# Principles & Techniques of Alternative Dispute Resolution (ADR)

By

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## Introduction

At one time, the thought of someone seeking legal redress especially in civil matters was that of suing and "going to court". However, it has become a notorious fact that disputes, unlike wine do not improve by aging: many things happen to a cause and to parties in a dispute by the simple passage of time. **D**elay in settlement or disposal of conflicting claims is indeed a primary enemy of justice and peace in a community.

The question that has been with civilization since the dawn of recorded history has been how to find a reliable, expeditious and satisfactory dispute settlement mechanism which is **inexpensive, reasonably quick and accessible to the whole community**. This is a realization of the fact that in such communities, disputes are bound to arise.

It is debatable whether in an African setting, litigation has been the main forum for resolution of disputes. However, the judicial process tends to transform social, political and economic disputes into legal disputes. Not only are some problems ill suited to a proper or full resolution through the adversarial process, the process may accentuate and exaggerate disputes rather than resolve them. As the courts grew, delays, formalities, technicalities, publicity, alleged corruption and the like crept in. The "win/lose" syndrome associated with litigation is so well known.

If we concede that litigation was the main forum for dispute resolution, from resolving disputes in a fixed and identifiable place called a court or courtroom, it is often that some disputes can be taken away from the court to any place – "out of court" for neutrals appointed by or on the instructions of the parties, to resolve. When disputes are settled 'out of court', the focus on interests and needs of the parties and the society rather than the rights of the individual changes the way in which disputes are categorized, analyzed and processed. This requires a total re-orientation and change of attitude and hence the concept of Alternative Dispute Resolution (ADR) processes. Interestingly, the holy books support the ADR processes[1].

In this article, therefore, we will give an overview of the Principles and Techniques ADR processes.

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See Genesis 18:16-33, Matthew: 5:9, 5:25-26, and 18:15-17 and Holy Quoran 49:9.

**Meaning of Alternative Dispute Resolution (ADR)**

ADR is an acronym that has several meanings essentially because there is no agreement on what the acronym stands for. Does the word 'A' stand for 'alternative', 'appropriate' or 'amicable'? If it is 'alternative', the next question is 'alternative to what'? 'Alternative' to litigation or mediation or conciliation or settlement. This raises the question of what is the primary forum for the resolution of disputes. When a dispute arises, do you attempt at settlement first or you resort to litigation immediately? Do the alternatives complement the traditional forum or displace it? This is so because much of ADR's value lies in the notion of a spectrum of dispute resolution mechanisms, with alternatives adding to, rather than replacing the litigation option. **It is safe to assert, therefore, that ADR describes processes which add to and enhance the range of resources and mechanisms to settle disputes. Essentially the processes change our focus on how disputes are categorized, analysed, and processed.**

In the western world, ADR may be defined as a range of procedures or processes that **serve as alternatives to litigation through the courts for the resolution of disputes, generally involving the intercession and assistance of a neutral and impartial third party.** In some definitions, and more commonly, (most jurisdictions), it excludes not only litigation but all forms of adjudication.[2] These other forms include arbitration. However, even Brown and Marriott now argue that it includes arbitration thus[3]:

> *It is now widely accepted - including by the authors of this work – that arbitration, contractual adjudication and other forms of dispute determination by a third party are also forms of ADR. The view that ADR is (or should be) alternative to all forms of third party determination and should embrace only non-adjudicatory process is no longer seriously propounded.*[4]

ADR can also be defined as a system of dispute resolution which is non-binding and by non-binding is meant the absence of imposed sanctions. In other words, the parties are under no obligation to comply with any decision or determination resulting from the process, if indeed there is one. Nor are the parties obliged to participate in or continue with the process in the absence of express contractual provision to that effect.[5] In this

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[2] See generally Brown H and Marriott A *ADR Principles and Practice* (2nd Edn, Sweet & Maxwell, 1999) pp 12-20, Macfarlane J (ed) *Rethinking Disputes: The Mediation Alternative* (London: Cavendish Publishing Ltd, 1997), Mackie K *et al The ADR Practice Guide: Commercial Disputes Resolution* (3rd Edn, Tottel Publishing, 2007) and Leornard L Riskin and James E Westbrook: *Dispute Resolution and Lawyers*(2nd Edn, West Group, 1997). , Asouzu A A *International Commercial Arbitration and African States: Practice, Participation and Institutional Development* (Cambridge: Cambridge University Press, 2001) p 13, Blackaby Nigel and Partasides Constantine Redfern and Hunter on International Arbitration (6th Edn, Oxford University Press 2015) 1 and Orojo J O and Ajomo M A *Law & Practice of Arbitration and Conciliation in Nigeria* ( Mbeyi & Associates (Nigeria) Ltd, 1999) p 4.

[3] See Brown H and Marriott *ADR Principles and Practice* (3rd Edn, Sweet & Maxwell, 2011), pp 1-13.

[4] See also Karl Mackie e al (n 2) t 3-39, Susan Blake, Julie Browne & Stuart Sime *A Practical Approach to Alternative Dispute Resolution* (2nd Edn, Oxford University Press, 2012) p 22, Michael Mcilwrath and John Savage *International Arbitration and Mediation: A Practical Guide* (Alpena an den Rijn, Kluwer Law International, 2010) p 11.

[5] Sutton, St David et al*: Russell on Arbitration* (23rd Ed, Sweet & Maxwell, 2007), p 47 and Paul Obo Idornigie, *Commercial Arbitration Law and Practice in Nigeria*, (Lawlords Publications, 2015) 28.

sense, arbitration is excluded. However, for purposes of this article, we will consider arbitration as part of the ADR processes. Despite the conceptual and jurisprudential issues arising from what is or is not ADR, mediation/conciliation is at the core of ADR processes while negotiation is common to all processes.

It is now generally recognized that other processes and forms include **private judging, expert determination/appraisal, med-arb, Ombudsman, early neutral evaluation, mini-trial (executive tribunal), and court annexed arbitration**.[6] Broadly, all processes can be divided into two: adjudicatory and consensual and the hybrid combinations in between them.

Whatever the viewpoint, ADR is like a confluence with many tributaries.[7] Lest we are misunderstood, we are merely saying that there are alternatives to litigation. Of course, we still go to court when the goal is to protect someone's rights, clarify a point of law or set a standard for public behavior or pursue post-election grievances. In the case of post-election, the procedure is stipulated in the Constitution[8] and Electoral Act.[9] However, it is advisable to establish a nexus between a dispute and a process so as to determine the process that is most appropriate. Thus we should know when to go to court or go out of court. We will now examine the contours of ADR.

## Meaning of Arbitration

Generally the essence of arbitration is that a dispute has arisen or potential for a dispute will arise and the parties, instead of going to the conventional courts, decide to refer the dispute to a private tribunal (arbitrator[s]) for settlement in a judicial manner. The implication of that agreement is that the decision of the arbitral tribunal (called an award) will be binding on them. In order to ensure that such a method of settling disputes is effective, assistance is usually given by the ordinary machinery of law to ensure that such awards can be enforced. Similarly, as a safeguard against impartiality and absence of due process, the court can, in certain instances, impeach an award.

Significant features of arbitration include:

- The agreement to arbitrate – there must be an agreement to arbitrate - the foundation stone of commercial arbitration save investment treaty arbitration or arbitration conducted under the provisions of a statute. Thus other than arbitration arising from a treaty or statute, commercial arbitration arises from the agreement to arbitrate. Such agreement can be a clause in the contract or a

[6] Mackie K et al, (n 2) at 1

[7] For example, in the case of **Arbitration**, we have pure commercial arbitration, maritime arbitration, construction arbitration, rent review and property valuation arbitration, commodity trade arbitration, agricultural property arbitration and consumer disputes arbitration. Similarly the fields of activity in **Mediation** include commercial and civil disputes, family disputes (separation, divorce, etc), employment disputes, community and neighbourhood issues, victim/offender mediation and reparation (restorative justice), environmental issues and international issues. In the case of **Negotiation**, virtually everything can be negotiated.

[8] See section 153(1)(f) and Third Schedule, Part I (F) of the 1999 Constitution, as amended

[9] See Electoral Act, 2010 as amended

separate contract usually referred to as 'submission agreement'. The agreement must generally be in writing.

- Arbitration can *ad hoc* or institutional, that is, the conduct of the reference is either based on institutional rules or without institutional rules. The very popular arbitral institutions are the London Court of International Arbitration (LCIA) and the International Commercial Centre (ICC).

- Choice of arbitrators – it is the parties that choose their own arbitrators or third parties authorized by the parties. This distinguishes arbitration from litigation. Thus the arbitrators are chosen by the parties, or an institution, court or other appointing authority.

- The decision of the arbitral tribunal is usually referred to as an award. The award distinguishes arbitration from mediation. This is so because the award is final, binding, conclusive and generally non-appealable but can be set aside.

- Enactments on arbitration usually provide for grounds for setting aside an award. In consequence, an arbitral award cannot be set aside on flimsy grounds but grounds set out in the enactments or rules.

- An arbitral award is enforced like a court judgment.

- There are no rigid formalities like litigation and there is confidentiality and privacy of arbitral proceedings.

- Arbitration – anchored on fundamental principles – party autonomy, arbitrability, separability, judicial non-intervention and *kompetenz-kompetenz.*[10]

**Request for (or Notice of) Arbitration**

Once it is established that there is a proper and valid agreement to arbitrate and a dispute has arisen within the context of the agreement, a request for (or notice of) arbitration is issued. Whereas under the ICC Rules[11], it is referred to as 'request for arbitration', under the UNCITRAL Arbitration Rules[12], it is referred to as 'notice of arbitration'. We must state that the UNCITRAL Arbitration Rules are generally used for *ad hoc* arbitrations while the institutions have their own rules. Similarly whereas the notice of arbitration is usually sent and delivered to the other party, in the case of institutional arbitration the notice (request) is addressed to the relevant institution and the institution notifies the other party.

Whether it is referred to as notice or request, the usual contents are:

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[10] Paul O Idornigie, "Anchoring Commercial Arbitration on Fundamental Principles" in *The Arbitrator & Mediator, The Journal of The Institute of Arbitrators & Mediators, Australia* (2004) 23 (1), p 65

[11] See Article 4 of the ICC Rules. See also Article 1 of the LCIA Rules, Rule 1 of the ICSID Institution Rules and Article 2 of the AAA International Arbitration Rules

[12] See Article 3 of the UNCITRAL Arbitration Rules, 2010. See also Article 4 of the Australian Centre for International Commercial Arbitration Rules and Article 3 of the Arbitration Rules of the Lagos Regional Centre for International Commercial Arbitration

a) A demand that the dispute be referred to arbitration;

b) The names and contact details of the parties;

c) Identification of the arbitration agreement that is invoked;

d) Identification of any contact or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

e) A brief description of the claim and an indication of the amount involved, if any;

f) The relief or remedy sought;

g) A proposal as to the number of arbitrations, language and place of arbitration, if the parties have not previously agreed

The notice may also include a proposal for the designation of an appointing authority.

There may be an issue as to when the arbitral proceedings actually commence. Under the principle of party autonomy, the parties should determine this but if not determined, it may be deemed to commence on the date on which the notice of arbitration is received by the other party.[13] In the case of institutional arbitration, the date of receipt by the institution of the request shall be treated as the date on which the arbitration is commenced.[14] It is important to record when the proceedings actually commenced for purposes of statutes of limitation.[15] This is so because the statute applies to arbitration the same way it applies to litigation. Consequently, if the proceedings are commenced after the statutory time limit, the proceedings may be declared statute barred.

**Constituting the Arbitral Tribunal**

According to the provisions of section 57 of the Act[16] 'arbitral tribunal' means a sole arbitrator or a panel of arbitrators. The key to an efficient arbitration lies in the choice of the arbitral tribunal. Many arbitral practitioners consider that choice to be the single most important decision that the parties make. The importance of this was succinctly stated in *Jones v Lebental*[17] and adopted with approval in *Kano State Urban Development Bank v Fanz Construction Ltd*[18], per Agbaje, JSC that "parties took their arbitrator for better or worse both as to decision of fact and decision of law".

Whereas in jurisdictions like England[19], there is presumption of a sole arbitrator, that of Nigeria (and the UNCITRAL Model Law)[20] it is a tribunal of three unless a contrary

[13] Arbitration and Conciliation Act, Cap A18, LFN, 2004 ("the Act), section 17

[14] Art 4.2 of the International Chamber of Commerce (ICC) Rules, 2017, Art 1.4 of the London Court of International Arbitration (LCIA) Rules, 2014

[15] Limitation Act of the FCT, section 7

[16] ibid

[17] (1898) 58 LT 406 at 408

[18] (1990) 4 NWLR (Pt 142) 1 at 43

[19] See Arbitration Act, 1996, section 15(3)

[20] See the Act, section 6 and Article 10(2) of the UNCITRAL Model Law

intention is expressed. In practice, it is not advisable to nominate an arbitrator in the substantive contract as the nominee may die, unavailable, not possess the qualities for the particular dispute. Usually the qualifications will be stated instead of appointing the arbitrator in advance.

In constituting the arbitral tribunal, therefore, reference must be made to the applicable rules and the decisions of the parties as to whether it should be a sole or more arbitrators. There is also the need to determine whether an umpire will be appointed. Under the English Arbitration Act[21], the parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire. There is no such provision in the Nigerian law. Where there is to be a chairman, he is usually chosen by one of three methods:

a) By the agreement between the parties;

b) By agreement between the party-appointed arbitrators; or

c) By appointment by a relevant institution (appointing authority) such as the ICC, LCIA, AAA, CIArb, Lagos Regional Centre or one of the many other institutions around the world.

Care should be taken to ensure that the arbitrator appointed is independent and impartial otherwise these are grounds for challenge of the appointment of an arbitrator. The basic test is whether grounds exist from which a reasonable person would think that there was a real likelihood that the arbitrator could not, or would not, fairly determine the issue on the basis of the evidence and arguments to be adduced before him.[22] In the area of appointment, institutional arbitration tend to have an edge over *ad hoc* arbitration in the administration of the proceedings, choice of arbitrators, fees, etc. It should be borne in mind that where an appointment is properly challenged, an arbitrator can be removed and replaced.[23]

**Preliminary Meeting[24]**

Once a notice of (request for) arbitration is properly served and an arbitral tribunal is constituted, a Preliminary Meeting is usually held. In preparing for the meeting, a proper Notice and Agenda should be circulated to the arbitral tribunal and parties and their counsel.

The following matters are usually considered at the Preliminary Meeting:

a) Introductions and Appearances

b) Appointment of Registrar or Confirmation of appointment of Registrar

[21] See section 15(1) of the English Arbitration Act 1996

[22] The Act, sections 8-9

[23] ibid, section 11

[24] Idornigie (n 5) 227

c) Confirmation that the Arbitrators were appointed by the parties and/Appointing Authority eg the Chief Judge of the FCT upon an application for that purpose.
d) Confirmation that the appointment is in line with the arbitration agreement.
e) Challenges and Disclosures
f) Do the parties have any objection to the Arbitrators' appointment?
g) Do the arbitrators have anything to disclose?

h) Confirmation of the date of commencement of arbitration

i) Outline of Claims/Dispute/Likely Issues

    I. Claimant's Summary
    II. Respondent's Summary and counterclaim, if any.
    III. Is there a concurrent arbitration or dispute? What are the claims and issues? (if it includes monetary claims, then also approximate value)

j) Powers of the Arbitrators

    I. Can Arbitrators decide on the basis of fairness and equity (ex aequo et bono)?
    II. Can Arbitrators decide as *amiable compositeur*?
    III. Should the arbitrators appoint experts/assessors? And will the parties be calling expert witnesses of their own?

k) Preliminary Issues

l) Consider whether specific issues in the dispute can be split. If so, parties to expressly consent.
m) Consider whether it would be necessary to make awards on different issues at different stages.
n) Venue of arbitration.
o) Sitting days (Weekdays, Weekends, Holidays).
p) Sitting hours.
q) Language of this arbitration (and arrangements for translation and interpretation).
r) Do the parties require tape recording and transcripts of evidence and/or proceedings?
s) Is consolidation with any concurrent arbitration necessary?

t) Procedural Issues

u) Documents-only or full hearing.
v) Submission of Witness Statements.
w) Compilation of Bundle of documents – agreed bundles or separate bundles.
x) Do the parties require inspection at locus?
y) Do the parties intend to make opening submissions?
z) Do the parties intend to make closing submissions?

aa) Pleadings

bb) Issues for Determination: By agreement of parties or to be submitted individually?

cc) Formal pleadings or Statement of Case.

dd) How much time do the parties require for filing of Pleadings?

ee) Will requests for particulars/further particulars be necessary?

ff) Communications and General Directions

gg) Notification or confirmation of email, telephone and physical mail addresses of the parties or counsel. All communications with the Registrar.

hh) Fax, letters, email, with arbitrators and Registrar

ii) Posts and courier

jj) Telephone communications with arbitrator only in emergency and notification to the other party

kk) Fees & Costs

ll) Arbitrator's fees

mm) Assessment of Administrative Costs

nn) Sharing/Recovery of costs

oo) Method of payment (time, nominated account, etc)

pp) Closing

qq) Any other matter

rr) Adjournment

At the end of a Preliminary Meeting, a Procedural Order or Order for Directions will be issued detailing how the proceedings will be conducted. The Order may be amended as appropriate in the course of the hearing. In the case of ICC arbitration, a similar order is called Terms of Reference.[25]

**Pre-hearing Review**

A pre-hearing review is usually held where there is going to be a hearing. The purpose of the pre-hearing review is to

a) enable the arbitrator to satisfy himself that all previous directions given in the Procedure Order have been or will be complied with;
b) consider whether there is need for any further direction;
c) ensure that issues between the parties have been identified;
d) exploring the ways of shortening the hearing;
e) whether there is the need to decide any issue as a preliminary issue;
f) arrange for appropriate bundles of documents; and
g) to ensure that the hearing will start in an efficient manner on the due date.

**Conduct of Arbitration**

[25] ICC Rules, Art 23

**Right to Representation –** Each party has a right not only to be present but to be represented by Counsel of his choice or other advisers unless that right has been excluded by agreement. It should be noted that under the Nigerian Arbitration Rules, parties can only be represented by legal practitioners as defined in the Legal Practitioners Act, 2004. The consequence of this is that foreign lawyers cannot appear as Counsel in Nigeria where the arbitration is domestic.[26]

**Equal Treatment of Parties –** if the principle of party autonomy is the first principle to be applied in relation to procure in international arbitration, equality of treatment of the parties is the second and it is of the same importance. The principle is given express recognition in international instruments[27], municipal laws[28] and rules[29].

**Taking evidence on oath –** a witness can be examined on oath or affirmation

**Evidence gathering –** adversarial or inquisitorial, admissibility, proof, facts, experts, presentation of witnesses, procedure for taking evidence. These are matters to be addressed at the Preliminary Meeting. It should be noted that the International Bar Association (IBA) has prepared rules for taking evidence in international arbitration and also has conflict rules.[30]

**Note taking/Recording/Transcription –** the arbitrator can take notes in full, or jots them down as reminders, engage a Registrar, engage a Transcriber, record proceedings on tape or video. Note taking is very important so as to remind the arbitrator and parties the evidence especially on findings of fact.

**Identification of issues** – It is advisable that at the Preliminary Meeting, parties are directed to identify issues for determination and whether some issues must be determined before the others or whether there are interlocutory applications.

**Pleadings/Memorials –** the form must have been agreed at the preliminary meeting. How are they to be exchanged – concurrently or consecutively? The usual order is Points of Claim, Point of Defence, Reply and Rejoinder.[31]

**After pleadings have been exchanged, there may be request for production of additional documents.**

**Hearing**[32] – oral, documents or both; dates for hearing, length of hearing, etc. If a hearing is expected to last for more than a day or two, a great deal of expense can be saved if the order in which witnesses are to be called is known in advance, so that the

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[26] Arbitration Rules, Art 4

[27] 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award, Article V(I)(b)

[28] The Act, section 14 .

[29] LCIA Rules, Article 14.1(i) and UNCITRAL Arbitral Rules, 2010, Article 17

[30] IBA Rules on the Taking of Evidence in International Arbitration, 2010 available at https://www.ibanet.org/Document/Default.aspx?DocumentUid=68336C49-4 accessed 23 October, 2019 and IBA Guidelines on Conflict of Interest in International Arbitration, 2015, available at https://sccinstitute.com/media/37100/iba_publications_arbitration_guideline accessed 23 October, 2019

[31] The Act, section 19

[32] See UNCITRAL Notes on Organising Arbitral Proceedings, Vienna, 1996. See also the Act, section 20

opposing party can dispense with the attendance of his witnesses that are not needed. It must be stressed that in Nigeria, the Evidence Act[33] does not apply to arbitral proceedings but the rules of evidence apply. Accordingly, section 15(3) of the Act provides that it the arbitrator that determines the admissibility, relevance, materiality and weight of any evidence placed before it.

**Usual Order of Events at the hearing**

At the Preliminary Meeting, the parties may agree that the arbitration will be 'documents only' in which case, there will be no oral hearing. However, where the parties agree that there is going to be a hearing, the usual order is as follows:

a) Opening statements of the Parties
b) Evidence in chief of the claimant's 1st witness
c) Cross-examination of the claimant's 1st witness
d) Re-examination of the claimant's 1st witness
e) Evidence in chief, cross-examination and re-examination of the Respondent's 1st witness
(All these are repeated for other witnesses)

f) Closing speech for the respondent
g) Closing Speech for the claimant.
h) Post-Hearing Briefs
NOTE: It is the duty of the arbitrator to adopt procedures that suits a particular proceedings

**Powers of the tribunal** e.g. appoint experts, order interim measures. All these should be raised at the preliminary meeting

**Settling and offering to settle a dispute** – with or without prejudice. The policy of the law is to encourage settlements. Thus you can write a letter on "without prejudice basis'. There can be an offer expressed to be made 'without prejudice save as to costs' or words to that effect. Such offers may not be disclosed to the arbitrator until he has issued an award on all matters except costs. Such an offer is usually called a 'Calderbank offer' – after the name of the case in which the procedure was first approved by the English courts. The purpose of a Calderbank offer is to enable the party making the offer (if it is rejected) to bring it to the arbitrator's attention at the end of the reference. This may be by way of providing the arbitrator with an envelope containing the offer, with instructions not to open it until he has decided everything except costs.

**Role of Tribunals**

The sources of powers of the arbitral tribunal are statutory, express, implied and terms of trade. Whatever is the source, the arbitrator is the master of procedure – as soon as an arbitrator is appointed, he takes charge of the proceedings. The arbitral tribunal has specific powers to rule on its competence and give orders, awards, correct awards,

[33] The Evidence Act, 2011, section 256(1)

interest on awards, security for costs, and determine fees if not determined by an institution. Thus an arbitral tribunal

a) may rule on its own substantive jurisdiction[34];
b) decide matters by a majority[35];
c) may rule as to whether the tribunal is properly constituted;
d) may rule as to whether the proceedings are within the reference;
e) may admit objections to jurisdictions;
f) may decide where and when any part of the proceedings is to be held;
g) may appoint experts[36];
h) may order a claimant to provide security for costs;
i) may dismiss a claim for want of prosecution;
j) may proceed ex parte[37]; and
k) ensure equal treatment of parties[38].

**Role of Parties – derived essentially from the Principle of Party Autonomy –** the parties are empowered to determine the following:

a) Receipt of written communications – how communications are to be written and served[39].
b) Appointment and number of arbitrators.[40]
c) Challenge of Procedure – if there is cause to challenge the appointment of an arbitrator.[41]
d) Request for interim measure of protection.[42]
e) Determination of Rules of Procedure – how the arbitral proceedings will be conducted.[43]
f) Place of Arbitration. There is a difference between the legal seat of the arbitration and place of hearing. It is for the parties to determine all these.[44]
g) Commencement of Arbitral Proceedings.[45]
h) Language of proceedings.[46]
i) Statements (or Points) of Claim and Defence – how and when they are to be prepared and served.[47]

[34] The Act, section 12
[35] Ibid, section 26(2)
[36] ibid, section 22
[37] ibid section 21
[38] ibid, section 14
[39] Ibid, section 56
[40] Ibid, sections 6 and 7
[41] Ibid, section 9
[42] Ibid section 13
[43] Ibid, section 47
[44] Ibid, section 16
[45] Ibid, section 17
[46] Ibid, section 18
[47] Ibid, section 19

j) Hearing and Written Proceedings – whether there will be a hearing and how the documents are to be prepared and served.[48]
k) Default of a party – generally if there is a default of a party without showing sufficient cause, the arbitral proceedings shall proceed.[49]
l) Choice of Applicable Law – this applies to international arbitration.
m) Appointment of Experts.[50]
n) Form and content of Award.[51]

**Multi-party Arbitration[52]**

This normally arises where there is a main contract and sub-contracts especially in construction cases. Without the authority of the parties, arbitrators do not have the powers to consolidate or order consecutive or concurrent hearings. Should the same tribunal be appointed? It's a matter for the parties. There are usually statutory or institutional provisions for consolidation. However, under the Act, there is no such provision.

**Role of the Courts**

According to the provisions of section 34 of the Act, the courts cannot intervene in arbitral proceedings except as provided by the Act. The relationship between national courts and arbitral tribunals swings between forced cohabitation and true partnership. Arbitration is dependent on the underlying support of the courts which alone have the power to rescue the system when one party seeks to sabotage it.

*T*he courts are involved in the arbitral process in three main ways, namely, before, during and after the arbitral proceedings. Where an arbitral institution is involved, the position will be different as such institutions provide some of the support that the arbitral process requires other than going to court. The relationship between courts and *ad hoc* arbitration has been compared to a relay race: Ideally, the handling of arbitral disputes should resemble a relay race. In the initial stages, before the arbitrators are seized of the dispute, the baton is in the grasp of the courts; for at that stage there is no other organization which could take steps to prevent the arbitration agreement from being ineffectual. When the arbitrators take charge they take over the baton and retain it until they have made an award. At this point, having no longer a function to fulfill, the arbitrators hand back the baton so that the court can in case of the need lend its coercive powers to the enforcement of the award.

The courts can intervene in the following instances:

[48] Ibid, section 20
[49] Ibid, section 21
[50] Section 23 ibid
[51] Section 26 ibid
[52] *Multiple Party Actions in International Arbitration* (ed Permanent Court of Arbitration) [OUP 2008)

a) Section 2 of the Act – Arbitration agreement irrevocable except by agreement or leave of court.
b) Sections 4 and 5 of the Act – Stay of Proceedings.
c) Section 7 of the Act – Appointment of Arbitrators.
d) Sections 9 and 10 of the Act – Challenge of Arbitrators/Failure or impossibility to act.
e) Section 13 of the Act – Interim measure of protection.
f) Section 23 of the Act – Power of court to order attendance of witness.
g) Section 29 of the Act – Application for setting aside an arbitral award and remission of award.
h) Section 30 of the Act – Setting Aside in case of misconduct by arbitrator and removal of an arbitrator.
i) Section 31 of the Act – Recognition and enforcement of award.
j) Sections 32 and 52 of the Act – Refusal of enforcement of award.

**Other ADR Processes**

The UNCITRAL adopted Conciliation Rules on 23 July 1980.[53] The UNCITRAL Conciliation Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of conciliation proceedings arising out of their commercial relationship. The Rules cover all aspects of the conciliation process, providing a model conciliation clause, defining when conciliation is deemed to have commenced and terminated and addressing procedural aspects relating to the appointment and role of conciliators and the general conduct of proceedings. The Rules also address issues such as confidentiality, admissibility of evidence in other proceedings and limits to the right of parties to undertake judicial or arbitral proceedings whilst the conciliation is in progress

In 2002, UNCITRAL adopted the Model Law on International Commercial Conciliation.[54] In 2018, UNCITRAL adopted the Model Law on International Commercial Mediation and International Settlement Agreement Resulting from Mediation. In the 2018 Model Law, mediation is defined to include conciliation.[55]

Mediation means a process whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship The mediator does not have the authority to impose upon the parties a solution to the dispute.[56]

To avoid uncertainty resulting from an absence of statutory provisions, the Model Law addresses procedural aspects of mediation, including appointment of conciliators, commencement and termination of mediation, conduct of the mediation, communication

[53] See UN General Assembly Resolution 35/52 of 4 December, 1980.
[54] See UN General Assembly Resolution 57/18 of 24 January, 2003
[55] See UN General Assembly Resolution 73/199 of 20 December, 2018
[56] UNCITRAL Model Law on International Commercial Mediation, Art 1.3

between the mediator and other parties, confidentiality and admissibility of evidence in other proceedings as well as post-mediation issues, such as the mediator acting as arbitrator and enforceability of settlement agreements. The Model Law provides uniform rules on enforcement of settlement agreements and also addresses the right of a party to invoke a settlement agreement in a procedure. It provides an exhaustive list of grounds that a party can invoke in a procedure covered by the Model Law.

The UNCITRAL Model Law on Mediation can be used as a basis for enactment of legislation on mediation, included, where needed, for implementing the United Nations Convention on International Settlement Agreements Resulting from Mediation

There are other ADR processes with standard procedures like Expert Determination and Dispute Resolution Board. There are still others like Med-Arb, Ombudsman and Mini-tribunal

All these other processes have their own techniques and principles.

**Conclusion**

In this article, we have discussed the contours of the alternative dispute resolution (ADR) processes. We are not saying that all disputes are amenable to the ADR processes but that we must choose the appropriate process for a particular dispute. This requires legal engineering such that the process should fit a dispute – there must be a nexus between them..

The fields to which ADR principles can be applied are never closed. Thus the categories can be enlarged. For instance, ADR principles can be used for pre-election disputes. Unlike a completed house or painting, ADR processes are like works in progress.

For the purpose of this article, we have discussed how the practice and procedure relating to arbitration. This can extended to other processes like mediation and conciliation.