ASSESSING THE DANGERS OF UNREGULATED PRACTICE OF ARBITRATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN NIGERIA

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Abstract

This Paper examines the state of practice of arbitration and other alternative dispute resolution (ADR) mechanisms in Nigeria. It states the advantages and disadvantages of arbitration and other ADR processes over litigation as a dispute settlement mechanism. It discusses the dangers of unregulated practice of arbitration and other forms of ADR in Nigeria. The Paper concludes that though arbitration and other ADR methods are effective in resolving commercial disputes, the absence of ADR-specific law and central regulatory body in Nigeria impedes the full realisation of the benefits of arbitration and other ADR mechanisms in Nigeria. It, therefore, recommends, *inter alia,* that the National Assembly of the Federal Republic of Nigeria enact an Act to regulate the practice and practitioners of arbitration and other ADR mechanisms in Nigeria. For comparative analysis, the Paper examines the position in Ghana. Doctrinal and empirical methods of research are used in gathering and scientifically analysing relevant statutes, judicial authorities, learned articles and textbooks, and interviews. Personal experiences, also, play a role in the research.

Key words: Addressing, Dangers, Unregulated Practice, Alternative Dispute Resolution, ADR Mechanisms, Arbitration, Conciliation, Mediation, Negotiation.

1. Introduction

The quality of training, qualification, certification, and supervision practitioners of any profession, trade, or vocation receive are crucial to the success, development, and sustenance of those professions, trades, and vocations. Any profession, trade, or vocation worth its name has a regulatory authority created under a statute. The statute establishes the regulatory body and spells out its powers and functions in respect of the profession, trade, or vocation. What the regulatory authority does is to train, examine, assess, and admit successful persons into the profession, trade, or vocation to practise it. The essence of regulation is to avoid confusion, prevent unauthorised persons from practicing the trade, and to curb unethical conducts among the members in the course of practicing their trade. Disciplinary actions are taken against erring members of the profession. Regulation, also, ensures that standards are maintained. Unfortunately, there is no central regulation of the practice of Arbitration and other Alternative Dispute Resolution mechanisms in Nigeria. What obtains is that there are different arbitration and other ADR bodies competing for members. It is more like a business venture than a trade or vocation. They register with the Corporate Affairs Commission under the Companies and Allied Matters Act (CAMA) 2020 either as companies limited by guarantee, or companies limited by shares, or as unincorporated bodies under Parts B and F of CAMA respectively. There is no uniform regulation of arbitration or other ADR processes. The training, examination, assessment, induction, and code

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of conducts differ from one body to another. They go to institutions of higher learning, Orientation Camps of the National Youth Service Corps, professional organizations, etc, to campaign vigorously for members. They assure prospective members that as soon as they qualify as members, chances of their marketability or employment increase. However, many members have discovered that not all that glitters is gold. They have not got a single arbitration or any other ADR mechanisms brief since qualifying as members nor participated in any arbitral proceedings for the sake of practical knowledge and skills. There is no synergy among the various arbitration bodies in Nigeria. On the contrary, there is unhealthy rivalry and acrimony among them.

Although, there is Arbitration and Conciliation Act 1988[1], it does not regulate the practice and practitioners of Arbitration and Conciliation *per se*. The Act provides as follows, "An Act to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation; and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting State arising out of international commercial arbitration.[2]" The intention set out in the preamble to the Act is settlement of commercial disputes only and the definition section provides that "commercial" means all relationships of a commercial nature including any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction of works, constructing, engineering licensing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail or road.[3] What it means is that the Arbitration and Conciliation Act does not provide for the training, examination, assessment, admission or induction into the trade, licensing, code of conducts, and disciplinary measures for practitioners of the vocation. The danger is that every Tom, Dick, and Harry venture into the practice of arbitration and other ADR processes. In other words, the Arbitration and Conciliation Act provides for how to conduct arbitration and conciliation proceedings without providing for who to conduct the proceedings. It takes professional human beings to drive the processes. There is, therefore, a high propensity for unethical conducts, low quality training and skills among the practitioners. But ADR is so important to dispute settlement that even courts of law encourage legal practitioners and their clients to use it in settling cases.[4]

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1 Cap A18 Laws of the Federation of Nigeria (LFN) 2010. See the Arbitration Laws of various States: Lagos, Enugu, Rivers, and Kaduna; Lagos State Multi-Door Courthouse Practice Directions 2003; Abuja Multi-Door Courthouse Mediation Procedure Rules 2003; Federal High Court Alternative Dispute Resolution Rules 2018.

2 Preamble to the Arbitration and Conciliation Act 1988. It should be noted that the National Assembly of the Federal Republic of Nigeria recently passed the Arbitration and Mediation Bill into law to repeal the Arbitration and Conciliation Act 1988. The new Bill, awaiting presidential assent, incorporates the UNCITRAL's Model Law on International Commercial Mediation 2018 and the UN Convention on International Settlement of Agreements Arising from Mediation (the Singapore Convention) 2018. This Bill even if signed into law by the President does not address the problem of unregulated practice of Arbitration and other ADR Mechanisms in Nigeria. See CIArb News, 'Nigeria's New Arbitration and Mediation Bill', www.ciarb.org/news/nigeria-s-new-arbitration-and-mediation-bill/ 19 July 2022.

3 *Ibid,* s 57 (1).

4 *BAC Electrical Ltd v Adesina* [2020] 14 N.W.L.R. (Pt. 1745) S.C 548; *The Vessel MT. Sea Tiger v A.S.M. (HK) Ltd* [2020] 14 N.W.L.R. (Pt. 1745) C.A. 418; Section 34 Arbitration and Conciliation Act; *Taraba State Government v Mu'azu* [2020] 10 N.W.L.R. (Pt. 1733) C.A. 450

The importance of arbitration and other ADR mechanisms such as conciliation, negotiation, mediation, med-arb, early neutral evaluation, private judging, etc, cannot be over-emphasised. There is need to regulate their practice for optimum benefits for both the practitioners and the consumers of their services.

2. Description of Terms

It may be wrong to assume that everyone knows the meanings or significance of the terms used in arbitration or other ADR mechanisms. It is for this reason that these terms are functionally described below.

ADR

This abbreviation stands for Alternative Dispute Resolution. It is any method of settling dispute aside litigation in formal courts of law.

Arbitration

Arbitration is the most prominent form of ADR, and the closest to litigation. It is a method of dispute resolution where a neutral third party called the arbitrator settles a dispute in a judicial manner between two parties who voluntarily submit their case to him. The arbitrator gives his decision technically called an award, which binds the parties. Arbitration can be commercial, industrial, investment, or customary depending on the nature of dispute to be settled. It could be domestic or international depending on the forum. Arbitration could, also, be institutional or ad hoc depending on its tenure.

Conciliation

Conciliation is an ADR mechanism in which a neutral third party called a conciliator helps the disputing parties to come to an agreement. He could meet with the disputing parties jointly and separately with a view to striking a balance. He proposes and draws up terms of settlement representing a fair compromise of the dispute. His decision is not binding on the parties although they could agree to adopt the terms of conciliation reached to settle their dispute.

Mediation

Mediation as an ADR mechanism is in almost every respect similar to conciliation except that a mediator does not suggest solution to the parties, and he cannot compel the disputing parties to reach a settlement. He guides the parties to reach a compromise themselves by first meeting them privately to understand each party's side of the dispute. After that, he brings the parties together so that they may settle the dispute by themselves. The opinion of the mediator is not binding on the parties except they wish to adopt it. The problem and its resolution belong to the parties: the mediator guides the parties to reach a mutual ground to settle their differences.

Negotiation

Negotiation is a dispute settlement mechanism in which the parties themselves try to reach an understanding with a view to resolving their dispute without the involvement of a third party. But that does not mean that a party cannot hire a third party to negotiate on his behalf. The parties may agree to adopt the result of their negotiation to resolve their dispute.

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Early Neutral Evaluation

This is an ADR mechanism in which a dispute is submitted to a neutral third party to evaluate, and thereafter advise the parties on the strength or weakness of their respective cases. This happens immediately a case is filed in the court. It helps in resolving disputes fast because if a party does not have a strong case, their chances of winning the case is slim; he has to choose the most suitable method to resolving the case by withdrawing it from the court.

Mini Trial

In mini trial, the disputing parties appoint a neutral party to act as a judge to guide them in reaching a decision. The parties may hire services of lawyers or experts in the field of their disputes. The neutral facilitator answers their questions, and tries to expose the strength and weakness of their respective cases. He draws up an agreement reached by the parties, which when signed by the parties becomes binding upon them.

Private judging

This is an ADR mechanism in which the parties to a dispute hire the services of a private judge, usually a retired judge, knowledgeable in their dispute to settle it for them. It is also called 'referral judging or rent a judge'. This enables the parties, especially if they are from different jurisdictions to escape submissions to courts of one jurisdiction. The judge has authority to give a binding decision in the case.

Med-Arb

This is a hybrid process combing mediation and arbitration. It could, also, be arb-med, which is a combination of arbitration and mediation. In hybrid processes, dispute resolution starts with the first form of ADR, and concludes with the latter.

3. The Nigerian Situation

Accounting, Banking, Engineering, Law, Management, Medicine, Pharmacy, Taxation, etc, have laws providing for the training, examination, assessment, admission, and licensing of persons who practise them. Those laws, also, establish regulatory authorities that supervise the operation of these professions or vocations. This is not the case with arbitration and other ADR methods in Nigeria. Arbitration and other ADR methods in Nigeria are either ad hoc or institutional. Although the arbitration and other ADR bodies do not operate under any enabling statute, they have some feature of permanence. Individual practitioners are in the ad hoc group. In Nigeria today, we have Chartered Institute of Arbitrators (Nigeria), Chartered Institute of Arbitrators UK (Nigerian Branch), Settlement House- Dispute Resolution Foundation, Dispute Resolution Associates Ltd, Institute of Chartered Mediators and Conciliators, Negotiation and Conflict Management Group, which founded the Lagos Multi-Door Courthouse, Abuja Multi-Door

Courthouse, the Federal High Court Alternative Dispute Resolution Centre, Institute of Construction Industry Arbitrators, Lagos Chamber of Commerce Committee on Dispute Resolution, Lagos Chamber of Commerce Committee International Arbitration Centre, Institute for Dispute Resolution, Warri, Delta State, Regional Centre for International Commercial Arbitration, established in Lagos in 1989 under the auspices of the Asian-African Legal

Consultative Organisation (AALCO), private law firms, International Centre for Arbitration and Mediation Abuja, etc. Those ADR bodies have their different *modus operandi.* They provide for how to do ADR but fail to spell out the training and qualification of the practitioners.

The Federal High Court Dispute Resolution Centre is a court-connected ADR centre. It is established by the Chief Judge of the Federal High Court pursuant to section 254 of the CFRN 1999. The Alternative Dispute Resolution Rules 2018 regulate ADR proceedings there. It is administered by the Alternative Dispute Resolution Committee.[5] By Order 3 (a) of the Rules, the Centre shall apply mediation, conciliation, arbitration, neutral evaluation, and any other ADR mechanisms in the resolution of disputes, as may from time to time be referred to it, from the Court. The Centre is to act as an administrator in the conduct of ADR proceedings; render assistance to disputing parties in the conduct of ad-hoc arbitration or mediation proceedings; encourage disputing parties whose matters are already filed in the Court to explore ADR options at the Centre, and maintain registers of suitably qualified persons who can act as mediators, arbitrators, or neutral evaluators.[6]

The Centre shall maintain a Roll of Neutral Facilitators consisting of negotiators, mediators, arbitrators, dispute resolution specialists and such other persons as may be required by the Centre. The Roll shall be made available to the parties to choose from in order to facilitate their dispute resolution sessions.[7] The Centre shall with the approval of the Committee develop the criteria for persons aspiring to be placed on the Roll. Any person aspiring to have his name placed on the Roll shall apply to the Chief Judge, and submit along his application an undertaking absolving the Centre and the Court from any liability resulting from his negligence, misconduct or any other harmful conduct during the performance of his duties as a neutral facilitator.[8] The problem is that persons who may be suitably qualified mediators, arbitrators, neutral evaluators, etc, to the Dispute Resolution Centre of the Federal High Court may not be so to other ADR bodies. Standards differ. At any rate, the Centre is still better than private ADR bodies most of which operate as profit-making ventures.

Again, the Court, counsel, and parties have their respective roles to place in resolving disputes through ADR in the Centre.[9] The counsel is expected to, among other things, encourage clients to explore ADR mechanisms; give regard and ensure clients accord respect to the notices, invitations and directives from the Centre, and to further the cause of ADR and give effect to the overriding objectives of the Centre.[10] The implication is that counsel representing clients may not be directly involved in the ADR process or may not be the only neutral facilitators in the Centre. If that were the case, the Centre would have taken care of the qualification of ADR practitioners in it. This is so because an average legal practitioner has better knowledge of law and practice of ADR than a layman. The reason for not making counsel neutral facilitators in the Centre in the cases they handling in the Court may not be unconnected with ethics of the profession, that is, conflict of

[5] Order 2 of the ADR Rules of the Centre.
[6] *Ibid,* Order 3 Paragraphs (c), (e), (f), (g) of the Rules.
[7] *Ibid,* Order 4 Rule 1.
[8] *Ibid,* Order 4 Rule 2.
[9] *Ibid,* Order 5.
[10] *Ibid,* Order 5 Rule 3.

interest. Even if the ADR proceedings are marked without prejudice, it will be difficult for the counsel to separate the evidence in the Centre from that of the Court. This is because the case will go back to the Court for continuation of trial if the parties are unable to settle it through ADR.[11] To that extent, the Centre has only succeeded on providing how ADR should be practised but not who to practise it. The Federal High Court (Civil Procedure) Rules 2019 makes provision for settlement out of court and arbitration without providing for qualifications of those to conduct the settlement and arbitration.[12] The Federal High Court Act 1973 has similar provisions for court connected arbitration.[13] ADR bodies do not adhere strictly to their names in terms of the scope of ADR they do. For instance, the Chartered Institute of Arbitrators trains prospective members not only in arbitration but also in conciliation, mediation, negotiation, and other hybrid processes such as med-arb, neutral early evaluation, private judging, etc. Preferential treatment is not usually given to any of the processes. Institute of Chartered Mediators and Conciliators does arbitration and other forms of ADR, too.

Generally, prospective members who are law school students or legal practitioners do not have to undergo the Foundation Course in the Chartered Institute of Arbitrators Nigeria. They start from the Conventional Associate Programme. After the associate membership comes the Full Membership and finally the Fellowship. Other ADR bodies do not differentiate between lawyers or law students. The same training may be enough for every member, notwithstanding their educational/professional background. The danger of deregulation is that training and qualifying examination for most of these stages could be for as short as a week, or three days. A two-day seminar and peer review are the only requirements for the highest cadre, that is, fellowship. It is to be noted that the Nigerian Institute of Chartered Arbitrators requires candidates for the Fellowship cadre to show evidence of having handled at the least three arbitration or other ADR proceedings or evidence of having written any two articles or a book on arbitration and other forms of ADR.[14] The major attraction to these institutes is the fees paid by the prospective members. The ADR bodies struggle to outdo one another in wooing members. They reduce the costs of the courses and shorten the training time to attract more members. This creates unhealthy competition and acrimony among the arbitration and other ADR bodies. Yet, there are many individual practitioners who never attended any training anywhere in this world. Ironically, some of them practise ADR big time, and get the fattest briefs.

Two examples will help to drive home the points being canvassed here. If one wishes to practise as a barrister and solicitor in Nigeria, he has to obtain a bachelor of laws from any university, local or foreign whose course of study is approved by the Council of Legal Education. After that, he goes to the Nigerian Law School for one year legal vocational training. He has to keep three dining terms. He has to pass the Bar Final Examinations, and obtain his Bar Qualifying Certificate. The Body of Benchers will screen him. If he passes the screening, he will be called to the Nigerian Bar by the Body of Benchers. Now that he is a barrister and solicitor of the Supreme Court of Nigeria,

[11] *Ibid,* Order 9 Rule 1, 2 (b), (c).
[12] Federal High Court (Civil Procedure) Rules 2019: Order 18- settlement out of court; Order 41-reference to referee, Order 52- arbitration.
[13] Cap F12 LFN 2010: ss 36, 37- reference for report and reference for trial; s 38-powers and remuneration of referees and arbitrators; s 41- statement of case pending arbitration.
[14] www.nicarb.org/ftp.php/ accessed on 8 March 2021.

the duties of the regulating bodies are not done. The Nigerian Bar Association, the Supreme Court of Nigeria, and the Legal Practitioners Disciplinary Committee of the Body of Benchers will ensure that he conforms to the ethics of the profession. He has to pay his Bar Practising Fees between 1 January and 31 March every year. He has to pay his Branch Dues, and obtain the Nigerian Bar Association's Stamp and Seal to practise law. Again, he has to attend approved Continuing Professional Development courses, seminars, or conferences to obtain the required credit points to practise law in each year. The regulating authorities are creations of statutes. These statutes are the Council of Legal Education (Consolidation, etc,) Act 1962[15] and the Legal Practitioners Act 1962.[16] No one strays into the legal profession in Nigeria. There is no becoming a lawyer by chance. It is a very serious business.

It may be expecting too much from practitioners of ADR in Nigeria to compare their training and qualification to the rigours of training legal practitioners in Nigeria. So, let us take the example of Management in which the present author is a graduate member. There is the Nigerian Institute of Management (Establishment) Act 2003[17], which regulates the practice of Management in Nigeria. It establishes the Nigerian Institute of Management which trains, examines, and assesses prospective managers in Nigeria. During the present author's National Youth Service in Osun State Nigeria, he trained as a Chartered Manager. For three months, the prospective managers had the training. Serious professional examination followed. Many candidates failed. Successful candidates were inducted as Chartered Managers. The induction programme was another learning platform with lectures and advice by chartered managers. No other body has the authority to train and induct members to practise Management in Nigeria.[18] It has code of conducts for managers, and exercises disciplinary actions over them. There is no similar Act or regulating body for arbitration or other ADR mechanisms in Nigeria.

4. The Ghanaian Situation

Quite unlike Nigeria, there is a law regulating the practice of arbitration and other ADR Mechanisms in Ghana. The law establishes a body to regulate the practice of ADR in Ghana. There are detailed procedures to training, examination, assessment, and admission of persons into ADR in Ghana. That ensures orderliness, high quality training, and ethics among practitioners of ADR in Ghana. The consumers of ADR services have value for their money, and can rest assured that they are in good hands. Practice of Arbitration and other ADR mechanisms is not all-comers' affair in Ghana. The Ghana Association of Chartered Mediators and Arbitrators is made up of professionals trained in mediation and arbitration. The Association gives accreditation to trained mediators and arbitrators to practise. It is involved in training stakeholders in dispute resolution all over Ghana. It trains Judges, registrars, and court administrators in ADR, especially mediation, negotiation, and customary arbitration. Customary arbitration proceedings or awards are acceptable by the Ghanaian superior courts unless it is proved to be void by reason of gross irregularities. It is the duty of the party alleging gross irregularities or want of jurisdiction to prove

[15] Cap L10 LFN 2010, s 1.
[16] Cap L11 LFN 2010, ss 2, 3, 4, 8, 10, 11, 13.
[17] Cap N149 LFN 2010.
[18] Nigerian Institute of Management (Establishment) Act 2003, ss 1, 3, 6, 7, 8, 9, 10, 11, 12, 14, 15, 18, 20.

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their existence in the proceedings or the award.[19] Ghanaian Courts offer mediation services to litigants and the general public.

There is Commercial Conciliation Centre at the American Chamber of Commerce for commercial disputes. There is, also, the Ghana Arbitration Centre established by retired judges and professionals as a venue for arbitration and a provider of ADR services with concentration on arbitration. The Centre's focus is on the commercial and industrial sectors. To qualify as an arbitrator or conciliator, lawyers must have at least 15 years experience with proven competence in areas relevant to arbitration or conciliation, high moral character, and impeccable integrity. The Arbitration Act of 1961 (Act 38) regulated settlement of disputes by arbitration. It, also, made provisions for enforcement of foreign arbitral awards in accordance with the New York Convention of 1958. It was the equivalent of Nigeria's Arbitration and Conciliation Act 1988, also modelled after the United Nations Commission on International Trade Law (UNCITRAL).

The Arbitration Act of Ghana has been repealed and replaced by the Alternative Dispute Resolution Act 2010[20], (the Act). Section 114 of the Act establishes the Alternative Dispute Resolution Centre (the Centre). The Centre administers the Act. It has a Board, with a Chairman and Executive Secretary appointed by the President of Ghana.[21] Section 123 of the Act provides for registration of arbitrators and mediators by the Centre. Section 12 of the Act provides for qualification of arbitrators. The Executive Secretary is to keep and maintain the register of arbitrators and mediators. Other arbitral bodies are to apply to the Centre for affiliation.[22] Section 125 of the Act establishes the Alternative Dispute Resolution Fund (the Fund). The Centre has power to make regulations to govern the practice of ADR in Ghana, particularly the qualifications of persons who wish to be registered as arbitrators and mediators.[23] The Third Schedule to the Act is on the Expedited Arbitration Proceedings Rules of the Centre made pursuant to section 60 of the Act. Order 1 (1) of the Rules provides that a Notice to a party or the Centre may be by telephone, fax, e-mail, or other mode of electronic communication. A Notice by telephone shall be confirmed in writing but a failure to confirm the Notice in writing shall not invalidate proceedings.[24]

5. Advantages of Arbitration and other ADR Mechanisms over Litigation in Nigeria

a. One of the features of arbitration and other forms of ADR is voluntariness. Parties are not compelled or coerced to use ADR to settle their disputes. They have to voluntarily submit their disputes to the neutral third parties to settle.[25]

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[19] *Buabin III v Kenin III* [2017] 106 G.M.J. 34 C.A. at 40-41.

[20] Alternative Dispute Resolution Act (ADR Act) 2010 (Ghana), s 137. See also Uniform Arbitration Act 2010, Federal Arbitration Act, both of the USA; CR Drahozal, *Commercial Arbitration: Cases and Problems* (3rd Edition (Documentary Supplement) Mass.: Matthew Benders & Co 2013) 13-21, 53-64.

[21] ADR Act, s 129.

[22] *Ibid,* s 138.

[23] *Ibid,* s 134 (b).

[24] *Ibid,* Order 1 (2).

[25] O Umah, 'Legality of the New Bishop's Court of Onitsha Anglican Diocese', thenigerialawyer.com/legality-of-the-new-bishops-court-of-onitsha-anglican-diocese/, accessed on 28 June 2021. The Bishop of the Diocese, Dr Owen Nwokolo was quoted to have said that no member of the Diocese will take a fellow parishioner to public courts until the matter has gone through this court in the Diocese. "If you do that, we will bring you back. You will be asked whether you have followed the Diocesan procedure as enshrined in the Diocesan Constitution." There is an

b. Arbitration and other ADR mechanisms are quicker than litigation.
c. They are less expensive than litigation.
d. Arbitration and other ADR mechanisms permit some disputes to be resolved solely on documents. This procedure saves time and money.
e. Parties can represent themselves in ADR proceedings, or be represented by persons of their choice who are not lawyers. Only lawyers represent clients in courts.
f. A party to a dispute may not want to be exposed to a decision of one person as the arbiter, who may have his weaknesses, should a dispute arise out of a contract. ADR affords parties the opportunity of appointing their own 'judges'. This is more important when the parties are from different countries and cultures.
g. Arbitration and other forms of ADR are confidential and less formal than litigation.
h. Arbitration and other ADR processes consider the convenience of the parties and their witnesses in fixing date, time and venue of hearing.
i. ADR allows for selection of experts to decide disputes in matters in which they are proficient. In litigation, the judge deals with any dispute brought to his court whether or not he has any special knowledge of the subject matter.
j. ADR is conciliatory in nature as against litigation which connotes battle. Arbitration and other ADR mechanisms preserve relationship but litigation strains relationship.
k. In international commercial arbitration, the parties may 'neutralise' a dispute by agreeing to refer it to a private but a consensually appointed third party in order to prevent such a dispute from being decided by regular courts of their countries.[26]
l. The decision of an arbitral tribunal is final and binding on the parties to the arbitral proceedings.
m. For reasons of national prestige, states and state institutions do not readily submit to the jurisdiction of foreign courts but many of them accept ADR mechanisms for settlement of disputes between them and foreign business corporations.

It should be noted that arbitration and other ADR mechanisms have disadvantages, too. These include:

a. delay in the appointment of arbitrators or other ADR practitioners especially when their appointment is challenged,
b. limited jurisdiction, that is, the fact that not all disputes are amenable to arbitration and other forms of ADR,
c. high costs of conducting arbitration and other ADR proceedings and payment of the neutrals,
d. low quality of decisions made,
e. absence of summary procedure, etc.[27]

element of compulsion in this statement, which offends the cardinal feature of arbitration and other forms of ADR, which is a voluntary submission of disputes by parties to arbitration or ADR.

[26] Nigerian Investment Promotion Act Cap N117 LFN 2010, s 26.

[27] DSJ Sutton, J Gill, and M Gearing (eds.), *Russel on Arbitration* (23rd Edition, London: Sweet & Maxwell 2010) 10-15; FO Agbo, 'Finality of Arbitral Award: Myth or Reality?', [2010] 10 (1) *Journal of Arbitration* 122-143, for advantages and disadvantages of arbitration.

6. Assessing the Dangers of Unregulated Practice of Arbitration and other ADR Mechanisms in Nigeria

a. Flight of Arbitration and other ADR Briefs

The absence of laws regulating the practice of arbitration and other ADR mechanisms in Nigeria may cause parties to commercial transactions in Nigeria to choose foreign jurisdictions as seats of arbitration. In this case, Nigeria will lose out. This is done by excluding Nigeria as place of arbitration in the event of any dispute arising from the commercial contracts. The arbitration clause will name a place outside Nigeria as a place to conduct the arbitration proceedings. Usually, the law of the place of arbitration will equally regulate the proceedings except the parties decide otherwise. It must be stated that apart from the absence of arbitration regulatory authority, the slow pace of our justice system contributes to flight of arbitration and other ADR briefs from Nigeria. The delay may happen when there is either interlocutory challenge to the arbitral proceedings on jurisdiction, appointment of arbitrators, etc, or on the final arbitral award. Commercial disputes ought to be quickly settled as time is usually of the essence.

b. Flight of Investments

It is a public knowledge that the administration of justice in Nigeria is extremely slow. It would take years to resolve a simple commercial dispute in the Nigeria Court. It is worse if complex commercial disputes are involved. It is, also, a truism that time is almost always of the essence in settling commercial disputes. The business world is always on the move. Lingering disputes over commercial or contractual transactions could affect businesses badly. It is for this reason that parties to commercial transactions agree before hand to refer disputes arising from their deals to arbitration or other ADR mechanisms for settlement.

Generally, investors- local or foreign, do not like to invest their money in jurisdictions with slow judicial systems. This results in loss of investments, which negatively affects the economy of the nation concerned. If the alternatives to litigation are also in a bad state in that nation, in addition to the slow judicial process, investors will avoid the nation like a plague. Absence of certified ADR training in Nigeria definitely affects the credibility of the practitioners. Where arbitrators are not adequately trained, for instance, they may misconduct the arbitral proceedings. The result is that their awards may be challenged in the regular courts. This brings the parties to the commercial disputes to square one. In that case, investors would avoid investing in the Nigeria economy. They would choose to invest in jurisdictions where there are effective ADR practitioners and fora for settlement of their commercial disputes.

c. Higher Costs of ADR Overseas

If arbitration and conciliation proceedings, mediation, negotiation, etc, take place in foreign lands, the immediate effect is that the cost of arbitration and other ADR mechanisms will increase. The parties and their representatives will have to pay for air tickets to and fro the place, pay for accommodation, pay for feeding, etc. The saving grace is the virtual sessions popularised by the COVID-19 Pandemic. But even at that, the cost of arbitration, conciliation, mediation, negotiation, etc, will still be higher because one has to acquire the necessary technology and expertise to be able to conduct or attend virtual sessions. It may be difficult for parties or witnesses who are not computer literate to cope with virtual ADR proceedings.

d. Loss of Revenue to Nigeria

The three dangers discussed above naturally lead to loss of revenue to the Federal Republic of Nigeria and the ADR practitioners in Nigeria. Nigeria generates a high volume of commercial transactions, both in domestic and international with about 80% of these transactions originating or terminating in big Nigerian commercial cities of Lagos, Port Harcourt, Onitsha, Kano, etc. However, disputes arising from these transactions which are purely Nigerian and domestic are ultimately settled outside the shores of Nigeria. The settlement of these Nigerian disputes in foreign arbitral seats or fora causes revenue loss to ADR practitioners and Nigeria to the tune of trillions of Naira.[28]

e. Underdevelopment of Arbitration and other ADR mechanisms in Nigeria

Participation in arbitral proceedings helps in honing the skills of arbitrators. The working experience gained from actually participating in arbitral proceedings cannot be acquired by reading arbitration textbooks or attending arbitration conferences or seminars. Experience is the best teacher. When arbitral proceedings hold in foreign jurisdiction almost always, its development is hampered. No party seeking to hire arbitrators or other ADR practitioners for sessions outside Nigeria will consider new entrants into the vocation. They go for established practitioners. This makes it difficult for the new and young arbitrators and other ADR practitioners to stay without experience. Indirectly this leads to underdevelopment of ADR practice in Nigeria.

f. Law Quality Training, Knowledge, Skills, and Values

It has been stated above that the unhealthy competition for members among the arbitration and other ADR bodies makes them reduce period of training to as short as few days or weeks.[29] An advertisement on 15 February 2021 by the Institute of Chartered Mediators and Conciliators (ICMC) for ICMC Mediation Skills Accreditation and Certification Training in Alausa Ikeja Lagos Nigeria between 1 and 4 March 2021 is for N150,000 (One Hundred and Fifty Thousand Naira) only. At the end of the 4-day training, successful candidates would be inducted as Associate Members of the Institute (AICMC). The criterion for qualification or success was not stated in the advertisement. Another advertisement for ICMC Virtual Mediation Skills Accreditation and Certification Training held between 22 and 26 February 2021 costs N120, 000 (One Hundred and Twenty Thousand Naira) only. The training time is 9 am-12 pm and 12 pm-5 pm daily.[30] Yet in another ICMC Virtual Mediation Skills Accreditation and Certification held at Independent Layout Enugu between 5 and 8 June 2021 between 9 am and 4 pm daily, participants had to pay N150,000.00. Successful candidates would be invited to Institute's Induction Ceremony to be inducted into the Institute as Associate Members (AICMC). The Nigerian Institute of Chartered Arbitrators has what it calls Fast Track Associate Training Programme for very busy executives and top government officials who intend to be part of arbitration and ADR world but who are not able to take part in the three-day conventional training and examination programme. Theirs is

[28] O Akinyeye, R Bello, and G Ikechukwu, 'A National Policy on Arbitration in Nigeria', a publication of the *Arbitration and Dispute Resolution Practice Group* of Olisa Agbakoba Legal, 6 February 2020, accessed on 25 February 2021, 1.

[29] U Chioma, 'ICMC Mediation Skills Accreditation and Certification Training in Lagos', (www.thenigerialawyer.com/icmcmediationskillsaccreditationandcertificationtraininginlagos2/, accessed on 18 February 2021.

[30] Discourse Nigeria Forum, 18 Feb 2021.

a two-day intensive practical training course in arbitration and other forms of ADR. Assessment is not by examination but by a peer review.

The natural consequence is that the members get inadequate training, which in turn affects their knowledge, skills, and values of ADR. The result is that they cannot function effectively as arbitrators, conciliators, negotiators, etc. In jurisdiction where ADR is just developing as Nigeria, it has been observed that some arbitrators or other ADR practitioners display lack of skills and dedication as to embarrass even themselves.[31] Unfortunately, if the parties choose to appoint a person who is not equal to the task to resolve their dispute by, say, arbitration, they must abide by their choice. Extreme youth or age, mental or physical infirmity, do not deprive an arbitrator of the power to act, nor render his award a nullity, although courts could regard serious incapacity as grounds for using their discretionary powers to intervene in arbitral proceedings.[32] This definitely affects the quality of ADR services they render to their clients, since they cannot give what they do not have.

g. No Specialisation; Jack of all Trades, Master of None

There is no specialisation as prospective ADR practitioners are trained in all the ADR mechanisms. They become the Jack of trades but master of none. There is need for the trainers to advise the intending ADR practitioners to choose what mechanisms to major in after general a introduction to all or many of the ADR mechanisms. The ADR institutes have to design modules for the training. Arbitration is the closest to litigation. It is more difficult to practise than the other ADR mechanisms. It should be on its own. Conciliation, mediation, negotiation, private judging, early neutral evaluation, med-arb and other hybrid processes could be grouped in twos or threes. This will enable ADR practitioners acquire sufficient knowledge and skills in the chosen mechanisms.

h. Lack of Synergy among the ADR Bodies

The various ADR bodies in Nigeria work across purposes. They are not united. They do not speak in one voice. Their orientation, training, and code of conducts differ. There is no central regulatory authority. There is no law regulating the ADR bodies, conducts of their members, and the practice of ADR as a vocation. There is friction between and among them. The Chartered Institute of Arbitrators UK, Nigeria Branch, took the Chartered Institute of Arbitrators Nigeria to law for the Tort of passing off the former's logo and membership grades.[33] The Federal High Court of Nigeria held for the Chartered Institute of Arbitrators UK, although the Chartered Institute of Arbitrators UK is not a registered entity under Nigerian Law but only carries out its activities through its Nigerian Branch. On the other hand, the Chartered Institute of Arbitrators Nigeria Ltd/Gte was incorporated in Nigeria in 1988. It is the leading arbitration institute in Nigeria, which has gained UNCITRAL Observer Status. The Court ordered the Chartered Institute of Arbitrators Nigeria to stop using its logo and membership grades, and to return all documents and letterheads bearing

[31] A Chukwuemerie, *Studies and Materials in International Commercial Arbitration* (Port Harcourt: Lawhouse Books 2002) 33, 139; G Ezejiofor, *The Law of Arbitration in Nigeria* (Nigeria: Longman 1997) 106-109; F Ajogwu, *Commercial Arbitration in Nigeria* (Lagos: Centre for Commercial Law Development 2009) 67-68.

[32] MJ Mustill and SC Boyd, *The Law and Practice of Commercial Arbitration in England* (2nd Edition, Butterworth: LexisNexis 1989 (2009 Reprint) 247-257.

[33] *Chartered Institute of Arbitrators (UK) v Chartered Institute of Arbitrators (Nigeria) LTD/GTE*, Unreported, Suit No: FHC/L/CS/341/2009, delivered on 22 October 2018.

the membership grades and logo of the former. The Chartered Institute of Arbitrators Nigeria has changed its name to Nigerian Institute of Chartered Arbitrators.[34] The Nigeria arbitral body has, also, appealed the decision of the trial Federal High Court of Nigeria to the Court of Appeal Nigeria, and filed a Motion for Stay of Execution of the trial court's judgment.

Sometime in February 2019**,** the Nigeria Chartered Institute of Arbitrators accused the Institute of Chartered Mediators and Conciliators of writing a false and damaging report about it. It is established that the more the number of active private ADR bodies, the more the quarrels. This does not readily apply to public arbitral and other ADR bodies such as the Lagos State Multi-Door Courthouse and the Abuja Multi-Door Courthouse Mediation Procedure. Settlement House-Dispute Resolution Foundation, Dispute Resolution Associates Ltd, privately owned, are no longer as vibrant as they used to be. The founder, late Prof Kevin Ndubuisi Nwosu, a scholar per excellence whose love for ADR was unequalled, popularised ADR and their use in Nigeria in the late 20th and the early 21st centuries. He trained judges, lawyers, labour leaders, government functionaries, the clergy, traditional rulers, etc, within and outside Nigeria on the knowledge, skills, values, and practice of ADR. He slumped and died in Abuja after delivering a powerful keynote address at a National Summit on Security organised by the Nigeria Police held on 17 August 2015 at the International Conference Centre Abuja. He flew into Nigeria from London where he was training judges on the use of ADR. He could not go back to London to finish that training. He died in active service.[35]

i. High Level of Unethical Conducts among ADR Practitioners in Nigeria

There may be high level of unethical conducts among practitioners of arbitration and other ADR mechanisms in Nigeria. The reasons abound. The absence of a central regulatory body supervising activities of arbitrators and other ADR practitioners in Nigeria could give rise to professional misconducts among them. There is no law regulating how the members practise the vocation. Some arbitrators use dilatory tactics to prolong arbitral proceedings in order to earn more fees. Some willfully stay away from proceedings without justification, take bribe to perver the course of justice or accept hospitality from one of the parties to give favourable decision to the donor.[36]

There is a high tendency of practitioners suspended or sacked in one ADR body to easily switch membership to other ADR bodies since there is no central register for members. If a law student who had been rusticated on account of examination malpractice by one university in southern Nigeria could go up north, and fraudulently got admission into another university, studied law and graduated; gained admission into the Nigerian Law School, graduated and got called to the Nigerian Bar, one would only imagine what might be happening among ADR practitioners without any central check.[37] Again, even if the other ADR bodies are aware of the misconducts, suspension or disqualification of some members of other ADR bodies, they may nevertheless admit them to boost their number and income by way of membership dues or annual practice fees. It could, also,

[34] www.nicarb.org.

[35] www.thenationonlineng.net/colloquium-for-late-law-school-teacher/accessed on 15 March 2021. K Nwosu, 'Use of Alternative Dispute Resolution (ADR) Mechanisms in Criminal Justice Administration in Nigeria', 1. Insecurity brings about poor investor confidence.

[36] A Chukwuemerie (n 31), 134; G Ezejiofor (n 31), 107.

[37] *Brown v State* [2017] 4 N.W.L.R. (Pt. 1556) S.C.341.

be done to spite the other ADR body or on the basis that the misconduct complained against is welcome in other camps, a case of one man's meat is another man's poison.

j. No Uniform Systemic Disciplinary Measures and Reports against Erring Arbitrators and other ADR Practitioners

In an organised profession, there is a system of reporting unethical conducts of members and disciplinary measures against them. The fear that one's misconducts may be reported to the regulating authority keeps one on their toes. This checks deliberate breach of professional code of conducts. In a situation where there is no organised system of reporting misconducts of members nor an authority recognised by the law to enforce ethics among practitioners of a profession or vocation, there is the tendency to observe the code of conducts in breaches. This is one of the dangers of unregulated practice and practitioners of arbitration and other ADR models in Nigeria.

k. Psychological Problem

It has been stated earlier in this paper that the arbitration and other ADR bodies in Nigeria visit higher institutions of learning such as the Nigerian Law School, the universities; professional bodies; the Orientation Camps of the National Youth Service Corps, where graduates undergo paramilitary training preparatory to their one year compulsory national service. They go there to catch them young. They make it appear that once prospective members enrol into their programmes, train, qualify, and get inducted into their ADR bodies; it will boost their chances of employment. There is no gainsaying that the rate of unemployment is high in Nigeria. Many are not employed at all. Many are underemployed. Starting businesses require start-up capital, and experience to sustain them. Generally, many people prefer white collar jobs to businesses. Fresh graduates would readily want to enroll into these ADR trainings to boost their chances of employment upon passing out of the service year as preached by the ADR Institutes and trainers. Another attraction to arbitration and other ADR models is that it makes a practitioner a quasi-judge. The idea of sitting in judgment over people's disputes, especially for non-lawyers, is attractive. Arbitration and ADR mechanisms offer people this opportunity. It does not discriminate. Whatever is one's course of study, ADR accommodates it.

The Dispute Resolution Associates Ltd and Settlement House advertised for a Professional Foundation Course in ADR in June 2014 at different places in Nigeria. The Professional Foundation Course was divided into three Parts, each Part holding for two days only. Parts 1 and 2 would take place in June 2014 while Part 3 would take place in September 2014. It covered Negotiation, Mediation, Conciliation, Arbitration, Early Neutral Evaluation, Mini-Trial and other hybrid processes. The training, also, covered Consensus Building, Victim-Offender Mediation, and the SMA Belgore Model of Criminal Justice. Students in tertiary institutions were especially encouraged to participate in view of the growing importance of dispute resolution skills to their career nationally and internationally. At the end of the training, they would be certified as Dispute Resolution Specialists (DRS). A Dispute Resolution Specialist, according to the advertisement, could become any of the following: negotiator, mediator, conciliator, arbitrator, private judge, intake specialist, dispute manager, chief negotiator, neutral evaluator, consensus facilitator, court certified neutral, dispute resolution officer, certified crime mediator, dispute resolution adviser, director dispute resolution, dispute resolution consultant, freelance dispute resolution practitioner,

political appointee on conflict management and dispute resolution, and lobbyist. The organizers assured the participants that job/career opportunities availed them in: private sector, public sector, NGOs and CSOs, multinational corporations, international agencies, and foreign governments. Total costs of training including induction ran thus: students= N82,000; NYSC= N110,000; others= N164,000.

Unfortunately, many of the ADR trainees are disappointed because the training does not raise their employment opportunities. It does not, also, better their fortune in their private capacities as self-employed ADR practitioners. One needs to get ADR briefs to be able to make money from the practice of ADR. No one having serious commercial disputes would want to engage the services of ADR green horns trained for only two days. This is double *wahala* for the new inductees. They have spent their little savings to train as ADR practitioners, and they cannot find jobs as such. This definitely causes psychological problem for them. The problem is bigger for nonprofessionals who have had the hope of getting employment upon completing the ADR course. Their hope is dashed.

The foregoing are the dangers of unregulated practice of arbitration and other ADR models in Nigeria identified by the author. The absence of law and regulatory body contribute largely to the problems identified and assessed above. The method the ADR bodies use to lure new members into their folds by making unfounded claim about higher employment opportunities upon induction will be checked if there are a law and a body regulating the practice of ADR in Nigeria. Such a false claim is a professional misconduct on its own. The regulatory body would ensure that adequate training on the law and practice of ADR is given to prospective practitioners by qualified practitioners. The Professional Foundation Course that would lead to one being certified as a Dispute Resolution Specialist holds on six days only in the aggregate. It would take only a genius to learn any meaning ADR skills within that short period of training, especially those who do not have any background in law. The quality of training received affects the credibility of the practitioners and their employability. The cost of training could, also, be regulated by law and the regulatory authority. The many arbitration and other ADR bodies will be brought under one umbrella with one body regulating it. This will take care of the unhealthy competition and acrimony among them, raise the standard of training offered to prospective ADR practitioners, and check the attendant unwholesome practices such as unfounded promises to prospective members, and unethical conducts among practitioners.[38]

The Attorney-General of the Federation and Minister of Justice of Nigeria recently set up a committee chaired by Olisa Agbakoba, SAN, former President of the Nigerian Bar Association to head the Federal Government of Nigeria's Committee for the Development of National Arbitration Policy. A major term of reference of the Committee is to harmonise the practice of arbitration and other ADR mechanisms in Nigeria. The aim is to standardise the practice of ADR in Nigeria, to arrest the flight of ADR briefs from Nigeria to foreign fora, and stop loss of revenue

[38] See generally EO Ezike, 'Developing a Statutory Framework for ADR in Nigeria', (2011-2012) 10 *Nig J.R.*, 244-266. The author holds the view that Arbitration and Conciliation are covered by a statute but the other forms of ADR are not covered by a statutory framework. That is obviously true. However, the contention of the present author is that even the Arbitration and Conciliation Act, just like the recent Arbitration and Mediation Bill, does not regulate the training and qualifications of practitioners of Arbitration and Conciliation/Mediation, and how they (Arbitration and Conciliation/Mediation) should be practised, and by whom.

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to both the Government of Nigeria and ADR practitioners. The National Arbitration Policy is premised on the concept that arbitration agreements and disputes arising from contractual or commercial relationships in Nigeria will have Nigeria as the seat of arbitration, especially where Nigerians or Nigerian Government or its agencies are wholly or partly parties to the transactions and the disputes arising from them.[39] The Nigerian Bar Association had also sent out questionnaires (survey on the efficacy of the arbitration practice in Nigeria) to lawyers to identify the key factors contributing to the efficiency or inefficiency of arbitration in Nigeria as well as identify steps that could be taken to improve the practice of arbitration in Nigeria.[40] The result of the survey would be shared in the LCA Journal of Arbitration and Dispute Settlement in Q4 2021.

7 Conclusion

Nigeria has a few of the best arbitrators and other ADR practitioners in the world. Many of them were trained overseas, and some by the Nigerian Chartered Institute of Arbitrators, Chartered Institute of Arbitrators UK, Nigerian Branch, etc. Others, mostly legal practitioners, learnt the law and practice of arbitration and other ADR mechanisms on their own by dint of hard work. There is, also, a considerable number of arbitration and other ADR institutes in Nigeria as listed in this work under the subheading "The Nigerian Situation." The problem is that arbitration and other ADR bodies or institutes formed by these experts do not give quality training and skills to the new and upcoming arbitrators and other ADR practitioners to enable them function effectively as arbitrators and other ADR practitioners. Though some people are naturally gifted in settlement of disputes notwithstanding their academic or educational background, there is still the need to acquire quality arbitration and other ADR skills to better their lot. This is so because ADR practitioners should learn how to conduct ADR proceedings: how to record proceedings, and how to receive evidence and assign probative value to them appropriately. At the end of the proceedings, they should be able to write their final arbitral awards, conciliation agreements, and other ADR terms of settlement in standard formats. This is worse where the practitioners manning the ADR proceedings do not have a background in Law, and where they sit alone instead of a panel. For instance, thirty-five percent of members of the Nigerian Institute of Chartered Arbitrators are non-lawyers. However, there is no law or regulatory body to ensure that the right thing is done. Therefore, the ADR bodies or institutes, most of which are owned by individuals, and run as business ventures, offer substandard training and certification to the new generation of arbitration and other ADR practitioners in Nigeria. Law should be enacted to regulate the practice and practitioners of arbitration and other ADR mechanisms in Nigeria, especially on the training, certification, supervision of practitioners, punishment for undisclosed incompetence and professional misconducts. ADR is a serious business, and it should be treated as such.[41] On the other hand, Ghana has an Act that regulates the practice of arbitration and other ADR mechanisms in Ghana. It stipulates the qualifications for arbitrators. The Ghana Arbitration Centre provides that to qualify as an arbitrator or conciliator, lawyers must have at least 15 years experience with proven competence in areas relevant to arbitration or conciliation, high moral character, and

[39] D Agbo, 'Agbakoba Heads FG's Arbitration Development Committee', 16 October 2020 at https://www.vanguardngr.com, accessed on 23 February 2021.O Akinyeye, R Bello, and G Ikechukwu (n 28), 3.

[40] https://www.surveymonkey.co.uk/r/J8CT6PF, accessed on 20 July 2021.

[41] See for instance s 1 (1) of the International Centre for the Settlement of Investment Disputes (Enforcement of Awards) Act LFN 2010 which makes awards by ICSID to have effect as awards in the final judgment of the Supreme Court of Nigeria.

impeccable integrity. The ADR Act 2010 of Ghana mandates other ADR bodies to affiliate to the ADR Centre provided for under the ADR Act, which supervises the practice of ADR in Ghana. The ADR Act gives prominent attention to customary arbitration. It specifies persons, and qualifications for customary arbitration practitioners.[42] This is in contrast with the Nigerian situation where features of valid customary arbitration keep changing from case to case.[43] Costs of ADR payable by parties are centrally regulated.[44] There is, also, ADR Fund established to develop ADR in Ghana. Nigeria should emulate Ghana, and regulate the practice and practitioners of arbitration and other ADR mechanisms in Nigeria.

8. Recommendations

The following recommendations are made for efficient and effective regulation of the practice and practitioners of arbitration and other forms of ADR in Nigeria:

1. The National Assembly of the Federal Republic of Nigeria should enact an Act to provide for minimum certified training and continuing professional development for arbitrators and other ADR practitioners in Nigeria.
2. Minimum qualifications for arbitrators and other ADR practitioners should be specified in the Act on permanent basis with allowance for parties to appoint arbitrators and other ADR practitioners with additional qualifications of their choice. It is becoming increasingly common for people, both lawyers and laymen, to practise solely as arbitrators, conciliators, mediators, negotiators, etc. There is, therefore, need to specify minimum qualification for ADR practitioners, and have a Roll/Register for them. Qualifications of ADR practitioners should not be only on ad hoc basis and by agreements of the parties to disputes.
3. There should be a list of disputes that are arbitrable with proviso to amend the list as society progresses.

   There is need for the Act to list disputes that are amenable to ADR processes. Apart from criminal matters, matrimonial causes, constitutional questions, etc, which are not amenable to ADR by virtue of public policies, there are many other disputes that one is not so sure could be settled by ADR. Parties to disputes could, on their own, decide to settle any dispute by ADR. The problem arises if any of the parties is not willing to honour the decision reached. In that case, they may enlist the help of the regular courts to enforce the decision. The court may refuse to enforce the decision of the parties on the ground that it is not the kind of case settled by ADR. An award given in the proceedings not permitted by the law of Nigeria is set aside on appeal; for instance matters not arbitrable: gaming and wagering, divorce petition, etc.[45] The Nigerian Court had held that tax issues cannot be settled by arbitration.[46]

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[42] Part 3 of ADR Act 2010, ss 89-113, 115 (2), (j).

[43] *Njoku v Ekeocha* (1972) 2 ECSLR 199; ; *Okpuruwu v Okpokam* [1988] 4 N.W.L.R. (Pt. 90) C.A. 554; *Agu v Ikewibe* (1991) 3 N.W.L.R. (Pt. 180) S.C. 385 at 407; *Chukwudozie Anyabunsi v Emmanuel Ugwunze* (1995) 7 S.C.N.J. 55 at 70; *Onwu v Nka* (1996) 7 S.C.N.J 240 at 255; *Umeadi v Chibunze* [2020] 10 N.W.L.R. (Pt. 1733) S.C. 405.

[44] Arbitration Act 2010*,* ss 22, 56,87, 88, 115 (2), (e), 134 (c).

[45] *K .S. V. D. B. v Fans Construction Ltd* (1990) 4 NWLR 172.

[46] *Esso Petroleum and Production Ltd & Snepco v NNPC,* unreported Appeal No:CA/A/507/2012, delivered on 22 July 2016 ; *Coetzee v Comitis* (2002) 6 W. R.N. 11, where the South African Constitutional Court held that arbitrators did not have the powers to determine constitutional issues; DSJ Sutton, G Gill, and M Gearing (n 27),14-18;MJ Mustill and SC Boyd (n 32), 149-150.

4. Grant more and firmer powers to arbitrators and other ADR practitioners to be in control of ADR proceedings. Arbitrators and other ADR practitioners should have more and firmer power to control the conduct of arbitration and other ADR mechanisms. A situation where parties turn arbitrators to their servants by dictating the pace of proceedings, and use dilatory tactics to prolong arbitral proceedings defeat some of the essentials of ADR, which includes saving time and costs. The powers should include the ability of ADR practitioners to refuse requests for unnecessary adjournments without being exposed to law suits by the parties.
5. Provide time within which to conclude ADR proceedings, and draw up awards, terms of conciliation, mediation, negotiations, etc. General maximum time should be set within which to conclude ADR proceedings, and make decisions. This is without prejudice to extension of time within which to conclude certain cases when it is appropriate to do so. An instance would be when the questions for determination are many or complex.

Specify and define conducts that are unethical for which ADR practitioners will be sanctioned by the regulatory authority or be sued by parties for negligence, breach of duty, etc. Misconducts such as breach of duty of accountability, breach of duty of privacy or nondisclosure, negligence, etc, are common. Use of delay tactics by arbitrators and other ADR practitioners to prolong ADR sessions so as to earn more fees, lack of requisite skills, absence from proceedings without justifiable advance notice, illegal attraction of briefs, etc, should be included in the conducts for which the regulatory body should punish any practitioner found culpable. Appropriate punishments for misconducts should be prescribed, with the proviso to review both the misconducts and the punishments from time to time as the need arises.