RECONCEPTUALISING COMMERCIAL DISPUTE RESOLUTION: THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN AVOIDING CONTENTIOUS LITIGATION

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Abstract

The inherent complexity of commercial activities makes disputes between parties almost inevitable. Managing commercial and contractual performance involves intricate considerations of corporate and human behaviour, often leading to disagreements. Such disputes typically consume significant financial and temporal resources, potentially resulting in loss of trade, reputational damage, and strained commercial relationships. Therefore, effective dispute resolution mechanisms are essential for swift, fair settlements that preserve business relationships and optimise resource use. Traditionally, litigation has been the primary method for resolving commercial disputes. However, its adversarial nature often leads to delays, high costs, and further deterioration of already fragile business ties. In contrast, Alternative Dispute Resolution (ADR) mechanisms such as mediation and arbitration offer more collaborative, cost-effective, and time-efficient approaches. These methods can preserve valuable business relationships while avoiding the contentiousness of court proceedings. Nigeria has increasingly embraced ADR as a viable alternative to litigation, as evidenced by the enactment of the Arbitration and Mediation Act 2023 and the National Policy on Arbitration and Alternative Dispute Resolution 2024. These developments signal a commitment to modernising dispute resolution frameworks and promoting ADR literacy. This paper adopts a doctrinal research methodology, analysing statutory instruments, policy documents, and relevant case law to assess the effectiveness of ADR in commercial dispute resolution. Findings reveal that ADR mechanisms, particularly arbitration and mediation, offer faster and more cost-effective outcomes than litigation, while also preserving commercial relationships. However, challenges remain in terms of awareness, enforcement, and institutional capacity. The paper concludes by recommending the integration of ADR into standard commercial practices and calls for enhanced stakeholder education to foster a more efficient and harmonious business environment.

1. Introduction

Nigeria is Africa's largest economy and a destination of a significant number of international commercial transactions such as, trade, and investments.[2] Nigeria as one of the developing economies in sub-Saharan Africa has experienced continuous growth in the last 25 years.[3] The remarkable improvement in the macroeconomic environment has made the region very attractive. The attraction of Nigeria lies not only in its abundance of natural resources but in demographic dividends[4] which have attracted and encouraged foreign investments across the various sectors of the economy in African jurisdictions and globally. In the context of commercial law,[5] commercial disputes refer to conflicts that arise between business entities or individuals engaged in commercial activities. Examples of such disputes can range from breach of contract, partnership disagreements, and employment disputes relating to breach of employment contract to intellectual property infringement.

Given the huge commercial transactions and investments and the complexity of such investment and

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[2] Nigeria with an estimate population of 227,882,945 as of 2023 million, has been rated the largest African Emerging Economy though the economy is Oil driven, there is expanding growth in manufacturing, telecommunication, construction, energy and transport. See https://data.worldbank.org/country/nigerialast accessed 18 March 2025

[3] United Nations Conference on Trade and Development (UNCTAD), Investment Policy Review of Nigeria (UNCTAD) 2023. https://investmentpolicy.unctad.org/investment-policy-review/156/nigeria accessed July 27 2025.

[4] IMF Regional Economic Outlook, 2015, 'Sub- Saharan Africa; How Can Sub-Saharan Africa Harness the Demographic Dividend? www.imf..org accessed 28 March 2025.

[5] Commercial law commercial law draws on principles from a number of different areas of jurisprudence: the exchange of merchandise and services is managed, legally, primarily through the mechanism of contract law, but principles from tort, property, equity and trusts. See Lord Reed, 'The Law and Commerce' [2022] LMCLQ 232-235.

commercial activities, the likelihood of disputes between parties is inevitable. Disputes are part of everyday life, particularly in today's world of ever evolving and complex world of trade and commerce, disagreements may arise over, interpretation, performance payment and delivery of goods and services.[6] Such commercial disputes usually occur because of a breakdown of parties' existing commercial relationships or an existing contractual relationship. Generally, the most prevalent method of dispute resolution is litigation in court, and most disputes arising from commercial transactions are resolved by litigation. Civil litigation offers distinct procedural advantages, notably through its adherence to formal and codified rules of evidence and procedure, which serve to uphold the principles of fairness, transparency, and legal certainty.[7] These procedural safeguards embedded within statutory frameworks such as the Evidence Act 2011[8] and the various Rules of Court ensure that parties are afforded equal opportunity to present their case, thereby reinforcing the rule of law and due process. The structured nature of litigation also facilitates judicial accountability and the development of precedent, contributing to the stability and predictability of legal outcomes in commercial and civil disputes.[9] Additionally, the court's decision is based on a systematic evaluation of facts, evidence, and law. Furthermore, the court's proceedings and decisions are public records, accessible to members of the public.[10] Indeed, undoubtedly, resolution of dispute by way of litigation has several advantages. However, litigation in court comes with its attendant cost, delay, and the potential to exacerbate conflicts, ultimately straining both business and personal relationships. Parties have increasingly sought recourse to alternative methods of dispute resolution in the form of negotiation, mediation, conciliation, arbitration and other hybrid processes. These alternative Dispute Resolution (ADR) methods and processes have become attractive and widely embraced at least in principle in Nigeria. This situation might stem from the numerous actual or perceived drawbacks associated with litigation. For instance, the adversarial approach of litigation is often criticized for focusing excessively on the legal rights and entitlements of the involved parties. This approach can overshadow the importance of the preservation of business relationships between the parties. Consequently, the adversarial nature of litigation may lead to strained relationships and a lack of consideration for the broader context of the parties' ongoing interactions and mutual interests[11] Most commercial disputes consume valuable resources, including finances, time, and management efforts, and can lead to a loss of trade. Additionally, they may harm trading reputations and commercial relationships, this underscores the need to have effective mechanisms in place for the swift resolution of disputes, ensuring justice and the efficient use of economic resources.[12]

This paper analyses the growing complexities of commerce and the increasing need for efficient and reliable method of dispute resolution. Most jurisdictions have placed ADR at the forefront of legal reform and practice, not only because of the need to decongest the ever-overloaded dockets, most importantly aligns with the broader objectives of efficient justice delivery and the rule of law reforms.[13] In Nigeria, the recent enacted Arbitration and Mediation Act (AMA) 2023[14] represents an important milestone and legislative step towards promoting ADR in line with international standard. The subsequent federal government National Policy on Arbitration and ADR 2024[15], which seeks

[6] K. Mackie, D. Miles and W. Marsh, *Commercial Dispute Resolution* (Butterworths, 1995), p. 18.
[7] Maureen Stanley_Idum, James Atta Agaba, Civil Litigation in Nigeria, (4th edn, Renaissance Law 2022), see also the case of *Ndukauba v Kolomo* (2005) 3 NWLR (Pt. 915)411 (SC) where the Supreme Court stressed rules of procedures are designed to ensure fairness and certainty in adjudication.
[8] Chapter 112, Laws of the Federation of Nigeria 2011
[9] See for example Federal High Court Civil Procedure Rules 2009, Lagos State High Court (Civil Procedure) Rules 2019.
[10] See Constitution of the Federal Repubic of Nigeria (as amended) 1999 sections 36,(1) 7 (3), 102, & 104(1).
[11] Chiara Giovannucci Orlandi, 'Dissemination of common rules on mediation and arbitration as a means of promoting ADR methods and improving the business landscape' (2019) 6 IBLJ 629.
[12] Reza Beheshti and Séverine Saintier and Sean Thomas, Bradgate's Commercial Law (4th edn, OUP 2024) ch 3
[13] Todorović I and Harges B, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5(4) J Strategic Contracting and Negotiation 214.
[14]The AMA 2023 was enacted in May 2023, and it repealed the age-long Arbitration and Conciliation Ac(,(ACA) 2004 which was in existence for more than three (3) decades.

amongst its aims, to decongest the Nigerian courts by fostering a judicial culture that supports arbitration and ADR while promoting public awareness of its benefits.

The methods of resolving disputes through the various ADR mechanisms allows parties to contend without being contentious, asserting their rights and interest with the acrimony and hostility associated with court proceedings. This paper examines the role of ADR in resolving disputes arising generally from commercial and or contractual transactions. While the various ADR methods include, negotiation, mediation, arbitration, conciliation, and med-arb, this paper will be focusing on mediation and arbitration as these two ADR methods are well structured, recognised and are supported by legal and institutional frameworks. The paper will consider the legal framework, practical benefits and institutional support for ADR, while it argues that ADR though a necessary tool for promoting a business- friendly dispute culture in Nigeria, there are challenges that poses hinderance to the widespread acceptance and application of ADR as a viable method of resolving commercial disputes in Nigeria.

The significance of this paper lies in its contribution to the evolving discourse on commercial dispute resolution in Nigeria, particularly in the context of legal reform and economic development. As Nigeria continues to attract substantial foreign direct investment and engage in complex commercial transactions, the need for efficient, non-contentious dispute resolution mechanisms becomes increasingly urgent. By critically examining the role of ADR especially mediation and arbitration, this paper provides insights into how Nigeria can foster a more business-friendly legal environment that supports sustainable commercial relationships and reduces the burden on the judiciary. The study also aligns with broader global trends advocating for the institutionalisation of ADR as a cornerstone of modern commercial law practice.

This paper adopts a doctrinal research methodology, relying on primary legal sources such as statutes, policy documents, and judicial decisions, alongside secondary literature including academic commentary and institutional reports. Through this analytical lens, the paper evaluates the legal and institutional frameworks governing ADR in Nigeria, with particular attention to the Arbitration and Mediation Act 2023 and the National Policy on Arbitration and ADR 2024. The findings reveal that while ADR mechanisms, especially mediation and arbitration offer significant advantages in terms of cost, time efficiency, and relationship preservation, their practical application remains hindered by limited awareness, inconsistent enforcement, and insufficient institutional capacity. The paper argues that addressing these challenges is essential for positioning ADR as a viable and preferred method of resolving commercial disputes in Nigeria.

The paper will be divided into five parts. This first part introduces the subject of this paper and outlines the scope. Part 2 discusses the Conceptual and Legal Frameworks of ADR in Nigeria. Part 3 examines ADR in practice highlighting the applications to commercial transactions. It will also examine institutional and judicial support for ADR in Nigeria. Part 4 highlights the challenges ADR in resolving commercial disputes. The final part concludes the paper and offering recommendations on how positioning ADR as effective non- contentious method for resolving commercial disputes.

2. Conceptual and Legal Framework of ADR -Conceptual Framework of ADR and Commercial Transactions

The term 'Alternative Dispute Resolution (ADR) is generally used to describe methods of procedure to settle disputes, either as an alternative to the traditional system of dispute resolution mechanism of the court (litigation) or as a supplement to that mechanism".[16] The definition offered by the Black's

[15] National Policy on Arbitration and Alternative Dispute Resolution (ADR), 2024.

Law Dictionary is that an ADR process is "a procedure for settling a dispute by means other than litigation, such as arbitration or mediation'.[17] ADR refers to legally recognised methods that are adopted for the resolution of disputes outside litigation.[18] There are a variety of ADR methods for resolving disputes without litigation, they can generally be classified into six types: negotiation, mediation, arbitration, conciliation, collaborative law, and early neutral evaluation.[19] In every case in which one of the various modes of ADR is used to resolve disputes between parties it offers a process or reaches a result that differs materially from those of the formal court system of litigation. ADR offers a system with procedural flexibility, a broad range of remedial options, and a focus on individualized methods of resolution of disputes. [20]

The variety of ADR methods that can be categorized into two main types based on how the dispute is resolved: adjudicative and agreement-based (or consensual). In adjudicative processes, like arbitration, an independent third party makes a decision, which can be binding (as in arbitration) or advisory (as with an Ombudsperson). Conversely, in agreement-based processes, the parties involved work towards a mutually agreed outcome with the help of an impartial third party.[21] Importantly, these ADR methods aim to provide flexible and efficient alternatives to traditional litigation, often resulting in more amicable resolutions and preserving relationships between the parties involved.
It is important to recognize that ADR is a broad and multifaceted concept. It encompasses a diverse array of activities and reflects significant variations in philosophy, practice, and approach within the dispute resolution field.

The concept of informal dispute resolution methods is not a new phenomenon, as humans have always used the informal method from time immemorial[22]. Dispute resolution outside the court system has always been a part of human history. Societies around the world have long employed non-judicial means to resolve disputes and conflicts, with evidence suggesting that the first forms of ADR date back thousands of years.[23] In Nigeria also, the concept of resolving disputes in an informal manner is not a new concept. Historically, leaders and elders used to act as mediators or arbitrators to settle disputes among members of their communities and families. [24]The referral of disputes to one or more laymen, especially to heads of family, community heads, or elders has deep roots in the customary law of many Nigerian communities. The decisions of these chiefs and elders were binding and obeyed for their decisions were unquestionable.[25]

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[16] See Orojo and MA Ajomo, Law and Practice of Arbitration and Conciliation in Nigeria (1991 Mbeyi and Associates) 9-11.
[17] Black's Law Dictionary (3rd edn, 2012) Alternative Dispute Resolution (§ 1:1)
[18] See, Garner B A, Black's Law Dictionary (9th ed., Thomson Reuters 2009) 58.
[19] Laurence Boulle and Michael Marriott, Brown & Marriott's ADR: Principles and Practice (4th edn, Sweet & Maxwell 2018).
[20] Ibid @2-008-9.
[21] ibid.
[22] David Spencer, *Principles of Dispute Resolution* (1st edn Thomas Reuters 2009) [1.10] 1.
[23] Merkel-Meadow C., "The History and Development of 'A'DR" (Volkerrechts blog 20 July 2016), at: http://voelkerrechtsblog.org/
[24] Steven Sunday Ogbobe, 'The Roles of Elders in Alternative Dispute Resolution: Nigeria in Context' (2022) 2(2) Nigerian Journal of Peace and Conflict Resolution 280 http://www.nijpcr.nou.edu.ng/wp-content/uploads/2022/08/NIJPCR-VOL-2-NO-2-CHAPTER-NINETEEN_OGEOBE.pdf accessed 20 July 2025
[25] Virtus, C. I. 'Law and Practice of Customary Arbitration in Nigeria: Agu v. Ikewibe and Applicable Law Issues Revisited' (1997) (41) *Journal of African law* 2, 201, see also *Ohiaeri vs. Akabeze* (1992) 3 2N.W.L.R (Pt 221) 1. See also *Okpuruwu v Okpokam* (1988) 4 N.W.L.R (pt. 90) 554 at 572.

The advent of British colonisation in Nigeria marked a significant transformation in the country's legal landscape, introducing the English model of litigation and formal court systems as the dominant mode of dispute resolution. This colonial imposition did not entirely displace indigenous legal traditions; rather, it coexisted with customary dispute resolution mechanisms, which had long been administered by community elders, chiefs, and family heads.[26] Under Nigerian law, customary law remains a recognised source of law, provided it satisfies the validity tests of being consistent with natural justice, public policy, and not contrary to any written statute. Consequently, customary arbitration and mediation,[27] core components of traditional dispute resolution are acknowledged as legitimate forms of Alternative Dispute Resolution (ADR) within the Nigerian legal system.[28]. However, the institutionalisation of the English court system and its capacity to enforce decisions through state apparatus gradually elevated litigation above customary processes in terms of authority, popularity, and procedural dominance. As the concept of statehood and its coercive powers became more entrenched, the supremacy of formal litigation and public justice mechanisms was solidified, often at the expense of indigenous dispute resolution frame works. This shift reflects the broader colonial legacy that continues to shape Nigeria's jurisprudence, where English legal principles remain deeply embedded in the structure and operation of the judiciary.[29]

In Nigeria, given that the legal system is predominantly adversarial, various ADR mechanisms, including mediation, conciliation, and arbitration, have been acknowledged as viable alternatives to litigation, which has traditionally dominated dispute resolution in the country.[30] These ADR methods provide effective means to resolve disputes without the necessity of resorting to formal court settlements. Furthermore, the adoption of ADR in Nigeria has been driven by the need for more efficient, cost-effective, and less adversarial approaches to dispute resolution. This shift not only alleviates the burden on the judicial system but also promotes amicable settlements and preserves relationships between disputing parties.
ADR methods can range from mediation and arbitration to negotiation and conciliation, each with its own unique processes and principles. Understanding these differences is essential for effectively navigating and selecting.

2.1 ADR and its Methods

ADR is a generic and broad concept, covering a wide range of activities and embracing significant differences in philosophy, practice, and approach in the dispute resolution field. ADR processes include approaches that enable parties to prevent disputes without outside assistance.[31] ADR methods can be classified into two main categories, Adjudicative and non- adjudicative ADR methods. Adjudicative methods also known as 'decisional methods involve a decision on the case being made by an impartial and neutral third party imposing a decision or solution upon the disputing parties, example is arbitration. On the other hand, non-adjudicative spectrum of ADR are facilitative methods of dispute resolution that may or may not involve a neutral third party whose role is to help the disputants reach a mutually acceptable solution or settlement such as negotiation.

[26] J.O. Asein, Introduction to the Nigerian Legal System (Ababa Press, 2005)
[27] A Adekoya, 'Customary Arbitration in Nigeria: A Valid ADR Mechanism?' (2016) 2 Nigerian Journal of Legal Studies 89.
[28] *Umeadi v Chibuze* (2020) LPELR -5112 (CA); *Okereke v Nwankwo* (2003) 9 NWLR (Pt.826) 592; *Ohiaeri v Akabeze* (1992) 2 NWLR (Pt. 2221)1; *Agu v Ikewibe* (1991)3 NWLR (Pt.180) 385
[29] C Ojukwu, 'The Colonial Impact on the Nigerian Legal System' (2013) 5 African Journal of Legal Theory 102, Emilia O. and Monalisa O.(2017), 'How Alternative Dispute Resolution Made a Comeback in Nigeria's Court' African Research Institute, seen https://www.africaresearchinstitute.org/newsite/publications/ accesses 12 March 2025.
[30] For instance, an empirical study carried out in 2012 indicated an increase in the use of alternative dispute resolution mechanisms like mediation and arbitration in Lagos State with the establishment of the first court-connected Alternative Dispute Resolution Centre in Africa, The Lagos Multi-Door Courthouse in 2002. See Emilia Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: Case Study of the Lagos MDC. (2013) Apogee Journal of Business, Property & Constitutional law, 2 (7) 96-130. http://eprints.soas.ac.uk/14521 accessed 27 September 2017, see also Andrew Chukwumerije, 'Salient Issues in the Law and Practice of Arbitration in Nigeria' (2006) A.J.I.C.L., 14(1) 1.
[31] *Halsey v Milton Keynes General NHS Trust.* [2004] EWCA Civ 576.

a. Negotiation

Negotiation is an everyday event in human life, between spouses, at the workplace, in organizations, communities, and nations. Negotiation is defined as an;

"interpersonal process through which arrangements are made with others to resolve disputes, plan transactions by reconciling conflicts or apparent conflicting interests. Negotiations are used either to resolve conflict or to avoid further escalation of disputes. It is a communication process using words or actions of demands, wishes and promises"[32].

Of all the different types of ADR mechanisms, negotiations are the least complex and formal as parties themselves may be engaged in the negotiation without necessarily involving a neutral third party.[33] Parties may by direct communication come to a compromise or find a common goal to resolve their disputes.[34]

Negotiation is essential ADR mechanism in commercial law, offering a cost-effective and flexible approach to resolving disputes outside the courtroom. It allows parties to maintain control over the outcome, fostering mutually beneficial solutions.

b. Mediation

This ADR method of mediation is defined as the process where parties seek the assistance of a neutral third party or parties to help them in reaching a mutually agreeable resolution for their dispute arising from a contractual or legal relationship.[35] Mediation and conciliation are similar and most times they are used interchangeable. The definition of mediation as offered by the AMA covers various terms like mediation, conciliation, or other similar expressions.[36] Mediation focuses on the restoration of relationship of the parties through third-party neutral assisted self-determination of disputes by the disputing parties. This process avoids the resolution process being contentious and a battlefield before a court or tribunal with the coercive power pf imposing a decision on the parties. It is an extremely common and effective way of resolving disputes without the need to go to court.

c. Arbitration.

Arbitration is a non-judicial process for the settlement of disputes under which the parties agree to be bound by the decision of an arbitrator whose decision is in general, final and legally binding on both parties.[37] Arbitration derives its authority primarily from the mutual consent of the parties involved, and secondarily from the State, which acts as a supervisory body and enforces the legal validity of the process. In arbitration, an independent third party referred to as the arbitrator is appointed to resolve the dispute by rendering a decision that is final and binding on both parties.[38] The arbitrator is often selected based on expertise in the subject matter of the dispute, and legal qualifications are only necessary if expressly required by the parties. A dispute that might otherwise go to court becomes subject to binding arbitration only by the agreement of the parties. In this sense, arbitration is a creature of contract, and the terms of the parties' particular arbitration agreement are generally controlled. The arbitral tribunal and the process to be followed are agreed in advance by the parties.[39] Arbitration proceedings exhibit considerable procedural flexibility, ranging from streamlined

[432] Leonard L Riskin (n2) 107.

[33] Susan Blake, Julie Browne and Stuart Sime, A Practical Approach to Alternative Dispute Resolution (5th edn, Oxford University Press 2021)

[34] A Halpern. 'Negotiating Skills' (Blackstone Press 1992) 3.

[35] Section 91 AMA 2023.

[36] ibid.

[37] *UBA Plc v Triedent Consulting Ltd [(2023]14 NWLR (Pt 1903) 127.*

[38] Nigel Blackaby KC, Constantine Partasides KC, Alan Redfern, ' Redfern and Hunter on International Arbitration, . (7th online edn Oxford 2022) https://doi.org/10.1093/law/9780192869906.001.0001 , accessed 23 July. 2025.

[39] O. Chukwumerije, Choice-of-Law in International Commercial Arbitration (Quorum Books, Westport, Connecticut and London, 1994), pp. 9–15.

document-only processes to full-scale hearings that closely resemble traditional courtroom litigation.[40] The scope and structure of arbitration are largely determined by party agreement and the applicable institutional rules, allowing for tailored procedures that may include written submissions, oral arguments, and the examination of witnesses and experts.[41] It is argued therefore, that this, adaptability is one of arbitration's defining features, enabling parties to design a dispute resolution process that suits the complexity and nature of their disputes.

2.2 Legal Framework of ADR in Nigeria.

Arbitration and mediation are the only two ADR methods that have received legislative backing. The extant ADR national law is the Arbitration and Mediation Act (AMA) 2023. The AMA marks a significant milestone in the promotion and development of both arbitration and mediation in Nigeria. The AMA repealed the erstwhile 35-year-old ACA and goes a long way in reforming Nigeria's legal framework for both arbitration and mediation in conformity with contemporary international best practice in ADR principles and practices.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) affirms the legitimacy of Alternative Dispute Resolution (ADR) mechanisms both explicitly and implicitly. Notably, Section 19(d) of the Constitution mandates the promotion of respect for international law and treaty obligations, and advocates for the resolution of international disputes through negotiation, mediation, conciliation, arbitration, and adjudication. Indeed, it is contended that the AMA 2023 represents a pivotal shift in aligning domestic dispute resolution mechanisms with international best practices, particularly in the realm of commercial arbitration and mediation Other legal frameworks of ADR in Nigeria, includes international instruments such as the UNCITRAL Model Law on International Arbitration (Model Law)[42], and the New York Convention on the Recognition and Enforcement of Arbitral Agreement and Foreign Awards (NYC).[43] The UNCITRAL Model Law on International Commercial Mediation (2018) updates and replaces the 2002 Model Law on Conciliation, aligning global mediation standards with the Singapore Convention and establishing a framework for enforcing international settlement agreements. The Model Law is designed to assist States in reforming and modernizing their laws on mediation procedure. It provides uniform rules in respect of the mediation process and aims at encouraging the use of mediation and ensuring greater predictability and certainty in its use.[44]

United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation").:- The Singapore Convention on Mediation is an international instrument for resolving trade disputes. Being a binding international instrument, it is expected to bring certainty and stability to the international framework on mediation.

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York Convention) 1958:-. The Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against, and it obliges Parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.[45]

[40] Park, William W., " Procedural Evolution in Business Arbitration," in ICCA Reports No. 10: Does a Right to a Physical Hearing Exist in International Arbitration? (Albert Jan van den Berg ed., 2022)

[41] Ibid.

[42] UNICITRAL Model Law on International Commercial Arbitration 1986 (as amended in 1996).

[43] The New York Convention on Recognition and Enforcement of Foreign Awards 1958.

[44] UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006)

[45] The New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 is the most widely accepted international treaty with over 170 countries as signatories to the convention. The convention facilitates the recognition and enforcement of both arbitration agreements and awards.

Other legal framework for ADR includes institutional rules, such as the UNCITRAL Rules, International Chambers of Commerce |(ICC) Rules, London Court of International Arbitration (LCIA), Lagos Court of Arbitration (LCA), Lagos Chamber of Commerce International Arbitration Centre (LACIAC) Rules 2016 and the National Industrial Court of Nigeria (NICN) Rules.

2.3. Judicial Support for ADR in Nigeria.

The Nigerian judicial system is beset by a range of systemic challenges, including chronic delays in case resolution, frequent and often indefinite adjournments, mismanagement of court records, and entrenched corruption all of which undermine the delivery of justice and public confidence in legal institutions. These challenges especially excessive delay is attributable to the slow process of the legal system which has resulted in the loss of public confidence in the Nigerian legal system.[46] Instances of cases that have suffered protracted delays are too many for comfort to be mentioned, there are cases s that took between 22 years[47] and 29 years[48] to be finally disposed of by the courts. The famous case of *IPCO v NNPC*[49] has portrayed the administration of justice system in Nigeria in a negative manner, so much that the English Court, on being informed that an application dated 22 November 2004 to strike out NNPC's application to set aside the award as of 2014 had not been heard, stated that "what has occurred in the Nigerian proceedings can I think properly and controversially be described as catastrophic."[50] In a recent survey carried out by a law firm in Nigeria, on the duration of arbitration related matters in Nigerian courts reveals a significant delay, particularly at the appellate levels. It was reported that it was reported that at the High Court, cases took an average of 1 year and 8 months (679 days), with 45% concluded within a year and only 10% exceeding three years. The Court of Appeal averaged 2 years and 9 months (1,059 days), but 45% of cases extended beyond three years. The Supreme Court was the slowest, averaging 4 years and 8 months (1,773 days), with 69% of cases lasting over three years. Overall, for cases that progressed through all three levels, the total time from arbitral award to final judgment averaged a staggering 10 years (3,810 days).[51] In a plethora of commercial cases, long and unnecessary delays, have for illustration, a land dispute lasted fifteen years at the trial court. By the time it was ripe for hearing at the Supreme Court, the court held that the inordinate delay in the trial court had occasioned a miscarriage of justice. The court ordered a trial de novo. By that time, the case was already twenty years old.[52]

Nigerian courts have on their own, adopted and encouraged the use of ADR mechanisms in settling disputes between parties. To this end various courts in Nigeria have either developed Court Rules and or incorporated provisions relating to ADR mechanisms. The court rules of some of the State High Courts and Federal High Courts in Nigeria provides a framework for the use ADR mechanisms.[53] The provisions of some High Court Rules, with the cooperation and consent of the parties, refer the parties to ADR centres attached to the court system, The aim is to offer both individuals and corporate organisations that seek to resolve their disputes, fast, flexible, confidential, and cost-effective dispute

[46]Lagos CJ decries Backlog of Cases – Lagos State Government seen at https://lagosstate.gov.ng/blog/2018/05/17/laos-cj-decries-backlog-of-court-cases accessed 14 July 2021.

[47]*Shell Petroleum Development Co v Uzo & 3 Ors* [1994] 9 NWLR Pt.366)51.

[48]*Elf Nigeria Limited v Operesilo & Anor* [1996] NWLR (Pt. 350) 258.

[49][2005] EWHC 726; *[2015] EWCA Civ 1144*; [2017] UKSC 16.

[50]Per Field J stated at [2014] 1 Lloyd's Rep. 625 at 630.

[51] Broderick Bozimo & Company, Analysis of Arbitration-Related Decisions in Nigeria (October 2021) https://broderickbozimo.com/wp-content/uploads/2021/10/BBaC-Analysis-of-Arbitration-Related-Decisions-in-Nigeria.pdf Accessed 2 August 2025.

[52]*See Ariori v Elemo, (1981) SC 1; see also Olaleye v. NNPC; Rossek & Ors v. ACB Ltd & Ors, (1993) 8 NWLR (Pt. 312) 382; Ogbuyinya v. Okudo] (1990) 4 NWLR (Pt. 146) 551.*

[53]See High Court of Ogun State (Civil Procedure) Rules2008, Order 25rule1(2)(c). 53; High Court of Osun State (Civil Procedure) Rules 2010, Order25 Rule 1(2)(c) 54; High Court of Oyo State (civil Procedure) Rules 2010, Order25rule1(2)(c) 55, High Court of Rivers State (Civil Procedure) Rules Federal High Court Act Cap F12, LFN 2004; Federal Capital Territory (Civil Procedure) Rules 2004.

resolution mechanism options. For instance, the extant Lagos State High Court (Civil Procedure) Rules 2019 relegate litigation as a last resort dispute resolution. The Rules provide that the court may, with the cooperation and consent of the parties, refer the parties to ADR centres attached to the court system.[54]

The underlying rationale behind the reform of Civil Procedure Rules across various High Courts in Nigeria is the promotion of expeditious and cost-effective dispute resolution through the institutionalisation of Alternative Dispute Resolution (ADR) mechanisms. These reforms reflect a deliberate shift from adversarial litigation toward consensual processes such as mediation, arbitration, and conciliation, aimed at reducing case backlog and enhancing judicial efficiency. For instance, the High Court of Lagos State (Civil Procedure Rules) 2019 and the Federal High Court ADR Rules 2018 contain elaborate provisions mandating or encouraging the referral of disputes to ADR at pre-trial stages. This procedural evolution is consistent with global trends inspired by Lord Woolf's reform of the English civil justice system, which emphasised early settlement and proportionality in dispute resolution.[55] The Nigerian Industrial Court of Nigeria (NICN) also has established ADR Centres aimed at encouraging litigants to settle their disputes by adopting ADR Mechanisms to resolve their disputes by reaching a mutually acceptable agreement. The NICN 2017 reviewed its Civil Procedure Rules to the effect that the court may refer for amicable settlement through conciliation or mediation any matter filed in any of the Registries of the Court to the ADR centre.

3. Application of ADR in Commercial Disputes.

The growing complexity and transnational nature of commercial transactions have exposed the limitations of adversarial litigation, particularly in terms of cost, delay, and confidentiality. The use of ADR mechanisms particularly the use of arbitration in cross-border commercial disputes has gained prominence as efficient, flexible, and relationship-preserving tools for resolving commercial disputes.[56] This global shift reflects a broader trend toward dispute resolution models that prioritise party autonomy, procedural adaptability, and the minimisation of reputational and financial risk[57]

3.1 Why ADR and Not Litigation.

Commercial disputes are an almost inescapable feature of business transactions. Even the most meticulously drafted contracts cannot fully insulate parties from disagreements or misinterpretations regarding their respective rights and obligations, whether at the negotiation, performance, or enforcement stage. While litigation offers the advantage of binding judgments backed by the coercive authority of the state, and judicial intervention may at times be indispensable, it is not without its limitations. Court proceedings are often protracted, costly, and public, exposing parties to reputational risk and procedural rigidity that may undermine commercial relationships and strategic interest.

[54]See Order 27 rule 2 Rules High Court of Lagos State (Civil Procedure Rules) 2019.

[55]Lord Woolf, Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales (HMSO 1996).

[56] See Arbitration surveys conducted between 2006 to 2021, by Queen Mary University of London and White and Case- 2021 International Arbitration Survey: Adapting Arbitration to a Changing World ; 2019 International Arbitration Survey: International Construction Disputes; 2018 International Arbitration Survey: The Evolution of International Arbitration; 2016 International Dispute Resolution Survey: An insight into resolving Technology, Media and Telecoms Disputes; 2015 International Arbitration Survey 'Improvements and Innovations in International Arbitration Corporate Choices in International Arbitration: An Industry Approach; 2012 Current and Preferred Practices in the Arbitral Process: International Arbitration Survey; 2010 International Arbitration Survey 'Choices in International Arbitration; Corporate Attitudes and Practices: Recognition and Enforcement of Foreign Awards; 2006 International Arbitration Study: Corporate Attitudes and Practices. Seen at https://arbitration.qmul.ac.uk/research/.Accessed 27 July 2025

[57]Queen Mary University of London and White & Case LLP, 2025 International Arbitration Survey: The Path Forward – Realities and Opportunities in Arbitration (QMUL 2025) https://www.qmul.ac.uk/arbitration/research/2025-international-arbitration-survey/ accessed 20 July 2025

This is particularly true in jurisdictions like Nigeria, where the judicial system suffers from excessive delays in case resolution. Though there is no solid database to back up the time frame within which an appeal process before the appellate court takes in Nigeria, however going by a plethora of cases it has been observed that the average lifespan of cases in Nigerian courts could be as high as 15 years with the appeal processes taking over 60% of the time.[58] Generally civil proceedings and in particular, commercial disputes in courts are also beset by severe delays which undermine the effectiveness of the court system. This has been acknowledged both the Nigerian courts[59] and scholars.[60] Instances of cases that have suffered protracted delays are too many to be mentioned, there is a plethora of cases that took between 22 years[61] and 29 years[62] to be finally disposed of by the courts. In Union *Bank Nigeria Plc v Ayodara Sons (Nig) limited* [63] a case which was instituted in 1989 but was not finally disposed by the Supreme Court until 2007. another example case an appeal was not determined by the Supreme Court until 2000. The famous case of *IPCO v NNPC*[64] has portrayed the administration of justice system in Nigeria in a negative manner, so much that the English Court, on being informed that an application dated 22 November 2004 to strike out NNPC's application to set aside the award as of 2014 had not been heard, stated that "what has occurred in the Nigerian proceedings can I think properly and controversially be described as catastrophic."[65]

In Nigeria, the issue of protracted delay of cases has been of great concern not only to litigants also the judiciary itself has been alarmed by the backlogs of cases that have impacted on congestion of cases in courts. For instance, Lagos is incontrovertibly the commercial nerve centre in Nigeria as well as within the West African sub-region. Lagos also boasts as the capital of commerce and industry accounting for over 60% of industrial and commercial activities in the country.[66] Over the years, delay in the disposal of such cases by the Lagos High Court, which is majorly attributed to the high volume of cases in the court's dockets, has been a serious source of concern.[67]

The adversarial approach of litigation of commercial disputes often seems not to meet with the expectation of businesses considering the length of time and resources. The extent of judicial delay in Nigeria and the perceived lack of commercial and modern sophistication of the courts have earned Nigeria's image international commercial arbitration community.[68] An investor prefers to know a court's decision, within a reasonable time frame or that his venture is wrong or illegal as soon as he embarks on it, rather than to wait in anxiety for months or years before he knows that he is right. As rightly stated, delay frustrates initiative and ruins business.[69]

[58]Effect Of Appeals On Course Of Trials – Litigation, Mediation & Arbitration – Nigeria' (Mondaq.com, 2020) https://www.mondaq.com/nigeria/trials-appeals-compensation/309008/effect-of-appeals-on-course-of-trials accessed 4 August 2025.

[59]See Nika Fishing Co. LTD V Lavina Corporation (2008) 16 NWLR (Pt. 114) 509,

[60]See A. Fagbohun, Delay in the Admiinistration of Civil Justice in Nigeria, Causes, Effects and Solutions.' (2019) Nigerian Judicial Review; A. Suberu, 'Access to Justice in Nigeria: The Problem of Delay in the Administrationn of Justice, (2004) Nigeria Current Law Report.

[61]*Shell Petroleum Development Co v Uzo & 3 Ors* [1994] 9 NWLR Pt.366)51.

[62]*Elf Nigeria Limited v Operesilo & Anor* [1996] NWLR (Pt. 350) 258.

[63][2007] NGSC 82.

[64] [2005] EWHC 726; *[2015] EWCA Civ 1144*; [2017] UKSC 16.

[65]Per Field J stated at [2014] 1 Lloyd's Rep. 625 at 630

[66]I. Nwangwu and T. Oni, "Lagos and the Potential for Economic Growth" (2 July 2015) available at, https://ng.boell.org Accessed 3 March 2025. See also, A. Babalola, "Lagos—Recognition as Commercial Capital City of Nigeria" (7 July 2016) available at: http://www.abuad.edu.ng/lagos-recognition-as commercial-capital-city-of-nigeria Accessed 24 August 2025.

[67]The backlog of cases and congestion necessitated the launch of the Lagos Backlog Elimination Programme (BPE) which was designed to decongest the court and the use of ADR mechanisms to resolve some of these cases where possible.

[68]The case of *IPCO v NNPC* is an excellent case study of the excessive delay in judicial intervention in Nigeria, judicial proceedings for challenge proceedings lasted for more than thirteen years.

[69]M.B. Belgore, "Judicial Response to the Regulation of Foreign Investment in Nigeria" in B. Sodipo (ed.), The Echo of a Judge: Selected Lectures of Mohamud Babatunde Belgore CJ (Ibadan: Evans Publishers, 2006), p.202.

Another structural weakness in the litigation of commercial disputes lies not in the uncertainty of legal reasoning, but in the paradoxical predictability of procedural delay. It is argued by the author that even where judgment is rendered in favour of a party, the fruits of litigation often remain elusive due to a constellation of post-judgment obstacles chief among them, protracted appellate proceedings, debtor insolvency, and strategic procedural abuse. Cost of litigation is not only limited to the financial cost of instituting an action in court, but it may also include cost that may be imposed on the vanquishing party.[70] As rightly observed by the English Court in *Pennock & Another v Hodgson*, stated that the that the "*unfortunate consequence of litigation is that in the absence of any compromise, someone loses, someone wins, it always cost a lot of money and usually generates a lot of ill-feelings that does not end with litigation*" [71]

Another drawback of litigating commercial disputes is the predictability of the outcome, as winning parties may find it difficult to reap the fruits of their judgements for many reasons. One of such reasons could be because of protracted appeal proceedings, insolvency and other factors. The Constitution recognizes and grants parties the right of appeal,[72] however, this constitutionally right of appeal has been used to frustrate cases before the court, hereby congesting the appellate court's system. The Court of Appeal and the Supreme Courts are over-clogged with appeal applications because unnecessary and frivolous appeals are made by lawyers to frustrate and delay the dispensation of cases[73]. This is exemplified when a party in the exercise of the right of appeal, causes an appeal to be entered at the Appellate Court, with the attendant effect that the case before the High Court would be adjourned indefinitely to await and abide by the outcome of the appeal. This leads to the rather disturbing trend that a case may end up staying in the courts for ten years, only to be returned to the trial court for determination. This practice was looked down upon by the then Chief Justice of Nigeria (CJN) in the case of *Amadi v N.N.P.C.*[74] where the CJN lamented that:
With the success of the Plaintiff's appeal before us, the case is to be sent back to the High Court to be determined, hopefully, on its merits after a delay of 13 years. Surely, this could have been avoided had it been that the point was taken in the course of proceedings in the substantive claim to enable any aggrieved party to appeal on both the issue of jurisdiction and the judgment on merit in the proceedings, as the case might be.[75]

The losing party in a commercial dispute in litigation has an automatic constitutional right of appeal. The Constitution recognizes and grants parties the right of appeal,[76] however, this constitutionally right of appeal has been used to frustrate cases before the court, hereby congesting the appellate court's system. The Court of Appeal and the Supreme Courts are over-clogged with appeal applications because unnecessary and frivolous appeals are made by lawyers to frustrate and delay the dispensation of cases[77].
Against the backdrop of the above drawbacks amongst others, constitutes a compelling reason the need for well-designed and comprehensive ADR methods for resolution of commercial disputes.

[70] Costs are imposed in accordance with the law and the civil procedure rules of the court, but they are largely determined at the court's discretion.
[71] [2010] EWCA Civ 873.
[72] Constitution FRN (as amended) Section 241, Chapter C23.
[73] See the cases *of Obafemi Awolowo University v Inaolaji Builders Limited*, [2020] 4 NWLR (Pt. 1714) 347; *Sunday Ehindero v Federal Republic of Nigeria* [2018] 5 NWLR (Pt1612) 30.
[74] (2000) 10 NWLR (Pt. 674) 76.
[75] Per Uwais CJN (as then was) at page 76.
[76] Constitution FRN (as amended) Section 241, Chapter C23.
[77] See the cases *of Obafemi Awolowo University v Inaolaji Builders Limited*, [2020] 4 NWLR (Pt. 1714) 347; *Sunday Ehindero v Federal Republic of Nigeria* [2018] 5 NWLR (Pt1612) 30.

3.2 Significance of ADR Clause in Commercial Contracts

The incorporation of ADR clauses into commercial contracts serves as a strategic safeguard against the unpredictability and adversarial nature of litigation. By predefining the mechanism through which disputes will be resolved, whether through arbitration, mediation, or negotiation parties reduce procedural uncertainty and mitigate the risk of protracted, costly legal battles. Indeed,, it is argued that beyond this risk management function, ADR clauses also promote confidentiality, preserve commercial relationships, and enhance enforcement prospects, particularly in cross-border transactions where neutral forums and enforceable outcomes are paramount.

For cross-border commercial parties, the most preferred dispute resolution method is arbitration aside its attractiveness in speed and finality parties from different countries typically hesitates to submit to each other's national courts or any national courts. Whether justified or not, there is often a mistrust of foreign courts and concerns about their suitability for handling certain types of international contracts.[78] More so, arbitral award for international commercial disputes are more easily enforced than foreign judgments, this is as a result of the NYC 1958 with 172 countries which have accepted the obligation to give effect to arbitration awards made in other countries which are party to the New York Convention.[79] There are limited grounds to refuse enforcement, and is far more effective than the enforcement of foreign judgments which are dependent on bilateral conventions.[80] It is therefore important in order to avoid national courts that parties insert an ADR to clause in their substantive contract so as to avoid lawsuits in the court.

More importantly, when parties have included ADR clauses and chosen arbitration, the doctrine of separability in arbitration, makes the arbitration clause in a contract considered to be an "independent agreement", separate from the main contract.[81] The arbitration clause embedded within a commercial contract is generally regarded as severable and autonomous from the main agreement. This means that even if the substantive contract is terminated or rendered void due to factors such as repudiation, invalidity, or illegality, the arbitration clause remains enforceable. Its survival ensures that disputes including those concerning the very existence or validity of the contract can still be resolved through the agreed-upon arbitral mechanism, rather than defaulting to litigation. In other words, the doctrine of separability of an arbitration clause will not invalidate an arbitration clause in a contract even if the underlying contract is found to be void *ab initio,* or otherwise invalid, that in and of itself would have no impact on the validity of the arbitration clause contained therein[82]

Closely connected with the separability is the competence-competence principle which grants arbitrators the authority to determine the existence, scope, and validity of an arbitration provision without needing a court's prior ruling. Importantly, a party's challenge to the arbitration clause does not prevent arbitrators from continuing with the arbitration process.[83]
The consent of parties to have their disputes solved by mediation can be included in their substantive contract or can be a standalone dispute resolution contract or combined with a standard arbitration

[78] Concise International Arbitration (Mistelis ed) (Second Edition 2015) Kluwer Law.
[79] https://www.newyorkconvention.org/contracting-states assessed 26 August 2025.
[80] In Nigeria, foreign judgments are primarily governed by the Foreign Judgements (Reciprocal Enforceement) Act 2004, see also *Access Bank Plc v Akingbola* [2004
[81] See section 14 (2) AMA 2023, Article 16 (1) Model Law.
[82] See Fiona Trust v Privalov; Prima Corp v Flood and Conkin Manufacturing Co, 29 116 BGE 1a 56, JT 1990 1 563; Harbour Assurance v Kansa General International Assurance Co. Ltd and Others 30 [1992]1 Lloyd's Rep. 81.
[83] Section 14 (1) AMA. The reasoning of the principle of competence- competence is that an arbitration agreement is autonomous and separate from the contract in which it is contained. Hence, the arbitral tribunal is empowered to decide its own competence independently. In order that a tribunal establishes its competence, the tribunal needs to assess the issue of arbitrability of the dispute, as well as all issues of validity and conclusion of the arbitration agreement.

clause such as a Med-Arbitration provision.[84] Most often the parties understands that these agreements require the parties to submit their dispute to mediation and at the same time prohibit them from commencing arbitration or litigation. Unlike the arbitration clause, mediation clauses are not particularly separable from the substantive contract, if the main contract is found invalid, the mediation clause may also be unenforceable.[85]

These points illustrate the significance of having ADR clauses in a commercial agreement which will predetermine the method of dispute resolution where parties' desires to exclude or limit court involvement in a dispute. However, merely copying and pasting an ADR clause into an agreement is insufficient for this purpose.

For ADR clauses in a commercial contract to be enforceable, they must meet certain basic requirements. For arbitration agreement to be enforceable they must meet the formal and substantive requirements. Arbitration agreements must be in writing[86] and the essence of having an arbitration agreement in writing is not only to record the consent of parties to arbitrate their future or present disputes, but also the basis of the arbitral tribunal's source of jurisdiction and existence.[87] In voluntary mediation, the mediation agreement is central to the process. This agreement can be established either ad hoc, after a dispute has arisen, or beforehand, as a mediation clause. For instance, parties may have included provisions in their contract for mediation or conciliation of current or future disputes under the guidance of the Lagos Multi-Door Courthouse (LMDC), Abuja Multi-Door Courthouse (AMDC), or any other State's Citizens' Mediation Centres.[88] Additionally, mediation agreement is often included as part of a multi-tier dispute resolution clause. These clauses outline a sequence of steps for resolving disputes.

For an Alternative Dispute Resolution (ADR) clause to be enforceable, it must be clear and unambiguous. The clause should provide unequivocal evidence that the parties consent to resolving their disputes through ADR methods. This clarity ensures that all parties understand and agree to the process, thereby facilitating smoother and more effective dispute resolution. Additionally, the clause should specify the types of ADR methods to be used, such as mediation or arbitration, and outline the procedures to be followed. These are the essential elements for an enforceable ADR provision. Naturally, as with any other contract, the parties are free to customize the ADR clause to suit their specific need.[89]

3.2 Arbitration and Commercial Disputes

Arbitration, a quintessential adjudicative mechanism within the broader framework of Alternative Dispute Resolution (ADR), has emerged as a preferred method for resolving a wide spectrum of disputes ranging from international and domestic commercial conflicts to employment, construction, consumer, and investment treaty disputes.[90] Like adjudication, arbitration also involves a neutral third party (the arbitrator) who is responsible for running the process and making the decisions necessary to resolve the dispute. One of the attractions of arbitration is party autonomy, which allows parties the freedom to tailor their disputes resolution process according to their needs. Parties are free to choose their arbitrators, laws to govern their arbitration, and the place or seat of the arbitration. Party

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[84] This is a process in which mediation is followed by Arbitration where mediation fails to resolve a dispute or parts of it.

[85] Maryam Salehijam, 'Mediation Clauses, Enforceability and Impact' 2018) 5 McGill Journal of Dispute Resolution 121.

[86] Section 2 AMA, art 11 (2) NYC 1958, and Art 7 (2) Model Law. .

[87] Under Article V (1) (c)NYC, an arbitral award will be refused recognition and enforcement if the award does not fall within the scope of the submission to arbitration.

[88] See Section 20 of the Lagos Multi-Door Courthouse Law,2007.

[89] Ilijana Todorović and Bobby Harges, Alternative dispute resolution in the world of commercial dispute; 'Journal of Strategic Contracting and Negotiation' (2021) 5(4) 214–221.

[90] Gary B, Born, International Commercial Arbitration (Kluwer Law International,3rd edn, 2021).

autonomy allows parties for instance person chosen as the arbitrator often has specialized expertise in the subject matter of the dispute. [91]

Unlike court proceedings, arbitration proceedings are confidential, this private nature of arbitration proceedings are particularly an advantage for business that wants to keep trade secrets and preserve business relationship. Another feature of arbitration is flexibility, unlike rigid procedural rules of litigation, in arbitration parties are free to move away from the structures of such procedural rules and fix the procedure in accordance to their needs. The cost and time that can be saved as well as the ability of parties to have disputes resolved by arbitrators and rules chosen by disputing parties makes it attractive to commercial parties.

Arbitrations can offer cost advantages; Commercial arbitrations can be comparatively low-cost if streamlined procedures are adopted and the arbitral tribunal takes a proactive role in managing the case.[92] Modern arbitration legislation such as the AMA 2023 typically encourages arbitrators to avoid unnecessary expense, equipping tribunals with the powers and subjecting parties to the duties necessary to achieve the resolution of the dispute fairly and without unnecessary delay.[93]
For disputes to be resolved by arbitration there must be a valid arbitration agreement between the parties.[94] Parties must have agreed either in their substantive contract agreement (arbitration clause) or by an arbitration agreement (submission arbitration).[95] A typical arbitration clause will provide that in the event of a dispute or difference arising out of the contract any such dispute or differences shall be determined by the appointment of an arbitrator to be agreed between the parties.[96]

One key characteristic of arbitration that differentiates it from other method of ADR is that it is a quasi-judicial dispute resolution method, whereby parties to a dispute agree to submit their disputes to an independent tribunal for a final and binding resolution. The final and binding decision (award) of an arbitrator or an arbitral tribunal will bind the parties. An arbitration award is registrable, recognised and enforceable[97] as a judgment of the court.[98] The advantage of the finality is that as such an award may be challenged narrow range of grounds.[99] It may offer the parties some comfort in respect of enforcement following the award, allowing them to rely (where applicable) on the New York Convention rather than a foreign jurisdiction's enforcement laws.

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[91]Yeshnah D Rampall and Ronán Feehily, 'The Sanctity of Party Autonomy and the Powers of Arbitrators to Determine the Applicable Law: The Quest for an Arbitral Equilibrium' (2019) Harvard Negotiation Law Review https://journals.law.harvard.edu/hnlr/wp-content/uploads/sites/91/The-Sanctity-of-Party-Autonomy-and.pdf Accessed 26 August 2025.

[92]See for instance UNCITRAL Arbitration Rules (as revised in 2013) Article 17 (1) which requires arbitral tribunal to conduct proceedings so as to avoid unnecessary delay and expenses. See also the Institutional Guidelines of the Chartered Institute of Arbitrators (CIArb) –Cost of International Arbitration Survey 2011 showing that cost of arbitration is loer when arbitrators adopt active case management.

[93]See section 1(1) AMA 2023 provides that "that the objective of this Part is to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense."

[94]For the formal validity of arbitration agreement see section 2 AMA 2023.

[95]*Nelson Benjamin Ltd V. Fupre & ORS* (2022) LPELR-58421(CA*); Onuselogu Enterprises Ltd v. Afribank (Nig.) Plc* (2005) 12 NWLR (Pt. 940) 577, 585

[96]Margaret L. Moses, The Principles and Practice of International Commercial Arbitration (4th edn, Cambridge University Press 2024).

[97]Art III NYC 1958,

[98]Section 57 AMA 2023.

[99]See 58 AMA 2023, Art V NYC 1958.

3.3 Mediation and Commercial Disputes.

Mediation is a non- adjudicative ADR method, it is a voluntary dispute resolution process in which an impartial third party (the mediator) assists with communication (in strategic, structured and purposeful discussions) and promotes reconciliation between parties which will allow them to reach a mutually acceptable agreement.[100]

Mediation is said to lie at the heart of ADR, this is because it is a process whereby a third-party act as an intermediary between the parties for the resolution of their disputes. It is an extremely common and effective way of resolving disputes without the need to go to court.[101] the AMA 2023 provides for the resolution of both domestic and international commercial mediation, Confidentiality is also a feature of mediation proceedings are also confidential, unless otherwise agreed by the parties. [102]

Mediation as a facilitative ADR process, disputing parties engage the assistance of an impartial third party, the mediator, who helps them to try to arrive at an agreed resolution of their dispute. The mediator has no authority to make any decisions that are binding on them, but uses certain procedures, techniques and skills to help them to negotiate an agreed resolution of their dispute without adjudication." A core principle of mediation is that the control of the process, and outcome, is entirely in the hands of the parties[103]

The role of the mediator can be summed up as follows; (1) to build, maintain and improve communication between the disputants;[104] (2) to facilitate information to and from in-between the disputants; [105](3) to, more or less, "befriend" the disputants in the mediation process in order to elicit trust and confidence from them that will enhance the settlement process; [106]and (4) to encourage "active mediation" which is the ability to cultivate a willingness to engage in cooperative negotiation[107]

The mediator does not impose decisions on the parties but acts like a catalyst in assisting the parties to explore their position and reach a solution based on common interest.[108] The mediator focus is to find a middle -ground, agreed by the parties, hence the is purely consensual and therefore it is based on joint decision-making. The intervention of the neutral third-party- mediator does not alter the consensual decisional method of the process. Consequently, unlike arbitration, the decision in mediation is non-binding on the parties, as it is directed at reaching a compromise and at the adjustment of the relationship between the parties. However, the AMA provides that settlement agreements arising from mediation are binding on the parties and can be enforced by a court as a contract, consent award, or consent judgment.[109] The settlement agreement between parties becomes binding on the parties, giving the principle *of Pacta sunt servanda* significance in the outcomes of mediation in Nigeria.

[100]Paul Newman, Alternative Dispute Resolution (CLT Professional Publishing Ltd 1999)36.
[101]Blake et al, A Practical Approach to Alternative Dispute Resolution (3rd edn, OUP 2014).
[102] Section 76 AMA 2023.
[103](n15) at
[104] Section 73 AMA 2023
[105]ibid.
[106]ibid.
[107] ibid.
[108] Paul Newman, Alternative Dispute Resolution (CLT Professional Publishing Ltd 1999)36
[109]See section 82 AMA, this provision is a reform of the repealed.

4. Drawbacks of ADR in Commercial Disputes

While Alternative Dispute Resolution (ADR) mechanisms offer undeniable advantages—such as cost-efficiency, confidentiality, procedural flexibility, and preservation of commercial relationships they are not without significant limitations, particularly in the context of commercial disputes. It is contended that the central concern lies in the voluntary and consensual nature of ADR, which, paradoxically, constitutes both its greatest strength and its most profound weakness.[110] Unlike litigation, which is coercively enforced by the judicial system, ADR requires the active participation and mutual consent of the disputing parties at every stage of the process. This dependency on party cooperation renders ADR vulnerable to strategic obstruction, power imbalances, and bad faith negotiation tactics. Moreover, the absence of coercive enforcement mechanisms particularly in non-binding processes like mediation can frustrate resolution and necessitate recourse to litigation, thereby defeating the very purpose of ADR.[111] Where one party is unwilling to engage, delays, breakdowns, or outright failure of the resolution process may occur, undermining the efficiency and finality that ADR purports to offer.[112] Although there is a global movement to make mediation compulsory[113] however, the question is whether settlement of dispute by mediation can be made compulsory. For instance, mediation requires the active participation of the parties because the role of the mediator is generally to facilitate the settlement of the dispute, as the parties themselves are at the driving seat of the process. A reluctant party cannot therefore by compel to settle their disputes by mediation even where the mediation is by court referral; parties attend the mediation and participate in good faith.[114] In England and Wales, even though the courts strongly encouraged settlement of disputes by ADR, mediation is yet to be made compulsory; however, refusing to mediate disputes with good and reasonable reasons can result in cost penalties.[115] Though there is no case authority in Nigeria as regards compelling parties to engage in ADR, the provision of Order 28 High Court Rules in respect of ADR, sanctions the referral of suits screened suitable for ADR to the Lagos State Multi-Door Court House or other appropriate ADR Institution or Practitioner. Whilst it is commendable that this rule is clearly in line with the objective of the Lagos State Judiciary to resolve disputes swiftly, however, compelling and mandating ADR attendance seems to ignore the rights of parties to choose the mode of dispute resolution. Under the Lagos State Multi-Door Courthouse (LMDC) where the dispute is referred to the LMDC, parties are completed to attend, this clearly indicates compulsory attendance and participation, but not compulsory settlement as parties may not initiate or proceed with litigation, until they comply with the mediation directive.[116]

While ADR is noted to be less expensive than court litigation, however If ADR is used in an inappropriate way or at an inappropriate time, the process may likely fail. Failed ADR is likely to add expense if the case still must go to court. Aside from the risk of additional expenses, arbitration can be expensive, as the process may involve the services of experts, administrative cost, arbitration, legal practitioners, and other logistic expenses especially in international commercial disputes. All these cost makes up additional cost that maybe incurred and even if ADR fails this may defeat the purpose of seeking to resolve the dispute by ADR method. ADR mechanisms are sometimes said to be faster than litigation. However, this is not always the case, and it depends on the attitude of parties, the

[110] Yusuf Olaoluwa, 'Analysis of the Strengths and Weaknesses of Alternative Dispute Resolution (ADR) in Commercial Disputes' (2020) Afribary https://afribary.com/works/adr-in-commercial-disputes. Accessed 20 July 2025.
[111] Laurence Boulle and Michael Marriott, Brown & Marriott's ADR (n19).
[112] ibid.
[113] Nayha Acharya, Exploring the Role of Mandatory Mediation in Civil Justice, 60(3) Alberta L. Rev. 719, 720 (2023), doi: 10.29173/alr2734.
[114] Section 17 (1) LMDC Law 2007.
[115] *Hasley v Milton Keynes General NHS Trust* [2004] EWCA civ 567
[116] See section 11 (1) LMDC law 2007.

tribunal, and even the nature of the subject matter of the dispute itself. Resolution of disputes by arbitration for instance is beginning to mutate into a private judicial system that looks and costs as much (if not higher) than litigation.[117] Arbitration is highly regulated as it is a quasi- judicial process that requires the supervisory and supportive role the courts, which has made it look more like litigation and therefore loses the expeditious advantage. ADR sometimes be criticized for prolonging dispute resolution and increasing the parties' expenses and at the end of the day, parties may eventually have the disputes litigated. For instance, in arbitration, parties may approach the court for support and supervision, this can occur at the beginning of proceedings for the appointment of the arbitral tribunal,[118] during the arbitral proceedings,[119] and even at the end of the arbitral proceedings when the award has been granted.[120] This support and supervision of the court may suffer long delays in court, hereby elongating the timescale of the arbitration process. For instance, in the case of *N.N. P. C v Lutin,*[121] arbitration proceedings were stalled for twelve years because of an interlocutory application brought by one of the parties regarding whether an arbitrator was right in exercising his discretion under s.16 (2) ACA to hold arbitral proceedings abroad.

Parties in accepting to ADR for the resolving their dispute, do not necessarily imply outright rejection of litigation. There are instances, that in parties' agreement contains multi-tier ADR clauses that requires parties to proceed through one or more ADR methods for example, negotiation, mediation before resorting to litigation. This tiered approach escalates both cost and delay. More importantly, ADR is not a one size fit all, ADR is not appropriate for all disputes The type or choice of the dispute resolution mechanism and indeed the type of ADR that would be adopted by parties would greatly depend on the type of dispute involved. This is so because different disputes would likely require different methods.[122] To know whether a dispute is arbitrable for instance, the test applied by Nigerian court is whether a dispute can be lawful by way of accord and satisfaction.[123] ADR mechanism cannot be used where disputes relating to issues of public rights like in tax matters[124] or constitutional law and unsuitable for insolvency matters. Though ADR mechanisms are used in environmental law issues, there are concerns that using ADR in environmental issues may result in using non-legal values to resolve important social values and this may delimit public rights and compromise the strict legal standards[125]

Another weakness of ADR is the unpredictability and reduction in the outcome of the ADR mechanism. The unpredictability in the outcome of the ADR mechanism will be unsuitable for disputes where parties need to have issues resolved as the success of the whole process greatly depends on wilful participation. In litigation, judges are bound by legal precedent, this preserves

[117]Arbitration as a formal ADR mechanism is becoming more described as being similar to civil litigation, costly, time-consuming, and subject to hardball advocacy.

[118] See *Backbone Connectivity Network Nigeria Ltd (BCNN) v Backbone Technology Network Inc. (BTN*) [2015] 14 NWLR (Part 1480.

[119]Arbitral tribunal lacks coercive powers, the parties may need to apply to court for example, the attendance of witnesses, see s.23 ACA 2004, production of evidence (s.13 ACA 2004) .

[120]Under Section 55 of Nigeria's Arbitration and Mediation Act 2023, an arbitral award may be set aside only on limited grounds such as party incapacity, invalid arbitration agreement, procedural unfairness, excess of authority, improper tribunal composition, non-arbitrability, or conflict with Nigerian public policy.

[121](2006) 2 NWLR (pt. 965) 506.

[122]Carrie Menkel-Meadow, Introduction: What will We Do When Adjudication Ends-A Brief Intellectual History of ADR (1997) 44 *UCLA Law Review* 44.46 1613-1630.

[123]*United World Ltd Inc v MTS (1998) 10 NWLR (Pt 568)106*

[124]*See Esso Petroleum and Production Nigeria Limited & SNEPCO v NNPC, Appeal CA/A/507/2012).*

[125]Edwards, Harry T. "Alternative Dispute Resolution: Panacea or Anathema?" Harvard Law Review, vol. 99, no. 3, 1986, pp. 668–684. www.jstor.org/stable/1341152 .

certainty and consistency in the application of the law. In contrast, With ADR, there are no binding precedents, for instance with arbitration, the arbitral tribunal have broad discretion especially in international commercial arbitration. The arbitral award granted by the arbitrators may deviate from the expectations of the parties. *In Baker Marine (Nig) Ltd v Chevron Nigeria*,[126] *Baker Marine* agreed to provide and work two jack-up barges for *Chevron.* The agreement contained an arbitration clause. A dispute was referred to arbitration after the completion of the contract. Arbitrators made their award in favour of *Baker Marine. Chevron s*ought to set aside the award while *Baker Marine* applied for recognition of the award and leave to enforce it. Both applications were made by originating summons. The Federal High Court set aside the award and dismissed the enforcement application. *Baker Marine* appealed. The Court of Appeal held that the grounds for setting aside award under section 30 ACA 1991 are misconduct and error of law on the face of the award; where there is failure on the part of the arbitrator to comply with the arbitration agreement, this will be misconduct; and that setting aside an award renders the whole arbitral proceedings null and void. In upholding the lower court decision, the Appellate Court stated that parties to the agreement who had elected to refer their dispute to arbitration must be taken to have trusted their fate for good or bad in the discretion of the arbitrators in so far as the arbitrators' act in accordance with the agreement and do not misconduct themselves. This case exemplifies how the outcome of an award may not align with the commercial expectation of the parties, yet becomes remains legally enforceable.[127] In mediation, parties are expected to reach a compromise, a mutual agreement and hence a party may feel that mediation option may reduce the expected outcome especially when there is an assumption that there is a strong case. A court litigation may be preferable to achieve the full potential of the case, including for example a costs order.

In cases where multiple parties may be involved and there needs to bind non-parties of a dispute, then the ADR mechanism may not be appropriate for dispute resolution. In arbitration, the agreement to arbitrate is a contract between the parties and will not be binding on third parties. Generally, non-parties to the arbitration agreement cannot be compelled or be bound.[128] Under the AMA, there is no automatic joinder of parties, third parties cannot be bound by arbitration agreements to which they are not signatories.[129] In of *Gamji Fertilizer Company Limited & Anor v France Appro SA S & Ors* , the Court of Appeal held that "an arbitral clause… can only bind the parties to the agreement entered into and not third party".[130] A third party may only be joined in an arbitral proceedings if all the parties to the arbitration agreement and the third-party consent to the joinder in writing. While this provision supports complex commercial dispute, however, compared with litigation, no party consent or third-party consent is needed. Any person whose rights arises out of the same commercial activity or transaction or any third party liable for contribution, indemnity maybe joined as a third party to a matter. The court can on its own join any necessary party without the need that the party's prior consent be sought, in so far, the formal requirements are met.[131]

[126] [200]12NWLR (Pt.682)367.
[127] See also *C v D [2007]* EWCA Civ 1282 (CA).
[128] Exceptional circumstances under the English Law for instance, by assignment, group of companies' doctrines, and novation. See *Fortress Value Recovery Fund LLC v Blue Skye Special Opportunities Fund LP and others [2013] EWCA Civ 367.*
[129] Section 40 (1) AMA 2023, see also LSAL 2009 s. 40 LSAL.
[130] (2016) LPELR-41245(CA).
[131] See for example, Order 13 of the Lagos State High Court (Civil Procedure) Rules, 2019; *Peenok Investments Ltd v. Hotel Presidential Ltd* (1983) 4 NCLR 122.

5. Conclusion and Recommendation.

In the complex and fast-paced world of commercial transactions, disputes are not only inevitable but often disruptive. Traditional litigation, while legally authoritative, tends to escalate conflict, strain business relationships, and consume valuable time and resources. Against this backdrop, Alternative Dispute Resolution (ADR) mechanisms emerge as a transformative paradigm one that resolves commercial disputes without descending into contentious legal battles. ADR's consensual and flexible nature allows parties to address disputes in a manner that prioritizes collaboration over confrontation. Methods such as mediation, arbitration, and negotiation offer tailored solutions that preserve commercial relationships, protect reputational interests, and promote continuity in business dealings. In Nigeria, the increasing adoption of ADR reflects a strategic shift away from adversarial litigation toward dispute resolution models that are more aligned with the realities of modern commerce. By emphasizing consensus-building, efficiency, and relational sensitivity, ADR mechanisms provide not just an alternative, but a superior framework for resolving commercial law disputes in a non-contentious manner. They embody a holistic approach one that integrates legal fairness with commercial pragmatism.