

Modern Trends in Commercial Dispute Resolution through Arbitration in Nigeria: Prospects and Constraints

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"The entire legal profession – lawyers, judges, law Professors, have become so mesmerized with the stimulation of the courtroom that we tend to forget that we ought to be healers of conflicts. For some disputes; trials will be the only means, but for many claims, trial by adversarial contest must in time go the way of the ancient trial by battle ----- our system is too costly, too painful, too destructive and too inefficient for really civilized people".[1]

INTRODUCTION

Given the nature and complexity of commercial activities, it is inevitable that disputes arise especially where transactions involve large amounts of money. Disputes use up valuable resources in terms of money, management time and loss of trade. They may also damage trading reputations and relationships. It is therefore essential, in the interests of justice and the efficient use of economic resources, that machinery be provided for their speedy resolution.[2] Business will normally seek to minimize the potential for conflict by taking steps to prevent disputes arising and establishing procedures for speedily resolving any which do arise.

No matter how much care is taken in the drafting of contracts, however, disputes will still inevitably arise, as is shown by the volume of litigation generated by the commodity trades, shipping industry, and the rest of the commercial transactions, despite the widespread use of carefully drafted and well-known standard form contracts. In general, it may be said that disputes are likely to arise where one party seeks to act opportunistically, by taking advantage of a change in circumstances or uncertainty in the agreement or in the law. Even the best drafted contract cannot provide with absolute certainty for every eventuality. There must therefore be mechanisms for resolving those disputes. The simplest, and most beneficial, is for the parties to seek themselves to resolve the dispute by negotiation, and most disputes are infact settled by negotiation, generally without the intervention of lawyers[3].

Failing settlement, however, they may resort to litigation, to formal arbitration or to one of the many developing alternative dispute resolution (ADR) mechanisms.

ARBITRATION IN NIGERIA

The various communities in Nigeria have their own informal ways of resolving dispute even before colonization, as was the case in other African communities. Customary law of the different communities was the law that regulated the life and transactions of the people of Nigeria. In Okpuruwu v Okpokam[4], Hon. Justice Oguntade held that;

> *In the pre-colonial times and before the advent of the regular courts, our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom.*

This mode of dispute resolution by elders, Chiefs and King is common in Nigeria and generally in Africa[5], where chiefs sit to resolve disputes amicably. The orientation of the people of Africa at large, in term of law is towards the reconciliation of dispute vide arbitration, mediation and conciliation[6]. A typical example of this in Nigeria is the ancient Benin Empire where the family head or village head served as mediator and

[1] Chief Justice Warren E. Burger, U.S. Supreme Court of Justice, 1969 – 1986 Cited by Justice Lawal Gummi in "Draft ADR and the Multi-door Court House initiative. The Nigerian Experience" in Oyeyipo, et als, Judiciary and Democracy in Nigeria: Essays in Honour of Hon. Justice S.M.A. Belgore C.J.N. Enugu, Snaap, 2007, P.79.
[2] Robert Bradgate,. Commercial Law London,. Butterworths, Publishers, 2000 P.867.
[3] See Beale and Dugdale, "Contracts Between Businessmen" (1975) 2 BJLS 45.cf Deakin, Lane and Wilkinson, "Contract Law, Trust Relations and incentives for co-operation: A Comparative Study" in Deakin and Michie (eds) Contracts, Co-operation and Competition: Studies in Economics and Management (1997), who found a relatively high likelihood that small English firms in their survey would resort to litigation, especially to recover unpaid debts.
[4] [1998] 4 NWLR (Pt 90) P.554 at 572.
[5] Daannaa H.S., 'The Acephalous Society and the Indirect Rule System in Africa' Journal of Legal Pluralism 34, 1994, p.61.
[6] Ayinla, L.A. Op.cit. p.256.

arbitrator.[1]

In the Yoruba settings, the Oba, Chiefs and the elders play this role, while in the North, the Emir, or the District, village or ward heads were saddled with the responsibility.

Arbitration is a mechanism therefore for the resolution of disputes which take place, usually in private, pursuant to an agreement between two or more parties, under which the parties agree to be bound by the decision to be given by the arbitrator according to law or, if so agreed, other considerations after a fair hearing, such decisions being enforceable at law.[2] Thus arbitration is adjudicatory. In Nigeria, it is regulated by the Arbitration and Conciliation Act.[3] Arbitration is anchored on fundamental principles like that of party autonomy,[4] arbitrability,[5] separability, judicial non-intervention, and Kompetenz Kompetenz (scope of jurisdiction, a power, referred to in German). An arbitral award is not appealable but can be set aside under certain conditions. If not set aside, it can be enforced like a court judgement. An arbitral award is *res judicata*.

The arbitral process is not a challenge to or in competition with the judicial powers vested in the courts. To be enforceable, the agreement to arbitrate must be in writing and signed.[6] The agreement is irrevocable except by agreement of the parties or by leave of court.[7] Arbitration can be of two types, namely, arbitral clause in a contract which refers future disputes to arbitration or a submission agreement that refers existing disputes to arbitration.

Arbitration can also be adhoc or institutional – administered by an arbitral institution like the International Chamber of Commerce (ICC) or London Court of International Arbitration (LCIA). If there is an arbitration agreement and one of the parties commences action in court, the other party can apply under sections 4 and 5 of the Act for a stay of proceedings. It should be noted that the party wishing to stay proceedings must apply for stay before delivering any pleadings or taking any other steps in the proceedings.[8]

PRACTIC OF ARBITRATION IN OTHER JURISDICTIONS

ARBITRATION IN SOUTH AFRICA

In South Africa, the Arbitration Act[9] provides rules for the settlement of disputes by arbitration tribunals in terms of written arbitration agreements and for the enforcement of the awards of such arbitration tribunals.

Notwithstanding what is set out in the Act, parties can design by agreement the way that the ADR process will be governed including the time periods for when discovery will be made and including of course, and this is one of the great advantages of ADR, the person or persons who will hear the matter. This process is done by both the parties and by a process of elimination with both parties starting with a list of several choices from the ranks of Senior Counsel from the advocates' Bar or Senior Practitioners from the ranks of attorneys. If the parties choose to have the matter subject to appeal, appeals on the decisions by these adjudicators are heard by a panel of the same. Generally the choice of adjudicator is governed by the experience in the particular matter at hand.

This advantage is what drives most parties to want their matter to be heard by way of ADR, because of the relative disadvantage of having the matter heard by a judge with no experience of the issue at hand. There are, however, disadvantages to this system and these disadvantages are mainly to do with the fact that, the practitioners appearing before the adjudicators are often friends and close colleagues and the separation created by the Bench does not exist.

The Alternative Dispute Resolution Association of South Africa and more recently the Arbitration Federation of South Africa have made significant attempts to institutionalise private commercial arbitration and, to a much lesser extent, mediation. Notwithstanding, the rules of court, delays created by parties and the length of court roll are experienced and in approximately 18 years ago, two judges of the Witwatersrand Local Division set out to create a special commercial court to hear matters that were deemed, by a set of criteria, to be commercial matters. The procedure was set out in a manual. Once the parties had met the criteria and the matter was declared a commercial matter, specific judges, experienced in commercial law were assigned to hold a pre-

[1] Ephraim, A., The Nigeria Arbitration Law in Focus Lagos. West African Publishers Ltd., , 1997, p.1.
[2] Tackaberry. J. and Marriott, A. 'Bernstein's Handbook of Arbitration and Dispute Resolution Practice 4th Ed., London: Sweet & Maxwell, 2003 P.13 as cited by Afolayan and Okorie in Modern Civil Procedure Law, Lagos Dee-Sage Nigeria Ltd. 2007, P.567 Kano State Urban Development Board-V-Fanz Construction Ltd. [1990] 4 NWLR Pt 142 P.1.
[3] Cap 19 LFN, 1990 Cap A 18 LFN, 2004.
[4] Idornigie, P.O. 'The Principle of Party Autonomy in Arbitral Proceedings: A Myth or Reality? Cited by Afolayan and Okorie in Modern Civil Procedure op.cit.
[5] Idornigie P.O. "The Principle of Arbitrability Revisited' Journal of International Arbitration Vol.21, Issue 3, 2004.
[6] Section 1 of the Act op.cit.
[7] Section 2 Ibid.
[8] Afolayan A.F. and Okorie, P.C., op.cit. P.568.
[9] Arbitration Act No.45 of 1965.

trial in order to narrow the issues and where possible to hear the case.[1]

Commercial court was not highly successful and was used less by parties than was originally intended. By far the method most used is ADR. This was not necessarily a result of the failure of the specialized commercial court, but more as a result of the fact that, contracting parties have almost automatically routinely inserted an alternative dispute resolution clause in contracts. These clauses bar a party from taking the matter to the High Court, unless they have first had the matter adjudicated by alternate dispute resolution.[2]

CANADIAN LAW AND ARBITRATION

Canada is a federal state like Nigeria, whose constitutional peculiarities give the appearance of complexity to the legislation governing commercial arbitration. Although legislation has been enacted federally, and by each of Canada's ten provinces and three territories, the complexity is more apparent than real. As a matter of practice, the laws of the various jurisdictions are remarkably similar. Differences that do exist are not sufficiently material to encourage forum shopping.

With the exception of Quebec, each of Canada's provinces and territories have two arbitration statutes: one for domestic arbitrations and another for international arbitrations. Although Quebec is governed by civil law and the rest of Canada by common law, the differences between the two with respect to arbitration are differences of form, not substance. The applicable federal statute, the Commercial Arbitration Act,[3] governs both domestic and international Commercial arbitrations, but is limited to disputes involving federal government, federal crown corporations and certain enumerated federal agencies. All other arbitrations are governed by provincial or territorial law. Court decisions are important sources of law governing arbitrations, especially in so far as the decisions interpret the legislation. And, although Quebec is a civil law jurisdiction, court decisions tend to play a large role in Quebec than they do in other civil law jurisdictions. Since implementation of the model Law, Canadian courts have demonstrated a clear shift in policy in favour of arbitration over court proceedings.[4] The Ontario Court of Appeal has stated that any ambiguities in the interpretation of arbitral legislation or agreements should be resolved in favour of arbitration.

Canadian Courts regularly implement Article 8(1) of the model law, which requires the stay of a judicial proceedings in favour of an arbitration where one party wishes to enforce the arbitration agreement.[5] Moreover, if a party to a foreign arbitration agreement commences Canadian judicial proceedings, the arbitration agreement notwithstanding, the opposing party may still apply to the Canadian Court for a stay of the Canadian Judicial Proceedings on the basis of the arbitration agreement. The Canadian Court would have to determine and apply the law governing the arbitration agreement itself. If the law, like Canadian law, gives primacy to arbitrations and provides for stay of conflicting judicial proceedings, a Canadian Court would be likely to exercise its discretion to stay the conflicting Canadian Proceeding.

ARBITRATION IN THE UNITED STATES

In the United States, the Federal Arbitration Act (FAA) is a statute that provides for judicial facilitation of private dispute resolution through arbitration. It applies in both state courts and federal courts, it applies where the transaction contemplated by the parties "involves" interstate commerce and is predicated on an exercise of the "commerce clause" powers given to Congress in the U.S. Constitution.

The Federal Arbitration Act,[6] enacted in 1925, provides for contractually – based compulsory and binding arbitration, resulting in an "arbitration award" entered by an arbitrator or arbitration panel as opposed to a "judgement" entered by a court of law. In an arbitration, the parties give up the right to an appeal on substantive grounds to a court.

The Federal Arbitration Act requires that, where the parties have agreed to arbitrate, they must do so in lieu of going to court, provided that, the proceeding is fundamentally fair---- that is, equivalent in fairness to the public courts. Once an award is entered by an arbitrator or arbitration panel, it must be "confirmed" in a Court of law. Once confirmed, the award is then reduced to an enforceable judgement, which may be enforced by the winning party in court, like any other judgement. Under the Federal Arbitration Act, awards must be confirmed within one year; while any objection to an award must be challenged by the losing party within three months. An arbitration agreement may be entered "prospectively"---- that is, in advance of any actual dispute; or may be entered into by disputing parties once a dispute has arisen.

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[1] Lee Gillespie-White, www.iipi.org/conferences/1p-courts/paper-Gillespie-White pdf.
[2] Ibid.
[3] R.S.C. 1985, C.C-34(6).
[4] See Automatic Systems Inc v Bracknell Corp (1994) 18, O.R. (3d) 257, and Canadian National Railway Coy v Lovat Tunnel Equipment Inc., (1999) 174 D.L.R. (4th) 385.
[5] See Automatic Systems Inc v Bracknell Corp (Supra).
[6] Found at 9 U.S.C. Section 1 et seq.www.law.cornell.edu/uscode

The Supreme Court, in Hall v Mattel,[1] ruled that, even if the parties agree in the arbitration agreement to allow expanded judicial review of the decision, the grounds for review specified in the Federal Arbitration Act may not be expanded.

Section 2 of the FAA declares that, arbitration provisions will be subject to invalidation only for the same grounds applicable to contractual provisions generally. Consequently, any state law that disfavours the enforcement of arbitration agreements will be preempted by the Federal Arbitration Act. State laws that govern the procedures of arbitration, but do not affect its enforcement are outside the Act's preemptive scope.[2] In Preston v Ferrer,[3] the Court held that, the Act requires arbitration first, even when state law provides for administrative dispute resolution.

ARBITRATION AS A MEAN OF COMMERCIAL DISPUTE RESOLUTION

All over the world, and particularly in the civilized jurisdictions, arbitration has been richly rooted as a quick, confidential and cost effective mechanism for dispute resolutions, especially where such disputes are commercial in character. Of all Alternative dispute techniques, arbitration seems to be most widely used.[4] The parties may agree to refer a dispute to arbitration after the dispute has arisen, but often the contract itself will provide for any disputes which arise out of it to be referred to arbitration. In particular, the standard forms of contract for commodity trading, shipping, construction and engineering contracts, generally provide for disputes to be referred to arbitration, but individual contracts prepared for particular parties or transactions may also include arbitration clauses.

A contract which requires disputes to be referred to arbitration will often provide for reference to one of the bodies, because it is not uncommon for a contract to provide simply for adhoc arbitration by a single arbitrator or a panel of arbitrators to be appointed by the parties as and when a dispute arises. The arbitrator's decision thus acquires its binding force from the parties agreement. In the past, the Courts tended to be suspicious of arbitration, fearing that the agreements might be used to oust the jurisdiction of the court. However, in recent years the courts have treated arbitration with much less suspicion than hitherto, recognizing that: *"Courts and arbitrators are in the same business, namely the administration of justice. The only difference is that the courts are in the public and the arbitrators in the private sector of the industry".*[5]

It is therefore increasingly recognized, that where parties have freely agreed to refer disputes to binding and final arbitration, their agreement should be respected and they should be held to it. In consumer contracts, different considerations apply to it where consent to arbitration may not be freely given and arbitration clauses in consumer contracts are therefore subject to strict controls.

THE CHALLENGES, AND CONSTRAINTS ASSOCIATED WITH ARBITRATION

Despite the merits of arbitration as have been started above, it has some constraints. Arbitration decisions are to be reached on the basis of the application of the law either chosen by the parties or the tribunal, whereas for example in the case of mediation the terms of settlement are subject to no such constraints; and in reaching a settlement, both the mediator and the parties are free to ignore or to override substantive contractual provisions. On the question whether resort to any of the ADR processes stops time from running, in the case of arbitration, it does not.[6] In the case of mediation and negotiation, although there are no statutory provisions, judicial pronouncements are to the effect that time does not stop to run.[7] This is, however, subject to some qualifications especially where there is an admission which is like an acknowledgement.[8]

Another problem associated with arbitration also is the enforcement of arbitral award especially in non-binding arbitration. We have seen that one of the principle reasons for agreeing to arbitration is to avoid litigation. That purpose is frustrated if parties who have agreed to arbitration, ignore their agreement and resort, instead, to litigation before the court if disputes arise. There is, of course, no reason why the parties should not ignore their arbitration agreement and resort to the court if both agrees. There will also be situations in which the Court's assistance is needed to ensure that the arbitration proceedings work effectively. For instance, where the

[1] No 06-989 of March 25th, 2008
[2] See Doctor's Assoc. Inc v Casarotto, 517 U.S. 681 (1996), and Buckeye check cashing Inc v Cardegna, 546 U.S. 440 (2006).
[3] 128 Supreme Court 978 (2008).
[4] Kelvin N. Nwosu, "ADR as a tool for attraction and protection of business investment in Nigeria," a Paper presented at the NBA, Annual General Conference, Jos, 2005.
[5] Bremer Vulkan Schiffbau and Maschinenfebrik v South India Shipping Company Ltd. [1981] A.C 909 at 921. Per Donaldson J.
[6] See Sections 59 – 66 of the Limitation Act. Cap 522 LFN 1990. But it must be noted that every state has its own limitation Law; see also City Engineering Nig. Ltd.-V-FHA [1997] a NWLR 224.
[7] Nwadiaro v Shell Development Ltd. [1990] 5 NWLR Pt 150 P.322.
[8] Eboigbe v NNPC [1994] 5 NWLR Pt 347, p.660.

parties are unable to agree on an arbitrator, or where interlocutory orders beyond the scope of the arbitrator's own jurisdiction are required. However, if the objectives of the arbitration agreement are not to be frustrated, neither party should be permitted to resort to court proceedings in preference to arbitration, without the agreement of the other. Moreover, the arbitration proceedings themselves must, so far as possible, be final, for the purpose of the arbitration agreement would also be frustrated if a party dissatisfied with the outcome of arbitration could then challenge it in the court. The parties cannot, however, oust the jurisdiction of the court altogether. The court must retain a general supervisory jurisdiction to be invoked where, for instance, a decision is manifestly wrong or in the event of improper behaviour by the arbitrator, for the parties cannot have intended to agree to the decision being improperly made, or the law being wrongly applied.

A party disappointed by the arbitration award should not be able to have a second bite at the cherry by re-opening the dispute before the court, especially since an appeal to the court may be used simply to delay enforcement of an award. It should be borne in mind, too, that one reason for encouraging the use of the arbitration is to reduce the work load of the courts. That objective will be undermined if the right of appeal is too readily available.

Once an award has been made by arbitral tribunal, the court's assistance may be required in most cases to enforce it. The successful party may sue on the award as a contract debt, or in England for instance with the leave of High Court, enforce it as if it were a judgement of that court.[1]

In South Africa, the disadvantages or problems have mainly to do with the fact that, the practitioners appearing before the adjudicators are often friends and close colleagues and the separation created by the Bench does not exist. There is also the problem of matters being treated with some degree of informality by practitioners.[2]

The process of integrating the ADR concept into the Ghanaian Society like in Nigeria continues to face some major challenges. First, it is competing with litigation which is very established as the main dispute resolution mechanism in the country. As such, more effort is needed to educate and convince the Ghanaian populace to buy into the concept of ADR. Another major challenge is the training and appropriate remuneration of ADR practitioners. The global consensus on expected outcomes of ADR mechanisms, point to the fact that the qualification and skills of neutrals or practitioners are a major factor to achieving good results.[3] The training of neutrals must therefore be of the required and accepted global standards to ensure an effective and standardized practice of ADR in the country.

SOME OF THE ADVANTAGES AND ACHIEVEMENTS OF ARBITRATION OVER LITIGATION

One of the attractions of arbitral proceedings is that it is less formal than court proceedings. Thus, the proceedings are usually tailor – made to suit the particular needs, interests and expectations of the parties, the arbitral tribunal and the witnesses. When an award is final, it is binding and conclusive and not appealable.[4] Although there is no appeal, an award can be set aside under certain conditions provided for in sections 29, 30 and 48 of the Act.[5]

As in court proceedings, arbitral proceedings are conducted in accordance with rules. However, in the case of arbitration, the rules must be agreed upon by the parties and where there is a lacuna in the Arbitration Rules, the proceedings are conducted in such a manner as the tribunal considers appropriate so as to ensure fairness. This includes the power to determine the admissibility, relevance, materiality and weight of any evidence placed before it.[6]

In the case of International Commercial Arbitration, subject to the provisions of section 52, section 51 of the Act, regulates enforcement and recognition of an award. Thus, in addition to the requirements of section 31. Where the award or arbitration agreement is in a foreign language, a duly certified translation thereof into English shall be supplied. Section 54 of the Act makes provision for the application of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Nigeria is a signatory to the Convention. However, section 52 has specified the grounds for refusing recognition and enforcement of International Commercial Arbitration in Nigeria. They include proof that a party to the arbitration agreement was under some incapacity; or that the arbitration agreement is invalid; or failure to give proper notice of the appointment of an arbitrator or the proceedings of inability to present one's case; the tribunal has exceeded its

[1] See Section 66 of the Arbitration Act of 1966.
[2] Lee Gillespie – White Op.cit.
[3] Senyo M.A., 'Alternative Dispute Resolution in Ghana', Op.cit.
[4] Kano State Urban Develop Board v Fanz Construction Ltd. (Supra), and Onwu & Ors v Nka & Ors (1996) 7 SCNJ 240 at 255.
[5] Commerce Assurance Ltd. v Alli (1992) 3 NWLR Pt 232 p.710, Lagos State Develop and Property Corporation v Adold/Stamm International (Nig.) Ltd. (1994) 7-8 SCNj Pt 111 p.647, Araka v Ejeagwu [2000] 15 NWLR 684 and Raspal Gazi Construction Coy Ltd. v FCDA [2001] 10 NWLR Pt 722 P.559.
[6] See Section 15 and 53 of the Act and Articles 15-20 of the Arbitration Rules.

jurisdiction, or composition of the tribunal was not in accordance with the arbitration agreement or law of the country where the arbitration took place; or the award is not binding yet or has been set aside or suspended by a court of the country in which it was made; or the court finds that the dispute is not arbitrable or against public policy.[1]

Section 34 of the Act provides that the court shall not intervene except as provided in the Act.[2] And by section 57, the "Court" is referred to the High Court of a State, the High Court of the Federal Capital, or the Federal High Court. These courts have power to intervene in the following areas: Stay of proceedings; revocation of arbitral agreement, appointment of arbitrators, attendance of witnesses, production of documents, setting aside of an award, remissions of award, enforcement of an award and refusal of enforcement.[3] In practice in Nigeria, what happens if an application is made to enforce an award and another is made to set aside the same award. The application to have priority, is the one to set aside, while the other to enforce is stayed.[4]

Therefore arbitration generally rest on agreement, its object is a final and binding award, it is subject to statutory provisions. Arbitrators must act in accordance with the rule of natural justice. Finally Arbitral decisions are to be reached on the basis of the application of the law either chosen by the parties or the tribunal.

It can be said that, the process of arbitration, has separated the people from the problem, i.e. avoid personality differences, focus on interest and not positions, generate a variety of options especially those creating mutual benefits; and it has also established objective and fair criteria for a resolution rather than the judgement of either party.

Arbitration have a number of advantages over litigation. In particular, it is often thought to be quicker and cheaper than litigation. Proceedings are held in private, enabling parties to avoid publicity for their dispute. It may be particularly attractive in an international context where each party may be unwilling to submit to the jurisdiction of the other's national courts, but be prepared to agree to arbitration by independent third party.

Again, it is thought that arbitration may be less confrontational, and therefore less damaging to a commercial relationship, than litigation and may therefore be preferred where parties wish to preserve their trading relationship.

THE WAY FORWARD

It is of the essence of the study and practice of alternative dispute resolution to provide mechanisms and processes which will resolve disputes more effectively than an automatic recourse to litigation. This will significantly challenge the view that adversarial litigation is the only means, apart from agreement, of resolving commercial disputes.

In recent years, there has been increasing dissatisfaction amongst parties to commercial contracts and certain consumer agreements with the high cost and delay associated with resolving disputes. Efforts should be geared towards enhancing, making effective and strengthening the Arbitration, Mediation and Reconciliation process by the government and private organizations in Nigeria. Adequate and intensive advocacy and public sensitization programmes must be undertaken to further establish the practice of arbitration in Nigeria. Even though some advocacy continues to be done, a lot more is needed to fully achieve the level of acceptance and popularity of the ADR concept of Dispute Resolution.

Even though the concept is not new in Nigeria, with the identification that our forefathers have used the Native and Customary arbitration methods, a lot more education and sensitization still need to be undertaken to make the process more popular and accepted.

The government, and other coalitions should undertake a registration exercise of all qualified and practicing ADR practitioners in the country with the view of publishing a national directory of ADR practitioners. This will enable parties in dispute to locate and contact them in and around their localities.

Some Government institutions by the nature of their responsibilities should employ ADR processes to achieve their statutory mandates. For example The National Human Rights Commission, The Judicial Service Commission of the Federation and States, Department of Social Welfare, The National Legal Aid Commission, Nigeria Labour Congress, Trade Union Congress etc.

In places like Ghana, the mechanisms can act as a welcome and appropriate substitute to the traditional and extended family methods of resolving disputes in Nigeria. These extended family mechanisms have become outdated and almost extinct due to the gradual breakdown of the extended family system. It is important to seek other contemporary ways of keeping the peace that has established the much needed stability and economic development.

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[1] See Idornigie P.O., "The Relationship Between Arbitral and Court Proceedings in Nigeria's," Journal of International Arbitration, Cited by Afolayan and Okorie op.cit. P.573.

[2] The constitutionality of this provision has been roundly criticized. See Idornigie op.cit. P.401. cf Ogunwale v Syrian Arab Republic [2002] a NWLR Pt 771 P.135.

[3] See Sections 4, 5id, 2id, 7, 23id, 29, 30, 48id, 29(3)id, 31, 32, 51 and 52id.

[4] Shell Trustees (Nig.) Ltd.-V-Imani & Sons Ltd. [2000] 6 NWLR Pt 662 P.639.

Potential suppliers and customers may be investigated to determine their commercial reputation and credit worthiness. Careful planning and drafting of contract may minimize the scope for disputes, by ensuring that credible people undertake commercial contracts.

Finally, the future of ADR, like arbitration, mediation and conciliation in Nigeria looks very promising. Settlement rates are favourable and acceptable. The process continues to be appreciated by parties who experience it. It is also very suitable to the nature of our people. Above all, it enhances access to justice by persons who are unable to access justice through the established court trial systems. It is more affordable and flexible and hence easier to undertake in all the communities in Nigeria.

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