



EBSU JOURNAL OF INTERNATIONAL LAW & JURIDICAL REVIEW

VOLUME 3, 2014

ISSN 2141-4602

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A Publication of the Department of International Law and Jurisprudence,
Faculty of Law, Ebonyi State University, Abakaliki

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15/16

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Abstract

One of the concerted efforts of African treaties aimed at Economic integration was the establishment of the African Development Bank (AfDB). The Bank was established for the purpose of promoting economic and social development in Africa by providing loans and grants to African government in the Regional Member Countries (RMCs). However, as lofty as this aims are, there are some teething clogs barricading the functionality of the African Development Bank. The thrust of this paper therefore is to examine the origin and development of the Bank vis-a-vis the law regulating its operations. In the final analysis, the paper posits that the working together of the African Development Bank, African Development Fund and Nigerian Trust Fund with other international organisations like World Trade Organization (WTO) and the International Monetary Fund (IMF) would shape and accelerate the actualization of the functionality of the African Development Bank internationally.

1. Introduction

The most important international development of the last half of the 20th Century is the remarkable growth in economic interdependent of the word more particularly in the African continent. This is an overwhelming development for traditional ideas of international law.¹

The concept of sovereignty or independence of national governments for instance has reduced in meaning when one government's internal fiscal monetary policy can have a dramatic effect on the economy of the other countries. Equality of nations (state sovereignty equality) likes has become a questionable assumption in the face of vast disparity in population of economic production and technology. Each of these may significantly affect military capability, internal stability and the welfare of citizen.²

There is no doubt African continent need economic integration, thus the new concept of Globalization depict the fact that a process which is seen as part of the product of the tremendous impact of advances in information technology on global relation need be embrace for economic disintegration and development. Africa is regarded as underdeveloped continent in the World with low human productivity³ as classified by United Nation's Development Programme (UNDP) Thus on this point Asiawaju said:-

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¹ S.B Ajulo (1989) "The Economic Community of West Africa States and International Law" *Journal of Modern African Studies* Vol. 27 No 2 pp. 230-250.

² *Ibid*, it can rightly be posited that the right of sovereignty of a nation is not total, no nation can be completely independent, there must be cross fertilization and exchange of ideas, technology and even financial support. One very quick example is the multiply effect of economic down turn in United State on the world economy

³ W. O. Egbewole, "Globalization and its Challenges on National Legal System: A case study of Nigeria, *India Journal or International Law* Vol. 43 No 2 (2003) (April-June) pp.332-348.

In strict socio-economic question, the West African Sub-Region has in the human memory formed a complex whole. The Phenomenon of long distance trade in all direction dated from antiquity as can be easily perceived from the History of trans-Saharan trade which also covered both the Savannah and the forest belts similarly, ancient was the phenomenon of migrations which has, from earlier than recorded dates, aided the concept and tradition of familiar relationship among several East African groups.

There is no gainsaying that the above depict the African legacy and how well African continent managed and propelled this legacy to ensure and actualized the economic integration of the continent that would have served a precursor for the current trend of Globalization.⁴

It is instructive to note that no nation in the world can exist in isolation, thus the need for countries to co-operate, integrate with one another for socio-economic integration and to make the world a safer place for all to live in.

It is pertinent to note that African Continent have made concerted effort in the realm of economic integration with treaties on economic outfit like, Economic community of West African State (ECOWAS), South African Development Community (SADC) and most recently, the West African Countries are making effort at adopting currency for West African sub-region known (West African Monetary Agency).⁵

2. Origin of African Development Bank (AfDB)

Following the end of colonial period in Africa, growing desire for more unity within the continent led to the establishment of two draft charters, for the establishment of the Organization of African Unity⁶ (OAU) and Regional Development Bank.⁷ The origin of the African Development Bank dates back to January 1960 when the idea of a special development fund for Africa was first discussed at the all-African people's conference in Tunis. The conference adopted a resolution calling for the setting up of an African investment bank to promote development projects. That resolution reflected African Leaders' disappointment at the failure of a proposal in the late 1950s to establish a Special United Nation Fund for Economic Development (SUNFED), which would be controlled by developing countries. In place of SUNFED there had been established the International Development Association (IDA) as a soft-loan fund within the World Bank group, but the weighted voting in the IDA gave the principal subscribers, mainly the developed nations of the West a controlling say in how its fund were used.⁸

The United Nations Economic Commission for Africa (ECA) took up the idea of an African Development Fund for Africa at its third session in February 1961. The ECA unanimously adopted a resolution requesting Robert Gardner, the then deputy executive secretary to undertake a thorough study of the possibilities of establishing an African Development Bank and to report to the Commission at its next session.⁹

Gardner initiated several studies, inquiries and consultations culminating in the appointment later in 1961 of a multinational panel of experts to carry out feasibility studies on the setting up of a regional development bank.¹⁰ The report by the panel of experts, recommending the establishment of the ADB,

⁴ A.I. Asiwaju, "Socio-economic Integration of West African Sub-region in Historical Context: Focus on European Colonial period" in A.B. Akinyemi *et al* (eds.) *Reading and Documents on ECOWAS* (Macmillan 1983) p. 34.

⁵ W. O. Egbewole, *Op. cit.*, pp.332-348. See also Article 1 & 2 of the Agreement Establishing the African Development Bank 6th Edition July, 2002.

⁶ O.A.U was established 1963 now changed to African Union

⁷ See African Development Bank, available at <http://www.afdb.org> accessed on 24/11/2009, pp 2-4

⁸ The African Today, *Organizations of the African Development Bank* (London, African Journal Limited, 1977), 54-78.

⁹ *ibid*

¹⁰ *ibid*

was considered by the ECA at its fourth session in February and March 1962. The ECA adopted the report and set up a committee of nine member states to draft a charter for the Bank and make arrangements for its formation members of the committee of Nine were Cameroon, Ethiopia, Guinea, Liberia, Mali, Nigeria, Sudan, Tanganyika and Tunisia; Mamoun Beheiry then Governor of the bank of Sudan who represented Sudan on the committee subsequently became the ADB's first President. He was succeeded in 1970 by Abdelwahab Labidi of Tunisia.¹¹

2.1 Consultation with Governments

The committee, which was chaired by Romeo Horton, President of the Bank of Liberia, held three meetings in June and September 1962 and in January 1963. After the first meeting it divided into three teams which went on separate tours for consultations with African government. At the second meeting the views obtained from African government were put together.¹²

Then the committee divided into two teams for consultations with the government of developed countries and international development agencies. The consultation with developed countries, which included the Soviet Union and the United State of American, was in keeping with the committee's terms of reference, which required it to take soundings on the extent to which the proposed bank could look to the developed countries for financial and technical assistance.¹³

The committee prepared series of reports on its missions and at its third meeting, in January 1963, it adopted a draft agreement on the establishment of the ADB, the draft agreement was then distributed to African governments for their comments. That was followed by a Conference of African Finance Ministers, held in Khartoum from July 16 to August 4 1963 at which the draft agreement was debated and approved.

It was decided initially that the Bank's capital should be subscribed entirely by African states in order to protect its African character and independence. That gave the AfDB a unique status in the world as the only regional or continental development bank without external contribution to its capital stock. The provision that subscription shall be payable wholly in gold or convertible currency is also unique; in similar institutions in other continents part of the subscription is payable in the currency of member states.¹⁴

Although under Article 3 of the Charter membership is open to independent state of the African continent and adjacent Islands, the African finance ministers resolved at their Khartoum meeting in 1963 that South African shall not be eligible for membership 'until its government has terminate its apartheid policies'.¹⁵

The Board of Governors decided at its meeting at Libreville in May 1978 that the Bank should now invite non African countries to subscribe to its capital; such countries had already been providing funds for the African Development Funds. In March 1979 agreement was reached on the admission of thirteen European countries and the USA, Canada, Japan and Kuwait to membership of the ADB with an increase in the Bank's capital to US\$6,300mn of which US\$4,200mn would be subscribed by African states to ensure continued African control. In May 1979 the Board of Governors approved the extension of membership at its meeting in Abidjan, which laid down that the Board would consists of 18 members, 12 of them African, while the president must always be African.¹⁶

By then the expected non-African members were Argentina Australia, Belgium, Brazil, Canada, Denmark, Finland, France, West Germany, Italy, Japan, South Korea, Kuwait, Netherlands Norway, Saudi Arabia, Spain, Sweden, Switzerland, UK, USA and Yugoslavia. However, their membership and the allocation of shares to them could not take immediate effect owing, partly to the need for legislation in

¹¹ *ibid*, it important to note that during its forty years of operations, AfDB has financed 2885 operations, for a total of \$47.5 billion. <http://www.bicus.afdb.org> accessed on 25th/11/2009

¹² The African Today (n 8) pp. 58-78

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *Ibid*, see E. Philip English & H. M. Mule, *The African Development Bank*, (Boulder, Colorado: Lynne Reinner, 1995) pp.20-30

¹⁶ *ibid*

new members states. Also in 1981 progress was delayed when a new Board of Governors vote on the issue, which had to be taken at the Lome meeting of the Board in May 1981, was indecisive. A majority voted for the opening of share capital to non-African members, but not the requisites 75 per cent majority of voting power.¹⁷

The bank has 53 African member and 24 non-member countries promoting sustainable economic growth and reduces poverty while also participating in a wide range of international programs including the Heavily Indebted Poor Country Debt Relief Initiative (HIPC) the More Comprehensive Multilateral Debt Relief Initiative (MDIR and New Partnership for Africa's Development.

2.2 Aims of African Development Bank

The Charter provides that the AfDB shall contribute to the economic development and social advancement of its members individually and collectively, to that end, the Bank utilizes its resources to finance investment projects or programme designed to contribute to the economic and social progress of its members giving priority, in as far as possible to projects and programmes intended to foster regional co-operation and orderly development of trade among member states.¹⁸

Donald Kaberuka on the function of AfDB Group said, as a Bank, as a development and finance institution, our fundamental mission and our core function is that of financing long term projects by deploying our concessional and non concessional resources to promote socioeconomic development in Africa. But our role is more than financing development. It also understands development (assuming development can be fully understood!). What is it that works? And under what conditions? How can we deploy best practices in economic management to better influence the African Economic condition?¹⁹

It promotes public and private capital investment in Africa and provides technical assistance, which may be required for the appraisal, preparation, financing and implementation of development projects and programmes. The Bank may also undertake such operations either alone or in conjunction with other financing institutions private groupings or organizations may also be granted loans by the Bank provided that such loans are guaranteed by the government of member state in which the groups or organizations operate.²⁰

While observing the principle of sound financial management the bank takes into account the economic and social impact of its action. It respects member states development priorities but pays particular attention to operations that promote economic integration. Except in specific circumstances, loan granted or guaranteed by the Bank should cover the financing of specific projects. The Bank may however, grant loan (that is unspecified loans) to National Development Bank or other appropriate institutions, or guarantee loans granted to such banks or institutions, to enable them finance specific projects that serve its purpose.²¹

For the financing of investment projects for development, the bank grants loans to member states at low rates of interest, ranging from 5 to 8 per cent per annum repayable annually or semi annually over a long period, varying from 10 to 40 years.²²

3. Legal Framework of African Development Bank

The Charter provides that the supreme organ of the Bank shall be the Board of Governor²³ on which each member state shall be represented by one governor; usually each governor is his Country's

¹⁷ *ibid*

¹⁸ The African Today pp.58-78

¹⁹ Donald Kaberuka, "Africa: Reflecting on the Global Economic Crisis and the Way Forward", (2009), The African Economic Conference, Addis Ababa.

²⁰ *ibid*

²¹ *ibid*

²² *Ibid*

²³ This is the highest policy making body, usually the Minister of Finance or Governor of the Central Bank do represent member country. See Article 29 to 32 AfDB Agreement

minister responsible for economic and financial affairs. The Board of Governors formulates general directives on policy, particularly with regard to loan. It holds an annual meeting and may with a few exception delegates all its power to the Board of Directors, which is the next highest organ of the bank.²⁴

The Board of directors comprises nine members elected by the board of Governors for a period of three years. It is responsible for the general conduct of the Bank's operation. Each director appoints an alternate. The President shall be elected by the Board of Governors for a five year term of office. The President of the Bank is the chairman of the Board of directors. He is the legal representative of the Bank and Chief of Staff. He conducts under the direction of the Board of Directors, the current business of the Bank. The president is assisted in the discharge of his functions by one or more Vice president.²⁵

3.1 Board of Governors and Directors of AfDB and AfDF

All the powers of the Bank shall be vested in the Board of Governors. In particular the Board shall general directives concerning the credit policy of the Bank.²⁶ Each members of the African Development shall be represented by the Board of Governor and shall appoint one alternative Governor; they shall be person of the highest competence and wide experience in economic and financial matters and shall national of the member states.²⁷

They Governors appointed shall serve for five years subject to termination of appointment any time before the expiration of the five years or to be reappointed at the pleasure of the appointing members. The Board of Governor shall hold their annual meetings with four months after the end of the preceding financial year at such place as the Board may decide.²⁸

One Governor shall be designated as chairman at each annual general meeting and two governors as its first and second vice chairman. Note that an alternative Governor may attend any meeting except in the absence of its principal.²⁹

3.2 Board of Directors of AfDB and AfDF

The Board of Directors, shall be responsible for the conduct of the general operations of the Bank and for this purpose shall in addition to the powers provide for its by the Board of Governors and in particular to, elect president and one or more vice president of the Bank, prepare the works of the Board of Governors take decision concerning direct loan guaranteed, investment in equity capital and borrowing of fund by the bans determine rate of interest submit account of each financial year and determine general structure of the bank.³⁰

The Directors shall be composed of nine members who shall not be Governor or alternative Governors. They shall be elected by the Board of Governors; they shall serve for a term of three years. Each Director shall appoint alternative Director to represent him on case of his absence. The Board shall function in continuous session at the principle officer of the Bank and shall meet as often as the business of the Bank shell meet as often as the business of the Bank may require.³¹ The Quorum shall be a simple majority at meetings.

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ Article 30 (1) *ibid*

²⁷ Article 31 AfDB Agreement, see also General regulation of the African Development adopted at the 1st Annual Meeting of the Board of Directors held at Lagos Nigeria November 4-7 1964 in the African Today p.54-78

²⁸ Rule 6 (2) & (7), Rule of procedure of the Board of Directors op cit note 32 (b) The African Today 4 p.54-78

²⁹ *Ibid*

³⁰ Article 32 (1) (a) - (e) AfDB Agreement.

³¹ Article 37 (1) - (4) The AfDB Agreement (n 5). See on the president of the Fund. Article 30 (1) - (4) of the AfDF Agreement 2003 provides that; (1). The President of the Bank shall be *ex officio* President of the Fund. He shall be Chairman of the Board of Directors but shall have no vote. He may participate in meetings of the Board of Governors but shall not vote. (2). The President shall be the legal representative of the Fund. (3). In the event that the President of the Bank is absent or his office should become vacant, the person for the time being designated to perform the duties of President of the Bank shall act as President of the Fund. (4). Subject to Article 26, the President shall conduct the ordinary business of the Fund and, in particular, shall: (i) propose the operating and

3.3 *The President of AfDB and AfDF*

The Board of Directors, by a majority of the total voting power of the members, shall elect the president of the bank. He shall be a person of the highest competence in matters pertaining to the activities, management and administration of the Bank. While holding office neither he nor any vice president shall be a governor or a director or alternative for either. The term of office shall be five years.³²

The president shall be the legal representative of the Bank. The Bank shall adopt regulations which shall determine who shall legally represent the Bank and perform other duties of the president in the event of his absent or that his office should become vacant. The president shall be the chairman of the Board of Director and shall have no vote except a deciding vote in case of equal division.³³

3.4 *Withdrawal of Membership*

The Article of the African Development Bank provide for mode of withdrawal from the Bank by Member states to the effect that, a member that wishes to withdraw shall transmit a notice in writing of his intention to withdrawal to the Bank at its principal office. The termination become operational and effective on the date specified in its notice, but in no event less than six months after the date of received of the notice by the Bank.³⁴

3.5 *Termination of the Bank operations*

The Board of Directors may suspend temporarily the operation of the Bank in respect of new loans and guarantees pending an opportunity for further consideration and any action in case of an emergency.³⁵

The Bank may terminate its operation in respect of new loans and guarantees by a decision of the Board of Governors exercising a majority of the total voting powers by members. After such terminations the Bank shall forthwith ceased all activities except those incidents to the orderly realization conservation and preservation of its assets and settlement of its obligations.³⁶

4. *Practices at the African Development Bank*

4.1 *Voting right in the AfDB and AfDF*

Member countries within the AfDB and AfDF Board of Directors enjoy equal right to participate in management of the Bank. The voting right is largely determined by the size of their contribution to the Bank's financial resources and in the AfDB Nigeria is the largest shareholder with 8.76%. While in the AfDF, the United States is the largest shareholder with 6.8% followed by Japan.³⁷ The Agreement establishing the AfD Bank provide for member countries right to vote. It provides:-

administrative budgets; (ii) propose the overall financing programme; (iii) arrange for the study and appraisal of projects and programmes for financing by the Fund in accordance with Article 15 (3); (iv) draw, as needed, on the officers, staff, organization, services and facilities of the Bank to carry out the business of the Fund and shall be responsible to the Board of Directors for ensuring and controlling the proper organization, staffing and services provided under Article 22; and (v) engage the services of such personnel, including consultants and experts, as may be needed by the Fund, and may terminate such services.

³² Article 37 (1) – (4) AfDB Agreement

³³ *ibid*

³⁴ Article 43 (1) and (2) AfDB Agreement see also Article 37 AfDF Agreement 2003, for withdrawal from the fund

³⁵ Article 46 (91) AfDB Agreement.

³⁶ Article 47 *ibid*.

³⁷ M. A. Weiss, the African Development Bank Group, CRS Report for Congress, (2009) p CRS-3 see <http://www.afdb.org> accessed 29/10/2009

Each member shall have 625 votes and in addition, one vote for each share of the capital stock of the Bank held by that member".³⁸

The voting right from the above provision of the Article are weighted in such way as to give smaller members more than a proportionate share of total voting powers. Thus a member with the minimum of subscription of US 1mn will have 725 votes while a member with the maximum of US 30mn will have a 3, 625 votes or a five times voting power of all smaller member although its subscription is 30 times greater.³⁹

Note that, the decisions of both the Board of Governors and of Board of Directors are taken by a simple majority of the voting power of those present.⁴⁰

Note that, the main sources of the Bank's capital are subscription by member state borrowing and net income from its operation; subscription account for 70 percent of its capital stock, the fund repaid in respect of loan or guarantees finance from the resources of special funds.⁴¹

4.2 Liability of members and payment of claims

In the event of termination of the Bank's operation the liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their currencies shall continue until all claims of creditors including all contingent claims shall have been discharged.⁴²

4.3 Distribution of assets

In the event of termination of operation of the Bank no distribution shall be made to members on account of their subscriptions to the capital stock of the bank until,

- a) All liabilities to creditors have been discharged or provided for and
- b) The Board of Governors has taken a decision to make a distribution. The decisions shall be taken by the Board exercising majority of total voting powers of the members.⁴³

Note that after that decision taken the by the Board of Directors may be two third majority vote make successive distributions of the assets of the Bank to members until all assets have been distributed.

³⁸ Article 35 (1), 32(c) AfDB Agreement (n 5), while in Article 29 of the AfDF agreement provides thus, The Bank, and the State participants as a group, shall each have 1,000 votes. Each governor of the Fund who is a governor of the Bank shall have, and shall be entitled to cast, such proportionate share of the Bank's votes as shall have been notified to the Fund by the President of the Bank. Each State participant shall have a proportionate share of the aggregate votes of the State participants based on the subscriptions of such participant made pursuant to Article 6 and, to the extent agreed by the State participants in connection with additional subscriptions authorized under Article 7 (1) and (2), on such additional subscriptions. However, the total votes to be allocated to regional members that are State participants shall not exceed one per cent of the total votes of State participants. In voting in the Board of Governors, each governor representing a State participant shall be entitled to cast the votes of the participant he represents. In voting in the Board of Directors, directors designated by the Bank shall together have 1,000 votes and directors selected by the State participants shall together have 1,000 votes. Each director designated by the Bank shall have the number of votes allocated to him by the Bank as set forth in the notification of his designation, given pursuant to Part I of Schedule B. Each director selected by one or more State participants shall have the number of votes held by the participant or participants which selected him. Each Bank director shall cast his votes as a unit. A director representing more than one State participant may cast separately the votes of the States he represents.

³⁹ *ibid.*

⁴⁰ Rule 35 (2) and (3) "Rule and Procedures of Board of Directors of ADB adopted by the Board of Directors Lagos Nigerian November 7-1964

⁴¹ Article 10 (1) (a) (b) and (c) AfDB Agreement

⁴² Article 48 (1) and (2) *ibid*

⁴³ Article 49 (1) *ibid*

The distribution shall be subject to the prior settlement of all outstanding claims of the Bank against each member.⁴⁴

4.4 Subscription and capital

The amount of subscription to be paid by member countries was fixed in accordance with a formula based on population Gross National Product (GNP) foreign trade, and government revenue, minimum subscription was fixed at US \$1mn with a minimum of US\$30mn. Subscriptions are divided in to two equal parts, namely paid up capital and callable shares.⁴⁵ The Agreement provides that,

Payment of the amount initially subscribed to the paid up capital stock of the Bank by a member which acquired membership in accordance with paragraph 11 of Article 64 shall be made in six instalments, the first of which shall be five per-cent, the second 35 percent and the remaining four instalments each 15 percent of that amount.⁴⁶

For member it is agreed that the payment should be spread over four and a half years with two instalments, amounting to 40 percent of their shares payable within the first six months. In the case of members of the Board of governors would determine payment date.⁴⁷ The currency upon which the paid share can be made is in Gold or convertible currency.⁴⁸

4.5 Special borrowing powers

The Bank may request any member to loan amounts of its currency to the Bank in order to finance expenditure in respect of goods or services produced in the territory of those members for the purpose of a project to be carried out in the territory of another member.⁴⁹

Note that, unless agreed otherwise, the aggregate amount outstanding in respect of its loan made to the Bank pursuant to the Article shall not at any time exceed the equivalent of the amount of its subscription to the capital of the Bank 36 (a). The Bank shall repay the loan and pay the interest due in respect thereof in the currency of the lending member or in currency accepted to the latter.⁵⁰

4.6 Suspension of Membership

A member state shall be suspended from the Bank if it failed to fulfil any of its obligations to the Bank and it appears to the Board of director to that effect.⁵¹ A member shall be suspended by that Board unless the Board of Governors at a subsequent meeting called by the Board of Directors for that purpose decide otherwise by a decision taken by a majority of the Governor exercising a majority of the total voting Powers of members.⁵²

Thus, if no decision was subsequently taken by a majority of the Governors exercising the same total voting powers, a suspended member shall ceased to be a member one year after such suspension by the Governors, while a member is under suspension, it shall not be entitled to exercise any right under the agreement.⁵³

⁴⁴ Article 49 (2) *ibid*

⁴⁵ Article 7(1) (a) and 7 (4) (c) AfDB Agreement.

⁴⁶ Article 7 (1) (a) AfDB Agreement.

⁴⁷ Article 7(1) (b) AfDB Agreement.

⁴⁸ Article 27 (1) (d) *ibid*.

⁴⁹ Article 24 (i) AfDB Agreement Special borrowing powers.

⁵⁰ Article 24 (3) and (5) *ibid*.

⁵¹ Article 44 (1) AfDB Agreement and Article 38 AfDF Agreement for suspension from the fund.

⁵² *Ibid*.

⁵³ Article 44 (2) and (3) AfDB Agreement.

Note that after the date on which a state ceased to be a member (hereinafter referred to in this agreement as the "termination date") the member state shall remain liable for its direct obligations to the Bank but shall not incur any liabilities with respect to loans, guarantees entered into thereafter by the Bank and to share in the income or the expenses of the bank.⁵⁴ The Bank shall equally arrange for the purchase of the shares of the member state that ceased to be members of the Bank.⁵⁵

5. Associate Bodies

The Bank carries out its functions in association with other institutions, two of which were established at its initiative. They are the African Development Fund (ADF), Nigerian Trust Fund (NTF) and Societe Internationale Financiere pour les investissements et la Development en Afrique South Africa (SIFIDA) or SIFIA Investment Company South Africa.⁵⁶ The African Development Bank was established by African government as a means of promoting their collective economic advancement and social progress individually and jointly.⁵⁷

5.1 The African Development Fund

In 1966, the year African Development Bank became operational its management involved the idea of setting up a special fund with contribution from the Bank and non African government which would enable the Bank to extend its operations to sectors such as education professional training, social activities, rural development administrative and infrastructures, which requires financing granted on concessional term. The bank derived its authority from the charter establishing the Bank which states

The Bank may establish or be entrusted with administration of special funds which are designed to serve its purpose and come within its functions. It may receive, hold, use commit or otherwise dispose of resources appertaining to such special funds.

Pursuance to the above, African Development Fund was established in November 1972 by African Development Bank and the special fund became operational in 1973 with potential resources of about US \$100 mn.⁵⁸ There are currently 38 AfDF borrower countries. The AfDF is primarily financed by 24 non-regional countries including United States, Canada and several European and Asian Countries. Every three years, donors agree on a replenishment agreement for the next three fiscal years. In December 2007, negotiation concluded for the eleventh replenishment of AfDF resources (AfDF-VI) that will provide financing of \$8.6 billion during 2008-2011.⁵⁹

Negotiation for the establishment of such fund was conducted under the auspices of Development Assistance Committee of Organization of Finance Co-operation and Development (OECD) of the 16 countries which participated in the negotiations for the agreement establishing the fund. 14 countries have signed and ratified it, they are Belgium, Brazil, Canada, Denmark, Finland, Japan, Norway, the Netherlands, West Germany, Spain, United Kingdom, Sweden, Switzerland and Yugoslavian.⁶⁰

The African Development Fund is a legal entity distinct from the African Development Bank. Its main organs are the Board of Governors,⁶¹ the Board of Directors and the President of the fund who chair

⁵⁴ Article 45 (1) *ibid.*

⁵⁵ Article 45 (3) and (4) *ibid.*

⁵⁶ *Ibid.*

⁵⁷ Article 1 AfDB Agreement.

⁵⁸ *ibid.*

⁵⁹ Martin A. The African Development Bank, p. CRS-2 see <http://www.afdb.org/portal>, accessed 29th Oct' 2009.

⁶⁰ The African Today p.57

⁶¹ Article 23-25 of the African Development Bank: agreement Establishing the African Development Fund (1962 as amended in 2003)

its Board of Directors.⁶² The fund draws on the administrative and operational structures of the African Development Bank and shares the same headquarters with it. Voting power is equally shared among the state participations and the African Development Bank.⁶³

The Bank fund's regulations and loan policies and procedures are complementary with those of the Bank. The fund financial and social objectives are in line with International Development Bank especially, in projects and programs directly benefiting the member countries in all facet of socio-economic integration of the continent⁶⁴. Member countries of the African development Bank are eligible to receive interest free loans from the funds repayable over 50 years with a year grace.⁶⁵

5.2 The Nigerian Trust Fund

The Nigerian Trust Fund is a fund, created by Nigeria in 1976 with an initial capital of \$80million. The Nigerian Trust Fund is aimed at assisting in the development efforts of the poorest AfDB members. The NTF is also positioned to provide financing on terms between those of the AfDB and AfDF to low-income regional member countries. As of December 31st year 2005, total trust fund resources amount to almost \$600 million. Following the end of the trust fund's 30 years term in April 2006, the Nigerian government has requested that the group begin winding down the trust fund's operations.⁶⁶

Nigeria establishes the 30 years fund during the 1970s oil boom as a way to increase its influence in AfDB. When it expired in 2006, Nigeria agreed to extend it for a further two years and at the AfDB meeting in Maputo, Mozambique, Nigeria agreed to let the fund run for another 10 years.⁶⁷

The NTF uses its resources to provide financing for project of national and regional importance which further economics and social development of the low-income Regional Member Countries (RMCs) whose economics and social conditions require financing on non-conventional terms. By 1996, the NTF had a total resources base of \$432 million. It lends at 4% interest rate with a twenty-five year payment period, including a five years grace period.⁶⁸

6. Problems and Prospects in the African Development Bank Activities

6.1 Problems

The future effectiveness of the AfDB largely rested on its ability to delineate its role in the crowded aid field populated by large multilateral donors, the United Nations and the World Bank, regional donor such as the European Union and the bilateral programs of the major donor.

AfDB is still significantly small sources of development finance for Africa. According to most recent figures, the AfDB provides only 6 percent of total development assistance to the continent. Through its International Development association (IDA), the World Bank annually approves about four times more in the low-interest loans and grants to Africa than the AfDB does. The AfDB lacks the financial resources, the staff capacity and the range of staff skills and experience of the World Bank.⁶⁹

The temporary status of the Bank's headquarters which although legally based in Abidjan, Cote d'Ivoire was moved to Tunis, Tunisia In 2003 because of civil war in the country and the Ivorian political crisis has to date prevented the Bank from returning to its permanent location. While the Tunisian

⁶² Article 26-28 *ibid*.

⁶³ *Ibid*

⁶⁴ 32(c) Article 10 (1) (a) (b) and (c) AfDB Agreement.

⁶⁵ *ibid*.

⁶⁶ Martin A. Weiss, The African Development Bank, p.CRS 3 see also <http://www.afdb.org> accessed on 29/10/2009 for more information.

⁶⁷ The Nation, Tuesday, May 12, 2009 p.1 & 55.

⁶⁸ African Development Bank (2005) about us group entities, <http://www.afdb.org/portal> accessed on 24/11/2009.

⁶⁹ For instance at the World Bank there are more than four (4) times the number of staff working on a given project than the AfDB.

government is reportedly happy to have the bank permanently stationed in their country the Ivorian government has blocked the attempt.

There is also serious problem of corruption and lack of transparency in African continent and such affecting implementation of AfDB and AfDF programmes in Member countries. However, the upsurge in the adoption of international instruments in curbing and preventing crime did not only raise global focus on crime in developing countries but also changed the approach by the international financial institutions like International Monetary Fund, World Bank and African Development Bank in admonishing the developing countries to implement anti corruption laws within their domestic legal frame work.⁷⁰

6.2 Prospects

The prospects so far achieved by the AfDB groups can be distilled from the provision of agreement establishing AfDF especially on the use of the Bank resources, which states as follows:-

The Fund shall provide financing for projects and programs to further economic and social development in the territory of members. The Fund shall provide such financing for the benefit of those members whose economic situation and prospects require such financing to be on concessional terms. Financing provided by the Fund shall be for purposes which in the opinion of the Fund are of high developmental priority in the light of the needs of the area or areas concerned and shall, except in special circumstances, be for specific projects or groups of projects, particularly those forming part of a national or regional or sub-regional programme, including provision of financing for national development banks or other suitable institutions for relending for specific projects approved by the Fund.⁷¹

In line with the above policy of the Bank and its groups, tremendous achievements had been recorded aimed bring about socio-economic development, integration and advancement of the African member states. This is evidenced from the following heightened operations of the AfDB and ADF.

The African Development bank (AFDB) Group earned \$73million net income for the financial year ended 31 December 2008, according to the 2008 bank group's Annual Report. The income before distribution which has been approved by the Board of Governors amounted to UA 304.661million, while allocable income for 2008 amounted to UA 266.656million compared to UA297.789million in 2007.⁷²

AfDB funding in 2008 went to four key sectors: infrastructure, multi-sector, finance, and industry. Approvals for infrastructure projects and programs amounted to UA 1.41billion (44.5 per cent of total approvals). The transportation sub-sector, power, and water supply and sanitation were among the major infrastructure components.⁷³

Loan and grant approval to the five African regions, including multinational projects and programmes amounted to UA 3.17billion, with North Africa leading the group with UA 819.9million (25.9 per cent). West Africa accounted for UA 633.5million (20.0 per cent); East Africa, UA 569.9million (18.0 per cent); Southern Africa, UA475.9million (15.0 per cent); and Central African with UA 74.0million (2.3 percent).⁷⁴

⁷⁰ D. C. Paul, "Law and Social Change: A Socio-Legal Analysis of the Nigerian Corrupt Practices and other related offences Act", 2000; *Journal of African Law*, 2001 p.178-180, the transparency international also rated Nigeria among the most corrupt countries in the world, see Transparency International Annual Corruption Perception Index, <http://www.transparency.org/cpi/2005/dnld/media>, visited on 25th May 2009.

⁷¹ Article 14 of the Agreement Establishing the African Development Fund 1962 as amended in 2003.

⁷² See African Development Bank, available at <http://www.afdb.org/portal/information> accessed on 22/10/2009 and *The Nation* Monday, May 18, 2009 p.22

⁷³ *ibid*

⁷⁴ *ibid*

Private sector operations accounted for nearly half of the approvals during the year in review rising to UA 901.2million or 49.9 per cent of AFDB approvals and 25.5 per cent of Bank Group total approvals. The sector is increasingly recognized as the engine of economic growth for the Regional Member Countries (RMCs) and the substantial amount approved demonstrates the Bank's continued focus on selectivity and areas of priority that would accelerate poverty reduction, in full alignment with the Bank Group Medium-Term Strategy 2008-2012.⁷⁵

In order to boost micro-economic development, A B Microfinance Bank of Nigeria was granted a loan of N1million by Japan and African Development Bank (AfDB) from the Fund for African Private Sectors (FAPA) Assistance (FAPA). This is in addition the grant attached in equity investment of ₦1,013,186 by the AfDB at the launch of the AB Microfinance Bank.⁷⁶

It is instructive to note that since the creation of FAPA (Funds for African Private Sectors) in 2006, Japan has contributed \$30million while AFDB has \$10million. Most importantly, the fund (FAPA) commitment up to 2009 is about N21million covering about 27 projects across African continent. The fund provides united grants for studies, technical assistance and capacity building for private sector projects and African institutions.⁷⁷

The AFDB in seeking to redress the devastating effect of global financial crisis, on the regional trade through the recently introduction of mechanism such as the Trade Finance Initiatives (TFI) has approved the investment of \$10million in the West African Emerging Market Fund (WAEMF) as approved by the Board of Director in Tunis.⁷⁸

The Global Economic down turn that originated from US, affected African economic and made growth rebound in African in 2009 slim. The global recession also slashed demand for commodity export thereby eroding government revenue in countries such as Nigeria, and Zambia, Ghana, and Kenya. They have turned to multinational lenders for loan to help boost foreign exchange reserved. Thus, AfDB was put under pressure as the demand for loan rises and the Bank need threefold increase in its capital base to avoid breaching lending limits as it faces growing demand.⁷⁹

Nkurmana and Shimeles⁸⁰ observed that the adverse impact that the crisis can have on growth in the immediate future and its effect on macroeconomic balances and fiscal space, are also well recognised. However, for some countries, the possibility that the shock could have long-lasting effect on growth has received less attention. There is considerable diversity among African countries in terms of their vulnerability to the current crisis and their potential to recover from it. Over the past decades, sustaining growth in Africa has been much harder than achieving high growth rates. Growth in the continent has been largely volatile. There have been episodes of accelerated growth, followed invariably by deceleration. This has led to asymmetric impact on development outcomes. In the absence of significant risk-mitigating responses, such as emergency loans, increased foreign aid, and other support mechanisms, the current crisis can degenerate into a development crisis.

Mr Herve Assah- AfDB rep. said AFDF portfolio in Nigeria hits \$1.2billion, thus are about 20 public sector project financed by the Fund (ADF) at concessional rule of about N590million adding that average disbursement rule stand at about 20 percent. The Nigerian public sector has access to both ADF and AFDB resources.⁸¹

The International Finance Co-operation (IFC) committed \$1.8 billion and also delivered \$26.1million worth of adversary services up from \$18.6million to new investments across 30 countries in Africa in the Fiscal year ended June, 2009. It is the largest volume in any single year since its founding in 1956.⁸²

⁷⁵ *Ibid*

⁷⁶ The Nation, Wed. Sept 9 2009 p. 41

⁷⁷ *ibid*

⁷⁸ The Nation, Thursday September 24, 2009 p.29 see <http://www.afdb.org/info> accessed on 29th October, 2009

⁷⁹ The Nation, Friday, May 15, 2009 p.20 and The Nation, Thursday, June 2, 2009, p. 2

⁸⁰ L. Ndikumana & A Shimeles, Global Economic Crises: Long term growth and policy Implication for Africa (Development Research Brief, 2009) pp.1 & 3 www.afdb.org/portal/information accessed on 24/11/2009

⁸¹ The Nation, Thursday June 2, p. 55

⁸² The Nation Friday August 21, 2009 p. 19.

Finance and adversary service were stepped down are amid turmoil in global financial market to encourage Africa Trade and investment flow and alleviate the impact of the Global economic slowdown on Africa most vulnerable countries Nigeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Chad and Cote d'voire were giving detail of the programme to alleviate the global financial crisis in African poorest region.

The infrastructure sectors, including power supply, water and sanitation, transport and communication has traditionally received the largest share of the AfDB lending. The focus was reaffirmed in the AfDB's 2003-2007 strategic plans which identify infrastructure project for approximately \$982 million, which totaled 40 percent of AfDB approvals that year.⁸³

In 2002, the AfDB teamed up with the New Partnership for Africa's Development (NEPAD) an initiative of the African Union to develop and implement an infrastructure shot Term Action Plan (I-STAP). This is regional integration project led by African Regional economic Communities (REC). According to 2005 Annual Report, regional economic blocs will make Africa "more competitive in the global market", while transport and power interconnections between smaller African economies will help create larger markets within the continent.⁸⁴

Another significant area of AfDB operation is the concentration on fight against HIV/AIDS. The Bank has five policies towards securing Africa's future through health vis-à-vis institutional capacity building, human capital development to create environment for the operation of national AIDs strategies through training and technical assistance, multi-sectoral responses with emphasis on prevention, control intervention that include information and education, voluntary counseling and testing, advocacy through participation in international and regional forum to raise commitment and leadership in fight against pandemic and partnership development.⁸⁵

In general it has been observed that there has been progress at all facet of AfDB participation with regard to democracy, growth and restoring micro financial balances in African Continent there are still more to do especially with the presence of large number of people living in abject poverty without access to potable water, erratic power supply, and infrastructural decay. The AfDB should be more selective and country-focused in its operations.

7. Conclusion

In conclusion, it could be gleaned that an appropriate implementation of the AfDB group's programmes would ensure tremendous socio-economic transformation of African in term of poverty reduction, infrastructural development, education, and energy and health system. The AfDB groups would or indeed has achieved in bringing countries with the same ideological learning together as a unifying force for the development of Africa. The effect of ideology as a unifying force in a society is captured in the expression of former president of Ghana Kwame Nkruma thus:-

...an ideology does not seek merely to unite a section of the people; it seeks to unite the whole society in which it finds itself. In effect, it unite the whole society when it is dominant, for beside seeking to establish common attitudes and purposes for the society...ideology decides what form of institutions it should take and channels the common efforts are to be directed.⁸⁶

With every sense of sincerity and objectivity, it is instructive to observe that, the African Development Bank and its groups has considerably shown its worth in term of providing the most desire

⁸³ Bank Information Centre. <http://www.bicusa.org/issues/afribdevelopmentbank/index.php>, accessed 29/10/09

⁸⁴ See <http://www.afdb.org>, accessed on 25/11/2009

⁸⁵ The African Development Bank: Tenth Replenishment of African Development Fund; Order 2006; Statutory Instrument 2006, No 2327, Government of the United Kingdom p.2 see <http://www.afdb.org/portal>, accessed 16/11/09

⁸⁶ N. Nkruma, *Consciencism* (London, Panal Books Ltd, 1964), p 59

socio-economic ideology for the development and integration of African States. The African Development Bank has been able to relatively accomplish the aims and objectives of its establishment in achieving the desire economic integration of African countries.

Notwithstanding, one must not lose sight of the problem militating against or being a clog in the wheel of further progressive performance of the Bank. That is, most African countries have failed to distinguish between national and community objectives. However the AfDB and AfDF have been able to achieve so much in its significant role in term of socio-economic integration of member countries because it has not allow its operation to be affected by the political situation in member countries. It whips regional sentiment in order to respond to the needs of African. This is in line with the policy of the Bank as stated thus:-

Neither the Fund, nor any officials or other persons acting on its behalf, shall interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only considerations relevant to the economic and social development of members shall be relevant to such decisions, and these considerations shall be weighed impartially to achieve the purposes stated in this Agreement.⁸⁷

The above seems to depict the summary of the current picture of the African Development Bank since the treaty establishing the Bank like any other international treaties establishing organs for international economic integration and development in Africa, focuses on providing for gradual establishment of an economic empire for African states within the globe for the political unit of the African State.

From all indication, the objects of the African Development Bank need be vigorously pursue so as to enable it compete favourably with other international economic organs such as International Monetary Fund" (IMF). According to Popoola.

To be sure no one after watching CNN, sky and other global satellite television channels and seeing the global operation of money markets and the stock exchange can deny that mankind is indeed entering into a new phase of history, made distinct by "globalization" and slapped by its ethos of free enterprises democracy and human rights, cutting across all pervious barriers and boundaries.⁸⁸

The AfDB, AfDF and NTF like the World Trade Organization (WTO) and the International Monetary Fund (IMF) should work together in shaping the global financial affairs of the continent, facilitate, strengthen credibility and promote transparent trade regime African countries. The effect of globalization should not be view in restrictive sense so has to see that African Development Bank brought to the fore all universal diverse issues of economics, commerce, production consumption and integration of African countries economic development.

⁸⁷ Article 21 AfDF Agreement 1962 as amended in 2002.

⁸⁸ A.O. Popoola "Foreign Investment in the 21st Century: Nigerian Perspective" Nigerian Society of International Law 14-16 August, 1997, p.67.