Alternative Dispute Resolution (ADR) as a Means to Improve Access to Timely Justice and a Pathway to Economic Growth in Nigeria

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Abstract

Alternative dispute resolution (ADR) is a tool for settling disputes outside the traditional judicial process held by the formal courts. ADR arose because the litigation process is expensive, prolonged, and fraught with technicalities. Business operators tend to prefer the private resolution of their disputes as opposed to open court proceedings. The process reduces antagonism and hostility, saving business relationships, as well as encouraging continued cordiality among the parties. The Nigerian Constitution provides for the settlement of disputes by arbitration, mediation, conciliation, negotiation, and adjudication. Negotiation involves two or more parties holding discussions to develop an agreement on matters of mutual concern. Conciliation entails settling disputes by consensus as opposed to adjudication. Mediation is a negotiation involving the assistance of a neutral third party. Arbitration is the reference of a dispute between two or more people for determination by a person or persons, other than a court of competent jurisdiction, after judicially hearing both sides. Arbitration, commonly classified as a kind of ADR process and perceived as a preferable method, is cheaper, quicker, flexible, informal, confidential, preserves the relationship of disputants, and reduces the workload of judges. The ADR mechanisms strengthen judicial modernization, unclog the courts, increase access to justice, reduce cost, support economic development by cutting costs of resolving disputes, and increase certainty in business investments. ADR permits claimants to present claims they could not litigate before in court, thereby improving access to justice. This thesis presents a contextual understanding of ADR, access to justice, and economic growth in Nigeria.
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Chapter 1: Introduction to the Study

**Background**

Commercial transactions play a vital role in generating revenue in every nation. Disputes often arise in business transactions, which require a quick resolution to forestall the disruption of business relationships. The occurrence of conflicts in different aspects of human interactions has increased in complexity in recent times. The courts are often the first recourse when disputes arise among individuals or corporate organizations. The problems associated with litigation, which include delays, costs, and formalities, impede the essence of the court’s process for achieving timely justice. The alternative methods, particularly, arbitration portends as a viable means to resolve commercial disputes. Arbitration is a contractual way to resolve disputes outside the court setting and originates in an agreement between the parties. A party that enters into a contract choose between arbitration and judicial litigation. The Arbitration and Conciliation Act 1988 regulates the arbitration process under Nigerian law.

ADR is rooted in Nigerian culture.¹ African societies practiced ADR processes before the colonial era. In Nigeria, villages and kingdoms constituted the pre-colonial era, with conflicts resolved by elders or appointed bodies. British colonialism introduced the court system, which co-existed with the traditional means of dispute settlement. The courts recognize the use of ADR in settling civil disputes. Presently, there is an increasing trend to entrench ADR mechanisms as alternatives to court litigation. The recourse to the use of ADR mechanisms considering the slow pace in

the economic growth and development in Nigeria will enhance people’s access to justice.

Risks and uncertainty are inevitable in investment, as most investment decisions occur under conditions of uncertainty (Babawale, 2007). Business transactions involve some degree of risk (Gill, Biger, Mathur, & Tibrewala, 2010). Investment is one of the riskiest activities that are speculative. The anticipation of unknown future demand, risk, and uncertainty are significant factors that influence decision-making. Investors seek to maximize wealth and choose investment options based on their risk and return characteristics. Successful decision making in business requires careful analysis of risks and return on investment (Allen & Floyd, 2005). The investment process is a return/risk trade-off. The viability of investment is dependent on the consistency and sustainability of economic development. Conflict is a significant threat to sustainable development, in addition to poverty alleviation and world security (Oni-Ojo & Roland-Otaru, 2013). Disputes disperse energy, time, and finance, while amity is the bedrock for progress and development. Poorly managed conflict hinders economic development (Mellersh, 2015). The return on investment and time lost when business and investment disputes pass through the court system becomes a problem for business professionals and stakeholders.

In Nigeria, there is a preference for peaceful resolution of disputes, as opposed to litigation. Litigation has been criticized for the expensive cost to the delivery of

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3 Gill, Biger, Mathur & Tibrewala (2010)
justice and delays associated with the battle of victor and vanquished. The courts encouraging and facilitating the ADR process is an aspect of case management that advances the administration of justice. The uncertainties associated with litigation cause professionals to seek alternative and innovative ways to resolve conflicts that arise in the course of business, without recourse to the court. Stakeholders can take advantage of the flexible multi-level ADR clauses for improved resolution of disputes in business transactions. Effective alleviation of the negative effect of conflict involves a process that addresses the critical variables of cost, time, and uncertainty (Okpaleke, Otegbulu & Emele, 2014).

Dispute Resolution and Economic Development in Nigeria

Nigeria operates an adversary system of justice, inherited from its colonial master Britain, which sometimes results in anger and frustration. The formal court system is fraught with problems that include delay and attendant denial of justice, an insufficient workforce, antiquated rules, and a method of adjudication. In the pre-colonial era, Nigeria had a culture of compromise and peaceful resolution of disputes. The indigenous judicial system had informal and straightforward procedures that involved compensation as opposed to custodial sentencing. The traditional method of dispute resolution involved reconciliation, mediation, and arbitration. ADR offers parties avenues to engage in constructive, non-adversarial problem-solving.

Nigeria is a major African major economy that is of significant interest to investors within and outside Africa. The country, rich in natural resources, has a diversified economy. The nation offers an advanced legal market and a robust dispute

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landscape. However, the slow and costly court proceedings deter investors from choosing litigation to resolve their disputes. Court reforms notwithstanding, investors look towards ADR, particularly arbitration, to resolve conflicts. Arbitration is a viable option, where the issue in dispute needs specific expertise such as an industry sector or area of practice. Sometimes, arbitration is not the best recourse or the only form of ADR. The other types of ADR include conciliation and mediation, among others. The Nigerian Arbitration and Conciliation Act 1988 incorporated the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the UNITRAL Model Law on International Commercial Arbitration.

Mediation is a process that facilitates negotiation between the parties, enabling them to resolve their differences. In the voluntary, non-binding process, a neutral party assists the disputants arrive at an amicable settlement. Mediation is suitable in resolving conflicts of sensitive and confidential nature. Negotiation is a consensual discussion to reach a compromise without the aid of a third party. Parties are in charge of the process, either directly or through a proxy, unlike arbitration and mediation. Conciliation involves an independent person or conciliator, bringing the parties together to resolve their differences. The Nigerian Arbitration and Conciliation Act recognizes conciliation as a mechanism for conflict resolution. The multi-door courts practiced in some jurisdictions in Nigeria are court-annexed ADR centers that offer arbitration, mediation, and conciliation, under the court supervision. The multi-door process helps to enhance access to justice. It restores pre-dispute relationships, sustains business relationships, and increases public satisfaction. The court-annexed ADR avails parties the advantages of ADR mechanisms, as well as allowing parties to enjoy the benefits of the court system. However, arbitration is best
suited to resolve commercial disputes, as it is quick, cost-efficient, with final and binding decisions.

Nigeria faces the simultaneous challenge of improving the lot of the weaker section of the community through the policies that re-distribute wealth and stimulate economic growth through business investment. Achieving the optimum balance between economic growth and re-distribution of wealth is not an easy task. The business community perceives that wealth-transferring policies increase the risk of complete government expropriation of business interests. Thus the redistributionist policies drive away capital. Without capital, growth is slow or non-existent, and as a result, driving away skilled employees and entrepreneurs.  

Conclusion

Although ADR existed in Nigeria, integrating the process into the court system paves new grounds. Aside from arbitration, which is similar to litigation, the ADR procedure could achieve substantive and procedural justice in the resolution of civil disputes; it facilitates access to procedural fairness. Enhancing an abridged justice for all affords more accessibility to the courts. The argument advocated in this study is that the use of the ADR process improves access to justice.

Given the preceding exposition, the objective of this study is to explore ADR as access to justice and a pathway to economic development in Nigeria. The study examines the impact of a dispute as a risk factor in business and investment. The formal court proceedings often fail to provide an effective means to resolve conflicts in a business setting. The argument is that ADR is a flexible and faster way to enforce

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7Mrs. Herliana, Designing culturally conscious alternative dispute resolution to foster Asian economic development, Mimbar Hukum, Vol. 23(2), 361-375 (2011)
rights, and the process provides useful information on the needs of the participants and preserves confidentiality, with increased participant satisfaction.

This research is in five parts, with an introduction, literature review of literature, methodological approach, findings, and recommendations. The understanding is crucial to comprehend the evolution of ADR and collective conciliation in Nigeria (Yemisi, 2017). The third section is the methodological approach, while the fourth section covers the summary of findings. The final chapter concludes the study with recommendations for practice. This study, which fills a notable gap in the literature while proffering constructive alternatives to resolve commercial disputes, is intended to help guide decisions of policy-makers and achieve a positive change in Nigeria.

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Chapter 2: Literature Review

Introduction

The legal system has experienced a revolution in thinking about how to resolve disputes. Scholars and ADR practitioners urge movement away from traditional adjudication, towards alternative procedures (Merkel & Meadow, 1995). Litigants voluntarily adopt the methods, but courts and legislature can mandate the process. Although the courts promote ADR to reduce demands on the court docket, ADR practitioners view adjudication as inappropriate for resolving legal disputes. Proponents of ADR argue that disputants have feelings of control and fairness, perceive the procedure, and solutions have legitimacy and are more likely to comply with the decision. Vidmar (1992) suggests that the perceived fairness of the procedural processes, contribute to the overall perception of justice and legitimacy, independently of the resolution outcomes themselves. Although praised in theory, ADR is yet to reach the desired levels of use, and businesses lack the awareness of ADR schemes and its benefits. The present study analyses the concept of ADR, the barriers to the development of ADR schemes, and the benefits to access to justice, timely justice, and economic growth in Nigeria.

Literature Search Strategy

In this literature review, I used peer-reviewed journals at the library of the University of Nevada, Reno, and other University libraries. I also accessed articles from previous scholars and the Federal High Court Library. Specifically, I accessed

10 Vidmar, 1992
ProQuest using the general terms (but not limited to): *alternative dispute resolution, ADR, schemes, access to justice, economic growth, Federal High Court, Nigeria.*

**Theoretical Framework**

Procedural justice theory focuses on what motivates people to cooperate with authorities and comply with orders in a group setting, as well as to what extent parties feel “justice was done”. The procedural justice theory originates from experimental research in social psychology and investigates how decision influences the outcome.\(^\text{11}\) Tyler (1990)\(^\text{12}\) added concepts from economics, sociology, and political science to produce the argument that it is not the fear of punishment or self-motives that make people comply with laws and regulations. Instead, it is the legitimacy of legal authorities, and individuals who perceive the police and courts as legitimate are more likely to obey the law.\(^\text{13}\) Procedural justice theory has been tested primarily in policing,\(^\text{14}\) courts,\(^\text{15}\) and organizational settings.\(^\text{16}\)

In the context of dispute resolution,\(^\text{17}\) the litigant’s perception of fairness in the dispute resolution process influences their satisfaction with the decisions.\(^\text{18}\) Research suggests that ADR disputants who feel some control and fairness, perceive the procedures and solutions as legitimate and are likely to comply with the conflict


\(^{13}\) Jackson, Jonathan et al. *Just Authority?: Trust in the Police in England and Wales*, Routledge


resolution decision. Procedural justice demonstrates a fair, honest, and transparent decision-making process that respects interpersonal interactions allowing people a voice in the process.

**Literature Review**

Growing bodies of empirical studies considered the potentials of ADR on economic variables and access to justice. Jerestina and Uzelac, (2014),\(^{21}\) show that ADR methods are useful in settling business conflicts. The indispensable tool for the protection of the rights of the people is ADR mechanisms; and, increasingly, there is the use of ADR techniques. The third-party conducts the confidential procedure, while the parties retain the jurisdiction. The significant benefits of ADR procedures focus on the role of the parties, reduced costs, and fast decisions of the proceedings, which are final as well as binding. The benefits highlight the need for the implementation of ADR methods in various segments of the Nigerian economy.

Welsh (2002)\(^{22}\) found that the advantages of ADR are not only because it is a voluntary, informal, and private process -- it also includes the quick and final resolution of the disputes at the local and international levels. *World Bank* (n.d.)\(^{23}\) established that the improvement of the performance of the judicial system through the optimal use of ADR is an important part of the growth in Nigeria’s economy as it moves to middle-income country status. The court can impose mandatory mediation

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on the parties by procedural and economic sanctions. Kaminskiene (2013) argued that under this condition, mandatory mediation for its expected and social-economic benefits is not an obstacle to access to justice.

The ability to afford the cost of litigation in Nigeria is a source of concern for parties seeking justice over the years. The Nigerian judiciary has embarked on some measures to improve access to justice, reduce costs for litigants, and remove undesirable complexities. The reforms aim to promote access to justice at proportionate costs. However, observers contend that the weakness of the civil courts is the inability to provide reasonable access to justice to anyone other than wealthy individuals. In Nigeria, inquiries regarding process help identify the inequality in the justice system. The system of delivering legal services by the professionals, the court proceedings themselves and procedural requirements all contribute to barriers to access to justice.

Furthermore, the adversarial nature of the court system and the alien language constitute barriers that limit the opportunities of individuals to obtain justice. Recently, there is recognition that a range of factors restricts equality before the law, which includes race, class, gender, cultural differences, and economic factors.

**ADR and Access to Justice**

The development of ADR received enthusiasm in the 1970s and 1980s in some western countries, which include the USA. Multiple aspects of the origins of ADR exist in the USA. Neighborhood Justice Centers, designed to broaden access to justice, sought to transfer control of dispute resolution to community leaders and

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disputants as opposed to courts and lawyers. The courts and the American Bar Association pursued alternatives to litigation. Critics highlight the contradictions in the development of ADR (Abel, 1982), with warnings against the total acceptance of the benefits of informal justice. However, they also gave support to the ideals of peace, equal access, quick and cost-saving operations, participatory, and substantive fairness. Abel also cautioned about the privatised nature of ADR processes, which inhibits systemic identification of issues (1982).

Merkel-Meadow (1995) addressed the debate around ADR developments and discussed when a solution, whether private or public, can serve respective interests. She points out the general assumption that the law is fair and suitable to settle conflicts. Delgado (1987) stated that relying on the formal justice system is dependent upon the system being free of bias. Hoffman (1994) posits that ADR brings with it the promise of greater access to the justice system. The increased use of ADR processes creates tension for public interest lawyers. The challenge is how to ensure that the ADR processes often mandated by courts and tribunals enhance and protects the rights of the disadvantaged and vulnerable. Friedman (2010) contended that alternative dispute resolution like mandatory arbitration is not access to justice in

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27 Ibid
specific circumstances. Noone (2011) argued that it is easy to abandon the rights for members of dominant groups, depended on for centuries as the bearers of rights.

Dispute Resolution in Light of Nigeria’s Economic Growth

The Nigerian economic boom, triggered by economic reforms in the late 1980s, is expected to continue. The World Bank projects more than 10% economic growth for developing countries over the next two years.\textsuperscript{33} Dispute resolution options include mediation and arbitration. Mediation is one of the popular dispute resolution methods in the country. Unlike arbitration, it is generally easier to persuade parties to consider mediation even after a dispute has arisen and where there is no prior agreement to mediate. In Nigeria, mediation can take place through institutional ADR providers, (e.g., institutional mediation, a court, that is, court conciliation, or one of Nigeria’s arbitration commissions, such as the Chartered Institute of Arbitrators, etc.). Parties must consider several factors in choosing the right ADR option, including cost, confidentiality, time, flexibility, and fairness, in choosing the right ADR option.

Moser and Rijn (2008)\textsuperscript{34} posit that administrative litigation is likely to prove ineffective, while arbitration is the most used ADR method. The proliferation of multi-cultural teams is the result of the complexity and the challenge of living and working in an interdependent world. Multi-cultural teams can have their disagreements; the disagreements can involve a conflict over task conflicts, a procedural conflict, or an interpersonal conflict.

The international business community requires the quick and efficient resolution of commercial disputes. Attorneys in international commercial disputes

\textsuperscript{33} Michael J. Moser, & Alphen Rijn, \textit{Dispute resolution in light of China’s economic growth,} \textit{Dispute Resolution Journal,} Vol. 63(2), 90, (May-Jul 2008)

\textsuperscript{34} ibid
should advise their clients on the availability and attractiveness of international conflict resolution, either arbitration or mediation. Irrespective of the type or combination of ADR chosen, parties should be sensitive to the differences in understanding the ADR processes by opposing parties in an international commercial dispute. For example, Aliment (2008)\textsuperscript{35} found that the planning and communication of the processes before a dispute arises helps to control costs, leading to a more satisfactory outcome.

\textbf{Conclusion}

Cross (2002)\textsuperscript{36} explained that the advancement of economic well-being is an essential societal objective. As argued by Fatemeh, Mehdi and Fereshte, (2016)\textsuperscript{37} economic growth is the most important macroeconomic variable reflecting the overall performance of a society. Conflict can be constructive or destructive, depending on what the involved and the third parties do about the dispute. Viktorija (2018)\textsuperscript{38} considered alternative dispute resolution methods as a more effective and efficient way of resolving disputes, especially in providing justice to citizens in countries, such as Nigeria, where the judiciary lost trust and respect of citizens. Richards and Nwankwo (2005)\textsuperscript{39} discussing issues in the legal environment on foreign direct investment argued that the ‘fear of national laws’ inhibit foreign investment in the

\textsuperscript{35} Aliment Randy J. Alternative dispute resolution in international business transactions, The Brief, Vol 38(4), 12-18, 20-23, 2 (Summer 2009)
\textsuperscript{36} Cross, Frank B. Law, and economic growth, Texas Law Review, Vol. 80(7), 1737-1775, (Jun 2002)
\textsuperscript{38} Haubrich Viktorija & Sego-Mari, Ivona, Court settlement – The historical challenge of the civil procedure of the federation of Bosnia and Herzegovina, Economic and Social Development: Book of Proceedings, Varadin, 187-196, (Jun 7/Jun 8, 2018)
region. Arbitration/ADR offers a strategic complementary adjudicative system to mitigate this adverse perception.\textsuperscript{40}

The rule of law associates with justice and social welfare.\textsuperscript{41} Zekos (2008)\textsuperscript{42} opined that litigation is synonymous with a fight unto death with economic, physical, and psychological consequences, whereas, ADR enhances “community involvement in the dispute resolution process.” It incorporates local values into the decision-making process that emphasizes concession, reunion, and fairness.\textsuperscript{43} It complements embedded moral and spiritual principles,\textsuperscript{44} and ultimately broadens access to justice.\textsuperscript{45}

\textsuperscript{40} Ibid
\textsuperscript{43} Andrew W. McThenia & Thomas L. Shaffer, \textit{For Reconciliation}, 94 YALE LJ. (1985)
\textsuperscript{44} Joseph Allegretti, \textit{A Christian Perspective on Alternative Dispute Resolution}, 28 Fordman Urb. LJ. 997,1001 (2001)
Chapter 3: Methodological Approach

Introduction

This study presents a comparative literature synthesis of the research studies related to the effect of ADR in access to justice and economic development. The study explains ADR in the justice system as a means toward economic growth. In a narrative review design, it demonstrates studies in ADR mechanisms and associated findings. The review of existing research identifies and integrates that focuses on ADR in the formal and informal justice system. The study also presents an analysis of ADR in the Nigerian context. The discussion section reviews ADR in different settings, identifies practical implications and proffers suggestions for future research.

Comparative Literature Synthesis

While people can settle their differences outside the court setting, the use of ADR in legal organizations and institutions is a recent occurrence. The interest in ADR spurred publications of works on ADR and mediation in particular. The literature addresses a broad audience, which includes the general public. Singer (1990)\(^{46}\) in his work stated that courts are not the best forums to resolve every dispute. Singer listed the conflicts that people can engage in and proffers ways to resolve the differences. The author gives descriptions of negotiation, mediation, and arbitration. The author shows that mediation in business and consumer settings is different from the community setting, and also separate from mediation employed in a family setting. Lovenheim (1989),\(^{47}\) writing for the general public explains the mediation process and the expectations of a consumer of mediation services, and asserts that the outcome of the process may differ from one setting to the other. Outlining the goals

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that disputants consider before determining how to resolve their disputes, the author argues that mediation is a viable option for parties that intend to repair relationships or reduce time, while litigation is appropriate where precedent is essential, or where a party is not competent to negotiate. Singer (1990) and Lovenheim (1989) also provide an exposition to the field of ADR suggesting knowledge of ADR by the public and its expectations helps parties make a meaningful choice. Both scholarly and public-oriented types of literature in this area tend to advance the possibility that disputants will make well-informed choices.

Ury, Brett, and Goldberg (1988)48 focused on designing effective dispute resolution systems. The collaborative work address professionals in dispute resolution, which include scholars, researchers, and consultants. The authors explained that three approaches are useful in resolving disputes, namely, interest, rights, or power-based. Interest-based resolution is the least costly, with fewer strains in a relationship. The authors argue against the traditional settlement of disputes since the courts resolve issues hinged on rights and power, as opposed to interests. Rogers and McEwen (1989) show how mediation works in the private system and the traditional justice system. The authors focus on law and practice of ADR, while Donovan and Leisure (1990)49 proffer a broad ADR practice book. The work gives an overview of ADR processes, including arbitration. It offers lawyers the guide to counsel their clients on the need for ADR. The work is helpful to novice practitioners that wish to hone their understanding of the emerging field. Paddock (1990)50

identifies the court as its primary audience. Paddock’s work is an ADR technique wherein mediator volunteers resolve court cases via mediation, over a concentrated period. The court, in such a scenario, suspends its usual court cases and channels every resource to the settlement exercise.

A common theme to these works is that ADR will continually develop, utilized by the courts and private persons for many reasons. The legislature perceives ADR as cost-effective to alleviate the necessity for funding more judges. The court finds it as an avenue to reduce or otherwise clear the strain on court dockets. The public views ADR as a more efficient means to settle disputes.\textsuperscript{51} Interest in ADR is evident in nearly every party to the justice system, including the public, courts, mediators, lawyers, and system planners. The devotion of additional resources to ADR systems necessitates a more in-depth analysis in future studies.

**Procedural Framework for Alternative Dispute Resolution in Nigeria**

Recently, an increased plethora of laws, Acts, Rules, and Guidelines make viable provisions to aid and enhance the adoption of ADR and stipulate clear-cut procedures to follow when ADR methods are adopted, relating to disputes that arise out of commercial interactions. It is essential to highlight some of the various provisions for ADR proceedings under the multiple Rules of Court. Section 24 of the National Industrial Court of Nigeria Civil Procedure Rules 2017 provides for an “Alternative Dispute Resolution Center.” The Federal Capital Territory High Court Civil Procedure Rules 2018 makes substantial provision for the procedural framework of ADR. Under the Rules, the court or judge is duty-bound to encourage settlement of matters through ADR. The Court of Lagos State (Civil Procedure) Rules 2019 Order

28 lays down a general procedural structure of ADR in Lagos State. The Federal High Court (Civil Procedure) Rules 2019 provides for Alternative Dispute Resolution proceedings. A request to set aside or remit any award can be made at any time within three months after making such an award and publishing it to the parties.

Aside from the above-listed Rules of Court, other bodies embraced ADR and promote its use. The “Chartered Institute of Bankers of Nigeria” encourages the use of ADR within financial disputes. The Central Bank of Nigeria (CBN), also promote the use of ADR. The CBN established a sub-committee on Ethics and Professionalism for Mortgage Bankers. The committee ensures the settlement of disputes between mortgage banks and their customers on one side and mortgage banks on the other side. Nigerians recognize the potential of ADR and adopt ADR with zeal, as it offers additional means of resolving disputes. Lagos host several specialist centers that enacted Arbitration rules for adoption and use by disputants. Some others use the regulations annexed to the Nigerian Arbitration and Conciliation Act. Such centers target regional and international clients, as the state judiciary does not refer cases to private providers.

**Legal Framework for ADR in Nigeria**

The Arbitration & Conciliation Act is the Federal law on arbitration and conciliation. The Act is premised on the UNCITRAL Model Law and incorporates the UNCITRAL arbitration rules. It ratifies and includes the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Some states have their arbitration laws, applying to all arbitration within the State, except where parties expressly agreed that another rule applies. The Lagos Court of Arbitration Law establishes a court of arbitration in Lagos State.
Arbitration Bodies in Nigeria

Several arbitration bodies in Nigeria contribute to enriching arbitration culture and practice, which include the following institutions:

I. **The Nigerian Institute of Chartered Arbitrators (NICArb).**
   
The body is the premier arbitration institute in Nigeria, established in 1979. The categories of membership are Qualified Mediator, Young Arbitrators Network, Associates, Members, and Fellows.

II. **Lagos Court of Arbitration (LCA).**
   
The Lagos Court of Arbitration (LCA) is an independent, private sector-driven, International Center for the resolution of commercial disputes through arbitration and other forms of alternative dispute resolution (ADR). Located within the International Center for Arbitration and ADR (ICAA), Lagos, Nigeria, the LCA’s use of internationally recognized neutrals, modern facilities, and the adoption of innovative technology, makes it efficient and best-in-class arbitration institution.

III. **The Chartered Institute of Arbitrators (UK; Nigeria Branch).**
   
The body is one of the branches of the Chartered Institute of Arbitrators (CIArb), United Kingdom. The Nigerian chapter obtained approval of the Institute in 1999, having fulfilled the requirements of a Branch status. The Branch membership cut across disciplines that include Law, Construction, Shipping, Engineering, Insurance, Banking, Accounting, Oil, and Gas. The CIArb is a recognized professional body for training individuals desirous of qualifying as arbitrators, mediators, and ADR practitioners.

IV. **The Maritime Arbitrators Association of Nigeria.**
   
The body, incorporated in 2005, has a primary objective of educating the public and stakeholders on the essence of arbitration and the alternative dispute
resolution mechanism. Membership is mainly from admiralty practitioners, shipping agents, marine insurers, and other professionals.

V. The Society of Construction Industry Arbitrators (SCIARB).

The SCIARB, formerly, the Institute Construction Industry Arbitrators, is a specialist Arbitration and ADR body in the Construction industry. The society is a notable arbitral institution in the construction industry in Nigeria. The organization inaugurated on October 15, 1993, is a multi-disciplinary Society with members drawn from the professions related to the construction industry. The Society is the Specialized Alternative Dispute Resolution body in the construction industry.52

Nigerian Courts and ADR

The Nigerian Courts in recent times manifested pro-arbitration tendencies in their decisions. The country also is currently witnessing an increase in arbitration institutions and a growing number of resource persons, and counsel with expertise and skill to handle complex arbitrations within and outside Nigeria. The recent pro-arbitration decisions include Statoil Nigeria Limited v. Nigerian National Petroleum Corporation,53 and Nigerian Agip Exploration Limited v. Nigerian National Petroleum Corporation,54 where the Court of Appeal held that the Nigerian Courts could not issue anti-arbitration injunctions. The above decisions contrast with the later decision in the case of SPDC V. Crestar Integrated Natural Resources Ltd,55 where the Appeal Court considered the effect of Section 34 of the Arbitration and Conciliation Act, limiting the power of Nigerian Courts to interfere with arbitral proceedings. In an

52 Trd Greeio, Litigation & Dispute Resolution, 2019 (8th ed.), Global Legal Group
55 SPDC V. Crestar Integrated Natural Resources Ltd (2015), LPELR-40034(CA)
application seeking injunctive Order to restrain an arbitration in London, the Applicant (Crestar) contended that the arbitration was unconscionable, vexatious, and oppressive, exposing appellant to expenses and risk of being adjudged to submit to the arbitration. Disregarding the arguments of SPDC on the application of section 34 of the Act applies to the proceedings, the Appeal Court agreeing with Crestar granted injunctive reliefs against the London proceedings. The Court distinguished the facts of Statoil Nigeria Limited v. Nigerian National Petroleum Corporation.

The SPDC v. Crestar case notwithstanding, Nigerian Courts continually exhibit a friendly approach towards arbitration. The various Civil Procedure Rules of Courts in Nigeria have provisions aimed at encouraging parties to explore alternative dispute resolution mechanisms. The Chief Justice of Nigeria, Justice Walter Onnoghen (Rtd.), in a circular dated May 26, 2017, directed the Heads of Court to issue Practice Directions aimed mandating parties to honor their arbitration agreements. Specifically, the Courts refuse to entertain matters emanating from a contract that has an arbitration agreement. The Court may award substantial cost against the Party who instituted an action in violation of an arbitration agreement. The Chief Judge of Federal High Court, Justice Ibrahim Auta (Rtd.), complying with the Directives, issued a Practice Direction, directing judges of the Federal High Court to decline jurisdiction and refuse actions instituted in breach of an arbitration agreement.

Section 4 and 5 of the Arbitration and Conciliation Act give the Court the power to stay proceedings in an action that is the subject of an arbitration agreement. It is not clear whether the Federal High Court Practice Direction seeks to take away the Courts’ discretion under section 5 of the Arbitration and Conciliation Act. The contention is that a Practice Direction cannot take away the discretion of the Court to stay proceedings or not, as it cannot amend the provisions of the Act. The submission
is premised on the fact that where there is a conflict between section 5 of the Arbitration and Conciliation Act and the Practice Direction, the former prevails.

In Joseph Onwu & Ors. v. Ezekiel Nka & Ors., the Nigerian Supreme Court held that the decision of arbitrators and other forms of dispute resolution are binding on the parties unless set aside by a competent court. In David Chukwuemeka Obiefuna Okoye v. Christopher Obiaso, the Supreme Court of Nigeria held that an arbitral award has the force of law. In Agu v. Ikewibe, the Court restated the Nigerian law and practice of customary arbitration. The Supreme Court, in a considered judgment, dealt with the meaning, validity, and the binding effect of Customary arbitration. Justice Karibi-Whyte, in the leading decision, held that although sections 6(1) & (5) of the Nigerian Constitution vests judicial powers in the courts, it does not prevent parties from settling disputes. The Arbitration and Conciliation Act recognizes customary arbitration.

The Court of Nigeria in Oline v. Obodo rejected the argument that the arbitration was just a settlement and not binding on the parties. The Court in Joseph Aguocha v. Edward Ubiji held that parties who voluntarily submit to arbitration could not withdraw from the outcome on the ground that it was unfavorable to him.

**Conclusion**

Disputes are invariable and recurring dilemmas in human and commercial interactions. Thus the need arises for effective dispute resolution mechanisms put in place. Traditionally, litigation and ADR mechanisms are the primary means of
resolving disputes. Litigation involves recourse to a structured court system that allows adversarial discourse and analysis of the conflict, followed by judgment in the form of a win-lose situation. ADR involves a non-adversarial method of resolving disputes by intersection and assistance of a neutral and impartial third party. Litigation is fraught with irregularities, mostly time wastage. The recent incursion of Alternative dispute resolution into dispute resolution laws shows the need for adequately defined procedural frameworks. The Nigerian situation is spectacular as it is a highly litigious society.

Furthermore, the practice of ADR in Nigeria does not have a vibrant awareness mechanism. A layperson lacks a proper understanding of the methods and operation of the Arbitration system. Perhaps, it is because the 1999 Constitution (as amended) does not explicitly provide for the adoption of Arbitration as a dispute resolution mechanism. The Nigerian federal Constitution is yet to introduce alternative means of conflict resolution as a human right to the national legal order. The constitutional norm establishing it as obligatory for all areas of law ensures that alternative justice reaches its highest point. A constitutional guideline helps to ensure that state regulations guarantee real access to justice through alternative dispute resolution mechanisms. 61 There is room to further integrate ADR into the Nigerian formal justice system through recognition under the Nigerian Constitution or laws to clarify their relationship with the State enforcement apparatus. The approach would

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increase the confidence that disputants have in the process and reassure them that participation in the ADR is equivalent to having their “day in court.”\textsuperscript{62}

\textsuperscript{62} Victor Akazue Nwakasi, Alternative Dispute Resolution in Nigeria: New Frontiers in Law, Olisa Agbakoba Legal, May 21, 2019
Chapter 4: Findings

Introduction

Lately, legal theory has assimilated many economic concepts. Both economists and jurists realised that economic growth and legal development grow hand in hand. In a country like Nigeria, the growth of alternative dispute resolution mechanisms becomes imperative because of the vast economic inequalities present in the country. Economists are interested in ADR for two main reasons. First, from an ex-post perspective, how disputes are resolved or decided in society affects the operation of the legal system and its cost-efficiency. Second, from an ex-ante perspective, how rights are vindicated impacts primary behavior and investments in prospective dispute avoidance.

ADR for Economic Growth

The dispute resolution Centers in Nigeria play a significant role in the nations’ efforts to sustain economic growth where embraced and utilized by the business community. The institution provides both arbitration and mediation services in response to both regional and domestic commercial disputes. The Center established itself as a forum that serves as a vital asset within the local economy to avoid or reduce commercial interruptions caused by conflicts. Through a collaborative effort with the business community to enhance the profile and to increase the use of services provided by the Center, the Dispute Resolution Center can ultimately serve as a model for the African region regarding the use of ADR and its impact on economic

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63 Siddharth Sharma, Economic analysis of alternative dispute resolution, Gujarat National Law Library, [14 Jul 2013]
growth and development. ADR, a cheaper and quicker means to settle issues, is widely used in consumer disputes.  

ADR may involve mediation or adjudication, and both are well suited to consumer disputes. Mediation allows both parties to engage in the process themselves and undertake a collaborative approach to reach a solution that satisfies both sides. Arbitration developed in response to the fast-changing markets. Arbitration can have a political, as well as economic impact. ADR favors practical solutions that require compromise and negotiation. Adjudication allows an independent third party to assess the evidence and decide upon a fair and reasonable outcome for the parties. Both methods are more cost-effective than court proceedings yet achieve more a solution that is both fair and in line with the law. The hope is that the increased use of ADR will translate to a corresponding growth in the Nigerian economy. The political environment affects the judicial process and the law. The time is ripe for mediation revival in Nigeria and also for international companies to consider using mediation centers that provide a cost-effective and efficient way to resolve disputes. The optimal use of ADR mechanisms will enhance economic growth in Nigeria by furthering an efficient, predictable resolution of business and commercial law disputes.

65 The European Commission, 29th November 2011
68 Chris Cotterill, Commercial courts will enhance economic development, Indiana Lawyer, June 29-July 12, (2016)
Conclusion

The mission of the arbitrator is to exercise judicial functions requiring him to give a fair hearing to both parties and arrive at a decision based on the merits of the case. The arbitrator’s duty differs from that of a conciliator who only guides the parties to reach an acceptable compromise. The social relationships in a society determine the methods used to achieve an order within it and the suitable policing action to enforce the decisions. In customary arbitration, there is a rare utilization of external enforcement mechanisms; instead, the communities use internal measures such as social ostracism or shaming methods. In Nigeria, to lawfully enforce the result of any dispute resolution mechanism entails a recourse to a court of law. The courts can construe commercial agreements and interpret the statutes to protect investors and rights generally. Ultimately, a speedy resolution of cases impacts positively on investment and economic growth. Nigerian businesses and foreign investors can benefit from the ADR mechanisms that offer a swift and efficient resolution of commercial disputes. The practical resolution of commercial disputes is a sine qua non to economic growth and access to justice in Nigeria.

70 Ibid
Chapter 5: Summary and Recommendation

**Introduction**

The formal court system often does not provide appropriate avenues to resolve disputes. Some authors proffer that the ADR process is quicker, efficient, and cost-effective. The process helps participants realize timely access to justice. Alternative dispute resolution is an instrument for easy and speedy access to justice throughout the world. ADR is cost-effective and reduces the backlog of cases in courts. Given the growing dissatisfaction of people with both the process and outcome of litigation, ADR is one of the instrumentalities to facilitate access to justice with a win-win feeling.\(^71\) As described previously, this involves strategies that include Negotiation, Mediation, Conciliation, and Arbitration.

**Summary and Recommendation**

ADR is an indispensable part of the functioning legal systems of many developed and developing countries.\(^72\) Against the backdrop of the bleak scenario of justice delivery system and recent legal reforms for increasing access to justice through ADR around the world, Nigeria initiated legislative schemes toward pre-trial mediation to make the formal justice system more accessible and fair. Nigeria institutionalises the practice of ADR in many areas of dispute settlement, such as family disputes, civil disputes, criminal disputes, labor disputes, and commercial disputes. ADR is gaining ground in Nigeria, helping to improve the investment and business climate.\(^73\)

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\(^73\) Jean-Fracois Bourque, Building up commercial dispute resolution in Africa: Commercial arbitration and alternative dispute resolution are gaining ground in African countries, helping to improve the investment and business climate, International Trade Forum, 4, (2006)
The various improvement of ADR notwithstanding, there are hindrances to its full-scale adoption by commercial disputants in Nigeria. One such barrier is the lack of updated Legislation to regulate Arbitration and ADR practices. Aside from the Lagos High Court Civil Procedure Rules (2018), the Federal Capital Territory Abuja High Court Civil Procedure Rules (2019), and the Federal High Court Civil Procedure Rules (2019), all other significant legislation on Arbitration and ADR are old. For instance, the Arbitration and Conciliatory Act, which is the most critical legislation on Arbitration, was enacted in 1990. Such law cannot reflect the current trends in society. Also, the lack of adequate legislation to cover other forms of ADR is another issue. The Arbitration and Conciliatory Act only makes provisions for Arbitration and Conciliation. It is also desirable for the parliament to create a Legislation that encompasses all forms of ADR. The need also exists for legislators to look beyond commercial disputes for arbitration practice in Nigeria, by considering a legal framework to accommodate other kinds of conflicts to our arbitration system.

Nigeria suffers from issues of law and dis-order resulting from gross economic challenges. Sectarian tensions, homegrown/imported terrorist groups, and extremism constitute some challenges. There is a need to accelerate economic growth and to improve its judicial process. The desirable environment requires that the majority of the citizens participate in the growth process. The numerous factors that affect the potential for enduring economic growth include macroeconomic strength, good infrastructure, a robust regulatory framework, an absence of bureaucratic corruption, and importantly, the rule of law. A well-functioning judicial system is critical to economic growth.
Conclusion

Nigeria, to combat the problems faced in access to justice, should focus on alternative means to resolve disputes outside the court system. The ADR practitioners utilize arbitration, mediation, and conciliation, as well as negotiation interchangeably. ADR acclaimed by international organizations as an “empowering option” will provide justice and aid the process of sustainable development. The ADR forums are useful because they are more accessible to the masses. Research suggests that a sound legal empowerment strategy to raise the knowledge of the disadvantaged populations about the rule of law will assist in advancing their rights and interests. Legal empowerment creates awareness and curbs the abuses of the poor and vulnerable. ADR tends to curb corruption within the courts, helps in reducing case backlog, hence the need to integrate the practice into the formal court system. As ADR aids the resolution of disputes for individuals, domestic businesses, and foreign corporations, it plays a dominant role in resolving disputes at all levels in society. Thus, ADR being a pivotal component of a successful legal empowerment strategy, helps to pave the road to a sustainable future, and a free world.74 Hence the needs to entrench the practice into dispute resolution structure in Nigeria and thoroughly assess and share its effectiveness.

74 M. Amadea Goresh, Paving the road to a more free world: ASDR as sustainable development – a look at Bangladesh, Pepperdine Dispute Resolution Law Journal, Vol. 9 Iss. 2 [2009], Art. 2, 251-282
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