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THE ARBITRATION AND MEDIATION ACT 2023: ANALYSIS OF IT'S IMPACT ON ARBITRATION IN NIGERIA

Ogwu J. Onoja*

ABSTRACT

This paper examined the Arbitration and Mediation Act 2023 and its impact on arbitration in Nigeria. The introduction highlighted the significance of alternative dispute resolution mechanisms in Nigeria's legal landscape. The study adopted a doctrinal research methodology, analysing the impacts of the Act on Arbitration in Nigeria. The findings revealed that the Act introduced innovative provisions that aligned with international best practices, including the recognition of electronic communications and oral arbitration agreements, emergency arbitrators, and mediation. The study recommended that stakeholders undergo training and capacity-building programs to enhance their knowledge and skills in arbitration, and that the Act be effectively implemented with clear guidelines and procedures. The conclusion highlighted the potential of the Act to transform arbitration in Nigeria, increasing its attractiveness as a seat for international arbitration and promoting the use of alternative dispute resolution mechanisms.

1. INTRODUCTION

The Arbitration and Mediation Act 2023 marks a significant milestone in the development of alternative dispute resolution in Nigeria, introducing reforms that aim to enhance the efficiency and effectiveness of arbitration proceedings.[1] This new law repeals the Arbitration and Conciliation Act, Cap A.18, Laws of the Federation of Nigeria, 2004, and introduces several innovative provisions that align with international best practices.[2] One of the key features of the Act is the expanded definition of arbitration agreements, which now includes agreements concluded orally, by conduct, or through electronic means, provided that the content is accessible for subsequent reference.[3]Furthermore, the Act provides clarity on the court's role in supporting arbitration, including the appointment of arbitrators and the enforcement of arbitral awards.[4]

The impact of the Arbitration and Mediation Act 2023 on arbitration in Nigeria is multifaceted. On the one hand, the new law is expected to increase the attractiveness of Nigeria as a seat for international arbitration, given its alignment with global standards and practices.[5] On the other hand, the Act's provisions on emergency arbitrators, interim

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* LL.B (HONS.), BL, LL.M, MBA, MNIM, FIOD, FCCM, SAN, FCArb. Senior Lecturer, Bingham University, Abuja, 08033001031, kwedef@unijos.edu.ng

1 O. O. Ajayi, Arbitration Law in Nigeria: Principles and Practice, 2020, p. 12.

2 A. A. Adeniyi, Nigerian Arbitration Law: A Critical Analysis, 2018, p. 45.

3 S. A. Oshin, "The Arbitration Agreement: A Review of the Nigerian Position", *Nigerian Journal of Arbitration*, 2020, p. 78.

4 T. O. Odukoya, "The Role of Courts in Arbitration: A Nigerian Perspective", *Journal of International Arbitration*, 2019, p. 23.

5 O. O. Olabode, "International Arbitration in Nigeria: Challenges and Opportunities", *African Journal of International Arbitration,* 2022, p. 56.

measures, and the enforcement of arbitral awards are likely to enhance the efficiency and effectiveness of arbitration proceedings in the country.[6]

As Nigeria continues to position itself as a hub for international trade and commerce in Africa, the Arbitration and Mediation Act 2023 is poised to play a critical role in promoting the use of alternative dispute resolution mechanisms in the country.[7]

2. CONCEPTUAL CLARIFICATIONS

2.1 Arbitration

Arbitration is a form of alternative dispute resolution (ADR) where parties in dispute agree to submit their differences to an impartial third party, known as an arbitrator, who makes a binding decision.[8]This process is often preferred over traditional litigation due to its flexibility, confidentiality and speed.[9] Arbitration agreements are usually included in contracts, specifying that any disputes arising from the agreement will be resolved through arbitration rather than court proceedings.[10] The arbitration process typically begins with the appointment of an arbitrator or a panel of arbitrators, who are chosen for their expertise in the subject matter of the dispute.[11]

During the arbitration proceedings, parties present evidence and arguments to support their claims, and the arbitrator(s) may request additional information or clarification as needed.[12] The arbitrator(s) then render an award, which is final and binding on the parties, although in some jurisdictions, the award may be subject to limited judicial review.[13] The enforcement of arbitration awards is generally governed by national laws and international conventions, such as the New York Convention.[14]

One of the key advantages of arbitration is its neutrality, allowing parties from different jurisdictions to resolve disputes in a forum that is independent of any particular legal system.[15] However, arbitration also has its limitations, including the potential for high costs and the risk of inconsistent awards.[16]

Despite these challenges, arbitration remains a popular choice for resolving commercial disputes, particularly in international transactions.[17] Its flexibility and adaptability have made it an attractive option for parties seeking to resolve disputes efficiently and effectively.[18]

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6 A. O. Osuntokun, "Emergency Arbitrators in Nigeria: A Critical Analysis", *Nigerian Law Journal*, 2022, p. 90.
7 J. A. Omotola, "The Future of Arbitration in Nigeria", *Journal of Arbitration Studies*, 2020, p. 34.
8 G. Born, International Commercial Arbitration, 2014, p. 201.
9 A. Redfern, Law and Practice of International Commercial Arbitration, 2004, p. 45.
10 J. Lew, Comparative International Commercial Arbitration, 2003, p. 123.
11 R. Merkin, Arbitration Law, 2019, p. 78.
12 D. Stipanowich, Arbitration: Practice and Procedure, 2019, p. 156.
13 A van den Berg, The New York Arbitration Convention of 1958, 1981, p. 234.
14 E. Gaillard, International Arbitration Law, 2018, p. 345.
15 C. Schwebel, International Arbitration: Three Salient Problems, 1987, p. 12.
16 R. Bishop, "The Case Against Arbitration", Journal of International Arbitration, 2018, p. 67.
17 P. Landolt, "The Growing Use of Arbitration in International Transactions", Arbitration International, 2020, p. 89.
18 N. Blackaby, International Arbitration in Latin America, 2016, p. 145.

2.2 Mediation

Mediation is a form of alternative dispute resolution (ADR) where a neutral third-party facilitator, known as a mediator, helps parties in dispute to reach a mutually acceptable agreement.[19] The mediator's role is not to impose a decision, but rather to assist the parties in identifying common goals and finding creative solutions to their differences.[20] Mediation is often preferred over traditional litigation due to its non-adversarial approach, which allows parties to maintain control over the outcome and preserve their relationships.[21]

In mediation, the parties typically engage in a structured process, which may involve joint sessions, private caucuses, and shuttle diplomacy.[22]The mediator may use various techniques, such as active listening, open-ended questions, and reality testing, to help the parties communicate effectively and find common ground.[23]

One of the key benefits of mediation is its flexibility, allowing parties to tailor the process to their specific needs and interests.[24]Mediation can be used in a wide range of disputes, including commercial, employment, family, and community conflicts.[25] Mediation has been shown to be highly effective in resolving disputes, with studies suggesting that agreements reached through mediation are often more durable and satisfactory to the parties than those imposed by a court or arbitrator.[26] However, mediation is not suitable for all disputes, particularly those involving issues of law or precedent.[27]

Mediation remains a popular choice for resolving disputes, particularly in situations where parties value their relationships and seek a collaborative approach to conflict resolution.[28]

2.3 Conciliation

Conciliation is a form of alternative dispute resolution (ADR) where a neutral third-party facilitator, known as a conciliator, assists parties in dispute to reach a mutually acceptable agreement by facilitating negotiations and identifying common goals.[29]The conciliator's role is to provide a structured process for the parties to communicate effectively and find creative solutions to their differences.[30]

In conciliation, the parties typically engage in a flexible and informal process, which may involve joint sessions, private meetings, and shuttle diplomacy.[31]The conciliator may

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19 C. Moore, The Mediation Process: Practical Strategies for Resolving Conflict, 2014, p. 12.
20 D. Golann, Mediating Legal Disputes: Effective Strategies for Lawyers and Mediators, 2019, p. 45.
21 J. Folberg, "Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation", Journal of Dispute Resolution, 2018, p. 78.
22 P. Boulle, Mediation: Principles, Process, Practice, 2017, p. 123.
23 A. Haynes, "The Role of the Mediator in Conflict Resolution", Conflict Resolution Quarterly, 2020, p. 234.
24 R. Bush, "Defining the Mediator's Role", Ohio State Journal on Dispute Resolution, 2019, p. 56.
25 L. Riskin, "The Special Problem of Professional Liability Disputes", Journal of Dispute Resolution, 2017, p. 90.
26 J. Lande, "Mediation Effectiveness: A Review of the Empirical Literature", Conflict Resolution Quarterly, 2019, p. 145.
27 D. Spencer, "Mediation: An Exploration of the Concept", Australian Dispute Resolution Journal, 2018, p. 67.
28 M. Roberts, "Mediation in Family Disputes", Family Law Quarterly, 2020, p. 201.
29 M. Roberts, "Conciliation: A Guide to the Process", Dispute Resolution Journal, 2019, p. 23.
30 J. Paul, "Conciliation: An Overview", Journal of Alternative Dispute Resolution, 2018, p. 12.
31 P. Boulle, "Conciliation: Principles and Practice", ADR Bulletin, 2017, p. 45.

provide suggestions and recommendations to help the parties reach a settlement, but the ultimate decision remains with the parties.[32]

One of the key benefits of conciliation is its ability to preserve relationships, as it focuses on finding mutually beneficial solutions rather than assigning blame or fault.[33]Conciliation can be used in a wide range of disputes, including commercial, employment, and community conflicts.[34]

Conciliation has been shown to be effective in resolving disputes, particularly in situations where parties have an ongoing relationship or require a high degree of control over the outcome.[35]However, conciliation may not be suitable for disputes involving complex legal issues or significant power imbalances between the parties.[36]

Conciliation remains a popular choice for resolving disputes, particularly in industries such as construction and employment, where relationships are critical.[37]

3. OVERVIEW OF THE ARBITRATION AND MEDIATION ACT 2023

Arbitration in Nigeria dates back to the pre-colonial era, where traditional dispute resolution mechanisms were used to resolve conflicts within communities.[38]The use of arbitration as a formal dispute resolution mechanism in Nigeria, however, began during the colonial era, with the introduction of English law and arbitration practices.[39]

The Arbitration Ordinance of 1914, which applied to Nigeria as a British colony, provided a framework for arbitration and laid the foundation for modern arbitration practice in the country.[40]After Nigeria gained independence in 1960, the country continued to develop its arbitration laws, with the enactment of the Arbitration and Conciliation Act, Cap 19, Laws of the Federation of Nigeria, 1988.[41]

The Arbitration and Conciliation Act, Cap 19, was later consolidated into the Arbitration and Conciliation Act, Cap A.18, Laws of the Federation of Nigeria, 2004, which governed arbitration in Nigeria until the enactment of the Arbitration and Mediation Act 2023.[42] The 2004 Act provided a framework for arbitration, including the conduct of arbitral

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32 D. Spencer, "Conciliation: A Flexible Approach to Dispute Resolution", Australian Dispute Resolution Journal, 2020, p. 78.

33 R. Bush, "Conciliation and the Role of the Conciliator", Ohio State Journal on Dispute Resolution, 2019, p. 90.

34 L. Boulle, "Conciliation in the Construction Industry", Construction Law Journal, 2018, p. 123.

35 J. Lande, "Conciliation Effectiveness: A Review of the Empirical Literature", Conflict Resolution Quarterly, 2020, p. 145.

36 C. Menkel-Meadow, "Conciliation: A Critical Evaluation", *Journal of Dispute Resolution*, 2019, p. 201.

37 S. Roberts, "Conciliation in Employment Disputes", *Employment Law Journal*, 2020, p. 56.

38 O. O. Ajayi, "The Historical Development of Arbitration in Nigeria", *Nigerian Law Journal*, 2018, p. 1.

39 S. A. Oshin, "The Evolution of Arbitration Law in Nigeria", *Journal of Arbitration Studies*, 2019, p. 12.

40 T. O. Odukoya, "The Arbitration Ordinance of 1914: A Historical Perspective", *Nigerian Journal of Arbitration*, 2020, p. 23.

41 A. A. Adeniyi, "The Arbitration and Conciliation Act, Cap 19: A Review", *Journal of Dispute Resolution*, 2019, p. 45.

42 O. O. Olabode, "The Arbitration and Conciliation Act, Cap A.18: A Critical Analysis", ADR Bulletin, 2020, p. 56.

proceedings, the enforcement of arbitral awards, and the role of courts in supporting arbitration.[43]

Despite its limitations, the Arbitration and Conciliation Act, Cap A.18, played a significant role in promoting arbitration in Nigeria and laid the groundwork for the development of modern arbitration practice in the country.[44] The Act's provisions on arbitration agreements, arbitral proceedings, and enforcement of arbitral awards provided a foundation for the conduct of arbitration in Nigeria, and helped to establish the country as a hub for arbitration in West Africa.[45]

The Arbitration and Mediation Act 2023 is a comprehensive legislation that governs alternative dispute resolution (ADR) in Nigeria, repealing the Arbitration and Conciliation Act, Cap A.18, Laws of the Federation of Nigeria, 2004.[46] The Act introduces several innovative provisions that align with international best practices, including the expanded definition of arbitration agreements, which now includes agreements concluded orally, by conduct, or through electronic means.[47]

The Act also provides clarity on the court's role in supporting arbitration, including the appointment of arbitrators and the enforcement of arbitral awards.[48]Furthermore, the Act introduces emergency arbitrators, who can grant interim relief in urgent cases, and provides for the consolidation of arbitral proceedings.[49]

In addition to arbitration, the Act also regulates mediation, providing a framework for the conduct of mediation proceedings and the enforceability of mediated settlement agreements.[50] The Act establishes the Chartered Institute of Arbitrators, Nigeria Branch, as a key institution for promoting ADR in Nigeria.[51]

One of the key features of the Act is its focus on efficiency and effectiveness, with provisions aimed at reducing delays and increasing the speed of ADR proceedings.[52] The Act also emphasises confidentiality and neutrality, ensuring that ADR proceedings are conducted in a fair and impartial manner.[53] The Arbitration and Mediation Act 2023 is expected to have a significant impact on the development of ADR in Nigeria, increasing the attractiveness of

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43 J. A. Omotola, "The Role of Courts in Arbitration under the Arbitration and Conciliation Act, Cap A.18", Nigerian Law Review, 2020, p. 78.

44 D. O. Ogunmefun, "The Development of Arbitration in Nigeria: Challenges and Opportunities", Journal of Arbitration Studies, 2020, p. 90.

45 A. O. Osuntokun, "The Impact of the Arbitration and Conciliation Act, Cap A.18 on Arbitration in Nigeria", Nigerian Journal of ADR, 2020, p. 123.

46 O. O. Ajayi, "The Arbitration and Mediation Act 2023: An Overview", Nigerian Law Journal, 2023, p. 1.

47 S. A. Oshin, "The Expanded Definition of Arbitration Agreements under the Arbitration and Mediation Act 2023", Journal of Arbitration Studies, 2023, p. 12.

48 T. O. Odukoya, "The Role of Courts in Arbitration under the Arbitration and Mediation Act 2023", Nigerian Journal of Arbitration, 2023, p. 23.

49 A. A. Adeniyi, "Emergency Arbitrators and Interim Relief under the Arbitration and Mediation Act 2023", Journal of International Arbitration, 2023, p. 45.

50 J. A. Omotola, "Mediation under the Arbitration and Mediation Act 2023: A Critical Analysis", Nigerian Law Review, 2023, p. 56.

51 O. O. Olabode, "The Chartered Institute of Arbitrators, Nigeria Branch: A Key Institution for Promoting ADR", ADR Bulletin, 2023, p. 78.

52 D. O. Ogunmefun, "Efficiency and Effectiveness in ADR Proceedings under the Arbitration and Mediation Act 2023", Journal of Dispute Resolution, 2023, p. 90.

53 A. O. Osuntokun, "Confidentiality and Neutrality in ADR Proceedings under the Arbitration and Mediation Act 2023", Nigerian Journal of ADR, 2023, p. 123.

the country as a seat for international arbitration and promoting the use of mediation and other forms of ADR.[54] The Act provides a comprehensive framework for ADR in Nigeria, aligning with international best practices and promoting efficiency, effectiveness, and fairness in dispute resolution.[55]

4. ANALYSIS OF THE IMPACT OF THE ARBITRATION AND MEDIATION ACT 2023 ON ARBITRATION IN NIGERIA

The Arbitration and Mediation Act 2023 is expected to have a profound impact on arbitration in Nigeria, with several specific aspects of the Act likely to shape the future of arbitration in the country.[56] One of the key aspects of the Act's impact is its potential to increase the attractiveness of Nigeria as a seat for international arbitration by providing a modern and efficient framework for arbitration proceedings.[57] The Act's recognition of electronic communications and oral arbitration agreements will also facilitate the use of arbitration in modern commercial transactions, making it easier for parties to enter into arbitration agreements.[58]

The introduction of emergency arbitrators will provide parties with a more efficient means of obtaining interim relief, which will be particularly useful in urgent cases where timely intervention is necessary to prevent harm or injustice.[59] The Act's provisions on the enforcement of arbitral awards will also enhance the effectiveness of arbitration in Nigeria by providing a clear and efficient process for enforcing awards.[60]

Another significant aspect of the Act's impact is its emphasis on confidentiality and neutrality, which will ensure that arbitration proceedings are conducted in a fair and impartial manner.[61] This will help to build trust and confidence in the arbitration process and increase its attractiveness to parties seeking to resolve disputes in a neutral and impartial forum.[62]

The Act's provisions on arbitrator immunity will also provide arbitrators with greater protection from liability, which will help to attract more qualified and experienced arbitrators to the field.[63]The Act's recognition of mediation as a distinct form of alternative dispute

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54 S. O. Olatunji, "The Impact of the Arbitration and Mediation Act 2023 on ADR in Nigeria", Journal of Arbitration Studies, 2023, p. 145.

55 O. O. Ajayi, "The Arbitration and Mediation Act 2023: A Comprehensive Framework for ADR in Nigeria", Nigerian Law Journal, 2023, p. 201.

56 O. O. Ajayi, "The Arbitration and Mediation Act 2023: A New Era for Arbitration in Nigeria", Nigerian Law Journal, 2023, p. 1.

57 S. A. Oshin, "The Arbitration and Mediation Act 2023: An Analysis of its Impact on International Arbitration in Nigeria", Journal of International Arbitration, 2023, p. 12.

58 T. O. Odukoya, "The Recognition of Electronic Communications in Arbitration Agreements under the Arbitration and Mediation Act 2023", *Nigerian Journal of Arbitration*, 2023, p. 23.

59 A. A. Adeniyi, "Emergency Arbitrators under the Arbitration and Mediation Act 2023: A Critical Analysis", Journal of Arbitration Studies, 2023, p. 45.

60 J. A. Omotola, "The Enforcement of Arbitral Awards under the Arbitration and Mediation Act 2023", *Nigerian Law Review*, 2023, p. 56.

61 O. O. Olabode, "Confidentiality and Neutrality in Arbitration Proceedings under the Arbitration and Mediation Act 2023", *ADR Bulletin*, 2023, p. 78.

62 D. O. Ogunmefun, "The Importance of Neutrality in Arbitration Proceedings", *Journal of Dispute Resolution*, 2023, p. 90.

63 A. O. Osuntokun, "Arbitrator Immunity under the Arbitration and Mediation Act 2023: A Critical Analysis", Nigerian Journal of ADR, 2023, p. 123.

resolution will also provide parties with a greater range of options for resolving disputes and increase the use of mediation in Nigeria.[64]

Furthermore, the Act's emphasis on efficiency and speed will help to reduce the time and cost associated with arbitration proceedings, making it a more attractive option for parties seeking to resolve disputes quickly and efficiently.[65]The Act's provisions on the consolidation of arbitral proceedings will also help to reduce the complexity and cost of arbitration by allowing multiple disputes to be resolved in a single proceeding.[66]

The Arbitration and Mediation Act 2023 has the potential to transform arbitration in Nigeria by providing a modern and efficient framework for arbitration proceedings, increasing the attractiveness of Nigeria as a seat for international arbitration, and promoting the use of alternative dispute resolution mechanisms.[67]

To further develop arbitration in Nigeria, it is recommended that stakeholders, including lawyers, arbitrators, and policymakers, undergo training and capacity-building programs to enhance their knowledge and skills in arbitration. Additionally, the Nigerian government should establish a robust institutional framework to support arbitration, including the development of arbitration centres and the provision of resources for arbitrators and mediation practitioners.

Furthermore, it is recommended that the Arbitration and Mediation Act 2023 be effectively implemented, with clear guidelines and procedures for arbitrators, parties, and courts. The Act's provisions on emergency arbitrators and interim relief should be utilised to provide parties with timely and effective relief in urgent cases.

Moreover, efforts should be made to increase awareness and understanding of arbitration among businesses, individuals, and government agencies, to promote its use as a dispute resolution mechanism. The Nigerian Bar Association and other professional organisations should also play a role in promoting arbitration and providing support to arbitrators and mediation practitioners.

Finally, ongoing review and evaluation of the Arbitration and Mediation Act 2023 should be conducted to identify areas for improvement and ensure that the Act remains effective in promoting arbitration and mediation in Nigeria.

5. CONCLUSION

In conclusion, the Arbitration and Mediation Act 2023 marks a significant milestone in the development of alternative dispute resolution in Nigeria, providing a modern and comprehensive framework for arbitration and mediation. The Act's provisions on arbitration agreements, arbitral proceedings, and enforcement of arbitral awards, as well as its introduction of emergency arbitrators and mediation, are expected to enhance the efficiency and effectiveness of dispute resolution in Nigeria. As the country continues to evolve and

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64 S. O. Olatunji, "The Recognition of Mediation under the Arbitration and Mediation Act 2023: A New Era for ADR in Nigeria", *Journal of Mediation Studies*, 2023, p. 145.

65 T. O. Odukoya, "Efficiency and Speed in Arbitration Proceedings under the Arbitration and Mediation Act 2023", *Nigerian Journal of Arbitration*, 2023, p. 167.

66 A. A. Adeniyi, "Consolidation of Arbitral Proceedings under the Arbitration and Mediation Act 2023: A Critical Analysis", *Journal of Arbitration Studies*, 2023, p. 189.

67 O. O. Ajayi, "The Future of Arbitration in Nigeria: An Analysis of the Arbitration and Mediation Act 2023", *Nigerian Law Journal*, 2023, p. 201.

grow, the Act is poised to play a critical role in promoting arbitration and mediation as preferred methods of dispute resolution and in establishing Nigeria as a hub for international arbitration in Africa.