under the 1996 Act for challenging an arbitration award, allegations of fraud in the underlying contract should not in itself be a basis for setting aside an arbitration award, except the fraud extends to the arbitration award as well.[16] Based on the principles of separability, the validity of the arbitration agreement that led to the Award being challenged by Nigeria is not tainted by the allegations of fraud in the procurement of the underlying contract.[17]

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[11] Hon Mr Justice Eder speaking in December 2014, consider statistics for the period 2012-2014, pointing out that: "*Under s68 ("serious irregularity"): in 2012, there was a total of 7 challenges all of which were rejected; in 2013, there was (again) a total of 7 challenges of which only 1 was allowed and the remaining 6 were rejected; in 2014, there was a total of 8 challenges of which 2 were allowed and the remaining 6 were rejected" (p. 4)*

[12] The Seven factors established by Colman J in AOOT Kalmneft v Glencore *Id.* are:
"(i) the length of the delay;
(ii) whether, in permitting the time limit to expire and the subsequent delay to occur, the party was acting reasonably in all the circumstances;
(iii) whether the respondent to the application or the arbitrator caused or contributed to the delay;
(iv) whether the respondent to the application would by reason of the delay suffer irremediable prejudice in addition to the mere loss of time if the application were permitted to proceed;
(v) whether the arbitration has continued during the period of delay and, if so, what impact on the progress of the arbitration or the costs incurred in respect of the determination of the application by the court might now have.
(vi) the strength of the application;
(vii) whether in the broadest sense it would be unfair to the applicant for him to be denied the opportunity of having the application determined" (paragraph 59).

[13] The strength of the application (factor vi) can also be cobbled into this unfairness point because Nigeria adduced more than sufficient evidence to establish a *prima facie* case of fraud. Thirty-four bundles of documents with hundreds of pages of evidence and thousands of pages of exhibits were submitted in this case and the related application for relief from sanctions to adduce new evidence in response to an enforcement application.

[14] [2002] EWCA Civ 1147, [2003] 2 CLC 1. *See* in particular the elucidations of Mance LJ at para 39. *See* also L Brown & Sons Ltd v Crosby Homes (North West) Ltd [2008] EWHC 817 (TCC), [2008] BLR 366 (per Akenhead J).

[15] [2019] EWHC 430 (Comm).

[16] *See* s. 68 (2) (g) of the 1996 Act.

[17] *See* s. 7 of the 1996 Act. *See* also *Fiona Trust & Holding Corporation v Yuri Privalov* [2007] EWCA Civ 20.

In *Chantiers de l'Atlantique SA v Gaztransport & Technigaz S.A.S.,*[18] the English High Court held that a causal link between fraud and the Award itself must be established to successfully set aside an award under s. 68 (2) (g) of the 1996 Act.[19] It will be interesting to see if in the substantive application Nigeria has put forward to nullify the arbitration award, the allegations of fraud,perjured evidence given by Mr Quinn and dishonest conduct by Nigeria's counsel in the arbitration proceedings will be sufficient to bring into question the integrity of the Award.[20] Given that these matters are yet to be determined in the pending application, the broader significance of this recent judgment by Cranston J is perhaps the fact that counsel for Nigeria was able to convince the Court to depart from its conventional stance on extension requests. Success at this stage opens up the possibilities for these broader issues to be heard.

III. ANY LESSONS LEARNED BY NIGERIA?

The details establishing the allegations of fraud in the procurement of the GSPA by P&ID are persuasive, to put it mildly. The alleged fraud facts point to a series of underhanded practices perpetuated by Nigerian senior government officials and public civil servants. However, what is intriguing is that the Government is keen to expose these corrupt practices to overturn this arbitration award. The obvious question is, why were these investigations not carried out earlier? Allegations of complicity and connivance of Nigeria's lead counsel with P&ID during the arbitration proceedings have been partly blamed for these delays. The comprehensive investigation eventually carried out by government anti-fraud agencies when the situation had escalated to the point of a substantial arbitral award against Nigeria was impressive albeit very late in the day. The level of detail uncovered in Nigeria's application reminds us that anti-graft institutions can function effectively in Nigeria with the right motivation. In this case, the threat of a US$ 10 billion award has provided the motivation for uncovering the perpetrators and accomplices to fraud perpetrated against the Nigerian people.

More importantly, with these unfolding incidents that could have further twists, are we likely to see more significant accountability from government officials'? Will perpetrators of fraud against the Nigerian people be exposed and brought to justice? Or are the culprits in the P&ID case "scapegoats", exposed because they are dispensable? In essence, has Nigeria exposed the allegations of fraud solely to overturn this arbitration award without any learning or change in attitude towards the broader issues of economic injustice which led to this mess in the first place? The P&ID scandal might be a watershed moment that tilts the scale favouring the vulnerable masses who have suffered the consequences of flagrant abuse of public finances by government officials. However, any meaningful and lasting change will require greater vigilance from the general public and CSOs. In part three of this piece, the focus shifts to another example of a fraud-tainted international contract involving an African country currently before English Courts.

IV. PARALLELS AND LESSONS FROM MOZAMBIQUE?

Afronomicslaw recently held a webinar focusing on the landmark decision by the Mozambique Constitutional Council in May 2020. The Court overturned odious loan agreements

[18] [2011] EWHC 3383 (Comm).
[19] Para 58-62.
[20] In the *Matter of Cheney Brothers v. Joroco Dresses, Inc., 218 App. Div. 652, 219 N. Y. Supp. 96 (ist Dept. 1926)* it was held that *'the question as to whether or not the contract was fraudulently induced raises an issue of fact which must be tried before the right to arbitration under the contract may be enforced. If the contract was voided by fraud, the arbitration provision therein falls.'*

between Mozambique and foreign creditors valued at approximately $2.2 billion.[21] The contexts of both cases differ; however, there are some important points of convergence from which we can draw useful parallels.

First, like the Nigeria GSPA scandal, the loan contract between Mozambique and the foreign creditors, including Credit Suisse and VBT Bank were procured by fraud and disregard of due process. In essence, both scenarios are connected by a common issue – corruption, involving public officials acting on behalf of a sovereign state that is a party to an international commercial transaction. However, a significant difference in outcomes is that the allegations of fraud in Nigeria's Case have only recently come to light after the better part of a decade and as a litigation strategy. In Mozambique, although there were also attempts to hide the shady transaction which took place in 2013, CSOs were instrumental in uncovering the transactions and instituting public interest litigation against the culprits. Denise Namburete who played a prominent role in the public interest litigation that ensued reports that *"Pressure from different actors, such as civil society, development partners and the media, led the Attorney General in Mozambique to commission an audit on the three loans in 2017."*[22]

The Mozambique case is significant in that it demonstrates the potency of CSOs in holding government officials accountable. Could a similar approach have helped uncover the fraud in the Nigerian scenario? This is an important question because there is no guarantee that the Nigerian Government will expose other similar shady deals if it has no strategic interest to meet. Perhaps this is a key learning point for CSOs in Nigeria and other African countries. Stakeholders in academia, CSOs and other advocacy groups must work collaboratively to facilitate more proactive interventions across the continent.

Second, both scenarios involve English law and require determination by English Courts. Although the substance of the disputes and the initial dispute settlement forums are different (i.e. the P&ID dispute went to arbitration, while the Mozambique case went through the Mozambican courts), ultimately, English Courts will play a crucial role in determining the outcomes of disputes involving African states and foreign investors with a fraud element. This links both cases on a normative level which we explore in the next section.

V. ADVOCATING FOR AN AFRICAN APPROACH TO DISPUTE SETTLEMENT

If the recent decision in Nigeria v P&ID is anything to go by, the English Court's posture towards issues of fraud and public policy could be crucial in the outcome of the Mozambique case. Having foreign forums handle cases involving sovereign states where corruption is prevalent is problematic if they (i.e. the foreign dispute resolution forums) do not factor in public interest considerations which are in the best interest of the general public from the home countries that bear the brunt of this fraudulent deals. In essence, the cases we have examined are significant because they present unique opportunities for foreign courts/arbitration panels to champion or

[21] *See Overturning Sovereign Debt for Violating National Law: Lessons from a recent Mozambique Constitutional Council Decision,* Afronomicslaw.org, (Jun. 08, 2020), https://www.afronomicslaw.org/2020/05/30/afronomicslaw-webinar-series/

[22] *See* Denise Namburete, *How Public Interest Litigation Led to Invalidation of Illegal Mozambican Debt,* Afronomicslaw, (Aug. 04, 2020), https://www.afronomicslaw.org/2020/08/04/how-public-interest-litigation-led-to-invalidation-of-illegal-mozambican-debt/

stifle economic justice for millions of people who suffer the real impact of fraudulent transactions between public officials and dubious foreign investors. Hence, the finding of the High Court in the recent P&ID application could serve as a deterrent for parties who think that foreign courts are less likely to engage in judicial activism in similar cases that involve a conspiracy to defraud vulnerable communities and citizens of developing countries. However, Bradlow speaking about the Mozambique case argues, that it is *"…not easy to predict the outcome of this case"* mainly because existing English precedence *"…suggests that the courts in England will uphold the Credit Suisse contract."*[23] In the P&ID case, Cranston J's approach raises a glimmer of hope that English Courts are willing to adopt a broader approach to interpreting contracts tainted by or procured by fraud. However, it is still hard to escape from Bradlow's realist estimation of the potential outcomes.

The uncertainty about how these disputes (including Nigeria's main challenge against the P&ID arbitral Award) will be decided raises more fundamental issues about the dependence of African countries on foreign courts and arbitration tribunals as a forum for settling disputes with foreign investors. More importantly, is it time to rethink the "hidden costs" of arbitrating in "arbitration-friendly" jurisdictions?[24] A significant amount of arbitration cases that could have been arbitrated by Nigerian practitioners are taken abroad to countries such as London, New York or Geneva.[25] This is troubling, considering that there are over 80 arbitration centres/institutions across Africa. It is odd that we do not have more disputes being resolved in arbitration centres in Nigeria or at least in neutral arbitration forums within the African continent.[26] In the Nigeria v P&ID scenario, for example, one of the issues raised by Nigeria's Attorney General was that "*the form of the arbitration agreement [in the GSPA contract] did not match the model reflected in a government circular in force at the time providing for arbitrations with their seat in Nigeria."* In light of this, there have been calls from several legal practitioners for Nigeria to introduce a national arbitration policy.[27]

Proponents of the national arbitration policy argue that having Nigeria as the Seat of arbitration would provide several benefits to Nigeria. A few of these are mentioned here. First, it is argued that a national arbitration policy could help to protect the country's national interests in its commercial relations (including contracts backed by government guarantees and contracts from private commercial relationships) with foreign investors. This is a far-reaching proposal, especially as it is envisaged that the national policy will extend to private commercial transactions. It also raises issues of party autonomy, an important characteristic of arbitration which makes it attractive to commercial parties.

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[23] *See* Danny Bradlow, *Prudent Debt Management and Lessons from the Mozambique Constitutional Council,* Afronomicslaw, (Aug 05, 2020), https://www.afronomicslaw.org/2020/08/05/prudent-debt-management-and-lessons-from-the-mozambique-constitutional-council/

[24] *See* Stewarts, *Recent developments in English law relevant to arbitration,* (Jun. 18, 2020), https://www.stewartslaw.com/news/arbitration-relevant-recent-developments-in-english-law/ *See also* Latham & Watkins, *Guide to International Arbitration* (2017) 22-23 https://www.lw.com/thoughtleadership/guide-to-international-arbitration-2017 (Last visited Oct. 24, 2020).

[25] Oladimeji Ramon, *Nigeria needs National Arbitration Policy, says Don', Punch Nigeria,* (Oct. 15, 2020), https://punchng.com/nigeria-needs-national-arbitration-policy-says-don/

[26] *See* Updated List of African Arbitration Centres/Institutions as at 20 March 2020 Produced by Dr Emilia Onyema and updated with research by Mr Sopuruchi Christian, Lecturer at Obafemi Awolowo University, Ile-Ife, Nigeria and LLM candidate at SOAS University of London. https://researcharbitrationafrica.com/files/List%20of%20Known%20Arbitration%20Institutions%20in%20Africa.pdf (Last visited Oct. 24, 2020).

[27] *See* Oluwole Akinyeye, *National Arbitration Policy: Critical Next Steps Following the P&ID Award, Olisa Agbakoba Legal (OLA),* (Sept. 09, 2019), https://oal.law/national-arbitration-policy-critical-next-steps-following-the-pid-award/ (Last visited Oct. 24, 2020).

Second, it has been further argued that a national policy would ensure that disputes such as the one in the P&ID case would be resolved following institutional arbitration mechanisms with Nigeria as the Seat of arbitration.[28] Arbitral awards issued by a foreign arbitration tribunal could therefore be avoided.

Third, proponents argue that a national arbitration policy would promote the growth and development of the economy through wealth creation and job opportunities for arbitration experts and professionals in Nigeria. Fourth, it has also been argued that a coherent arbitration policy would save the Nigerian Government billions of dollars which it would have otherwise expended by arbitrating abroad.

Considering the potential benefits of having a national arbitration policy, the Attorney General and Minister of Justice in Nigeria, Mr Abubakar Malami, recently inaugurated the National Arbitration Policy Committee.[29] The Committee is intended to convene experts who will develop the national arbitration policy.

If Nigeria indeed adopts a national arbitration policy, what impact if any will it have on arbitration practice in Nigeria and more broadly in Africa? Also, will such a policy diminish the attractiveness of Nigeria as an investment destination moving forward? Finally, what impact will the envisaged policy have on respect for the rule of law in Nigeria? These are important questions that Nigeria must take into consideration. For example, focusing on the last question, the arguments that a national arbitration policy will protect Nigeria's national interests is intriguing. The details of Nigeria's core argument in the P&ID case indicate that the greatest threat to Nigeria's national interest is the alleged complicity by public servants accused of colluding with P&ID officials. Protecting Nigeria's interests in commercial transactions requires much more than a National Arbitration Policy. A robust transparency policy must complement a national arbitration policy during the procurement process of government contracts. Corruption and flagrant disregard for due process may ultimately have placed Nigeria in the precarious position it currently faces with the P&ID award. Ironically, the Nigerian Government's identification of the potential culprits in the alleged scam may end up being the "get out of jail card" that helps her defeat the Award. Given these circumstances, Nigeria's national interests in her dealings with foreign investors are best protected with a zero-tolerance for corruption in government procurement processes, rather than depending on a national arbitration policy alone.

Foreign investors are keen to avoid litigation within domestic courts, preferring neutral dispute settlement forums; hence, arbitration's popularity in foreign jurisdictions. Given this, by adopting a national arbitration policy, Nigeria runs the risk of dampening investor confidence. However, if robust domestic transparency mechanisms accompany the envisaged policy, perhaps, well-meaning foreign investors will be more open to still doing business in Nigeria even if there is a policy that insists on Nigeria as the Seat if there are disputes.

Undoubtedly, the utilisation of African based arbitration hubs/regional courts will allow African countries and advocacy groups to develop an African centred approach and jurisprudence for dispute settlements that take cognisance of the economic injustice that comes with fraudulent or unfair contract terms. For example, corruption in the African context requires an African

[28] Dipo Olowookere, *Need for Executive Order on National Arbitration Policy',* Business Post, (Sept. 3 2019) https://businesspost.ng/featureoped/need-for-executive-order-on-national-arbitration-policy/
[29] Joseph Onyekwere, *Malami inaugurates National Arbitration Policy Committee',* The Guardian, (Oct. 14, 2020), https://guardian.ng/news/malami-inaugurates-national-arbitration-policy-committee/

approach, supported by African adjudication mechanisms.[30] However, improving the utilisation of Nigeria's arbitration centres should not be hinged solely on the proposed national arbitration policy. To be competitive, the focus must go beyond Nigeria's national interests. Collective support for Africa as a preferred seat of arbitration has more significant potential to increase the competitiveness of arbitration forums across the continent, including in Nigeria.

VI. CONCLUDING REMARKS

This piece has explored key issues arising from the Nigeria v P&ID case. Indeed, Nigeria has many lessons to learn from the P& ID saga. For many Nigerians, the English High Court's decision granting the Nigerian Government an extension of time to challenge the arbitral Award provides a glimmer of hope in what otherwise appeared to be a grim situation for the country. It is hoped that the arbitral Award and the many controversies that have trailed the controversial GSPA would prove to be a watershed moment for the Nigerian Government in ensuring due process and accountability at all levels of government. Following the recent developments in the P &ID case, the National Arbitration Committee was hurriedly constituted to develop the country's national arbitration policy. Yet, the issues surrounding arbitration are mere symptoms of the malaise which plagues governance in Nigerian. Hence, a fundamental overhaul and reform are needed if Nigeria is to avoid a repeat of the circumstances which led to the P&ID case.

[30] There is a growing recognition of African centred approaches to interpreting contract law which rely on African concepts of social justice. *See* for example, HM du Plessis, *Harmonising Legal Values and Ubuntu: The Quest for Social Justice in the South African Common Law of Contract*, http://www.saflii.org/za/journals/PER/2019/77.pdf (Last visited Oct. 24, 2020). *See also*, Andrew Hutchison, *Good Faith In Contract: A Uniquely South African Perspective*, 1 Journal of Commonwealth Law (2019) https://www.journalofcommonwealthlaw.org/article/7441-good-faith-in-contract-a-uniquely-south-african-perspective (Last visited Oct. 24, 2020).