ARBITRATION: ACHIEVING A HOLISTIC IMPACT THROUGH GREATER ACCESS

By

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1.0 ABSTRACT

Prior to the colonization of Nigeria, customary arbitration had always been the accepted means of dispute resolution. This changed drastically with the establishment of the court system by the colonial masters. Today, there are two types of arbitration in Nigeria: customary and modern arbitration – assimilated from British arbitration law, which is the main focus of this paper. The latter, as one of the legally backed mechanisms of Alternative Dispute Resolution in Nigeria is governed by the Arbitration and Conciliation Act (ACA)[1] While modern arbitration has evolved to become popular among the major cities in the country, it has not gained notoriety among the people settled in rural communities.

Flowing from this background, this paper examines arbitration as a means of greater access to justice, discusses the need to take modern arbitration to the rural grassroots, and most importantly, the approaches needed to take arbitration to the rural communities for easy, fast, and less expensive settlement of disputes (as opposed to litigation, which is time-consuming, costly, and rigorous). Constraints hindering the growth of arbitration in Nigeria and the new trends in the dispute resolution mechanism are also assessed in the study. Given that Nigerian courts continue to buckle under the weight of long-winding, ever-increasing piles of cases, broader acceptance and adoption of arbitration is arguably the best solution to the lingering problem.

Keywords: Arbitration, Justice, Grassroots

2.0 INTRODUCTION

In man's pursuit of an ideal process for ensuring justice, he has tested many waters and created processes and institutions to that end. While these institutions may have been ideal, what is ideal may

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[1] 1988 CAP A18 Laws of the Federation of Nigeria 2004.

not be continually adequate in the ever-changing dynamics of human life. Hence, in the present civilization where the traditional court system continues to lose its efficacy, alternative means of resolving disputes are being sought. Historically, lack of access to justice was alien to traditional dispute resolution in Nigeria, despite its unsophisticated nature. This was because depending on the issue, any member of the community could approach the available seats of justice without the challenges now posed by the introduced foreign system of adjudication.

Considering Nigeria's cultural and religious diversity, arbitration serves as a tool of greater cohesion both economically and socially. Already, its success in the pre-colonial era speaks volumes about its efficacy. The adversarial court system invariably negates the original goal of dispute resolution, which was to restore the peace that once existed amongst parties. In addition to this being alien to our cultural heritage, it is also accompanied by several challenges, making justice a mirage to the masses and a benefit to the few. Hence, this work, among other things, proffers arbitration as an ideal mechanism to address the challenges of accessing justice in rural Nigeria.

3.0 ARBITRATION: PAST INTO THE PRESENT

There is no agreement on the history of arbitration; thus, the philosophical question of determining the point in time when humans began to mutually choose to submit disputes to the adjudication of an independent third party has continued to generate a great deal of controversy. According to Mathew and Hassim's "Philosophy of Arbitration," the dispute resolution technique has existed since the time of King Solomon. In the biblical account, the King arbitrated a child ownership dispute between two harlots who mutually decided to seek his counsel.

Similarly, Redfern and Hunter concur that the practice of arbitration comes "naturally to primitive bodies of law" and that even after the establishment of the court by the state, people still continue to resolve their disputes through arbitration to avoid the "formality and expenses associated with the conventional court system."[2] In Greek mythology; Juno, Pallas Athens, and Venus disputed for a prize on who was the most beautiful amongst them. A royal Shepherd, Paris, was appointed by the parties as their arbitrator as the last and the only means of settlement since all other opinions had failed.[3]

[2] Redfern and Hunter, "*Law and Practice of International Commercial Arbitration"* 2nd Ed.(1991), p. 22

[3] Frank D. Emerson, "History of Arbitration Practice and Law" 19 CLEV. ST. L. REV. 155(1970)

Also, Frank Emerson was of the view that arbitration evolved out of commercial transactions that involved many countries and people before civilization and globalization. Traders in centuries past travelled to several countries and were always in need of an objective person to mediate and preside over dispute resolution.[4]

In recent times, arbitration has evolved over the years. Several countries have developed legal systems that recognize arbitration and also confer power on courts to enforce or review arbitration awards. Arbitration today involves parties to a dispute submitting it willingly to an independent third party or panel to adjudicate the dispute based on the evidence and give a binding judgment known as an award that would be recognized by the court.

The practice of dispute settlement using the process of arbitration is not new to Nigerian society.[5] Arbitration was in existence in the various indigenous communities that make up the territory called Nigeria long before the introduction of the legal system of court litigation by the colonial masters.[5]

Speaking on arbitration practice in pre-colonial Africa, the former President of the International Court of Justice, T. O. Elias, confirmed arbitration to be a unanimous system consistent with the African customary method of settling disputes in which disputes are referred to the family head or an elder(s) of the community for a compromise dependent on the subsequent acceptance of both parties, and such compromise which may feature an award becomes binding and from which either party is free to resign at any stage of the proceedings.[6]

In the geographical areas that constitute the southern part of Nigeria, the Kings assumed the role of arbitrators to any dispute. Although they often delegate such roles to older chiefs, the final decision remains subject to the King's authority.[7] In the Ancient Benin Empire, arbitration and mediation were employed as means of dispute resolution. Historical records affirm that Odionwere, the village head, and other heads of families collectively known as the Okaegbe, are saddled with the responsibility of

[4] Ibid [5] Nwabueze B. O., "Machinery of Justice in Nigeria" Cambridge University Press(1963) 45

[5] Idornigie P. O., "Overview of ADR in Nigeria's Arbitration" Vol. 73 No. 1, 73 (2007)

[6] Elias Olawale Taslim, "The Nature of African Customary Law" England Manchester University Press, P. 212 (1956)

[7] Akanbi M., Abdulrauf L and Daibu A., "Customary Arbitration in Nigeria: A Review of Extent Judicial Parameters and The Need for Paradigm Shift" Afe Babalola University: J. of SUST. DEV. LAW and POLICY. Vol. 6. 1: 2015.

resolving disputes through arbitration, although their arbitral decisions were subject to reversal or approval by the Oba of Benin, who was the final arbiter in any dispute in the empire.[8]

Other communities in southern Nigeria that were acephalous, like the Igbos, used arbitration as a means of dispute settlement through the head of the family who was a panel member while the oldest amongst them was the chief arbiter in the village center called Obi. In the Ibibio community before the coming of the colonial masters, arbitration was the known method of settling disputes. Every village in Ibibioland had a body of elders that arbitrated local disputes with their judgment being enforced by the Ekpo society.[9]

In pre-colonial Northern Nigeria, arbitration was commonly used for dispute resolution. This can be connected to the strong foundation of Islam in the region. The Maliki school of Islam, commonly practised in northern Nigeria, engages in arbitration for the settlement of disputes with the backing of the Holy Quran and the support from the Sunnah of the Prophet.[10]

Arbitration was also recognized during the colonial administration but became quite unpopular because of the establishment of courts. This can be seen in the land case between Adiasm, Ikot Ekpere Division V. Ikot Ebebi, Afaha Obong, Abak Division in 1951, where after arbitration by the chiefs and elders, a memorandum was sent by the District Officer to the Senior Resident, Calabar province, that the parties had settled their dispute through arbitration.[11]

The first modern arbitration statute in Nigeria was the Arbitration Ordinance of 1914, a replica of the English Arbitration Act of 1889. Before Nigeria's independence, this act was re-enacted as Arbitration Ordinance 1958.

[8] Bello, A. Temitayo, "Customary and Modern Arbitration in Nigeria: A Recycle of Old Frontiers" Journal of Research and
Development Vol. 2, No. 1. (2014)

[9] Abia O. Timothy and Ekpoattei I. Tim, "Arbitration as an Alternative Method of Conflict Resolution Among the Ibibio of SouthEast Nigeria" American Journal of Social Issues and Humanities Vol. 4, Issue 1 (2014)

[10] Akanbi M., Abdulrauf L. and Daibu A., "Customary Arbitration in Nigeria: A Review of Extent Judicial Parameters and the Need for Paradigm Shift" Afe Babalola University: J. of SUST. DEV. LAW and POLICY. Vol. 6.1:2015

[11] Abia O. Timothy. and Ekpoattai I. Tim, "Arbitration as an Alternative Method of Conflict Resolution Among the Ibibio of SouthEast Nigeria" American Journal of Social Issues and Humanities Vol. 4, Issue 1 (2014)

It was replaced in 1988 by the Arbitration and Conciliation Decree, derived from the United Nations Commission on International Trade Law (UNCITRAL). Today, the Arbitration and Conciliation Act (Chapter 18, Laws of the Federation of Nigeria 2004)[12] is the law governing arbitration in the country. With Nigeria as a federation, different states have the power to enact Arbitration laws such as the Lagos State Arbitration Law, 2009 or River State Arbitration Law 2019. With the enactment of these legislations, arbitration has become a solid part of the Nigerian justice system.

While modern arbitration is more popular, customary arbitration also has a level of judicial notoriety in the country. The Supreme Court in the case of **Egesimba V. Onuzurike**, Karibi Whyte, JSC[14] held that "where a body of men, be they chiefs or otherwise, acts as arbitrators over a dispute between two parties their decision shall have binding effect, if it is shown firstly, that both parties submitted to the arbitration, secondly, that the parties accepted the terms of the decision, such decision has the same authority as the judgment of judicial body and will be binding on the parties and thus create an estoppel."

4.0 ARBITRATION: ACHIEVING A HOLISTIC IMPACT THROUGH GREATER ACCESS

In pre-colonial Nigerian societies, there existed a certain organized system of adjudication before the introduction of the English Legal system. As described in the Supreme Court case of Agu v Ikewibe, the customary mode of settling a dispute was to refer the dispute to the family head or elders of the community for a compromise solution. The compromise is based upon the subsequent acceptance by both parties of the suggested award, which becomes binding only after such significance of the acceptance. Either party is free to resile at any stage of the proceedings before the award is given.

This dispute resolution system, being a precursor to formal arbitration in Nigeria, was not only a functional means of access to justice, but it guaranteed the existence of peace and it promoted unity. However, the post-colonial constitution has established that the legal means of access to justice is through the court of law or a judicial tribunal established by law.[13] Therefore, the reality and the mindset of many Nigerians remain that access to justice can only be found through the courts as established by the constitution. This mindset is further heightened by the high level of illiteracy and

[12] Arbitration and Conciliation Act(ACA) 1988 CAP A18 Laws of the Federation of Nigeria 2004. The current Act governing Arbitration in Nigeria is the Arbitration and Mediation Act,2023. [14] (2002) 9-10 SC 1 at 9

[13] Constitution of the Federal Republic of Nigeria, 1999

poverty in the country. Unlike the pre-colonial era where the poor peasant farmer can simply approach the traditional heads, and commence proceedings against a wealthy neighbor who has decided to destroy his farm and property,[14] it has become a daunting prospect for the rural settlers to seek justice, formally. It is in response to these challenges that alternative dispute resolution methods like arbitration have been widely proffered.

In the latter part of the twentieth century, the use of arbitration gained massive recognition, especially in commercial disputes. Despite the early history of customary arbitration in Nigeria, the adoption of formal arbitration is still relatively new and underutilized. In theory, arbitration as an alternative dispute resolution strategy is known for speed in adjudication, party control, and privacy among others. When compared to litigation, these characteristics generally enhance parties' access to justice because barriers to entry are lower, decisions are reached quickly, there are more equitable substantive outcomes, and parties can also keep their dealings confidential. However, in reality, not all modern arbitration proceedings share these characteristics especially in a developing country like Nigeria, where communities are yet to be exposed to benefits of Alternative Dispute Resolution techniques.

Taking a cue from the successes of customary arbitration in pre-colonial Nigeria, arbitration presents itself as a veritable catalyst for enhanced access to justice, particularly for the masses. Not only does arbitration extend justice to the grassroots, it also addresses the challenges of the adversarial court system which is quite foreign to the African/Nigerian indigenous methods of effective dispute resolution. But with limited awareness and underutilization, one can see arbitration heading towards the same path as the conventional court system. Unlike the customary arbitral system which was accessible to everyone irrespective of wealth or societal status, presently, only a few individuals and commercial entities have the benefits of adopting arbitration in dispute resolution in Nigeria based on certain factors.

There is no gainsaying that arbitration has the potential of changing the narrative of the justice system in Nigeria. Therefore, in the quest for ensuring the fundamental rights of Nigerians through access to justice as provided for in the constitution, arbitration offers itself as a means to that end. As laws reflect the societal nuances of individuals, customary arbitration must be revisited and enhanced in line with international standards, while maintaining its integrity and the peculiar qualities by which

[14] Aguda T.A "***Law versus Justice"*** 1984, pp. 19-20

it was able to ensure greater access to justice and effective dispute resolution in the pre-colonial Nigerian societies. When such laws are tailored to meet the needs of Nigeria, it is only then that the goals of ensuring greater access to justice through arbitration can be achieved.

5.0 EXAMINING ARBITRATIONS AS A MEANS TO GREATER ACCESS

Bridging the gap between the people and justice has always been one of the goals of democratic societies as the right to justice is an inalienable right that every individual is entitled to as a human being and a citizen of a particular country. In the past, several types of research and activities have been undertaken to acclaim justice maximization. However, with the nature of litigation, especially, in countries like Nigeria where the court system is adversarial, it has been difficult to achieve justice maximization because, when a judge proclaims a winner, the real conflict begins. Whenever courts are sitting over a legal issue, they more often than not, (because of the stringent procedures) miss the underlying catalyst of the dispute, because litigation is mostly concerned with proving a party wrong, and the other party right.

Access and delivery of justice is the climax and crux of every judiciary. Courts were set up to ensure efficient delivery of justice. However, as societies widened and disputes increased, creating a large number of cases to be decided upon, leading to prolonged hearing of cases, the judiciary had to seek an alternative. This desire to maximize justice informed the need to travel back in time because disputes were settled and issues were resolved in times past without litigation, even in pre-colonial Nigeria. In Ancient Greece, they usually set up a panel for dispute resolution procedures which allowed for the citizens to get justice, the panel they set up was found to be a formal arbitration procedure.

Arbitration is a procedure in which a dispute is submitted by agreement of both parties to one or more arbitrators who in turn make a binding decision on the dispute.[15] It is a contract-based form of dispute resolution. In **Agu v Ikewibe**[18] the ***Supreme Court defined arbitration as a reference to the decision of one or more persons, either with an umpire of a particular matter with differences between the parties.***

[15] WIPO, 'What is arbitration? <https://www.wipo.int/amc/en/arbitration/what-is-ard.html>accessed 9thApril 2022 [18] (1991) 3 NW 9th April180) 388 at 417

Arbitration since its inception and introduction has been embraced because like other forms of Alternative Dispute Resolution, it appeals to cultural inclinations and it is believed to be a means to greater access to justice, especially for the masses. Justice as has been established is a fundamental human right and a vital aspect of the rule of law, which is an important part of the criminal, civil, and administrative law.

Articles 8 and 10 of the UDHR provide for the right to access justice[16]. **Article 2, paragraph 3 and Article 4 of the UN National Covenant** provide the right to access to justice.

The beauty of arbitration has been perceived to be strengthened by the fact that justice is achieved outside of court and it is a faster, easier, and more accessible means of obtaining justice. **Section 19 of the constitution**[17]recognizes the settlement of disputes outside of courts.

Maucro Cappelli and Bryan Garth in their 1978 survey[18] postulate arbitration as playing a significant role in securing access to justice, more so outside the walls of a courtroom. Furthermore, arbitration has promoted justice in recent times in cases involving family, human rights, employment, commercial disputes, international commercial disputes, and what makes it phenomenal is that the decisions of an arbitration court is final and binding, except the parties agree otherwise before the commencement of the procedure. The award is enforceable in any court of law.

Arbitration is indeed a means to greater access as the fast and quick nature of its procedures makes it easy for arbitrators to take up diverse cases without prolonged hearings as obtainable in court, ensuring justice as the issue is still fresh in the minds of the parties and evidence (s) is readily available. In arbitration, parties choose their arbitrator in agreement, ensuring that the person is an expert in the issue to be decided upon and is capable of giving unbiased judgment. Hence arbitrators can make a quick grasp of the issue at hand and as such ensure a faster arbitration process.

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[16] Article 8 of the UDHR provides that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental human rights granted him by the constitution or by law". Article 10 provides that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

[17] Constitution of the Federal Republic of Nigeria, 1999 (as amended)

[18] IClG "International Arbitration 2021l Access to Justice in Arbitration – Cost and Technology citing Access to Justice: The Newest
Wave in the Worldwide Movement to Make Rights Effective, 1978.

In addition, arbitration is a flexible, means of settling disputes. This is because the parties can choose to bypass certain procedures that could lengthen the dispute resolution process contributing to the fast nature of dispute resolution.

Also, awards issued by international arbitration tribunals are easier to enforce in foreign states than judicial judgments. Increased globalization has led to arbitration becoming the most preferred mechanism for settling international disputes as it is usually accessible to all parties.

Attributes associated with arbitration can be leveraged to promote justice and it has been said that arbitration is to bridge the gap between the legal system and the traditional mode of the African justice System, promoting accessibility. Arbitration has fueled access to justice via customary arbitration provided to those at the grassroots. Customary arbitration is founded on the voluntary submission of disputes to elders and chiefs in a community by the parties.[19] Arbitration connects to people's sense of justice because it is ingrained in culture. Riding on this wave of connectivity, it is gaining ground, promoting and also promises a future-forward access to justice.

6.0 APPROACHES NEEDED TO TAKE ARBITRATION TO THE GRASSROOTS

Over the years, from time immemorial, the need to get justice has been the mantra of man since humans have disputes every day. From the use of *Sango and Esu*[20] as a state-led rural justice system by the Yoruba to the use of *Al-Kali* in Hausa communities, the Nigerian traditional community has been a justice-led state. This has been the ground norm in the local community in Nigeria for the past years as it has played the adjudicatory and adversarial role of resolving complex issues while maintaining peace and ambience in the community.

However, with evolution comes the Nigerian legal system, the structured legal system of Nigeria – Court System. Birthing litigation, the court system is costly and time-consuming, the time expended at court has made access to justice a nightmare for many average Nigerians. Alternative Dispute Resolution is at its peak of taking over the adjudicatory method of justice delivery further reducing the time expended at the court.

[19] Nnaemeka-Agu P "The Dualism of English and Customary Law in Nigeria" Africa Indigenous Laws, Elias T.O et al ed 1975 p.251 at 253

[20] Esu is the intercessor god, that devotees of all the other or is as have to pay homage to.

Arbitration undeniably has woven its way into the heart of many and is fast becoming one of the most reliable Alternative Dispute Resolution. Arbitration has deep roots in local tradition, cultures, and even religion and has continually shaped the arbitral proceedings structure of both modern and traditional proceedings. It has consequently proven to be an effective mode of dispute resolution, especially in communal clashes, and has eliminated future or further enmities between the parties.[21]

More so, an arbitration panel like the Lagos Multi-Door Courthouse should be established in rural communities. This coupled with well advertised awareness campaigns on the speed and less expensiveness of arbitration settlement in the rural communities is more likely to lead to the fast adoption of arbitration as reliable means of dispute resolution since it aligns with the traditional way of settling disputes in opposition to court litigation.

Additionally, the Nigerian Institute of Chartered Arbitrators has more work to do on the need to train more people, most especially those from the rural areas in Nigeria, through short courses on the principles of arbitration and why it is an effective and efficient means to settling disputes in the rural communities where most disputes arise as a result of land issues.

Lawyers are groomed all their years of study on litigation; in classes, competitions and the famous moot and mock competitions. However, it would be of huge advantage if this same effort is chanelled towards educating them on dispute resolution through arbitration. This can be achieved by introducing arbitration as a course for undergraduate law students with Arbitration Club in all law faculties in Nigeria, and encouraging participation in international arbitration competitions. Every law student who yearns will be inducted into the Nigeria Institute of Chartered Arbitrators after passing the Arbitration course after their final examination as an undergraduate. This will help the upcoming lawyers who would practice in the rural communities, or proceed to become judicial officials, to introduce arbitration to potential clients as an option.

In line with the aforementioned, if the state-led rural justice system is adequately enabled and revamped to suit Arbitration and other ADR mechanisms, the justice system could be a desirable alternative to the formal system of justice for people living in rural areas and the average person.

[21] M .O Ibrahim, 'positioning arbitration as the future of dispute resolution in Nigeria: Dispute Resolution' *legalpedia* accessed April 17, 2022 <https://www.google.com/amp/s/legalpediaonline.com/positioning-arbitration-as-the-future-of-dispute-resolution-innigeria/amp/>

7.0 NEW TRENDS AND TRAJECTORY OF ARBITRATION IN NIGERIA

The past couple of years have been marked by one of the most sweeping and unprecedented changes in the history of mankind. With the incursion of the Covid-19 pandemic into the sphere of human relations, adjustments had to be made in order to create what is now famously tagged "the new normal".

Arbitration as a form of dispute resolution is not left out in this paradigm shift. Due to a plethora of lockdown and travel restriction rules on both national and international levels, the procedures for arbitration hearings had to adjust to the new world order. As a result, a major new trend in arbitration is the shift from physical hearings with face-to-face deliberations to virtual hearings with parties meetings and proceedings hosted on internet assisted platforms.

The 2021 International Arbitration Survey[22] *revealed that a whopping 79% of respondents*[23] *chose to proceed with arbitration virtually at the scheduled time when in-person was no longer possible. While only 4% would proceed with a documents-only award, 16% of respondents chose to postpone hearings till it could be held in person.*

Similarly, Babjide et al[24] noted that Nigerian arbitration proceedings witnessed a wider acceptance of the use of remote hearings and that this shift was aided and made relatively seamless by the issuance of guidelines by various international and domestic arbitral bodies, such as the Chartered Institute of Arbitration's Guidance Note on Remote Dispute Resolution Proceedings, and the Lagos Court of Arbitration Rules[28]

With no end in sight to the Coronavirus pandemic, it is safe to assume that remote hearings will continue for many years to come, and may even become a standard practice in arbitration hearings. This is due to the fact that it provides even more flexibility and saves resources. For example, travel expenses, particularly in international arbitration (where travel costs are compounded by quarantining and health check costs), are eliminated.

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[22] Queen Mary University of London and SIA, *Adapting Arbitration to a Changing World* (2021) <https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/>as accessed 13 April 2022

[23] Interviewees were based in 39 countries and 53 cities across all continents (except Antarctica)

[24] Babjide et. al, Year in review: International Arbitration in Nigeria, (2021) Vol 12 The International Arbitration Review <https://www.lexology.com/library/detail.aspx?g=7c5e1442-9026-40a9-b0e9-cd90f802f094> as accessed 12 April 2022 [28] Article 30 (4)

However, the shift to remote hearings births new issues that needs to be tackled in order to ensure fair arbitration proceedings. One major issue is the assessment and observation of witnesses during trials. With remote hearings, determining the credibility of witnesses, accessing their demeanour, and ensuring there are no irregularities on their end, is harder from a mere screen, and thus creates distrust in the process.

Likewise, the confidentiality of proceedings in the face of cyber-attacks poses another problem with the shift to remote hearings. One major attraction of arbitration is the privacy it affords to parties who wish to carry on business without the unnecessary incursion of the public into their affairs. If hearings are exposed to illegal invasion by cyber-attacks, this purpose is defeated.

Another new trend worthy of note is the wider acceptance of arbitration and support of Arbitration in the Nigerian Judicial system. As arbitration continues to gain notoriety in Nigeria, courts are making it a point of duty to recognize and enforce both domestic and international awards. An example is the Court of Appeal ruling in the case of *Emerald Energy Resources Limited v Signet Advisors Limited (No. 1)*[25]

In this case, the applicant sought to have an arbitral award in question rescinded on various grounds. However, the Court stated in its ruling that arbitral awards whether domestic or international should not be treated with levity. It was further held that parties who have submitted their dispute to arbitration should be made to accept the arbitral award resulting therefrom and that except in truly deserving circumstances, arbitral awards should not be set aside or denied recognition in Nigeria.[26]

Thus, while the pandemic has posed challenges to the advancement of arbitration, technology has been able to create a way out and proffer new ways of conducting arbitration which is more cost-effective and time-efficient. In addition, arbitration continues to be an increasingly favoured method of dispute resolution for businesses. With this shift, persons in rural areas have even more chances to access justice through arbitration. They do not need to travel long distances or be physically present at hearings.

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[25] Unreported decision of the Court of Appeal, Lagos Judicial Division, in Appeal No. CA/L/932/2018 delivered on 13 November 2020

[26] Uzoma Azikiwe, Festus Onyia (2021) The middle Eastern and African Arbitration Review <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2021/article/nigeria#footnote-008backlink> as accessed 11 April 20222

This will further open their businesses to collaboration with others in urban areas. For example, farmers and urban stores can do business and resolve disputes without one party facing the inconvenience of travel

Also, with the courts' growing positive attitude toward the technique, there is hope that it will become a preferred dispute resolution mechanism for everyone, from government bodies and large corporations to small businesses, as well as individuals, in the near future.

8.0 THE CONSTRAINTS

8.1 Limitation of Discovery Process

Essentially, the adoption of ADR sometimes questions the feasibility of realizing quality outcomes or results.[27]

This is evident in its informal procedure as effective procedure of discovery is typically absent. Although some ADR methods give room for disputants to exchange information between themselves, many are administered with less formality and in a non-managerial fashion. In mediation, for instance, this limitation is visible as there lies the reluctance of disputants to produce information towards driving quality judgement in the long run.

As affirmed by *(Edward, 1987)*, while there are some guidelines governing some ADR procedures like arbitration, as stipulated in the *American Arbitration Association Commercial Mediation Rules and the International Chamber of Commerce Arbitration Rules,* pertaining to the exchange of information, it would amount to an error in reasoning to assert that the processes of ADR are similar to that of litigation as there is the absence of a set of procedure characteristic of judiciary discovery.[28] Given this limitation, uneven negotiating command creeps in thereby, making the court an improved alternative for a disputant weak party in the end.[33]

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[27] Edward Brunet, 'Questioning the Quality of Alternative Dispute Resolution', Tulane Law Review, Vol.62, November 1997, no 1 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2279104> accessed 13th April, 2022.
[28] Ibid [33] White Code Mediation and Arbitration Centre, 'Limitations of Alternative Dispute Resolution', <https://viamediationcentre.org/readnews/NjQx/LIMITATIONS-OF-ALTERNATIVE-DISPUTE-RESOLUTION> accessed 13th April, 2022.

8.2 Ingrained Culture of Litigation

Seemingly, many Nigerian judges are afraid of arbitration taking over their roles and powers of the court. As such, litigation ponderously becomes the chief mechanism of resolving disputes – particularly those arising from the commercial world.[29] As a matter of fact, the losing party in commercial disputes with substantial financial implications may appeal to the Court of Appeal and the Supreme Court, provided the application to invalidate the arbitral award initially awarded is dismissed.[30] Consequently, in the long run, the winning party may be subject to the same difficulties of litigation in conventional courts.

8.3 Acute Shortage of Legal Expertise

In most cases where arguments border on convoluted legal points, mediators and arbitrators are found less likely to have the same legal proficiency, knowledge, and experiences as conventional judges in courts. This owes to the fact that many of such mediators and arbitrators are drawn from non-legal backgrounds like engineering, social sciences, and economics, *inter alia.* Regardless of the broad range of situations which could give rise to conflict under the ADR mechanism, like social conflict, viable conflict, and legal conflicts, among others, mediators do not possess the kind of advanced *judges-like* perspective. As a result, greater access may be impeded as to the use of ADR because intending parties (disputants) may feel that their disputes would not be handled with due care; in other words, the feeling of disputes not being in safe *hands.*

8.4 Delay Arising from Enforcement of Arbitral Awards

It is now commonplace that awards for damages emanating from arbitration are oftentimes fraught with delays in execution. Consequently, enforcement may be bogged down by the appellate process. This constraint is even worrying in Nigeria, as the Arbitration and Conciliation Act not only does not define what domestic arbitration is,[31] but also the formalities of applying for enforcement of arbitral

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[29] Emmanuel Ekpenyong, 'Nigeria: The Problems Militating against the Growth of Arbitration in Nigeria', *mondaq,* 25 June, 2014 <https://www.mondaq.com/nigeria/arbitration-dispute-resolution/322946/the-problems-militating-against-the-growth-of-arbitrationin-nigeria> accessed 14th April, 2022.

[30] Ibid

[31] Alice Lawrence-Nemi, 'Review of Problems with Enforcing International Arbitral Awards in Nigeria – Part 2', *The Guardian,* January 04, 2022 <https://guardian.ng/features/review-of-problems-with-enforcing-international-arbitral-awards-in-nigeria-part-2/> accessed 14th April, 2022.

awards are decided by the Rules of various High Courts of Nigeria.[32] A similar situation persists from awards originating from international arbitration. As such, this has been found to be negatively impacting Nigeria's standing as an arbitration-friendly jurisdiction. Premised on this, citizens are discouraged from utilizing ADR for the fear that a losing party may deliberately take the advantage of the slow-paced characteristics of the court system to deny a winning party the benefits initially awarded.[33]

9.0 RECOMMENDATION & CONCLUSION

This paper has examined practical approaches that would be pivotal to ensuring that the doctrine of ADR is invariably wielded to realize broad-based impacts on all and sundry. On this note, this paper envisages that the concept of ADR is as old as Neanderthal, and assesses the needed approaches, trends, and possible constraints towards realizing its greater access in contemporary times.

By and large, the concept of ADR just like the court's conventional litigation system is to ensure the right to justice is upheld in human society. Its peculiarities however lie in its speedy approach and cost-efficient nature as regards dispute resolution. Meanwhile, this uniqueness of ADR is not mainstream in developing worlds like Nigeria, despite her historical linkage to the utility of the concept. Hence, by deliberate execution of the submission in this paper by necessary key players; such as the government, the legal profession, and its institutions, and the NICARB, this narrative of non-mainstream adoption in a country like Nigeria would be rewritten, thereby, paving the way for greater access towards ultimately driving holistic impacts.

[32] Ibid

[33] The New Practice (TNP), 'Dealing with the Setbacks and Challenges encountered in ADR', *Virtual National Workshop for Judges on ADR,* National Judicial Institute (June 2021).