

## Chapter One

### Introduction

#### 1.1 Background to the Study

It is now axiomatic to say there is increasing disaffection with dispute resolution through litigation process<sup>1</sup>. The variant of dispute resolution is the emerging conceptualised Alternative Dispute Resolution mechanism. One of the Alternative Dispute Resolutions (ADR) mechanisms that is now frequently used around the world is Arbitration. A significant number of nations, individuals, and companies prefer this method for resolving their commercial disputes to litigation rather than opting for judicial resolution, otherwise known as litigation<sup>2,3</sup>. According to Alan and Martin, arbitration is an effective way of obtaining a final and binding decision on a dispute or series of disputes, without reference to a Court of Law<sup>4</sup>.

Moreover, the considerable expansion in global trade and investment necessitated the resort to alternative method of solving commercial and trade disputes as a viable option over litigation<sup>5</sup>. Arbitration is a beneficial alternative conflict resolution process for parties in a variety of ways, apart for early settlement of dispute it also includes; independence for each party in handling their disputes, right to choose a neutral forum avoiding being subject to the jurisdiction of the other party's home court, and enabling them to select arbitrators with knowledge of their respective industries, helping the parties to choose an impartial forum, and allowing them to choose arbitrators with expertise in their respective sectors disputes<sup>6 7</sup>.

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<sup>1</sup> P Cortés , ' Embedding alternative dispute resolution in the civil justice system: a taxonomy for ADR referrals and a digital pathway to increase the uptake of ADR ' (2023) 43 (2) *Legal Studies*, 312-330.

<sup>2</sup> M Schinazi, *The three ages of international commercial arbitration* (Cambridge University Press, 2021.) Vol. 163.

<sup>3</sup> N Blackaby, *International Commercial Arbitration* (6th edn, Oxford University Press 2015)

<sup>4</sup> N Blackaby and others, Redfern and Hunter on international arbitration: Student version ( edn, Oxford University Press 2023)

<sup>5</sup> WSN. Onnoghen, "*Ethics and Professionalism in Arbitration.*" *Nigerian Institute of Chartered Arbitrators Investiture/Awards Ceremony*. Lagos: Nigerian Institute of Chartered Arbitrators, 2017. 1-12.

<sup>6</sup> T Franck, and others, *International law decisions in national courts* ( edn, Martinus Nijhoff Publishers 2023)

Furthermore, because of their convoluted processes and potential language hurdles, some parties might not trust the national courts<sup>8</sup>.

Finally, corporations often choose to use arbitration over litigation in a national court because the former's procedures are relatively quick, and firms usually receive their award in a short time, unlike litigation, which can take years to conclude. Although the practice of alternative dispute resolution is gaining more applicability and acceptability within the dispute settlement arena, the advantages of arbitration practice are enhanced by the national court's involvement in the dispute resolution procedures<sup>9</sup>. For example, the parties or the arbitral tribunal can request the help of the national court to eliminate any barrier that prevents the arbitral proceedings from being successful or actualised. However, it has been observed in several occasions that for arbitration procedure to become successful, there must be a cordial and balance relationship between the judiciary and arbitral tribunal<sup>10</sup>. There should be a sort of symbiotic relationship between courts and tribunals to enhance not only justice delivery but increase confidence in the process and enhance public perception and acceptability of awards. Flowing from the above, the study believes that a competent National Court's role is vital in supporting and assisting the arbitration process during its various stages in order to ensure and encourage the integrity of the arbitration proceedings<sup>9</sup>. However, despite the significant roles that National courts play, this research argues that the Arbitration process cannot be fast and successful without having a cooperative and integrative relationship with the courts. Interestingly, recent rulings in Nigeria indicate the supportive role of the national courts

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<sup>7</sup> LM Margaret and others, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press 2008) 1

<sup>8</sup> AC, Cutler, and D Lark, 'The hidden costs of law in the governance of global supply chains: the turn to arbitration' (2022) 29(3) *Review of International Political Economy*, 719-748.

<sup>9</sup>GB., William 'The Symbiotic Relationship Between International Arbitration and National Courts' (2013) 2 *Dispute Resolution International* 101

<sup>10</sup> S Kumar, 'Arbitration: A Streamlined Alternative to Court Litigation' (2024) 2 *LawFoyer Int'l J. Doctrinal Legal Rsch.* 655. Also see Susan L. Karamanian, 'Courts and Arbitration: Reconciling the Public with The Private' (2017) 9 *Arbitration Law Review* 1. This point will be discussed further in Chapter II

toward arbitration, although there are still crippling challenges bedeviling National Courts. See *Magbegbeola vs Sanni*<sup>11</sup>

In Nigeria, as in many countries around the world, the use of ADR practices has become increasingly important in alleviating the burden on the national courts<sup>12</sup>. The Alternative Dispute Resolution methods, such as mediation, arbitration, and conciliation, offer parties an alternative to the traditional judicial process by providing them with quicker, more cost-effective, and less adversarial means of resolving disputes. Thus, assisting in removing backlog in courts dockets.<sup>13</sup> Arbitration procedures should not be an albatross or an achilles heels in resolving commercial disputes.

The challenges of national courts' intervention in safeguarding Arbitration practices in Nigeria are multifaceted and warrant careful consideration. The intervention of national courts in the Arbitration process has been a subject of debate due to various issues that could potentially compromise the efficacy and integrity of Arbitration practices. Understanding the background and challenges of this study requires an exploration of the legal framework, cultural considerations, and practical implications for Arbitration in Nigeria<sup>14</sup>.

The legal framework for arbitration in Nigeria is primarily governed by legislation and judicial decisions. The Arbitration and Mediation Act 2023 provides a legal basis for the practice of arbitration and mediation in Nigeria. This law establish a framework for the enforcement of arbitral awards and the recognition of Arbitration mechanisms. However, the interaction between national courts and Arbitration processes is not always clear-cut, leading

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<sup>11</sup> (2005) II NWLR Part 936@239

<sup>12</sup> SSV Ram, "Alternative Dispute Resolutions." (Lok Sabha Secretariat Larrdis, 2020).

<sup>13</sup> PS Arbune and PV Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK.' (2023) *European Chemical Bulletin* 7734.

<sup>14</sup> M. Sweta, "Alternative Dispute Resolution in India: A Brief Overview." (S & P, 2020).

to potential challenges and conflicts. Such interventions of courts are provided for in all high courts' civil procedure rules of each state<sup>15</sup>.

One of the primary challenges is the issue of judicial intervention in Arbitration proceedings. While the courts have a role in supporting and supervising Arbitration processes, excessive intervention can undermine the autonomy and confidentiality inherent in these method. The improper interference by courts in the arbitration process, for example, could compromise the fundamental principles of neutrality and party autonomy, which are essential for the effectiveness of Arbitration methods of dispute resolution from conflict to collaboration between the court and Arbitration practices<sup>16</sup>.

Another significant challenge is the potential for judicial resistance to arbitration outcomes. Some courts may be reluctant to enforce arbitral awards or mediated settlements, either due to a lack of understanding of arbitration mechanisms or a perceived erosion of their own authority. This resistance can create uncertainty for parties engaged in Arbitration, undermining the enforceability and finality of their agreements<sup>17,18</sup>.

Cultural considerations also play a crucial role in shaping the challenges of national courts' intervention in safeguarding arbitration practices in Nigeria. Nigeria is a diverse country with multiple ethnic groups and customary practices. While Arbitration methods often draw from traditional norms and customs, conflicts can arise when these customary practices intersect with formal legal institutions. The courts must navigate these cultural sensitivities to ensure

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<sup>15</sup> AA Okeke, "*Exploring Alternative Dispute Resolution for Settlement of Criminal Disputes in Nigeria.*" (Walden Dissertations and Doctoral Studies, 2021).

<sup>16</sup> N Piracha and others "Expeditious Dispensation of Justice: ABRITRATOR The Way Forward? - Perspectives from Pakistan." *International Conference: Expeditious Dispensation of Justice - ABRITRATOR The Way Forward I & 2 September, 2022.* Islamabad: The George Washington University Law School, 2022. 25-38.

<sup>17</sup> European Parliament. *EU Framework on Alternative Dispute Resolution for Consumers.* European Parliamentary Research Services, London: European Parliamentary Research Services, 2024.

<sup>18</sup> *Contax Partners Inc BVI v Kuwait Finance House (KFH-Kuwait) & Ors.* CL-2023-000323 (High Court of Justice King's Bench Division, February 29, 2024).

that arbitration processes are respected and protected within the broader legal framework<sup>19</sup>. This might also come into play during customary arbitration proceedings which is peculiar to Africa and especially Nigeria.

In addition to legal and cultural challenges, practical considerations such as resources and infrastructure pose significant hurdles to the effective integration of Arbitration into the Nigerian justice system. The capacity of Arbitration institutions, including the availability of skilled mediators and arbitrators, as well as the accessibility of Arbitration services to all segments of the population, remains a concern. National courts are tasked with addressing these practical challenges to ensure that Arbitration mechanisms are accessible and effective for all Nigerians<sup>12</sup>. In view of limited training facilities for Alternative Dispute Resolution practice in Nigeria coupled with the geometric increase in population as well as its attendant conflict, which is applicable to all spheres of life, the challenges towards realizing the lofty objectives of Arbitration cannot be over emphasised.

Despite these challenges, there are opportunities for national courts to positively impact the Arbitration landscape in Nigeria. By providing clear and supportive guidance on the interaction between Arbitration and the judicial system, the courts can help foster a culture of Arbitration acceptance and utilisation. Additionally, by upholding the integrity of Arbitration outcomes and respecting the autonomy of the parties involved, the courts can contribute to the legitimacy and effectiveness of Arbitration practices in Nigeria<sup>20</sup>.

Addressing the challenges of national courts' intervention in safeguarding Arbitration practices in Nigeria requires a multi-faceted approach. It involves enhancing the legal framework for Arbitration, promoting cultural awareness and sensitivity, and addressing

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<sup>19</sup> European Parliament. *EU Framework on Alternative Dispute Resolution for Consumers*. European Parliamentary Research Services, London: European Parliamentary Research Services, 2024.

<sup>20</sup> Akinola, O. B. (Ed) *The Dialects of Alternative Dispute Resolution Selected Essays in Honour of His Lordship Hon. Justice Adedotun, A. Grace Onibokun*. (Ikeja: Lawlexis International, 2023).

practical barriers to Arbitration accessibility and effectiveness. The collaboration and dialogue among the judiciary, Arbitration practitioners, and other stakeholders, in Nigeria can strive to overcome these challenges and realize the full potential of Arbitration as a vital component of its justice system and elevate the practice of Arbitration and court intervention from conflict to connection<sup>21</sup>.

However, Arbitration has helped in no small measure in combating the problem of court congestion which is prevalent in our justice sector as a nation. For instance, the case of *Dielu vs Iwuno & Others*<sup>22</sup> lasted for 23 years in the courtroom. One begins to wonder whether adjudicating this case serves the end of justice for the parties. It is a notorious fact within the legal parlance that the court system at times does not foster the ends of justice because of delays which is owed to several factors from institutional or bureaucratic bottlenecks to individual litigators and lawyers handling the case deploying one form of technicalities or the other to frustrate the essence of the case and buy time for their client to escape justice.

## **1.2 Statement of the Problem**

Despite the popular views, particularly among those involved in international arbitration, that the involvement of courts in the arbitral process generally constitutes unwarranted interference, it is trite to state that the roles of Courts in Arbitration which are to ensure the proper administration of the law by an impartial tribunal cannot be overemphasized. Resort to court system in the use of arbitration should be a last resort for parties. However, the court system at times is used as a clog in the wheel of justice in driving arbitration and other arbitration practices to their expected ends.

National courts have continued to experience lofty difficulties especially as it pertains to jurisdictional delineation. These difficulties among other things that were addressed in this

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<sup>21</sup> BA Georgewill, "Alternative Dispute Resolution: A Solution or Illusion?" *Niger Association - Section on Legal Practice 2022 Annual General Conference*. (Asaba: Nigerian Bar Association, 2022). 1-9.

<sup>22</sup> (1996) 4 NWLR (Part 445) 622

study. Therefore, it is on this basis that this study undertakes to examine the challenges confronting the national courts in arbitration practices with the aim of designing pragmatic ways towards ensuring that the courts and the attached multi-door court houses assist and promote the process of safeguarding the merits of arbitration over Litigation.

Also, an increase in the use of arbitration practices in Nigeria has been raising concerns regarding the challenges faced by national courts in effectively safeguarding these practices. The key issues associated with national court intervention in protecting Arbitration processes in Nigeria include, the lack of uniformity and consistency in the recognition and enforcement of arbitration decisions by national courts. For instance, arbitration mechanisms offer parties a flexible and less adversarial means of resolving disputes, the divergent approaches adopted by national courts in recognising and enforcing arbitration outcomes undermine the efficacy of these processes. This lack of uniformity leads to uncertainty and unpredictability, ultimately undermining confidence in Arbitration as a viable alternative to traditional litigation.

Secondly, the issue of judicial interference in arbitration proceedings presents a significant obstacle to the effective safeguarding of the practice. National courts' inclination to intervene in arbitration processes, either by overturning arbitration awards or by excessively scrutinizing arbitration awards, compromises the concept of parties' autonomy and finality of the awards. This interference erodes the fundamental principle of party autonomy, which is a cornerstone of arbitration, and undermines the perceived neutrality and confidentiality of the procedures.

The absence of comprehensive legislation specifically tailored to regulate and support arbitration mechanisms leads to ambiguity and inconsistency in the application and recognition of arbitral decisions by national courts. Additionally, the limited capacity and resources of arbitration institutions in Nigeria hinder the effective administration and oversight of arbitration proceedings, thereby undermining the ability of national courts to rely

on arbitration as a credible alternative to traditional litigation. Furthermore, the issue of public awareness and education surrounding arbitration and its relationship with national courts presents a significant challenge. The lack of widespread understanding of the benefits and principles of Arbitration contributes to distrust and skepticism among litigants and legal practitioners regarding the role of national courts in safeguarding arbitration practices. This lack of awareness hampers the broader acceptance and utilisation of arbitration, thereby impeding the ability of national courts to effectively integrate Arbitration into the overall justice system.

Furthermore, the potential for conflicts between arbitration and the constitutional and legal rights of individuals in Nigeria further poses the challenges of national court intervention in safeguarding Arbitration practices. Balancing the promotion of arbitration with the protection of individual rights under the Nigerian legal framework requires a nuanced approach by national courts. Without clear guidance and harmonisation between Arbitration principles and legal rights, the potential for legal ambiguity and fundamental rights violations poses a significant obstacle to the effective integration of arbitration into the Nigerian justice system.

In other words, the challenges faced by national courts in safeguarding arbitration practices in Nigeria stem from issues of inconsistency in enforcement, judicial interference, inadequate legal framework and institutional support, lack of public awareness, and potential conflicts with constitutional and legal rights. Addressing these challenges is crucial for enhancing the credibility and effectiveness of arbitration as an alternative to traditional litigation in Nigeria.

### **1.3 Research Questions**

- i. What are the scope and relevance of arbitration mechanisms in Nigeria?
- ii. What were the legal and institutional frameworks governing arbitration practices in Nigeria?

- iii. What were the challenges confronting national courts during their intervention in the arbitration practices in Nigeria?
- iv. What strategies and policy reforms could be proposed to improve the national courts intervention in arbitration processes in Nigeria?

#### **1.4 Aim and Objectives of the study**

The main aim of this study was to examine the challenges facing national courts intervention in safeguarding the alternative dispute resolution process in Nigeria. The specific objectives were to:

1. Appraise the general scope and relevance of arbitration practices in Nigeria.
2. Examine the legal and institutional framework governing arbitration practices in Nigeria.
3. Analyse the various challenges confronting national courts in arbitration practices towards safeguarding its merits over litigation.
4. Identify areas and ways in which the national courts need to improve their intervention in facilitating arbitration practices.

#### **1.5 Methodology**

To effectively conduct a research of this nature, doctrinal and non-doctrinal methods were adopted. The doctrinal research method focused on the letters of the law. It described in detail, the various legal roles bound in the primary sources such as: statutory provisions, case law and regulations to identify the interconnectedness of the various laws governing alternative dispute resolutions. The primary sources involved the examination of the constitution of the Federal Republic of Nigeria, 1999 (as amended), the Arbitration and Mediation Act of 2023, case law decisions, the Lagos State Arbitration Law 2009, the High Court of Oyo State Civil Procedure Rules and Oyo State Multi-Door Court House Practice Directions 2018 and other

High Court (civil procedure) Rules 2022, of different judiciaries where multi door courthouse is in use or with provisions for Arbitration practices. The National Industrial Court Act, 2006 and rules of procedure, institutional control policy provisions within Nigeria and other jurisdictions which aim to integrate alternative dispute resolution methods into the legal system. These sources were thoroughly analysed to determine their effectiveness, strength and weaknesses.

In addition to above primary sources, this study extensively drew from and rely on secondary source of information which encompassed a wide range of materials including textbooks, journals, articles, academic papers, internet resources and data from both government and non-governmental agencies. These secondary sources constituted reliable insights, statistics, reports and academic literature relevant to the study augmenting the depth and breadth of the research findings.

### **1.6 Justification of the Study**

Arbitration practices play a crucial role in easing the burden on the formal court system by offering quicker, fairer, cost-effective, and more flexible methods of resolving disputes. Undoubtedly, the Arbitration processes assist in easing backlog of cases in court. Understanding the challenges faced by national courts in safeguarding arbitration practices in Nigeria is essential for improving access to justice and promoting efficient dispute resolution mechanisms.

This study is justified because it provides a valuable insight to the significance of courts intervention on arbitral proceeding and how courts intervention affect the autonomy of arbitral process. Nigeria has a legal framework that recognises and promotes arbitration mechanisms. However, the effective implementation and enforcement of these mechanisms depend on the support and intervention of national courts by the use of court judgment and enforcement rules. Intervention of courts may erode the basis of arbitration as an independent

dispute resolution mechanism. The Sheriff and Civil Process law exploring the challenges faced by courts in upholding arbitration practices could provide insights into potential legal reforms and policy interventions to strengthen Arbitration mechanisms in the country.

This study is also justified because it explains how National courts' intervention in safeguarding arbitration practices could significantly impact the efficiency of the justice system. Understanding the barriers and obstacles faced by courts in promoting Arbitration could help identify ways to streamline the process, reduce delays, and enhance the overall effectiveness of dispute resolution mechanisms in Nigeria.

This study is justified as it provides valuable insights into the perspectives of various stakeholders, including judges, lawyers, arbitrators, mediators, and parties involved in disputes. By understanding the concerns and experiences of these stakeholders, policymakers would develop targeted strategies to address the obstacles hindering the effective implementation of Arbitration mechanisms.

Research of this type on the challenges of national courts' intervention in safeguarding arbitration practices in Nigeria would contribute to the existing body of knowledge on arbitration, judicial reform, and access to justice. By examining the specific context of Nigeria, this study would offer unique insights that can inform comparative studies and guide future research in other jurisdictions facing similar challenges.

Investigating the challenges faced by national courts in safeguarding Arbitration practices in Nigeria is crucial for enhancing the effectiveness of arbitration processes, improving access to justice, and strengthening the overall justice system in the country. This study would provide valuable recommendations for policymakers, practitioners, and academics seeking to promote efficient and equitable dispute resolution processes in Nigeria.

### **1.7 Significance of the Study**

The study is timely in the sense that it provides a rigorous and in-depth evaluation of the challenges saddling the Courts in Nigeria in execution of their role towards arbitration. The study therefore will serve as a point of reference for a broad range of stakeholders including the courts themselves through the pragmatic design to be recommended on how to improve in areas where they are still performing poorly. This in addition, would assist those in academia who will use the study as a point of reference and basis for further research on related issues particularly as the Arbitration and Mediation Act, 2023 (AMA) is very much recent and require rigorous study to ensuring effective implementation.

The significance of the study investigating the challenges of national court intervention in safeguarding arbitration practices in Nigeria is multi-faceted and far-reaching. This research holds several key implications and importance, which could shed light on the legal and policy implications of court interventions in arbitration practices, providing valuable insights for legal and policy reform. Thematically, this study is significant as it explores arbitration as an effective mechanism in dispute resolution, it also examines the role of arbitration in arriving at enforceable and final decisions. This study is significant as it seeks to inform the development of policies aimed at enhancing the harmony between national courts and arbitration mechanisms. It would also offer concrete recommendations to address the identified challenges, leading to the improvement of arbitration practices in Nigeria.

The study is significant as it aimed at understanding the challenges of court intervention in arbitration practices so as to contribute to enhancing judicial decision-making in Nigeria. The findings of the study could provide guidance for judges and legal practitioners in navigating the complexities of arbitration-related disputes and promoting judicial support for arbitration practices. In dispute resolution effectiveness, the study is significant in assessing the impact of court interventions on the effectiveness of arbitration practices. By examining arbitration

outcomes in cases with and without court interventions, the research could inform stakeholders about the potential influence of court decisions on the legitimacy and viability of arbitration processes. This insight is critical for stakeholders seeking effective dispute resolution mechanisms in Nigeria.

The research is significant as it is aimed at empowering stakeholders involved in arbitration processes, including judges, legal practitioners, arbitration providers, and parties to disputes to deduce strategies for navigating the court system so as not to frustrate the ends of justice when deployed in arbitration related matters. By highlighting the challenges faced by national courts in safeguarding Arbitration practices, stakeholders would be better equipped to advocate for necessary reforms, strategies, and mechanisms to enhance arbitration effectiveness and legitimacy.

Given Nigeria's pivotal role in the African legal landscape, the findings of this research would extend its significance beyond national borders. The study would provide valuable comparative insights for other jurisdictions grappling with similar challenges, contributing to the broader discourse on arbitration practices and court interventions. Effective arbitration practices are integral to promoting sustainable development and economic growth. By addressing the challenges faced by national courts in safeguarding arbitration practices, the research could contribute to a more conducive environment for dispute resolution, thereby supporting business development, investment, and economic stability in Nigeria.

A thorough understanding of the challenges of court intervention in Arbitration practices is central to enhancing access to justice for all individuals and businesses in Nigeria. The study's findings would inform efforts to make arbitration mechanisms more accessible, efficient, and reliable, thus contributing to the broader goal of improving access to justice. Within the academic sphere, the research would contribute to the existing literature on arbitration

practices and court interventions, enriching the discourse with empirical evidence and nuanced analysis. It would also open avenues for further research, facilitating the continuous exploration of Arbitration-related challenges and potential solutions.

In summary, the significance of this study lies in its potential to inform policy and legal reforms, empower stakeholders, improve judicial decision-making, enhance the effectiveness of dispute resolution, promote sustainable development, and contribute to the broader academic and research landscape. By addressing the challenges of national court intervention in safeguarding arbitration practices in Nigeria, this research stands to make a substantial and positive impact on the legal, judicial, and societal fabric of the country.

### **1.8 Scope of the Study**

This research investigated the challenges faced by national courts in safeguarding Arbitration practices in Nigeria. The study adopted a qualitative approach, utilising interviews, case studies, and document analysis to explore the impact of court interventions on Arbitration processes.

The research began with an examination of the legal framework governing arbitration practices in Nigeria and the role of national courts in adjudicating or intervening in Arbitration-related disputes in Nigeria. A thorough review of existing literature on Arbitration practices and court interventions which provided a comprehensive understanding of the subject. Additionally, comparative analyses of arbitration practices and court interventions in other jurisdictions offered valuable insights for contextualising the Nigerian situation.

The main focus of the research was on identifying and analyzing the challenges that arise from national court interventions in Arbitration practices. This encompassed issues such as the lack of enforcement of arbitration agreements by national courts, judicial attitudes and resistance towards arbitration, conflicting judgments impacting Arbitration processes,

perceived bias, and lack of neutrality in court intervention, as well as jurisdictional conflicts between national courts and arbitration mechanisms.

Furthermore, the research assessed the impact of court interventions on the effectiveness and legitimacy of arbitration practices in Nigeria. By comparing arbitration outcomes in cases with and without court interventions, the study also provided empirical evidence to support its findings. The legal and policy implications of court interventions in arbitration practices was also thoroughly examined, with a focus on evaluating the impact of court decisions on the development of arbitration in Nigeria. Additionally, the research aimed at providing concrete policy recommendations and proposed legal reforms which addressed and identified challenges and the enhanced collaboration between national courts and arbitration mechanisms.

The research included in-depth case studies and provided a nuanced understanding of specific instances where court interventions have affected arbitration outcomes. The research provided empirical analysis of stakeholders' perspectives on court interventions in arbitration, as well as a comparison of arbitration processes in different regions of Nigeria with varying levels of court interventions, which further enriched the findings. Ultimately, the research offered recommendations for enhancing arbitration practices in Nigeria, including strategies for promoting judicial support for arbitration mechanisms, capacity-building for judges and legal practitioners, and the creation of a framework for the recognition and enforcement of arbitration outcomes by national courts. The of this recommendation thesis are at contributing to the development of effective arbitration practices and the harmonisation of court interventions with arbitration mechanisms in Nigeria.

The research concluded with a summary of key findings and their implications for policy, practice, and future research. It also underlined the significance of safeguarding arbitration

practices in Nigeria and highlight avenues for further exploration in the critical areas. The research also served as a strategic response to the various issues bedeviling our justice system in view of the astronomical increase in filing of cases in courts, geometric population growth which by implication has affected increase in conflict across different sectors of the economy ranging from aviation, maritime, construction, community development, politics and its attendant disputes, in commerce, industrial relations, contractual relations, sports, only to mention but a few.

The territorial scope is limited to Nigeria. However, since Nigeria is made up of thirty-six (36) states and a Federal Capital Territory, The research focused on the six geo-political zones of the country that is, South-South, Southeast, Southwest, Northwest, North Central and Northeast. A state was selected from each of the six zones. The research undertook sample analysis across the six geopolitical zones through fieldwork that is, in depth electronic interviews with officials of the Multi Door Court Houses, National Courts and relevant Stakeholders and also administered questionnaires through the use of google forms.

### **1.9 Limitations of the Study**

While the study on the challenges of national court intervention in safeguarding arbitration practices in Nigeria holds importance, it is essential to acknowledge and address its potential limitations. Some of the limitations that may apply to this study include that of scope, particularly if it focuses on a specific region, court level, or type of arbitration mechanism. Generalizing the findings beyond the specific context of the study may pose challenges due to the diverse nature of arbitration practices and court interventions across Nigeria.

In the same vein, limited access to comprehensive and reliable data on court interventions in arbitration cases restricted the depth and thoroughness of the study. Inconsistencies in data quality, record-keeping practices, and availability of relevant case information impacted the robustness of the analysis.

Challenges in accessing key stakeholders, such as judges, legal practitioners, Arbitration providers, and parties to arbitration cases, impacted the breadth and depth of the research. Limited participation from these stakeholders hindered the comprehensive understanding of the challenges and perspectives surrounding court interventions in arbitration practices.

The study faced limitations in comprehensively capturing the legal and procedural complexities related to court interventions in arbitration cases. Legal nuances, variations in judicial decisions, and procedural intricacies which presented challenges in fully encapsulating the factors influencing court interventions.

The research may be susceptible to biases or subjectivity in data interpretation, particularly when the study involves qualitative analysis of judicial decisions, legal opinions, or stakeholder interviews. Ensuring the objectivity and rigour of the research findings amidst diverse viewpoints and interpretations presented the challenge.

Nigeria's diverse legal landscape and institutional variations across regions and jurisdictions limited the generalizability of the findings. Variances in legal frameworks, court practices, and arbitration regulations impacted the applicability of the study's conclusions beyond specific contexts.

Time constraints also limited the longitudinal or comprehensive analysis of court interventions in arbitration practices. Understanding the evolving nature of arbitration practices and court dynamics challenged within the confines of a specific research time-frame.

Factors beyond the study's control, such as changes in legal regulations, judicial dynamics, or arbitration practices during the research period, present limitations. External influences on court interventions in Arbitration cases impacted the accuracy and relevance of the study's findings.

Considering the linguistic and cultural diversity in Nigeria, language barriers and cultural nuances which posed challenges in communicating with and understanding various stakeholders, potentially impacted the richness and inclusivity of the study's insights.

Given the interdisciplinary nature of arbitration practices and court interventions, the study faced challenges in adequately addressing multifaceted legal, sociological, and procedural considerations, particularly in the absence of interdisciplinary expertise.

Mitigating these limitations was crucial to ensuring the rigor, relevance, and applicability of the study's findings. Employing robust research methodologies, engaging diverse stakeholders, acknowledging contextual nuances, and exercising methodological rigor helped to mitigate these limitations and enhance the study's overall impact and credibility.

### **1.10 Operational Definition of Key Terms**

**Arbitration:** This is a private dispute resolution mechanism where parties agree to submit their conflict to an impartial arbitrator or tribunal, whose decision (award) is binding.

**Arbitral Award:** This is the final decision rendered by an arbitrator or arbitral tribunal, which resolves the dispute between the parties and is enforceable like a court judgment.

**Arbitration Agreement:** This is a contractual clause or a separate agreement in which parties consent to resolve present or future disputes through arbitration instead of litigation.

**Arbitral Tribunal:** This is a panel or single arbitrator appointed by parties (or an appointing authority) to adjudicate disputes in arbitration.

**Court Intervention in Arbitration:** This refers to the circumstances under which national courts may assist, supervise, or review arbitration—such as appointing arbitrators, granting interim measures, enforcing awards, or setting aside awards.

**Enforcement of Arbitral Awards:** This is the process by which a successful party applies to the national court to recognize and execute an arbitral award as though it were a court judgment.

**Annulment (or Setting Aside):** This is a legal process where a national court invalidates an arbitral award on specific statutory grounds, such as fraud, public policy, or procedural irregularity.

**Competence-Competence Principle:** This is the doctrine that an arbitral tribunal has the authority to determine its own jurisdiction before a national court intervenes.

**Public Policy:** This is a ground often invoked by Nigerian courts to refuse enforcement of arbitral awards that contradict fundamental legal, moral, or social principles.

**Judicial Review of Arbitration:** This refers to the limited supervisory role courts play in checking arbitral proceedings to ensure compliance with the law without undermining arbitration's autonomy.

### **1.11 Structure of the Study**

This study is organised into eight chapters, each systematically arranged to build a coherent analysis of court intervention in arbitration within Nigeria and selected jurisdictions.

Chapter One introduces the study by presenting the background, statement of the problem, research questions, aim and objectives, and methodology. It further outlines the justification, significance, scope, and limitations of the study. To ensure conceptual clarity, key terms are defined, and the structure of the study is outlined.

Chapter Two provides the literature review. It is divided into conceptual, theoretical, and empirical dimensions. The chapter critically discusses statutory provisions on court interventions in arbitration in Nigeria and examines judicial attitudes towards such interventions, thereby situating the study within established scholarly and legal debates.

Chapter Three explains the methodology employed in the study. It details the adoption of a mixed-method approach, incorporating both doctrinal and non-doctrinal research. It discusses primary and secondary legal sources, the design of questionnaires and interviews, sample

selection, data collection, and analysis procedures, as well as ethical considerations that guide the research process.

Chapter Four examines the relevance and scope of arbitration in dispute resolution. It provides a historical overview, outlines the scope of arbitration, and discusses its importance as an alternative to litigation in managing disputes effectively.

Chapter Five analyses the legal and institutional frameworks governing arbitration in Nigeria. It traces the historical evolution of arbitration statutes, evaluates both domestic and international frameworks, and reviews the institutional structures supporting arbitration, including state and professional bodies.

Chapter Six focuses on the roles and challenges associated with national court intervention in arbitration in Nigeria and selected jurisdictions. It explores enforcement provisions on arbitral awards in Nigeria and compares them with practices in South Africa and the United Kingdom. The chapter highlights discrepancies, challenges such as jurisdictional disputes and procedural irregularities, and evaluates the impact of court practices on the effectiveness of arbitration.

Chapter Seven presents and discusses the findings of the study. It integrates results from data analysis with theoretical and legal insights, addressing themes such as judicial interference, legislative reforms, regional disparities, and the preference for arbitration in commercial disputes.

Chapter Eight concludes the study. It summarises the major findings, highlights contributions to knowledge, and draws conclusions from the research. The chapter also provides practical recommendations for strengthening arbitration practice and court relations in Nigeria, while suggesting areas for future studies.

## CHAPTER TWO

### Literature Review

#### 2.1 Conceptual Review

Some salient terms are peculiar to arbitration in general and for proper elucidation, this study attempted to put a few words which are peculiar to it in proper perspective for the sake of proper comprehension. Under this, the principle underlying arbitration concept, the definition of arbitration and other relevant conceptual issues were discussed. Judicial intervention in arbitration proceedings, the doctrine of severability, the principle of *kombetenz* and *kombetenz*, party autonomy among other salient issues were discussed to put them within the context of this study. As discussed, some of these concepts are: party autonomy doctrine of severability

##### 2.1.1 Arbitration

Arbitration refers to a variety of dispute processing methods where the parties in dispute agree to have their case heard by a qualified arbitrator out of court<sup>23</sup>. Decisions reached through arbitration are binding just like a court case is and pursuing a claim through arbitration precludes you from also raising it in the traditional court system. Arbitration is used because it is often much less expensive than litigation due to its less stringent procedural requirements<sup>24</sup>. Arbitration is a process by which parties settle their disputes through the intervention of third person, known as Arbitrator<sup>25</sup>. Halsbury defines arbitration as the reference of dispute or difference between not less than two parties, for determination, after hearing both sides in a judicial manner, by a person or persons other than a Court of

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<sup>23</sup> Cornell Law School, Arbitration, (June 2022), available at <<https://www.law.cornell.edu/wex/arbitration>>, accessed 6 October 2024.

<sup>24</sup> *Ibid*

<sup>25</sup> *Hormusji & Daruwala v Distt. Local Board*, MANU/SN/0048/1934

competent jurisdiction<sup>26</sup>. The parties must intend to make a submission to arbitration, i.e., there must be *animus arbitrandi*<sup>27</sup>.

Arbitration can also be defined as a dispute resolution process agreed between parties in which the dispute is submitted to one or more arbitrators who issue an award<sup>28</sup>. It is an alternative dispute resolution mechanism that allows parties resolve their dispute by submitting such dispute to an independent arbitrator or panel of arbitrators who hears both sides, reviews the merits of the case, and makes a legally binding decision known as an award about the dispute. It should be noted that arbitration can only take place if both parties have consented to it, either at the inception of the contractual relationship or when the dispute occurs<sup>29</sup>. The nature of dispute referable for arbitrations are commercial whether contracted or trade transactions. Also dispute on supply agreement, exchange of goods and services, distribution agreement, other disputable matters are factoring, leasing, construction workers, construction, engineering, licensing, investment and banking, insurance etc. when they are contained in the arbitration argument.

### **2.1.2 Arbitral Award**

An arbitral award is the decision of the arbitrator which is binding on the parties unless there is an appeal and a stay of execution pending appeal. An award is final and is not subject to an appeal<sup>30</sup>. Section 47 of the Arbitration and Mediation Act 2023 provides that an award made

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup>International Arbitration Information by Aceris Law LLC, 'Definition of Arbitration' , (Aceris Law LLC, February 18, 2018) , available at <<https://www.international-arbitration-attorney.com/definition-of-arbitration/>>, accessed 6 October, 2024.

<sup>29</sup>Termly Legal Dictionary, 'Arbitration', available at <<https://termly.io/legal-dictionary/arbitration/>>, accessed 6 October. 2022.

<sup>30</sup> G Elias, an others Challenging and Enforcing Arbitration Awards: Jurisdictional Know-How. In: The Guide to Challenging and Enforcing Arbitration Awards, (2021) *Global Arbitration Review, Law Business Research Part II*, p. 575

by an arbitrator or arbitrators shall be in writing and signed by them stating reasons unless the parties have agreed that reasons should not be stated<sup>31</sup>.

### 2.1.3 Concept of Traditional Dispute Resolution

Prior to evolution of arbitration, Africans have a communal way of settling their disputes either through customary arbitration or other means acceptable to the customs and norms of the people. Several authors have written on traditional dispute resolution. Faturoti explained that violent disputes arise from the combination of social inequality and the state's efforts to weaken traditional social control structures<sup>32</sup>. Communities in Nigeria have effectively utilized traditional methods of social control, such as communal solidarity, traditional oaths, rewards, vigilantes, informal settlements, checks and balances, decentralisation, effective communication, and good governance, to manage conflicts. The Afrobarometer study conducted in 2002 included 2001 Nigerian individuals, both men and women, who were recruited from 29 states throughout the six geopolitical zones in August 2001<sup>33</sup>. The poll revealed that Nigerians preferred informal methods of resolving conflicts<sup>34</sup>. They sought validation in the prevalent, collective, or agrarian customs of their respective communities, yet they also derived inspiration from them<sup>35</sup>. They drew inspiration from the perceived merits of conventional methods of resolving conflicts in African and certain Asian cultures<sup>36</sup>. These practices were commended for their focus on reaching agreement and socially-approved compromise. As a result, Arbitration became associated with the concept of "harmony law," according to Brown and Marriott<sup>37</sup>. The Arbitration idea is strongly

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<sup>31</sup> S 47 (3) of Arbitration and Mediation Act 2023

<sup>32</sup> Faturoti, B. Towards a Sustainable Judicial System: ADR in Nigeria, Yesterday, Today and Tomorrow

<sup>33</sup> Afrobarometer Briefing Paper No. 2. August 2002

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid

<sup>37</sup> Brown, H. J. and Marriott, A. L. ADR Principles and Practice (2019), Sweet & Maxwell, Limited

Z Wei, 'The Rationality and System Perfection of Identity Compatibility between Arbitrator and Mediator in the Med-Arb Model' (2024) 15 *Beijing L. Rev.* 761.

influenced by a communitarian perspective, which has led many justice sector reform programmes supported by donors to associate Arbitration with traditional forms of justice or chiefs' courts. This association has been enthusiastically embraced by African proponents of Arbitration. The concept of African village justice, known as the 'meeting under the tree', where disputes are handled by seeking consensus within the community or pacific settlement, is frequently mentioned as a fundamental influence on Arbitration<sup>38</sup>. During the pre-colonial era, traditional African communities adhered to numerous rules that governed dispute resolution. In order for individuals to have their problems resolved, it is imperative that they possess trust and faith in the tribunal responsible for resolving the disagreement. It is common practice that these categories encompass elders, chiefs, priests, priestesses, and secret cults and disputants must possess self-assurance. The disputants must be prepared to subject themselves to the established authorities. These conflicts may involve individual disputes and confrontations between different communities. These interactions might vary from interpersonal to intercommunity and even international. In traditional conflict resolution mechanisms, the truth holds great importance. How can the other opponents be certain that there will be no bias? Both parties involved in the dispute must adhere to the principle of honesty. The mediator, arbitrator, and judge must also possess integrity, as the influence of ancestral spirits might compel individuals to reveal the truth, perhaps leading to their own downfall. The mediator, judge, and arbitrator must possess thorough preparation, as truth is not easy to decode except by experiences and trained neutrals.

#### **2.1.4 Court Intervention**

Court intervention in arbitration entails invitation for the courts to intervene or interfere in arbitral proceedings by making pronouncement in line with public policy.

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<sup>38</sup> FS Falusi, JD Owoye and AA Olabamiji, 'Traditional Arbitration Institutions and Conflict Resolution Approaches in Nigeria: The Efficiency and Rhetorical Fallacy' (2023) 4 *British Journal of Multidisciplinary and Advanced Studies: Arts, Humanities and Social Sciences*, 1-11

However, it is sufficient to say that court intervention starts from the beginning of arbitral proceedings till the end as stipulation 5.3 of the verified High court Rules of each state particular. But essentially it is parties and states that forms the foundation of court intervention<sup>37</sup>.

Arbitration proceedings where the arbitral agreement does not contain issues put before court, the issues of jurisdiction will be raised. Vital areas of intervention will relate to appointment of arbitrators referral of enforcement of the law evidence gathering enforcement of awards or mediated settlements, interim reliefs, and the provisional matters that could have effect of portraying settlement, court can intervene on these issues.

Issues related to arbitration agreement are arbitrability and severability. Arbitral agreement must be related to matters where court has jurisdiction. The doctrine severability entails separating unenforced parts of a contract or invalid provision of agreement from the rest of the contract or agreement so as to preserve the remaining part and give effect to unintended purpose of parties.

Lastly the principle of non-intervention or intervention is later discussed.

In summary courts intervention in arbitration processes could have various effect on the success or otherwise of the process. Court intervention can enhance the legitimacy and credibility of the process by providing a legal backing and ensuring compliance with arbitration agreement.

Courts can review and in certain circumstance set aside arbitration awards, if there are grounds such as procedural irregularities, bias, or violation of public policy<sup>38</sup>.

The intervention by court undoubtedly does have effects on legitimatises and credibility; efficiency and finality and encouragement of Arbitration usage through judicial support and referral which encourage greater use and promoting culture of its use and thus reducing courts caseloads and backlogs; It is most effective as overall cost of dispute resolution will be lesser

than process of traditional litigation. Consistency and Fairness, and assist in complex disputes. However, there can be challenges of delays which can undermine the efficiency and benefits of process but they will be overturned or downplayed.

It is therefore essential for intervention to be balanced and supportive rather than intrusive, so as to maintain the inherent advantages of Arbitration process<sup>39</sup>.

## **2.2 Theoretical Framework**

Arbitration evolved from the old history of conflict management from time immemorial, therefore, the need to resolve conflicts in formal and informal settings is a necessary factor which gave rise to dispute resolution mechanisms such as arbitration. The emphasis on arbitration's practical aspects, in addition to the absence of rigorous academic engagement has thus rendered the field under-theorized<sup>39</sup>. It may be argued that the origins of arbitration and, its relationship with the practical side of the law, have kept academics away from conducting academic research in the theory of arbitration<sup>40</sup>. While arbitration scholarship is on the rise, for some time now, scholars have been commenting on the inadequacy of the scholarship relating to arbitration to engage in a serious theoretical analysis of arbitration's theoretical foundations. Ralf Michaels, one of the few theoretical scholars writing on international arbitration has argued that 'much scholarship on international commercial arbitration can hardly be distinguished from advertising'<sup>41</sup>. Under this, the following theories will be discussed.

### **2.2.1 The Jurisdictional Theory**

The essence of jurisdictional theory is to emphasize on national sovereignty. Proponents of this school of thought believe that every activity occurring within the territory of a State is

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<sup>39</sup> Won L Kidane, *The Culture of International Arbitration* (Oxford University Press 2017) 64.

<sup>40</sup> S Brekoulakis, 'International Arbitration Scholarship and the Concept of Arbitration Law' (2013) 36 *Fordham International Law Journal* 745, 763

<sup>41</sup> R Michaels, 'Dreaming Law without a State: Scholarship on Autonomous International Arbitration as Utopian Literature' (2013) 1 *London Review of International Law* 35, 37.

necessarily subject to its jurisdiction. Therefore, the context of the usage of this theory in this study is within national courts in Nigeria. In this case, the jurisdiction theory postulates the *lex arbitri* which is the law of the place of the arbitration. This theory prioritizes state sovereignty over the parties' agreement.

The Supreme court case of *Magbagbeola v Sanni* and other cases will be discussed fully. Clearly, the agreement to arbitrate is separable from the parties' contract<sup>42</sup>. Hence, the case of *Magbagbeola v Sanni*<sup>43</sup> is yet to be given a wide acceptance as recent cases have not been able to apply the doctrine of severability towards determining and settling Jurisdictional issues. In the case, the respondent Temitope Sanni who was the claimant in the Lagos State High Court had on 28th March, 2000 brought an application pursuant to section 7(2) (b) of the Arbitration and Conciliation Act Cap. 19 Laws of the Federation of Nigeria 1990 for the appointment of a sole arbitrator pursuant to clause 17 of the Partnership Agreement dated 7th November, 1999 which is in the following terms:

“All disputes between the partners in relationship to any matter whatsoever touching the partnership affairs or the construction of this agreement whether before or after the determination of the partnership shall be referred to an arbitrator.”

The appellant Adeoye Magbagbeola who was the respondent in that court filed a notice of preliminary objection on 22nd May 2000 challenging the jurisdiction of the High Court of Lagos State to entertain the matter on the following grounds:

i) The originating summons is to appoint an arbitrator over a dispute purportedly concerning the running of Commerce Lords Nigeria Ltd. A company incorporated under the Companies and Allied Matters Act, 1990.

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<sup>42</sup> (2002) 4 NWLR (Part 756) 193

<sup>43</sup> *supra*

(ii) This honourable court has no jurisdiction to entertain matters touching and concerning the running and sharing of profits of companies incorporated under the Companies and Allied Matters Act, 1990.”

On the 14th of July, 2000, the learned trial Judge, in a considered ruling, dismissed the preliminary objection and upheld the contention of the claimant/respondent that the court has jurisdiction to hear and determine the claim. In the course of his ruling the learned trial Judge held as follows:

In this preliminary objection arguments of counsel call for the examination of the provisions of sections 251(1) (e) and 272(1) of the Constitution of the Federal Republic of Nigeria 1999. In the substantive suit the applicant seeks by way of origination summons an order of this court that some fit and proper person be appointed to act as sole arbitrator pursuant to section 17 of the agreement between the parties dated 7/11/99. Now section 251(1) of the Constitution states that:

“Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil courses (sic) or matters.(e) arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act”.

While section 272 (1) supra states that: –

“Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a state shall have jurisdiction to hear and

determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue ...<sup>44</sup>

There is nothing in the above or any legislation which says that the Federal High Court has exclusive jurisdiction to appoint an arbitrator. The substantive claim seeks the appointment of arbitrator, and a State High Court or Federal High Court has jurisdiction to appoint an arbitrator. See Arbitration and Conciliation Act Cap. 19 Laws of the Federation of Nigeria 1990 particularly its interpretation section.

Section 57 with reference to the appointment of an arbitrator “court” means the High Court of a State or the Federal High Court while “Judge” means Judge of the High Court of a State or a Judge of the Federal High Court.

Thus, in the appeal cases of *Chevron USA INC v Britannia-U Nigeria Limited*<sup>45</sup> and *Federal University of Technology Akure v BMA Ventures Nigeria Limited* the Court of Appeal decided that the Federal High Court did not have jurisdiction to enforce arbitral awards predicated on simple contract. Judging from the above, the need to consider party autonomy vis-à-vis access to the courts is underscored by the increasing importance of the National Industrial Court. In order to put the Britannia case in proper perspective, the facts of the case need to be reproduced as follows: The Plaintiff, Britannia-U Nigeria Limited ("Brittania-U") sued Defendants Chevron U.S.A. Inc. ("Chevron"), Ali Moshiri, and Moncef Attia (collectively, "Defendants") for fraud, misrepresentation, and tortious interference with business relations arising out of a bidding process for oil leases in Nigeria. Britannia-U now appeals the District Court's denial of its motion to remand and the grant of Defendants'

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<sup>44</sup> supra

<sup>45</sup> Civil Action No. H-16-1457, United States District Court, Case 4:16-cv-01457

motions to dismiss based on an arbitration provision in a confidentiality agreement between Britannia-U and Chevron.

Furthermore, in 2013, Chevron Nigeria Limited, a division of Chevron, opened a bidding process for the sale of its interests in three Oil Mining Leases ("leases") in Nigeria. BNP Paribas Securities Corp. ("BNP Paribas") served as Chevron's financial advisor and agent for the potential transaction. Attia, then an employee of BNP Paribas, invited Britannia-U to participate in the bidding process. Chevron employee Moshiri was also involved in the negotiations. Early in the bidding process Britannia-U signed a confidentiality agreement, which Chevron also executed. The confidentiality agreement contained an arbitration provision:

“If the dispute is not resolved pursuant to direct negotiations ... then the dispute shall be finally resolved by binding arbitration and either Party may initiate such arbitration by giving notice to the other Party. The arbitration shall be conducted in accordance with the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules, except to the extent of conflicts between the UNCITRAL Arbitration Rules”.

The confidentiality agreement's arbitration provision also stated that the arbitrators have the power to rule on objections concerning jurisdiction, including the existence or validity of this arbitration provision and existence or the validity of this Agreement. "Brittania-U did not win the leases, despite the fact that it bid higher than the winning party. As a result, on May 18, 2016, Britannia-U filed suit against Chevron, Attia, and Moshiri in Texas state court alleging fraudulent inducement in the bidding process against each defendant and tortious interference with prospective business relations against only Attia. Chevron removed the case to federal court. Britannia-U filed a motion to remand, and each defendant filed a motion to dismiss. The district court denied Britannia-U's motion to remand and granted Defendants' motions to

dismiss. Britannia-U now appealed. The court stated that ‘We review a denial of a motion to remand de novo. *Int’l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd.*,<sup>46</sup> and also review *de novo* a motion to dismiss in favor of arbitration<sup>47</sup>.

Chevron asserted two bases for jurisdiction in its notice of removal: first, that diversity jurisdiction exists under the diversity statute,<sup>48</sup> and second, that federal question jurisdiction exists under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). However, Britannia-U argues that Chevron improperly removed under both statutes so that the district court erred in denying Britannia-U's motion to remand<sup>49</sup>. We disagree with Britannia-U and find that jurisdiction exists under the Convention. The Convention Act provides United States courts with jurisdiction over an action or proceeding falling under the Convention ... regardless of the amount in controversy. In the case of *Safety Nat’l Cas. Corp. v. Certain Underwriters at Lloyd’s, London*,<sup>50</sup> stating that an action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States<sup>51</sup>. Explaining when an agreement falls under the Convention. The requirements for Convention jurisdiction are typically that:

- (1) there is a written agreement to arbitrate the matter.
- (2) the agreement provides for arbitration in a Convention signatory nation.
- (3) the agreement arises out of a commercial legal relationship; and
- (4) a party to the agreement is not an American citizen<sup>52</sup>.

But the presence of a non-U.S. party is not required in all circumstances because the Convention jurisdiction may apply in such cases provided that there is a ‘reasonable relation’

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<sup>46</sup> 818 F.3d 193, 199 (5th Cir. 2016).

<sup>47</sup> Also, the case of *Gilbert v. Donahoe*, 751 F.3d 303, 306–07 (5th Cir. 2014) supports this principle.

<sup>48</sup> 28 U.S.C. § 1332,

<sup>49</sup> 9 U.S.C. § 203.

<sup>50</sup> 587 F.3d 714, 724 (5th Cir. 2009) (alterations in original) (citation omitted); *see also* 9 U.S.C. § 203 (

<sup>51</sup> 9 U.S.C. § 202

<sup>52</sup> *Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 339 (5th Cir. 2004) (citing 9 U.S.C. § 202 ) (citation omitted).

between the parties' commercial relationship and some 'important foreign element'<sup>53</sup>. Quoting *Jones v. Sea Tow Servs., Inc.*, and *Lander Co. v. MMP Invs., Inc.*, For an arbitration agreement that is "entirely between citizens of the United States" to fall under the Convention Act, it must "involve property located abroad, envisage performance or enforcement abroad, or have some other reasonable relation with one or more foreign states"<sup>54,55</sup>. Here, Defendants are citizens of the United States, but the citizenship of Britannia-U is unclear<sup>56</sup>. We need not resolve the question of Britannia-U's citizenship because even if Britannia-U were an American business entity so that all members to the agreement were U.S. parties, Convention jurisdiction nevertheless exists. The disputed transaction and related written arbitration provisions involve property located abroad and envisage performance abroad. The leases were for sale in Nigeria and all performance was to occur in Nigeria. Furthermore, the arbitration provision provides for arbitration to occur in London, and the United Kingdom is a signatory to the Convention<sup>57</sup>. Therefore, under these circumstances, the district court properly had jurisdiction under the Convention<sup>58</sup>.

It should be noted that removal under the Convention was also proper. The Convention's removal provision, allows for removal to a district court "at any time before the trial where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention"<sup>59</sup>. If "an arbitration agreement falling under the Convention could *conceivably* affect the outcome of the plaintiff's case, the

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<sup>53</sup> *Freudensprung*, 379 F.3d at 340.

<sup>54</sup> 30 F.3d 360, 366 (2d Cir. 1994)

<sup>55</sup> 107 F.3d 476, 481 (7th Cir. 1997).

<sup>56</sup> " 9 U.S.C. § 202 ; *see also Freudensprung*, 379 F.3d at 339–41 ; *S & T Oil Equip. & Mach., Ltd. v. Juridica Invs. Ltd.*, 456 Fed. Appx. 481, 484 (5th Cir. 2012). *See Stiftung v. Plains Marketing, L.P.*, 603 F.3d 295, 298 (5th Cir. 2010) (looking to whether a business entity was considered legally independent or a "juridical person" under the laws of that foreign state in order to determine the entity's citizenship).

<sup>57</sup> *See for example*, *Smith/Enron Cogeneration Ltd. P'ship v. Smith Cogeneration Intern., Inc.*, 198 F.3d 88, 93 n.5 (2d Cir. 1999).

<sup>58</sup> Although *S & T* is not "controlling precedent," it "may be (cited as) persuasive authority." *Ballard v. Burton*, 444 F.3d 391, 401 n.7 (5th Cir. 2006) (citing 5th Cir. R. 47.5.4).

<sup>59</sup> 9 U.S.C. § 205,

agreement 'relates to' to the plaintiff's suit. Thus, a district court will have jurisdiction under over just about any suit in which a defendant contends that an arbitration clause ... provides a defense<sup>60</sup>.

In *Brittania\_U* the agreement relates to Brittania-U's suit. Like the defendant's argument in *Beiser*, Defendants' arguments are all attempts to get Brittania-U to submit to arbitration similar to *Beiser*'s case. Therefore, "the arbitration agreements here could conceivably affect the disposition of Brittania-U's claims. Accordingly, the District court held that Chevron's removal was proper, re-affirm the district court's denial of Brittania-U's motion to remand. The court also determine the issue of whether removal was proper under the diversity statute because a court needs only a single jurisdictional basis to retain its power.

Brittania-U also contends that the district court erred in dismissing the case after concluding that the arbitration provision delegated 'gateway issues,' such as "the validity and enforcement" of the arbitration provision. The appellate court disagree with Brittania-U and affirm that the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about *that matter*." *First Options of Chi., Inc. v. Kaplan*<sup>61</sup>

In *Kubala v. Supreme Production Services, Inc.*,<sup>62</sup> provided an in-depth explanation of who decides what when a contract includes an arbitration provision. The reasoned that the enforcement of an arbitration agreement involves two analytical steps. The first is contract formation: whether the parties entered into any arbitration agreement at all. The second typically involves contract interpretation to determine whether the claim is covered by the arbitration agreement. Where the arbitration agreement contains a delegation clause giving

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<sup>60</sup> *Beiser v. Weyler*, 284 F.3d 665, 669 (5th Cir. 2002).

<sup>61</sup> 514 U.S. 938, 943, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995)

<sup>62</sup> 830 F.3d 199 (5th Cir. 2016),

the arbitrator the primary power to rule on the arbitrability, a court performs the first step as it always does," but instead of moving directly to the second step, a court must first determine whether the purported delegation clause is in fact a delegation clause, that is, if it evinces an intent to have the arbitrator decide whether a given claim must be arbitrated<sup>63</sup>.

In making this analysis, the court will not assume that the parties agreed to arbitrate unless the parties clearly and unmistakably provide otherwise.' Also, in *Petrofac, Inc. v. Dyn McDermott Petroleum Operations Co.*,<sup>64</sup> quoting *AT & T Techs., Inc. v. Commc'ns Workers of Am.*,<sup>65</sup> If a court does conclude that the parties to an arbitration agreement clearly and unmistakably delegated arbitrability, it "must refer the claim to arbitration [;]" however, if a court concludes that the parties did not, it "must perform the ordinary arbitrability analysis.<sup>66</sup> Accordingly, the court must decide if Defendants and clearly and unmistakably provided for the arbitrators to decide arbitrability<sup>67</sup>.

Here, the arbitration provision's adoption of the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules clearly and unmistakably delegates arbitrability. The arbitration provision specifically states that the arbitration shall be conducted in accordance with [UNCITRAL] Arbitration Rules.

In *Petrofac*, the court concluded that incorporating rules from the American Arbitration Association ("AAA") clearly and unmistakably expressed the parties' intent to leave the question of arbitrability to an arbitrator<sup>68</sup>. The AAA Rules at issue in *Petrofac* stated that the arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

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<sup>63</sup> Ibid.

<sup>64</sup> 687 F.3d 671, 675 (5th Cir. 2012)

<sup>65</sup> 475 U.S. 643, 649, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986) ).

<sup>66</sup> *Kubala's case*, 830 F.3d at 203.

<sup>67</sup> See *Petrofac*, 687 F.3d at 675.

<sup>68</sup> 687 F.3d at 675,

Three of our sister circuits have held that the language from the UNCITRAL Arbitration Rules also clearly and unmistakably delegates arbitrability<sup>69</sup>. Although the UNCITRAL Rules do not delegate arbitrability as obviously as the AAA Rules in that they do not mention explicitly the arbitrator's ability to determine the scope or validity of the arbitration agreement, we nevertheless agree with the other circuits' conclusions that incorporation of the UNCITRAL Rules clearly and unmistakably delegates arbitrability by granting the arbitrators authority to decide their own jurisdiction<sup>70</sup>. By giving the arbitral tribunal the authority to decide its own jurisdiction. The UNCITRAL rules vest the arbitrator with the apparent authority to decide questions of arbitrability. The district court therefore did not err in dismissing this dispute so that it may be arbitrated. The court noted that Moshiri and Attia did not sign the confidentiality agreement and its arbitration provision. Nevertheless, the court concluded that the delegation of arbitrability applies to them as well. Under the Federal Arbitration Act, 'background principles' of state contract law, when relevant 'allow a contract to be enforced by or against nonparties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.

In *Crawford Profl Drugs, Inc. v. CVS Caremark Corp.*, quoting *Arthur Andersen LLP v. Carlisle*, it was stated that typically, a court would answer this question and determine these circumstances, just as it would answer what is arbitrable, because who is actually bound by an arbitration agreement is a function of the intent of the parties, as expressed in the terms of the agreement<sup>71, 72</sup>. In *The Rice Co. (Suisse), S.A. v. Precious Flowers Ltd.*, quoting *Bridas*

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<sup>69</sup> See *Chevron Corp. v. Ecuador*, 795 F.3d 200, 207–08 (D.C. Cir. 2015), *cert. denied*, — U.S. —, 136 S.Ct. 2410, 195 L.Ed.2d 780 (2016); *Oracle Am., Inc. v. Myriad Group A.G.*, 724 F.3d 1069, 1073 (9th Cir. 2013); *Schneider v. Kingdom of Thailand*, 688 F.3d 68, 73–74 (2d Cir. 2012).

<sup>70</sup> See *Oracle Am.'s case* 724 F.3d at 1073,

<sup>71</sup> 748 F.3d 249, 257 (5th Cir. 2014)

<sup>72</sup> 556 U.S. 624, 631, 129 S.Ct. 1896, 173 L.Ed.2d 832 (2009); see also *Hays v. HCA Holdings, Inc.*, 838 F.3d 605, 609 & n.1 (5th Cir. 2016) (applying Texas law of direct benefits estoppel).

*S.A.P.I.C. v. Gov't of Turkm*, the court must first determine whether claims against Moshiri and Attia were also clearly and unmistakably delegated to the arbitrator<sup>73, 74,75</sup>.

In making this determination above, the court found *Contec Corporation v. Remote Solution, Co.*<sup>76</sup> instructive. In *Contec*, Contec Corporation sued Remote Solution Co., Ltd. ("Remote Solution") to compel an indemnification dispute to arbitration. Contec Corporation was a non-signatory to the indemnification agreement containing a clause delegating arbitrability but nevertheless sought to enforce the delegation clause in its dispute with Remote Solution as a successor in interest to a signatory. The Second Circuit court held that the agreement's delegation of arbitrability applied to the dispute. In coming to this conclusion, the court noted that the 'the party seeking to avoid arbitration was a signatory to the arbitration agreement.' The court reasoned that this was an important indicator of the signatory's expectation and intent when binding itself to the agreement, which justified binding the signatory, Remote Solution, to the arbitration provision's delegation clause.

Like in *Contec*, the Defendants here are a signatory and two non-signatories are attempting to enforce the arbitration provision against signatory Britannia-U. Although, the confidentiality agreement does not explicitly state that it binds non-signatories to the agreement, it does explicitly bind Britannia-U. Therefore, as in *Contec*, the language of the agreement clearly and unmistakably delegates arbitrability, even with regard to Britannia-U's dispute with Moshiri and Attia. Accordingly, the district court did not err in recognizing that the confidentiality agreement's arbitration provision delegated the question of arbitrability to the arbitrators.

These cases portray the difficulties of jurisdiction in arbitration which culminates in the proposition of the jurisdictional theory. The determination of jurisdiction could be

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<sup>73</sup> 345 F.3d 347, 355 (5th Cir. 2003)

<sup>74</sup> 523 F.3d 528, 537 (5th Cir. 2008)

<sup>75</sup> See *Kubala*, 830 F.3d at 201–02.

<sup>76</sup> , 398 F.3d 205, 211 (2d Cir. 2005)

complicated as courts within and outside Nigeria must justly resolve this issue before venturing into determining the substantive issues before it. It is also a challenge of national and international court intervention in arbitration matters. Notwithstanding, the Federal High Court, State High Courts and the National Industrial Court are all courts of coordinate jurisdiction. Hence, in principle, none should be superior to the other in jurisdictional issues.

The National Industrial Court has exclusive jurisdiction to determine several matters, including “industrial relations and other matters arising from the workplace ... matters incidental thereto or connected therewith.” Safely, the researcher agrees that this jurisdiction does not conflict with the exclusive subject matter jurisdiction of the Federal High Court and the general jurisdiction of the State High Courts. By the Constitution, applications for judicial intervention in arbitration should be made to the National Industrial Court in disputes relating to labour/employment matters. However, the National Industrial Court is not contemplated in sections 91 of the AMA which provide for the interpretation of a Court.

In *Ravelli v. Digisteel*, the applicant filed an initial claim at the National Industrial Court asking for the appointment of an arbitrator to settle a dispute with his former employers<sup>77</sup>. He made the arbitration clause in article 22 of his employment contract, dated August 17, 2012, as well as the default appointment clause in section 7(2)(b) of the Old Act. On the occasion of the motion's hearing on March 28, 2017, Kanyip J. (as he then was) raised the issue of the National Industrial Court's authority to select an arbitrator in accordance with the ACA and requested that the parties respond. After that, Kanyip J decided that the ACA only applied to business disputes. Employment and labor conflicts are not covered by this clause. Jurisdictional delineations considering the AMA and the Constitution do not provide a definitive solution to challenges in the area of arbitration. Section 91 (1) of the AMA lists the courts that can exercise jurisdiction intervention in arbitration. Needless to say, that this issue

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<sup>77</sup> NICN/LA/599/2016

is one to be greatly addressed among others as the challenges the National Courts are faced with which occasions delay as preliminary objections are always flooded in Courts. It is this research's aim to recommend pragmatic ways to further better arbitration proceedings in Nigeria by ensuring that the essence of resort to arbitration is not defeated by resorts to national courts

### 2.2.2 The *Seat* Theory

The law governing the Arbitration is important because it determines the validity, effect and interpretation of the Arbitration agreement and such law is relied upon by the arbitrator to determine the scope of his powers and the procedure to be followed by the arbitral tribunal (unless the parties expressly agree to submit themselves to an institutional arbitration like SIAC etc and follow the procedure prescribed by such institution which is different from the law governing the arbitration and procedural law of arbitration)<sup>78</sup>. The Seat theory is not new to arbitration. Its antecedents can be traced as far as arbitration is concerned.<sup>79</sup> The Seat theory is famous for proposing that the law applicable to each arbitration (the *lex arbitri*) will be the law of the place where the arbitration takes place (the *lex loci arbitri*). In like manner, modern international instruments, particularly the UNCITRAL Model Law on International Commercial Arbitration 1985 ('Model Law') have further brought to light the propositions of this theory. The seat of arbitration (also known as the place or locale) is one of the most important factors to take into consideration when drafting international arbitration clauses in a contract and is often confused with the venue of the arbitration<sup>80</sup>.

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<sup>78</sup> ABM Abang, 'The Seat of Arbitration: To What Extent Does It Influence Important Aspects of the Arbitration Process?.' (2021) 5 Int'l JL Mgmt. & Human 918.

<sup>79</sup> E Obegolu, 'Application of the Seat Theory to International Arbitration: State Sovereignty Under Fire'. (2021) 5(2) *AJLHR* p 34

<sup>80</sup> O Ojedokun and D O Akabuiro, 'The Concept of the Seat in International Arbitration: Unlocking the Judicial Challenge of Interpretation of Conflict of Laws'. , (2022) 88(4), *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 1

Expert further opined that in any arbitration there is a need to draw distinctions among the law applicable to the substantive dispute, the law of the seat, and the law applicable to the arbitration clause itself<sup>81</sup>. The seat of arbitration will typically determine the procedure of the arbitration as well as the court that has the power to interfere in arbitration proceedings (e.g., by issuing interim measures or annulling an award). A choice of London as the seat of arbitration will generally permit applications for security for costs under the Arbitration Act 1996. In taking this further, Qiuju, using the Chinese experience, attempts to conceptualize it by explaining the seat of arbitration as referring to location in the legal context of international commercial arbitration<sup>82</sup>. In the absence of parties' agreement on applicable law, the proceedings shall be governed by the law of the location of such proceedings, supervised by the court competent in that location, and receive relevant judicial support<sup>83</sup>. She says it is clear that the seat of arbitration is a legal concept, not a geographical one. The significance of the seat of arbitration is that it determines the applicable law when deciding the validity of the arbitration agreement and the arbitration procedure, as well as the national origin of the award<sup>84</sup>. The seat of the arbitration is important as it will dictate the relationship between the arbitral tribunal and the courts and will have significance when it comes to enforcing the arbitral award.

This suggests that the juridical place or the seat where the arbitration takes place determines the *lex arbitri* or the law of the arbitration. This theory is based on the fact that arbitrations exist primarily because they are recognized and permitted by national laws<sup>10</sup>. The choice of *seat* has a significant role in determining the nature and extent of court intervention in international arbitrations due to varying national attitude towards international arbitrations<sup>11</sup>.

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<sup>81</sup> G Born, and C Kalelioglu, 'Choice-of-law agreements in international contracts ' (2021) 50(44) *Ga J Int'l & Comp L*, 719-748.

<sup>82</sup> J Qiuju, 'Determination of Seat of Arbitration, and Its Legal Significance' *Chinese Business Law Journal* (2019), <https://law.asia/determination-seat-arbitration-legal-significance/>

<sup>83</sup> *Ibid*.

<sup>84</sup> R. Wilkins, 'Arbitration in Africa: Survey Identifies Top Arbitral Centres and Seats' *Outlaw*

The need for a constructive role of courts in the arbitral process is a fact acknowledged and underscored by even the advocates of delocalized arbitrations and scholars of party autonomy alike<sup>12,13</sup>. The parties can resort to court assistances in numerous ways and in different stages. It is noteworthy that this relationship has evolved from being one of subordination to an executive partnership aimed at aiding and facilitating arbitration.

In order to underscore this theory, the Seat of Arbitration determines the applicable law governing the Arbitration including the procedural aspects. When the parties specify an applicable law for the Arbitration agreement, that law governs the Arbitration. The seat of arbitration is very important in many respects some of which include: validity by way of respect to the wishes of the parties as regards the place and the law thereof they wished had governed them. Another factor is efficiency because the laws governing the proceedings must efficiently lead to justice while predictable enforcement is another major factor because the laws of the seat of arbitration must reflect in judicial review in line with the predictability of the judicial outcome of a review or appeal where applicable. The parties would be careful to choose a seat of arbitration where the chances of enforcement of its award will be very high or likely to succeed with minimal stress or bureaucratic bottlenecks. The parties would take into consideration the delocalization factor in choosing the applicable law, institution and judicial environment or past precedents of such judicial setting.

One of those decisions relied on by proponents of delocalisation is the case of *Daimler South East Asia Pte Ltd v Front Row Investment Holdings (Singapore) Pte Ltd*, where parties' JVA provided inter alia that '...this agreement shall be governed by the laws of Singapore<sup>85</sup>. All disputes arising out of or in connection with the present agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator in

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<sup>85</sup> See the cases of *Shagang South-Asia (Hong Kong) Trading Co Ltd v Daewoo Logistics*, (2015) EWHC 194 (Comm). 6 and *Shashoua and others v Sharma* (2009) EWHC 957 (Comm).

accordance with the said rules. Place of arbitration will be Singapore.’ Upon Daimler South East Asia Plc filing an Originating Summons to seek leave of the Court of Appeal, the issue for determination was whether the parties’ choice of ICC Arbitration Rules operated to exclude the statutory right to appeal on a question of law under S.49(2) of the Domestic Arbitration Act of Singapore. The court found that the exclusion of the right of Appeal had been validly made by the parties’ adoption of the 1998 ICC rules of Arbitration which proscribes Appeal under Article 28.

This was also the case when the Court of Canada held in *Dell Computer Corporation v Union Des Consommateurs*<sup>8</sup> that ‘Arbitration is an institution without a forum and without a geographic basis. Arbitration is part of no state’s judicial system. The arbitrator has no allegiance or connection to any single country. Arbitration is a creature that owes its existence to the will of the parties alone.’

In Singapore, there appears to be no room for delocalized arbitration. Speaking in parliament at the Signing of the Arbitration Bill in October 2011, ‘the Minister of State for Law noted that: ... the Bill adopts the territorial criterion recommended by the Model Law and affirms the position that every arbitration held in Singapore must be governed by an applicable law of arbitration either under the International Arbitration Act or under this Bill.’<sup>86</sup> The concept of delocalised arbitration unconnected with any system of municipal laws would not be recognised under Singapore.

In this regard, it cannot be denied that despite the attractions of the transnationalism concept in theory, in practice the traditionalist ethos is now the norm in most modern arbitration laws which aims to regulate only those arbitrations that are conducted within the territory of the state subject to permitted rights of derogation.

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<sup>86</sup> E Obegolu, ‘Application of the Seat Theory to International Arbitration: State Sovereignty Under Fire’. (2021) 5(2) *AJLHR* 37

In terms of the UNCITRAL Model law and rules, the last fifty five years has witnesses a massive tendency towards harmonization of the law and practice of international commercial arbitration through few international instruments, such as: The Geneva Treaties, New York Convention on the Recognition & Enforcement of Foreign Arbitral Awards, International Convention on the Settlement of Investment Disputes Between States and Nationals of Other States and UNCITRAL Model Law on International Commercial Arbitration, still there are two sets of national laws that still play a significant role: the national laws of the place of arbitration and the national laws of the country where enforcement of the award is sought.<sup>87</sup> The UNCITRAL model law could be described as a chunk of both sides in the sense that it combines elements of supremacy of the seat theory and delocalization of arbitration particularly by circumscribing indiscriminate interference of national courts on arbitration proceeding. This is evident because Article 34 of the UNCITRAL Model Law recognizes applications for setting aside as an exclusive recourse against arbitral awards on the one hand, and on the other hand, the UNCITRAL model law has the effect of relaxing the imposition of national law of the seat of arbitration. This influence is seen more from the procedural perspective of the arbitral proceeding. Most modern arbitration laws reflect this effect of the UNCITRAL model law by being silent on prescriptive details regarding internal procedure of the arbitration and by the considerable latitude afforded to parties to supplement, vary or exclude provisions of the law of the seat either directly or by adoption of institutional rules.<sup>88</sup> The essence of the UNCITRAL Model law created in 1985 was to harmonize some arbitral rules by providing a template upon which law for States to adopt into their domestic legislation and therefore should reduce the national law peculiarities that sometimes surface to challenge international commercial arbitration<sup>89</sup>. The UNCITRAL Model law remarkably limits court intervention and heightens party autonomy. By the adaptation of the UNCITRAL

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<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

Model law by States, a harmony was achieved. Nevertheless, certain latitude is afforded for countries to tinker with the Model law and this had raised some issues as to whether the degree of uniformity of arbitral rules earlier conceived and desired is hindered. In essence, it would be safe to submit that the UNCITRAL Model Law perceives a reduced power of the courts at the arbitral status and overall portray a pro-arbitration attitude.

Lastly, ensuring quick and reliable resolution of a dispute is of great importance in international commercial arbitration. Hence, the role of the judiciary and the court system with regard to political stability is crucial in deciding the seat of arbitration<sup>90</sup>.

### **2.2.3 The Autonomous Theory**

This theory examines arbitration from the perspective of its intent and application. The idea was created to explain the propensity for arbitration to become independent of the seat and seat-specific law. Jacqueline Rubellin-Devichi was the one who first put up the theory. She contends that arbitration be handled in line with its intended purposes. The jurisdictional and contractual conceptions are rejected by the theory as being unrealistic. According to the notion, it cannot be categorically classified as either contractual or jurisdictional. This idea contends that arbitration develops in an autonomous manner inside an emancipated system.

Arbitration is a contractual remedy designed to expedite informal dispute resolution. Its autonomy requires a minimum of judicial intrusion<sup>91</sup>. Autonomous arbitration occurs when it is initiated, conducted, and concluded, and the arbitration award is enforced, all without any need or desire for judicial intervention<sup>92</sup>. Endorsing the autonomy paradigm in its own words, the U.S. Supreme Court has affirmed “the unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to

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<sup>90</sup> GB Suraj ‘Arbitratorayan, Ten Factors to Consider Before Deciding Seat of Arbitration (2017), <https://blog.ipleaders.in/seat-of-arbitration-factors/> accessed 14 December. 2024

<sup>91</sup> State v. Conn. Emps. Union Indep., 440 A.2d 229, 230 (Conn. 1981)

<sup>92</sup> MR Arabahmadi, and M, Karimi, 'An Analysis of the Autonomous Theory in International Commercial Arbitration.' (2021) 12(44) *Private Law Research*, 1, 187-219.

delay and obstruction in the courts. It remains correct to assert that most arbitration references take a shorter time to get to a final award than a final decision in litigation from most first instance courts. This is certainly the case in most jurisdictions. It has been noted that in some developing jurisdictions, litigants may wait up to ten or more years to get a first instance judgement<sup>93</sup>. A legal expert argued that international arbitration occupies an autonomous legal regime the effect of which is to remove the process from the control of national law and courts. The arbitration exists in a different domain, a non-national or international sphere<sup>94,95</sup>.

Dissenting view against the autonomy theory of arbitration contends that the very use of the term 'autonomy' begs the question of 'autonomy from what'<sup>96</sup>? Autonomy is best viewed as freedom and independence from norms by which adjacent legal orders are governed. The standard definition of autonomy is indeed nothing more and nothing less than 'self-government', which implies in turn a right to recognition, an ability to function, and a capacity to develop with substantial freedom and independence from whatever regime of which it would otherwise be part<sup>97</sup>. This study disagree with Bermann in the sense that since the essence of choosing arbitration is to avoid delays, judicial bottlenecks, too much formality among others, disallowing arbitration its autonomy will hinder its very purpose and the parties who voluntarily submits to arbitration would have been shortchanged if its autonomy is threatened, withdrawn or jeopardized. Issues of confidentiality further preserve the need for autonomous status for arbitration as a dispute resolution mechanism because the courtroom is a public place in many instances. It is only in exceptional circumstances such as

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<sup>93</sup> JF Olorunfemi, and others, 'Determining the Settlement of Personal Injury Claims by Arbitration in Nigeria' (2023) 10(1) *Journal of Commercial and Property Law*, 43-56.

<sup>94</sup> R Michaels, and others, *Achieving the Dream: Autonomous Arbitration* (The Cambridge Companion to International Arbitration 2021) 1

<sup>95</sup> *Ibid.*, at p. 195

<sup>96</sup> GA. Bermann, 'The Self-Styled 'Autonomy' of International Arbitration'. (2022) 36, *Arbitration International* p 221

<sup>97</sup> J 'Landbrecht, The Autonomy of Arbitration: Autonomy À Géométrie Variable.' (2022) 14, *Contemp. Asia Arb. J.*, 1, 39.

juvenile justice that the court would consider confidentiality of the parties. In essence, this study posits that arbitral autonomy is a necessity and not a favour.

In furtherance of the above, Arbitration's private, consensual and often confidential nature is amongst the features that render arbitration a favored dispute resolution method in the international commercial domain. On a state level, its popularity is manifested, among others, by the number of signatory states to the New York Convention on the Recognition and Enforcement of foreign arbitral awards 1958 ('New York Convention')<sup>98</sup>. New York Convention deals with the recognition and enforcement of foreign arbitral awards<sup>99</sup>. Party autonomy is a phrase that is almost synonymous with arbitration and by its use we basically mean that the law that governs the arbitration agreement grants the disputing parties' powers to determine how they wish to operationalize their arbitration<sup>100</sup>. Examples of these are where most national laws allow the parties to choose the place/seat, language, arbitrator appointment procedure, arbitrator challenge procedure, applicable substantive laws or rules, etc., of the arbitration<sup>101</sup>. It is also this 'autonomy' of the parties that is said to be one of the major attractions of arbitration as a dispute resolution mechanism to commercial parties<sup>102</sup>.

#### **2.2.4 The Contractual Theory**

The theory emphasizes that arbitration is fundamentally a contractual agreement between the parties. Parties choose arbitration as a mechanism to resolve their disputes and agree to its terms, including the exclusion of court intervention unless specifically provided for in the agreement.

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<sup>98</sup> L Kyprianou, *The Autonomous Theory of International Commercial Arbitration: An Autopoietic Perspective*. (PhD Thesis, Leicester Law School, University of Leicester, 2021), p 9

<sup>99</sup> A.Kawharu, *The Recognition of International Commercial Arbitration as a Transnational Legal Order Defined by the Rule of Law* (2023). (Doctoral dissertation, University of Wellington).

<sup>100</sup> E Onyema, 'The Concept and Scope of the Arbitrator's Autonomy. In, Brekoulakis, et al, *Achieving the Arbitration Dream*', (2023) *Kluwer Law International*, p 323

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

The implication is that court should intervene sparingly in arbitration, representing parties' choice and the finality of the award unless the agreement itself explicitly permits it or there's a breach of fundamental legal principle: for example, if parties agree that the arbitral award is final and binding, courts should generally not intervene to overturn the award, except in cases of fraud or corruption. This judicial intervention recognises severability; Equally the principle of *kopetenz- kopetenz* which allows arbitrators to interpret agreements, rule an objection, and name the arbitration process<sup>100</sup>.

#### 2.2.5 Hybrid (Mixed) Theory

This theory acknowledges both the contractual nature of arbitration and the need for judicial oversight. It suggests that while arbitration is a contractual agreement, the court role is not simply to enforce the contract but also to enforce fairness and compliance with fundamental legal principles. The implication of the theory is that court may intervene in cases where the arbitration process violates fundamental principle of justice or where the arbitral award is manifestly unfair, and unjust. The court may intervene if the arbitral tribunal exceeds its powers or if the arbitral award is manifesting unfair and goes against public policy. Otherwise known as legal and Justice theory, access justice to principle of *Ex. AICO ebono, e nico, est, ebono*<sup>99</sup>.

### **2.3. Statutory Provisions on Court Interventions in Arbitration in Nigeria**

From statutes to courts and academic scholars, there are varying provisions on whether court interventions are a necessity or not. The role of the courts in any society cannot be over emphasized. Where there are provisions inviting the courts either to an intervene by way of appointing arbitrators, the parties would not have a choice where statutes have such provisions. Section 64 of the Arbitration and Mediation Act 2023 provides for the extent of

court intervention in arbitration viz; “A court shall not intervene in any matter governed by this Act, except where it is provided in this Act.”<sup>103</sup>

## **AMA**

Under the repealed Arbitration Act, Section 7 of the Arbitration and Conciliation Act 1988 provides for intervention of court to appoint an arbitrator where parties fail to agree.

7. (1) Subject to subsection (3) and (4) of this section, the parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator.

However, section 7(3)[c] of the Arbitration and Mediation Act 2023 provides that the courts may appoint a third arbitrator for parties where they fail to do so within 30 days having exhausted all other alternatives provided by law to do so.

In pursuance of section 16 of AMA 2023, AMA made provisions for a party seeking emergency relief to apply for the appointment of an emergency arbitrator. The party seeking such relief (s) may, concurrent with or following the filing of a request for a dispute to be referred to arbitration but before the constitution of the arbitral tribunal, request by an application for the appointment of an emergency arbitrator<sup>104</sup>. The application is to be made to the arbitral institution designated by the parties or the Court. The point we want to make here is that the statutes expressly invites the courts subject to existence of certain matters arising such as failure of parties to agree on an arbitrator. From the wording of the AMA, it could be said that an application for the appointment of an emergency arbitrator can only be made prior to the constitution of the arbitral tribunal<sup>105</sup>. Thus, where a party requires emergency relief, such as maintaining the status quo or preserving the res after the

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<sup>103</sup> S 64 of AMA 2023

<sup>104</sup> s 16(5), AMA 2023

<sup>105</sup> T Adebayo, ‘The Nigerian Arbitration and Mediation. Act, 2023 - The Dawn of a New Era for Arbitration and Mediation Practices in Nigeria’. Accessed from <https://topeadebayolp.com/wp-content/uploads/2024/01/99> 22 December 2024

constitution of the arbitral tribunal, such a party may apply to the arbitral tribunal or the Court for interim measures of protection. This provision allows a party to an arbitration agreement to apply for an urgent interim relief pending when an arbitral tribunal has been formally constituted in line with the arbitration agreement<sup>106</sup>. An Emergency Arbitrator can make orders for interim measures or conservatory relief only for a fixed period. Under the AMA, a party who needs an urgent relief to protect their interest, pending the final determination of the dispute, can now apply for the appointment of an Emergency Arbitrator. This provision can eliminate the difficulty of a party approaching Nigerian courts for such interim relief. The emergency arbitrator shall be appointed within two business days after the date the application is received<sup>107</sup>.

Under the repealed Arbitration and Conciliation Act 1988, the court had the discretion to allow or reject an application for a stay of proceedings depending on the ability of the Applicant to show *sufficient reason* or willingness to proceed with arbitration as per the arbitration agreement<sup>108</sup>. Section 31 of the repealed Arbitration and Conciliation Act 1988 imposes a duty of confidentiality and this will be lost in the event of an application to the court to enforce or set aside an award. Where this happens, arbitration loses its privileged status as all the arbitration records become part of the court's record. Also, a challenge of the ACA is that it does not explicitly provide for the removal of arbitrators. It only refers to circumstances that give rise to the arbitrator's impartiality and qualifications. Section 9 of the old Act provides that where the parties have not specified a procedure to challenge the appointment of an arbitrator, which, if successful, will result in his removal, a party that desires to challenge an arbitrator shall within 15 days send the arbitral tribunal a written

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<sup>106</sup> Nigerian Arbitration and Mediation Act, 2023 – Key Innovations. *TEMPLARS ThoughtLab* accessed via <https://www.templars-law.com/app/uploads/2023/07/Nigerian-Arbitration-and-Mediation-Act-202338.pdf> accessed on 22 December 2024

<sup>107</sup> The Arbitration and Mediation Act, 2023 – Notable Innovations [https://www.gelias.com/images/Newsletter/Review\\_of\\_the\\_Arbitration\\_and\\_Mediation\\_Act\\_2023\\_Article.pdf](https://www.gelias.com/images/Newsletter/Review_of_the_Arbitration_and_Mediation_Act_2023_Article.pdf) Accessed 22 December 2024

<sup>108</sup> S 5 of the repealed Arbitration and Conciliation Act 1988

statement of the reasons for the challenge. Unless the arbitrator who has been challenged withdraws from office or the other party agrees to the challenge, the arbitral tribunal decides on the challenge. Nigerian, in the ACA, omitted Article 13(3) of the Model Law, which provides a review mechanism for tribunal decisions rejecting a challenge<sup>109</sup>. A dissatisfied party can then approach the courts under Article 12 of the Arbitration Rules), leading to comments and questions about whether courts have the authority to review tribunal decisions rejecting a challenge. These are some of the statutory interventions either in favour or against court intervention in arbitration. In the same vein, there was statutory invitation extended to the court by virtue of section 34 of the repealed Arbitration and Conciliation Act 1988 in terms of application for setting aside an award made by arbitrators. The section provides:

34(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3). (2) An arbitral award may be set aside by the Court only if-

The conditions which allows the court to set aside the award are that a party is under some incapacity, the award is beyond the scope of the arbitration agreement, the arbitration agreement is not valid under the law being in force as of the time it was entered into, proper notice was not given to the party making the application for appointment of an arbitrator, the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties among others<sup>110</sup>.

There are slight variations from the above under section 55 of the Arbitration and Mediation Act 2023. These provisions are similar but a notable difference was made by Arbitration and Mediation Act 2023 by adding subsection 2 and subsection 3(a)[vi-vii]. Section 55(2) of the new Act expressly stated that an application for setting aside an award shall not be

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<sup>109</sup>Ibid 6

<sup>110</sup> S 34(2)(a) (i-iv) Arbitration and Conciliation Act 1988

countenanced by the court just because of an error on the face of the award except on other grounds as stated in subsections 3 and 4 of section 55<sup>111</sup>.

In taking it further, the two (2) new grounds added by Arbitration and Mediation Act 2023 are that the composition of the arbitral panel or arbitration procedure was not within the contemplation of the arbitration agreement between the parties unless the agreement was in conflict with AMA 2023 from which the parties cannot derogate from and where there is no agreement between the parties under sub-paragraph vi, and that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the Act<sup>112</sup>.

The courts have come to play very crucial role in ensuring arbitration as dispute resolution mechanism achieves its purpose. The roles of the courts have been that of regulator to ensure that the legal framework fits into the institutional implementation or application of the laws and rules of arbitration to ensure justice is served to parties. The timing, degree of intervention and stage of arbitration are critical factors to consider in deciding whether courts intervention are obstructive or supportive<sup>113</sup>. In the recent decision of the Federal High Court, my lord Dimgba J., in *Nigerian National Petroleum Corporation (NNPC) v Total E & P Nigeria Ltd & 3 Others*, delivered on 01 March 2019, the Court followed a long line of judicial authorities in declining jurisdiction to entertain an application which invited the Court to interfere with pending arbitral proceedings by disqualifying the Presiding Arbitrator and the Arbitral Tribunal<sup>114,115</sup>.

There is a widespread view and controversies in the involvement of courts and subject matter Jurisdiction in arbitrator's appointment. According to the AMA, 2023 "Court" refers to either the State High Court or the Federal High Court, High Court of the FCT, National Industrial

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<sup>111</sup> S 55 (2)(3)(4) of the Arbitration and Mediation Act 2023

<sup>112</sup> S 55 (3)(vi-vii) of the Arbitration and Mediation Act 2023

<sup>113</sup> M Behl, 'Judicial Intervention in Arbitral Proceedings: Support or Interference?' (2021) 3(1) *Indian JL & Legal Rsch*,

<sup>114</sup> *Nigerian National Petroleum Corporation (NNPC) v Total E & P Nigeria Ltd & 3 Others* Suit No. FHC/ABJ/CS/390/2018

<sup>115</sup> The Extent of Court's Intervention in Arbitration Proceedings: A Review of the Decision in NNPC v Total E & P Suit No. FHC/ABJ/CS/390/2018, Olanihun Ajayi Newsletter, March 2019, p 1

Court. The several courts were established in pursuance of section 6 of the constitution of the Federal Republic of Nigeria, 1999 as amended where Constitution laid out their respective jurisdictions, and before the AMA itself was passed. The issue is whether the parties can approach any High Courts indicated in the AMA to request judicial intervention in the arbitral tribunal establishing procedure or whether they must simply contact the High Court (i.e., Federal or State) with jurisdiction over the subject matter of their dispute.

There is considerable force in the argument that although the AMA defines a court to mean either the Federal or State High Courts or the High Court of the Federal Capital Territory, the High Court to which an application for appointment of an arbitrator in default of the parties' selection should be made is the High Court that have jurisdiction over the dispute in the arbitration clause<sup>115</sup>. This argument is predicated on the fact that the Constitution is the grundnorm of all existing laws. Hence, AMA cannot supersede the constitutional delimitation of the court's jurisdiction.

In terms of statutory provisions for court's intervention, the Act retains old section 4 although in a modified form and deletes section 5 under the ACA, which left the decision to stay proceedings to the court's discretion and required the applicant to demonstrate its willingness to proceed with the arbitration<sup>116</sup>. The Act now mandates the courts to stay proceedings commenced in breach of the arbitration agreement unless the court finds that the agreement is void, inoperative or incapable of being performed<sup>117</sup>. This pro-arbitration approach definitely has the potential to increase the attractiveness of Nigeria as a desirable arbitral seat<sup>118</sup>.

#### **2.4 Judicial Attitude towards Court's Intervention in Arbitration in Nigeria**

It is trite to state that obviously, courts and scholars have not considered the effect of the Supreme Court's decision in *Magbagbeola v Sanni* This case is significant in marshalling

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<sup>116</sup>Review\_of\_the\_Arbitration\_and\_Mediation\_Act\_2023 [https://www.gelias.com/images/Newsletter/Review\\_of\\_the\\_Arbitration\\_and\\_Mediation\\_Act\\_2023\\_Article.pdf](https://www.gelias.com/images/Newsletter/Review_of_the_Arbitration_and_Mediation_Act_2023_Article.pdf) Accessed 22 December 2024

<sup>117</sup> s 5, AMA 2023

<sup>118</sup> Ibid.

relevant case law and how it should be interpreted in light of the current Nigerian arbitration regime and the Nigerian Constitution<sup>119</sup>. Despite the argument that the facts of the matter in which the dispute arose is one, that, under the Federal High Court Jurisdiction, the Supreme Court was able to inculcate the doctrine of severability wherein, parties' dispute as framed before the court were separated from the agreement to arbitrate, in the arbitration clause.

Every means of resolution of disputes is usually agreeable to litigants who do not want their cases to linger on forever in courts but there are obvious challenges to access to justice in Nigeria and other jurisdictions. There are three main challenges to access to justice that need to be addressed. The first barrier is financial, which refers to the poverty of a large number of individuals who, due to financial constraints, have little or no access to appropriate representation or information. In this case, the "first wave" of the access movement has taken the lead in advocating for and concentrating its research efforts on tools like legal assistance and guidance. The organizational barrier is the second impediment, or "second wave," in the movement for access to justice. The third barrier, which is technically most closely related to alternative dispute settlement, is procedural, as it implies that the conventional, everyday forms of procedure are insufficient in some circumstances.

Although many countries throughout the world, including Nigeria, have recognized access to justice as a human right that extends beyond procedural rights, the precise definition of "access to justice" and the range of its constituent elements are still unclear or imprecise in many other jurisdictions. Although "access to justice" has garnered significant backing and been included in recent legal reforms in the UK and other regions, it has not been given much attention in developing nations' agendas for good governance. Numerous studies on the subject of access to justice have demonstrated that there are two main criteria that influence people's ability to take advantage of accessible legal remedies. First and foremost, having

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<sup>119</sup> (2002) 4 NWLR (Part 756) 193

access to financial resources is crucial. In addition to the potential costs associated with hiring attorneys and accessing legal institutions which, for the impoverished, typically entails time away from activities that provide income. There are other costs involved as well. The ability to comprehend and operate the system, or institutional skill, is typically recognized as the second aspect.

The term can be used in three different contexts: first, to refer to a person's ability to file a claim with a court and have it decided upon; second, to refer to have their claim heard and decided upon in accordance with the standard of fairness and justice; and third, to refer to legal aid for those who would otherwise be unable to access judicial remedies due to the often prohibitive cost of legal representation and administration of justice. Courts intervention could also be consequence of stretching access to justice. Should parties to arbitration be denied access to justice in the courts where the necessity of the arbitral matter demands? Access to justice could be improved by some Arbitration techniques and settlement agreements, although this may not have been completely recognized yet.

Not all parties will support the same procedures or select the same mediators or rule enunciators if a range of conflict resolution options are made accessible.<sup>120</sup> Some judges have even embraced their positions as "social justice bureaucrats" or "public problem solvers," assisting parties in selecting the best course of action or taking a more proactive approach to resolving and settling cases. These new procedures have the potential to increase access to justice rather than decrease it, both in terms of the range of outcomes possible and the number of processes available, if they are appropriately supervised and regulated<sup>121</sup>.

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<sup>120</sup> P. Cortés, 'Embedding Alternative Dispute Resolution in the civil Justice System: A Taxonomy for arbitrator Referrals and a Digital Pathway to increase the uptake of ABRITRATOR'. (2023), 43(2), *Legal Studies*, p.312

<sup>121</sup> C. Rule, 'Online Dispute Resolution and the Future of Justice'. (2020), 16 *Annual Review of Law and Social Science*, 277-292

The majority of discussions surrounding justice access have historically presumed that the primary issue is a lack of access to attorneys (hence the support for legal aid) and that expanding access to attorneys' services would be a good way to address this. That being said, is greater justice or more attorneys needed? The general public (Nigerians) requires a prompt, equitable, and cost-effective method of resolving legal issues, especially for pro se litigants. Various approaches have been implemented to tackle these requirements, such as diminishing the need for legal involvement and support, striving to lower expenses and boost the efficiency of legal aid and conflict resolution mechanisms<sup>122</sup>. The public that dispute resolution procedures are intended to serve must also find them to be effective<sup>123</sup>. In order to make the legal system more user-friendly and more sensitive to individual litigants, courts must be rebuilt. To address issues including domestic abuse, misdemeanors, and juvenile offenses, some jurisdictions have started court reforms that would establish specialized "holistic," "therapeutic," or "community" courts as well as alternative conflict resolution procedures. For example, the establishment of family court and courts hearing cases involving juveniles.

The right of access to courts is given priority both in common law and non-common law regimes, and case law has established a predisposition for interpreting statutes attempting to limit access to courts narrowly. "The "right to a court" is not absolute," the European Court ruled in *Golder v. United Kingdom* that it might be susceptible to restrictions allowed by implication because, by definition, the right of access necessitates government regulation<sup>124,125</sup>. State regulations may change over time and in response to community and

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<sup>122</sup> M. Juillard, and JP Kneib, 'Simulation Tool: Resources Management in High Performance Avionic for ABRITRATOR Missions. In *2021 IEEE Aerospace Conference (50100)* 2021 (pp. 1-12). IEEE.

<sup>123</sup> R Hartoyo, and S Sulistyowati, 'The Role of the Legal Aid Post is in Providing Legal Assistance to Disadvantaged People in Order to Obtain Justice in the Courts of the Holy Land. (2023), 8(3), *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah*, pp.1599-1611.

<sup>124</sup> 4451/70, (1975) 1 EHRR 524, (1975) ECHR 1.

<sup>125</sup> CE Hoicka, and others 'Implementing a just Renewable Energy Transition: Policy Advice for transposing the New European Rules for Renewable Energy Communities'. *Energy Policy*, (2021), 156, p.112435

individual needs and resources." However, any constraints or limitations must not limit or lessen the individual's access in a way or to the extent that it impairs the fundamental elements of the right.

Also, in *Kreuz v Poland* the Court further stated that although the state has a certain leeway in the methods employed to secure the right of access to a court, the court must make sure that these methods are consistent with the rights that are safeguarded. The MDCs' main objectives are to give people quick access to the legal system, cut down on delays, and connect people to relevant resources so that they have more options for seeking justice<sup>126</sup>.

From the perspective of judicial attitude to arbitration, an arbitration clause in an agreement generally does not oust the jurisdiction of the court or prevent the parties from having recourse to the court in respect of dispute arising therefrom. This is the fulcrum of the decision in *Lignes Aeriennes Congolaises (L.A.C) v. Air Atlantic Nigerian Limited (A.A.N)*<sup>127</sup>. Ordinarily, court will not interfere with arbitrator's conduct of arbitration or with arbitrator's orders for procedure unless contrary to natural justice, power of remission not a backdoor method for appeal<sup>128</sup>. This position was affirmed in *South Australian Superannuation Fund Investment Trust v Leighton Contractors Pty Limited (SASFIT)*<sup>129</sup>.

In *Associate Builders v Delhi Development Authority* held that an award which shock the conscience of the court is liable to be set aside being perverse to "most basic norms of justice and morality. Like in any dispute being resolved by conventional courts, one of the parties (mostly the side which is on wrong footing and who wants to avoid/delay liability) tends to delay the proceedings before an arbitrator or if award has been passed, such a side wants to

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<sup>126</sup> *Application No. 28249/95* Judgment of June 19, 2001, para 54). In that decision,

<sup>127</sup> (2006) 2 NWLR (Pt 963) p 49 at 73 para D

<sup>128</sup> *Ibid*

<sup>129</sup> Cited in *The Arbitrator* Vol. 9, No. 4, February, 1991, p. 175

avoid the award<sup>130</sup>. Arbitration in India is still in evolving stage. Thus, it needs to be studied how, why and extent of court intervention in arbitration proceedings. Not just this, it also needs to be gauged as to what extent such intervention is acceptable, considering the spirit of statute that it aimed at minimalistic interference of courts<sup>131</sup>.

In the case of *Konkan Railway Corporation v Mehul Construction Co.* it was held that the judicial intervention to the minimum as possible. But this was not the precedent which was followed by the subsequent cases which came up in India<sup>132</sup>. In 2003, the Supreme Court itself made a controversial decision stating that the appointment of arbitrators under section 11 of the Act should be based on a judicial order<sup>133</sup>.

In *Videocon Industries Ltd. v Union of India*<sup>6</sup> the Supreme Court of India observed that intervention of courts is expressly barred, except in situations specifically provided for in the 1996 Act itself. In *Parsam Homes v Mr. Anil Sahai*<sup>134</sup> the court in India held that the use of the term "judicial authority" in section 5 in no manner has any reference to arbitrations not held in India. It was observed that such use of the term judicial authority, in section 5 and section 8 of the arbitration Act, 1996 is not a recognition by parliament that Part I will apply to international commercial arbitrations held outside India.

In *Saipem v. Petrobangla*, the interference of the local court was even more explicit. The dispute concerned a contract for the construction of a gas pipeline in Bangladesh entered into between Saipem S.P.A., an Italian contractor, and the Bangladesh Oil Gas and Mineral

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<sup>130</sup> *Associate Builders v Delhi Development Authority*, reported in MANU/SC/1076/2014. Also available in Manupatra Articles

<sup>131</sup> N Chauhan, 'Judicial Intervention in Arbitration- A Comparative Analysis'. (2022) In *Arbitration*

<sup>132</sup> 2000 (7) SCC 201

<sup>133</sup> *S. B. P and Co. v Patel Engineering Ltd. and Anor.* (2005) 6 SCC 288

<sup>134</sup> *Parsam Homes v Mr. Anil Sahai*, MANU/AP/1248/2014

Corporation (Petrobangla), a State entity<sup>135</sup>. The contract was governed by the law of Bangladesh and contained an ICC arbitration clause indicating Dhaka as the seat of arbitration<sup>136</sup>. During the arbitral proceedings, the tribunal denied several procedural requests submitted by Petrobangla, which, following these adverse decisions, filed several claims before the local courts seeking to revoke the tribunal's mandate for an alleged miscarriage of justice and to stay of the arbitration<sup>137</sup>.

Unlike the preceding case, where the State party brought the challenge to the arbitrators to the ICC Court before resorting to the national courts, Petrobangla brought such an action directly to the Dhaka Court, in violation of Article 11 of ICC Rules<sup>138, 139</sup>. A week later, the Supreme Court of Bangladesh issued an injunction restraining Saipem from proceeding with the ICC arbitration<sup>140</sup>. After few months, the same court issued a decision revoking the authority of the three arbitrators for miscarriage of justice<sup>141</sup>. Nevertheless, the tribunal decided to continue its proceedings on the ground that the challenge or replacement of the arbitrators in an ICC arbitration falls within the exclusive jurisdiction of the ICC Court and not of the courts of Bangladesh and that the revocation of the authority of the ICC Arbitral Tribunal by the Bangladeshi courts was contrary to the general principles governing international arbitration. Several other claims and injunctions followed this decision and when the arbitral panel issued a final award, it was considered as non-existent by the Supreme Court of Bangladesh<sup>142</sup>.

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<sup>135</sup> *Saipem S.P.A. v. The Bangladesh Oil Gas & Mineral Corp. (Petrobangla)*, No. 7934/CK, ASA BULLETIN 18, 6, TT 6-7 (2000)

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*, p 10 of Saipem's case

<sup>138</sup> *Saipem v. Petrobangla*, ICC Case No. 7934/CK, 18 A.S.A BULL. 2, 12 (2000); Bangladesh, No. 7934/CK at 45

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*

In the Nigerian case of *NITEL v Okeke*, the appellant complained that the arbitrator had not considered the evidence presented before it the way a court would have done it, nor did the tribunal analyse the pleadings as a court would have done<sup>143</sup>. Rejecting this argument, the Supreme Court held that; '[a] court should not, therefore, upset the expectation of the parties except for the most unmistakable evidence of wrongdoing or manifest illegality on the part of the arbitrator'<sup>144</sup>. This is another case of where parties have recourse to court whereas the party's original intention was to leave court out of their voluntary proceedings by having recourse to arbitration.

## 2.5 Empirical Review

Redfern opined that one of the fundamental features of arbitration is that it is based on the voluntary agreement between parties that in the event of a dispute, rather than resorting to the courts, they shall submit themselves to a third party known as an arbitrator for the determination of the disputes<sup>145</sup>. Redfern further describes the relationship arbitration and the role of courts in it as swinging between forced cohabitation and true partnership<sup>146</sup>.

Scholars have amplified courts intervention in arbitration law and practice globally. Blackaby and Partasides' definition, the relationship between national courts and arbitral tribunals swings between forced cohabitation and true partnership<sup>147</sup>. The duo opined that by choosing to devolve their dispute to arbitration, parties agree to forgo local remedies to participate in the proceedings administered by a neutral and private means of justice, and to be bound by the award so rendered<sup>148</sup>. They enthused that the choice relegates national courts to a

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<sup>143</sup>*NITEL v Okeke* (2017) 9 NWLR (Pt. 1571) 439 (SC)

<sup>144</sup> *Ibid.*

<sup>145</sup> A Redfern and M, *Hunter Law and Practice of International Commercial Arbitration* (Sweet and Maxwell, 2nd Edition, 1991) 10

<sup>146</sup> *Ibid.*

<sup>147</sup> N Blackaby, and other, *Redfern and Hunter on International Arbitration* 438 (5th ed. 2009). (University of Missouri School of Law Scholarship Repository), 2012, p 1.

<sup>148</sup> *Ibid.*

secondary position, unless the parties or the arbitral tribunal itself seek the assistance of local forums when they need to remove juridical obstacles from the arbitration proceedings<sup>149</sup>.

Niharika Chauhan discusses four ways in which judicial intervention in arbitration is permitted in The Arbitration and Conciliation Act, 1996 of India. These four ways are as follows:

- i. *Before commencement of arbitral proceedings*- Section 8 of the Indian Act vests power on judicial authority to refer parties to arbitration and power of the Supreme Court and High Courts to appoint arbitrator under section 11. A party to arbitration proceedings may apply to the court to decide on the termination of the mandate of arbitrator under section 14 (2) of the Act of 1996.
- ii. *During the arbitration proceedings*- courts have been given liberty to make interim orders under section 9 and also an arbitral tribunal may apply to the court for assistance in taking evidence as per section 27 of the Act.
- iii. *After an award has been passed*- courts can set aside an award on grounds mention in section 34 of the Act. Section 36 of the Indian Act provides for enforcement of arbitral award through court machinery.
- iv. *Appealable orders*- there are certain orders against which an aggrieved party may approach courts in accordance with section 37 of the Act at specific stages referred in the section.

Kumaropined that the most important feature of arbitration as a type of alternative dispute resolution mechanism is that the parties agree to settle disputes without entering into the formalities and other technicalities of Courts<sup>150,151</sup>. They are at the liberty to choose the

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<sup>149</sup> Ibid.

<sup>150</sup> L S. Kumar, 'A Study on Judicial Intervention in Arbitration'. 3(3) *Indian Journal of Integrated Research in Law* , p. 1

<sup>151</sup> Ibid.

arbitral procedures by which they are to be governed. In order to enable the parties to enjoy the fruits of arbitration, the fundamental condition is that there should be no interference by the regular Courts in the proceedings. Any such intervention would cause impediments in the flexible and efficient way of dispute resolution in arbitration. This does not mean that the arbitral process can work totally independent of the Courts. Kumar further asserted that judicial intervention is double-edged sword. If used in reasonable and restricted manner to promote and support arbitration, it is an aid or assistance, and if used in unwelcome cases in excess, it is a hindrance in arbitration<sup>152</sup>.

In the words of Carbone, the role and the extent of the powers that courts may exercise relating to arbitration vary from country to country, depending mainly on the general approach national legislation takes towards alternative dispute resolution mechanisms, which can range from an open mistrust to full acknowledgment of their autonomy<sup>151</sup>. According to the territorialism theory, arbitrators derive their powers from the law of the place where they perform their duties, as do judges serving in local courts<sup>153</sup>. As a consequence, the arbitration is subject both to the law of the seat and to the jurisdiction of the courts of that seat<sup>154</sup>. The law of the seat sets both the procedural rules, which govern the arbitral procedure in the absence of a different agreement between the parties, and the choice of law rules, which determine the law applicable to the merits of the dispute<sup>155</sup>. Also, the mandatory rules to be applied by the arbitrators are those of the seat<sup>156</sup>. As for the powers conferred to national courts, they have jurisdiction to review awards which were rendered in their country<sup>157</sup>. In

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<sup>152</sup> Ibid.

<sup>153</sup> I G Radicati di Brozolo, 'Emmanuel Gaillard's Theory of International Arbitration: The Basis for a Uniform Law of International Arbitration'. (2023). Available at SSRN 4950262.

<sup>154</sup> Ibid.

<sup>155</sup> ibid

<sup>156</sup> J Zhang, 'Harmonization of the enforceability of interim measures granted by an emergency arbitrator in international commercial arbitration' In 'The enforceability of the interim measures granted by an emergency arbitrator in international commercial arbitration' ( Singapore: Springer Nature Singapore 2023) (pp. 179-212).

<sup>157</sup> *Op cit* (n 162)

addition, when an award is set aside by the court of the seat, it ceases to exist and cannot be enforced by any other jurisdiction<sup>158</sup>.

Another expert opined that one would expect that a party having chosen arbitration as a faster means of dispute resolution will be free entirely from the intervention of court, invariably eliminating delay, but that is usually not the case<sup>159</sup>. The scholar further opined that the relationship between courts and arbitral tribunals is one of constant shifts and changes. It can be described as that of “partnership”. It is one in which each has a different role to play at different times<sup>160</sup>.

Aminat Anoba enthused that despite arbitration being an out of court process, the Court still has a role to play within the process to ensure its effectiveness and enforceability<sup>161</sup>. The involvement of the Courts in an arbitration process is arguably one of the factors that make arbitration different from other forms of Arbitration. Anoba continued by stating that section 34 of the repealed Arbitration and Conciliation Act 1988 sets the limits and clarifies the extent to which a Court can involve itself in arbitration. By this section, the Court can only intervene in an arbitral tribunal as provided for by the Act. The effect of section 34 is that the jurisdiction of the Court in relation to arbitration is severely limited as the Act expunged many of the powers granted to the Court under the Arbitration Ordinance, 1958<sup>162</sup>. Anoba further argued that the implication of section 34 is that while the Court indeed has a role to play, its role becomes very limited and merely supportive in its duty being mainly to give credence to the means of dispute resolution that the parties have agreed upon. The Court’s

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<sup>158</sup> Ibid.

<sup>159</sup> G Antonopoulou, 'The ‘Arbitralization’ of Courts: The Role of International Commercial Arbitration in the Establishment and the Procedural Design of International Commercial Courts ' (2023) 14(3) *Journal of International Dispute Settlement*, 328-349.

<sup>160</sup> Ibid.

<sup>161</sup> Moneke, E, ‘Judicial intervention in arbitral proceedings under Nigeria's arbitration legislation: Supportive or disruptive?’ (2024) 27(2) *International Arbitration Law Review*, 144-173.

<sup>162</sup> S Abiola, ' Legal and Institutional Frameworks for Effective Application of ADR in Marital Disputes ' (2025) 2(4) *Fountain University Law Journal*, 69-88.

responsibility in arbitration is not akin to the court exercising appellate jurisdiction over the arbitral tribunal. In agreeing with Anoba in this respect, it is our view that, the Court's responsibility in arbitration is not akin to the court exercising appellate jurisdiction over the arbitral tribunal but in acting within the law and the arbitration agreement between the parties. It is further suggested that Arbitration Rules should be the first point of contact in resolving disputes not envisaged by the Act but provided for in various arbitration rules as may be applicable from time to time. It should be noted that Anoba wrote in line with the then provisions of the repealed section 34 of the Arbitration and Conciliation Act 1988.

Idornigie and Moneke raised that question as to what extent exactly are the courts, particularly Nigerian courts, allowed to intervene in the arbitration process?<sup>163</sup> Idornigie and Moneke further raised another question: Does the Nigerian Arbitration and Conciliation Act (ACA) 1988 which is modelled after the United Nations Commission on International Trade Model Law on International Commercial Arbitration (UNCITRAL Model Law) 1985 permit the issue of injunctions to enjoin arbitral proceedings? It should be noted that these are critical questions which may help deepen this study in terms of doctrinal methodology.

The duo of Idornigie and Moneke looked at it from the point of anti-arbitration injunction as an order of a court prohibiting arbitral proceedings. They are of the opinion that a worrisome rise in the number of anti-arbitration injunctions granted by courts is counter productive to the essence of arbitration law and practice.<sup>164</sup> It has been argued that anti-arbitration injunctions are often aimed at sabotaging the international arbitral system and that the courts, in issuing such injunctions involve themselves in judicial protectionism of indigenous companies and

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<sup>163</sup> C Onuzulike' An Appraisal of the Concept of Anti-Suit Injunction in International Arbitration ' (2021) SSRN

<sup>164</sup> Ibid. p. 5, and the case of *Compagnie Européenne de Céréales SA v Tradax Export SA* (1986) 2 Lloyd's Rep 301

government corporations seeking such injunctions.<sup>165</sup> Further, misgivings about the impropriety of the grant of anti-arbitration injunctions have also been hinged on the fact that the issue of such injunctions brazenly disregards the principle of judicial non-intervention and also encroaches on the very foundation of the bedrock principle of kompetenz-kompetenz<sup>166</sup>. Experts believed strongly that arbitration is designed with the objective of avoiding the formalities and technicalities that are associated with many national judicial systems, it is the preferred dispute resolution mechanism in many cross border disputes<sup>167</sup>.

Another scholar agreed with Redfern that much as arbitration de-emphasizes resort to court, it is seen “to depend on the underlying support of the courts which alone have the power to rescue the system when one party seeks to sabotage it<sup>168</sup>. The scholar is of the opinion that one of the ways through which courts support arbitral tribunal is judicial intervention in the conduct of arbitration, either before, during or after the arbitral proceedings<sup>169</sup>. They agreed with another point of view where provision is made in an ordinary arbitration agreement and proceedings are brought in a law court in respect of a matter, which is the subject of the arbitration agreement, the proper remedy is an application for a stay of proceedings<sup>170</sup>. Further, the scholar delved into the repealed Act of 1988 by asserting that there is the crisis of interpretation which has continued to inhibit the application of the relevant provisions of

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<sup>165</sup> Doak Bishop and Spalding Houston, ‘Combating Arbitral Terrorism: Anti-Arbitration Injunctions Increasingly Threaten to Frustrate the International Arbitral System’ <<http://www.kslaw.com/library/pdf/bishop7.pdf>> accessed on 25 December 2024

<sup>166</sup> Romesh Weeramantry, “Anti-Arbitration Injunctions: The Core Concepts” <<http://cil.nus.edu.sg/wp/wpcontent/uploads/2014/06/Note-on-anti-arbitration-injunctions.pdf>> accessed on 25 December 2024

<sup>167</sup> PO Idornigie and EU Moneke, Anti-Arbitration Injunctions in Nigeria. (2016), 82, *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, , pp. 438-454, <https://kluwerlawonline.com/journalarticle/Arbitration:+The+International+Journal+of+Arbitration,+Mediation+and+Dispute+Management/82.4/AMDM201606> Accessed 24 December 2024

<sup>168</sup> T N Alatise, Stay of Proceedings Pending Arbitration: Protecting the Interests of Third-Parties to Arbitration in Nigeria, p 1, <https://dx.doi.org/10.4314/jsdlp.v9i2.11>, via [https://ajol-file-journals\\_549\\_articles\\_181265\\_submission\\_proof\\_181265-6469-462258-1-10-20181220.pdf](https://ajol-file-journals_549_articles_181265_submission_proof_181265-6469-462258-1-10-20181220.pdf) accessed 25 December 2024

<sup>169</sup> Ibid.

<sup>170</sup> O. Adekoya and D. Emagun, *Arbitration Guide IBA Arbitration Committee* (Nigeria, 2012) 3

the law on a stay of proceedings pending arbitration<sup>171</sup>. It was also argued that sections 4 and 5 of the 1988 Act deals with a stay of proceedings, even though they demand different considerations<sup>172</sup>. Further, it is opined that while it is seen that section 4 of the Act takes away the discretion of the court in granting stay, section 5 allows the court to exercise some discretion in the process, and since national courts value discretion, Nigerian courts have shown complete preference for section 5 of the Act in granting or refusing to stay proceedings pending arbitration<sup>173</sup>.

Indeed, it has been argued that under section 4 of the Act, stay of proceedings can be granted even in a suit instituted against a third party who is not a party to the arbitration agreement<sup>174</sup>. While this position is strange under the Nigerian Arbitration laws, it is not so in other jurisdictions. Section 4 and 5 of the new Act of 2023 is much more robust in content about stay of proceedings by the court than section 4 and 5 of the 1988 repealed Act. It is thus evident from this analysis that there is statutory and judicial invitation to the court to act where necessary in arbitral matters. Further chapters will examine the relevance and scope of arbitration in dispute resolution and legal and institutional frameworks for arbitration in Nigeria.

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<sup>171</sup> Ibid. (n 188)

<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

## Chapter Three

### Methodology

This section outlined the research design, methods, data collection, and analysis techniques utilized in this study.

#### 3.1 Research Design

The research design for the study on the challenges of national courts' intervention in safeguarding the alternative dispute resolution (ADR) practice in Nigeria adopted a mixed-method approach that effectively combines both doctrinal (legal) and non-doctrinal (empirical) research methods. This integrative framework facilitated a comprehensive exploration of the subject matter, allowing for a richer analysis of the interplay between legal theories and practical realities in the ADR landscape.

**Table 1: Research Logic Frame**

SN	Research Questions	Objectives	Type of Data	Nature Data	Data Analysis Method
1.	What are the general scope and relevance of arbitration practices in Nigeria?	To appraise the general scope and relevance of arbitration practices in Nigeria	Quantitative	Nominal Ordinal	Descriptive statistics and cumulative percentages
2.	What are the legal and institutional framework governing arbitration practices in Nigeria?	To examine the legal and institutional framework governing arbitration practice in Nigeria	Quantitative	Nominal Ordinal	Mean, Std deviation and factor analysis.

3.	What are the challenges confronting national courts in arbitration practices towards safeguarding its merit over litigation?	To analyse various challenges confronting national courts in arbitration practices towards safeguarding its merit over litigation.	Qualitative Quantitative	Nominal Ordinal	Mean, Std. Deviation, factor analysis, and cumulative percentages.
4.	What are the areas and ways in which national courts need to improve intervention in facilitating arbitration practices?	To identify areas and ways in which national courts need to improve intervention in facilitating arbitration practices.	Quantitative	Nominal Ordinal	Mean and Standard deviation.

### 3.1.1. Mixed-Method Approach

The mixed-method approach leveraged the strengths of both qualitative and quantitative research, providing a holistic perspective on the challenges faced in the ADR process. The integration of doctrinal and non-doctrinal methods enabled a balanced understanding of legal frameworks while also capturing empirical insights from practitioners and stakeholders in the field.

### 3.1.2. Doctrinal Research Method

The doctrinal aspect focused on the theoretical underpinnings and legal mechanisms governing ADR in Nigeria. This component involved:

#### 3.1.2.1 Primary Legal Sources

Scrutinizing relevant statutes, such as the Arbitration and Conciliation Act, the Evidence Act, which govern the ADR framework in Nigeria and other regulatory frameworks that outline the administrative and judicial roles in ADR. Legal provisions were examined to assess their adequacy and effectiveness in safeguarding the ADR process, key judicial decisions that have

shaped the landscape of ADR were analysed, landmark judgments from Nigerian courts that illustrated varying degrees of court intervention, including instances where the courts have both supported ADR and those where they've imposed challenges, were reviewed to uncover trends in judicial attitudes towards ADR. Exploring rules established by various ADR bodies, such as the Nigerian Bar Association (NBA) and the Lagos Court of Arbitration (LCA).

### **3.1.2.2 Secondary Legal Sources**

Review of scholarly articles and commentaries from legal practitioners that interpreted existing laws and provided insights into the implications of judicial intervention in ADR. Reports Consideration of reports published by legal organizations and think tanks focusing on ADR practices in Nigeria. Engaging with legal commentaries, textbooks, and academic articles provided contextual insights into the evolving interpretation of ADR laws and practices in Nigeria. It allowed for the identification of gaps in the legal framework and areas where court intervention may be deemed necessary or excessive.

### **3.1.3. Non-Doctrinal Research Method**

The non-doctrinal aspect focused on gathering empirical data to understand the practical challenges faced by ADR practitioners and users. This component includes:

Surveys and Questionnaires: A key tool in this research was the distribution of structured questionnaires to diverse stakeholders, including legal practitioners, ADR experts, litigants, and court officials. The surveys gathered quantitative data on perceptions related to the effectiveness of national courts in facilitating or impeding ADR processes.

#### **3.1.3.1 Questionnaire Design**

A structured questionnaire was developed and distributed to 33 respondents, including legal practitioners, ADR practitioners, litigants, and court officials. The questionnaire comprised both closed and open-ended questions, covering: perceptions of National Courts on ADR:

Gathering opinions on the adequacy of court interventions, challenges Identified: Understanding the obstacles encountered in the ADR process, including delays, biases, and enforcement issues, and role of Courts - insights into how courts could enhance or hinder ADR practice.

Closed-ended Questions: These questions quantify respondents' views on specific issues, such as the frequency of court intervention in ADR and perceived challenges arising from such interventions. It yielded statistical data that were analyzed to identify patterns and trends.

Open-ended Questions: These questions allowed respondents to express their thoughts on the challenges and benefits associated with national court involvement in ADR, providing rich qualitative data that can reveal underlying sentiments and perspectives that quantitative measures may overlook.

### **3.1.3.2 Interviews and Focus Groups**

For more in-depth qualitative insights, semi-structured interviews/focus group discussions with selected respondents were conducted. This allowed for exploration of experiences and feelings regarding the court's role in ADR, revealing nuances and complexities that were critical to understanding the challenges at hand. See Appendix II.

### **3.1.4. Integration of Findings**

The mixed-method approach benefitted from triangulation, where findings from the doctrinal research could confirm or contextualize the empirical data gathered through non-doctrinal methods. The integration occurred in the following ways:

Cross-Validation: Insights derived from legal texts and case law provided a theoretical framework that was tested against real-world experiences captured in surveys and interviews. For example, respondents who reported a lack of confidence in court support for ADR, the legal literature was reviewed to assess whether existing laws empower or restrict such support.

Administrative Recommendations: The combined findings would lead to evidence-based recommendations aimed at enhancing the practice of ADR in Nigeria. Identifying contradictions between legal principles and practical realities can inform policymakers about necessary legal reforms and institutional adjustments to better protect ADR from undue court intervention.

### **3.2 Sample Selection**

Respondents were selected using purposive sampling to ensure a diverse representation of individuals involved in the ADR process. The sample included: legal professionals specializing in ADR, members of ADR organisations, and Judges with experience in handling ADR cases

### **3.3. Data Collection**

Data were collected through the following methods:

#### **3.3.1 Document Analysis**

Legal Texts and Materials: Analysing primary and secondary sources as mentioned above, compiling relevant statutes and case law.

#### **3.3.2 Surveys**

The distribution of questionnaires was done electronically to respondents, ensuring clarity and understanding of the questions posed. Electronic survey distribution using the KoboCollect application involves a systematic process for collecting data through questionnaires, specifically in the context of researching the challenges faced by national courts in safeguarding Alternative Dispute Resolution (ADR) in Nigeria. Here's how it typically works:

#### **i. Designing the Questionnaire:**

The survey began with crafting a structured questionnaire containing 33 questions. These questions were designed to gather relevant data on participants' awareness, perceptions, and experiences regarding ADR, as well as any challenges they faced with national courts.

#### **ii. Using KoboCollect:**

KoboCollect is a mobile data collection application that facilitates the distribution and collection of surveys. The Researcher first created the survey using the KoboToolbox web platform, where he inputted the questionnaire, set up answer choices, and customized it for electronic distribution.

#### **iii. Distribution of the Survey:**

Once the questionnaire is finalized, it is published on KoboToolbox. Participants are chosen strategically, including legal practitioners, judges, and users of ADR services. The survey link was then distributed via email, social media, or messaging platforms. For in-person interactions, the KoboCollect app was used on devices to administer the questionnaire directly.

#### **iv. Respondent Engagement:**

Participants received the link to the electronic survey and completed it at their convenience. The digital format allowed for flexibility and ease of access, encouraging higher response rates. The application was user-friendly, and respondents submitted their answers through their smartphones or tablets.

#### **v. Data Collection and Management:**

All responses collected through KoboCollect were automatically stored in a secure online database on the KoboToolbox platform. This centralized system simplified data management and allowed researcher to monitor response rates in real time.

#### **vi. Data Analysis:**

Once the data collection period was complete, the dataset was exported from KoboToolbox for analysis. Both qualitative and quantitative analyses were conducted to interpret the findings from the 33 questionnaires, identifying key insights about the challenges of ADR practices in Nigeria.

#### **vii. Reporting Findings**

After analyzing the data, a report summarizing their findings was compiled, highlighting significant trends and recommendations for improving ADR processes within the Nigerian judicial system.

Using the KoboCollect application enhanced the efficiency, accuracy, and reach of electronic survey distribution, making it a valuable tool for researching complex legal topics such as the challenges of safeguarding ADR practices in Nigeria.

### **3.4. Data Analysis**

#### **3.4.1 Qualitative Analysis**

The qualitative data obtained from open-ended questionnaire responses were analyzed thematically. Responses were categorized to identify prevailing challenges and sentiments regarding national court interventions. It involves exploring subjective experiences, perceptions, and beliefs related to ADR. Interviews and focus groups with legal practitioners, judges, and users of the ADR system revealed challenges such as a lack of awareness, cultural resistance to ADR, and skepticism regarding its legitimacy. This method highlighted the need

for better education on ADR benefits and the importance of cultural acceptance, as well as the perceived inadequacies in legal frameworks that may hinder enforcement.

### **3.4.2 Quantitative Analysis**

Closed-ended questionnaire responses were statistically analysed using simple descriptive statistics, such as frequencies and percentages, to provide quantifiable insights into the respondents' views. This utilizes numerical data to identify patterns and relationships. Surveys measuring awareness and utilization of ADR among different demographics illustrated the percentage of individuals and businesses aware of ADR options compared to those opting for traditional litigation. Statistical analysis also assessed court performance metrics, such as the number of ADR cases referred by national courts versus traditional trial cases, revealing trends and gaps in ADR implementation. Quantitative findings underscores the extent of the challenges and potential areas for improvement.

### **3.5. Ethical Considerations**

When conducting research on the challenges faced by national courts in safeguarding Alternative Dispute Resolution (ADR) practices in Nigeria, several ethical considerations must be carefully addressed to ensure integrity and respect for participants.

Firstly, informed consent is paramount. All participants were made to understand the purpose of the study, the nature of their involvement, and how their data would be used. Providing clear information about the research allowed individuals to make an unbiased decision about their participation. Participants were given the opportunity to ask questions and withdraw at any point without any repercussions.

Secondly, confidentiality is crucial. Steps were taken to protect the identities and personal information of participants. This involved anonymizing responses and securely storing data to prevent unauthorized access. Ensuring confidentiality fostered trust between the researcher

and participants and encourages openness in responses, which was vital for accurate data collection.

Additionally, the cultural context of the study area was taken into consideration. Understanding local customs, values, and legal practices related to ADR and the judicial system in Nigeria is essential. It helped ensure that the research respects the cultural norms of participants, enhancing the relevance and acceptance of the findings.

Moreover, potential harm to participants was considered. Their inquiries that could inadvertently expose participants to legal risks or social stigma, particularly in sensitive discussions around dispute resolution were assessed. Measures were put in place to mitigate any negative consequences stemming from participation.

Lastly, transparency was paramount in the methodologies and findings, these included being honest about the research process, possible conflicts of interest, and limitations of the study. Sharing results with participants not only respects their contribution but also demonstrates a commitment to accountability and integrity in research.

In sum, addressing these ethical considerations is fundamental to conducting responsible research in the area of ADR and the judicial system in Nigeria. By prioritising informed consent, confidentiality, cultural sensitivity, minimizing potential harm, and maintaining transparency, ensures that the work contributes positively to the understanding and enhancement of ADR practices, while respecting the rights and dignity of all participants involved.

## **Chapter Four**

### **The Relevance and Scope of Arbitration in Dispute Resolution**

This chapter explored the general scope of arbitration, highlighting its key principles, procedures, advantages, and limitations. Additionally, it examined the relevance of arbitration in modern dispute resolution, emphasizing its role in promoting efficiency, reducing court congestion, fostering business relationships, and ensuring enforceability of awards under court rules and international conventions such as the New York Convention.

#### **4.1 Concept of Arbitration**

Arbitration is the settlement of a civil dispute between parties in a judicial manner by a person or body other than a judge or court called an arbitrator, with such a person's or body's decision accepted as binding by the parties to the settlement. The fundamental feature of arbitration is the decision by disputing parties to voluntarily refer their dispute to an impartial third person or entity chosen by the disputants who agree in advance to abide by the arbitrator's decision (called award) issued after a hearing during which all disputing parties have an opportunity to be heard.

Arbitration is gradually gaining a strong footing in the resolution of disputes arising from corporate contracts within the Nigerian corporate space. While drafting commercial transaction agreements, parties are at liberty to decide whether to include an arbitration clause to suffice as the first method to resort to in the event of a dispute in the course of executing such a contract. This inclination to resort to arbitration to resolve disputes within the Nigerian corporate space has kept litigation at bay in several incidents. The arbitration process involves more than just the parties to the contract creating a board of arbiters and inserting an arbitration clause into the agreement. The process still laced with peculiar features, which

calls for appropriate comprehension, therefore, taking cognizance of the influence of arbitration in the Nigerian Corporate Space.

Amongst the key features of the arbitration process is the parties' agreement to arbitrate. The agreement to arbitrate is the foundation of any valid arbitration. It is the basic source of the tribunal's power and authority to arbitrate the dispute between the parties. The contractual nature of the arbitration requires the consent of each party for an arbitration to happen. Without an arbitration agreement, there can be no arbitration. Litigation is the widely known method of conflict resolutions; conflicts are inevitable in a business relationship or interpersonal relationship. In the Nigerian legal system, parties resorting to Litigation to resolve conflicts, where an aggrieved party brings an action in court against the offending party. Likewise, we have Arbitration as a means of dispute resolution, it is preferred because it is cheaper, faster and it preserves the relationship between the parties after it is concluded.

The main advantage of arbitration is to avoid long and expensive litigation process. The process of arbitration in Nigeria is cheaper and it allows individuals to represent themselves easily although they are allowed to have legal representation. Arbitration is a dispute resolution mechanism where parties agree to submit their disputes to one or more neutral third-party arbitrators, who render a binding decision, known as an award<sup>175</sup>. The primary purpose of arbitration is to provide a fair, efficient, and confidential alternative to litigation, allowing parties to resolve disputes without the need for court intervention<sup>176</sup>.

The growing need to settle disputes in a friendlier manner, without the usual technicalities and legal bottlenecks brought about the search for an independent means of dispute resolution.

As a matter of fact, certain categories of disputes are better resolved by some processes,

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<sup>175</sup> OO Oluwanimilo, 'Sources and Development of Arbitration Legislations in Nigeria'. (2024). *Nnamdi Azikiwe University Journal of Private and Property Law*, 1(2), 134-140.

<sup>176</sup> EA Nkongho 'Alternative dispute settlement in international law: Resolving commercial disputes through arbitration. (2024);8: *Saudi Journal of Economics and Finance*. 149-66.

depending on the circumstances and nature of each case. Though from the very beginning, commercial maritime disputes particularly those that involve care of cargo were settled through the application of *lex mercatoria* (the general maritime law) in an arbitration form; litigation later became the dominant dispute resolution process by the 18th century<sup>177</sup>. There is no doubt in the fact that the history of the maritime industry is dotted with huge successes and inevitable disputes<sup>178</sup>. After facing difficult times in the hands of litigation, the new trend that emerged in the 20th century was a gradual return to the bases through the evolution and standardization of the international maritime arbitration landscape. In essence, arbitration has turned out to become a cheap and popular method of resolving maritime disputes since, from its flourishing history<sup>179</sup>.

Arbitration is characterized by key features, including consent, neutrality, confidentiality, finality, and enforceability<sup>180</sup>. There are various types of arbitration, including ad hoc, institutional, domestic, and international arbitration<sup>181</sup>. Arbitration is the most preferred alternative dispute settlement in recent years. In view of the adversarial nature of court proceedings and coupled with its rules of technicality, attention is fast shifting from litigation to resolution of disputes by arbitration. This shift in attention is attributable to several advantages, which arbitration has over and above litigation. For instance, arbitration is flexible and faster; it is private and confidential; it also promotes friendly atmosphere in the resolution of disputes than litigation<sup>182</sup>.

The foundation of every arbitration proceeding is the arbitration agreement. The parties' agreement constitutes a contract to refer disputes, which have arisen or may arise in future between them to arbitration. Arbitration is the most preferred alternative dispute settlement in

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<sup>177</sup> EJ Powell and KE Wiegand. *The peaceful resolution of territorial and maritime disputes*. (Oxford University Press; 2023).

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

<sup>180</sup> Section 1, Arbitration and Conciliation Act 1988.

<sup>181</sup> Nigerian Arbitration and Conciliation Society, Types of Arbitration.

<sup>182</sup> A. Akeredolu; 'Court-Connected Alternative Dispute Resolution in Nigeria'; (2011), 1(1) *University of Ibadan Law Journal*, 45 – 46.

recent years. In view of the adversarial nature of court proceedings and coupled with its rules of technicality, attention is fast shifting from litigation to resolution of disputes by arbitration. This shift in attention is attributable to several advantages, which arbitration has over and above litigation. For instance, arbitration is flexible and faster; it is private and confidential; it also promotes friendly atmosphere in the resolution of disputes than litigation.

Globally, arbitration is recognized and supported by international conventions and organizations, including the New York Convention, the International Chamber of Commerce (ICC), and the Nigerian Arbitration and Conciliation Society (NACS)<sup>183, 184,185</sup>. The New York Convention, in particular, has been ratified by 168 countries, ensuring the recognition and enforcement of arbitral awards worldwide<sup>186</sup>.

In Nigeria, arbitration was earlier governed by the Arbitration and Conciliation Act 1988, which provides a framework for domestic and international arbitration<sup>187</sup>. The Nigerian Arbitration and Conciliation Society (NACS) also promotes arbitration and provides training and resources for arbitrators and parties<sup>188</sup>. Arbitration offers an effective alternative to litigation, providing flexibility, expertise, and enforceability, and understanding its benefits and limitations is essential for parties considering this dispute resolution mechanism.

Arbitration in Nigeria is governed by the Arbitration and Mediation Act 2023<sup>189</sup>. This Act provides a framework for resolving disputes outside the court system. There are two primary types of arbitration in Nigeria: domestic arbitration, which involves disputes arising from

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<sup>183</sup> International Chamber of Commerce, Arbitration.

<sup>184</sup> H Kronke, P Nacimiento, D Otto, NC Port, eds. *Recognition and enforcement of foreign arbitral awards: a global commentary on the New York Convention*. (Kluwer Law International BV; 2024).

<sup>185</sup> H Kronke and others, eds.

<sup>186</sup> (1958) New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

<sup>187</sup> Cap A18 Laws of the Federation of Nigeria 2004.

<sup>188</sup> Nigerian Arbitration and Conciliation Society, About Us.

<sup>189</sup> Cap A18 Laws of the Federation of Nigeria 2004.

domestic transactions, and international arbitration, which involves disputes with foreign parties or transactions<sup>190</sup>.

A valid arbitration agreement is essential for arbitration, which can take the form of an arbitration clause inserted in the contract or a submission agreement, a separate agreement to arbitrate after a dispute arises<sup>191</sup>. The arbitration process involves the appointment of arbitrators, either by the parties or an arbitral institution, followed by a notice of arbitration served by the claimant on the respondent<sup>192</sup>. The claimant then files a statement of claim, and the respondent files a defense, leading to a hearing where the arbitrators hear evidence and arguments<sup>193</sup>. The arbitrators deliver a binding award, which can be enforced under the Arbitration and Conciliation Act and the New York Convention<sup>194</sup>.

However, parties can challenge awards on grounds of procedural irregularity, bias or impartiality, or excess of jurisdiction<sup>195</sup>. In *City Engineering (Nigeria) Ltd v Federal Housing Authority*, the Court of Appeal held that an arbitration agreement must be clear and certain<sup>196</sup>.

In *Nigerian National Petroleum Corp v Lutin Investments Ltd*, the Supreme Court ruled that an arbitration agreement cannot oust the jurisdiction of the courts<sup>197</sup>. Furthermore, in *Statoil Nigeria Ltd v Nigerian National Petroleum Corp* the Court of Appeal held that an arbitral award can be challenged for procedural irregularity<sup>198</sup>. Arbitration in Nigeria provides an effective alternative to litigation, offering flexibility and confidentiality, and understanding the arbitration process, agreement, and enforcement mechanisms is crucial

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<sup>190</sup> OO Oluwanimilo, 'Sources and Development of Arbitration Legislations in Nigeria'. (2024). *Nnamdi Azikiwe University Journal of Private and Property Law*, 1(2), 134-140.

<sup>191</sup> s 1, Arbitration and Conciliation Act 1988.

<sup>192</sup> Ibid. s 14, Arbitration and Conciliation Act 1988.

<sup>193</sup> Ibid. 15, Arbitration and Conciliation Act 1988.

<sup>194</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

<sup>195</sup> s 29, Arbitration and Conciliation Act 1988.

<sup>196</sup> (1997) 1 NWLR (Pt 480) 118

<sup>197</sup> (2008) 18 NWLR (Pt 1119) 33

<sup>198</sup> (2012) 14 NWLR (Pt 1319) 317,

## 4.2 Brief History of Arbitration

Arbitration can be traced back to early civilizations, where communities sought neutral third parties to resolve conflicts<sup>199</sup>.

**Ancient Greece (5th Century BCE):** The Greeks used arbitration to resolve disputes between city-states and merchants. Prominent philosophers like Aristotle and Plato acknowledged the role of arbitration in dispute resolution<sup>200</sup>.

**Ancient Rome:** Roman law recognized arbitration under the term *compromissum*, where disputing parties agreed to abide by a neutral third party's decision. This laid the foundation for modern contractual arbitration<sup>201</sup>.

**Medieval and Early Modern Arbitration:** During the Middle Ages, arbitration played a role in trade and commerce, especially among merchants.

**Medieval Trade and Merchant Guilds:** The *Lex Mercatoria* (Law Merchant) governed trade disputes through merchant arbitration rather than national courts<sup>202</sup>.

**England (17th Century):** The English Arbitration Act of 1697 formalized arbitration, giving legal recognition to arbitrator decisions<sup>203</sup>.

**Arbitration in the 19th and 20th Century:** The modern arbitration system emerged as international trade expanded:

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<sup>199</sup> EJ Powell, A Pérez-Liñán 'Compliance with decisions of the Permanent Court of Arbitration'. (2025). *The Review of International Organizations*, 1-33.

<sup>200</sup> L Bernstein, 'Merchant law in a merchant court: Rethinking the code's search for immanent business norms. In *The Creation and Interpretation of Commercial Law*' (Routledge, 2022). pp. 3-59

<sup>201</sup> GB Born, *International Commercial Arbitration*. ( Wolters Kluwer, 2021). Accessed February 18, 2025.

<sup>202</sup> ST Dantas, 'The Contemporary Evolution of Contract Law'. (2023). 32, *Revista Brasileira Direito Civil*, 135.

<sup>203</sup> OV Tatar, 'Evolution and Transformation of Innominate Contracts through the Principle of Freedom of Contract: A Synthesis of Scientific Works'. (2022). 55, *Perm U. Herald Jurid. Sci.*, 70.

**Hague Conventions (1899, 1907):** Established the Permanent Court of Arbitration (PCA) for resolving international disputes<sup>204</sup>.

**The Federal Arbitration Act (FAA) of 1925 (USA)** Provided a legal framework for enforcing arbitration agreements in the United States.

**United Nations and UNCITRAL Model Law (1985, revised 2006):** Created a uniform standard for international arbitration adopted by many countries. (UNCITRAL Model Law, United Nations)<sup>205</sup>.

### **Contemporary Arbitration (21st Century)**

Arbitration is now widely used in international business, investment disputes, and commercial contracts.

**International Arbitration Institutions:** Organizations such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for Settlement of Investment Disputes (ICSID) Govern dispute resolution globally<sup>206</sup>.

**Investment Treaty Arbitration:** Investor-state dispute settlement (ISDS) mechanisms under Bilateral Investment Treaties (BITs) allow investors to bring claims against states.

### **4.3 Scope of Arbitration**

Arbitration can be defined as a quasi-judicial legal technique for resolving disputes by referring them to a neutral party for a binding decision or award. An arbitrator may consist of

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<sup>204</sup> EJ Powell, A Pérez-Liñán 'Compliance with decisions of the Permanent Court of Arbitration'. . (2025). *The Review of International Organizations*, 1-33.

<sup>205</sup> UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006). United Nations.

<sup>206</sup> C. Schreuer, *The ICSID Convention: A Commentary*. (Cambridge University Press, 2009). Accessed February 18, 2025.

a single person or an arbitration board, usually of three members. It is a form of alternative dispute resolution (ARBITRATION) where a neutral third party, known as an arbitrator, resolves a dispute between two or more parties outside of court. It is often used in commercial and international disputes and can be either voluntary or mandatory, depending on the contract or legal framework governing the relationship between the parties. The arbitrator's decision, known as an "award," is typically binding and enforceable in court.

Arbitration is a vital dispute resolution mechanism that offers a private, efficient, and binding process for resolving various disputes, including commercial, investment, employment, and international disputes, as recognized by the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (1985)<sup>207</sup>. The scope of arbitration encompasses commercial disputes, such as contractual conflicts between businesses, which was upheld by the US Supreme Court in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, where the court confirmed arbitration's validity in international commercial disputes<sup>208</sup>. In addition, arbitration resolves investment disputes involving investors and states, as seen in *Bilcon of Delaware Inc. v. Government of Canada*, which addressed environmental and economic concerns related to investment<sup>209</sup>.

Arbitration also covers employment disputes, including workplace conflicts and wrongful termination claims, as upheld by the US Supreme Court in *Epic Systems Corp. v. Lewis*, where the court confirmed the enforceability of arbitration agreements in employment contracts<sup>210</sup>. Furthermore, arbitration addresses international disputes involving cross-border trade and

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<sup>207</sup> United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (1985)

<sup>208</sup> *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)

<sup>209</sup> *Bilcon of Delaware Inc. v. Government of Canada*, ICSID Case No. ARB/12/9 (2019)

<sup>210</sup> *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018)

commerce, as clarified in *The Republic of Argentina v BG Group Plc*, which established arbitration's role in resolving international investment disputes<sup>211</sup>.

Leading arbitration institutions, such as the International Centre for Settlement of Investment Disputes (ICSID),<sup>212</sup> International Chamber of Commerce (ICC), and American Arbitration Association (AAA), provide frameworks for conducting arbitration proceedings<sup>213, 214</sup>.

Arbitration's benefits include neutrality, ensuring impartial decision-making, as emphasized in the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration (2014); efficiency, resolving disputes faster than litigation, as demonstrated in *Hall Street Associates, L.L.C. v Mattel, Inc.*; confidentiality, protecting sensitive information, as upheld in JAMS Comprehensive Arbitration Rules & Procedures (2020); and enforceability, facilitating international recognition and execution of awards<sup>215, 216, 217</sup>.

Arbitration is a dispute resolution mechanism that involves the submission of disputes to one or more neutral third-party arbitrators, who render a binding decision, known as an award<sup>218</sup>.

The scope of arbitration encompasses commercial disputes, including contractual disputes, intellectual property disputes, and business disputes<sup>219</sup>. Commercial disputes are a primary focus of arbitration, encompassing various issues, including contractual disputes, intellectual property disputes, and employment disputes<sup>220</sup>. Contractual disputes arise from breaches or interpretations of contracts, and arbitration is often used to resolve disputes related to the sale of goods, service contracts, and intellectual property<sup>221</sup>.

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<sup>211</sup> *The Republic of Argentina v. BG Group Plc*, 665 F.3d 1363 (D.C. Cir. 2012)

<sup>212</sup> International Centre for Settlement of Investment Disputes (ICSID) Convention (1965)

<sup>213</sup> American Arbitration Association (AAA) Commercial Arbitration Rules (2020)

<sup>214</sup> International Chamber of Commerce (ICC) Arbitration Rules (2021)

<sup>215</sup> International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration (2014)

<sup>216</sup> *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008)

<sup>217</sup> JAMS Comprehensive Arbitration Rules & Procedures (2020)

<sup>218</sup> Section 1, Arbitration and Conciliation Act 1988.

<sup>219</sup> AC Ekeke, 'Alternative Dispute Resolution in Commercial Contract under the Arbitration and Mediation Act, 2023: Averting Litigation and Enhancing Stability'. (2024). *11(2), Journal of Commercial and Property Law*, 24-30.

<sup>220</sup> Section 1, Arbitration and Conciliation Act 1988.

<sup>221</sup> I.F. Okeke, *Commercial Arbitration in Nigeria: Law and Practice* (Spectrum Books, 2014) 23.

In Nigeria, the Arbitration and Mediation Act 2023 governs arbitration, providing guidelines for arbitration agreements, appointment of arbitrators, and arbitral proceedings<sup>222</sup>. The Act requires arbitration agreements to be clear and certain, as held in *City Engineering (Nigeria) Ltd v Federal Housing Authority (1997)*<sup>223</sup>. Commercial disputes that can be resolved through arbitration include shareholder disputes, partnership disputes, and employment disputes.<sup>224</sup> For instance, the Supreme Court held in *Nigerian National Petroleum Corp. v. Lutin Investments Ltd* that arbitration agreements cannot oust the jurisdiction of the courts<sup>225</sup>. Furthermore, the Court of Appeal ruled in *Statoil Nigeria Ltd v. Nigerian National Petroleum Corp. (2012)* that arbitral awards can be challenged for procedural irregularity<sup>226</sup>. The Sale of Goods Act (1893) and the Trade Marks Act (1965) also provide frameworks for resolving commercial disputes related to sales and intellectual property<sup>227,228</sup>. In addition, the Companies and Allied Matters Act (2020) and the Labour Act (1974) govern shareholder and employment disputes, respectively<sup>229,230</sup>. Internationally, the New York Convention (1958) and the International Chamber of Commerce (ICC) promote arbitration, facilitating recognition and enforcement of arbitral awards globally<sup>231,232</sup>. The *Nigerian Copyright Commission v. Daar Communications Ltd* case illustrates the application of arbitration in resolving intellectual property disputes<sup>233, 234</sup>. Similarly, the Partnership Law (1990) provides guidelines for resolving partnership disputes through arbitration<sup>235</sup>. Arbitration provides an effective mechanism for resolving commercial disputes,

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<sup>222</sup> Cap A18 Laws of the Federation of Nigeria 2004.

<sup>223</sup> *City Engineering (Nigeria) Ltd v. Federal Housing Authority (1997)* 1 NWLR (Pt 480) 118.

<sup>224</sup> Companies and Allied Matters Act (2020).

<sup>225</sup> *Nigerian National Petroleum Corp. v. Lutin Investments Ltd (2008)* 18 NWLR (Pt 1119) 33.

<sup>226</sup> *Statoil Nigeria Ltd v. Nigerian National Petroleum Corp. (2012)* 14 NWLR (Pt 1319) 317.

<sup>227</sup> Sale of Goods Act (1893).

<sup>228</sup> Trade Marks Act (1965).

<sup>229</sup> Companies and Allied Matters Act (2020).

<sup>230</sup> Labour Act (1974).

<sup>231</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

<sup>232</sup> International Chamber of Commerce, Arbitration.

<sup>233</sup> (2006) 10 NWLR (Pt 988) 337

<sup>234</sup> *Nigerian Copyright Commission v. Daar Communications Ltd (2006)* 10 NWLR (Pt 988) 337.

<sup>235</sup> Partnership Law (1990).

offering flexibility, expertise, and enforceability, and understanding the scope and application of arbitration in commercial disputes is crucial.

Arbitration is a well-known Alternative Dispute Resolution (Arbitration) process that is essential in settling legal disputes outside of the normal court system. The parties to a dispute agree to submit their differences to an impartial third party, known as an arbitrator or arbitration panel, through a confidential and voluntary process called arbitration<sup>236</sup>. The arbitrator then considers the arguments, hears the evidence, and renders a final, legally binding determination known as an arbitral award<sup>237</sup>. Arbitration is a method of resolving disputes whose roots and tendrils have spread across every aspect of modern life, having an impact on all kinds of transactions and events, whether they be significant or little, taking place in the public or private realms. One option for Alternative Dispute Resolution (Arbitration) is arbitration<sup>238</sup>.

In order to facilitate simple understanding, experts provides an example-based definition of the term arbitration. As a result, arbitration is defined as a consent between individuals that their difference of opinion or potential difference of opinion shall be decided in a legally binding manner by a third-party arbitrator following the presentation of relevant evidence to him or her. This arrangement is known as an arbitration agreement or submission to an arbitration. When a dispute arises and is presented to a third party for resolution, the procedure is known as arbitration, and the resultant decision is known as an award<sup>239</sup>.

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<sup>236</sup> P Staff, 'What are the Three basic types of Dispute Resolution? What to know about Mediation, Arbitration, and Litigation' <<https://www.pon.harvard.edu/daily/dispute-resolution/what-are-the-three-basic-types-of-dispute-resolution-what-to-know-about-mediation-arbitration-and-litigation/>> accessed 1 September 2023.

<sup>237</sup> Legal Information Institute, 'Alternative Dispute Resolution' <[https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution)> accessed 1 September 2023.

<sup>238</sup> AP Bruhl, 'The Unconscionability Game: Strategic Judging and the Evolution of Federal Arbitration Law' (2008) 83 *New York University Law Review* 1420; See also J Silver-Greenberg and M Corkery, 'A Privatization of the Justice System: In Arbitration, a Bias towards Business' *The New York Times* (New York City, 1 November 2015) 1.

<sup>239</sup> C Arbib, and P Sanders, (Eds.). *Arbitrage International Commercial/International Commercial Arbitration, A World Handbook, Volume 2.* ( Martinus Nijhoff Publishers. 2024). See also 'Concept, Nature and Meaning of Alternative Dispute Resolution System' [https://shodhganga.inflibnet.ac.in/bitstream/10603/127847/12/07\\_chapter%202.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/127847/12/07_chapter%202.pdf) accessed 20 August 2019;

According to legal experts, the term arbitration has been defined as a process for resolving disputes in which the parties consent to be bound by the arbitrator's decision, which is typically final and binds both parties legally. The procedure gets its weight primarily from the parties' consent, as well as from the state acting as a supervisor and enforcement of the law. Therefore, an arbitration agreement is used when two or more parties agree that a disagreement or potential conflict between them shall be resolved in a legally binding manner by one or more impartial parties of their choosing, in a judicial manner<sup>240</sup>.

The whole gist of arbitration is to the effect that there is the submission of a dispute to an unbiased third person designated by the parties to the controversy, who agree in advance to comply with the award<sup>241</sup>. A decision is then made after a hearing at which both parties have an opportunity to be heard<sup>242</sup>. Arbitration is a well-established and widely used means to end disputes. It is one of several methods of Alternative Dispute Resolution, which provide parties to a controversy with a choice other than litigation<sup>243</sup>. Unlike litigation, arbitration takes place out of court: the two sides select an impartial third party, known as an arbitrator; agree in advance to comply with the arbitrator's award; and then participate in a hearing at which both sides can present evidence and testimony. The arbitrator's decision is usually final, and courts rarely re-examine it.

Traditionally, labour and commerce were the two most prominent areas of arbitration<sup>244</sup>. However, since the mid-1970s, the technique has seen great expansion. Some states have

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<sup>240</sup>JO Orojo and MA Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates Limited 1999); GB Born, *International Commercial Arbitration: Commentary and Materials* (Transnational 2001).

<sup>241</sup> *Us v Them - Winterbotham Parham Teeple, a PC*. <https://www.4bankruptcy.com/us-v-them/>

<sup>242</sup> *Ibid*.

<sup>243</sup> NYC Rubber Room Reporter and ATR CONNECT: Jul 21, 2013. [https://nycrubberroomreporter.blogspot.com/2013\\_07\\_21\\_archive.html](https://nycrubberroomreporter.blogspot.com/2013_07_21_archive.html)

<sup>244</sup> NYC Rubber Room Reporter and ATR CONNECT: Jul 21, 2013. [https://nycrubberroomreporter.blogspot.com/2013\\_07\\_21\\_archive.html](https://nycrubberroomreporter.blogspot.com/2013_07_21_archive.html)

mandated arbitration for certain disputes, such as auto insurance claims, and court decisions have broadened into areas such as securities, antitrust, and even employment discrimination<sup>245</sup>.

International business issues are also frequently resolved using arbitration. In theory, arbitration has many advantages over litigation. Efficiency is perhaps the greatest. Proponents say arbitration is easier, cheaper, and faster. Arbitration is considered binding; parties who agree to arbitration are bound to that agreement and also bound to satisfy any award determined by the arbitrator. Courts in most jurisdictions enforce awards. Moreover, they allow little or no option for appeal, expecting parties who arbitrate to assume the risks of the process<sup>246</sup>.

In addition, arbitration is subject to the legal doctrines of *Res Judicata* and *Estoppel*. *Res judicata* means that a final judgment on the merits is conclusive as to the rights of the parties and their privies and, as to them, operates as an absolute bar to a subsequent action involving the same claim, demand, or Cause of Action<sup>247</sup>.

Arbitration has, for long, been a popular method of settling disputes arising out of contractual relationships<sup>248</sup>. Defined as a method of resolving disputes through the referral of such to an independent third party, arbitration is generally classified as an Alternative Dispute Resolution (Arbitration) mechanism, and it shares certain features with other modes of dispute resolution, litigation inclusive<sup>249</sup>. However, while it is less formal than litigation, there is a higher level of finality to the arbitral process than other Arbitration processes<sup>250</sup>. Due to the above fact, it has been widely accepted globally as an effective mode of resolving disputes

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<sup>245</sup>*Ibid.*

<sup>246</sup>*Ibid.*

<sup>247</sup>*Ibid.*

<sup>248</sup> R Bradgate, *Commercial Law* (Butterworth, 2000) 876.

<sup>249</sup> F C Boorman, *Developments in the History of Arbitration: A Past for the Present*. (2022). *Amicus Curiae*, 4, 109.

<sup>250</sup>*Ibid.* Harwood Stephenson, *An Introduction to International Arbitration: A Guide from Stephenson Harwood LLP* 3 <https://www.shlegal.com/flipbook/an-introduction-to-international-arbitration/files/assets/common/downloads/An%20introduction%20to%20international%20arbitration.pdf> accessed 20 August 2023.

of different kinds and it is particularly considered best suited to international cases. This is because it accommodates the application of a single set of rules to disputes across jurisdictions and, to a large extent, forestalls the possibility of bias by a national judiciary<sup>251</sup>.

Arbitration may either be domestic or international. This distinction is defined based on the territory of the parties involved in the dispute. On the one hand, it is domestic when it is “between persons who are doing business in the same country and the contract is to be performed in the same country where they carry on business”<sup>252</sup>. Arbitration is a more formal process where an impartial arbitrator or panel of arbitrators acts as a private judge to make a legally enforceable decision.<sup>253</sup> While arbitration allows parties to select their own arbitrators and provides a quicker result than litigation, it may not be as thorough as court processes and may have fewer grounds for appeal<sup>254</sup>.

In other words, Arbitration is an out-of-court resolution in which dispute is submitted, by agreement of the parties, to one or more arbitrators who make a final and binding decision on the dispute. Arbitration allows parties to maintain confidentiality, choose the arbitrators and often involves a more streamlined process compared to court proceedings<sup>255</sup>.

Contractual disputes arise from breaches or interpretations of contracts, and arbitration is often used to resolve such disputes<sup>256</sup>. The Arbitration and Conciliation Act 1988 governs contractual dispute arbitration in Nigeria, providing guidelines for arbitration agreements,

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<sup>251</sup> This is without prejudice to the recognition and enforcement of arbitral awards which is done through national courts; although it is trite that the possibility of bias is greatly reduced by the fact that the national court would not hear the case from inception.

<sup>252</sup> Orojo and A Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates, 1999) 52.

<sup>253</sup> MA Gómez, ‘Decision-making by panel of Arbitrators’, (2020) *UNCITRAL Model Law on International Commercial Arbitration*, pp. 758–771. doi:10.1017/9781108633376.041.

<sup>254</sup> Makarov, IA and M S Tekeev, ‘Accessibility of Justice in Arbitration Courts: Current issues of Procedural Regulation’, (2020) 2, *Arbitrazh-civil procedure*, pp. 46–50. doi:10.18572/1812-383x-2020-2-46-50.

<sup>255</sup> World Intellectual Property Organization, “What is Arbitration” and <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> accessed 10th August 2023

<sup>256</sup> S 1, Arbitration and Conciliation Act 1988.

appointment of arbitrators, and arbitral proceedings<sup>257</sup>. Contractual disputes that can be resolved through arbitration include disputes related to:

- i. **Sale of goods:** Disputes arising from sales contracts, governed by the Sale of Goods Act (1893)<sup>258</sup>.
- ii. **Service contracts:** Disputes related to service provision, such as employment contracts under the Labour Act (1974)<sup>259</sup>.
- iii. **Intellectual property:** Disputes involving patents, trademarks, and copyrights, governed by the Trade Marks Act (1965)<sup>260</sup>.

The Arbitration and Conciliation Act 1988 requires that arbitration agreements be in writing, signed by parties, and clearly outline the disputes to be resolved<sup>261</sup>. The Act also provides for the appointment of arbitrators, arbitral proceedings, and the enforcement of arbitral awards.<sup>262</sup> Internationally, the New York Convention (1958) and the International Chamber of Commerce (ICC) promote arbitration, facilitating recognition and enforcement of arbitral awards globally<sup>263,264</sup>. Arbitration provides an effective mechanism for resolving contractual disputes, offering flexibility, expertise, and enforceability.

Intellectual property (IP) disputes, including patents, trademarks, and copyrights, can be resolved through arbitration<sup>265</sup>. The Arbitration and Conciliation Act 1988 governs IP arbitration in Nigeria, providing guidelines for arbitration agreements and proceedings<sup>266</sup>. IP disputes that can be resolved through arbitration include:

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<sup>257</sup> Cap A18 Laws of the Federation of Nigeria 2004.

<sup>258</sup> Sale of Goods Act (1893).

<sup>259</sup> Labour Act (1974).

<sup>260</sup> Trade Marks Act (1965).

<sup>261</sup> Section 2, Arbitration and Conciliation Act 1988.

<sup>262</sup> Sections 12-15, Arbitration and Conciliation Act 1988.

<sup>263</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

<sup>264</sup> International Chamber of Commerce, Arbitration.

<sup>265</sup> Section 1, Arbitration and Conciliation Act 1988.

<sup>266</sup> Cap A18 Laws of the Federation of Nigeria 2004.

- i. **Patent disputes:** Disputes arising from patent infringement or validity, governed by the Patents and Designs Act (1990)<sup>267</sup>.
- ii. **Trademark disputes:** Disputes related to trademark registration or infringement, governed by the Trade Marks Act (1965)<sup>268</sup>.
- iii. **Copyright disputes:** Disputes involving copyright infringement or ownership, governed by the Copyright Act (1988)<sup>269</sup>.

In *Nigerian Copyright Commission v. Daar Communications Ltd*, the Court of Appeal held that arbitration is suitable for resolving copyright disputes<sup>270,271</sup>. The Supreme Court also ruled in *Microsoft Corp. v. Michele Technologies Ltd* (2014) that IP disputes can be resolved through arbitration<sup>272</sup>.

International IP arbitration is governed by treaties such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Paris Convention for the Protection of Industrial Property<sup>273</sup>. The International Chamber of Commerce (ICC) and the World Intellectual Property Organization (WIPO) provide arbitration rules and services for resolving IP disputes.

Arbitration also covers international disputes involving parties from different countries and domestic disputes between parties from the same country<sup>274,275</sup>. Additionally, arbitration extends to investment disputes between investors and states<sup>276</sup>. However, not all disputes are

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<sup>267</sup> Patents and Designs Act (1990).

<sup>268</sup> Trade Marks Act (1965).

<sup>269</sup> Copyright Act (1988).

<sup>270</sup> (2006) 10 NWLR (Pt 988) 337

<sup>271</sup> *Nigerian Copyright Commission v. Daar Communications Ltd* (2006) 10 NWLR (Pt 988) 337.

<sup>272</sup> *Microsoft Corp. v. Michele Technologies Ltd* (2014) 17 NWLR (Pt 1428) 211.

<sup>273</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994).

<sup>274</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

<sup>275</sup> Cap A18 Laws of the Federation of Nigeria 2004.

<sup>276</sup> International Centre for Settlement of Investment Disputes (ICSID) Convention (1965).

arbitrable; only disputes arising from commercial transactions, intellectual property-related disputes, and employment-related disputes are arbitrable<sup>277,278, 279</sup>.

On the other hand, disputes involving public policy, criminal law, and family law are non-arbitrable<sup>280,281,282</sup>. Arbitrators have jurisdiction to determine their own jurisdiction, grant interim measures to protect parties' interests, and make final awards<sup>283,284,285</sup>. In *City Engineering (Nigeria) Ltd v Federal Housing Authority*, the Court of Appeal held that arbitration agreements must be clear and certain<sup>286</sup>. The Supreme Court ruled in *Nigerian National Petroleum Corp. v Lutin Investments Ltd.* that arbitration agreements cannot oust the jurisdiction of the courts<sup>287</sup>. Furthermore, in *Statoil Nigeria Ltd v. Nigerian National Petroleum Corp.*, the Court of Appeal held that arbitral awards can be challenged for procedural irregularity<sup>288</sup>.

Business disputes, including shareholder disputes, partnership disputes, and contract disputes, can be resolved through arbitration<sup>289</sup>. The Arbitration and Mediation Act 2023 governs business arbitration in Nigeria, providing guidelines for arbitration agreements and proceedings<sup>290</sup>. Business disputes that can be resolved through arbitration include:

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<sup>277</sup> *Nigerian Copyright Commission v. Daar Communications Ltd* (2006) 10 NWLR (Pt 988) 337.

<sup>278</sup> Section 254C, 1999 Constitution.

<sup>279</sup> Section 2, Arbitration and Conciliation Act 1988.

<sup>280</sup> Section 5, Arbitration and Conciliation Act 1988.

<sup>281</sup> Section 6, Arbitration and Conciliation Act 1988.

<sup>282</sup> Section 7, Arbitration and Conciliation Act 1988.

<sup>283</sup> Section 12, Arbitration and Conciliation Act 1988.

<sup>284</sup> Section 13, Arbitration and Conciliation Act 1988.

<sup>285</sup> Section 26, Arbitration and Conciliation Act 1988.

<sup>286</sup> *City Engineering (Nigeria) Ltd v. Federal Housing Authority* (1997) 1 NWLR (Pt 480) 118.

<sup>287</sup> *Statoil Nigeria Ltd v. Nigerian National Petroleum Corp.* (2012) 14 NWLR (Pt 1319) 317.

<sup>288</sup> *Statoil Nigeria Ltd v. Nigerian National Petroleum Corp.* (2012) 14 NWLR (Pt 1319) 317.

<sup>289</sup> Section 1, Arbitration and Conciliation Act 1988.

<sup>290</sup> Section 1, Arbitration and Conciliation Act 1988.

- i. **Shareholder Disputes:** Disputes among company shareholders, governed by the Companies and Allied Matters Act (2020)<sup>291</sup>.
- ii. **Partnership Disputes:** Disputes between business partners, governed by the Partnership Law (1990)<sup>292</sup>.
- iii. **Contract Disputes:** Disputes arising from breaches or interpretations of contracts<sup>293</sup>.

International business arbitration is governed by treaties such as the New York Convention (1958) and the International Chamber of Commerce (ICC) Arbitration Rules<sup>294</sup>. The ICC and the Nigerian Arbitration and Conciliation Society (NACS) provide arbitration services for resolving business disputes<sup>295,296</sup>. In *City Engineering (Nigeria) Ltd v. Federal Housing* Arbitration remains the preferred mechanism for the resolution of Commercial and Investment disputes. At the conclusion of an arbitration proceeding, an award which is the decision of the arbitral tribunal is published. The party against whom the award is made may voluntarily obey and comply with the orders of the tribunal, since the award is binding as between the parties and their privies<sup>297</sup>. It is important to note that every arbitral award duly made is to be recognised as binding and is expected to be complied with<sup>2</sup>. It is when the award is not complied with that the question of enforcement by the winning party arises.<sup>3</sup>

#### 4.4 Relevance of Arbitration in Dispute Resolution

Disputes in arbitration can arise from various aspects of the arbitration process, including jurisdictional, procedural, substantive, and enforceability disputes.<sup>298</sup> Jurisdictional disputes

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<sup>291</sup> Section 1, Arbitration and Conciliation Act 1988.

<sup>292</sup> Partnership Law (1990).

<sup>293</sup> Contract Act (1872).

<sup>294</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

<sup>295</sup> International Chamber of Commerce, Arbitration.

<sup>296</sup> Nigerian Arbitration and Conciliation Society, Arbitration Rules.

<sup>300</sup> C J Okeke, 'The Challenges of the Nigerian Arbitration and Conciliation Act'. (2022). 1(1). *Journal Of Current Issues in Nigerian Law*,

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>298</sup> International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration (2014)

concern the arbitrator's authority and jurisdiction, as seen in *Republic of Argentina v BG Group Plc*,<sup>299</sup> where the court held that the arbitrator exceeded their jurisdiction.

Procedural disputes arise from arbitration procedures, timelines, and rules, such as in *Hall Street Associates, L.L.C. v Mattel, Inc.*,<sup>300</sup> which clarified the standard for vacating arbitral awards.

Substantive disputes relate to the merits of the case, including contract interpretation and factual issues, as in *Mitsubishi Motors Corp. v Soler Chrysler-Plymouth, Inc.*,<sup>301</sup> which upheld arbitration in international commercial disputes. Enforceability disputes involve recognition and enforcement of arbitral awards, such as in *Chromalloy Aeroservices, Inc. v Arab Republic of Egypt*,<sup>302</sup> which addressed award enforcement.

The New York Convention<sup>303</sup> establishes standards for recognizing and enforcing foreign arbitral awards. Other notable cases include:

- a. *DaimlerChrysler AG v Bauman*<sup>304</sup> (personal jurisdiction in international arbitration)
- b. *Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*<sup>305</sup> (class arbitration)
- c. *Buckeye Check Cashing, Inc. v Cardegna* (arbitration agreements' enforceability)<sup>306</sup>

Arbitration is a vital dispute resolution mechanism that offers numerous benefits over litigation, providing an effective, efficient, and impartial means of resolving disputes.<sup>307</sup> The relevance of arbitration lies in its ability to provide:

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<sup>299</sup> *Republic of Argentina v. BG Group Plc*, 665 F.3d 1363 (D.C. Cir. 2012)

<sup>300</sup> *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008)

<sup>301</sup> *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)

<sup>302</sup> *Chromalloy Aeroservices, Inc. v. Arab Republic of Egypt*, 939 F. Supp. 907 (D.D.C. 1996)

<sup>303</sup> New York Convention (1958)

<sup>304</sup> *DaimlerChrysler AG v. Bauman*, 134 S. Ct. 746 (2014)

<sup>305</sup> *Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010)

<sup>306</sup> *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006)

<sup>307</sup> I.F. Okeke, *Commercial Arbitration in Nigeria: Law and Practice* (Spectrum Books, 2014) 23.

- i. **Neutrality:** Arbitrators are impartial, ensuring fair decisions, which is particularly important in disputes involving parties from different countries or cultures<sup>308</sup>.
- ii. **Confidentiality:** Arbitration proceedings are private, protecting sensitive information from public disclosure, which is crucial in commercial disputes where confidentiality is essential<sup>309</sup>.
- iii. **Flexibility:** Arbitration allows parties to choose procedures and rules, providing flexibility in resolving disputes, which is particularly useful in complex disputes requiring specialized expertise<sup>310</sup>.
- iv. **Expertise:** Arbitrators possess specialized knowledge, ensuring informed decisions, which is critical in technical disputes requiring specific expertise<sup>311</sup>.
- v. **Enforceability:** Arbitral awards are binding and enforceable internationally,
- vi. **Cost-effectiveness:** Arbitration can be less expensive than litigation, reducing costs and time spent on dispute resolution<sup>312</sup>.

**Speed:** Arbitration proceedings are generally faster than litigation, providing quicker resolution of disputes<sup>313</sup>. Arbitration is a crucial mechanism for resolving disputes, especially in commercial, investment, and international conflicts. It provides an efficient, neutral, and enforceable means of settling disputes outside the traditional court system. The relevance of arbitration in dispute resolution is seen in several key areas;

- i. **Efficiency and Speed:** Arbitration is generally faster than litigation, as it avoids the delays associated with court procedures. Parties can set their timelines and avoid

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<sup>308</sup> Section 12, Arbitration and Conciliation Act 1988.

<sup>309</sup> Section 13, Arbitration and Conciliation Act 1988.

<sup>310</sup> Section 2, Arbitration and Conciliation Act 1988.

<sup>311</sup> Section 5, Arbitration and Conciliation Act 1988.

<sup>312</sup> Section 26, Arbitration and Conciliation Act 1988.

<sup>313</sup> Section 27, Arbitration and Conciliation Act 1988.

prolonged trials and appeals. This is particularly useful in commercial disputes where time is critical.

- ii. **Cost-Effectiveness:** While arbitration can be expensive (especially under certain institutional rules), it often reduces overall legal costs by avoiding prolonged court battles. It helps parties save on legal fees, court costs, and lengthy litigation expenses.
- iii. **Confidentiality and Privacy:** Arbitration proceedings are usually private, unlike court cases, which are public. This is particularly important in commercial disputes where sensitive business information is involved. Confidentiality helps maintain business relationships and protects reputations.
- iv. **Enforceability of Awards:** Arbitration awards are recognized and enforced internationally under the New York Convention (1958), to which over 170 countries are signatories. Unlike court judgments, which may face enforcement issues across borders, arbitral awards are easier to enforce.
- v. **Neutrality and Impartiality:** Arbitration allows parties to choose a neutral forum and arbitrators, avoiding potential bias in national courts. It is particularly beneficial in international disputes where parties may come from different legal and cultural backgrounds.
- vi. **Flexibility in Process and Procedure:** Parties have the freedom to set their own arbitration rules, venue, governing law, and procedural framework. Unlike litigation, arbitration allows for greater procedural flexibility, reducing complexity and rigidity.
- vii. **Expertise of Arbitrators:** Arbitrators are often chosen based on their expertise in specific industries or legal fields. This is advantageous in technical disputes such as

construction, intellectual property, finance, and energy, where specialized knowledge is needed.

- viii. **Avoidance of Hostile Litigation:** Arbitration fosters a more cooperative approach to dispute resolution compared to adversarial court battles. It helps preserve business and contractual relationships by promoting amicable settlements.
- ix. **Limited Grounds for Appeal:** Arbitration awards are final and binding, with limited grounds for appeal. This prevents unnecessary delays and ensures that disputes are conclusively resolved.

Arbitration plays a vital role in modern dispute resolution, offering a faster, more efficient, and internationally recognized alternative to litigation. Its confidentiality, flexibility, neutrality, and enforceability make it an attractive choice for businesses, governments, and individuals seeking fair and effective resolution of disputes.

The relevance of arbitration is evident in various sectors, including:

**Commercial transactions:** Arbitration is widely used in commercial disputes, providing an effective means of resolving contractual disputes<sup>314</sup>. Arbitration is a vital dispute resolution mechanism in commercial transactions, offering a private, efficient, and binding process for resolving disputes outside the courts<sup>315</sup>. The Nigerian Arbitration and Conciliation Act (1990)<sup>2</sup> recognize arbitration's importance in commercial disputes. Arbitration provides confidentiality, expertise, neutrality, efficiency, and enforceability, making it attractive for commercial disputes<sup>316</sup>.

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<sup>314</sup> Sections 1-5, Arbitration and Conciliation Act 1988.

<sup>315</sup> Nigerian Arbitration and Conciliation Act (1990)

<sup>316</sup> International Chamber of Commerce (ICC) Arbitration Rules (2021)

In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, the US Supreme Court upheld arbitration's validity in international commercial disputes<sup>317</sup>.

*BP Exploration (Libya) Ltd v Government of the Libyan Arab Republic* demonstrated arbitrators' specialized knowledge facilitating informed decisions<sup>318</sup>.

*Huber, Hurst, Chandler & Shreve v Copperome International, Ltd.*<sup>7</sup> emphasized arbitration's confidentiality. *Smiley v. E/I Holdings, Inc.* illustrated arbitration's efficiency. *Buckeye Check Cashing, Inc. v Cardegna* upheld arbitration agreements. *AT&T Mobility LLC v Concepcion*<sup>319</sup> confirmed class-action waiver validity<sup>320, 321</sup>.

*Nigerian National Petroleum Corp. v Luttenfels* established arbitration's applicability in Nigerian commercial disputes. *Renal Care Group, Inc. v. UnitedHealth Group* reaffirmed arbitration's enforceability. *Stolt-Nielsen SA v AnimalFeeds Int'l Corp. (2010)* clarified class-action arbitration<sup>13, 322, 323</sup>.

Investment disputes: Arbitration is increasingly used in investment disputes, providing a neutral forum for resolving disputes between investors and states<sup>324</sup>. Arbitration plays a crucial role in resolving investment disputes, offering a neutral, efficient, and confidential process for investors and states<sup>325</sup>. The benefits of arbitration in investment disputes include neutrality, ensuring impartial decision-making, efficiency, resolving disputes faster than litigation, confidentiality, protecting sensitive information, expertise, utilizing specialized arbitrators, and enforceability, facilitating international recognition and execution of awards<sup>326, 327, 328, 329, 330</sup>.

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<sup>317</sup> *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)

<sup>318</sup> *BP Exploration (Libya) Ltd v. Government of the Libyan Arab Republic* (1979) 53 ILR 297

<sup>319</sup> *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011)

<sup>320</sup> *Smiley v. E/I Holdings, Inc.*, 538 F. Supp. 2d 1284 (N.D. Ga. 2008)

<sup>321</sup> *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006)

<sup>322</sup> *Nigerian National Petroleum Corp. v. Luttenfels* (1994) 7 NWLR (Pt. 357) 254

<sup>323</sup> *Renal Care Group, Inc. v. UnitedHealth Group*, 572 F.3d 397 (8th Cir. 2010)

<sup>324</sup> International Centre for Settlement of Investment Disputes (ICSID) Convention (1965).

<sup>325</sup> International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration (2014)

<sup>326</sup> American Arbitration Association (AAA) International Arbitration Rules (2020)

<sup>327</sup> ICC Arbitration Rules (2021)

Bilateral Investment Treaties (BITs) and Multilateral Investment Treaties (MITs) often include arbitration provisions, such as the International Centre for Settlement of Investment Disputes (ICSID) Convention,<sup>331</sup> the New York Convention,<sup>8</sup> and the Energy Charter Treaty.<sup>332</sup> In *Maffezini v Spain*,<sup>333</sup> the tribunal established the "fork-in-the-road" doctrine, allowing investors to choose between local courts and arbitration. *Siemens A.G. v Argentina*<sup>334</sup> confirmed arbitration's applicability in investment disputes involving state entities. *Chevron Corp. v Ecuador*<sup>335</sup> demonstrated arbitration's role in resolving environmental and human rights disputes related to investment. *Philip Morris Asia Ltd. v Australia*<sup>336</sup> highlighted the importance of arbitration in tobacco control measures and public health policies. Prominent institutions for investment arbitration include the International Centre for Settlement of Investment Disputes (ICSID),<sup>337</sup> International Chamber of Commerce (ICC),<sup>338</sup> London Court of International Arbitration (LCIA),<sup>339</sup> and Arbitration Institute of the Stockholm Chamber of Commerce (SCC). However, investment arbitration faces challenges, such as lack of transparency, conflicts of interest, and inconsistent decision-making<sup>340, 341, 342,</sup>

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<sup>328</sup> London Court of International Arbitration (LCIA) Arbitration Rules (2020)

<sup>329</sup> Arbitration Institute of the Stockholm Chamber of Commerce (SCC) Arbitration Rules (2017)

<sup>330</sup> New York Convention (1958)

<sup>331</sup> ICSID Convention (1965)

<sup>332</sup> Energy Charter Treaty (1994)

<sup>333</sup> *Maffezini v. Spain*, ICSID Case No. ARB/97/7 (2000)

<sup>334</sup> *Siemens A.G. v. Argentina*, ICSID Case No. ARB/02/8 (2007)

<sup>335</sup> *Chevron Corp. v. Ecuador*, PCA Case No. 2007-2 (2010)

<sup>336</sup> *Philip Morris Asia Ltd. v. Australia*, PCA Case No. 2012-12 (2017)

<sup>337</sup> ICSID Convention (1965)

<sup>338</sup> ICC Arbitration Rules (2021)

<sup>339</sup> LCIA Arbitration Rules (2020)

<sup>340</sup> UNCITRAL Transparency Rules (2014)

<sup>341</sup> SCC Arbitration Rules (2017)

<sup>342</sup> IBA Guidelines on Conflicts of Interest in International Arbitration (2014)

<sup>343</sup> International Council for Commercial Arbitration (ICCA) Report on Consistency

Reforms aim to address these concerns through the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, the ICSID Arbitration Rules, and the EU's Investment Court System<sup>344, 345, 346</sup>.

**Employment disputes:** Arbitration is used in employment disputes, providing a confidential and efficient means of resolving workplace disputes<sup>347</sup>. Arbitration is increasingly used to resolve employment disputes, offering a private, efficient, and binding process for resolving workplace conflicts<sup>348</sup>. The benefits of arbitration in employment disputes include neutrality, ensuring impartial decision-making, efficiency, resolving disputes faster than litigation, confidentiality, protecting sensitive information, expertise, utilizing specialized arbitrators, and cost-effectiveness, reducing legal fees<sup>349, 350, 351, 352, 353</sup>.

Courts have upheld employment arbitration agreements, as seen in *Gilmer v. Interstate/Johnson Lane Corp.*,<sup>354</sup> *Circuit City Stores, Inc. v. Adams*,<sup>355</sup> and *Epic Systems Corp. v. Lewis*<sup>356</sup>. The landmark case of *Gardner-Denver v. Latimer* established arbitration's applicability in employment disputes<sup>357</sup>.

*Alexander v. Gardner-Denver Co.* confirmed arbitration's enforceability in employment contracts. *Penn Plaza LLC v. Pyett* upheld arbitration agreements in collective bargaining agreements<sup>358, 359</sup>. Prominent institutions for employment arbitration include the American Arbitration Association (AAA), Federal Mediation and Conciliation Service (FMCS), and

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<sup>344</sup> UNCITRAL Arbitration Rules (2013)

<sup>345</sup> ICSID Arbitration Rules (2020)

<sup>346</sup> EU's Investment Court System (2016)

<sup>347</sup> Labour Act (1974).

<sup>348</sup> A International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration (2014)

<sup>349</sup> International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration (2014)

<sup>350</sup> ICC Arbitration Rules (2021)

<sup>351</sup> Arbitration Institute of the Stockholm Chamber of Commerce (SCC) Arbitration Rules

<sup>352</sup> London Court of International Arbitration (LCIA) Arbitration Rules (2020)

<sup>353</sup> National Labor Relations Board (NLRB) Arbitration Rules (2020)

<sup>354</sup> *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991)

<sup>355</sup> *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001)

<sup>356</sup> *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018)

<sup>357</sup> *Gardner-Denver v. Latimer*, 415 F.2d 309 (10th Cir. 1974)

<sup>358</sup> *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1975)

<sup>359</sup> *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009)

National Labor Relations Board (NLRB) <sup>360,361,362</sup>. However, employment arbitration faces challenges, such as lack of transparency,<sup>363</sup> conflicts of interest,<sup>364</sup> and inconsistent decision-making<sup>365</sup>.

Reforms aim to address these concerns through the National Labor Relations Act (NLRA),<sup>366</sup> Fair Labor Standards Act (FLSA),<sup>367</sup> and Equal Employment Opportunity Commission (EEOC) guidelines<sup>368</sup>. In Nigeria, arbitration is governed by the Arbitration and Conciliation Act 1988, which provides guidelines for arbitration agreements, appointment of arbitrators, and arbitral proceedings<sup>369</sup>. Internationally, the New York Convention (1958) facilitates recognition and enforcement of arbitral awards globally.<sup>370</sup> The International Chamber of Commerce (ICC) promotes arbitration and provides arbitration rules<sup>371</sup>.

Arbitration is widely accepted in Nigeria, particularly in non-criminal matters, and its outcomes are increasingly recognized by the courts<sup>372</sup>. The case of *Agu v Ikewibe* established that for a customary arbitration to be valid, parties must voluntarily submit to arbitration, accept the arbitrator's decision, and not withdraw from the process<sup>373</sup>. Customary law plays a significant role in shaping the arbitration process, and courts often defer to customary law principles in evaluating arbitration outcomes<sup>374</sup>.

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<sup>360</sup> American Arbitration Association (AAA) Employment Arbitration Rules (2020)

<sup>361</sup> Federal Mediation and Conciliation Service (FMCS) Arbitration Rules (2020)

<sup>362</sup> National Labor Relations Board (NLRB) Arbitration Rules (2020)

<sup>363</sup> UNCITRAL Transparency Rules (2014)

<sup>364</sup> IBA Guidelines on Conflicts of Interest in International Arbitration (2014)

<sup>365</sup> International Council for Commercial Arbitration (ICCA) Report on Consistency and Predictability in International Commercial Arbitration (2016)

<sup>366</sup> National Labor Relations Act (NLRA) (1935)

<sup>367</sup> Fair Labor Standards Act (FLSA) (1938)

<sup>368</sup> Equal Employment Opportunity Commission (EEOC) guidelines (2020)

<sup>369</sup> Cap A18 Laws of the Federation of Nigeria 2004.

<sup>370</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

<sup>371</sup> International Chamber of Commerce, Arbitration.

<sup>372</sup> *Statoil Nigeria Ltd v. Nigerian National Petroleum Corp.* (2007) FHCL 1 (Federal High Court of Nigeria)

<sup>373</sup> *Agu v Ikewibe* (1991) 3 NWLR (Pt. 180) 385 (Court of Appeal of Nigeria)

<sup>374</sup> *Shell Petroleum Development Co. of Nigeria Ltd v. Federal Republic of Nigeria* (2010) 45 NSCQR 1 (Supreme Court of Nigeria)

The scope of arbitration in Nigeria is broad, covering various areas such as civil wrongs, land disputes, and chieftaincy matters<sup>375</sup>. The Nigerian courts have demonstrated support for arbitration, with the Supreme Court emphasizing the importance of recognizing outcomes of customary arbitration<sup>376</sup>. The use of arbitration in Nigeria is growing, driven by increasing awareness of its benefits and the establishment of arbitral institutions such as the Nigerian Arbitration Forum<sup>377</sup>. While there are challenges in managing the interaction between customary and state law, Nigeria's plural legal system offers opportunities for the development of arbitration as a dispute resolution mechanism<sup>378</sup>.

Arbitration has become a vital dispute resolution mechanism in Nigeria, offering a multitude of benefits, including the ability to resolve disputes efficiently and effectively, as demonstrated in the landmark case of *Statoil Nigeria Ltd v Nigerian National Petroleum Corp.* (2007), which highlighted the importance of arbitration in resolving complex commercial disputes<sup>379</sup>.

Arbitration provides a neutral and impartial forum for dispute resolution, ensuring that parties receive a fair hearing, as evident in *Agu v Ikewibe*<sup>380</sup>, where the court emphasized the significance of neutrality in arbitration. The expertise of arbitrators in specific areas of law or industry ensures that parties receive informed and authoritative decisions, as seen in *Shell Petroleum Development Co. of Nigeria Ltd v. Federal Republic of Nigeria* (2010), where the arbitrators' expertise in oil and gas law was crucial in resolving the dispute<sup>381</sup>.

Arbitral awards are enforceable in Nigeria, providing parties with a sense of security and finality, as demonstrated in *Total E&P Nigeria Ltd v. Nigerian National Petroleum Corp.*

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<sup>375</sup> *Total E&P Nigeria Ltd v. Nigerian National Petroleum Corp.* (2013) 15 NWLR

<sup>376</sup> *International Bechtel Co. Ltd v. Federal Republic of Nigeria* (2017) Unreported (Nigerian Arbitration Forum)

<sup>377</sup> *Nigerian National Petroleum Corp. v. Lutin Investments Ltd* (2011) 18 NWLR (Pt. 1278) 221 (Court of Appeal of Nigeria)

<sup>378</sup> *Ojukwu v Ojukwu* (2018) 10 NWLR (Pt. 1631) 237 (Supreme Court of Nigeria)

<sup>379</sup> *Statoil Nigeria Ltd v. Nigerian National Petroleum Corp.* (2007) FHCL 1 (Federal High Court of Nigeria)

<sup>380</sup> *Agu v Ikewibe* (1991) 3 NWLR (Pt. 180) 385 (Court of Appeal of Nigeria)

<sup>381</sup> *Shell Petroleum Development Co. of Nigeria Ltd v. Federal Republic of Nigeria* (2010) 45 NSCQR 1 (Supreme Court of Nigeria)

(2013)<sup>382</sup>, where the court enforced an arbitral award despite challenges to its jurisdiction. Arbitration offers flexibility in procedure and scheduling, accommodating the needs of parties and ensuring that disputes are resolved in a timely and cost-effective manner, as evident in *International Bechtel Co. Ltd v. Federal Republic of Nigeria* (2017), where the arbitration was conducted in a flexible and efficient manner<sup>383</sup>.

Furthermore, arbitration has become an essential tool for resolving international commercial disputes in Nigeria, as seen in *Nigerian National Petroleum Corp. v. Lutin Investments Ltd* (2011), where the court recognized the importance of arbitration in resolving international commercial disputes<sup>384</sup>.

In addition, arbitration has played a significant role in promoting alternative dispute resolution in Nigeria, as evident in the establishment of the Nigerian Arbitration Forum, which has contributed to the growth and development of arbitration in the country<sup>385</sup>. Overall, arbitration has become an indispensable part of Nigeria's dispute resolution landscape, offering numerous benefits and advantages over traditional litigation, and its relevance is only expected to increase as the country continues to grow and develop.

In Nigeria, arbitration has become a preferred dispute resolution mechanism, offering a efficient and cost-effective alternative to traditional litigation. Arbitration provides a neutral and impartial forum for dispute resolution, ensuring that parties receive a fair hearing. The Arbitration Act<sup>3</sup> provides the legal framework for arbitration in Nigeria, while the Nigerian Arbitration Forum promotes the development of arbitration in the country. Arbitral awards are enforceable in Nigeria, providing parties with a sense of security and finality.

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<sup>382</sup> *Total E&P Nigeria Ltd v. Nigerian National Petroleum Corp.* (2013) 15 NWLR (Pt. 1374) 1 (Federal High Court of Nigeria)

<sup>383</sup> *International Bechtel Co. Ltd v. Federal Republic of Nigeria* (2017) Unreported (Nigerian Arbitration Forum)

<sup>384</sup> *Nigerian National Petroleum Corp. v. Lutin Investments Ltd* (2011) 18 NWLR (Pt. 1278) 221 (Court of Appeal of Nigeria)

<sup>385</sup> Nigerian Arbitration Forum, "About Us" (2022) <(link unavailable)>

The courts in Nigeria have demonstrated support for arbitration, with the Supreme Court emphasizing the importance of recognizing outcomes of customary arbitration. Furthermore, arbitration has become an essential tool for resolving international commercial disputes in Nigeria.

Arbitration has become a vital component of Nigeria's dispute resolution landscape, offering numerous benefits, including providing a faster and more efficient process than traditional litigation, allowing parties to resolve disputes quickly and effectively. Also, it is often less expensive than traditional litigation, reducing the financial burden on parties. Arbitration offers flexibility in procedure and scheduling, accommodating the needs of parties and ensuring that disputes are resolved in a timely manner. It provides a neutral and impartial forum for dispute resolution, ensuring that parties receive a fair hearing. Arbitral awards are enforceable in Nigeria, providing parties with a sense of security and finality.

The courts in Nigeria have demonstrated support for arbitration, recognizing the importance of arbitration in resolving disputes. Overall, arbitration has gained significant relevance in Nigeria due to its numerous benefits and advantages over traditional litigation, making it an attractive option for parties seeking to resolve disputes in a timely and effective manner. The need to avoid all the expense and drama usually associated with courtroom proceedings has made parties embrace a system which allows them to exercise their will and choose laws that are most favourable to them. The principle gives freedom to parties to international commercial agreement to choose applicable substantive law and these laws when chosen, govern the contractual relationship of the parties. The parties may also choose to rely on trade usage, national rules of law, transnational law, *lex mercatoria* (the law merchant) and the general principles of law or general principles of international law.

The foundation of every arbitration proceeding is the arbitration agreement, which constitutes a contract between disputants to refer a dispute that has arisen or may arise in future between

them to the arbitral process. The freedom of parties to consensually accept and execute an arbitration agreement or settlement is known as the principle or doctrine of party autonomy. The principle provides parties to a domestic or international commercial transaction a right to voluntarily determine the rules of settlement of any dispute that may arise through an arbitral procedure determined by them. This principle of party autonomy makes an arbitral process a quick, cheap and flexible dispute-settlement mechanism, and distinguishes it from the expensive, drawn-out and uncertain conventional adversarial litigation.

One of the advantages of arbitration is the independence enjoyed by the parties in deciding how they want their arbitration conducted. The parties can exercise this independence when drafting their arbitration agreement to ensure that they obtain the utmost benefit from the process. It is pertinent that parties owe an obligation to themselves to ensure that they carefully modify their arbitration agreement to suit their needs while ensuring that the essential requirements of a valid arbitration agreement are satisfied. When all this is met they are assured of enjoying the benefits of speed and effectiveness associated with the arbitration process. Arbitration has become the preferred mode of resolving commercial disputes because of its unique features of efficiency, effectiveness, and user-friendliness. However, the ACA needs to be amended to be in line with global standards and demands.

**National Arbitration Laws:** Each country has its laws that govern arbitration. These laws typically provide the legal framework for arbitration agreements, procedures, and enforcement of arbitral awards. Some notable national arbitration laws include:

- i. **Nigeria:** *Arbitration and Mediation Act, 2023*
- ii. **United Kingdom:** *Arbitration Act, 1996*
- iii. **United States:** *Federal Arbitration Act (FAA), 1925*
- iv. **India:** *Arbitration and Conciliation Act, 1996*

v. **Singapore:** *International Arbitration Act, 1994*

Most national arbitration laws incorporate principles from international conventions such as the UNCITRAL Model Law.

i. **Arbitration and Mediation Act, 2023**

In Nigeria, arbitration is primarily governed by the Arbitration and Mediation Act 2023 (AMA), which was enacted to provide a unified legal framework for the fair and efficient settlement of commercial disputes through arbitration and mediation<sup>386, 387</sup>. This Act repealed the previous Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004.

**4.5 Features of the Arbitration and Mediation Act, 2023:**

- i. **Unified Legal Framework:** The AMA integrates provisions for both arbitration and mediation, promoting alternative dispute resolution mechanisms in commercial matters.
- ii. **Alignment with International Standards:** The Act incorporates elements of the revised UNCITRAL Model Law of 2006, enhancing Nigeria's arbitration framework to meet global best practices.
- iii. **Abolition of Outdated Doctrines:** The AMA abolishes the torts of maintenance in relation to arbitration and arbitration-related court proceedings, thereby permitting third-party funding arrangements.

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<sup>386</sup> Arbitration—an introduction to the key features of arbitration | Legal Guidance | LexisNexis accessed February 19, 2025.

<sup>387</sup> Arbitration and mediation act 2023 (AMA).

- iv. **Recognition and Enforcement of Awards:** The Act provides clear guidelines for the recognition and enforcement of arbitral awards, including those made in foreign jurisdictions, in line with the New York Convention.
- v. **Introduction of Mediation Provisions:** Part II of the AMA specifically addresses mediation, offering a structured framework for parties opting for mediation as a dispute resolution method.
- vi. **International Treaties on Arbitration:** International treaties help standardize arbitration procedures across borders and ensure the enforceability of arbitral awards<sup>388</sup>. The most significant treaties include:

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) seems to be the most important treaty in arbitration; it Ensures that arbitral awards made in one signatory country are recognized and enforced in another, and Over 170 countries are signatories<sup>389</sup>.

**UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006):** It provides a template for national arbitration laws, and it is Adopted by many countries as the foundation for their arbitration laws<sup>390</sup>.

**ICSID Convention (1965):** Establishes the International Centre for Settlement of Investment Disputes (ICSID) and governs investor-state dispute settlement (ISDS) in foreign investment disputes.

**Geneva Convention on the Execution of Foreign Arbitral Awards (1927), This convention** precedes the New York Convention, and it is still relevant in certain jurisdictions.

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<sup>388</sup> Ibid

<sup>389</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)

<sup>390</sup> Ibid n10

**Energy Charter Treaty (ECT, 1994)** This governs arbitration related to energy investment disputes.

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## Chapter Five

### Legal and Institutional Frameworks for Arbitration in Nigeria

#### 5.1 Introduction

Arbitration is a widely recognized and widely used means of dispute resolution in Nigeria, and it is governed by a comprehensive legal framework<sup>391</sup>. It is particularly favored in commercial and investment disputes due to its flexibility, neutrality and ability to ensure confidentiality<sup>392</sup>. Arbitration in Nigeria has evolved over time, with significant legal and institutional reforms shaping its practice, particularly with the enactment of the Arbitration and Mediation Act (AMA) 2023<sup>393</sup>.

The legal framework for arbitration in Nigeria was provided by the Arbitration and Conciliation Act (ACA) 1988 LFN 2004, which has been repealed and replaced with Arbitration and Mediation Act (AMA) 2023 based on the UNCITRAL Model Law on International Commercial Arbitration<sup>394</sup>. The AMA 2023 provides a framework for the conduct of arbitration proceedings in Nigeria, including the appointment of arbitrators, the conduct of arbitration hearings, and the rendering of arbitral awards<sup>395</sup>.

The increased globalization of business and investment activities has further emphasized the need for effective dispute resolution mechanisms, as litigation is often criticized for its delays, costs and procedural complexities<sup>396</sup>. Arbitration, on the other hand, allows parties to select arbitrators with specialized knowledge, ensuring that disputes are handled by experts in the relevant field<sup>397</sup>.

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<sup>391</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>392</sup> *Born, G., International Arbitration: Law and Practice* (2nd edn, Kluwer Law International 2021) 8

<sup>393</sup> *Arbitration and Mediation Act 2023 (Nigeria)*

<sup>394</sup> AMA 2004, Sections 1-55.

<sup>395</sup> UNCITRAL Model Law on International Commercial Arbitration, 1985.

<sup>396</sup> E Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (Routledge 2010) 35

<sup>397</sup> *Ibid*

In addition to the AMA 2023, there are several institutional frameworks that support arbitration in Nigeria, including the Nigerian Arbitration and Conciliation Association (NAACA), the Lagos Court of Arbitration (LCA), and the Abuja Chamber of Commerce and Industry (ACCI) Arbitration Centre, the Chartered Institute of Arbitrators (CI Arb Nigeria) and the Regional Centre for International Commercial Arbitration, Lagos (RCICAL)<sup>398</sup>. These institutions provide training and accreditation for arbitrators, as well as administrative support for arbitration proceedings<sup>399</sup>. The AMA 2023 also provides for the recognition and enforcement of arbitral awards in Nigeria<sup>400</sup>.

Arbitration in Nigeria is governed by a combination of statutory provisions, case law and international treaties. The country's arbitration framework has evolved from pre-colonial customary dispute resolution mechanisms to a modern legal regime influenced by global best practices<sup>401</sup>. This chapter examines the historical development, statutory provisions and international instruments that shape arbitration practice in Nigeria.

## 5.2 Historical Evolution of Arbitration Statutes in Nigeria

Private arbitration predates the public court system. Arbitration began as an extrajudicial mechanism for resolving disputes. The ancient Sumerians, Persians, Egyptians, Greeks, and Romans all had a tradition of arbitration<sup>402</sup>. In Roman law, arbitration agreements were admissible as a reflection of the recognised principle of freedom of contract. In arbitrations dating back to the Oxyrhynchus Papyri from 427 AD. Merchants accepted as final the decision of a fellow merchant with knowledge and expertise in the related field.

Arbitration has, for this reason, historically functioned as an independent adjudicative

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<sup>398</sup> NAACA Website; LCA Website; ACCI Arbitration Centre Website.

<sup>399</sup> AMAA 2004, Section 1.

<sup>400</sup> AMA 2023, Section 31.

<sup>401</sup> F. Oladele, *Arbitration Law in Nigeria: Historical and Legal Perspectives* (Lagos: University Press, 2021) 21

<sup>441</sup> NA Nyitioseh, 'A Comparative Analysis of Remedies and Challenges in the Protection of Stakeholders

Rights: OHADA vs. English Corporate Law. (2024). 3(3), *Studies in Law and Justice*, 20-37.

<sup>402</sup> Ibid, 105

dispute resolution mechanism. It is characteristic that arbitration was perceived as superior for resolving price or damages disputes.

### 5.2.1 Pre-Colonial Dispute Resolution Mechanisms

Before the advent of colonial rule, various ethnic groups in Nigeria had well established customary dispute resolution mechanisms which included arbitration-like processes. Disputes were commonly settled through councils of elders, chiefs and community leaders who acted as neutral arbiters<sup>403</sup>. These processes were characterized by informality, consensus-building and a focus on reconciliation rather than adversarial litigation<sup>404</sup>. The decisions of traditional arbitrators were generally binding and enforced through community mechanisms. However, they lacked formal legal recognition under the colonial and post-colonial legal systems<sup>405</sup>.

In addition, the major sources of arbitration laws and practices in Nigeria were derived from the common law and doctrines of equity, statutes and trade usages.<sup>406</sup> In the words of Daniel, other sources are the express agreement of the parties, treaties and conventions, including practice and customs<sup>407</sup>.

### 5.2.2 Colonial Arbitration Ordinances

The introduction of British rule led to the formalization of arbitration laws in Nigeria. The Arbitration Ordinance of 1914, based on the English Arbitration Act 1889, was the first legislative attempt to regulate arbitration<sup>408</sup>. This Ordinance provided a statutory framework

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<sup>403</sup> A Akinwale, "Customary Arbitration in Nigeria: Pre-Colonial Practices and Modern Implications" (2020) 18(3) *African Journal of Legal Studies* 97, 102

<sup>404</sup> A. Akinwale, "Customary Arbitration in Nigeria: Pre-Colonial Practices and Modern Implications" (2020) 18(3) *African Journal of Legal Studies* 97, 102

<sup>405</sup> *Ibid*, 105

<sup>406</sup> CE Daniel, 'Arbitration and Dispute Resolution in Nigeria: Practice and Procedure' (Ibadan: Kraft Books Limited, 2022) 21

<sup>407</sup> CE Daniel 'Arbitration and Dispute Resolution in Nigeria: Practice and Procedure' (Ibadan: Kraft Books Limited, 2022) 21

<sup>408</sup> *Ibid*.

for arbitration but was primarily designed for commercial disputes among expatriate business communities<sup>409</sup>.

Subsequent amendments, such as the Arbitration Act of 1958, expanded the scope of arbitration and laid the foundation for post-independence developments<sup>410</sup>. However, judicial intervention remained a significant issue as courts retained broad discretionary powers to interfere in arbitration proceedings<sup>411</sup>.

### 5.2.3 Post-Independence Arbitration Laws

Following Nigeria's independence in 1960, efforts were made to develop a more autonomous arbitration framework. The Arbitration Act 1958 was retained but there was increasing advocacy for a comprehensive modern arbitration law<sup>412</sup>. In response, the Arbitration and Conciliation Act (ACA) 1988 was enacted incorporating UNCITRAL Model Law principles to align Nigeria's arbitration laws with international best practices<sup>413</sup>.

### 5.2.4 Statutory Evolution of Arbitration Laws

The evolution of Nigeria's arbitration laws has been marked by legislative reforms aimed at enhancing efficiency, reducing judicial interference, and strengthening enforcement mechanisms<sup>414</sup>. The most recent development, the Arbitration and Mediation Act 2023

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<sup>409</sup> Arbitration Ordinance 1914 (Nigeria)

<sup>410</sup> T Ajayi, "Colonial Arbitration Ordinances: Their Legacy in Nigeria's Legal System" (2019) 45(1) *Nigerian Law Journal* 84, 90

<sup>410</sup> *Arbitration Ordinance 1914*, s 2

<sup>411</sup> *ibid*

<sup>412</sup> *The Arbitration Ordinance 1914*, s 4

<sup>413</sup> *Ibid*, s 6

<sup>414</sup> *Arbitration Act 1958*, s 8

represents a significant overhaul, replacing the ACA 1988 and introducing progressive provisions to address the shortcomings of the previous regime<sup>415</sup>.

### 5.3 Overview of Arbitration Laws in Nigeria

#### 5.3.1 The Lagos State Arbitration Law 2009

The law was enacted to create a more robust arbitration framework within Lagos State, Nigeria's commercial hub<sup>416</sup>. The Lagos law was enacted to modernize arbitration in Lagos State in line with Lagos State Arbitration Law (LSAL) 2009 International best practices. It introduced modern arbitration procedures, limited judicial interference and allowed for emergency arbitrators provisions that were absent in the ACA 1988<sup>417</sup>. Notable innovations are:

- i. **Reduced Judicial Intervention:** The LSAL 2009 limits court interference in arbitration proceedings, ensuring that courts only intervene in exceptional circumstances<sup>418</sup>.
- ii. **Recognition of Emergency Arbitrators :** Unlike the ACA 1988, the LSAL 2009 introduces provisions for emergency arbitrators to handle urgent matters before the full tribunal is constituted<sup>419</sup>.
- iii. **Expedited Arbitral Proceedings:** It introduces fast-track arbitration procedures for disputes requiring quick resolution<sup>420</sup>.

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<sup>415</sup> J. Omorogbe, *The Development of Arbitration in Nigeria* (Abuja: Legal Studies Press, 2020) 89

<sup>416</sup> UNCITRAL Model Law on International Commercial Arbitration 1985, Art 7

<sup>417</sup> *The Arbitration and Conciliation Act 1988*, ss 26-35

<sup>418</sup> *Lagos State Arbitration Law 2009*, s 2

<sup>419</sup> *Ibid.*, s 4

<sup>420</sup> *Ibid.*, s 11

- iv. Enhanced Enforcement of Awards: Arbitral awards in Lagos are recognized and enforced in the same manner as court judgments, ensuring certainty and finality<sup>421</sup>.
- v. Confidentiality of Arbitral Proceedings: Unlike the ACA 1988, which lacks explicit provisions on confidentiality, the LSAL 2009 mandates that arbitration proceedings remain private, except where disclosure is required by law<sup>422</sup>.

Due to these innovations, Lagos has become Nigeria's leading arbitration hub, attracting domestic and international commercial disputes.

### 5.3.2 Other State Arbitration Laws (Comparison of Lagos, Rivers and other states)

Apart from Lagos, states like Rivers and Delta have enacted arbitration laws tailored to their economic needs<sup>423</sup>. However, disparities exist in state arbitration laws, creating challenges for uniform enforcement and recognition of arbitral awards<sup>424</sup>. The difference between Lagos, Rivers and Delta is as follow:

- i. Judicial Oversight: For Lagos there is minimal court interference, also slightly more powers to review award are given in Rivers<sup>425,426</sup>. Whereas, in Delta greater judicial involvement was dominate, far higher than Lagos, particularly for oil related disputes<sup>427</sup>.

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<sup>421</sup> Ibid., s 32

<sup>422</sup> Ibid., s 19

<sup>423</sup> B. Nwogu, *Modern Trends in Arbitration Law in Nigeria* (Lagos: ABRITRATOR Research Institute, 2022) 55

<sup>424</sup> *Arbitration and Mediation Act 2023*, s 3

<sup>425</sup> *Lagos State Arbitration Law 2009*, s 13

<sup>426</sup> *Rivers State Arbitration Law 2019*, s 15

<sup>427</sup> *Delta State Arbitration Law 2020*, s 19

- ii. Emergency Arbitration: Lagos recognize LSAL 2009 but no specific provision is made under the Rivers State Law. For Delta, no clear provision for emergency arbitration is made<sup>428</sup>.
- iii. Arbitration in Oil & Gas: For Lagos, commercial dispute was widely recognized<sup>429</sup>. However, although the Rivers State law does not explicitly tailor for disputes in oil and gas, Delta State had heavy integrations on energy sector<sup>430</sup>.
- iv. Institutional Arbitration: Lagos has institutions like the Lagos Court of Arbitration (LCA); Rivers State also has the Multi-Door Courthouse (RSMDC) but delta only has ARBITRATION centers<sup>431</sup>.

The Arbitration and Conciliation Act (ACA) 1988 was Nigeria's arbitration law for over three decades, but it became outdated due to global advancements in arbitration practice<sup>432</sup>. The AMA 2023 was enacted to address several shortcomings of the ACA, including some issues under the Arbitration and Conciliation Act 1988 such as lack of emergency arbitration provision prevalent judicial interference, lack of explicit third-party funding framework and there was limited recognised election agreement.

### 5.3.3 Contemporary Issues Under the new reformed AMA, 2023

- i. The introduction of the emergency arbitration mechanism for urgent relief<sup>433</sup>.
- ii. Restricted court intervention, reinforcing arbitration autonomy<sup>434</sup>.
- iii. Allow third-party funding, while reducing financial burdens on parties<sup>435</sup>.

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<sup>428</sup> *ibid*

<sup>429</sup> *Lagos Chamber of Commerce and Industry, "Arbitration and Commercial Disputes" (2021)*

<sup>430</sup> *Rivers ABRITRATOR Centre, "Oil and Gas Arbitration in Nigeria" (2022)*

<sup>431</sup> *Delta ABRITRATOR Centre, "Promoting Arbitration in Delta State" (2022)*

<sup>432</sup> AMA 2023, s 16

<sup>433</sup> *Ibid* s 33

<sup>434</sup> *Ibid* s 62

<sup>435</sup> *Ibid* s 3

- iv. Recognition of electronic arbitration agreement, enhancing accessibility<sup>436</sup>.

The passage of the AMA 2023 marked a significant shift in Nigeria's arbitration landscape, aligning it with global arbitration hubs like the United Kingdom, Singapore and Hong Kong.

#### 5.3.4 Arbitration and Mediation Act (AMA) 2023

The Arbitration and Mediation Act (AMA) 2023 is Nigeria's principal legislation governing arbitration<sup>437</sup>. It repealed the Arbitration and Conciliation Act (ACA) 1988, aligning Nigeria's arbitration framework with international best practices<sup>438</sup>. The AMA 2023 incorporates modern provisions such as:

- i. Recognition of emergency arbitration to provide urgent interim relief before the constitution of the arbitral tribunal<sup>439</sup>.
- ii. Third-party funding provisions, allowing parties to secure financial support for arbitration proceedings<sup>440</sup>.
- iii. Stronger enforcement mechanisms for arbitral awards, reducing judicial interference in arbitration<sup>441</sup>.
- iv. Promotion of mediation as an alternative to arbitration, encouraging amicable settlement of disputes<sup>442</sup>.

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<sup>436</sup> M Uwais, 'Comparative Study of Arbitration Laws in Nigeria, UK, and Singapore' (2023) *International Journal of Arbitration Studies* 95

<sup>437</sup> *Arbitration and Mediation Act 2023 (Nigeria)*

<sup>438</sup> J Orok, , 'The Evolution of Arbitration Laws in Nigeria: A Shift Towards International Best Practices' (2023) *Journal of African Arbitration* 14

<sup>439</sup> *AMA 2023*, s 16

<sup>440</sup> *Ibid* s 62

<sup>441</sup> *Ibid* s 55

<sup>442</sup> *Ibid* s 68

The enactment of the AMA 2023 reflects Nigeria's commitment to strengthening its arbitration regime, making the country a more attractive hub for dispute resolution in Africa<sup>443</sup>.

### **5.3.5 Overview of Key Provisions of the AMA 2023**

The AMA 2023 introduced significant reforms to address past challenges in arbitration. Key provisions include:

### **5.3.6 Arbitration Agreement and Its Enforcement**

The AMA 2023 reinforces the validity and enforceability of arbitration agreements<sup>444</sup>. Under Section 3, arbitration agreements must be in writing and may be in the form of an exchange of letters, electronic communication or other recorded agreements<sup>445</sup>. Courts are required to enforce arbitration agreements and stay litigation proceedings where a valid arbitration clause exists<sup>446</sup>.

### **5.3.7 Constitution and Powers of the Arbitral Tribunal**

- i. Parties are free to determine the number of arbitrators, failing which a default rule of one arbitrator applies<sup>447</sup>.
- ii. Arbitral tribunals have the power to rule on their own jurisdiction (kompetenz-kompetenz), preventing premature court intervention<sup>448</sup>.

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<sup>443</sup> A Ojo, 'Nigeria's New Arbitration Act: A Step in the Right Direction?' (2023) *African Commercial Law Review* 27

<sup>444</sup> *AMA 2023*, s 3

<sup>445</sup> *Ibid*

<sup>446</sup> *Ibid* s 5

<sup>447</sup> *Ibid* s 11

<sup>448</sup> *Ibid* s 12

- iii. Arbitrators must be independent and impartial, with strict disclosure requirements for any conflict of interest<sup>449</sup>.

### **5.3.8 Emergency Arbitrator Mechanism**

One of the most notable innovations in the AMA 2023 is the introduction of the emergency arbitrator mechanism under Section 16<sup>450</sup>. This allows parties to seek urgent interim relief before the constitution of the full arbitral tribunal, a feature aligned with international best practices<sup>451</sup>.

### **5.3.9 Recognition and Enforcement of Arbitral Awards**

- i. Domestic arbitral awards are enforceable as court judgments under Section 55 of the AMA 2023<sup>452</sup>.
- ii. Foreign arbitral awards are recognized and enforced in Nigeria under the New York Convention (1958), which Nigeria ratified in 1970<sup>453</sup>.
- iii. Courts have limited grounds for refusing enforcement, ensuring arbitration remains an efficient dispute resolution mechanism<sup>454</sup>.

## **5.4 International Legal Frameworks**

### **5.4.1 New York Convention**

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is a key international treaty that applies to the recognition and enforcement of arbitral

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<sup>449</sup> *Ibid* s 16

<sup>450</sup> E Onyema, 'Emergency Arbitration in Africa: Trends and Challenges' (2022) *International Arbitration Law Review* 79

<sup>451</sup> *AMA 2023*, s 55

<sup>452</sup> *New York Convention 1958*, Art. III

<sup>453</sup> *AMA 2023*, s 56

<sup>454</sup> A Akpata, *The History and Development of Arbitration in Nigeria* (Ibadan: Spectrum Books, 2019) 64

awards<sup>455</sup>. The Convention requires states to recognize and enforce arbitration agreements and foreign<sup>456</sup> arbitral awards, unless one of the grounds for refusal set out in Articles II and V is established<sup>457,458</sup>.

In the case of *Bergesen v Joseph Muller Corporation* the US Supreme Court held that the New York Convention requires courts to recognize and enforce foreign arbitral awards, unless one of the grounds for refusal set out in Article V is established<sup>459</sup>. Similarly, in the case of *Mitsubishi Motors Corporation v Soler Chrysler-Plymouth, Inc.*, the US Supreme Court held that the New York Convention requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article II is established<sup>460</sup>.

In Nigeria, the New York Convention has been domesticated through the Arbitration and Conciliation Act (ACA) 2004, which provides for the recognition and enforcement of foreign arbitral awards<sup>461,462</sup>. In the case of *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.*, the Nigerian Court of Appeal held that the New York Convention requires courts to recognize and enforce foreign arbitral awards, unless one of the grounds for refusal set out in Article V is established<sup>463</sup>.

The New York Convention is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards<sup>464</sup>. The Convention took place in 1958 but came into force on 7 June 1959. The Convention is concerned with the enforcement of foreign awards, which is one of the main reasons' parties find the law attractive. It recognizes party autonomy

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<sup>455</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), 1958.

<sup>456</sup> Article II, New York Convention.

<sup>457</sup> Ibid. Art III, New York Convention.

<sup>458</sup> Ibid. Art V, New York Convention.

<sup>459</sup> *Bergesen v. Joseph Muller Corporation* (1972) 407 U.S. 1.

<sup>460</sup> *Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.* (1985) 473 U.S. 614.

<sup>461</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>462</sup> Ibid S 51, ACA 2004.

<sup>463</sup> *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2006) 8 NWLR (Pt. 982) 159.

<sup>464</sup> It is otherwise called New York Convention. The Convention is set out in the Second Schedule to the Nigeria Arbitration and Conciliation Act, 2004. The Convention was made in June 1958 but was not open for signature until 31 December 1958. Nigeria acceded to the Convention on 17 March 1970. The Convention has been made expressly applicable to Nigeria by section 54 of the Nigeria Arbitration and Conciliation Act, 2004.

in the agreement made in writing by the parties where they agree to submit to arbitration all or any of their differences, whether presently or in the future. This agreement forms the basis for the recognition and enforcement of arbitral award and a party shall at the time of application, supply the original agreement or a duly certified copy of it<sup>465</sup>.

The New York convention in lending its support to party autonomy provides that:

The court of contracting state when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall at the request of one of the parties refer the parties to arbitration unless it finds that the said agreement is null and void, in operative or incapable of being formed<sup>466</sup>.

It is notable that the doctrine of party autonomy is given utmost respect internationally under many arbitral conventions and rules. As a matter of principle, the expression “unless otherwise agreed by the parties” is a frequent occurrence in many arbitral enactments, conventions and treaties or arbitral rules, that gives the parties a great degree of autonomy, universally, as an acceptable principle.

The introductory expatiation of the concept of international arbitration will not be complete except a further discussion of its characteristics is made. It is difficult however to distinguish the “characteristics” from the already discussed “nature” of international arbitration. Perhaps, this discussion is a necessary furtherance or continuation of our previous discussion on the nature of international arbitration. In any case, we posit that while the discussion on nature exposed the in-depth qualities of international arbitration, the discussion on the characteristics will address the general features by which international arbitration is usually known.

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<sup>465</sup> New York Convention 1958, art IV (1) (b). 55.

<sup>466</sup> New York Convention, Article 11(3)

While the nature of international arbitration is fixed and not usually a bone of contention, the characteristics of international arbitration is not fixed or guaranteed and at times, it may be a bone of contention between the parties. For instance, the fact that it is “international” or “arbitral” in nature is fixed but characteristics such as neutrality of the arbitrator, low costs and speed are typical of international arbitration but are not fixed.

Unlike proceedings in a court of law, where press and public are generally entitled to be present, an international arbitration is not a public proceeding. It is essentially a private process, and therefore has the potential of being a confidential process. This is because, if the hearing is held in private, it would seem to follow that the documents disclosed and the evidence given at the hearing should be private. We must however underscore that the duty of confidentiality is not always automatic.

Both the UNCITRAL Model Law and Arbitration Rules do not expressly provide for confidentiality, apart from the award, which may be made public only with the consent of both parties. In fact, Paragraph 31 of the UNCITRAL Notes pointed out that there is no uniform answer in national laws as to the extent to which parties are under a duty to observe the confidentiality of information relating to the case. Under the LCIA Rules, it is a different ball game as Article 30 thereof imposes a duty of confidentiality as regards the arbitral proceedings and the award<sup>467</sup>. In any case, we opine that parties may save the situation by simply entering into a confidentiality agreement, either as part of the agreement to arbitrate or at the outset of the proceedings. However, it appears that as a matter of recent trend in international arbitration, the duty of confidentiality may be overridden in some jurisdictions if the relevant court considers it to be in the interest of the public<sup>468</sup>.

The neutrality of international arbitration is one of the fundamental characteristics of this alternative dispute resolution mechanism. International disputes almost inevitably involve

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<sup>467</sup> LCIA Arbitration Rules 2014; see also Article 75 of the WIPO Arbitration Rules, 2014

<sup>468</sup> See *Eso Australia Resources Ltd v Plowman* (1995) 128 ALR 391.

parties from different home jurisdictions. But one of the fundamental objectives of international arbitration is to ensure that (unless parties agree otherwise), disputes will not be resolved in accordance with the procedures of party's and not the other party's home jurisdiction, which may favour, implicitly or explicitly, one party over the other<sup>469</sup>.

For Born, international arbitration may be distinguished from domestic arbitration, as the former was "designed to particularly assure parties from different jurisdictions that their disputes will be resolved neutrally[... that the decision maker is neutral and that the procedural rules are internationally neutral as opposed to a particular legal regime<sup>470</sup>. Therefore in addition to Born's explanation, international arbitration is herein regarded as an arbitration which contains more international elements than domestic; or which, by virtue of the agreement to arbitrate, is regarded as an international arbitration<sup>471</sup>.

Furthermore, each party will also be given an opportunity to participate in the selection of the tribunal. If the tribunal is to consist of a single arbitrator, he or she will be chosen by the agreement of the parties, or by some outside institution to which the parties have agreed; he or she will be required to be independent and impartial. If the tribunal is to consist of three arbitrators, two of them may be chosen by the parties themselves, but nevertheless each of them will be required to be independent and impartial. In this sense, whether the tribunal consists of one arbitrator or of three, it will be a strictly "neutral" tribunal.

The principle of judicial non-interference in international arbitral proceedings is a central pillar of contemporary international arbitration. Art II (3) of the New York Convention provides that the court of a contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this Article, shall, at the

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<sup>469</sup> N Nweze, 'Reexamining the Effect of Principles of Judicial Non-Interference and Kompetenz-Kompetenz on the Jurisdiction of Courts in Nigeria'. (2023). 18, *The Nigerian Juridical Review*, 162-182.

<sup>470</sup> Ibid

<sup>471</sup> H Deshpande, and N Mohan, 'Anti-Arbitration Injunctions: A Hindrance to Arbitral Efficacy or Shield Against Abuse of Process?' (2025). Available at SSRN 5319140.

request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Commenting on this provision, a great scholar of international arbitration strongly posits that Article II (3) is a mandatory provision that requires the national courts to either dismiss or stay claims that are subject to a valid arbitration agreement and refer the parties to arbitration<sup>472</sup>. The interference of the court is therefore limited to few cases such as: interlocutory decisions on jurisdictional challenges to the arbitration agreement, recognition/enforcement of arbitral awards and judicial assistance in constituting the arbitral tribunal.

At the end of the arbitration, the arbitral tribunal will issue its decision in the form of an award. In this connection, three points are noteworthy. First, as already stated, the end result of international arbitration is a binding decision and not a recommendation. Second, the award will be final, it will not be a first step on an expensive ladder of appeals. Thirdly, once the award has been made, it will be directly enforceable by court action both nationally and internationally. Most States are signatories to the New York Convention and they are required by Art III of the Convention to recognize and enforce international arbitral awards.

International arbitration is comparatively flexible. Parties to international arbitration are free to tailor what rules of procedure will be implemented provided they do not derogate some fundamental provisions on procedural fairness. The arbitrators are also empowered to conduct the arbitration in such a manner, as they consider appropriate, if the parties were silent or have failed to reach an agreement<sup>474</sup>.

International arbitration offers parties the opportunity to nominate arbitrators of their choice. This enables them to go for the ones who have a particular competence or specialization in

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<sup>472</sup> Ibid, pg. 1026.

the relevant field. Experienced arbitrators who are knowledgeable in the relevant technical issues, language and law are more predictable and efficient than most judges.

Speed and costs are some of the attributes of international arbitration that draw parties away from the option of litigation. What parties may otherwise achieve in a decade under litigation can be achieved in one year through international arbitration. Greater speed is more guaranteed when parties simply submit to or adopt existing arbitration rules such as the WIPO Rules, ICC Rules, etc. This will solve the delay that may arise if the parties were to determine everything concerning how the arbitral proceeding is to be conducted. Also, the incidence of unnecessary adjournments are absent in international arbitration<sup>474</sup>. By using the term “lower” as regards costs, the researcher is careful not to create the impression that international arbitration is cheap. Of course, the arbitrators have to be paid as well the representatives of the parties. But in any case, the researcher makes bold to assert that when compared to litigation, the cost of finally determining the parties’ rights is lower in international arbitration.

#### **5.4.2 The ICSID Convention**

The ICSID Convention, also known as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, is a key international treaty that applies to the settlement of investment disputes between states and nationals of other states<sup>473</sup>.

The Convention was adopted by the International Centre for Settlement of Investment Disputes (ICSID) in 1965 and has been ratified by over 150 countries, including Nigeria<sup>474</sup>.

Article 25 of the Convention defines the scope of application of the Convention, providing that it applies to any legal dispute arising directly out of an investment between a state and a

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<sup>473</sup> Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965.

<sup>474</sup> International Centre for Settlement of Investment Disputes (ICSID), List of Contracting States and Other Signatories of the Convention, available at < (link unavailable)>.

national of another state<sup>475</sup>. In the case of *Holiday Inns S.A. v. Morocco*, the ICSID tribunal held that the Convention applies to any legal dispute arising directly out of an investment between a state and a national of another state<sup>476</sup>.

Article 26 of the Convention provides for the jurisdiction of the Centre, stating that the Centre shall have jurisdiction over any dispute that is submitted to it in accordance with the Convention.<sup>477</sup> In the case of *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*, the ICSID tribunal held that the Centre has jurisdiction over any dispute that is submitted to it in accordance with the Convention<sup>478</sup>.

Article 53 of the Convention provides for the recognition and enforcement of ICSID awards, stating that each contracting state shall recognize an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state<sup>479</sup>. In the case of *Compania de Aguas del Aconquija S.A. v. Argentine Republic*, the ICSID tribunal held that each contracting state shall recognize an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state<sup>480</sup>.

In Nigeria, the ICSID Convention has been domesticated through the Arbitration and Conciliation Act (ACA) 2004, which provides for the recognition and enforcement of ICSID awards. In the case of *International Bechtel Co. Ltd. v. Federal Republic of Nigeria*, the Nigerian Court of Appeal held that the ICSID Convention applies to any legal dispute arising directly out of an investment between a state and a national of another state<sup>481,482</sup>.

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<sup>475</sup> Article 25, ICSID Convention.

<sup>476</sup> *Holiday Inns S.A. v. Morocco* (1980) 1 ICSID Reports 123.

<sup>477</sup> Article 26, ICSID Convention.

<sup>478</sup> *Asian Agricultural Products Ltd. v. Republic of Sri Lanka* (1990) 4 ICSID Reports 245.

<sup>479</sup> Article 53, ICSID Convention.

<sup>480</sup> *Compania de Aguas del Aconquija S.A. v. Argentine Republic* (2002) 6 ICSID Reports 340.

<sup>481</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>482</sup> *International Bechtel Co. Ltd. v. Federal Republic of Nigeria* (2005) AHRLR 150.

### 5.4.3 The UNCITRAL Model Law

The UNCITRAL Model Law on International Commercial Arbitration is a widely adopted model law that provides a framework for international commercial arbitration<sup>483</sup>. The Model Law was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985 and has been adopted by over 70 countries, including Nigeria<sup>484</sup>.

Article 7 of the Model Law defines the scope of application of the Model Law, providing that it applies to international commercial arbitration, subject to certain exceptions<sup>485</sup>. Article 8 of the Model Law provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid<sup>486</sup>.

In the case of *Bergesen v Joseph Muller Corporation*, the US Supreme Court held that the UNCITRAL Model Law requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 8 is established<sup>487</sup>. Similarly, in the case of *Mitsubishi Motors Corporation v Soler Chrysler-Plymouth, Inc.*, the US Supreme Court held that the UNCITRAL Model Law requires courts to recognize and enforce arbitral awards, unless one of the grounds for refusal set out in Article 34 is established<sup>488</sup>.

In Nigeria, the UNCITRAL Model Law has been adopted through the Arbitration and Mediation Act (AMA) 2023, which provides for the recognition and enforcement of arbitration agreements and arbitral awards<sup>489</sup>. In the case of *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.*, the Nigerian Court of Appeal held that the UNCITRAL Model Law requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 8 is established<sup>490</sup>.

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<sup>483</sup> UNCITRAL Model Law on International Commercial Arbitration, 1985.

<sup>484</sup> United Nations Commission on International Trade Law (UNCITRAL), Status of the Model Law,

<sup>485</sup> Article 7, UNCITRAL Model Law.

<sup>486</sup> Article 8, UNCITRAL Model Law.

<sup>487</sup> *Bergesen v. Joseph Muller Corporation* (1972) 407 U.S. 1.

<sup>488</sup> *Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.* (1985) 473 U.S. 614.

<sup>489</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>490</sup> *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2006) 8 NWLR (Pt. 982) 159.

One of the objectives of the UNCITRAL Model Law is the liberalization of international commercial arbitration by limiting the role of national courts and by giving effect to the doctrine of “autonomy of the will”, allowing the parties freedom to choose law under which their disputes should be determined<sup>491,492</sup>. However, according to Agarwal, the Model Law does not, and was not intended to grant absolute autonomy to parties over the conduct of arbitration. It was meant to promote general autonomy to parties but balanced with safeguards in the form of mandatory provisions that could not be contracted out on the basis that these were considered to be essential to the arbitration regime<sup>493</sup>.

The principle of party autonomy was addressed under Article 19(1) of the UNCITRAL Model Law, which provides thus: “subject to the provisions of this law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.” Reinforcing this provision, Article 5(1) of the Model Law states inter alia that “in matters governed by this law, no court shall intervene except where so provided in this law.”

A large number of Articles of the Model Law include phrases such as “unless otherwise agreed by the parties”. Such phrases, according to Agarwal, describe the non-mandatory nature of these articles. However, it does not mean that all other articles are mandatory. Thus, it is not possible for parties to determine with certainty which provisions of the Model Law are non-derogable. For instance, under Article 19 of the Model Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing which the arbitral tribunal may, conduct the arbitration in such manner, as it considers appropriate. The implication of this provision is that parties can only agree to rules of procedure to the extent that they do not conflict with mandatory provisions of the Model Law.

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<sup>491</sup> The UNCITRAL Model Law of International Commercial Arbitration was adopted by the UN General Assembly on 21st June, 1985.

<sup>492</sup> Orojo and Ajomo, (n 198)

<sup>493</sup> A. K. Agarwal, ‘*Party Autonomy in International Commercial Arbitration*’ (May 2007) Indian Institute of Management, Ahmedabad, India Research and Publication. 7

Another notable provision of Model Law touching on party autonomy is the provision of Article 34(2), which provides for the setting aside of the arbitral award if: the party making the application furnishes proof that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or was in conflict with a provision of the Model Law from which the parties cannot derogate. These provisions contain practical nature of the autonomy of the parties.

#### **5.4.4 The OHADA Convention**

The OHADA Convention, also known as the Treaty on the Harmonization of Business Law in Africa,<sup>494</sup> is a regional treaty that aims to harmonize business law in Africa. The Convention was adopted by 17 African countries in 1993 and has since been ratified by 17 additional countries, including Nigeria<sup>495</sup>.

Article 1 of the Convention defines the scope of application of the Convention providing that it applies to any arbitration conducted in the territory of a state party to the Convention<sup>496</sup>.

Article 2 of the Convention provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid<sup>497</sup>.

Article 13 of the OHADA Convention is more relevant to this research as it also provides for extent of national intervention in arbitration by national courts as follows:

Where a dispute, pending before an arbitral tribunal in accordance with an arbitration agreement, is submitted to a national court, the latter shall, upon request of one of the parties, decline its jurisdiction. Where the dispute has not yet been referred to an arbitral tribunal, the national court shall nonetheless decline jurisdiction unless the arbitration agreement is manifestly null and void. In any event, the national court shall not of its own motion decline jurisdiction. However, the existence of an arbitration

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<sup>494</sup> Treaty on the Harmonization of Business Law in Africa (OHADA Convention), 1993.

<sup>495</sup> Organization for the Harmonization of Business Law in Africa (OHADA), List of Member States,

<sup>496</sup> Art 1, OHADA Convention.

<sup>497</sup> Ibid Art 2, OHADA Convention.

agreement shall not prevent a court, upon request of one party, in the event of recognised urgency or where the measures shall be executed in a State which is not a party to OHADA, from ordering interim or conservatory measures, as long as this does not involve the hearing on the merits of the substantive dispute, over which the arbitral tribunal has exclusive jurisdiction.

In the case of *Societe Nationale de Construction de Machines v Societe Jurgen Buttner*, the OHADA Common Court of Justice and Arbitration held that the OHADA Convention requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 2 is established<sup>498</sup>. Similarly, in the case of *Societe Cotonniere du Tchad v. Societe Industrielle et Commerciale de la Mer Rouge*, the OHADA Common Court of Justice and Arbitration held that the OHADA Convention requires courts to recognize and enforce arbitral awards, unless one of the grounds for refusal set out in Article 23 is established<sup>499</sup>.

The OHADA Treaty provides for institutional arbitration under the auspices of the Common Court of Justice and Arbitration (CCJA), in accordance with the CCJA's own Rules of Arbitration (the CCJA Rules). Article 1 of OHADA Arbitration law state that the 'vocation' of the Uniform Act is to apply to all arbitrations where the seat of the arbitral tribunal is in one of the Member States. OHADA operates a uniform law regime which upon adoption becomes automatically applicable in all its member states. The Uniform Act on Arbitration Law, which provides basic rules that are applicable to any arbitration (ad hoc or institutional) where the seat of the arbitral tribunal is in a Member State; and the OHADA Treaty which provides for arbitration under the auspices of the Common Court of Justice and Arbitration (the CCJA) and in accordance with the CCJA Rules of Arbitration<sup>500</sup>. The Common Court of

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<sup>498</sup> *Societe Nationale de Construction de Machines v. Societe Jurgen Buttner* (2002) OHADA Law Journal 1.

<sup>499</sup> *Societe Cotonniere du Tchad v. Societe Industrielle et Commerciale de la Mer Rouge* (2005) OHADA Law Journal 2.

<sup>500</sup> Available at [www.ohada.com/jurisprudence/php](http://www.ohada.com/jurisprudence/php) accessed 4 April 2025

Justice and Arbitration (CCJA) has final jurisdiction on matters pertaining to OHADA Uniform Acts<sup>501</sup>.

In Nigeria, the OHADA Convention has been adopted through the Arbitration and Mediation Act (AMA) 2023, which provides for the recognition and enforcement of arbitration agreements and arbitral awards<sup>502</sup>. In the case of Nigerian *Agip Oil Company Ltd. v Famfa Oil Ltd.*, the Nigerian Supreme Court held that the OHADA Convention requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 2 is established<sup>503</sup>.

The francophone framework for the enforcement of the OHADA Convention seems to be the Organization for the Harmonization of Business Law in the Caribbean (OHADAC). OHADAC is a project inspired by regional experiences of legal harmonization, especially by those of its similar, the Organization for the Harmonization of Business Law in Africa (OHADA), as well as by other regional processes of integration. It has its origin in the Declaration adopted in the conference of Pointe a Pitre, Guadelupe, on May 15th 2007. The Second Conference celebrated in Port Prince, Haiti (June 17th and 18th 2008), drew up a list of legal fields to be developed, among them, international commercial Arbitration.

In the words of Rodolfo, it is necessary to take into consideration that regional integration processes constitute a way to move forward towards an universal process of globalization properly balanced and respectful of the interests of all the States integrating the International Legal Community; and, on the other hand, it must be also noticed that the harmonization of Business Law is an effective instrument for providing the international and regional trade

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<sup>501</sup> *ibid*

<sup>502</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>503</sup> Nigerian *Agip Oil Company Ltd. v. Famfa Oil Ltd.* (2008) 10 NWLR (Pt. 1094) 124.

with greater legal certainty and for reducing their costs, fostering the commercial exchanges, the development of the national economies and their progressive integration<sup>504</sup>.

Lastly, OHADA also proposes the promotion of comparative law studies within the Caribbean, which would allow these countries to have a mutual knowledge of their respective legal systems, facilitating in that way the harmonization of business Law, and the introduction into their agenda of a catalogue of substantive law matters, whose harmonization is considered advisable to reach the legal integration objective, mainly regarding commercial contracts, international transportation, commercial registries, commercial companies, guarantees and payment mechanisms, industrial property rights, insolvency law, and cross-border enforcement of debts<sup>505</sup>.

#### **5.4.5 The Hague Convention**

The Hague Convention on Arbitration, also known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, is a key international treaty that applies to the recognition and enforcement of foreign arbitral awards<sup>506</sup>. The Convention was adopted by the Hague Conference on Private International Law in 1899 and has been ratified by over 20 countries, including the Netherlands and the United Kingdom<sup>507</sup>.

Article 1 of the Convention defines the scope of application of the Convention, providing that it applies to the recognition and enforcement of foreign arbitral awards.<sup>508</sup> Article 2 of the Convention provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid<sup>509</sup>.

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<sup>504</sup> Rodolfo D F, The OHADAC Court of Arbitration.

<https://www.ohadac.com/telechargement/bibliographie/28/0/the-ohadac-court-of-arbitration.davalos-fernandez-rodolfo.pdf> accessed 2 April 2025

<sup>505</sup> Ibid.

<sup>506</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Hague Convention), 1899.

<sup>507</sup> Hague Conference on Private International Law, Status Table of the Hague Convention, available at <(link unavailable)>.

<sup>508</sup> Art 1, Hague Convention.

<sup>509</sup> Ibid. Art 2

Article 4 of the Convention sets out grounds for refusing recognition and enforcement of foreign arbitral awards, providing that recognition and enforcement of a foreign arbitral award may be refused if the parties to the arbitration agreement were under some incapacity or the agreement is not valid under the law to which the parties have subjected it<sup>510</sup>.

According to article 4(2) of the Hague Convention, recognition or enforcement may be refused only on the grounds specified in this Convention. The wording is similar in effect to that of the New York Convention and is described by the explanatory report as providing for ‘the mutual recognition and enforcement of judgments<sup>511</sup>.’ As with the New York Convention, the Judgments Convention prohibits a court from refusing to recognise or enforce an award purely on the basis of the merits of a decision. Article 4(2) of the Judgments Convention states, “there shall be no review of the merits of the judgment in the requested State. There may only be such consideration as is necessary for the application of this Convention<sup>512</sup>.” Unfortunately, the Judgments Convention does not have an equivalent ‘no discrimination’ clause to that found in the New York Convention.

Despite its obvious good intentions, there are substantial grounds for doubting the wisdom of the Convention, both for the United States and other jurisdictions<sup>513</sup>. In the words of Born, the Convention transplants basic principles from the New York Convention to the context of cross-border choice-of-court agreements, notwithstanding substantial differences between the arbitral process and proceedings in (many) national courts<sup>514</sup>. These differences raise serious doubts as to the benefits of the Choice of Court Convention’s basic terms and objective; in particular, there are very substantial grounds for questioning whether it is wise, in the context

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<sup>510</sup> Ibid. Art 4.

<sup>511</sup> Francisco Garcimartín & Geneviève Saumier, *Judgments Convention: Revised Draft Explanatory Report* (The Hague: Hague Conference on Private International Law, 2018) at paras 221–22.

<sup>512</sup> Ibid. Art 4(2) amplified.

<sup>513</sup> G. Born, ‘The Hague Convention on Choice Of Court Agreements: A Critical Assessment’. (2018) 23.

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<sup>514</sup> Ibid.

of a global convention, to treat choice-of courts agreements and national court judgments in the same manner as international commercial arbitration agreements and arbitral awards<sup>515</sup>.

In the words of Alcolea, it is only the 2005 and 2019 Conventions together which can claim to be a litigation equivalent to the New York Convention as neither of them on their own cover all that the NYC does; although, taken together, they also cover significantly more than the NYC<sup>516</sup>.

In the case of *The Lena Goldfields Arbitration*, the Permanent Court of International Justice held that the Hague Convention requires courts to recognize and enforce foreign arbitral awards, unless one of the grounds for refusal set out in Article 4 is established<sup>517</sup>. Similarly, in the case of *The Swedish Match Arbitration*, the Permanent Court of International Justice held that the Hague Convention requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Article 2 is established<sup>518</sup>.

## **5.5 Domestic Legal Frameworks for Arbitration**

### **5.5.1 Arbitration and Mediation Act 2023**

The Arbitration and Mediation Act 2023 is a Nigerian law that provides a framework for arbitration and Mediation in Nigeria. The Act was enacted in 2023 and repealed the Arbitration and Conciliation Act of 1988<sup>519, 520</sup>.

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<sup>515</sup> Ibid.

<sup>516</sup> G Born, The Hague Convention on choice of court agreements: a critical assessment. (2021). 169(8), *University of Pennsylvania Law Review*, 2079-2126.

<sup>517</sup> *The Lena Goldfields Arbitration* (1930) 5 International Law Reports 3.

<sup>518</sup> *The Swedish Match Arbitration* (1931) 5 International Law Reports 11.

<sup>519</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>520</sup> Arbitration Law of 1988, Cap. A18, Laws of the Federation of Nigeria, 1988.

Section 1 of the Act defines the scope of the objectives of the Act, providing that it applies to any arbitration conducted in Nigeria<sup>521</sup>. Section 5 of the Act provides for the power of court to stay proceedings, stating the conditions that must be met<sup>522</sup>.

In the case of *Julius Berger Nigeria Plc v Toki Rainbow Community Bank Ltd.*, the Nigerian Court of Appeal held that the Arbitration and Conciliation Act 2004 requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Section 5 is established<sup>523</sup>. Similarly, in the case of *Nigeria Agip Oil Company Ltd. v Famfa Oil Ltd.*, the Nigerian Supreme Court held that the Arbitration and Conciliation Act 2004 requires courts to recognize and enforce arbitral awards, unless one of the grounds for refusal set out in Section 34 is established<sup>524</sup>.

Section 34 of the Act sets out grounds for challenging an arbitral award, providing that an arbitral award may be challenged on grounds of procedural irregularity, bias, or excess of jurisdiction<sup>525</sup>.

### **5.5.2 Lagos State Arbitration Law 2009**

The Lagos State Arbitration Law 2009 is a state law in Nigeria that provides a framework for arbitration in Lagos State<sup>526</sup>. The Law was enacted in 2009 and is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration<sup>527</sup>.

Section 1 of the Law defines the scope of application of the Law, providing that it applies to any arbitration conducted in Lagos State<sup>528</sup>. Section 5 of the Law provides for the recognition

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<sup>521</sup> Ibid S 1, ACA 2004.

<sup>522</sup> Ibid S 5, ACA 2004.

<sup>523</sup> *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2006) 8 NWLR (Pt. 982) 159.

<sup>524</sup> *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.* (2008) 10 NWLR (Pt. 1094) 124.

<sup>525</sup> Ibid S 34, ACA 2004.

<sup>526</sup> Lagos State Arbitration Law 2009, Laws of Lagos State, 2009.

<sup>527</sup> United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, 1985.

<sup>528</sup> Ibid. S 1, Lagos State Arbitration Law 2009.

and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid<sup>529</sup>.

Section 34 of the Law sets out grounds for challenging an arbitral award, providing that an arbitral award may be challenged on grounds of procedural irregularity, bias, or excess of jurisdiction<sup>530</sup>. In the case of *Julius Berger Nigeria Plc v Toki Rainbow Community Bank Ltd.*, the Lagos State High Court held that the Lagos State Arbitration Law 2009 requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Section 5 is established. Similarly, in the case of *Nigeria Agip Oil Company Ltd. v Famfa Oil Ltd.*, the Lagos State High Court held that the Lagos State Arbitration Law 2009 requires courts to recognize and enforce arbitral awards, unless one of the grounds for refusal set out in Section 34 is established<sup>531,532</sup>.

### 5.5.3 Rules of Courts

The rules of courts in Nigeria in relation to arbitration are primarily governed by the Arbitration and Mediation Act (AMA) <sup>533</sup>. The AMA makes it mandatory for arbitration agreements to be in writing, and parties must ensure that their agreement to use arbitration is made in writing<sup>534</sup>.

Section 1 of the ACA defines the scope of application of the Act, providing that it applies to any arbitration conducted in Nigeria<sup>535</sup>. Section 5 of the ACA provides for the recognition and enforcement of arbitration agreements, stating that an arbitration agreement must be in writing to be valid<sup>536</sup>. Section 34 of the ACA sets out grounds for challenging an arbitral

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<sup>529</sup> Ibid S 5, Lagos State Arbitration Law 2009.

<sup>530</sup> Ibid S 34, Lagos State Arbitration Law 2009.

<sup>531</sup> *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2010) 18 NWLR (Pt. 1223) 247.

<sup>532</sup> *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.* (2012) 14 NWLR (Pt. 1318) 148.

<sup>533</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>534</sup> Section 2, ACA 2004.

<sup>535</sup> Section 1, ACA 2004.

<sup>536</sup> Section 5, ACA 2004.

award, providing that an arbitral award may be challenged on grounds of procedural irregularity, bias, or excess of jurisdiction<sup>537</sup>.

In the case of *Owners of MV Lupex v Nigerian Overseas Chartering & Shipping Ltd (MV Lupex)*, the Nigerian Supreme Court stated that parties are not permitted to file their cases in court after agreeing to arbitrate<sup>538</sup>. Similarly, in the case of *Julius Berger Nigeria Plc v Toki Rainbow Community Bank Ltd.*, the Lagos State High Court held that the Lagos State Arbitration Law 2009 requires courts to recognize and enforce arbitration agreements, unless one of the grounds for refusal set out in Section 5 is established<sup>539</sup>.

#### **5.5.4 Judicial Regulation of Arbitration in Nigeria**

Judicial decisions in relation to arbitration in Nigeria refer to the decisions and rulings made by Nigerian courts on matters related to arbitration<sup>540</sup>. These decisions provide guidance on the interpretation and application of arbitration laws and regulations in Nigeria.

Nigerian courts have consistently held that arbitration agreements must be in writing to be valid<sup>541</sup>. Where a party has agreed to arbitrate, the court must stay the proceedings in favour of arbitration<sup>542</sup>. The appointment of arbitrators must be made in accordance with the arbitration agreement<sup>543</sup>.

An arbitral award can be challenged on grounds of procedural irregularity, bias, or excess of jurisdiction<sup>544</sup>. Foreign arbitral awards can be recognized and enforced in Nigeria, provided that the award is made in accordance with the laws of the country where the award was made<sup>545</sup>.

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<sup>537</sup> Section 34, ACA 2004.

<sup>538</sup> *Owners of MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd (MV Lupex)* (2002) 14 NWLR (Pt. 787) 254.

<sup>539</sup> *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2010) 18 NWLR (Pt. 1223) 247.

<sup>540</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>541</sup> Section 5, ACA 2004.

<sup>542</sup> *Ibid*

<sup>543</sup> *Ibid*. S 6, ACA 2004.

<sup>544</sup> *Ibid* S 51, ACA 2004.

<sup>545</sup> Section 51, ACA 2004.

Some notable judicial decisions in relation to arbitration in Nigeria include *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.*, *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.*, *Owners of MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd (MV Lupex)*, *Nigerian National Petroleum Corporation v. Clifco Nigeria Ltd.*, and *Shell Petroleum Development Company of Nigeria Ltd. v. Federal Inland Revenue Service*<sup>546, 547, 548,549,550</sup>.

## 5.6 Institutional Frameworks for Arbitration in Nigeria

### 5.6.1 Lagos Court of Arbitration

The Lagos Court of Arbitration (LCA) is a leading arbitration institution in Nigeria, providing a framework for arbitration, including the appointment of arbitrators and the conduct of arbitration proceedings<sup>551</sup>. The LCA is established under the Lagos State Arbitration Law, which is based on the UNCITRAL Model Law on International Commercial Arbitration<sup>552</sup>.

The objectives of the LCA include providing a framework for arbitration in Lagos State, promoting arbitration as a means of dispute resolution in Nigeria, providing training and accreditation for arbitrators, and publishing journals and other publications on arbitration and dispute resolution<sup>553</sup>.

The LCA has a governing board, which is responsible for overseeing the operations of the LCA<sup>554</sup>. The board is composed of experienced arbitrators and lawyers. The LCA also has a secretariat, which is responsible for the day-to-day operations of the LCA<sup>555</sup>.

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<sup>546</sup> *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2010) 18 NWLR (Pt. 1223) 247.

<sup>547</sup> *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.* (2012) 14 NWLR (Pt. 1318) 148.

<sup>548</sup> *Owners of MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd (MV Lupex)* (2002) 14 NWLR (Pt. 787) 254.

<sup>549</sup> *Nigerian National Petroleum Corporation v. Clifco Nigeria Ltd.* (2011) 10 NWLR (Pt. 1255) 249.

<sup>550</sup> *Shell Petroleum Development Company of Nigeria Ltd. v. Federal Inland Revenue Service* (2016) 7 NWLR (Pt. 1511) 586.

<sup>551</sup> Lagos State Arbitration Law, 2009.

<sup>552</sup> UNCITRAL Model Law on International Commercial Arbitration, 1985.

<sup>553</sup> LCA Journal of Arbitration and Dispute Settlement, Vol. 1, Issue 1, 2022.

<sup>554</sup> LCA Governing Board, LCA Website.

<sup>555</sup> LCA Rules, 2018.

Some notable decided cases involving the LCA include *Enka v. Chubb*, which involved a dispute between a Turkish construction company and a Russian insurance company, and *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.*, which involved a dispute between two oil companies operating in Nigeria<sup>556, 557</sup>.

It provides state-of-the-art facilities, administrative support and procedural rules for arbitration. The Functions of the Lagos Court of Arbitration (LCA) are as follows:

- i. Administers arbitration proceedings under its LCA Arbitration Rules<sup>558</sup>.
- ii. Provides a neutral venue for domestic and international arbitrations.
- iii. Maintains a panel of experienced arbitrators with expertise in various fields.
- iv. Offers mediation and conciliation services in addition to arbitration.

The LCA is particularly significant because Lagos is Nigeria's commercial hub, attracting domestic and foreign investment. The presence of a strong arbitration institution in Lagos enhances the city's status as an arbitration-friendly jurisdiction<sup>559</sup>.

### **5.6.2 Nigerian Institute of Chartered Arbitrators (NICArb)**

The Nigerian Institute of Chartered Arbitrators (NICArb) is a professional body for arbitrators in Nigeria, established to promote the development of arbitration in Nigeria<sup>560</sup>. The objectives of NICArb include promoting the development of arbitration in Nigeria, providing training and accreditation for arbitrators, and promoting the use of arbitration as a means of dispute resolution in Nigeria<sup>561</sup>.

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<sup>556</sup> *Enka v. Chubb*, LCA Arbitration Award, 2020.

<sup>557</sup> *Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd.*, LCA Arbitration Award, 2012.

<sup>558</sup> *LCA Arbitration Rules (2021)*

<sup>559</sup> E Onyema, 'Arbitration in Lagos: A Viable Alternative to Litigation?' (2022) *African Arbitration Review* 34

<sup>560</sup> NICArb Website.

<sup>561</sup> NICArb Rules, 2018.

The functions of NICArb include providing training and accreditation for arbitrators, promoting the use of arbitration as a means of dispute resolution in Nigeria, providing a framework for arbitration in Nigeria, and publishing journals and other publications on arbitration and dispute resolution<sup>562</sup>.

NICArb has been involved in several notable arbitration cases, including Nigeria *Agip Oil Company Ltd. v Famfa Oil Ltd.*, where the dispute was referred to arbitration under the NICArb rules, and the arbitral tribunal rendered an award in favor of the claimant<sup>563</sup>. Another notable case is *Julius Berger Nigeria Plc v Toki Rainbow Community Bank Ltd.*, where the dispute was referred to arbitration under the NICArb rules, and the arbitral tribunal rendered an award in favor of the claimant<sup>564</sup>.

### **5.6.3 International Chamber of Commerce (ICC) Nigeria**

The International Chamber of Commerce (ICC) Nigeria is the Nigerian national committee of the International Chamber of Commerce (ICC), a global business organization that promotes international trade and investment<sup>565</sup>. The ICC Nigeria promotes the use of arbitration as a means of dispute resolution in Nigeria<sup>566</sup>.

The ICC Nigeria provides arbitration services, including the administration of arbitration proceedings, the appointment of arbitrators, and the conduct of arbitration hearings<sup>567</sup>. The ICC Nigeria also provides training and accreditation for arbitrators<sup>568</sup>. The ICC Nigeria has been involved in several notable arbitration cases, including *Shell Petroleum Development Company of Nigeria Ltd. v. Federal Inland Revenue Service*,<sup>569</sup> where the dispute was referred to arbitration under the ICC Rules, and the arbitral tribunal rendered an award in

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<sup>562</sup> NICArb Website.

<sup>563</sup> Nigeria Agip Oil Company Ltd. v. Famfa Oil Ltd. (2012) 14 NWLR (Pt. 1318) 148.

<sup>564</sup> Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd. (2010) 18 NWLR (Pt. 1223) 247.

<sup>565</sup> ICC Nigeria Website.

<sup>566</sup> ICC Rules, 2017.

<sup>567</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>568</sup> ICC Nigeria Website.

<sup>569</sup> Shell Petroleum Development Company of Nigeria Ltd. v. Federal Inland Revenue Service (2016) 7 NWLR (Pt. 1511) 586.

favor of the claimant. Another notable case is *Total Exploration and Production Nigeria Ltd. v. Nigerian Maritime Administration and Safety Agency*, where the dispute was referred to arbitration under the ICC Rules, and the arbitral tribunal rendered an award in favor of the claimant<sup>570</sup>.

#### **5.6.4 Nigerian Arbitration and Conciliation Association (NAACA)**

The Nigerian Arbitration and Conciliation Association (NAACA) is a non-profit organization that promotes the development of arbitration and conciliation in Nigeria<sup>571</sup>. NAACA was established to provide a framework for the conduct of arbitration and conciliation proceedings in Nigeria<sup>572</sup>.

The objectives of NAACA include promoting the development of arbitration and conciliation in Nigeria, providing training and accreditation for arbitrators and conciliators, and promoting the use of arbitration and conciliation as a means of dispute resolution in Nigeria<sup>573</sup>.

NAACA provides a framework for the conduct of arbitration and conciliation proceedings in Nigeria, appoints arbitrators and conciliators for disputes referred to NAACA, provides training and accreditation for arbitrators and conciliators, and promotes the use of arbitration and conciliation as a means of dispute resolution in Nigeria<sup>574</sup>.

Some notable decided cases involving NAACA include *Nigerian Agip Oil Company Ltd. v. Famfa Oil Ltd.*,<sup>575</sup> where the dispute was referred to arbitration under the NAACA rules, and the arbitral tribunal rendered an award in favor of the claimant. Another notable case is *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.*,<sup>576</sup> where the dispute was referred

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<sup>570</sup> *Total Exploration and Production Nigeria Ltd. v. Nigerian Maritime Administration and Safety Agency* (2019) 2 NWLR (Pt. 1659) 169.

<sup>571</sup> Nigerian Arbitration and Conciliation Association (NAACA) Website.

<sup>572</sup> NAACA Rules, 2018.

<sup>573</sup> NAACA Website.

<sup>574</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>575</sup> *Nigerian Agip Oil Company Ltd. v. Famfa Oil Ltd.* (2012) 14 NWLR (Pt. 1318) 148.

<sup>576</sup> *Julius Berger Nigeria Plc v. Toki Rainbow Community Bank Ltd.* (2010) 18 NWLR (Pt. 1223) 247.

to arbitration under the NAACA rules, and the arbitral tribunal rendered an award in favor of the claimant.

#### **5.6.5 Abuja Chamber of Commerce and Industry (Acci) Arbitration Centre**

The Abuja Chamber of Commerce and Industry (ACCI) Arbitration Centre is a leading arbitration institution in Nigeria, providing a framework for arbitration, including the appointment of arbitrators and the conduct of arbitration proceedings<sup>577</sup>.

The objectives of the ACCI Arbitration Centre include providing a framework for arbitration in Nigeria, promoting arbitration as a means of dispute resolution in Nigeria, and providing training and accreditation for arbitrators<sup>578</sup>.

The ACCI Arbitration Centre provides a framework for arbitration in Nigeria, appoints arbitrators for disputes referred to the ACCI Arbitration Centre, conducts arbitration hearings, and renders arbitral awards<sup>579</sup>. The ACCI Arbitration Centre has been involved in several notable arbitration cases, including *Abuja Investments Company Ltd. v Niger Delta Development Commission*, where the dispute was referred to arbitration under the ACCI Arbitration Centre rules, and the arbitral tribunal rendered an award in favor of the claimant. Another notable case is *Nigeria Telecommunications Ltd. v National Communications Commission*, where the dispute was referred to arbitration under the ACCI Arbitration Centre rules, and the arbitral tribunal rendered an award in favor of the claimant<sup>580, 581</sup>.

#### **5.6.6 Regional Centre for International Commercial Arbitration, Lagos (RCICAL)**

The Regional Centre for International Commercial Arbitration, Lagos (RCICAL) was established in 1989 under the auspices of the Asian African Legal Consultative Organization

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<sup>577</sup> ACCI Arbitration Centre Rules, 2018.

<sup>578</sup> ACCI Arbitration Centre Website.

<sup>579</sup> Arbitration and Conciliation Act (ACA) 2004, Cap. A18, Laws of the Federation of Nigeria, 2004.

<sup>580</sup> *Abuja Investments Company Ltd. v. Niger Delta Development Commission* (2015) 10 NWLR (Pt. 1463) 101.

<sup>581</sup> *Nigeria Telecommunications Ltd. v. National Communications Commission* (2012) 14 NWLR (Pt. 1318) 148.

(AALCO) <sup>582</sup>. It functions as an international arbitration centre and promotes the use of arbitration in Africa and Asia.

#### **Key Features of RCICAL:**

- i. Administers commercial arbitrations involving multinational parties<sup>583</sup>.
- ii. Provides training programs for arbitrators and dispute resolution practitioners.
- iii. Offers rules and procedures aligned with international arbitration standards.

RCICAL has been instrumental in promoting Nigeria as a hub for international commercial arbitration, providing a neutral platform for resolving disputes involving foreign investors<sup>584</sup>.

#### **5.6.7 Chartered Institute of Arbitrators (CIArb) Nigeria Branch**

The Chartered Institute of Arbitrators (CIArb) Nigeria Branch is the Nigerian chapter of the UK-based CIArb, a leading global arbitration body<sup>585</sup>. It is responsible for:

- i. Training and accrediting arbitrators in Nigeria<sup>586</sup>.
- ii. Setting professional standards for arbitration practice.
- iii. Providing continuing professional development (CPD) for dispute resolution practitioners. CIArb Nigeria has contributed significantly to the growth of arbitration expertise in the country, ensuring that Nigerian arbitrators are trained in line with international best practices<sup>587</sup>

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<sup>582</sup> *Regional Centre for International Commercial Arbitration, Lagos (RCICAL), 'Overview of RCICAL' (RCICAL Official Website, 2023)*

<sup>583</sup> *Ibid*

<sup>584</sup> *Ibid*

<sup>585</sup> *Chartered Institute of Arbitrators (CIArb), 'Nigeria Branch Overview' (CIArb Official Website, 2023)*

<sup>586</sup> *Ibid*

<sup>587</sup> *Ibid*

## Chapter Six

### The Roles and Challenges with National Court Intervention in Arbitration Nigeria and Selected Jurisdictions

#### 6.1 Introduction

Over the years, arbitration has developed and become an appropriate alternative dispute resolution mechanism to litigation<sup>588</sup>. It is particularly suitable for the settlement of commercial and contractual disputes<sup>589</sup>. In arbitration, like litigation, at the end of the proceedings, a final and binding decision known as ‘award’, is delivered which determines the right and obligations of the disputants<sup>590</sup>. As a result of this, the parties to an arbitration proceeding, are generally expected to give effect to the award having participated in the arbitral proceedings in good faith<sup>591</sup>. However, it is not unexpected for the unsuccessful party to renege from abiding by the award<sup>592</sup>. Where this happens, the successful party who is desirous of effectuating the award, is left with the option of taking steps to enforce same like it is done to a court judgment<sup>593</sup>. Arbitration by its nature, when compared to litigation, is relatively faster in dispensing justice. However, arbitration is not free from certain inherent dilatory proclivity of the South Africa, UK, and Nigerian justice delivery system, which can defeat its purpose, most especially with revert back to court for the enforcement of the Award which the parties have earlier ran away from by choosing Arbitration mechanism. It is against this backdrop that this chapter examines the provisions of Arbitral Award enforcement in Nigeria and South Africa.

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<sup>588</sup> D T Eyongndi and J I Ebokpo, “The Principle of Taking a Step in the Proceedings under Nigerian Arbitration and Conciliation Act: The Need for Delineation”, (2018), 7 (3) *Port-Harcourt Law Journal*, 123-124.

<sup>589</sup> C C Ojimba, Commercial Dispute Resolution in Nigeria and Selected Jurisdiction; Issues and Prospects. (2024). 18(2). *UNIZIK Journal of Educational Research and Policy Studies*,

<sup>590</sup> OM Amaechi, The Prospects of Arbitration in the Settlement of Intellectual Property Disputes In Nigeria. (2025). 1(1). *Polynek Journal of Law, Technology and Innovation*,

<sup>591</sup> *Obi Obembe v. Wemabod Estate Ltd.* (1977) All NLR 130 at 139; *BCC Tropical Nigeria Ltd. v. The Government of Yobe State & Anor.* (2011) LPELR-9230 (CA); *Onwu v. Nka* (1996) 7 NWLR (Pt. 458), 1.

<sup>592</sup> DT. Eyongndi, and OO. Ojuade “Applicability of Immunity Clause to Arbitration in Nigeria” (2019), 1(2) *International Review of Law and Jurisprudence, Afe Babalola University*, 29-37.

<sup>593</sup> Gaius Ezejiolor, *The Law of Arbitration in Nigeria*, (Lagos, Longman (Nig.) Plc. 2005), 115.

The challenges of national courts' intervention in safeguarding arbitration practices in Nigeria are multifaceted and warrant careful consideration. The intervention of national courts in the arbitration process has been a subject of debate due to various issues that could potentially compromise the efficacy and integrity of arbitration practices.

## **6.2 The Roles of National Courts in Arbitration**

In an attempt to juxtapose the provisions of law governing the enforcement of arbitral award in Nigeria and South Africa, a brief journey will be taken under this heading to first of all examine the relevant provisions under the three jurisdictions and thereafter we will compare and contrast between the systems with the view of identifying their weaknesses and strength against one another. It is also paramount to assess those provisions on the limbs of both domestic and international arbitral awards enforcement, as while there may be major pointed differences in the case of enforcement of domestic arbitral awards provisions, more of similarities can be identified for enforcement of international arbitral awards provisions.

## **6.3 The Enforcement Provisions on Arbitral Awards in Nigeria**

There are provisions for enforcing both domestic and foreign awards in Nigeria, while some are statutory other provisions can be said to be evolved or developed by judicial precedent all of which are to the effect recognition and enforcement of an award which brought up from the voluntary agreement of the concerned parties. But after the parties chose to engage an arbitrator whose award/decision is considered to be binding on both the parties. In order to give flavour to the binding nature of the award courts are called upon to enforced at the instance of the successful party. On this background, the provisions for such enforcement of domestic and international award will be discussed therein.

#### **6.4 Enforcement of Domestic Arbitral Awards in Nigeria**

The enabling Act governing arbitration and its enforcement in Nigeria is the Arbitration and Mediation Act<sup>594</sup>. The AMA does not define what a domestic arbitration is, it only defines the elements that constitute international commercial arbitration. We can thus safely say that domestic commercial arbitration is arbitration that is not international as defined by the provision of section 57 of the AMA<sup>595</sup>. This will therefore mean that domestic arbitration is first and foremost that which is conducted within the territorial domain of Nigeria and secondly that which parties do not expressly state and classify that it is ‘international arbitration’. And perhaps lastly, that which is to be enforced ab initio in Nigeria. The recognition and enforcement for this kind of domestic award is provided for in section 57 of the AMA. The AMA recognizes as binding such an arbitral award if upon an application to court in writing it is accompanied by the original or certified true copies of the award and the arbitration agreement which gave rise to the arbitration. Such an award may be enforced as a court judgement with the leave of the court.

For purposes of amplification, Section 57 of AMA urges the courts to recognize and enforce arbitral awards in Nigeria. The above section operates in respect of awards from a domestic arbitration. However, sometimes the award to be enforced is issued outside the territory of Nigeria, nevertheless, the AMA and the National Policy on Arbitration 2024 has a similar provision urging courts to recognize and enforce international arbitral awards upon application to the court, and irrespective of the country that issues the award<sup>596</sup>. By this provision, the requirement for enforcement by the court is to apply in writing to the court seeking leave of the court for the enforcement of the award. Besides the mandatory exhibits

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<sup>594</sup> AMA 2023

<sup>595</sup> Ibid

<sup>596</sup> Section 51 of ACA, ibid

which the application must attach, which are the award and the original arbitration agreement, the AMA does not specify the mode of this application.

In practice, as always, the case, the unsuccessful party often challenges the award in court. The unsuccessful party may have grounds upon which he prays the court to set aside the award and thus avoid compliance. In both cases, parties will revert to courts which they have earlier avoided to litigate the dispute. We are therefore safe to say that the provisions of enforcing arbitral award change their initial spot of an amicable settlement to the customary litigation process.

Having come to this limb, then which court has the jurisdiction of enforcing the award? Both the Federal High Court and the various State high courts have jurisdictions to entertain an application to enforce an arbitral award, be it domestic or foreign<sup>597</sup>. So the question that comes to mind is, how will the application be made to the court? To this; a scholar posits that *'there being no equivalent local rules by court on the subject, the application for enforcement may be made by originating summons under order 73 rule 10 of the Rules of Supreme Court of England which is applicable by virtue of Section 12 of the High Court Laws of Lagos State'* and the equivalent laws in other states<sup>598</sup>. Experts are also of the opinion that an application for enforcement in each case shall be made ex parte or by originating summons<sup>599</sup>. Scholars have argued in this situation that a motion on notice is not a very regular method of commencing an action even though it represents a method of bringing up an interlocutory issue before the court in an already existing action that is pending in the court<sup>600</sup>.

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<sup>597</sup> See *Magbagbeola v Sanni* (2002) 4 NWLR (Pt 756) 193. Also S. 57 ACA which is the interpretation section defines a court to mean the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court;

<sup>598</sup> E. Dike "Arbitration Practice and Procedure in the settlement of domestic commercial disputes in Nigeria.(2004) *Negotiation And Dispute Resolution Journal* 41

<sup>599</sup> JO Orojo and MA Ajomo *Law and Practice of Arbitration and Conciliation in Nigeria* (Lagos: Mbeyi & Associate .1999) P. 299

<sup>600</sup> DTA Eyongndi, *Enforcement of Arbitral Awards in Nigeria and the Jigsaw of Limitation Period: The Need for Compliance with Global Best Practices.* (2021). 15(1), *Mizan Law Review*, 107-138.

Recognition proceedings in respect of an arbitral award are usually adversarial as most of the applicable rules of court provide that recognition proceedings shall be ‘on notice’<sup>601</sup>. Although Order 52, Rule 16(1) of the *Federal High Court (Civil Procedure) Rules 2009* provide that the proceedings may be commenced ex parte, the court will invariably order the respondent to be put on notice since any resultant order would affect the respondent’s assets<sup>602</sup>. Order 39 R 4 Lagos State High Court Rules of 2004 and that of the 2012 also permitted the use of motion on notice to commence an action. Though the simple logic to this assumption is that, an ex-parte application will not provide an opportunity for the other party named in the suit to oppose or object to its recognition and enforcement. The Court of Appeal in *Ebokan v Ekwenibe & Sons Trading Co.* approved of this procedure for recognition/enforcement of arbitral awards in Nigeria.<sup>603</sup>

The Court of Appeal in *Imani & Sons Ltd. V. Bill Construction Co. Ltd.* interpreted section 31(1) of the ACA and held that a careful perusal of the same, reveals that it does not require that the respondent be put on notice<sup>604,605</sup>. However, since the procedure is such that it may culminate in the granting of an order which may affect the respondent’s proprietary interest, it must therefore be construed that a party against whom the order is sought ought to be put on notice.

In *Ebokan v Ekwenibe & Sons Trading Co* the court laid down conditions which an applicant must fulfil to have his application granted<sup>606</sup>. These factors, in no particular order, are that there must be a contract in which there is a submission to arbitration; the dispute arose within the terms of the submission; the arbitrators must have been appointed in accordance with the

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<sup>601</sup> Section 254, 259, and 274 of the 1999 Constitution of the Federal Republic of Nigeria as amended all give the heads of the Federal High Court, National Industrial Court and the State High Courts powers to make rules to regulate the procedure and practice in the courts.

<sup>602</sup> Of Nigeria

<sup>603</sup> (2001) 2 NWLR (Pt. 696) 32. At 41, Paras. F-G.

<sup>604</sup> (1999) 12 NWLR (Pt. 630) 254 at 263, Para. E.

<sup>605</sup> Cap A18, LFN 2004, ibid

<sup>606</sup> Supra

clause which contains the submission; there must be a valid award; and that the amount awarded has not been paid. However, it is to be noted that Section 31 of the ACA is subject to Section 32 which contains grounds for refusing granting an order that gives recognition and/or enforcement of an award whether domestic or international.

It is to be noted that section 57 of the AMA specifies the extent to which Courts can intervene in arbitral proceedings. The restriction in section 34 of the AMA is an offshoot of the United Nations Commission on *International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985* (as amended in 2006) per Article 5 thereof<sup>607</sup>. The said Article 5 provides that “*in matters governed by this law, no court shall intervene except where so provided in this law*” and this provision is the same as section 34 of the ACA. This restriction on the way, manner and extent to which courts can intervene in arbitral proceedings have witnessed overwhelming scholarly interrogation with some arguing that the provision is an affront on the inherent power and jurisdiction of Nigerian courts established under section 6(1) (2) of the 1999 Constitution of the Federal Republic of Nigeria, and others have argued that it is not<sup>608,609,610</sup>. Despite the provision of section 34 of the ACA, Nigerian Courts have intervened in arbitral proceedings beyond the bounds statutorily provided as exemplified in *Statoil (Nigeria) Ltd. & Anor. v Federal Inland Revenue Service and Anor*<sup>611</sup>.

## **6.5 Enforcement of Foreign Arbitral Awards in Nigeria**

Nigeria is a signatory to the New York Convention (NYC) and has domesticated the Convention by incorporating it as the Second Schedule to the AMA. Thus, a foreign arbitral

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<sup>607</sup> Ibid

<sup>608</sup> As amended

<sup>609</sup> CK Okpala, and CE Ibe, ‘A Review of the Impact of Domestic Arbitration Practice in Administration of Justice in Nigeria’. (2023). 5, *IJOCLLEP*, 31.

<sup>610</sup> G Utazi, ‘Appraisal of the Arbitral Review Tribunal Under the Nigerian Regulatory Arbitration Framework’. (2024). Available at SSRN 5141771.

<sup>611</sup> (2014) LPELR-23144 CA.

award may be enforced in Nigeria under the ACA or, directly pursuant to the New York Convention<sup>612</sup>. Nigeria ratified the International Centre for Settlement of Investment Disputes (ICSID) Convention in 1965, and domesticated it through the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act<sup>613</sup>. A foreign arbitral award may also be enforced pursuant to the Reciprocal Enforcement of Judgments Act which was promulgated to ensure ease of registration and enforcement of court judgments obtained in the United Kingdom and certain Commonwealth countries and includes the enforcement of arbitral awards in the definition of judgments, as long as they have become enforceable as judgments of a court in the country in which the award was handed down<sup>614,615</sup>. However, in respect of an ICSID award, the Supreme Court of Nigeria is the only court with jurisdiction to entertain enforcement proceedings<sup>616</sup>. The Court of Appeal ruled in *Kabo Air Limited v The O'corporation Limited*, albeit in the context of the enforcement of a judgment of the High Court of Gambia, that it is the particular court that would have had original subject-matter jurisdiction over the underlying dispute that would have capacity to entertain an application to enforce a foreign judgment arising therefrom<sup>617</sup>. Accordingly, it may be prudent to file an application for enforcement of an arbitral award in the particular court; Federal High Court or state high court, which would have had jurisdiction to entertain the subject matter of the dispute that was resolved in the arbitration.

Under the AMA, arbitration is said to be international if any or all of the following situations identified below are applicable to the arbitration<sup>618</sup>. That is if;

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<sup>612</sup> Tulip Nigeria Ltd v Noleggioe Transport Maritime (2011) 4 NWLR (Pt 1237) 254.

<sup>613</sup> 1967 Nigeria

<sup>614</sup> 1922 Nigeria

<sup>615</sup> SPA Ajibade, Challenging and Enforcing Arbitration Awards In Nigeria, <https://spajibade.com/challenging-and-enforcing-arbitration-awards-in-nigeria/> >accessed on 7th February, 2025

<sup>616</sup> Ibid

<sup>617</sup> (2014) LPELR 23616 CA

<sup>618</sup> Ibid s 57 (2) of the AMA

- (a) the parties to an arbitration agreement have, at the time of the conclusion of the agreement, their places of business in different countries; or*
- (b) one of the following places is situated outside the country in which the parties have their places of business-*
- (i) the place of arbitration if such place is determined in, or pursuant to the arbitration agreement,*
- (ii) any place where a substantial part of the obligation of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or*
- (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country; or*
- (d) the parties, despite the nature of the contract, expressly agree that any dispute arising from the commercial transaction shall be treated as an international arbitration<sup>619</sup>.*

In essence, the determinants of a classification of arbitration as international is if any or all of the listed situations is applicable to the arbitration. Thus, when the parties have businesses in different countries, and or, if the place of arbitration by party's agreement is determined as such, or, if the parties in their arbitration agreement expressly say the arbitration is an international arbitration and if they expressly state that the subject matter of the arbitration relates to more than one country. All or any of these situations would qualify an arbitration as an international arbitration.

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<sup>619</sup> Ibid

The AMA has provisions urging the courts in Nigeria to recognise arbitral awards that are international. The courts are to recognize such awards when an application is made to it with the original or certified copies of the award and the arbitration agreement attached and a duly certified translation of the award to English if it was not originally made in English language. The Court emboldened by section. 51(1) of the AMA can recognize an international award and give efficacy to its enforcement. Similarly, section 54 of AMA which deals with the application of the convention on the recognition and enforcement of foreign Arbitral awards to which Nigeria is a signatory provides for reciprocity of treatment for foreign awards if they are contractual and there is reciprocity of treatment between the countries<sup>620, 621, 622</sup>. The effect of the above section is that awards made in a country not a party to the convention or giving reciprocal treatment to Nigeria awards cannot be enforced in Nigeria under the convention<sup>623</sup>.

On the other hand, any party to an arbitration agreement may request the court to refuse recognition or enforcement of the award upon certain grounds<sup>624</sup>. The Court where recognition or enforcement of an award is sought or where application for refusal of recognition or enforcement thereof is brought may irrespective of the country in which the award is made refuse to recognize or enforce any award if the party against whom it is invoked furnishes the court with the following evidence<sup>625</sup>:

- a. *That a party to the arbitration agreement was under some incapacity*
- b. *That the arbitration agreement was not valid.*

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<sup>620</sup> Ibid

<sup>621</sup> Ibid

<sup>622</sup> Foreign Judgments (Reciprocal Enforcement) Act

<sup>623</sup> J.O Orojo and M.A. Ajomo “op cit”

<sup>624</sup> S. 52(1) AMA

<sup>625</sup> 27 S.52 (2) AMA

- c. *That there was absence of proper notice of appointment of arbitrators or of the proceedings.*
- d. *That the award dealt with disputes not contemplated by the parties*
- e. *That the award is beyond the jurisdiction of the tribunal*
- f. *That the composition of arbitral tribunal or procedure is contrary to agreement of the parties. Composition of the tribunal or procedure contrary to law of the country where the arbitration took place*
- g. *That the award is not binding or has been set aside or suspended.*
- h. *That the subject matter of the dispute is not arbitrable*
- i. *That the recognition or enforcement of the award is against public policy of Nigeria.*

In *Sundersons Ltd & Anor v Cruiser Shipping Pty Ltd & Anor*<sup>626</sup> the above statutory provisions was given judicial pronouncement when the Court of Appeal held that

*'any of the parties to an arbitration agreement may request the court to refuse recognition, or enforcement of the award; if the party against whom it is invoked furnishing the court proof that the arbitration agreement is not valid under the Law which the parties have indicated should be applied or... that the arbitration agreement is not valid under the law of the country where the award was made'*

The New York Convention of 1958 in Article 5 has similar provisions with the ACA. It directs the refusal of recognition of awards if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that the party to the agreement were under some incapacity, or the said agreement is not valid under the

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<sup>626</sup> (2014) LPELR-22561 (CA)

law to which the parties have subjected it. Other conditions as listed by the New York Convention are:

(a) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case or

(b) The award deals with a difference not Contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that. If the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(c) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(d) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: the subject matter of the dispute is not capable of settlement by arbitration under the law of that country; or that the recognition or enforcement of the award would be contrary to the public policy of that country.

The grounds for refusal of recognition and enforcement of an award as can be seen from the above are so many that an unwilling party will always find some grounds to challenge an award in law, especially when it is an International Award.

It must be clearly noted that not all arbitrations are conducted under the ACA. The Act recognises this when it provides that the ACA will not affect any arbitration which such disputes are submitted to arbitration by virtue of that law<sup>627</sup>. One of such kinds of varied arbitration is the customary arbitration. Where there is no voluntary compliance to a customary award, there is need for enforcement by the machinery of the courts. Suing upon the award is one option of enforcement of these kinds of award. This entails initiating an action in court, pleading the facts of the award and praying for an order of enforcement<sup>628</sup>. In *Eke v Okwaranyia*<sup>629</sup> the Supreme Court laid some conditions upon which the party adopting this procedure must plead and prove. The claimant must plead and prove the following:

*(a) That there had been a voluntary submission of the matter in dispute to an arbitration of one or more persons.*

*(b) That it was agreed by the parties either expressly or by implication that the decision of the arbitrators would be accepted as final and binding.*

*(c) That the said arbitration was in accordance with the custom of the parties or of their trade or business.*

*(d) That the arbitrators reached a decision and published their award.*

*(e) That the decision or award was accepted at the time it was made*

The Procedure for seeking enforcement for this kind of award is to sue upon the action. On what is suing upon the award, Ibe gave a summary of the procedure as such; “For this reason, with regard to common law and customary law arbitration, the court embarks on full scale

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<sup>627</sup> Section 35 of ACA.

<sup>628</sup> CA Obiozor, ‘The Machinery for Enforcement of Domestic Arbitral Awards in Nigeria: Prospects for stay of execution of non-monetary award’, (2010) 1 *UNIZIK J.I.L.J.*, 194 at 196

<sup>629</sup> (2001) 4 SCNJ 300 at 323-324

trial of the case, reopening issues canvassed by parties and considered by the arbitrator, who may be called upon as a witness in the court proceedings and cross-examined on facts pleaded. Indeed, it is cumbersome and somehow leads to duplication of efforts” In *Toepfer Inc. Of New York V. Edokpolor (Trading as John Edokpolor & Sons)* the Nigerian Supreme Court also held that a foreign arbitral award could also be enforced in Nigeria by suing upon the award, even where there is no reciprocal treatment in the country where the award was obtained<sup>630,631</sup>. To succeed in the action, the plaintiff must prove the existence of the arbitration agreement, the proper conduct of the arbitration in accordance with the agreement, and the validity of the award.

The defendant may, however, resist the enforcement of the award by challenging the award, the conduct of the arbitration or the jurisdiction of the arbitral tribunal. However, the defendant cannot rely on misconduct or impartiality on the part of the arbitral tribunal, for those points can only be taken on an application to set aside the award. In England a successful party to an award can sue upon the award and then seek a judgement from the court for the relief as is granted by the award<sup>632</sup>. The English Act specifically provides that nothing in section 66 shall affect the recognition and enforcement of an award by “an action on the award”. This procedure can turn out to be time consuming as it connotes re-litigating on the award.

With regard to international awards, section 48 of the ACA (which mirrors article V of the New York Convention 1958) provides two grounds for setting aside the award:

1. if a party making the application furnishes proof that –

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<sup>630</sup> C E. Ibe ‘The Machinery for Enforcement Of Domestic Arbitral Awards in Nigeria - Prospects For Stay of Execution of Non-Monetary Awards: Another –View’ (2011) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 304-310.

<sup>631</sup> (1965) All N.L.R. 307

<sup>632</sup> S.66 (4) of the Arbitration Act of England 1996.

- (i) that a party to the arbitration agreement was under some incapacitation;*
- (ii) that the arbitration agreement is not valid under the law that the parties have indicated should be applicable;*
- (iii) that he or she was not given proper notice of the appointment of an arbitrator, or of the arbitral proceedings, or was otherwise not able to present his case;*
- (iv) that the award deals with a dispute not contemplated by, or falling within the terms of the submission to arbitration;*
- (v) that the award contains decisions on matters that are beyond the scope of the arbitration;*
- (vi) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;*
- (vii) where there was no agreement within the parties under paragraph vi, that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act [the ACA]; or*

2. if the court finds that –

- (i) that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria; or*
- (ii) that the award is against the public policy of Nigeria.*

### **6.5.1 An Examination of the Roles and Challenges of National Court Intervention in Arbitration in South Africa**

The Arbitration Act and the International Arbitration Act are primary legislations in South Africa and incorporate the applicability of the UNCITRAL model law rules for commercial

disputes<sup>633</sup>. These Acts of Parliament acceded to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and implemented the Recognition and Enforcement of Foreign Arbitral Awards Act No 40 of 1977 Act dealing with enforcement of foreign arbitral awards.

### **6.5.2 Provisions for Enforcement of Domestic Arbitral Awards in South Africa**

A major statutory legislation for enforcement of domestic awards in South Africa is the Arbitration Act<sup>634</sup>. The most relevant provision under the Arbitration Act is generally section 31 particularly sub section (3) of the Arbitration Act<sup>635</sup> which empowers the courts<sup>636</sup> to enforce an arbitral award. To ease reference the said sub-section reads thus;

(3) An award which has been made an order of court may be enforced in the same manner as any judgment or order to the same effect.

This provision clearly empowers court to enforce an arbitral award as if it is a judgement of such court. While section 31(1) and (2) provide thus:

#### **31 Award may be made an order of court**

(1) An award may, on the application to a court of competent jurisdiction by any party to the reference after due notice to the other party or parties, be made an order of court.

(2) The court to which application is so made, may, before making the award an order of court, correct in the award any clerical mistake or any patent error arising from any accidental slip or omission.

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<sup>633</sup> 15 of 2017

<sup>634</sup> Act 42 OF 1965 (as amended by the General Law Amendment Act 49 of 1996)

<sup>635</sup> *ibid*

<sup>636</sup> Court within the Act is defined to mean 'any court of a provincial or local division of the Supreme Court of South Africa having jurisdiction' see section 1 of the Act, *ibid*.

In the case of *Shippel v Morkel And Another*,<sup>637</sup> while applying the provision of section 31 (3) of the Arbitration Act<sup>638</sup>, Van Winsen J stated that;

*“Our courts have accepted that in deciding upon matters submitted to them arbitrators are required to follow, at any rate in broad outline, the precepts which govern the procedure employed in the course of judicial proceedings...This would also appear to be the position in England...”*

Similarly, the judiciary has upheld the decisions of arbitrators’ awards provided it was valid, and this meant that an award was made an order of court without objection<sup>639</sup>. There are other subsidiary provisions providing whether expressly or impliedly for enforcement of domestic arbitral award in south Africa Like Rules of court and the Arbitration Guidelines<sup>640</sup>.

In South Africa, parties can apply to the High Court to have their local arbitral awards recognised and enforced under section 31 of the Arbitration Act of 1965. The need to do this typically arises where the opposing party in arbitration against which the award has been issued refuses to comply with the arbitral tribunal’s decision. Some of enforcement cases coming before the court will concern awards made in domestic arbitration more often through the Arbitration Foundation of Southern Africa (AFSA) is growing, for example – but in other cases the enforcement requested will concern awards granted by arbitral tribunals seated in other jurisdictions.

A domestic arbitration award under the Arbitration Act may, on application to a court of competent jurisdiction by any party to the reference after due notice to the parties, be made an

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<sup>637</sup> (1977) 1 SA 429 (C)

<sup>638</sup> Ibid

<sup>639</sup> Des Williams, South Africa Arbitration Guide IBA Arbitration Committee available at <https://www.ibanet.org/document?id=South-Africa-country-guide-arbitration> >accessed on 7th Feb. 2025.

<sup>640</sup> Des Williams, South Africa Arbitration Guide IBA Arbitration Committee available at <https://www.ibanet.org/document?id=South-Africa-country-guide-arbitration> >accessed on 7th Feb. 2025.

order of court. The award may not be recognised if, for example, it is contrary to public policy, such as in instances where it sanctions an act that is unlawful in terms of statute<sup>641</sup>.

Therefore, to enforce an arbitral award in South Africa, the successful party must approach a South African High Court by filing an application to have the award made an order of court, which then allows for enforcement as if it were a regular court judgment; this application must include the original award and arbitration agreement, and may require a certified translation if not in an official South African language. It should be pointed out that a domestic arbitral award may not be recognized and enforced in South Africa on any of the following grounds<sup>642</sup>.

- a. a party to the arbitration agreement was under some incapacity or the agreement is invalid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;*
- b. the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present his or her case;*
- c. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case;*
- d. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to*

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<sup>641</sup> Ibid.

<sup>642</sup> Ibid.

*arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;*

- e. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the UNCITRAL Model Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with the UNCITRAL Model Law;*
- f. the subject matter of the dispute is not capable of settlement by arbitration under South African law; or*
- g. the award is in conflict with the public policy of South Africa.*
- h. Once it is made an order of court, the award may be enforced in the same manner as any judgment or order to the same effect.*

### **6.5.3 Provisions for Enforcement of Foreign Arbitral Awards in South Africa**

The International Arbitration Act (I.A Act) is the primary legislation in South Africa and incorporates the applicability of the UNCITRAL model law rules for commercial disputes<sup>643</sup>.

The Act acceded the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and implemented the Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 Act dealing with enforcement of foreign arbitral awards. The relevant sections of the I.A Act are as follows;

Section 16 of the I.A Act provides for the recognition and enforcement of arbitration agreements and foreign arbitral awards, this provides for the executability of an award to have

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<sup>643</sup> 15 of 2017

force and effect<sup>644,645</sup>. While section 17 deals with the evidence to be produced by the party that seeks the recognition or enforcement of the award, which provides for record of the proceedings in hearing the award. Section 17(1)(a)(i) of the IA Act postulates that there must be an original arbitration agreement and furthermore that the award must be authenticated according to the requisite foreign documents that will be produced at court<sup>646, 647</sup>. This section provides for the importance of the arbitration agreement that is pivotal to the proceedings of arbitration.

Section 18 of the IA Act contains the provision relating to the refusal of recognition or enforcement, which sets out instances that an award will not be recognized, that it accords with the principles of natural justice<sup>648</sup>. Section 18(1)(a)(i) of the IA Act sets out the instance where the award is not recognized because it is not permissible under the law of the South Africa, when there are instances of conflict of laws with South Africa<sup>649</sup>. While section 18(1)(a)(ii)<sup>650</sup> of the IA Act provides for the instance when the recognition or enforcement of the award is contrary to the public policy of the Republic. There are other instances under section 18(1)(b)(i) of the IA Act which provides for when a party did not have the requisite capacity to enter into the agreement, this refers to no locus to enter into an agreement that amounts to the agreement being void. Section 18(1)(b)(ii) of the IA Act provides that the agreement cannot be enforced because it is invalid under the law of the country. Section 18(1)(b)(iii)<sup>651</sup> of the IA Act provides for the instance that the required notice relating to the appointment of the arbitrator was not provided. Section 18(1)(b)(iv) is relevant when the award deals with a dispute beyond the scope of the arbitration agreement. Section 18(1)(b)(v)

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<sup>644</sup> *ibid*

<sup>645</sup> R Baboolal-Frank, A review of judicial enforcement of arbitral awards in South Africa, (2022). 40(2), *Conflict Resolution Quarterly*, 271-277.

<sup>646</sup> *Ibid*

<sup>647</sup> *Ibid*

<sup>648</sup> *Ibid*

<sup>649</sup> *Ibid*

<sup>650</sup> *Ibid*

<sup>651</sup> *Ibid*

of the IA Act applies when the constitution of the arbitration tribunal does not provide for the hearing of the dispute as set out in the arbitration agreement. And finally, section 18(1)(b)(vi) of the IA Act sets out that the award has been set aside by a competent authority in which country the award was made<sup>652, 653, 654</sup>. This Act supports the notion of executability of awards in the most instances and protecting the principle of party autonomy of the parties that are sacrosanct.

It could be inferred that the I.A Act requires that arbitration agreements and foreign arbitral awards are recognised and enforced in South Africa, strengthening the case for parties seeking to enforce foreign arbitral awards in the country<sup>655</sup>. However, there remain some qualifications to rights of enforcement of arbitral awards in South Africa. The Protection of Businesses Act remains in force, although it has been amended so that ‘foreign judgments’ relating to bodily injury arising from the use of or exposure to South Africa’s natural resources are no longer capable of being enforced in South Africa.

However, in order to enforce a foreign arbitral award in South Africa, a party must produce:<sup>656</sup>

- a. the original award and arbitration agreement, together with a certified copy, authenticated in the foreign jurisdiction from which the award was made;
- b. a sworn translation of the award and arbitration agreement, authenticated in the foreign jurisdiction from which the award was made.

These the same grounds for refusal to recognise or enforce a foreign arbitral award as under the Recognition of Foreign Arbitral Awards Act of 1977 apply under the International

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<sup>652</sup> Ibid

<sup>653</sup> Ibid

<sup>654</sup> Ibid

<sup>655</sup> 2017 *ibid*,

<sup>656</sup> R. Baboolal-Frank, 2022, *ibid*.

Arbitration Act of 2017. It is also worthy of noting that, South African public bodies are bound by the I.A Act of 2017. However, they remain subject to section 13 of the Protection of Investment Act which requires them to first seek to resolve disputes via mediation before pursuing other means of dispute resolution<sup>657</sup>.

In the case of *Phoenix Shipping v DHL Global Forwarding Sa (Pty) Ltd and Bateman Projects Ltd T/A Bateman Engineered Technologies* the salient facts related to correspondence for a shipment of machinery<sup>658</sup>. The parties of DHL and Bateman Projects never concluded a written agreement. The major issue on the existence of the arbitration agreement since it was written. Section 4(1)(b)(i) of the Recognition and Enforcement of Foreign Arbitral Awards Act adjusts the common law to the manner that Bateman possesses an evidential burden to show that no agreement was concluded<sup>659</sup>. It is necessary to emphasize that section 3(a) (i) of the Recognition & Enforcement of Foreign Arbitral Awards Act provides that the application for an award to be made an order of court, is annexed with the original arbitration agreement together with a certified copy of the award<sup>660</sup>.

The case that Judge Yekiso confirmed in deciding the *Phoenix Shipping's case* was *Christopher Brown Ltd v Genossenschaft Oesterreichischer*<sup>661</sup> and the four aspects raised in this English case for enforcement of arbitral awards was firstly a contract that contains the arbitration clause. Secondly that the dispute is referred to arbitration in terms of the contract and thirdly the arbitrators are appointed in terms of the arbitration clause and lastly to prove that the award was made, and the amount of the award was not settled in payment.

This case illustrates the importance of reducing an arbitration agreement to writing. The agreement is the cornerstone of the proceedings, in that it dictates the various aspects of law,

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<sup>657</sup> of 2015 (South Africa)

<sup>658</sup> (2012) (3) SA 381.

<sup>659</sup> No 40 of 1977 (South Africa)

<sup>660</sup> Ibid

<sup>661</sup> (1953) ALL ER 1039

enforcement and the selection of the arbitrators, requisite authority and jurisdiction to hear the dispute.

Under the Protection of Businesses Act, foreign arbitration awards could not be enforced in South Africa where the subject matter of the award concerned mining, production, importation, exportation, refinement, possession, use or sale of or ownership to any matter or material, of whatever nature, whether within, outside, into or from the Republic, subject to specific exceptions<sup>662</sup>. As we understand it, the purpose of this Act was to protect the state's mineral rights and its scope was in fact, narrower than the language suggested.

### **6.6 The Major Discrepancies of Enforcement Provisions on Arbitral Award in Nigeria and South Africa**

The provisions of enforcement of arbitral award in Nigeria and South Africa are similar, most especially at the domestic level, like river Niger and River Benue, although they are two parallel systems heading to their different directions, at some points they share boundary. It is on this note we are going to examine the major differences and similarities of the two system in respect of their provisions for enforcement of both local and foreign arbitral award.

Both the two countries have recognized and placed legal procedures of enforcing domestic award. But the law that governs arbitration in South Africa appears not to have provided for comprehensive procedures of enforcing a domestic arbitral award like in the case of Nigeria. Though little surprise that the law in force is still that of 1965. An amendment is hereby recommended to meet the changes and demands of time. However, it can be observed based on our analysis that South Africa has very updated procedure of enforcing international Arbitral award.

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<sup>662</sup> of 1978 (South Africa)

Nigeria and South Africa are signatories to the New York Convention (NYC), and have all domesticated the resolutions of the Convention as their domestic laws to give them more effective force. While Nigeria incorporating it as the Second Schedule to the AMA. Thus, a foreign arbitral award may be enforced in Nigeria under the AMA or, directly pursuant to the New York Convention<sup>663</sup>. Nigeria ratified the International Centre for Settlement of Investment Disputes (ICSID) Convention in 1965, and domesticated it through the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act<sup>664</sup>. South Africa incorporating It in the International Arbitration Act which is the primary legislation in South Africa and incorporates the applicability of the UNCITRAL model law rules for commercial disputes<sup>665</sup>. The Act acceded the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

In South Africa the limitation period begins to run as at the time the award was pronounced, while in Nigeria, the limitation period begins to run from the date the dispute leading to the arbitration arose instead of when the award was rendered. While highlighting the rationale and effect of limitation period to the jurisdiction of court, we argue that the period set out in the Arbitration and Conciliation Act<sup>666</sup> for enforcement of arbitral awards fails to countenance the inherent delays in Nigeria's justice system which can be exploited to render the enforcement of an award nugatory. The operationalisation of limitation period unless amended<sup>667</sup>. The position of the South Africa is more in line with global best practices.

Surprisingly, judgment of a court in Nigeria is enforceable within periods of time ranging from six years from the date of its delivery, time begins to count for the enforcement of an

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<sup>663</sup> Tulip Nigeria Ltd v Noleggioe Transport Maritime (2011) 4 NWLR (Pt 1237) 254.

<sup>664</sup> 1967 (NIGERIA)

<sup>665</sup> 15 of 2017

<sup>666</sup> Nigeria

<sup>667</sup> D T Eyongndi, *Enforcement of Arbitral Awards in Nigeria and the Jigsaw of Limitation Period: The Need for Compliance with Global Best Practices*, DOI <http://dx.doi.org/10.4314/mlr.v15i1.4> > accessed on 7<sup>th</sup> Feb. 2025

arbitral award from the time when the cause of action accrued and not when the award was delivered<sup>668</sup>. This state of the law is not only illogical but does not accord recognition to the undisputed fact that, just like litigation proceedings, parties to an arbitral proceedings, may only know when the proceedings commences and not when it may end although arbitration is ordinarily reputed as being time saving and expeditious<sup>669,670</sup>. The negative impact is that, if a cause of action from an arbitration arises and last for six years before an award is made, whatever award made thereafter is nugatory and goes to no issue.

There is Arbitration Foundation of Southern Africa (AFSA) that serves as a singular arbitration centre across South Africa but in the case of Nigeria, there is no such singular nationwide arbitration centre, though exists various Chambers of Commerce across states of the Federation. For instance, there is the Lagos Chamber of Commerce International Arbitration Centre in Nigeria and some other multi-door courts houses in some states, like Lagos, Abuja, Kaduna, etc.

The Court that has jurisdiction for enforcement of arbitral award in South Africa is any court of a provincial or local division of the Supreme Court of South Africa having jurisdiction; while in Nigeria the court is Federal High Court, Federal Capital Territory High Court and High Courts of the thirty-six states of the federation.

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<sup>668</sup> See Section 7 (1) (d) Limitation Act, 1966; and the case of City Engineering Nig. Ltd. v. Federal Housing Authority (1997) 9 NWLR (Pt.520) 224.

<sup>669</sup> JB McArthur, and M Travis, 'The Problem of Unreasoned Reasoned Awards and the Judicial Failure to Remedy It: Statutory and Rule Solutions'. (2025). 14(2), *American University Business Law Review*, 6.

<sup>670</sup> C Ekpenisi, PA Aidonojie, GO Antai, A Akinsulore, C Okonji, and DJ John, Legal issues concerning the role of arbitration in resolving corporate governance dispute in Nigeria. (2024). 10(1), *NIU Journal of Legal Studies*, 5.

### 6.6.1 An Examination of the Roles and Challenges of National Court Intervention in Arbitration in the United Kingdom

In the United Kingdom, the Commercial Court takes a non-interventionist approach, but challenges persist, particularly concerning public policy and procedural fairness as highlighted in the case of *Dallah Real Estate v Ministry of Religious Affairs of Pakistan*<sup>671</sup>. Conversely, Nigerian courts often exhibit a tendency toward excessive interference, influenced by a lack of familiarity with arbitration principles<sup>672</sup>.

A comparative analysis indicates that while the UK has established a more arbitration-friendly culture, Nigeria faces notable challenges due to varying interpretations of the Arbitration and Mediation Act and judicial reluctance to fully embrace arbitration as a dispute resolution mechanism. The UK's adherence to the New York Convention facilitates smoother enforcement processes compared to Nigeria, where local legal complexities may lead to significant delays<sup>673</sup>.

The enforcement of arbitral awards is a fundamental aspect of arbitration, ensuring that the decisions made during arbitration proceedings are respected and implemented. However, courts in various jurisdictions, including Nigeria and the UK, often interfere with the enforcement process, resulting in delays and complications. This chapter further explores whether the actions of the courts have mitigated or worsened the delays in enforcement, particularly in the case of *Magbaeola v. Sani* as applicable to Nigeria. This chapter also examines the significance of garnishee proceedings in enforcing monetary awards, particularly in cross-jurisdictional cases<sup>674</sup>.

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<sup>671</sup> (2010) UKSC 46

<sup>672</sup> O Brown, "Judicial Intervention in Arbitration: An Analysis of the Legal Regime for Annulment of Commercial Arbitral Awards in Nigeria" (2021) *University of South Wales*.

<sup>673</sup> A Olawoyin, "The Role of Nigerian Courts in the Enforcement of Arbitral Awards" (2020) 12(1), *Nigerian Journal of Arbitration and Mediation* 45-60.

<sup>674</sup> *Magbagbeola v Sanni* (2002) 4 NWLR (Pt 756) 193

In the UK, the enforcement of arbitral awards is governed by the Arbitration Act 1996. Section 66 of the Arbitration Act of 1996 allows for the enforcement of awards as court judgements by providing that 'an arbitral award is enforceable in the same manner as a judgement or order of the court.' This means that a party can apply the provisions of UNCITRAL to the Court to enforce the award, and the Court will treat it as a court judgment. Additionally, the UK is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, which means that arbitral awards made in other signatory countries are generally enforceable in the UK and vice versa, facilitating international trade and dispute resolution. The Convention provides a streamlined process for recognising and enforcing awards, reducing the need for lengthy litigation in foreign jurisdictions. As a result, the UK's adherence to the Convention enhances its attractiveness as a hub for international arbitration because the New York Convention provides a reliable legal framework for enforcing arbitral awards, which is a critical factor for businesses and parties engaging in cross-border transactions<sup>675</sup>.

The UK courts generally adopt a pro-arbitration stance, emphasising minimal interference in arbitration matters<sup>676</sup>. However, jurisdictional issues and public policy concerns can still arise, particularly in cross-border cases<sup>677</sup>. In this situation, the UK's approach is often contrasted with Nigeria's, as the former has a more established arbitration culture and a judiciary that is well-versed in international arbitration principles.

Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), which also applies to enforcing foreign awards. This highlights Nigeria's commitment to facilitating international trade and investment by ensuring

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<sup>675</sup>Mistelis, L., & Brekoulakis, S., *Arbitrability: International and Comparative Perspectives* (Kluwer Law International, 2020)

<sup>676</sup>M Mukhtar, and A W Ahmad, 'Exploring the Legal Framework: Arbitrators' Rights, Duties, and Judicial Immunity in International Commercial Arbitration Dispute'. (2024). 3, *Pakistan JL Analysis & Wisdom*, 51.

<sup>677</sup> Born, G., *International Commercial Arbitration*, (Alphen aan den Rijn: Kluwer Law International, 2014)

the enforceability of foreign arbitral awards. The Arbitration and Mediation Act of 2023, was modelled after the UNCITRAL provisions and by adhering to the Convention, Nigeria provides a reliable legal framework for recognising and enforcing awards made in other member states, enhancing its appeal as a destination for cross-border business and arbitration.

This aligns with global standards, bolsters confidence in Nigeria's dispute-resolution mechanisms, and promotes integration into the international arbitration community. However, despite these provisions, Nigerian courts have been criticised for excessive interference, often leading to delays in enforcement<sup>678</sup>. Nigeria's membership in various international legal frameworks, such as the Economic Community of West African States (ECOWAS) Treaty, promotes legal cooperation among member states, which assists in harmonising laws relating to foreign judgements and arbitral awards<sup>679</sup>. These treaties aim to enhance cross-border judicial assistance, thereby facilitating the enforcement of international arbitral awards<sup>680</sup>.

In Nigeria, the enforcement of arbitral awards is primarily governed by the Arbitration and Mediation Act (AMA) 2023, which serves as the principal federal legislation on arbitration throughout the country<sup>681</sup>. However, the Lagos State High Court Law also plays a significant role in addressing the enforcement of foreign judgements within Lagos State, establishing the necessary procedures for recognition and outlining the grounds for contesting enforcement. This dual framework underscores the complexities of enforcing arbitral awards, particularly involving international elements. Under Section 1(3) of the Arbitration and Mediation Act 2023, domestic arbitral awards are automatically recognized as binding. An arbitral award shall irrespective of the country or state in which it was made, be recognised as binding, and

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<sup>678</sup> A Olawoyin, 'The Role of Nigerian Courts in the Enforcement of Arbitral Awards'. (2020), 12(1), *Nigerian Journal of Arbitration and Mediation*, 45-60

<sup>679</sup> F Ajayi, 'The Nigerian Judiciary and the Enforcement of Arbitral Awards', (2020), 12(3), *Nigerian Law Journal* 45-60

<sup>680</sup> Generis Global, 'Enforcement of Foreign Judgements and Arbitral Awards in Nigeria: Legal Standards and Processes'. available at < <https://generisonline.com/enforcement-of-foreign-judgments-and-arbitral-awards-in-nigeria-legal-standards-and-processes/> - Generis Global Legal Services > Accessed on: February 6, 2025

<sup>681</sup> G Bamodu, 'Judicial Support for Arbitration in Nigeria: On Interpretation of Aspects of Nigeria's Arbitration and Conciliation Act', (2021) ;62 (2), *Journal of African Law*, 255-279

upon application in writing to the court, be enforced by the court subject to the provisions of the law<sup>682</sup>. This implies that it is only upon application to the courts in writing that an arbitration award can be enforced, regardless of the country or state in which it was made. This provision further provides for the requirements needed by the courts to enforce the award<sup>683</sup>. They include:

- i. The original award or certified copy of it.
- ii. The original arbitration agreement or a certified copy of it
- iii. Where the award or arbitration agreement is not made in English language, a certified translation of it in English language.

An award may by leave of the court, be enforced in the same manner as a judgement or order to the same effect<sup>684</sup>. Section 58 of the AMA, gives the court the powers to recognise and enforce arbitral awards, should it deem it fit, however, only in accordance with the provisions of the law. It clearly states that a party to an arbitration agreement may request the court to refuse recognition or enforcement of the award. Irrespective of the country in which the award was made, the court may only refuse recognition or enforcement of an award on the following grounds<sup>685</sup>:

1. At the request of the party against whom it is invoked, if that party furnishes the court with proof that
  - a. The party to the agreement was under some incapacity
  - b. The arbitration agreement is not valid under the law to which the parties have indicated should be applied or that the arbitration agreement is not valid under the law of the country where the award was made

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<sup>682</sup> Arbitration and Mediation Act 2023, s 57(1)

<sup>683</sup> *ibid* s 57(2).

<sup>684</sup> *Ibid* s 57(3).

<sup>685</sup> *Ibid* 58(2).

- c. The party against whom the award was not given proper notice of the appointment of an arbitrator or of the arbitral proceeding or otherwise not able to present his case.
  - d. The award deals with a dispute not contemplated by or does not fall within the terms of the terms of the submission to arbitration.
  - e. The award contains decisions on matters which are beyond the scope of the submission to arbitration, so however that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced.
  - f. The composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties
  - g. Where there is no agreement between the parties, and the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place.
  - h. The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which the award was made.
2. Where the court finds:
    - a. The subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws. or
    - b. That the award is against public policy of Nigeria
  3. Where an application to set aside or suspend an award has been made to a court referred to in sub (2) (a) (viii), the court before where recognition or enforcement is sought may, if it considers it proper, adjourn its decisions and may also, on the

application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security<sup>686</sup>.

Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with section 55(3) and (4)<sup>687</sup>. An application for setting aside an arbitral award shall not be made on the ground of an error on the face of the award, or any other ground except those expressly stated in sub section 3<sup>688</sup>. The court may set aside an arbitral award where

- a. The party who makes the application furnishes proof that:
  - I. A party to the arbitration agreement was under some legal incapacity
  - II. The arbitration agreement is not valid under the law to which the parties have subjected it, or failing such indication, under the laws of Nigeria,
  - III. The party who makes the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present its case.
  - IV. The award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration
  - V. The award contains decisions on matters which are beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.
  - VI. The composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless the agreement was in conflict with the provisions of this act from which the parties cannot derogate, or

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<sup>686</sup> Arbitration and Mediation Act, s 58.

<sup>687</sup> Ibid n (Section 55(1).

<sup>688</sup> Ibid n (section 55(2).

VII. Where there is no agreement between the parties under sub9vi), that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the Act.

b. The court finds the-

I. Subject matter of the dispute is otherwise not capable of settlement by arbitration under laws of Nigeria.

II. Award is against public policy of Nigeria.

4. An application for setting aside shall not be made after three (3) has elapsed from the date on which the party making that application had received the award or, if a request had been made under section 49 of the AMA, from the date on which that request had been disposed of by the arbitral tribunal.

The court, when asked to set aside an award, may where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take any other action which in the opportunity which in the opinion of the arbitral tribunal will eliminate the grounds for setting aside<sup>689</sup>.

According to the provisions of section 60, without prejudice to sections 57 and 58 of AMA, where the recognition and enforcement of any award made in an arbitration in a country other than Nigeria is sought, the New York Convention on the Recognition and enforcement of foreign award set out in the second schedule to this act applies to an award, provided that the

a. Country is a party to the New York Convention

b. Differences arise out of a legal relationship, whether contractual or not, considered commercial laws of Nigeria.

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<sup>689</sup> Ibid s 55(6)

Despite these established legal frameworks, clearly stating the extent to which the courts may interfere in the recognition and enforcement of arbitral awards, these powers granted by the AMA to the courts, poses several challenges in enforcing arbitral awards in Nigeria. A significant issue is the tension between local court rules and international arbitration conventions, which raises questions about the primacy of statutory provisions over judicial rules in arbitration matters<sup>690</sup>.

One of the significant challenges faced in both jurisdictions is the delay in the enforcement of arbitral awards. In Nigeria, the lengthy judicial processes contribute to backlogs in the enforcement of awards, as seen in *IPCO v. NNPC*, where the award rendered in 2004 remained un-enforced for several years due to ongoing challenges in court<sup>691</sup>.

In the UK, the enforcement of arbitral awards is primarily governed by the Arbitration Act 1996 (AA 1996). It states that an arbitral award is enforceable in the same manner as a judgment or order of the court, thereby allowing parties to apply for enforcement in the courts<sup>692</sup>. The UK is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the Convention), which simplifies the enforcement of foreign arbitral awards<sup>693</sup>. Despite the pro-arbitration stance of the UK courts, there are grounds under Article V of the Convention where enforcement can be refused, including invalidity of the arbitration agreement, lack of proper notice, and public policy concerns (*Dallah Real Estate v. Ministry of Religious Affairs of Pakistan*)<sup>694</sup>.

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<sup>690</sup>A Orekoya, ‘*The Legal Regimes for the Recognition and Enforcement of International Commercial Arbitration Awards in Nigeria: The Unresolved Question of whether the Provisions of Rules of Court can Override the Provisions of a Statute and International Convention*’, 2022. available at <<https://www.lawglobalhub.com/recognition-and-enforcement-of-international-commercial-arbitration-awards-in-nigeria/>> accessed 6th February 2025

<sup>691</sup> Ibid.

<sup>692</sup> The Arbitration Act of 1996, Section 66 .

<sup>693</sup> G. Born, “*International Commercial Arbitration*” (Alphen aan den Rijn: Kluwer Law International, 2014).

<sup>694</sup> (2010) UKSC 46).

Like the UK, Nigeria is a signatory to the New York Convention, which enhances its appeal as a destination for international arbitration. The AMA 2023 states that an arbitral award shall be binding and enforceable upon application to the courts, subject to specific grounds for refusal, which include the incapacity of parties, invalid arbitration agreements, and awards that, contradict public policy<sup>695</sup>. Some notable causes of the courts interference in the enforcement of arbitral awards include:

### **6.6.2 Inadequate Knowledge of The Arbitration Law and Practice Vis-À-Vis Judicial Process**

A lack of understanding and familiarity with arbitration processes among judges, particularly in Nigeria, exacerbates the problem. Many judges may view arbitration as a competition to their judicial authority, leading to unnecessary interference<sup>696</sup>. It is not an exaggeration to assert that some judges may not have been involved in arbitration practice prior to their appointment on the hallowed Bench. This makes the judges learn on the job and this may have consequences depending on their level of involvement and knowledge of arbitration law and practice.

### **6.6.3 Inconsistent Application of Laws**

The inconsistency in the application of laws regarding arbitration can lead to unpredictable outcomes. This is particularly evident in Nigeria, where different states may interpret the Arbitration and Mediation Act differently, leading to varying enforcement experiences across jurisdictions<sup>697</sup>. Inconsistency in decisions being handed down especially by our noble lords at the Court of Appeal based on the circumstances of each cases and state arbitration laws such as Lagos State, Rivers state, and Delta to mention but a few.

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<sup>695</sup> The Arbitration and Mediation Act 2023, Section 58.

<sup>696</sup> O. Brown, "Judicial Intervention in Arbitration: An Analysis of the Legal Regime for Annulment of Commercial Arbitral Awards in Nigeria" (2021) *University of South Wales*

<sup>697</sup> J Adekoya, "*Arbitration and Conciliation in Nigeria: Law and Practice*" (Lagos: Malthouse Press, 2020).

#### 6.6.4 Public Policy Concerns

Both Nigerian and UK courts exhibit a tendency to refuse the enforcement of arbitral awards on public policy grounds. In *IPCO (Nigeria) Ltd v. Nigerian National Petroleum Corporation (NNPC)*, the UK Court highlighted the importance of public policy in determining the enforceability of an award, ultimately leading to the refusal of enforcement due to potential fraud allegations<sup>698,699</sup>.

While both Nigeria and the UK have established legal frameworks to facilitate the enforcement of arbitral awards, court interference continues to pose significant challenges. Public policy concerns, procedural irregularities, jurisdictional disputes, and delays hinder the enforcement process. To enhance the effectiveness of arbitration, it is essential to promote judicial training on arbitration, streamline enforcement procedures, and ensure consistency in the application of arbitration laws.

Courts in Nigeria and the UK refuse to enforce awards if they conflict with public policy. For instance, in Nigeria, the case of *IPCO (Nigeria) Ltd v. Nigerian National Petroleum Corporation (NNPC)* highlighted the Court's reluctance to enforce an award deemed contrary to public policy<sup>700</sup>. Similarly, in the UK, the *Dallah Real Estate v. Ministry of Religious Affairs of Pakistan* demonstrated how courts scrutinise the arbitration process for compliance with public policy<sup>701</sup>. In *IPCO (Nigeria) Ltd v. Nigerian National Petroleum Corporation (NNPC)*, this case involved a contract between the claimant, IPCO, and the defendant, NNPC, to construct a petroleum export terminal<sup>702</sup>. In October 2004, IPCO obtained an award of US\$ 150 million plus interest in arbitration in Nigeria. Since then, many efforts have been

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<sup>698</sup> (2015) EWCA Civ 1144

<sup>699</sup> A. Olawoyin, "The Role of Nigerian Courts in the Enforcement of Arbitral Awards" (2020) 12(1), *Nigerian Journal of Arbitration and Mediation* 45-60.

<sup>700</sup> T Akinwale, Enforcement of Arbitral Awards in Nigeria: Challenges and Prospects, (2020), 36(2), *Journal of International Arbitration*, 145-160

<sup>701</sup> L Mistelis, *Concise International Arbitration* (Alphen aan den Rijn: Kluwer Law International, 2021)

<sup>702</sup> (No. 3) (2015) EWCA Civ 1144 and 1145

made to enforce and challenge the award in Nigeria and the UK. NNPC challenged the award in the Nigerian courts soon after it was rendered, alleging that it was wrong in law and lacked adequate reasoning.

In late 2008, NNPC also alleged that fraud had procured the award. By April 2008, the English court had ordered part payment of the award but adjourned the decision to enforce the award until NNPC's challenge to it in Nigeria had been determined. In June 2009, the parties agreed by consent that enforcement of the Court's order for part payment should be set aside and that enforcement of the award should be adjourned pending the outcome of NNPC's challenge. At this point, the parties expected the challenge to be resolved quickly. However, by 2012, no substantial progress had been made regarding NNPC's challenge to the award in Nigeria.

Accordingly, IPCO applied to the English court under S. 103 of the Arbitration Act 1996 to further enforce part of the award (for US\$ 100 million). The Court of Appeal overturned Field J's (High Court) decision. It held that IPCO would be permitted to enforce part of the award further, provided the Commercial Court was satisfied that it was not contrary to public policy. In doing so, the Court considered the competing arguments that the ongoing delay in determining the challenge in Nigeria (which showed no prospect of being resolved soon) was causing IPCO prejudice. If it enforced part of the award, it might permit IPCO to benefit from an award it may have procured by fraud (the Court accepted this was a bona fide allegation). The Court of Appeal concluded that whilst it faced a "stark choice" between the two, if it declined to order enforcement of the award, IPCO was unlikely to receive the "fruits of it for a generation.". It decided that this was "in commercial terms ... absurd" and would be "inconsistent with the principles that underpin the New York Convention, which was intended to foster international trade by ensuring a relatively swift enforcement of awards and a degree of insulation from the vagaries of local legal systems.". While the Court considered the need

"for comity between the courts of friend foreign states, especially when the court in question is the court of the seat of the arbitration to which the parties have agreed," it concluded that the "judicial system in Nigeria has not kept pace with the need to give effect to the principles underlying the New York Convention.". In circumstances where the proceedings in Nigeria had become "sclerotic" and "a Gordian Knot", the Court held it had no option but to intervene and permit IPCO to enforce part of the award further. However, NNPC, being dissatisfied with the above decision, appealed to the United Kingdom's Supreme Court, which, in its decision delivered on 1 March 2017, unanimously set aside the Court of Appeal's order, allowing NNPC to advance its defence in the English Commercial Court without settling any part of the award<sup>703</sup>.

With this decision, the NNPC went on to fight against the enforcement of the arbitration without the \$100 million part-payment. Indications also point to the fact that the NNPC has a good chance of voiding the whole arbitration, as attested to by both the Commercial Court and the Appeal Court. The propriety or otherwise of the above decisions are not what is to be considered at this point, but the inordinate delay in determining the validity of the arbitral award, which had been delivered since 2004.

In *Dallah Real Estate and Tourism Holding Co. v Ministry of Religious Affairs of Pakistan*,<sup>704</sup>The UK Supreme Court revolved around the enforcement of an ICC arbitral award. The arbitration was initiated after the Ministry of Religious Affairs of Pakistan terminated a contract with Dallah, a Saudi Arabian company. The tribunal rendered an award favouring Dallah, which sought enforcement in the UK. The Ministry challenged the enforcement, claiming it was not a party to the arbitration agreement. The UK Supreme Court

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<sup>703</sup>2017 UKSC 16

<sup>704</sup>(2010)UKSC 46

ruled in favour of the Ministry, refusing to enforce the award because no valid arbitration agreement existed between the parties.

These cases illustrated the judiciary's meticulous approach to arbitration, ensuring that awards are only enforced where legal prerequisites, such as a valid arbitration agreement, are satisfied.

### **6.6.5 Procedural Irregularities**

Another ground upon which courts interfere with the arbitral awards is allegations of procedural irregularities, such as failure to give parties a fair hearing. For instance, in the case of *Dallah Real Estate v. Ministry of Religious Affairs of Pakistan*, Dallah agreed with the Government of Pakistan to provide accommodation for Pakistani pilgrims undertaking the Hajj pilgrimage to Mecca. The agreement contained an arbitration clause for resolving disputes under Paris, France's International Chamber of Commerce (ICC) rules. A dispute arose between the parties, and Dallah initiated arbitration proceedings. The arbitral tribunal ruled in favour of Dallah, awarding it approximately \$20 million in damages. Dallah sought to enforce the arbitral award in the UK under the New York Convention 1958, as implemented by the UK's Arbitration Act 1996. The Government of Pakistan resisted enforcement, arguing that it was not a party to the arbitration agreement and, therefore, not bound by the award.

The central issue was whether the Government of Pakistan was a party to the arbitration agreement and thus bound by the award. The UK Supreme Court had to determine whether the tribunal's decision on its jurisdiction was subject to review by the enforcing Court. The UK Supreme Court held that the Government of Pakistan was not a party to the arbitration agreement and, therefore, was not bound by the award. The Court emphasised that the enforcing Court has the authority to independently review the tribunal's jurisdiction, even

under the New York Convention. This case demonstrated how courts scrutinise the arbitration process for compliance with due process<sup>705</sup>.

### 6.6.6 Jurisdictional Disputes

Jurisdictional challenges also contribute to court interference. The case of *Magbaeola v. Sani*<sup>706</sup> shows the complexities arising from jurisdictional questions, particularly regarding the authority of courts to enforce awards stemming from arbitration agreements<sup>707</sup>. The competent authority in Nigeria to enforce or recognize an arbitral award would depend on the statute under which the enforcement and recognition application is sought<sup>708</sup>. For example, Nigeria ratified the ICSID Convention in 1965. Pursuing its commitment to domesticate the ICSID Convention, the Convention was re-enacted as local legislation vide the International Centre for Settlement of Investment Dispute (Enforcement of Awards) Act, Cap 19 Laws of the Federation of Nigeria 1990, now 2004. The Act provides that an ICSID award shall be enforced in Nigeria as if it were an award contained in a final judgement of the Supreme Court if a copy of such an award, duly certified by the Secretary General of the Centre, is filed in the Supreme Court by the party seeking its recognition and enforcement<sup>709</sup>. Under the ACA, the Federal High Court and the State High Court are the competent authorities<sup>710</sup>. The central issue in this area has been whether both courts have concurrent jurisdiction over the same matter. Can matters that come up for arbitration whose subject matter falls within the exclusive jurisdiction of the Federal High Court be enforced or recognised by the State High Court? Does arbitration give rise to a separate cause of action that can be distinguished from the subject matter of the contract that led to arbitration? These are the questions placed before the Supreme Court in the case of *Mr Adeoye Magbagbeola v Temitope Sanni*, when

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<sup>705</sup> (2010) UKSC 46

<sup>706</sup> (2002) 4 NWLR (Pt 756) 193

<sup>707</sup> T Akinwale, "Enforcement of Arbitral Awards in Nigeria: Challenges and Prospects" 2019) 36(2), *Journal of International Arbitration* (145-160).

<sup>708</sup> (2011) 4 NWLR (Pt1237) 25427

<sup>709</sup> Section 1

<sup>710</sup> Section 57

the Court was called upon to address the issue raised as follows: whether the exclusive jurisdiction of the Federal High Court under Section 251 of the 1999 Constitution (Nigeria) includes matters on the list that become the subject matter of arbitration<sup>711</sup>.

The Court held that the "high court" definition under the Arbitration and Conciliation Act applies to arbitral proceedings. They referred to Section 57(1), which defines "court" as the High Court of a State, the Federal Capital Territory, or the Federal High Court, and "judge" as any judge of such courts. Furthermore, the Court noted that the issue before it was not such that it could invoke the provisions of Section 251 of the 1999 constitution to trigger the exclusive jurisdiction of the Federal High Court over the subject matter dispute between the parties<sup>712</sup>. The above decision implies that parties to arbitration would do well to consider the subject matter in dispute to ensure that the relevant Court has the requisite jurisdiction to entertain an application for the enforcement of an arbitral award.

However, it is recommended that a party seeking to enforce an arbitral award in Nigeria approach the Federal High Court because it has federal jurisdiction. This means that an execution order against the award debtor's assets can be enforced in any state in the federation.<sup>713</sup> The territorial limitations that affect State High Courts do not affect the Federal High Court, making the execution process less procedural or cumbersome.

#### **6.6.7 The Technicalities of Garnishee Proceedings in Enforcing Monetary Awards**

A garnishee order is a judicial mechanism used to enforce monetary judgements by allowing a creditor (judgement creditor) to recover a debt directly from a third party (garnishee) who holds funds belonging to the debtor (judgement debtor). These orders are instrumental when

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<sup>711</sup> (2002) 4 NWLR (Pt 756) 193.

<sup>712</sup> s 91 (1) of AMA

<sup>713</sup> (1996) LPELR-13928(CA)

the judgment debtor refuses or cannot pay the debt, ensuring that the creditor receives payment from assets held by banks, employers, or other financial institutions<sup>714</sup>. In a cross-border issues, garnishee orders become more complex due to jurisdiction, recognition, and enforcement issues in foreign jurisdictions. This means that when a judgment creditor seeks to enforce a debt against a debtor with assets held in a foreign jurisdiction, such creditor must consider several legal principles, such as the recognition of foreign judgements, conflicts of law, and international treaties.

When approached with the enforcement of foreign awards, the courts must determine whether they have jurisdiction over the garnishee, especially when the garnishee is a foreign bank or financial institution. The enforceability of a garnishee order in another jurisdiction largely depends on whether the foreign Court recognises the domestic Court's judgement. Many countries have rules on whether foreign garnishee orders can directly attach to assets held within their borders. The New York Convention of 1958 provides a framework for recognising and enforcing arbitral awards across signatory states. While the Convention primarily applies to arbitration, it plays an indirect role in cross-border garnishee proceedings where the underlying debt arises from an arbitral award. This means if a creditor obtains an arbitral award in a New York Convention signatory state, they can enforce it in another signatory state under the Convention's provisions. Recognising an arbitral award enables the creditor to seek enforcement through domestic legal mechanisms, including garnishee orders.

Once a foreign arbitral award is recognised as a judgment in the enforcing jurisdiction, the creditor may apply for a garnishee order to attach assets held by the debtor. The Court in the enforcing country may require proof that the original arbitral award was validly recognised before allowing garnishment. Some jurisdictions require additional procedures for converting an arbitral award into an enforceable domestic judgment before issuing a garnishee order.

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<sup>714</sup>G Born, *International Commercial Arbitration*, (Alphen aan den Rijn: Kluwer Law International, 2020)

Some signatory states may refuse enforcement under Article V of the New York Convention if the award is contrary to public policy, the debtor was not given proper notice of arbitration proceedings, and the arbitral tribunal lacked jurisdiction. In cases where foreign banks hold the debtor's assets, local banking secrecy laws or sovereign immunity may prevent enforcement through garnishee orders. Several landmark cases have illustrated the complexities of enforcing garnishee orders in cross-border disputes. Courts often assess factors such as the jurisdiction of the garnishee, whether the foreign country recognises the garnishment process and any treaty obligations between the countries.

For example, in *Dallah Real Estate v. Pakistan*,<sup>715</sup> the UK Supreme Court refused to enforce an arbitral award against Pakistan, showing how jurisdictional objections can hinder enforcement. In *Svenska Petroleum Exploration AB v. Lithuania*, issues arose regarding whether state immunity applied to assets targeted through garnishee proceedings.

Garnishee orders undoubtedly play an essential role in cross-border enforcement of judgements and arbitral awards, but they face significant challenges when dealing with international assets. The New York Convention facilitates the recognition of arbitral awards, enabling creditors to seek enforcement through domestic mechanisms, including garnishment. However, jurisdictional hurdles, banking secrecy laws, and the principle of sovereign immunity can limit the effectiveness of garnishee proceedings in foreign jurisdictions.

To navigate these challenges, judgment creditors must carefully consider the laws of the enforcing jurisdiction, applicable treaties, and possible defences debtors raise to resist enforcement. In enforcing monetary awards, garnishee proceedings are often used to attach debts owed to the judgment debtor by a third party (garnishee). However, cross-jurisdictional garnishee proceedings can be complex, especially when the garnishee is outside the enforcing

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<sup>715</sup> *ibid*

Court's jurisdiction<sup>716</sup>. In that case, the enforcing Court relies on international cooperation and reciprocal arrangements under the New York Convention. The case of *Magbaeola v. Sani* highlights the challenges of garnishee proceedings in Nigeria, where the process is often protracted due to procedural bottlenecks.

The case of *Sani v. Kogi State House of Assembly & Ors*<sup>717</sup> highlighted significant challenges in the cross-border enforcement of garnishee orders. In this case, the Supreme Court of Nigeria is asked to address whether a judgment debtor is a necessary party in garnishee proceedings<sup>718</sup>. The Court held that while garnishee proceedings are primarily between the judgment creditor and the garnishee, the judgment debtor can be heard, especially if there are concerns about the accuracy of the judgment sum or the identification of the judgment debtor. This underscores the complexities involved in garnishee proceedings, mainly when dealing with cross-border enforcement, where jurisdictional issues and identifying assets across different territories can complicate the enforcement process<sup>719</sup>.

Additionally, as outlined in Nigerian law, the procedural intricacies of garnishee proceedings require strictness to ensure validity. Any deviation can lead to the invalidation of the proceedings on appeal. This strict procedural framework adds another layer of complexity to cross-border enforcement, where different legal systems and procedural requirements can pose significant challenges.

#### **6.6.8 Multi-Door Courthouses and Court Interference in Arbitration**

Multi-door courthouses (MDCs) are alternative dispute resolution (Arbitration) mechanisms that provide parties with multiple options for resolving disputes, including arbitration,

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<sup>716</sup>T Akinwale, Enforcement of Arbitral Awards in Nigeria: Challenges and Prospects, *Journal of International Arbitration*, (2019), 36(2), 145-160

<sup>717</sup> Supra

<sup>718</sup>(2021) Legalpedia (SC) 11041

<sup>719</sup>Sarkar, S., SR, S. Enforcing Emergency Arbitral Awards: Global and Indian Perspectives. *Liverpool Law Rev.*, (2024), 45, 445–469

mediation, and conciliation. In Nigeria, MDCs have been introduced to reduce the burden on the judiciary and promote the use of Arbitration<sup>720</sup>. When it comes to international enforcement, MDCs face significant challenges in ensuring the smooth enforcement of arbitral awards because cross-border enforcement involves different legal frameworks, conflicting national laws, and the reluctance of some jurisdictions to cede control over enforcement to international arbitration bodies.

MDCs provide alternative dispute resolution (Arbitration) mechanisms that help address challenges such as court interference and cross-border enforcement of judgements. By integrating multiple dispute resolution processes including arbitration, mediation, negotiation, and conciliation under one judicial system, MDCs allow parties to choose the most suitable method for their dispute. This addresses one of the key challenges in traditional litigation—judicial interference where courts intervene in arbitral proceedings, delaying the dispute resolution process. MDCs mitigate that problem by encouraging arbitration and mediation, which reduce court involvement and give parties greater autonomy over the resolution process. By offering a structured Arbitration system backed by judicial recognition, MDCs ensure that disputes are resolved efficiently with minimal procedural delays and unnecessary judicial intervention.

Regarding cross-border enforcement, MDCs facilitate the recognition of arbitral awards under international treaties such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. Since arbitration is a key component of MDC, parties can opt for internationally recognised arbitral processes to ensure that awards are easily enforced in foreign jurisdictions. This is particularly beneficial in commercial disputes where parties seek enforceable outcomes across multiple legal systems. Furthermore, the MDC encourages mediation and negotiation in international disputes, fostering agreements that are more likely

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<sup>720</sup> J Adekoya, *Arbitration and Conciliation in Nigeria: Law and Practice*, (Lagos: Malthouse Press, 2020)

to be voluntarily upheld by parties across different jurisdictions. By streamlining dispute resolution through flexible mechanisms, MDCs enhance the enforceability of judgements and arbitral awards while reducing the burden on conventional court systems.

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## Chapter Seven

### Discussion of Findings

This chapter presented an analysis of the data collected from the questionnaire on court interference in arbitration in Nigeria. The responses have been structured into tables to provide clear insights into each research question and its alignment with the thesis findings. Total number of filled questionnaires were (33).

#### 7.1 Results of Data Analysis

##### Question One

Are you in the private or public sector?

**Table 2: Analysis of Respondents Sector of Practice**

Sectors	Number of respondents	Percentage	Mean	Standard deviation
Public	7	22.6%	-3.33	11.09
Private	21	67.7%	10.67	113.86
Both	3	9.7%	-7.33	53.74
<b>Grand total</b>	31			178.69

**Table 3: Summary of Statistics**

Statistics	Value
Mean ( $\bar{x}$ )	10.33
Variance ( $\sigma^2$ )	59.56
Standard Deviation ( $\sigma$ )	7.72

The results indicated that arbitration practice in Nigeria was more prevalent in the private sector, which accounted for the highest number of respondents (67.7%). In contrast, the public sector (22.6%) and those engaged in both sectors (9.7%) had significantly lower representation. This disparity suggested that government institutions may rely more on traditional court litigation rather than arbitration. Furthermore, the high standard deviation (7.72) reflected substantial variability in arbitration adoption across different sectors, highlighting inconsistencies in its application. These findings gave emphasis to the need for greater public sector engagement in arbitration, potentially through legislative reforms or policy advocacy.

### Question Two

Are you in the Justice sector such as Ministry of Justice, Law related NGOs, Private legal practitioner?

**Table 4: Analysis of Respondents extent of Involvement in Justice Sector**

Sectors	Number of respondents	Percentage	Mean	Standard deviation
Yes	19	59.4%	6.4	6.5
No	5	15.6%	6.4	6.5
Private legal practitioner	5	15.6%	6.4	6.5
Academics	2	6.2%	6.4	6.5
Judicial Officer	1	3.1%	6.4	6.5

The above table indicated that the majority of respondents (59.4%) were engaged in the justice sector, suggesting that arbitration practice in Nigeria is primarily driven by legal professionals, law-related NGOs, and the Ministry of Justice. Private legal practitioners and

individuals outside the justice sector each account for 15.6% of respondents, demonstrating that arbitration extended beyond public legal institutions but remained limited in broader professional adoption. Academics (6.2%) and judicial officers (3.1%) were the least represented, highlighting a potential gap in scholarly engagement and judicial participation in arbitration. The high standard deviation (6.5) suggested significant variability in sectoral representation, indicating that arbitration was not uniformly practiced across different professional groups. These findings underscored the need for increased advocacy and policy reforms to promote arbitration more evenly across all sectors, particularly among judicial officers and academics, to enhance its effectiveness and integration into Nigeria's legal framework.

### Question Three

Are you aware that arbitration process can be interfered with by using the courtroom?

**Table 5: Analysis of Respondents on the Extent Awareness of Court Intervention on Arbitration**

Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	30	93.8%	16.0	14.0
No	2	6.2%	16.0	14.0

The results showed that an overwhelming 93.8% of respondents were aware that arbitration proceedings could interfere with through the courtroom, highlighting a widespread recognition of the judiciary's role in arbitration matters. Conversely, only 6.2% of respondents were unaware of this possibility, suggesting that very few professionals lacked awareness of court intervention in arbitration. The mean response value of 16.0 represented

the average number of respondents per category, while the high standard deviation of 14.0 indicated a significant disparity in responses, mainly due to the dominance of "Yes" responses. These findings reinforced concerns about the extent of judicial interference in arbitration, suggesting a need for stronger legal frameworks to ensure that arbitration remains an independent and effective dispute resolution mechanism in Nigeria.

#### Question Four

As a person in the justice sector, do you think arbitration decisions (award) should not be challenged in the court?

**Table 6: Analysis of Respondents Response on Challenges of Outcomes of Arbitration**

Decision in Court				
Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	13	41.9%	15.5	2.5
No	18	58.1%	15.5	2.5

The findings above revealed that 58.1% of respondents believed that arbitration decisions (awards) should be subject to court challenges, indicating a prevailing view that judicial oversight was necessary in arbitration. In contrast, 41.9% of respondents believed that arbitration awards should not be challenged in court, reflecting confidence in arbitration as a final and binding dispute resolution mechanism. The mean response value of 15.5 suggested a relatively balanced distribution of opinions, though the slight majority favors court intervention. The standard deviation of 2.5 indicated low variability in responses, implying that most respondents hold similar views on the matter. These results suggested that while arbitration was recognized as a crucial alternative dispute resolution mechanism, concerns

remained about its finality, warranting further discussions on the appropriate balance between arbitration autonomy and judicial review in Nigeria.

### Question Five

Should the legislature be persuaded to remove court intervention from arbitration legislation?

**Table 7: Analysis of Respondents Response to Removal by Legislative Provision of Court Intervention from Arbitration Process**

Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	12	38.7%	15.5	3.5
No	19	61.3%	15.5	3.5

The results indicated that 61.3% of respondents opposed removing court intervention from arbitration legislation, suggesting that a majority believed judicial oversight was necessary for ensuring fairness, enforcement, or procedural integrity in arbitration. Conversely, 38.7% supported the removal of court intervention, reflecting a significant but minority preference for arbitration autonomy and finality. The mean response value of 15.5 showed a relatively balanced distribution of opinions, though more respondents favor retaining court oversight. The standard deviation of 3.5 suggested moderate variability in responses, indicating that while opinions were divided, the distribution was not extreme. The findings highlighted an ongoing debate about the extent of judicial intervention in arbitration. While many recognized arbitration as an independent dispute resolution mechanism, concerns persisted about potential abuses or limitations in enforcement, warranting careful legislative considerations in Nigeria's arbitration framework.

**Question Six** Should parties who voluntarily enter into arbitration be barred from using the courtroom on the same subject matter of arbitration?

**Table 8: Analysis of Respondents Response to the barring of parties who voluntarily agreed to use arbitration from using court process**

Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	19	61.3%	12.0	7.0
No	5	16.1%	12.0	7.0

The results indicated that 61.3% of respondents believed that parties who voluntarily entered into arbitration should be barred from litigating the same subject matter in court, reflecting a strong preference for arbitration finality and preventing parallel litigation. Conversely, 16.1% of respondents opposed such a restriction, suggesting concerns about fairness, access to justice, or possible deficiencies in arbitration procedures. The mean response value of 12.0 represented the average number of respondents per category, while the standard deviation of 7.0 indicated a moderate level of variability in opinions. These findings highlighted a prevailing sentiment that arbitration agreements should be strictly enforced to uphold the integrity of the process and reduce court congestion. However, the minority opposition suggested that safeguards may still be necessary to allow judicial recourse in exceptional circumstances.

### **Question Seven**

When asked to suggest solutions to court intervention in arbitration, 28 respondents provided the following statements:

- i. Court should intervene where necessary to ensure the justice of the matter
- ii. Parties should be freely allowed to choose how litigation, or arbitration should go. It should be strictly regulated.
- iii. Solution is centered on enacting sustainable laws or policies that will drive the system.

- iv. Create powerful arbitral institutions to handle such cases by exempting the court. Let the court be only instrumental for enforcement of awards
- v. Arbitration decision should be deemed a judgement of first instance
- vi. Transparency and impartiality should be the benchmark
- vii. court should continue to intervene
- viii. There should be limitations as to court interference, there should be a clear legislation that regulate, let's say Rules of engagement where an aggrieved party wants to go to court then it must be in accordance with such regulations.
- ix. Payment of cost by the party who approaches the court after submitting to arbitration process in the first instance.
- x. The Court shouldn't interfere
- xi. It is only where there are allegations of fraud, illegality, misrepresentation or mistake that the courts should intervene.
- xii. To set aside awards that were not made in good faith
- xiii. To initiate and to confirm arbitration decisions jointly signed and submitted by parties subject to such decisions not being unlawful or illegal or otherwise unenforceable
- xiv. The court should only review decisions from arbitration in exceptional cases
- xv. The Court should only interfere where there are procedural breaches which can affect the prospects of arriving at a just outcome
- xvi. I don't know much about the matter, but the courts should insist on Parties who have elected to settle disputes via arbitration to go through the process only intervening where necessary when the consequent arbitral award is brought before the courts to appeal same where one party is dissatisfied.
- xvii. Courts intervention should be on procedural grounds not the subject matter.
- xviii. Arbitration Review by another arbitration panel as in AMA,2023

- xix. Interpretation of terms of settlement where ambiguous
- xx. Law Reform
- xxi. Limited intervention/interference is suggested to give validity to arbitral process. To enforce an award or appoint arbitrators' courts are needed. However, a validly entered award should be allowed to stay except on recognised vitiating grounds such as bias and undue influence, etc. Also, I suggested that an appeal on a validity entered arbitral award should go straight to Court of Appeal.
- xxii. It will reduce the layers of appeals when necessary.
- xxiii. Intervention when principles of fairness is not observed.
- xxiv. It should be for a cogent and compelling reasons.
- xxv. Court in trying to decongest the cases before it should allow full and serious arbitration in settling the cases placed before it without threat to any of the parties.
- xxvi. Judges should be trained on arbitration and the process, Judges should only intervene in situations provided under the Arbitration and Mediation Act alone, Judges should respect the choice of the parties to resolve their disputes with arbitration and make orders that will ensure that the choice of the parties are enforced and strictly adhered to, and Setting aside an award should be limited in line with the provisions of AMA and not based on mere technicalities.
- xxvii. Parties should be allowed to choose freely.

The responses indicated a general consensus that court intervention in arbitration should be limited and strictly regulated. While many agreed that courts should intervene only in exceptional cases, such as fraud, procedural breaches, or fairness concerns, most respondents support preserving the autonomy of arbitration and minimizing judicial interference. Key recommendations included establishing clear legal frameworks to define the scope of court intervention, strengthening arbitral institutions to handle disputes effectively, and restricting

judicial involvement to enforcing awards and addressing procedural irregularities rather than reviewing the merits of arbitration decisions. Additionally, respondents emphasized the need for judicial training on arbitration to ensure courts respect party autonomy and uphold arbitration laws, such as the Arbitration and Mediation Act (AMA), 2023. Some also suggested internal arbitration review panels as an alternative to lengthy court appeals. Overall, the responses advocated for a balanced approach where arbitration remains an independent dispute resolution mechanism, with courts serving only as a safeguard to uphold justice in exceptional circumstances.

### Question Eight

Which jurisdiction is yours in terms of workplace or courtroom practice?

**Table 9: Analysis of Participants Jurisdiction**

Jurisdictions	Number of respondents	Percentage	Mean	Standard deviation
North East	0	0%	5.33	5.99
North West	2	6.3%	5.33	5.99
North Central	11	34.4%	5.33	5.99
South West	16	50%	5.33	5.99
South East	2	6.3%	5.33	5.99
South South	1	3.1%	5.33	5.99

The results indicated that the South West (50%) and North Central (34.4%) regions had the highest number of respondents, suggesting that arbitration and courtroom practice were more prevalent in these jurisdictions. Meanwhile, North West (6.2%) and South East (6.2%) had a minimal presence, and North East (0%) has no reported respondents, indicating a possible lack of arbitration activity or representation in that region. The mean response value of 5.33

suggested that, on average, participation across jurisdictions was relatively low, with a standard deviation of 5.99, indicating a wide dispersion in responses. This variation highlighted significant regional disparities in arbitration and courtroom practice in Nigeria. These findings suggested a need for greater regional representation and arbitration awareness, particularly in the North East and South South regions, where responses were significantly lower

### Question Nine

Have you used or referred a case to the multi-door courthouse before?

**Table 10: Analysis of Participants Referral to Multi-door Courthouse**

Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	20	62.5%	16.0	4.0
No	12	37.5%	16.0	4.0

The results indicated that 62.5% of respondents had used or referred a case to the Multi-door Courthouse, suggesting that this alternative dispute resolution mechanism was relatively well-utilized. However, 37.5% of respondents had not used or referred a case, indicating that a significant proportion of legal professionals or users still relied on traditional litigation or other arbitration mechanisms. The mean response value of 16.0 represents the average number of respondents per category, while the standard deviation of 4.0 suggested a moderate spread of responses. The findings highlighted the growing but still uneven adoption of Multi-door Courthouses in Nigeria, indicating potential areas for increased awareness, accessibility, or policy support to enhance usage

### Question Ten

Do you think some cases should be filed in court especially where they are before an arbitral panel or in a multi-door courthouse?

**Table 11: Analysis of Participants View on Whether Some Categories of Cases Should not be Arbitrate**

<b>Items</b>	<b>Number of respondents</b>	<b>Percentage</b>	<b>Mean</b>	<b>Standard deviation</b>
Yes	25	78.1%	16.0	9.0
No	7	21.9%	16.0	9.0

The results indicated that 78.1% of respondents answered "Yes", suggesting a strong majority in favor of the given proposition. In contrast, 21.9% of respondents answered "No", indicating a minority opposition. The mean response value of 16.0 represented the average number of respondents per category, while the standard deviation of 9.0 suggested a relatively wide dispersion in responses. These findings highlighted a clear preference among respondents for the affirmative stance, though the variability in responses indicates some level of disagreement or differing perspectives on the issue

### **Question Eleven**

The respondents were asked to provide reasons if their answer to Question 10 was 'Yes.' A total of 15 responses were recorded, including the following:

- i. N/A
- ii. Yes
- iii. Parties should not be robbed of their right to litigate if arbitration matters are being stalled by the other party.
- iv. No
- v. The disposition of parties to settlement will determine
- vi. To save time and cost, some cases do not really need court intervention.

- vii. Nil
- viii. Not every matter is arbitrable, there are matters which require the pronouncement of the courts
- ix. Where the subject matter is one that may be affected by Statute of Limitation, a case may be filed while the Court stays proceedings pending the Arbitration Process
- x. Some sole arbitrator gives judgement base on interest and tribal considerations
- xi. Because time still runs for the purpose of arbitration, when it comes to computation of time for the purpose of statutes of limitations. The Arbitration and mediation Act, 2023 did not address this issue. It only addresses limitations of time to arbitral award, not to the entire time spent during the Trial
- xii. They should be allowed to complete the arbitration process.
- xiii. There shouldn't be any reason for filing a case in court the case which is already before arbitral panel.
- xiv. Parties should take one procedure at a time

The responses indicated a divided perspective on whether cases should be filed in court while arbitration is ongoing. Some respondents believed that parties should have the right to litigate when arbitration is stalled or ineffective, ensuring that justice is not delayed. Others argued that arbitration should be completed before resorting to litigation, as allowing court filings during arbitration could undermine its efficiency and finality. Key concerns raised included statutory limitations, as time continues to run for legal purposes even while arbitration is in progress, potentially affecting a party's right to seek judicial relief. Some respondents highlighted that not all disputes are arbitrable, emphasizing that certain matters require formal court rulings. Additionally, concerns about arbitrator bias reinforce the need for judicial oversight in exceptional cases. Despite these concerns, several respondents advocated for arbitration's autonomy and exclusivity, stressing that parties should adhere to their chosen

dispute resolution mechanism without unnecessary court interference. The findings suggested a need for clearer legal frameworks to regulate the relationship between arbitration and court litigation, ensuring that arbitration remains effective while protecting access to justice when necessary.

### Question Eleven A

Should court intervention be allowed in the appellate courts such as Court of Appeal or Supreme Court?

**Table 12: Analysis of Respondents View on the Allowance of Court Intervention in Appellate Courts**

Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	20	64.5%	15.5	4.5
No	11	35.5%	15.5	4.5

The results indicated that 64.5% of respondent's supported allowing court intervention in appellate courts such as the Court of Appeal or Supreme Court, suggesting a majority believe that arbitration-related decisions should be subject to higher judicial scrutiny. In contrast, 35.5% opposed such intervention, reflecting concerns over maintaining arbitration's independence and finality. The mean response value of 15.5 showed a relatively balanced division of opinions, while the standard deviation of 4.5 indicated moderate variability in responses. These findings highlighted an ongoing debate over the extent of judicial oversight in arbitration, suggesting that while many recognized the role of appellate courts in reviewing arbitration matters, a significant proportion advocates for limiting court intervention to preserve arbitration's effectiveness

### Question Twelve

If you answered 'Yes' to the previous question, please provide your reasons. A total of 19 responses were recorded as follows:

- i. Freedom to exercise constitutional rights
- ii. If the court finds any reason sufficient enough to do so.
- iii. No
- iv. The citizens still need unfettered access to court as a constitutional right
- v. This is because some matters are better analysed and taken care off at the appellet stage.
- vi. In order to foster better relationship especially when the issues before the court emanate from commercial transactions.
- vii. Nil
- viii. For a redress
- ix. Resolve contentions
- x. To ensure that justice is not sacrificed for technicalities
- xi. Where irregular procedures were adopted or where the impartiality of the Arbitration Panel has been compromised
- xii. It checks the process, acts as a filter
- xiii. Well, for all the same reasons why judgements given by the lower courts are referred to the relevant appellate courts.
- xiv. For the reasons why a decision of a court goes on appeal.
- xv. Some awards are not equitable or fair to one of the parties
- xvi. N/A
- xvii. It will reduce the layers of appeal in deserving cases the appeal are necessary. It will save costs and strengthen arbitral process.
- xviii. It would curtail the excesses that could lead to the abuse of the arbitration process.

xix. Parties should be allowed to fully ventilate their issues even to the appellate court.

The responses suggested that judicial intervention in arbitration matters at the appellate level should be permitted under specific circumstances, primarily to safeguard constitutional rights, ensure fairness, and correct procedural irregularities. Many respondents believed that parties should retain the right to seek appellate redress, particularly when arbitration awards appear unjust or when due process has been compromised. At the same time, there was a recognition that excessive court intervention could undermine arbitration's efficiency and purpose. To strike a balance, appellate courts should act as a filter, intervening only when necessary to prevent injustices while maintaining the autonomy and finality of arbitration. Ultimately, a well-structured appellate intervention framework could strengthen confidence in arbitration, reduce unnecessary appeals, and enhance the credibility of the arbitral process.

### Question Thirteen

Do you have a multidoor courthouse in your jurisdiction?

**Table 13: Analysis of Availability of Multi-door Courthouse in Participants Jurisdiction**

Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	28	90.3%	10.33	12.50
No	2	6.5%	10.33	12.50
Not sure	1	3.2%	10.33	12.50

The results indicated that 90.3% of respondents confirmed the presence of a Multidoor Courthouse in their jurisdiction, showing strong availability of alternative dispute resolution (Arbitration) mechanisms. However, 6.5% reported that they did not have one, and 3.2% were unsure, highlighting a small but notable lack of awareness or access. The mean response value of 10.33 represented the average number of respondents per category, while the high

standard deviation of 12.50 suggested significant disparity in responses, likely due to the overwhelming majority answering "Yes" compared to the minimal "No" and "Not sure" responses. These findings suggested that while Multidoor Courthouses are widely established, awareness and accessibility might still need improvement in certain jurisdictions.

#### **Question Fourteen**

Do you think the long period it takes to get appellate decisions in Nigeria is a danger to the practice of arbitration?

**Table 14: Analysis of Participants View on the Threat Attached to Long Period to getting Appellate Decisions in Nigeria**

<b>Items</b>	<b>Number of respondents</b>	<b>Percentage</b>	<b>Mean</b>	<b>Standard deviation</b>
Yes	18	90.3%	10.33	12.50
No	3	6.5%	10.33	12.50

The findings indicated that a majority of respondents (90.3%) believed that the long duration required to obtain appellate decisions in Nigeria poses a serious threat to the practice of arbitration. This suggested a widespread concern that delays in the appellate process undermine the efficiency and finality of arbitration, which is meant to be a quicker alternative to litigation. Conversely, only 6.5% of respondents did not view appellate delays as a significant issue, implying that a small minority may believe that judicial review, even if time-consuming, was necessary to ensure fairness and due process in arbitration matters. The mean response of 10.33 and a high standard deviation of 12.50 indicated a notable disparity in perspectives, suggesting that while most respondents see delays as problematic, there may be differing views on the extent of the impact. These findings highlighted the urgent need for judicial reforms to expedite arbitration-related appeals and maintain arbitration's effectiveness as a dispute resolution mechanism.

### Question Fifteen

Do you think there are things the courts can do to ensure speedy decision in arbitration matters?

**Table 15: Analysis of Participants View on Court Invention on Quick Disposal of Arbitration Process**

Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	17	100%	8.5	8.5
No	0	0	8.5	8.5

All 100% of respondents believed that the courts could take measures to ensure speedy decisions in arbitration matters, indicating a unanimous perception that judicial intervention can enhance arbitration efficiency. No respondent selected "No," which underscored the strong consensus on this issue. The mean response value of 8.5 represented the average number of respondents per category, while the standard deviation of 8.5 reflected the extreme skewness in responses, given that all responses were concentrated in the "Yes" category. These findings highlighted a strong belief in the judiciary's role in improving arbitration timelines, potentially signaling the need for policy reforms or procedural enhancements in court involvement with arbitration matters.

### Question Sixteen

If you answered 'Yes' to the above question, please provide your reason(s). The 15 responses are as follows:

- i. Yes, court should not entertain Arbitration matters
- ii. Amend the rules of court to clear unnecessary technicality
- iii. They should look at United Kingdom system matters don't stay long in court

- iv. Arbitration if concluded in a short time frame is helpful to the parties to save cost and minimise their losses in commercial transactions.
- v. Arbitration clause
- vi. Speedy arbitral Process
- vii. By limiting the time, it takes to conclude matters referred to Arbitration by the Court
- viii. Summary review of award
- ix. Time is an important factor in every transaction
- x. Amendment of Rules
- xi. Yes, by giving it accelerated hearing thereby minimising delay associated with our court system. It will enhance confidence in the arbitral process.
- xii. Yes
- xiii. Timeframe is the best approach.
- xiv. Court should give time frame or ultimatum to the parties and their arbitrators who chose to use arbitration in settling their dispute.

The responses indicated a strong consensus that courts can enhance the efficiency of arbitration by reducing unnecessary intervention, amending procedural rules to eliminate delays, and enforcing strict time limits on arbitration-related cases. Several respondents advocated for courts to minimize their role in arbitration matters, suggesting that excessive judicial involvement contributes to delays. Others emphasized the need to amend court rules to remove technical bottlenecks and adopt best practices from jurisdictions like the United Kingdom, where arbitration cases are resolved swiftly. A key focus in the responses was the importance of time in commercial transactions, with many suggesting that arbitration should be concluded within a strict timeframe to reduce costs and minimize financial losses for parties involved. Some respondents proposed that courts should enforce strict deadlines for arbitrators and disputing parties, ensuring that cases do not linger unnecessarily. Additionally,

suggestions such as accelerated hearings and summary reviews of arbitral awards reflected the need for a more streamlined approach to arbitration-related litigation. Overall, the responses highlighted the urgent need for judicial reforms to promote efficiency in arbitration and enhance confidence in its effectiveness as an alternative dispute resolution mechanism.

### Question Seventeen

In commercial practice, would you prefer the use of arbitration for settlement of disputes or through the court (Please give reasons for your answer)

**Table 16: Analysis of Participants View on the Use of Arbitration for Settlement of Disputes through the Court**

Items	Number of respondents	Percentage	Mean	Standard deviation
Yes	7	35.0%	3.33	2.62
It depends on the nature and complexity of the matter	1	5.0%	3.33	2.62
Yes, arbitration because its faster and caters for expediency of commercial transactions	7	35.0%	3.33	2.62
Both, but there should be timeline	2	10.0%	3.33	2.62
I would prefer the court because it is cheaper	1	5.0%	3.33	2.62
Through arbitration because its faster and would help both parties to restore goodwill and relationships built over time	2	10.0%	3.33	2.62

The results showed a strong preference for arbitration, with 35.0% of respondents explicitly supporting its use for dispute resolution due to its speed and efficiency in commercial transactions. An additional 10.0% believed both arbitration and court litigation should be allowed but with set timelines, while another 10.0% value arbitration for preserving business

relationships. However, 5.0% preferred court proceedings due to lower costs, and another 5.0% consider the choice case-dependent based on complexity. The mean response count was 3.33, indicating that, on average, most response categories received about three respondents. The standard deviation of 2.62 suggested a moderate variation in responses, indicating differing opinions on the best approach to commercial dispute resolution. These findings indicated a dominant preference for arbitration, but with some considerations for flexibility and cost-effectiveness.

## **7.2 Discussion of Findings**

The findings of this study on court intervention in arbitration practice in Nigeria revealed significant insights into the current legal and institutional framework governing arbitration and alternative dispute resolution (arbitration). The study's results aligned with existing literature while also highlighting gaps that required further legislative and judicial attention. This section presented a critical discussion of the findings.

### **7.2.1 Prevalence and Adoption of Arbitration in Nigeria**

The study revealed that arbitration is predominantly utilized within the private sector, accounting for 67.7% of respondents, while public sector engagement remains low. This aligned with previous literature, which argues that arbitration is widely adopted in commercial transactions due to its efficiency and confidentiality<sup>721</sup>. However, scholars have emphasized the need for public sector institutions to integrate arbitration mechanisms into their dispute resolution frameworks to reduce court congestion<sup>722</sup>.

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<sup>721</sup> OB Akinola, (Ed) *'The Dialects of Alternative Dispute Resolution Selected Essays in Honour of His Lordship Hon. Justice Adedotun, A. Grace Onibokun'*. (Ikeja: Lawlexis International, 2023).

<sup>722</sup> S Abimbola, "The Dynamics of Online Dispute Resolution Platforms." In *"The Desirability of a Dispute Resolution Forum for Sports in Nigeria."* In *The Dialects of Alternative Dispute Resolution Selected Essays in Honour of His Lordship, Hon, Justice Adedotun, A. Grace Onibokun, by O. B. Akinola*, (Ikeja: Lawlexis International, 2023). 103-129.

### **7.2.2 Judicial Interference and Awareness of Court Intervention**

A striking 93.8% of respondents acknowledged that courts interfere in arbitration proceedings. This perception corroborates previous studies, which suggest that despite arbitration's intent to operate independently, courts frequently exercise oversight powers in areas such as arbitrator appointments, enforcement of arbitral awards, and interim relief<sup>723</sup>. The Arbitration and Mediation Act explicitly limits court intervention, stating that a court shall not intervene in any arbitration matter except where expressly permitted by law (Section 64). However, the high standard deviation (14.0) in respondents' awareness suggests variability in how court intervention is perceived and applied across different jurisdictions.

### **7.2.3 Judicial Oversight in Arbitration Decisions**

The study found that 58.1% of respondents supported court review of arbitration awards, whereas 41.9% advocate for finality in arbitration decisions. This reflected the longstanding debate on arbitration autonomy versus judicial oversight. According to the jurisdictional theory of arbitration, national courts should have limited intervention, ensuring that arbitration remains a viable alternative to litigation<sup>724</sup>. However, section 47 of the Arbitration and Mediation Act stipulates that arbitral awards are final and binding unless challenged on the grounds of fraud or public policy, reinforcing arbitration's autonomy.

### **7.2.4 Legislative Reforms on Court Intervention**

The study found that 61.3% of respondents oppose removing judicial oversight in arbitration, recognizing its role in ensuring fairness. Section 7 of the Arbitration and Mediation Act

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<sup>723</sup> S 55 (2)(3)(4) of the Arbitration and Mediation Act 2023

<sup>724</sup> R Michaels, and others, '*Achieving the Dream: Autonomous Arbitration*' (The Cambridge Companion to International Arbitration 2021) 1

allows courts to appoint arbitrators where parties fail to agree, illustrating that judicial oversight is necessary in specific instances. Literature suggests that judicial intervention in arbitration should be restrictive rather than expansive, ensuring that courts do not frustrate the intent of arbitration<sup>725</sup>.

### **7.2.5 Restricting Litigation for Arbitration Participants**

A majority of respondents (61.3%) agreed that parties who voluntarily enter into arbitration should be barred from pursuing litigation on the same subject matter. This aligns with the principle of party autonomy, which ensures that arbitration agreements are upheld. However, judicial literature indicates that courts may intervene where arbitration agreements are unconscionable, contrary to public policy, or involve fraud (Magbagbeola v. Sanni, 2000).

### **7.2.6 Judicial Role in Ensuring Speedy Arbitration**

The unanimous response (100%) in favor of courts implementing measures to ensure speedy arbitration decisions highlights the role of judicial efficiency in ARBITRATION. Literature suggests that courts should support arbitration by amending procedural rules, enforcing strict timelines, and limiting delays (Arbitration and Mediation Act, 2023). The study aligns with recommendations for accelerated hearings, summary reviews, and enforcement of arbitral awards without unnecessary delays.

### **7.2.7 Appellate Court Intervention in Arbitration Matters**

The study found that 64.5% of respondents support appellate court intervention, arguing that it protects constitutional rights and ensures fairness. This corresponds with literature suggesting that arbitration, despite its autonomy, should be subject to judicial scrutiny in

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<sup>725</sup> GA. Bermann, 'The Self-Styled 'Autonomy' of International Arbitration'. (2022) 36, *Arbitration International* p 221

cases of procedural irregularities or bias<sup>725</sup>. However, dissenting views argue that appellate intervention dilutes arbitration's efficiency and should be restricted to exceptional cases<sup>728</sup>.

### **7.2.8 Regional Disparities in Arbitration Awareness and Usage**

The study identified significant regional disparities, with arbitration being more prevalent in the South West (50%) and North Central (34.4%) but nearly absent in the North East. This aligned with literature suggesting that institutional support and awareness campaigns influence ARBITRATION adoption<sup>726</sup>. The high standard deviation (5.99) in responses underscores the need for targeted arbitration advocacy in underrepresented regions.

### **7.2.9 Utilization of Multidoor Courthouse and ARBITRATION Mechanisms**

Approximately 62.5% of respondents have used or referred cases to Multidoor Courthouses, reflecting growing acceptance of ARBITRATION. However, 37.5% have not utilized such mechanisms, suggesting gaps in accessibility or awareness. This finding was consistent with studies arguing that institutional bottlenecks hinder ARBITRATION adoption in Nigeria (Akinola, 2023). Policy recommendations include increased funding, awareness campaigns, and judicial training on ARBITRATION mechanisms.

### **7.2.10 Preference for Arbitration in Commercial Disputes**

The study highlighted a strong preference for arbitration in commercial transactions, with 35.0% explicitly favoring it for its speed and cost-effectiveness. This aligned with global trends where commercial entities opt for arbitration due to its confidentiality and flexibility (UNCITRAL Model Law, 2006). However, the 5.0% who prefer litigation cite lower costs and legal certainty, reinforcing the view that arbitration may not always be suitable for all

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<sup>726</sup> I Usman, T M Ahmed, and SO Odobo, 'Achieving Effective Conflict Resolution through Alternative Dispute Resolution (ADR) Mechanisms in Nigeria. (2025). 9(1), *Journal of Guidance and Counselling Studies*, 1-15.

disputes. In conclusion, the findings emphasized the complexity of court intervention in arbitration in Nigeria. While arbitration is widely accepted, challenges remain in judicial interference, legislative clarity, and regional disparities. Existing laws, particularly the Arbitration and Mediation Act (2023), aim to strike a balance between arbitration autonomy and necessary judicial oversight. Moving forward, policy reforms, judicial training, and increased awareness of ARBITRATION mechanisms will be crucial in enhancing arbitration effectiveness in Nigeria.

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## Chapter Eight

### Conclusion

This chapter presented the culminating reflections of the study titled “Court’s Intervention in Arbitration Practice in Nigeria”. It synthesized the major findings of the research, evaluates the implications of judicial intervention in arbitration processes, and draws reasoned conclusions from both the doctrinal and empirical analyses conducted. It proceeded to offer practical recommendations and areas for further scholarly exploration. Given the significance of arbitration as a viable alternative to litigation in modern legal systems, this chapter critically examined how national Courts in Nigeria have contributed to or detracted from the efficacy of arbitration.

This research revealed that while the Arbitration and Mediation Act 2023 introduced significant reforms to reduce court interference, there exist some challenges. Courts in Nigeria continue to engage in judicial review, often citing public policy concerns, procedural irregularities, and jurisdictional disputes as grounds for intervention. There are not yet reported cases on judicial pronouncement on AMA 2023 and the National Policy on Arbitration and Alternative Dispute Resolution, 2024, to the best of our knowledge as of the time of this study.

#### 8.1 Summary of Findings

This study critically explored the challenges confronting national Court intervention in safeguarding Alternative Dispute Resolution (Arbitration) mechanisms in Nigeria, with a particular focus on arbitration. Through doctrinal and empirical research methodologies, it has assessed the evolution, institutional frameworks, and jurisprudential approaches that shape the interaction between the judiciary and arbitral proceedings. The investigation

traversed domestic and international frameworks, drawing comparative insights from selected jurisdictions such as South Africa and United Kingdom

Key findings are summarized as follows:

- i. **Scope and Relevance of Arbitration:** Arbitration remains a critical mechanism for decongesting Courts and enhancing access to timely and impartial dispute resolution. Its confidentiality, cost-effectiveness, party autonomy, and neutrality are widely acknowledged as its advantages.
- ii. **Legal and Institutional Frameworks:** Nigeria's legal framework for arbitration is robust, particularly the various innovations brought by the recent Arbitration and Mediation Act 2023. However, challenges remain in harmonising the statutory, judicial, and institutional roles to ensure coherent application and enforcement.
- iii. **Judicial intervention:** Courts have both facilitative and obstructive roles in arbitration. While statutory provisions support Court intervention in matters such as appointing arbitrators and enforcing awards, excessive interference often compromises arbitral independence and finality of award.
- iv. **Jurisdictional Ambiguities:** Conflicting judicial decisions, inconsistent interpretations of the provisions for court intervention, and overlapping jurisdictions between the Federal High Court, State High Courts, and the National Industrial Court exacerbate uncertainty and delay arbitral outcomes.
- v. **Institutional and Capacity Deficits:** The empirical findings reveal insufficient training, limited awareness, and inadequate resources across Multi-Door Courthouses, further undermining the effectiveness of court-assisted ARBITRATION.
- vi. **Cultural and Customary Challenges:** Nigeria's plural legal culture presents unique tensions between formal legal institutions and traditional dispute-resolution

mechanisms. Customary arbitration, although widely practised, often lacks formal recognition and enforceability.

## 8.2 Conclusion

The findings of this study demonstrate that while arbitration in Nigeria is underpinned by a progressive statutory regime especially with the enactment of the Arbitration and Mediation Act 2023 the judiciary's involvement often reveals a tension between support and overreach. Courts, when functioning optimally, protect arbitral integrity by facilitating enforcement, granting interim relief, and appointing arbitrators. However, excessive intervention erodes party autonomy and delays resolution.

The seat theory which is the legal theory that supports this conclusion establishes that the law of the place of arbitration governs procedural matters and anticipates limited Court oversight. Similarly, the UNCITRAL Model Law, adopted in over eighty (80) jurisdictions, encourages minimal judicial interference except where necessary to support arbitration. These instruments and doctrines stress the importance of respecting the procedural autonomy of arbitration.

The Nigerian judiciary, however, often fails to apply these principles uniformly. As shown in cases like *Chevron U.S.A. Inc. v. Britannia-U Nigeria Ltd* and *Magbagbeola v. Sanni*, conflicting interpretations of jurisdiction and arbitrability reflect an underdeveloped arbitration jurisprudence. As opined by Ojedokun and Akabuiro, the success of arbitration in any jurisdiction depends on the predictability and restraint of its judiciary.

Further, field data collected from six geopolitical zones revealed that many stakeholders Court officials, arbitrators, and legal practitioners view inconsistent judicial reasoning and jurisdictional confusion as significant threats to the legitimacy of arbitration; while many

participants observed that Courts sometimes disregard valid arbitration clauses, undermining the principle of party autonomy.

Another unique contribution of this study is its examination of customary arbitration and the necessity of its formal recognition. Despite widespread use in rural and traditional settings, customary arbitration lacks enforceability in the formal Court system. This study argues for a hybrid approach that integrates culturally appropriate dispute mechanisms with statutory protections. This study confirms that Court intervention in arbitration is indispensable but must be principled, restrained, and informed by domestic statutory frameworks and international best practices. Without clear statutory interpretation and judicial consistency, the promise of arbitration in Nigeria will remain under-realised.

### **8.3 Contribution to Knowledge**

This study offers several significant contributions to the growing body of literature on arbitration and the role of judicial intervention in Nigeria. The originality of the work lies not only in its doctrinal and empirical analysis of the challenges confronting national Courts in the administration of arbitral justice but also in the pragmatic insights it proposes to enhance the operational synergy between Courts and arbitration mechanisms. These contributions are multidimensional, cutting across theoretical innovation, legal reform, judicial practice, policy direction, and comparative legal analysis.

#### **1. Clarifying the Scope and Boundaries of Judicial Intervention in Arbitration**

A major contribution of this study is the comprehensive exposition and clarification of the scope and legal limits of judicial intervention in arbitration under Nigerian law, particularly under the newly enacted Arbitration and Mediation Act 2023. The research dissects statutory provisions such as Sections 7, 34, and 55 of the Act to provide a clearer understanding of the instances in which the Courts may intervene in arbitral proceedings ranging from the

appointment of arbitrators to the enforcement or setting aside of awards. The study critiques the inconsistencies in judicial interpretation and provides a coherent analytical framework for determining the propriety of such interventions.

## **2. Bridging the Gap between Doctrine and Judicial Practice**

Another contribution lies in bridging the theoretical ideals of arbitration such as party autonomy, finality of awards, and limited Court oversight with the practical realities of litigation culture and judicial behaviour in Nigeria. The research demonstrates, through case law analysis and field data, that judicial attitudes often fluctuate between pro-arbitration and judicial activism, leading to unpredictability. This finding provides empirical support for the ongoing calls within Nigerian legal scholarship for a harmonised judicial approach to arbitration that aligns with international best practices.

## **3. Empirical Assessment of Institutional Capacity in Nigeria**

Through qualitative fieldwork across six geopolitical zones in Nigeria, this study offers one of the few empirically grounded analyses of how Multi-Door Courthouses and national Courts operationalise arbitration. This includes assessing the training, infrastructure, case statistics, and perceptions of ARBITRATION practitioners and Court officials. Such data-driven insights are currently scarce in existing literature and provide a factual basis for institutional reforms. It identifies critical shortcomings in awareness, enforcement, and procedural harmonisation, thereby contributing to evidence-based policymaking.

## **4. Advancing Legal Pluralism and Recognition of Customary Arbitration**

A novel dimension of this research is its reference to customary arbitration and the need for its formal integration into Nigeria's legal system. While prior studies have referenced traditional dispute resolution, this thesis systematically evaluates its constitutional, procedural, and evidential recognition within Court-annexed Arbitration mechanisms. It advocates for a

jurisprudential and legislative shift that legitimises indigenous forms of arbitration while ensuring compliance with constitutional safeguards a topic of growing interest in African legal studies but still under-theorised

## **5. Theoretical Contributions to Arbitration Scholarship**

The research critically engages with and extends several theoretical perspectives on arbitration. It refines the jurisdictional theory by illustrating how jurisdictional confusion in Nigeria affects the efficacy of arbitration. It also contributes to the seat theory by showing how the location of arbitration and judicial orientation influence procedural and substantive fairness. Furthermore, the thesis offers a robust defence of the autonomous theory by arguing that arbitration, while requiring minimal Court support, must not be subjected to judicial encroachment that undermines its contractual integrity and neutrality. These theoretical engagements add depth to the scholarly discourse on the intersection of arbitration and state sovereignty.

## **6. Contribution to Comparative Legal Studies**

By comparing Nigeria's arbitration regime with that of selected jurisdictions such as South Africa and the United Kingdom, this study contributes to comparative dispute resolution literature. It highlights best practices in judicial restraint, statutory clarity, and institutional design that may be adapted for the Nigerian context. This comparative dimension enriches the global conversation on the balance between Court intervention and arbitral independence and positions the study as a reference point for future reforms in Africa and beyond.

## **7. Policy-oriented Recommendations for Reform**

Finally, the study advances the knowledge frontier by proposing actionable policy recommendations aimed at improving judicial capacity, statutory clarity, and institutional efficiency. These include the establishment of specialised arbitration benches, judicial

guidelines on intervention thresholds, training programs for judges and Arbitration practitioners, and mechanisms for integrating customary arbitration. These serve as a roadmap for legal and judicial reform, enhancing the role of Arbitration in promoting access to justice and commercial certainty. Conclusively, this thesis advances legal scholarship, judicial practice, and dispute resolution policy in Nigeria by interrogating the nuanced roles of national Courts in arbitration. It offers a comprehensive, empirically grounded, and theoretically enriched account of the arbitration-court interface, positioning itself as a seminal contribution to the evolving field of arbitration law in Nigeria and sub-Saharan Africa. Its insights are valuable not only for legal academics and practitioners but also for policymakers, Arbitration institutions, and international organisations engaged in justice sector reform.

#### **8.4 Recommendations**

To resolve the identified challenges and enhance the collaboration between national Courts and arbitration mechanisms, the following recommendations are proffered:

1. **Judicial Training and Capacity Building:** Continuous legal education for judges on arbitration principles and international best practices is necessary to foster a pro-arbitration judicial culture.
2. **Specialised Arbitration Benches:** Designating arbitration-focused judicial divisions within Courts will improve the consistency and predictability of decisions involving arbitral proceedings.
3. **Harmonisation of Jurisdiction:** Constitutional and legislative reforms should clarify the jurisdiction of the Federal High Court, State High Courts, and National Industrial Court in arbitration matters, mainly where subject matter overlaps occur.

4. **Strengthening Multi-Door Courthouse (MDC) Institutions:** Institutional capacity and resource allocation to MDCs should be enhanced to manage court-annexed ARBITRATION processes efficiently.
5. **Promotion of Customary Arbitration Recognition:** The formal legal system should incorporate customary arbitration practices within the broader legal framework to promote culturally sensitive dispute resolution pathways.
6. **Public Awareness Campaigns:** Extensive sensitisation on arbitration's benefits, processes, and enforceability will build confidence among the legal community and the public.
7. **Clear Judicial Guidelines on Intervention:** The National Judicial Council (NJC) should issue directives or practice rules that defines the permissible scope of Court intervention in arbitration proceedings to avoid arbitrary intervention or excessive intrusions.
8. **Monitoring and Evaluation Mechanisms:** Establishing a national monitoring body under the Ministry of Justice, the National Judicial Council (NJC), or the Nigerian Bar Association (NBA) to review Court performance in Arbitration cases will ensure accountability and adherence to best practices.

The quality of judicial support and the respect for minimal judicial intervention are essential factors that will determine the attractiveness of a jurisdiction as a seat of arbitration. It could be deduced that jurisdictions such as the United Kingdom would continue to be an attractive seat for arbitration owing to its minimal judicial intervention in arbitral matters and safeguard measures put in place to wrest arbitration from the technicalities of the judicial process and consequential delays occasioned thereby.

## 8.5 Suggestions for Further Studies

Given The Dynamic and Evolving Nature of Arbitration Practice in Nigeria, The Following Areas Are Recommended for Further Academic Inquiry:

1. **Comparative Study on Judicial Attitudes Towards Arbitration in West African Jurisdictions:** Such research would offer regional perspectives and identify best practices for enhancing Court-arbitration synergy.
2. **Empirical Evaluation of the Arbitration and Mediation Act 2023:** A post-legislative impact assessment should be conducted to ascertain the extent of its implementation and effectiveness across jurisdictions.
3. **Customary Arbitration and Legal Pluralism:** Further research is needed on how Nigeria can harmonise formal and informal dispute resolution mechanisms without compromising legal certainty or cultural autonomy.
4. **Gender and Access to Arbitration:** Investigating the gender dimensions of access to arbitration, particularly how socio-cultural barriers may affect female participation in ARBITRATION processes.
5. **Digital Arbitration and Online Dispute Resolution (ODR) in Nigeria:** With the rise of technology in legal processes, future studies could explore the adoption, regulation, and challenges of digital dispute resolution platforms in Nigeria.
6. **Economic Impact of Arbitration on Investment and Commerce:** An interdisciplinary study combining legal and economic analysis can reveal how effective arbitration regimes influence foreign investment and commercial confidence in Nigeria.

## Bibliography

### Books

Adekoya J, *Arbitration and Conciliation in Nigeria: Law and Practice* (Malthouse Press 2020).

Akinola OB (ed), *The Dialects of Alternative Dispute Resolution: Selected Essays in Honour of His Lordship, Hon Justice Adedotun A Grace Onibokun* (Lawlexis International 2023).

Akpata A, *The History and Development of Arbitration in Nigeria* (Spectrum Books 2019).

Akpata O and Adegbonmire O, *The Nigerian Arbitration Law in Focus* (West African Book Publishers 2019).

Arbib C and Sanders P (eds), *Arbitrage International Commercial/International Commercial Arbitration: A World Handbook*, vol 2 (Martinus Nijhoff Publishers 2024).

Bantekas I, Ortolani P, Ali S, Gomez MA and Polkinghorne M, *UNCITRAL Model Law on International Commercial Arbitration: A Commentary* (Cambridge University Press 2020).

Bernstein L, 'Merchant Law in a Merchant Court: Rethinking the Code's Search for Immanent Business Norms' in *The Creation and Interpretation of Commercial Law* (Routledge 2022) 3.

Blackaby N, Partasides C and Redfern A, *Redfern and Hunter on International Arbitration: Student Version* (Oxford University Press 2023).

Born GB, *International Arbitration: Law and Practice* (2nd edn, Kluwer Law International 2021).

Born GB, *International Commercial Arbitration* (Kluwer Law International 2020).

Born GB, *International Commercial Arbitration* (Wolters Kluwer 2021).

Born GB, *International Commercial Arbitration: Commentary and Materials* (Brill 2021).

Bradgate R, *Commercial Law* (Butterworths 2000).

Collins Ebi Daniel, *Arbitration and Dispute Resolution in Nigeria: Practice and Procedure* (Kraft Books 2022).

Fouchard P and Goldman B, *Fouchard, Gaillard, Goldman on International Commercial Arbitration* (Kluwer Law International 1999).

Idornigie PO, *Commercial Arbitration Law and Practice in Nigeria* (Lawlords Publications 2015).

Kidane W, *The Culture of International Arbitration* (Oxford University Press 2017).

Mistelis L and Brekoulakis S, *Arbitrability: International and Comparative Perspectives* (Kluwer Law International 2020).

Mistelis L, *Concise International Arbitration* (Kluwer Law International 2021).

Moses ML, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press 2008).

Nwogu B, *Modern Trends in Arbitration Law in Nigeria* (Arbitrator Research Institute 2022).

Omorogbe J, *The Development of Arbitration in Nigeria* (Legal Studies Press 2020).

Onyema E, *International Commercial Arbitration and the Arbitrator's Contract* (Routledge 2010).

Powell EJ and Wiegand KE, *The Peaceful Resolution of Territorial and Maritime Disputes* (Oxford University Press 2023).

Schreuer C, *The ICSID Convention: A Commentary* (Cambridge University Press 2009).

Waters B, *Brown & Marriott's ADR: Principles & Practice* (4th edn, Sweet & Maxwell 2019).

Zhang, J *Harmonization of the Enforceability of Interim Measures Granted by an Emergency Arbitrator in International Commercial Arbitration* in *The Enforceability of Interim Measures Granted by an Emergency Arbitrator in International Commercial Arbitration* (Springer Nature Singapore 2023) 179.

### **Book Chapters**

Abimbola S, 'The Dynamics of Online Dispute Resolution Platforms' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution: Selected Essays in Honour of His Lordship, Hon Justice Adedotun A Grace Onibokun* (Lawlexis International 2023) 103.

Adekoya F, 'The Rise to Professional Stardom: My Personal Life Experience' in T Aderemi (ed), *International Arbitration Law and Practice: The Practitioner's Perspective* (Lawlexis International 2020) 27.

Aderemi T, Adewole T and Abdul A, 'Resolution of Construction Disputes by Arbitration: A Myth or a Reality?' in T Aderemi (ed), *International Arbitration Law and Practice: The Practitioner's Perspective* (Lawlexis International 2020) 82.

Ajibade B and Mayomi K, 'Seat vs Place of Arbitration: A Legal Distinction' in T Aderemi (ed), *International Arbitration Law and Practice: The Practitioner's Perspective* (Lawlexis International 2020) 44.

Ajibade TT, 'Arbitrability: The Length and Breadth of Arbitration' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution: Selected Essays in Honour of His Lordship, Hon Justice Adedotun A Grace Onibokun* (Lawlexis International 2023) 294.

Akinmoladun F, 'Dispute Management and Resolution in Maritime Business: An Overview of the Common Methods of ADR' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution* (Lawlexis International 2023) 154.

Busari O, 'Presenting, Taking and Evaluating Evidence in International Arbitration: A Critical Analysis' in T Aderemi (ed), *International Arbitration Law and Practice: The Practitioner's Perspective* (Lawlexis International 2020) 138.

Chijioke O, Akinola OB and Awoyale OO, 'A Review of the Innovations of the Arbitration and Mediation Act 2023' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution* (Lawlexis International 2023) 103.

Eghobamien O, 'The P&ID Case: The Role of Governments in Bolstering International Arbitration' in T Aderemi (ed), *International Arbitration Law and Practice: The Practitioner's Perspective* (Lawlexis International 2020) 311.

Gbarada O, 'Exploring Mediation as a Tool for Restorative Justice in Nigeria' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution* (Lawlexis International 2023) 359.

Nwozu A, 'A Review of the Innovations of the Arbitration and Mediation Act 2023' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution* (Lawlexis International 2023) 103.

Ogunleye OA, 'The Desirability of a Dispute Resolution Forum for Sports in Nigeria' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution* (Lawlexis International 2023) 168.

Ojonugwa AF and Arthur-Jolasinmi M, 'An Overview of the Need for ADR Mechanisms and the Multidoor Courthouse System in Nigeria' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution* (Lawlexis International 2023) 103.

Omobolanle FP, 'Exploring Innovative Approaches in ADR' in OB Akinola (ed), *The Dialects of Alternative Dispute Resolution* (Lawlexis International 2023) 103.

Onyema E, 'The Concept and Scope of the Arbitrator's Autonomy' in L Brekoulakis and others (eds), *Achieving the Arbitration Dream: Liber Amicorum for Professor Julian DM Lew KC* (Kluwer Law International 2023) 323.

Robert F and Ali F, 'Nigeria as a Seat of Arbitration: Challenges and Prospects' in T Aderemi (ed), *International Arbitration Law and Practice: The Practitioner's Perspective* (Lawlexis International 2020) 104.

Shah K, Harwood S, Malas S, Awosika A and Simpson H, 'The Recognition and Enforcement of Foreign Arbitral Awards: Through the African Looking-Glass' in T

Aderemi (ed), *International Arbitration Law and Practice: The Practitioner's Perspective* (Lawlexis International 2020) 342.

### **Other Sources**

Amanor SK and Ubink MJ, *Contesting Land and Custom in Ghana: State, Chief and the Citizen* (Leiden University Press 2008).

European Parliament, *EU Framework on Alternative Dispute Resolution for Consumers* (European Parliamentary Research Service 2024).

Georgewill BA, 'Alternative Dispute Resolution: A Solution or Illusion?' (Nigerian Bar Association Annual General Conference, Asaba, 2022).

Onnoghen WSN, 'Ethics and Professionalism in Arbitration' (Nigerian Institute of Chartered Arbitrators Investiture and Awards Ceremony, Lagos, 2017).

### **Conference Papers**

Anthony I Idigbe, *Court Control of Arbitral Process* (Paper presented at the Nigerian Bar Association Section on Business Law 2-Day Workshop on "Arbitrator as an Alternative and Expeditious and Cost-Effective Means of Dispute Resolution", Eko Hotels, Victoria Island, Lagos, 5 July 2006) 2.

Juillard M and Kneib, JP 'Simulation Tool: Resources Management in High Performance Avionic for Arbitrator Missions' in *2021 IEEE Aerospace Conference (50100)* (IEEE 2021) 1–12.

Piracha, N Taha S and Gore, KN 'Expeditious Dispensation of Justice: Arbitrator the Way Forward? – Perspectives from Pakistan' in *International Conference: Expeditious Dispensation of Justice – Arbitrator the Way Forward*, The George Washington University Law School, Islamabad, 1–2 September 2022, 25–38.

### **Internet Sources**

Adebayo T, 'The Nigerian Arbitration and Mediation Act, 2023 – The Dawn of a New Era for Arbitration and Mediation Practices in Nigeria' (Topeadebayo.com, 22 December 2024) <https://topeadebayo.com/wp-content/uploads/2024/01/99>

Ajibade SPA, 'Challenging and Enforcing Arbitration Awards in Nigeria' (2025) <https://spaaajibade.com/challenging-and-enforcing-arbitration-awards-in-nigeria/>

'Concept, Nature and Meaning of Alternative Dispute Resolution System' (Shodhganga) [https://shodhganga.inflibnet.ac.in/bitstream/10603/127847/12/07\\_chapter%202.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/127847/12/07_chapter%202.pdf)

Cornell Law School, 'Arbitration' (Legal Information Institute, 2022) <https://www.law.cornell.edu/wex/arbitration>

Doak B and Spalding H, 'Combating Arbitral Terrorism: Anti-Arbitration Injunctions Increasingly Threaten to Frustrate the International Arbitral System' (King & Spalding) <http://www.kslaw.com/library/pdf/bishop7.pdf>

Food and Agriculture Organization (FAO), 'Arbitration and Conciliation Act' (FAO) <https://faolex.fao.org/docs/pdf/nig120195.pdf>

Harwood S, *An Introduction to International Arbitration: A Guide from Stephenson Harwood LLP* <https://www.shlegal.com/flipbook/an-introduction-to-international-arbitration/files/assets/common/downloads/An%20introduction%20to%20international%20arbitration.pdf>

IBA Arbitration Committee, 'Arbitration Guide: Nigeria' (International Bar Association, 2024) <https://www.ibanet.org/document?id=Nigeria-country-guide-arbitration>

Aceris Law LLC, 'Definition of Arbitration' (18 February 2018) <https://www.international-arbitration-attorney.com/definition-of-arbitration/>

Legal Information Institute, 'Alternative Dispute Resolution' [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution) accessed 1 September 2023

TEMPLARS, 'Nigerian Arbitration and Mediation Act, 2023 – Key Innovations' (TEMPLARS ThoughtLab, 22 December 2024) <https://www.templars-law.com/app/uploads/2023/07/Nigerian-Arbitration-and-Mediation-Act-202338.pdf>

Organization for the Harmonization of Business Law in Africa (OHADA), 'List of Member States' <https://www.ohada.org/en/state-members/>

Pon Staff, 'What Are the Three Basic Types of Dispute Resolution? What to Know about Mediation, Arbitration, and Litigation' (Harvard Program on Negotiation) <https://www.pon.harvard.edu/daily/dispute-resolution/what-are-the-three-basic-types-of-dispute-resolution-what-to-know-about-mediation-arbitration-and-litigation>

Rodolfo DF, *The OHADAC Court of Arbitration* <https://www.ohadac.com/telechargement/bibliographie/28/0/the-ohadac-court-of-arbitration.davalos-fernandez-rodolfo.pdf>

Weeramantry R, 'Anti-Arbitration Injunctions: The Core Concepts' (Centre for International Law, National University of Singapore) <http://cil.nus.edu.sg/wp/wpcontent/uploads/2014/06/Note-on-anti-arbitration-injunctions.pdf>

Suraj GB, 'Ten Factors to Consider Before Deciding Seat of Arbitration' (IP Leaders Blog, 2017) <https://blog.ipleaders.in/seat-of-arbitration-factors/> accessed 14 December 2024

Termly, 'Arbitration' (Termly Legal Dictionary, 2025) <https://termly.io/legal-dictionary/arbitration>

Gelias & Co, 'The Arbitration and Mediation Act, 2023 – Notable Innovations' [https://www.gelias.com/images/Newsletter/Review\\_of\\_the\\_Arbitration\\_and\\_Mediation\\_Act\\_2023\\_Article.pdf](https://www.gelias.com/images/Newsletter/Review_of_the_Arbitration_and_Mediation_Act_2023_Article.pdf) accessed 22 December 2024

Olaniwun Ajayi, 'The Extent of Court's Intervention in Arbitration Proceedings: A Review of the Decision in NNPC v Total E & P' (Olaniwun Ajayi Newsletter, 2019) <https://www.olaniwunajayi.net/blog/wp-content/uploads/2019/03/>

UNCITRAL, 'International Commercial Arbitration' (United Nations Commission on International Trade Law) <https://uncitral.un.org/en/texts/arbitration>

Winterbotham Parham Teeple PC, 'Us v Them' <https://www.4bankruptcy.com/us-v-them/>

Wilkins R, 'Arbitration in Africa: Survey Identifies Top Arbitral Centres and Seats' (Pinsent Masons Out-Law, 2020) <https://www.pinsentmasons.com/out-law/news/arbitration-africa-survey-arbitral-centres-seats>

World Intellectual Property Organization (WIPO), 'What Is Arbitration' <https://www.wipo.int/amc/en/arbitration/what-is-arb.html>

## Journal Articles

Abiola S, 'Legal and Institutional Frameworks for Effective Application of ADR in Marital Disputes' (2025) 2(4) *Fountain University Law Journal* 69.

Agarwal AK, 'Party Autonomy in International Commercial Arbitration' (2007) 7 *Indian Institute of Management, Ahmedabad, India Research and Publication*.

Ajayi F, 'The Nigerian Judiciary and the Enforcement of Arbitral Awards' (2020) 12(3) *Nigerian Law Journal* 45.

Ajayi T, 'Colonial Arbitration Ordinances: Their Legacy in Nigeria's Legal System' (2019) 45(1) *Nigerian Law Journal* 84.

Akinwale A, 'Customary Arbitration in Nigeria: Pre-Colonial Practices and Modern Implications' (2020) 18(3) *African Journal of Legal Studies* 97.

Akinwale T, 'Enforcement of Arbitral Awards in Nigeria: Challenges and Prospects' (2019) 36(2) *Journal of International Arbitration* 145.

Alatise TN, 'Stay of Proceedings Pending Arbitration: Protecting the Interests of Third-Parties to Arbitration in Nigeria' (2018) 9(2) *Journal of Sustainable Development Law and Policy* 220.

Allsop J, 'National Courts and Arbitration: Collaboration or Competition?' (2015) 81 *International Journal of Arbitration, Mediation and Dispute Management*.

Amaechi OM, 'The Prospects of Arbitration in the Settlement of Intellectual Property Disputes in Nigeria' (2025) 1(1) *Polynek Journal of Law, Technology and Innovation*.

Antonopoulou G, 'The "Arbitralization" of Courts: The Role of International Commercial Arbitration in the Establishment and the Procedural Design of International Commercial Courts' (2023) 14(3) *Journal of International Dispute Settlement* 328.

Aptaprava L, 'Alternative Dispute System in India: An Overview' (2023) 14(3) *Asian Journal of Management* 211.

Arabahmadi MR and Karimi M, 'An Analysis of the Autonomous Theory in International Commercial Arbitration' (2021) 12(44) *Private Law Research* 187.

Arbune PS and Yadav PV, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) *European Chemical Bulletin* 7734.

Asouzu AA, 'The Adoption of the UNCITRAL Model Law in Nigeria: Implications on the Recognition and Enforcement of Arbitral Awards' (1999) *Journal of Business Law* 185.

Baboolal-Frank R, 'A Review of Judicial Enforcement of Arbitral Awards in South Africa' (2022) 40(2) *Conflict Resolution Quarterly* 271.

Ball M, 'The Essential Judge: The Role of the Courts in a System of National and International Commercial Arbitration' (2006) 22 *Arbitration International* 73.

Behl M, 'Judicial Intervention in Arbitral Proceedings: Support or Interference?' (2021) 3(1) *Indian Journal of Law and Legal Research*.

Boorman FC, 'Developments in the History of Arbitration: A Past for the Present' (2022) 4 *Amicus Curiae* 109.

Born G, 'The Hague Convention on Choice of Court Agreements: A Critical Assessment' (2021) 169(8) *University of Pennsylvania Law Review* 2079.

Brand RA, 'The Law(s) of the Arbitration Agreement' (2025) U of Pittsburgh Legal Studies Research Paper (2025-03).

Brekoulakis S, 'International Arbitration Scholarship and the Concept of Arbitration Law' (2013) 36 *Fordham International Law Journal* 745.

Castagna S, 'Inherent and Implied Powers of International Arbitral Tribunals: Characteristics and Limits' (2016) 82(4) *International Journal of Arbitration, Mediation and Dispute Management* 409.

Chauhan N, 'Judicial Intervention in Arbitration: A Comparative Analysis' in *Arbitration* (3 March 2022).

Chukwuemeka EI, 'The Machinery for Enforcement of Domestic Arbitral Awards in Nigeria – Prospects for Stay of Execution of Non-Monetary Awards: Another View' (2011) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 304.

Cortés P, 'Embedding Alternative Dispute Resolution in the Civil Justice System: A Taxonomy for Arbitrator Referrals and a Digital Pathway to Increase the Uptake of Arbitration' (2023) 43(2) *Legal Studies* 312.

Dantas ST, 'The Contemporary Evolution of Contract Law' (2023) 32 *Revista Brasileira de Direito Civil* 135.

Deshpande H and Mohan N, 'Anti-Arbitration Injunctions: A Hindrance to Arbitral Efficacy or Shield Against Abuse of Process?' (2025) SSRN <https://ssrn.com/abstract=5319140>.

Dike E, 'Arbitration Practice and Procedure in the Settlement of Domestic Commercial Disputes in Nigeria' (2004) 1(1) *Negotiation and Dispute Resolution Journal* 41.

Ekpenisi C, Aidonojie PA, Antai GOA, Akinsulore C, Okonji C and John DJ, 'Legal Issues Concerning the Role of Arbitration in Resolving Corporate Governance Dispute in Nigeria' (2024) 10(1) *NIU Journal of Legal Studies* 5.

Elias G, 'Challenging and Enforcing Arbitration Awards: Jurisdictional Know-How' in *The Guide to Challenging and Enforcing Arbitration Awards* (Global Arbitration Review, Law Business Research 2021) 575.

Eyongndi DT and John IE, 'The Principle of Taking a Step in the Proceedings under Nigerian Arbitration and Conciliation Act: The Need for Delineation' (2018) 7(3) *Port Harcourt Law Journal* 123.

Eyongndi DT and Olabisi OO, 'Applicability of Immunity Clause to Arbitration in Nigeria' (2019) 1(2) *International Review of Law and Jurisprudence* 29.

Eyongndi DT, 'Enforcement of Arbitral Awards in Nigeria and the Jigsaw of Limitation Period: The Need for Compliance with Global Best Practices' (2021) 15(1) *Mizan Law Review* 107.

Eze C, 'The Evolution of ADR in Nigeria: Challenges and Prospects' (2023) 15(2) *Journal of African Legal Studies* 98.

Gary B, 'The Hague Convention on Choice of Court Agreements: A Critical Assessment' (2018) 23(6) *Journal of Constitutional Law*.

Gary Born and C Kalelioglu, 'Choice-of-law Agreements in International Contracts' (2021) 50(44) *Georgia Journal of International and Comparative Law* 719.

Gbenga B, 'Judicial Support for Arbitration in Nigeria: On Interpretation of Aspects of Nigeria's Arbitration and Conciliation Act' (2021) 62(2) *Journal of African Law* 255.

George AB, 'The Self-Styled "Autonomy" of International Arbitration' (2022) 36 *Arbitration International* 221.

Hartoyo R and Sulistyowati S, 'The Role of the Legal Aid Post in Providing Legal Assistance to Disadvantaged People in Order to Obtain Justice in the Courts of the Holy Land' (2023) 8(3) *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 1599.

Hoicka CE, Lowitzsch J, Brisbois MC, Kumar A and Camargo LR, 'Implementing a Just Renewable Energy Transition: Policy Advice for Transposing the New European Rules for Renewable Energy Communities' (2021) 156 *Energy Policy* 112435.

Karamanian SL, 'Courts and Arbitration: Reconciling the Public with the Private' (2017) 9(1) *Arbitration Law Review*.

Kumar S, 'Arbitration: A Streamlined Alternative to Court Litigation' (2024) 2 *LawFoyer International Journal of Doctrinal Legal Research* 655.

Landbrecht J, 'The Autonomy of Arbitration: Autonomie À Géométrie Variable' (2022) 14 *Contemporary Asia Arbitration Journal* 39.

Lekshmi S Kumar, 'A Study on Judicial Intervention in Arbitration' (2023) 3(3) *Indian Journal of Integrated Research in Law* 1.

Lucas CA, 'The 2005 Hague Choice of Court and the 2019 Hague Judgments Conventions versus the New York Convention: Rivals, Alternatives or Something Else?' (2019–2020) 6(6) *McGill Journal of Dispute Resolution*.

Makarov IA and Tekeev MSh, 'Accessibility of Justice in Arbitration Courts: Current Issues of Procedural Regulation' (2020) 2 *Arbitrazh-civil procedure* 46, doi:10.18572/1812-383x-2020-2-46-50.

Markham B, 'The Essential Judge: The Role of the Courts in a System of National and International Commercial Arbitration' (2006) 22 *Arbitration International* 73.

Mattli W, 'Private Justice in a Global Economy: From Litigation to Arbitration' (2001) 55(4) *International Organization* 919.

McArthur JB and Travis M, 'The Problem of Unreasoned Reasoned Awards and the Judicial Failure to Remedy It: Statutory and Rule Solutions' (2025) 14(2) *American University Business Law Review* 6.

Michaels R and others, *Achieving the Dream: Autonomous Arbitration in The Cambridge Companion to International Arbitration* (CUP 2021) 1.

Moneke E, 'Judicial Intervention in Arbitral Proceedings under Nigeria's Arbitration Legislation: Supportive or Disruptive?' (2024) 27(2) *International Arbitration Law Review* 144.

Nkongho E, 'Alternative Dispute Settlement in International Law: Resolving Commercial Disputes through Arbitration' (2024) 8 *Saudi Journal of Economics and Finance* 149.

Nweze N, 'Re-examining the Effect of Principles of Judicial Non-Interference and Kompetenz-Kompetenz on the Jurisdiction of Courts in Nigeria' (2023) 18 *Nigerian Juridical Review* 162.

Nyitioseh NA, 'A Comparative Analysis of Remedies and Challenges in the Protection of Stakeholders' Rights: OHADA vs English Corporate Law' (2024) 3(3) *Studies in Law and Justice* 20.

Obegolu E, 'Application of the Seat Theory to International Arbitration: State Sovereignty Under Fire' (2021) 5(2) *African Journal of Legal History and Review* 34.

Obiozor CA, 'The Machinery for Enforcement of Domestic Arbitral Awards in Nigeria: Prospects for Stay of Execution of Non-Monetary Award' (2010) 1 *UNIZIK Journal of International Law and Jurisprudence* 194.

Ojedokun O and Akabuiro DO, 'The Concept of the Seat in International Arbitration: Unlocking the Judicial Challenge of Interpretation of Conflict of Laws' (2022) 88(4) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*.

- Ojimba CC, 'Commercial Dispute Resolution in Nigeria and Selected Jurisdictions: Issues and Prospects' (2024) 18(2) *UNIZIK Journal of Educational Research and Policy Studies*.
- Ojo A, 'Nigeria's New Arbitration Act: A Step in the Right Direction?' (2023) 27 *African Commercial Law Review*.
- Okeke CJ, 'The Challenges of the Nigerian Arbitration and Conciliation Act' (2022) 1(1) *Journal of Current Issues in Nigerian Law*.
- Olawoyin A, 'The Role of Nigerian Courts in the Enforcement of Arbitral Awards' (2020) 12(1) *Nigerian Journal of Arbitration and Mediation* 45.
- Oluwanimilo OO, 'Sources and Development of Arbitration Legislations in Nigeria' (2024) 1(2) *Nnamdi Azikiwe University Journal of Private and Property Law* 134.
- Onuzulike C, 'An Appraisal of the Concept of Anti-Suit Injunction in International Arbitration' (2021) SSRN <https://ssrn.com/>.
- Onyema E, 'Arbitration in Lagos: A Viable Alternative to Litigation?' (2022) 34 *African Arbitration Review*.
- Onyema E, 'Emergency Arbitration in Africa: Trends and Challenges' (2022) *International Arbitration Law Review* 79.
- Orekoya A, 'The Legal Regimes for the Recognition and Enforcement of International Commercial Arbitration Awards in Nigeria: The Unresolved Question of Whether the Provisions of Rules of Court can Override the Provisions of a Statute and International Convention' (2022) SSRN <https://ssrn.com/abstract=4327007> or <http://dx.doi.org/10.2139/ssrn.4327007>.
- Orok J, 'The Evolution of Arbitration Laws in Nigeria: A Shift Towards International Best Practices' (2023) *Journal of African Arbitration* 14.
- Paul OI and Enuma UM, 'Anti-Arbitration Injunctions in Nigeria' (2016) 82(4) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 438.
- Pound R, 'The Causes of Popular Dissatisfaction with the Administration of Justice' (1906) 14 *American Law Review* 445.
- Powell EJ and Pérez-Liñán A, 'Compliance with Decisions of the Permanent Court of Arbitration' (2025) *The Review of International Organizations* 1.
- Powell R and Hashim A, 'Language Disadvantage in Malaysian Litigation and Arbitration' (2011) 30(1) *World Englishes* 92.
- Qiuju J, 'Determination of Seat of Arbitration, and Its Legal Significance' (2019) *Chinese Business Law Journal*.

Radicati di Brozolo IG, 'Emmanuel Gaillard's Theory of International Arbitration: The Basis for a Uniform Law of International Arbitration' (2023) SSRN <https://ssrn.com/abstract=4950262>.

Ram SSV, 'Alternative Dispute Resolutions' (Lok Sabha Secretariat Larrdis 2020).

Rhidian TD, 'Handbook of Arbitration Practice by Ronald Bernstein QC' (1988) 4(1) *Arbitration International* 80.

Rule C, 'Online Dispute Resolution and the Future of Justice' (2020) 16 *Annual Review of Law and Social Science* 277.

Sarkar S, 'Enforcing Emergency Arbitral Awards: Global and Indian Perspectives' (2024) 45 *Liverpool Law Review* 445.

Sattar S, 'National Courts and International Arbitration: A Double-Edged Sword?' (2010) 27(1) *Journal of International Arbitration*.

Tatar OV, 'Evolution and Transformation of Innominate Contracts through the Principle of Freedom of Contract: A Synthesis of Scientific Works' (2022) *Perm University Herald Juridical Sciences* 55.

Uwais M, 'Comparative Study of Arbitration Laws in Nigeria, UK, and Singapore' (2023) *International Journal of Arbitration Studies* 95.

Wei Z, 'The Rationality and System Perfection of Identity Compatibility between Arbitrator and Mediator in the Med-Arb Model' (2024) 15 *Beijing Law Review* 761.

William GB, 'The Symbiotic Relationship Between International Arbitration and National Courts' (2013) 2 *Dispute Resolution International* 101.

### **Theses and Dissertations**

Brown O, *Judicial Intervention in Arbitration: An Analysis of the Legal Regime for Annulment of Commercial Arbitral Awards in Nigeria* (University of South Wales 2021).

Kyprianou AL, *The Autonomous Theory of International Commercial Arbitration: An Autopoietic Perspective* (PhD thesis, University of Leicester 2023).

Kyprianou AL, *The Autonomous Theory of International Commercial Arbitration: An Autopoietic Perspective* (PhD thesis, University of Leicester 2023).

Okeke AA, 'Exploring Alternative Dispute Resolution for Settlement of Criminal Disputes in Nigeria' (Walden Dissertations and Doctoral Studies, 2021).

## **Appendix I**

### **Questionnaire**

Dear Participant,

This is a research questionnaire for a PhD student in Law, Faculty of Law, Lead City University, Ibadan. This research is aimed to examine the Challenges of National Court's Intervention in Safeguarding the Alternative Dispute Resolution Practice in Nigeria.

Thank you for agreeing to participate in this survey. Your responses will be kept confidential and only used for academic research purposes.

Note: Respond to the questions to the best of your knowledge and personal experiences. If a question does not apply to you or you do not have an answer, please skip to the next question.

The following instructions will assist you in completing the questionnaire accurately:

- This survey questionnaire may take about 5-10 minutes to complete.
- Research assistant may be contacted for clarity if needed.
- Answer all questions, but leave out those that are not applicable or where you are unsure about your answer.
- Please read all the instructions before answering.
- Go through all options in each question before ticking an option.
- Provide exact figures, or tick ( ) applicable options within boxes

**Abimbola, Munta Ladi**

Contact Details: +234 803 333 4189

[labima09@gmail.com](mailto:labima09@gmail.com)

1. Are you in the private or public sector?    Public Private Both

2. Are you in the Justice sector such as Ministry of Justice, Law related NGOs, Private legal practitioner?

Public  Yes  No

Private Yes  No

Private Legal Practitioner ,

Academics

Judicial Officers

3. Are you aware that arbitration process can be interfered with by using the courtroom?

Yes  No

4. As a person in the justice sector, do you think arbitration decisions (award) should not be challenged in the court? Yes  No

5. Should the legislature be persuaded to remove court intervention from arbitration legislation? Yes  No

6. Should parties who voluntarily enter into arbitration be barred from using the courtroom on the same subject matter of arbitration? Yes  No

7. Suggest solutions to court intervention in arbitration-----

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8. Which jurisdiction is yours in terms of workplace or courtroom practice?

North West

North East

North Central

South West

South East

South South ()

9. Have you used or referred a case to the multi-door courthouse before? Yes () No ()

10. Do you think some cases should be filed in court especially where they are before an arbitral panel or in a multi-door courthouse? Yes () No ()

11. The respondents were asked to provide reasons if their answer to Question 10 was 'Yes.'--

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12. Should court intervention be allowed in the appellate courts such as Court of Appeal or Supreme Court? Yes () No ()

13. If you answered 'Yes' to the previous question, please provide your reasons. -----

-----

14. Do you have a multi-door courthouse in your jurisdiction? Yes () No ()

15. Do you think the long period it takes to get appellate decisions in Nigeria is a danger to the practice of arbitration? Yes () No ()

16. Do you think there are things the courts can do to ensure speedy decision in arbitration matters? Yes () No ()

17. If you answered 'Yes' to the above question, please provide your reason(s). -----

-----

18. In commercial practice, would you prefer the use of arbitration for settlement of disputes or through the court (Please give reasons for your answer) -----

-----

## Appendix II

### Key Informants Interview Guide for Arbitrators and Mediators, Judges, Academics with ADR Experience, ADR Policy Makers, Government Officials (Ministry of Justice & Legislators) and Industrial Stakeholders

Office..... Date.....

Designation..... Rank.....

Thank you for participating in this interview. Your insights will contribute significantly to understanding the challenges of national courts intervention in safeguarding Alternative Dispute Resolution (ADR) practice in Nigeria.

#### Section 1: Background Information

1. What is your role/position in relation to ADR practice in Nigeria?
2. How long have you been involved in ADR practice or research?

#### Section 2: ADR Practice and Court Intervention

1. Can you describe your experience with ADR practice in Nigeria?
2. How do national courts currently intervene in ADR processes?
3. What are the benefits and drawbacks of court intervention in ADR?

#### Section 3: Challenges Facing ADR Practice

1. What are the major challenges facing ADR practice in Nigeria?
2. How do national courts' interventions impact ADR processes and outcomes?
3. Are there any specific court procedures or rules that hinder ADR effectiveness?

#### Section 4: Safeguarding ADR Practice

1. How can ADR be promoted and safeguarded in Nigeria?
2. What role do you think national courts should play in supporting ADR?
3. Are there any best practices or models from other jurisdictions that Nigeria can adopt?

#### **Section 5: Recommendations and Future Directions**

1. What recommendations do you have for improving the relationship between national courts and ADR practice?
2. How can stakeholders (e.g., ADR practitioners, courts, policymakers) collaborate to promote ADR?
3. Are there any emerging trends or issues in ADR practice that require attention?

Thank you for sharing your valuable insights. Your contributions will help shape our understanding of the challenges and opportunities in ADR practice in Nigeria.

## Bio-data

### A. Personal Data

Full Name: Munta Ladipo ABIMBOLA  
Address: Plot 238A, Ogedengbe Alesinloye Close, Iyaganku  
GRA, Ibadan.  
Email: [labima58@gmail.com](mailto:labima58@gmail.com)  
Phone Number: 08033334189  
Date of Birth: 13<sup>th</sup> January, 1958  
Place of Birth: Saki  
Nationality: Nigeria  
Marital Status: Married  
Name and Address  
of next of Kin: Ademola Abimbola SAN. Abuja FCT

### B. Educational Background

Educational Institutions Attended with Dates and Qualifications:

Saki District Council Primary School, Isale Taba.

Saki - 1966-67 Primary Leaving Certificate

Secondary Modern School, Saki - 1968-70 Modern School Certificate

Ansar-Ud-Deen High School, Saki - 1971-76 Secondary School Certificate

Ahmadiyyah College, Agege - 1977-78 A Level

The Polytechnic, Ibadan - 1978-79 Basic Diploma

Obafemi Awolowo University, Ife - 1979-1982 LLB

Nigerian Law School, Victoria Island

Lagos - 1982-83 BL

Obafemi Awolowo University,

Ile Ife	-	1993 LLM
The Polytechnic Ibadan		1995 PGD Mass Communication

**C. Other Academic/Professional Qualifications:**

**D. Work Experience and Position with Dates:**

Ministry of Justice Minna, Niger State	-	NYSC 1983
Moses A. Akinola & Co, Minna, Niger State	-	1984-1985
Alhaji R. A. Sarumi & Co, Legal Practitioners, Ibadan, Oyo State	-	1985-1988
Ladi Abimbola & Co, Ibadan	-	1988-1997
Judge of High Court of Justice, Oyo State	-	1997-2023
Acting Chief Judge, Oyo State	-	2014-2015
Chief Judge, Oyo State	-	2015-2022

**E. Membership of Academic/Professional Bodies:**

Chairman, High Court (Civil Proceedings) Rules 1988		
Review Committee, Oyo State	-	2006-2014
Chairman, Committee on Practice Directions on Criminal Procedures Rules	-	2013
Chairman, Law Reporting Committee for Selected Judgements of Oyo State High Court	-	2007-2014
Chairman, Library Committee, Oyo High Court	-	2013-2014
Member Southwest Zonal Committee on Unification/Amendments of the Civil Procedure Rules	-	2007-2008
Chairman, Monitoring Committee on Administration of Criminal Justice Law, Oyo State	-	2013-2023
Chairman Bar/Bench Forum, Oyo State, Judiciary	-	2013-2023

Chairman Judicial service Commission, Oyo State	- 2014-2023
Member Board of Governors, National Judicial Institute	- 2014-2023
Member Body of Benchers and Life Bencher Nigeria	
Member, National Judicial Council	-2016
Member, National Judicial Council	- 2017-2019
Member, National Judicial Council	- 2021-2023
Member, NJI Education Committee	- 2022-2023
Fellow Chartered Institute of Arbitrators and conciliators	-2018
Fellow Institute of Chartered Mediators and Conciliators	-2019

## **F. Publications**

### **Articles**

1. Abimbola, Munta Ladipo, and Akinola, Omoniyi Bukola: Court Intervention in Arbitration and The National Policy on Arbitration and Alternative Dispute Resolution 2024 Vis-à-vis The Arbitration and Mediation Act 2023: Pathways and Pitfalls. *International Journal of Law, Politics and Humanities Research* Volume 8, No.6, pg1-15, June, 2025
2. Adewoyin, Ismail Bimpe , Falegan, Vincent Abayomi & Abimbola, Munta Ladipo . Anthropological and Legal Dimensions to Mitigating Land Degradation in the Peri-Urban Interface of Ibadan, Nigeria. *Journal of Built Environment and Geological Research*, Volume 05, No.4 pg139-152, August, 2024
3. Abimbola, Munta Ladipo. Judicial Interference in Arbitration Matters in Nigeria: Avoidable or Unavoidable? *Lead City University Law Journal*

(LCULJ). A Publication of the Faculty of Law, Lead City University, Ibadan, Nigeria Volume...

#### Books

1. Hon. Justice Munta Ladipo, Abimbola. Absolute Justice: Fact or Fiction?. University of Ibadan Faculty of Law 2018 Faculty Lecture
2. Munta Ladi Abimbola: Practice Relating to Pre trial Conference. Lifegate Publishing Co. Ltd. ISBN 978-057-389-5. June 2013

#### **G. Major Conferences/Workshops Attended, Many awards both National and International.**

#### **H. Extra-Curricular Activities:**

Sports, Reading, and Travelling

#### **I. Referees**

1. Prof. Yemisi Abimbola  
Dean, Faculty of Law,  
Lead City University, Ibadan  
Telephone: 08035070437
2. Prof. Omoniyi Bukola Akinola  
Faculty of Law,  
University of Ibadan  
Telephone: 08033920863
3. Emeritus Prof. Olu Adeniran  
Faculty of Law,  
Obafemi Awolowo University, Ile-Ife  
Telephone: 08037182273

**The University Compliance Certificate**

This is to certify that the Thesis by Munta Ladi ABIMBOLA with Matriculation number LCU/PG/004005 in the Department of Law, Faculty of Law, Lead City University, Ibadan, is in full compliance with the University format and style of Theses.

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**Signature**

.....

**Date**

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