Alternative Dispute Resolution Mechanisms And the Judiciary

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Abstract

Historically, any discourse on the administration of justice will invariably focus on the courts and the judiciary. However, we now have Alternative Dispute Resolution (ADR) and Multidoor Court Houses (MCH). Among scholars, jurists and legal practitioners, there are conceptual and jurisprudential issues regarding ADR especially in terms of its origin, development, components and most especially its relationship with the judiciary. This chapter traces the historical developments of ADR processes and examines the interface between arbitration, mediation/conciliation and the judiciary. It contends that the Arbitration and Conciliation Act, 2004 sets out the areas where the courts can intervene in arbitration whereas there are no such relationships between mediation/conciliation and litigation. However, with the MCH, there is now an interface between mediation/conciliation and the litigation. Lastly, despite the controversy as to whether arbitration is part of ADR, for the purposes of this analysis, it concedes that arbitration is part of the ADR though it is sui generis

Introduction

[t]he notion that ordinary people want black-robed judges, well-dressed lawyers and fine panelled courtrooms as the setting to resolve their disputes is not correct. People with problems, like people in pain, want relief, and they want it as quickly and inexpensively as possible

Chief Justice Warren Burger[1]

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[1]*Our Vicious Legal Spiral, 16 Judges J. 23, 49 (1977)*

Any analytical work on the legal history and development of Nigeria will invariably focus on the administration of justice through the courts. However, before the advent of the English-type courts, traditional African societies had their own mode of settling disputes. Lately concepts like the Alternative Dispute Resolution (ADR) and Multi-door Court-house (MDC) have emerged. ADR raises conceptual and jurisprudential issues especially in terms of its origin, development, components and relationship with the judiciary. Similarly the concept of MDC raises the issue of the entire spectrum of the dispute resolution mechanisms and relationship with the judiciary. In some ways, the ADR mechanisms and MCH are closely connected. A MCH is a court house like the traditional court but while the former has several doors for litigation, arbitration, mediation, conciliation, amongst others, the latter has one door for litigation.

It has become abundantly clear that not all disputes are amenable to the judicial process through litigation. It is also clear that business men (and women) would like their disputes disposed of expeditiously in a forum where they exercise some control instead of going to court where they are simply referred to as 'plaintiff' and 'defendant' and a third party imposing a decision on them without their involvement in the decision-making process. To some extent, therefore, Chief Justice Warren Burger is correct but there are roles still reserved for the judiciary.

Arbitration has become the preferred mode for resolving pure commercial disputes *a fortiori*, where the parties are from different jurisdictions. However, what is critical is to establish a nexus between a dispute and a process in order to ascertain the proper door. This will determine how disputes are analysed, categorized and processed. The ability to establish this nexus is the new skills that lawyers must acquire. Even those who are concerned about taking silk, alternative dispute resolution processes are now recognized both for purposes of disputes disposed of by judges and lawyers applying to take silk.

In this chapter, therefore, we will trace the legal history of Nigeria from the perspective of the ADR mechanisms and the judiciary.

Evolution of ADR[2]

[2]See Paul Obo Idornigie, 'What is (and Isn't) Alternative Dispute Resolution' in Dakas C J Dakas, Akkarren Samuel Shaakaa, Alphonsus O Alubo (eds) *Beyond Shenanigans: Jos Book of Readings on Critical Legal Issues* (Innovative Communications 2015) 560.

In the Western world, the shortcomings of the judicial process led to radical procedural reforms, utilising other alternative dispute resolution (ADR) procedures. It was thought that that may streamline the process, render it less costly and permit early and fair settlement. In the words of Karl Mackie and Others:

> There are many positive reasons for adopting Alternative Dispute Resolution (ADR) processes as a means of trying to resolve civil disputes. However, it is probably true that initial enthusiasm for ADR stemmed primarily from a negative source – dissatisfaction with the delays, costs and inadequacies of the litigation process, particularly in the United States where ADR first developed. UK lawyers for many years had tended to dismiss ADR as a phenomenon specific to the United States. Companies in the United States were seen as more litigious. They were faced by claimants whose cases were funded by lawyers paid by substantial contingency fees. Trials were in courts where liability and damages were often determined by jury, and there was no prospect of recovering legal costs from an opponent in the event of victory. Indeed, much of the same features distinguish the civil justice system in the United States from the United Kingdom even today. [3]

However by the late 1980s and early 1990s, a more considered recognition grew that ADR was playing an increasingly useful part in the industrialized common law world in overcoming some of the disadvantages of a highly expensive and often rigid adversarial system.

In Africa, it is colonial rule that introduced 'litigation' as represented by the English-type courts. This is so because before the advent of colonial rule, African states had their own system of resolving disputes which is still in force in non-urban areas in Nigeria. Certainly when a traditional ruler is resolving disputes, he generally mediates or conciliates or settles and sometimes arbitrates but not litigate as in the western world. Age-grades also carry out similar roles as traditional rulers in Africa.

In examining the evolution and meaning of ADR, it is imperative to analyse each element in the acronym. This was alluded to by Brown and Marriott thus:

[3] Karl Mackie and Others, *The ADR Practice Guide: Commercial Dispute Resolution* (3rd edn, Tottel Publishing 2007) 3.

> Analysing each of the three elements of ADR – "alternative", "dispute" and "resolution" – is instructive, not as a semantic exercise, but rather to examine what the process fundamentally involves. In doing so, it is important to bear in mind that ADR is a generic and broad concept, covering a wide range of activities and embracing huge differences of philosophy, practice and approach in the dispute conflict field.[4]

Indeed Karl Mackie and others[5] interrogated the jurisprudential basis of the acronym. In trying to answer this question, Karl Mackie and Others posited that as a field, ADR evolved for differing motives and with different emphases and that:

> (t)he most common classification is to describe ADR as a structured dispute resolution process with third-party intervention which does not impose a legally binding outcome on the parties. Mediation is the archetypal ADR process falling within this classification.

This clearly excludes 'arbitration' because arbitration imposes a legally binding outcome on the parties.

We submit that from a Eurocentric perspective, that the letter "A" is alternative to litigation. This was alluded to by Blake, Browne and Sime[6] thus:

> The term 'alternative dispute resolution' or 'ADR' does not have an agreed definition. … There are also debates as to whether the term 'alternative dispute resolution' should be used at all. Options are only really 'alternative' if the use of litigation is seen as the norm, but statistics show that most cases settle rather than going to court for decision, so that settlement rather than litigation is actually the norm. Also many cases use a mixture of court procedure and ADR rather than relying solely on one 'alternative'. For such reasons it has been argued that it may be more accurate

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[4.] Henry Brown and Arthur Marriott, *ADR Principles and Practic*e (3rd edn, Sweet & Maxwell 2011) 2.

[5.] Karl Mackie and Others (n 3) 8. See also KehindeAina, *Dispute Resolution* (NCMG International and AinaBlankson LP) 2012; KehindeAina, *Commercial Mediation: Enhancing Economic Growth and Courts in Africa* (NCMG International and AinaBlankson LP) 2012; P O Idornigie 'Re-thinking Business Disputes Resolution: The Mediation/Conciliation Option' in *Ambrose Alli University Law Journal*, Vol. 1, 2002 No. 1, 48; P O Idornigie 'Overview of ADR in Nigeria' in *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, Vol 73, No. 1, 73; and P O Idornigie, 'Alternative Dispute Resolution Mechanisms' in A F Afolayan and P C Okorie (eds), *Modern Civil Procedure Law* (Dee-Sage Nigeria Limited 2007) 563.

[6.] Susan Blake, Julie Brown and Stuart Sime, *A Practical Approach to Alternative Dispute Resolution* (2nd edn, Oxford University Press 2011) 5.

> to talk of 'appropriate dispute resolution'. Rather than be drawn into such debates, we take the pragmatic view that 'ADR' is a term generally accepted as covering alternatives to litigation.

However, from an Afrocentric perspective, the letter "A" in the acronym is alternative to 'mediation' or 'conciliation' or 'reconciliation' or 'settlement'. The reason for this is not far-fetched. This is so because 'litigation' or the 'English-type courts' are western creations whereas settlement, reconciliation, mediation or conciliation are at the heart of dispute settlement in Africa. In Africa, a dispute or conflict is seen as a form of social disequilibrium and efforts are usually geared towards restoring equilibrium. Therefore, litigation is an alternative to the traditional modes of resolving disputes in Africa. We do not have any problem with the definition of the word 'dispute' although the challenge is at what point does a conflict become a dispute? Or is there a difference between a conflict and a dispute? Is there a dispute if liability is admitted but payment is not made[7]? Lastly when there are differences or controversies between the parties to a contract, at what point should the dispute resolution process in a contract be invoked? In a work of this nature, all these issues cannot be sufficiently addressed. Be that as it may, the dispute resolution clause is usually invoked when the parties cannot settle their differences or controversies.

Is 'resolution' the same thing as settlement, compromise, management or facilitation? This is so because the options for dealing with a dispute may include resolution, settlement, prevention, management, transformation, analysis and intervention. Parties may only want a neutral person to facilitate certain aspects of a dispute, leaving the actual resolution to themselves or for settlement in another forum or a different time. This is what happens in Early Neutral Evaluation (ENE) where the evaluator works alongside the parties and their lawyers in guiding them through various stages of litigation. Transformation of a dispute can be viewed in two main ways: the transformation of a dispute from an adversarial process into a problem-solving exercise and from rights-based approach into one that includes an interest-based approach; and the reframing of issues so that they can more effectively and easily be addressed and resolved. Thus we also submit that negotiated settlement can be the norm and other processes are alternatives.

However, for the purpose of this chapter, we will focus on arbitration and medication/conciliation after examining the evolution of the MCH. In examining

[7]See *Kano State Urban Development Board v Fanz Construction Limited* (1990) 4 NWLR (Pt 142) 1 at 33 where the Supreme Court held that there is no dispute within the meaning of an agreement to refer disputes where there is no controversy in being, as when a party admits liability but simply fails to pay or when a cause of action has disappeared owing to the application, where it applies, of the maxim *actiopersonalisnoritur cum persona*.

arbitration, we will trace the evolution of arbitration in Nigeria before considering the relationship between ADR mechanisms and the judiciary.

Evolution of MCH

Over the years, the various High Court (Civil Procedure) Rules provided for reference to arbitration. Lately various High Courts (Civil Procedure) Rules,[8] provide for reference to arbitration and other Alternative Dispute Resolution (ADR) processes. Indeed, the current thinking in litigation is that the court should not be a mono-door courthouse where parties only litigate but a multi-door courthouse where arbitration, conciliation, mediation and other ADR processes are encouraged.[9] In countries like the United States of America, the courts use ADR processes more than private organizations. In the United Kingdom, the Woolf Report on "Access to Civil Justice"[10] which culminated in the promulgation of the new Civil Procedure Rules[11] is testimony to the importance of court-annexed arbitration and other ADR processes. The new UK Civil Procedure Rules enjoin the court to actively manage cases and take steps for '.... *encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure'.*

One of the most significant developments arising out of the relationship between ADR procedures and the court system has been the creation in the United States of Multi-door courthouses. The author of the concept of multi-door courthouses was Professor Frank E A Sander.[12] Interestingly Professor Sander was concerned with what were important factors for determining effectiveness of a dispute resolution process and he delivered his lecture at a conference where the members of the American Bar Association were also present. The paper that Professor Sander delivered was titled "Varieties of Dispute Processing". Furthermore the occasion was a conference named in honour of Professor Roscoe

[8] See Order 17 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure Rules) 2004; Order 52 of the Federal High Court Rules, 2009; Preamble 2 to the High Court of Lagos State (Civil Procedure) Rules, 2012 and Order 3, Rule 8 of the Rules dealing with 'Screening for ADR'. See also Order 29 of the High Court of Delta State (Civil Procedure) Rules, 2009.

[9] The Lagos Multi-Door Courthouse Law, Cap L3, Laws of Lagos State, 2015;Akwalbom Multi-Door Courthouse Law, 2011 and Delta State Multi-door Courthouse Law, 2013.

[10] See the *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* available at https://books.google.com.ng/books?id=EeC0QgAACAAJ&dq=bibliogroup:%22Access+to+Justice:+To+the+Lord+Chancellor+on+the+Civil+Justice+System+in+England+and+Wales%22&hl=en&sa=X&ved=0ahUKEwj9nfKC9oXUAhWLKVAKHTD9BPEQ6AEIJDAA accessed 23 May, 2017. See also the.....(information not provided)

[11] Karl Mackie and Others (n 3) 4 and David St John Sutton, Judith Gill and Matthew Gearing, *Russell on Arbitration* (23rd edn, Sweet & Maxwell 2007) 20.

[12] Professor Sander, Professor of Law at Harvard University delivered a paper in 1976 to the National Conference on the Causes of Popular Dissatisfaction with Administration of Justice, jointly sponsored by the Judicial Conference of the United States, the Conference of Chief Justices and the American Bar Association.

Pound who incidentally had delivered a famous paper in 1906 titled 'Causes of Popular Dissatisfaction with Administration of Justice"[13] Professor Sander was of the view that most important criteria for determining the effectiveness of a dispute resolution process were: "*cost, speed, accuracy, credibility (to the public and the parties) and workability. In some cases, but not in all, predictability may also be important".*

He also identified two questions as important, namely the significant characteristics of various alternative dispute resolution mechanisms, and how these characteristics could be utilised so that some rational criteria could be developed for allocating various types of disputes to different dispute resolution processes. He outlined a spectrum of processes, on a decreasing scale of external involvement, with adjudication at the one end and 'avoidance' at the minimum involvement end. He therefore recommended:

> . . . a flexible and diverse panoply of dispute resolution processes, with particular types of cases being assigned to different processes (or combination of processes), according to some of the criteria previously mentioned. Conceivably such allocation might be accomplished for a particular class of cases at the outset by the legislature, that in effect is what was done by the Massachusetts legislature for malpractice cases. Alternatively, one might envision by the year 2000 not simply a court house but a Dispute Resolution Centre, where the grievant would first be channelled through a screening clerk who would then direct him to the process (or sequence of processes) most appropriate to his type of case.[14]

An initial enquiry to the court would be dealt with by an intake officer who would aim to give an individual and specialized answer to each inquirer. The role requires a high level of skill; and the question has been raised to whether that degree of attention can reliably be expected from intake officers. Other questions have also been raised, for example, as to whether the choice of process remains with the inquirer, as presumably it must; and whether represented parties need to go through this process, or whether it can be assumed that their lawyers can help them make these choices. All the same, this sets the tone for MDC and its development and application in other jurisdictions.

[13] See the Pound Conference Report, cited as 70 Federal Rules Decisions (FRD) 79 at p 11
[14] Brown & Marriott (n 4) 93

The MDC was implemented in several US courts. Indeed the concept was described by the American Bar Association as "an exciting and innovative idea". In Nigeria, some States like Lagos, AkwaIbom, Kwara and Delta[15] have laws on Multi-Door Courthouse while others like Abia, Kaduna, Kano, Cross Rivers, and the Federal Capital Territory have Multi-door Courthouses derived from the constitutional powers vested in Chief Judges of States to make rules for regulating practice and procedure of the High Courts.[16]

Arbitration[17]

Arbitration is increasingly gaining acceptance across the world as an alternative to traditional litigation in the resolution of commercial disputes. It is anchored on four fundamental principles, namely, the principle of party autonomy, the principle of separability, the principle of arbitrability and the principle of judicial non-intervention (or minimal intervention). There is also the bedrock principle of the competence of the arbitral tribunal to rule on its own jurisdiction, usually referred to as the principle of *Kompetenz-Kompetenz*.[18] The principles of judicial non-intervention and *Kompetenz-Kompetenz* are closely related and are indeed crucial to the effectiveness of the arbitral process, particularly international arbitration because they guarantee that the process can proceed in accordance with the agreement of the parties without the delays, uncertainties and other challenges concomitant with judicial review of procedural decisions[19] by national courts. Hence, these principles presuppose that by electing to resolve disputes through arbitration, the parties have made a conscious decision not to submit to the jurisdiction of the courts.[20]According to Akpata, '*Arbitration or mediation was used for resolving conflicts because of their emphasis on moral persuasion and their ability to maintain harmony in human relationship*'[21] The Nigerian courts have defined 'arbitration agreement' variously.[22] In *Nigerian Agip Exploration*

[15] See the Lagos State Multi-Door Courthouse Law, Cap L3, Laws of Lagos State, 2015, Kwara State Citizens Mediation and Conciliation Centre Law, 2008, Akwalbom Multi-Door Courthouse Law, 2011 and the Delta State Multi-door Courthouse Law, 2013.

[16] See section 274 of the 1999 Constitution, as amended.

[17]See Paul Obo Idornigie, 'Arbitration', in Epiphany Azinge and Nnamdi Aduba (eds) *Law and Development in Nigeria* (NIALS Press 2010) 943

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

[19] Gary Born, "The Principle of Judicial Non-Interference in International Arbitral Proceedings" (2009) 30 *University of Pennsylvania Journal of International Law* 999 http://ssrn.com/abstract=1959827 [Accessed 7 October 2016]. See also Paul Obo Idornigie and Enuma Moneke, 'Anti-Arbitration Injunctions in Nigeria' in (2016) 82 *Arbitration* 838 (citation incomplete)

[20] Paul O. Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications 2015)316.

[21.] Ephraim Akpata, *The Arbitration Law in Focus* (West African Book Publishers Limited 1997) 1. See also P O Idornigie 'Evolution of Commercial Arbitration' in *Current Jos Law Journal*, Vol 6, No 6 2003, 246.

[22.] See *Kano State Urban Development Board v Fanz Construction Company Limited* (1990) 4 NWLR (Pt 142) 1;*Commerce Assurance Limited v Alli* (1992) 3 NWLR (Pt 232) 710; *African Re Corp v AIM ConsultantsLimited*

Limited v Nigerian National Petroleum Corporation & Anor[23], the Court of Appeal defined 'arbitration' thus:

> (i)s the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction; whose decision is in general, final and legally binding on both parties appointed by a court, to hear the parties claims and render a decision. The process of arbitration derives its force principally from an agreement of the parties and the law requires the parties to obey the rules, proceedings and awards of the arbitral panel.

In Nigeria, evolution of arbitration can be treated under three broad sub-headings, namely, during the pre-colonial period, the colonial period and the post-colonial period. These three periods fit into the three classical types of arbitration in Nigeria, namely, customary, common law and statutory arbitration.

(a) During the Pre-Colonial Period

A cursory look at the various ethnic groups in Nigeria reveal that before the advent of colonial rule, we had our indigenous methods of settling disputes. According to Akpata:

> In the environs of Benin City the Village Head (Odionwere) or the family head (Okaegbe) principally functioned as the arbitrator or the mediator to resolve conflicts or disputes among the people. The parties were also at liberty to request any member of the community in whom they reposed confidence to mediate or arbitrate with the undertaking to abide by his decision.[24]

In the Ibo-speaking part of Nigeria, the age-grade *or amala* performs arbitral functions. Similarly in the Yoruba-speaking parts, the Obas perform arbitral functions.[25] According to Ezejiofor:

(2004) 11 NWLR (Pt 884) 223; Agu v Ikwibe (1991) 3 NWLR (Pt 180) 385; Savoia Ltd v Sonubi (2000) 12 NWLR 539; *Ras Pal Gazi Construction Company v. FCDA* (2001) 10 NWLR (Pt 722) 559; *Onward Enterprises Ltd v. M V Matrix* (2008) LPELR-4789; *Statoil (Nig) Limited v. NNPC* (2013) 14 NWLR (Pt 1373) 1; *Mutual Life & General Insurance Ltd v. Iheme*(2014) 1 NWLR (Pt 1389) 670; *RCO & S Ltd v Rainbownet Ltd (2014) 5 NWLR (Pt 1401) 516 and SA & Ind. Company Ltd v Ministry of Finance Incorporated (*2014) 10 NWLR (Pt 1416) 515.

23. (2014) 6 CLRN 150. See also P O Idornigie 'Arbitration' in E Azinge and N Aduba (eds) NIALS *Law and Development in Nigeria: 50 years of Nationhood* (NIALS Press 2010) 94.

24. Akpata (n 21)

25. USF Nnalue, 'Promoting Conflict Resolution through Non-Adjudicatory Process' in (1997) *Abia State University LawJournal* 57. See also *Agu v Ekewibe* (1991) 3 NWLR (Pt 180) 385 at 407.

> Customary law arbitration is particularly important institution among the non-urban dwellers in the country. They often resort to it for the resolution of their differences because it is cheaper, less formal and less rancorous than litigation. Because the system helps in the promotion of peace and stability within the communities and because it assists in the reduction of pressure on the over-worked regular courts, its employment as a dispute settlement mechanism should be encouraged by all organs of the state.[26]

As observed by Holdsworth:

> (t)he practice of arbitration therefore, comes, so to speak, naturally to primitive bodies of laws, and after courts have been established by the state and recourse to them has become the natural method of settling disputes, the practice continues because the parties to a dispute want to settle them with less formality and expense than is involved in a recourse to courts.[27]

The above is true of England and Nigeria. Despite the fact that we have embraced the English Legal System, recourse to customary arbitration is still a method of settling disputes especially in rural areas. In land matters, arbitration was used to settle disputes relating to land. Thus, in *Larbi v. Kwasi*[28], the Privy Council held that a customary arbitration was valid and binding and that it was repugnant to good sense for a losing party to reject the decision of the arbitrator to which he had previously agreed. Similarly, in *Mensah v. Takyiampong & Ors,*[29] the West African Court of Appeal held, *inter alia*, that:

> (i)n customary arbitration, when a decision is made, it is binding upon the parties, as such decisions upon arbitration in accordance with native law and custom have always been that the unsuccessful party is barred from reopening the question decided and that if he tries to do so in the Courts, the decision may be successfully pleaded by way of estoppel.

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26. G Ezejiofor 'The Pre-requisites of Customary Arbitration' in (1992-1993) *Journal of Private and Property Law*Vols 16 and 18 34..
27. *Holdsworth History of English Law* (1964) Vol. XIV p. 187.
28. (1952) 13 WACA 76
29. (1940) 6 WACA 118. See also Andrew I Chukwuemerie, *Studies and Materials in International Commercial Arbitration* (Lawhouse Books 2002) 210; CA Candide-Johnson & O Shasore, *Commercial Arbitration Law and International Practice in Nigeria* LexisNexis 2012) 5 and F Ajogwu*Commercial Arbitration in Nigeria: Law & Practice* (Mbeyi& Associates (Nig) Limited 2009) 9.

One distinguishing feature of customary arbitration is that it is usually oral. This takes it outside the ambit of statutory arbitration. From a long line of decided cases it is obvious that arbitration is not alien to customary jurisprudence.[30] It is therefore surprising that Uwaifo JCA, as he then was, held *in Okpuruwu v. Okpokam*[31]that: *'No community in Nigeria regard the settlement by arbitration between disputing parties as part of native law and custom… there is no concept known as customary or native arbitration in our jurisprudence'*.

It must be stated that learned Nigerian authors and scholars have dealt extensively with the issue of validity and bindingness of customary arbitration that the entire field has been comprehensively covered.[32] Be that as it may, although the pre-requisites of customary arbitration were, with due respect, wrongly stated in *Agu v. Ikewibe*[33]and *Ohiaeri v. Akabeze,*[34] they were correctly restated in *Awosile v.Sotunbo*[35]as follows:

(a) Voluntary submission of the dispute to arbitration by the parties;
(b) agreement by the parties expressly or by implication, to be bound by the award;
(c) conduct of the arbitration according to customary law; and
(d) publication of a decision which is final.[36]

It is settled in Nigeria that when a customary arbitration award is pleaded, it serves as estoppel.[37]

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30. See *Ofomata&Ors v Anoka &Ors* (1974) 4 EC.S.L.R 251; *Assampong v Amuaku* (1932) 1 WACA 192;*Inyang&Ors v. Essien&Ors* (1957) 2 F.S.C. 39; and *Foli v. Akese* (1930) 1 WACA 1. See also *Idika&Ors v. Erisi&Ors* (1988) 2 NWLR (Pt 78) 563; *Ojibah v. Ojiba*h (1991) 5 NWLR (Pt 191) 314; *Okere v. Nwoke* (1991) 8 NWLR (Pt 209) 317 and *Begha v. Tiza* (2000) 4 NWLR (Pt 652) 193.

31. *Okpuruwu v. Okpokam* (1988) 4 NWLR (Pt 90) 572.

32. Gaius Ezejiofor, *The Law of Arbitration in Nigeria* (Longman Nigeria Limited 1997) 22; JO Orojo and MA Ajomo*Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi& Association (Nig) Limited 1999) 36; and C A Oguabor 'Recurrent Issues in the Validity of Customary Arbitration in Nigeria' O in Amucheazi& C A Ogbuabor (eds) *Thematic Issues in Nigerian Arbitration Law and Practice* (Varsity Press Limited 2008) 88.

33. *Agu v Ekewibe* (1991) 3 NWLR (Pt 180) 385 at 407.

34. (1992) 2 NWLR (Pt 221) 1. See also *Okereke v. Nwankwo* (2003) 9 NWLR (Pt 828) 592 where the Supreme Court stated the conditions thus: (a) the disputing parties must submit voluntarily to arbitration; (b) the parties must agree either expressly or by implication that the decision of the arbitrators will be accepted as final and binding; (c) arbitration must be conducted in accordance with the custom of the parties or their trade or business; (d) the arbitrators must reach a decision and publish their award; and (e) the decision or award must be accepted at the time at which it was made. With respect, this last condition is unnecessary if the parties had already agreed either expressly or by implication that the decision of the arbitrators will be accepted as final and binding.

35. (1992) 5 NWLR (Pt 243) 514. See also *Oparaji&Ors v. Ohanu&Ors* (1999) 6 SCNJ 27 at 38.

36. For a detailed analysis of the pre-requisite, see generally Ezejiofor (n 26). See also *Odinigi v. Oyeleke* (2001) 6 NWLR (Pt 708) 12 at 28-29 and *Ndah v. Chianuokwu* (2006) 17 NWLR (Pt 1007) 74.

37. See *Assampong v. Amuaka* (1932) WACA 192 at 201 and *Nwankpa v. Nwogu* (2006) 2 NWLR (Pt 964) 251.

(b) *During the Colonial Period*

Lagos colony was ceded to England in 1861 by virtue of the Treaty of Cession of that year. However, English Law was introduced to the Colony by virtue of Ordinance No. 3 of 1863. With this Ordinance especially Ordinance No. 4 of 1876, the statutes of general application, the rules of common law and doctrines of equity became part and sources of our laws.[38] Thus, side by side with the customary arbitration we had common law arbitration. Both customary and common law arbitration can be entered into orally. The defects in oral submissions have been eloquently analysed by Ezejiofor.[39]

The evolution of arbitration generally centered around the common law and trade usages. What remains to be considered here is the relationship between common law and customary arbitration. Although, there is no judicial authority in this regard, the internal conflict of law rules in Nigeria can be evoked as appropriate.[40] Generally the effect of such conflict is dependent on whether the parties to such a transaction or event are both Nigerians or Nigerian and Non-Nigerian. If the parties are both Nigerians, the general rule is that the transaction will be regulated by customary law.[41] However, there are two exceptions to this general rule, namely, where the parties agreed or seem to have agreed that English Law will regulate the transaction, and where the transaction is unknown to customary law.[42]

If it is a transaction involving a Nigerian and a Non-Nigerian, the applicable law is the English Law unless where such application will result in substantial injustice to either of the parties in which case, customary law will apply.[43] Where the parties are non– Nigerians, then English law will apply.[44] There is no reported Nigerian case based on the UK Arbitration Act 1889. It is also uncertain as to whether it was a statute of general application. When it is noted, that there is no official listing of statutes of general application unless a matter based on a particular statute went to court this is understandable. It is however humbly

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38. See Akintude Olusegun Obilade, *The Nigerian Legal System* (Spectrum Books Limited 2009) 100. The effective date was 24 July 1874 until it was changed to 1st January, 1900.

39. Ezejiofor, (n 32) 20. The weaknesses include the fact that absence of writing may led to a disagreement as to what the exact terms of the agreement are; authority of the arbitrator can be revoked before the award is published; an award by parol agreement can only be enforced by action; there can be no application for stay of proceedings in the case of oral agreement and the death of a party to an oral submission revokes the authority of the arbitration and brings the arbitration to an end.

40. Obilade (n 38) 145.

41. *Labinjo v. Abake* (1924) 5 N.L.R. 33.

42. *Griffin v. Talabi* (1948) 12 WACA 371.

43. *Koney v. UTC* (1934) 2 WACA 188 and *Nelson v. Nelson* (1951) 13 WACA 248.

44. Obilade (n 38) 154.

submitted that since there was no local legislation on arbitration at that time, the Arbitration Act 1889 could be treated as such.

The hitherto Northern and Southern Protectorates were amalgamated in 1914 to form a country called Nigeria. In the same year, an Arbitration Ordinance[45] came into effect. The provisions of this Ordinance were identical with the English Arbitration Act, 1889. Thus, for the first time in the history of arbitration in Nigeria, we had a local enactment regulating arbitration. Unfortunately, the provisions of the Arbitration Ordinance were scanty as they dealt with domestic arbitration only. As at independence, we still had the Arbitration Act which was applicable to Lagos as the federal capital territory. The Regions (now states) had their own Arbitration Laws[46].

(c) *During the Post - Colonial Period*

It is noteworthy that although Nigeria gained political independence in 1960, there was no legislative instrument on international commercial arbitration until it adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985[47]and promulgated it into the Arbitration and Conciliation Decree.[48] Section 58(1) of the ACA provides that it shall apply throughout the Federation while subsection (2) of section 58 repealed the Arbitration Act. Did this ACA repeal the Arbitration Laws of the States? We submit to the contrary because subsection (2) expressly repealed the Arbitration Act of the Federal Capital Territory of Lagos. Unfortunately in the Laws of the Federation of Nigeria 1990 and 2004, subsection 2 of section 58 of the Act was omitted. It must be borne in mind that in March 1988, Nigeria was under military rule and decrees promulgated by the regime superseded the Constitution and edicts promulgated by State Governments. However, when Section 58(1) of the ACA provides that it shall apply throughout the federation, what is the effect on the State Laws on Arbitration? It was clear during the military regime that such state laws could not stand in the face of the decree. It is safe and reasonable to assert that the doctrine of "covering the field" can be invoked to fill any gap that may arise.[49]

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45. Ordinance No. 16 of 1914 which was later re-enacted as Arbitration Act Cap 13, Laws of the Federation 1958.

46. See the Arbitration Law of Northern Nigerian 1963, Arbitration Law of Western Nigeria 1959 and Arbitration Law of Eastern Nigeria 1963. This law is still applicable in most states in Nigeria. See Arbitration Law, Cap 10, Laws of Bendel State of Nigeria, 1976 and Arbitration Law, Cap A13, Laws of Delta State, 2006. However, Lagos State has a modern arbitration law – Arbitration Law of 2009.

47UNCITRAL Model Law available at <https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pd> accessed 23 May, 2017.

48. Decree No. 11 of 14 March, 1988, formerly Cap 19, LFN, 1990 and now Cap A18, LFN, 2004 ("the ACA").

49. On this doctrine, see *Attorney General of Ogun State v Attorney General of the Federation*(1982) 1 - 2 SC 13 at 16; *Oseni v Dawodu* (1994) 4 SCNJ Part II, 197 at 212 and *Lakanmi& Anor v AG West*(1971) UILR Vol I, Part II, 201 at 209. See also PO Idornigie "The Doctrine of Covering the Field and Arbitration Laws in

Consequently, when it is realised that the ACA covers commercial arbitration and the state laws cover both commercial and non-commercial, it can be argued that the federal law has not completely, exhaustively and exclusively covered the entire field. Consequently, the state laws can be applied to non-commercial arbitration. Section 54(1) of the ACA provides for the domestication of the 1958 New York Convention while Section 53 provides for the application of other arbitration rules other than those set out in Schedule 1 to the ACA.

Nigeria was the first African country to adopt the UNCITRAL Model Law. Most of the sections of the ACA are derived from the UNCITRAL Model Law. For example sections 1 to 28 of the ACA correspond with Articles 7 to 33 of the UNCITRAL Model Law. Sections 29 to 36 of the ACA are purely for domestic arbitration while sections 37 to 42 of the ACA deal with conciliation in domestic proceedings. Sections 43 to 55 of the ACA are additional provisions on international commercial arbitration. Essentially Sections 48, 51 and 52 of the ACA correspond with Articles 34, 35 and 36 of the UNCITRAL Model Law respectively.

In Nigeria it is unsettled what the cutoff date for common law is.[50] If the cutoff date is 1st January, 1900, then in Nigeria today it is only customary and statutory arbitration that are in force. However if the cutoff date is not 1st January, 1900, then common law and customary arbitration which are oral as eloquently stated by Ezejiofor[51] will be in force.

With the coming into force on 29 May of the Constitution of the Federal Republic of Nigeria, 1999[52], it became clear that the ACA could not stand as a federal law dealing with domestic and international arbitration. Reform became imperative.[53]Since March 11, 1988 that the ACA was promulgated, all attempts made to reform it have failed. A National Committee on the Reform and Harmonisation of Arbitration and Alternative Dispute Resolution (ADR)[54] Laws was inaugurated by the then Honourable Attorney General of the Federal Republic of Nigeria, Chief Bayo Ojo *S.A.N.*, on the 23rd of September 2005, and chaired by the late Dr J. Olakunle Orojo . The Committee produced a Report and drafted two Bills, a Federal Arbitration and Conciliation Bill and a Uniform

Nigeria" *Arbitration: The Journal of the Chartered Institute of Arbitrators* Vol.. 66, No. 3, August 2000, 193-198. We concede, however, that this issue is unsettled.

[50].See AEW Park *The Sources of Nigerian Law* (Sweet & Maxwell 1963) 5 – 42. Cf: A Allot *Essays inAfrican Law*(Butterworths 1960) 3.

[51].Ezejiofor (n 26) 21.

[52]. See section 320 of the Constitution.

[53] Idornigie (n 20) 395.

[54]Candide-Johnson and Shasore (n 23)15

Arbitration and Conciliation Bill. The aim was to have a law at the federal level dealing with international and inter-state arbitration and another at the state level dealing with domestic arbitration. While the Federal Bill has not been passed, Lagos State modified the Uniform Arbitration and Conciliation Bill and passed the Arbitration Law of Lagos State, 2009. In Nigeria, it is unsettled whether the Federal Government can pass any law on arbitration.[55] My view is that it is a responsibility shared between the Federal Government and the State Governments essentially because the states cannot make laws on international and inter-state arbitration nor make laws to implement treaties like the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[56]

In 2016, the arbitration stakeholders in Nigeria set up a Technical Committee to review the 2007 Draft Bill. At the end of its deliberations, an updated Arbitration and Conciliation Bill 2017 was drafted and presented to the Senate Committee on Judiciary, Human Rights and Legal Matters on 12 June, 2017. This updated version took into account the UNCITRAL Model Law as amended in 2006 and developments in other jurisdictions especially the inclusion of Emergency Arbitrator.

Mediation/Conciliation

Despite the controversy as to what ADR is or is not, it is settled that at the core is 'mediation'. Again this raises the question as to whether there is a difference between mediation and conciliation. In the UNCITRAL Model Law on International Commercial Conciliation,[57]

> "conciliation" means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons ("the conciliator") 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 conciliator does not have the authority to impose upon the parties a solution to the dispute.

[55]See Candide-Johnson and Shasore, ibid at 16-21 for a discussion on the legislative competence of states to pass laws on arbitration.
[56]Idornigie (n 20) 395-420
[57]. General Assembly Resolution 57/18 of 19 November, 2002. See Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17 (A/57/17), Annex I.

Although most practitioners in this area draw a line between mediation and conciliation, we are guided by this definition. We submit that the use of ADR processes as mainly represented by mediation should not be made mandatory but optional otherwise the consensual nature of the process will be defeated.[58] We believe that the ADR processes should be encouraged.[59] In Nigeria, the legal regime regulating conciliation is the ACA. There is none for mediation except the rules of various professional mediation institutions.[60]

ADR Mechanisms and the Judiciary

In examining the relationship between the ADR mechanisms and the judiciary it is apposite to examine the relationship between arbitration and the judiciary on the one hand and mediation/conciliation and the judiciary on the other.

Arbitration and the Judiciary[61]

At the beginning, the judiciary interfered with arbitral proceedings in various ways like case stated and overarching superintendence over arbitral proceedings. In Nigeria, section 6 of the 1999 Constitution, as amended vests judicial powers in the courts established in the Constitution especially in the determination of any question as to civil rights and obligations of citizens.[62] However, it is now settled that the courts play supervisory and supportive roles in arbitration but without destroying the essence of arbitration. In other words, courts are enjoined not to order anti-arbitration injunctions. Thus arbitration does not oust the court's jurisdiction as enshrined in section 6 of the 1999 Constitution, as amended but simply a means of resolving disputes other than litigation through the courts. Arbitration and arbitration proceedings are private proceedings that have public effect and consequences recognized by the courts.

58. In this regard, we do not share the position in the Preamble to the Lagos State High Court (Civil Procedure) Rules, 2012 which provides, among others, in Preamble 2(1) and (2), page xx that the Court shall further the overriding objectives by actively managing cases. Active case management includes (a) mandating the parties to use an (ADR) mechanism where the Court considers it appropriate and facilitating the use of such procedure.

59. See Order 17 of the High Court of the Federal Capital Territory (Civil Procedure Rules), 2004 and Order 52 of the Federal High Court Rules, 2009.

60See CIArb Mediation Rules; LCIA Mediation Rules, 2012; WIPO Mediation Rules, 2016 and ICC Mediation Rules, 2014.

61See generally Paul Obo Idornigie, "The Relationship Between Arbitral and Court Proceedings" in *Journal of International Arbitration* 19(5) 443-459, October 2002; Paul Obo Idornigie,'The Significance of section 34 of the Arbitration and Conciliation Act, 2004 on the Extent of Court's Intervention in Matters Governed by the Act' in O Omole (ed) *Reflections on Nigeria, Law, Vol. 2: Commemorative Essays in Honour of Prof (Mrs) Jadesola Akande* (Lagos: Speakes Promotions Ltd, 2013) 233-244 309and Paul Idornigie &EnumaMunoke (n 19)

62See section 6(6)(b) of the 1999 Constitution

Practically speaking, for the arbitral process to be successful and achieve the desired results, it must be assisted and supported by an effective judicial system which guarantees the rule of law.[63] Nonetheless, because of the overriding need to preserve and protect the sanctity of arbitration and the arbitral process, intervention by the courts should be undertaken with utmost caution, even where the relevant statutes permit such intervention.[64]

In the words of Blackaby and Partasides

> *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.*[65]

For Nigeria, the position of the law on anti-arbitration injunctions can be gathered from two statutory provisions: the Federal High Court Act and the Arbitration and Conciliation Act. Section 34 of the ACA provides as follows: "*a court shall not intervene in any matter governed by this Act except where so provided in the Act".* In essence, intervention by the courts in arbitral proceedings would only be allowed in instances specified in the ACA.

In commenting on a similar provision in the UK Arbitration Act, 1996, the Court of Appeal (English) in*Cetelem v Roust*[66], **held that this provision is 'intended to ensure that the powers of the court should be limited to assisting the arbitral process and should not usurp or interfere with it'.** It is a well established principle of English law that section 1(c) of the English Arbitration Act '**makes it clear that the general position is that there is no inherent common law jurisdiction of the court to supervise arbitration outside the framework of the Arbitration Act 1996'**[67]

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[63] Dominique Hascher, "The Courts as Collaborators in the International Dispute Resolution Project' (2015) 81 *International Journal of Arbitration, Mediation and Dispute Management* 443.

[64]Idornigie &Moneke (n 19). See also section 13 of the Federal High Court Act, Cap F13, LFN, 2004 that allows Federal High Courts to grant an injunction conditionally or unconditionally. This power is extended to the Court of Appeal by virtue of the provisions of section 15 of the Court of Appeal Act, Cap C36, LFN, 2004 and the Supreme Court by virtue of the provisions of section 22 of the Supreme Court Act, Cap S15, LFN, 2004.

[65] Nigel Blackaby and Constantine Partasides*Redfern and Hunter on International Arbitration* (5thedn, Oxford University Press, 2009) 439. See also Paul O Idornigie, 'The Relationship Between Arbitral and Court Proceedings'in *Journal of International Arbitration* 19(5) 443-459.

[66] (2005) 1 WLR 35555 at 3571. See also the position of the House of Lords *in Lesotho Highlands v ImpreglioSpA, per Lord Wilberforce* (2006) 1 AC 221 – '**it has given to the court only those essential powers which I believe the court should have'**.

[67] Sutton and Others (n 11) 345.

Under the ACA, the courts are only allowed to intervene where an application is brought before it to:

- ✓ revoke an arbitration agreement;[68]
- ✓ stay court proceedings;[69]
- ✓ appoint an arbitrator;[70]
- ✓ challenge the appointment of an arbitrator;[71]
- ✓ order interim measures of protection;[72]
- ✓ order the attendance of a witness; [73]
- ✓ remove an arbitrator on grounds of misconduct;[74]
- ✓ set aside an arbitral award;[75]
- ✓ remit an award;[76]
- ✓ recognise and enforce an award;[77]
- ✓ or refuse to recognise and enforce an award.[78]

Any other involvement not envisaged by the Act would amount to a "hijack" of the arbitral proceedings by the courts. Therefore the courts cannot entertain an application to enjoin arbitral proceedings initiated on the grounds that the tribunal lacks jurisdiction because the powers to grant anti-arbitration injunctions are clearly not provided for by the ACA 1988, and by virtue of section 34, ACA the courts can only intervene in arbitral proceedings in the instances provided for in the ACA.[79] However, where a matter is not provided for in the

[68]ACA s.2.

[69]ACA ss.4 and 5; *Obembe v Wemabod Estate Ltd* (1977) 11 NSCC 264; *KSDUB v Fanz Construction Co Ltd* [1990] 4NWLR (Pt.142) 1; *Sino-Afric Agricultural & Ind. Co Ltd v Ministry of Finance Incorporated* (2014) 10 NWLR (Pt.1416) 515; *Benedict Mbeledogu v JohnAneto* (1996) 2 NWLR (Pt.429) 157.

[70]ACA s.7; ACA 1988 Arbitration Rules Art.6; *Bendex Engineering v Efficient Petroleum Nigeria Ltd* (2001) 8 NWLR (Pt.715) 333; *CG De Geo-Physique v Etuk*(2004) 1 NWLR (Pt.853) 220; *Kano State Oil & Allied Products Ltd v Kofa Trading Co Ltd* (1996) 3 NWLR (Pt.436) 244; *Magbagbeola v Sanni* (2002) 4 NWLR (Pt.756) 193;*Ogunwale v Syrian Arab Republic* (2002) 9 NWLR (Pt.711).

[71]ACA s.9.

[72]ACA Arbitration Rules Art 26(3); ACA s.13.

[73]ACA s.23.

[74]ACA s.30(2).

[75]ACA ss.29 and 30(1); *KSUDB v Fanz Construction Co Ltd* [1990] 4 NWLR (Pt.142) 1; *Adwork Ltd v Nigerian Airways Ltd* (2000) 2 NWLR (Pt.645) 415; *Arbico (Nig) Ltd v Nigerian Machine Tools Ltd* (2002) 15 NWLR (Pt.789) 7; *Mutual Life & General Insurance Ltd v Kodilheme* (2014) 1 NWLR (Pt.1389) 670.

[76]ACA s.29(3).

[77]ACA ss.31 and 51; *Araka v Ejeagwu* (2000) 15 NWLR (Pt.692) 684; *GhassanHalaoui v Grosvenor Casinos Ltd* (2002) 17 NWLR (Pt.795) 28.

[78]ACA ss.32 and 52.

[79] Cf. the English Arbitration Act s.72(1), which empowers courts to intervene to enjoin arbitral proceedings where a party who did not take part in the proceedings raises questions as to the jurisdiction of the tribunal. However, the English courts will only award anti-arbitration injunctions in exceptional circumstances, particularly where it is obvious that the arbitration proceedings were wrongly brought. In *J. Jarvis & Sons Ltd v Blue Circle Dartford Estates Ltd*[2007] BLR 439, the court refused to enjoin arbitration proceedings which were

ACA, the courts can intervene.[80] Despite the provisions in section 13 of the Federal High Court Act that empowers the courts to grant injunctions, this powers should be exercised sparingly. Indeed once there is an arbitration agreement, the presumption should be that the parties intend to arbitrate their differences until a contrary intention is proved.

Mediation/Conciliation and the Judiciary

In relation to mediation/conciliation, the ACA does not have a similar provision like section 34 of the ACA.[81] However, it is expected that under section 42 of the ACA, the conciliator or conciliation body shall draw up the terms of settlement at the end of the conciliation proceedings. If the terms of settlement are acceptable to the parties, they can be enforced. However, where the parties do not agree to the terms of settlement, the dispute can be submitted to arbitration or take an action in court as the parties deem fit.[82] Under Article 16 of the Conciliation Rules, the parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings.

In the event that the parties resort to refer the dispute to arbitration, the parties and the conciliator usually undertake that the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect to a dispute that is the subject of the conciliation proceedings. Similarly the conciliator shall not be presented as a witness in any such proceedings.[83] The parties also undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings views expressed or suggestions made by the other party in respect of a possible settlement of the dispute or admissions made by the other party in the course of the conciliation proceedings or the proposals made by the conciliator or the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.[84] The non-admissibility of evidence in other proceeding is consistent with the principle of 'without prejudice' in section 26 of the Evidence Act, 2011.

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brought on the grounds that concurrent proceedings which may result in inconsistent findings would be in place because such grounds did not constitute exceptional circumstances.

[80]See *Shell Petroleum Development Company of Nigeria Limited v Cresta Integrated Natural Resources Limited,* Appeal No. CA/L/331M/2015 (Unreported), judgment delivered on 21 December 2015.

[81]See sections 37-42 and 55 of the ACA

[82]See also Art 13 of the Conciliation Rules, Schedule 3 to the ACA.

[83]See Art 19 ibid

[84]See Art 20 ibid

The relationship between medication/conciliation and court proceedings has been enhanced by the provisions in Article 14 of the UNCITRAL Model Law on International Commercial Conciliation that states enacting the UNCITRAL Model Law on Conciliation should insert in the law the method of enforcing settlement agreements or refer to provisions governing such enforcement. Nigeria is yet to adopt this Model Law on Conciliation. However, in states where there are enactments on MDC, once the settlement agreement or memorandum of understanding is signed by the parties, filed at the MDC and endorsed by the ADR or a person authorised by the Chief Judge of the State, it is enforceable like a consent judgment of a High Court of Justice.[85]

Concluding Remarks

In analysing the relationship between ADR processes and the judiciary, an analysis must be made of the components of different ADR processes. There is also the jurisprudential and conceptual issue as to whether 'arbitration' is part of the ADR processes. For the purpose of this analysis, we have considered 'arbitration' as part of the ADR processes. Over and above this, the relationship between arbitration and the judiciary is different from the relationship between mediation/conciliation and the judiciary. Although there are several components of the ADR processes, in this chapter, the focus was on mediation/conciliation.

In section 34 of the ACA, it is expressly provided that the courts cannot intervene in arbitral proceedings except as provided in the ACA. There is no such provision in relation to either mediation or conciliation. However, to enforce an arbitral award or settlement arising from a mediation or conciliation proceeding, the support of the judiciary is necessary. Whereas an arbitral award is directly enforced like a court judgment, a settlement agreement is not directly enforceable except in states where there is an enactment on MDC that expressly provides that on registration of such settlement agreement, it can be enforced.

[85]See sections 4(1)(b) and 26 of the Lagos Multidoor Courthouse Law, 2015 and section 5 of the Akwa Ibom Multi-Door Courthouse Law, 2011.