

Abstract

There is no gain saying that a robust dispute resolution framework is fundamental to every country's prosperous and harmonious existence. For one, it builds confidence in the justice system. For another, it assures foreign investors that there is sufficient legal framework for protection of their interest. To this end, it behooves on any government to continuously evaluate the efficiency of its dispute resolution framework and constantly work on improving them. This study was such an evaluation. It interrogated the legal framework for mediation, which is a form of dispute resolution mechanism in Nigeria. To achieve this purpose, a doctrinal method was employed. This paper found that the legal framework for mediation in Nigeria is grossly inadequate in ordering a prosperous and harmonious existence in Nigeria. It therefore recommended a thorough legislative updating to ensure that Mediation practice in Nigeria contributes optimally to swift and efficient justice dispensation in Nigeria.

Keywords: Mediation Practice, Legal Framework, ADR, Nigeria

1. Introduction

Mediation is a process through which parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons lacking the authority to impose a decision on the parties.¹ As long as human beings interact; conflict is likely to ensue as a necessary consequence of that interaction. Most often, those conflicts are resolved informally. However, to better order the society, certain rules and laws are made to provide for resolution of conflicts. The creation of these rules and laws, makes for certainty. These rules and laws help manage expectations of the citizens, and foster a better sense of what is acceptable and what is unacceptable. For too long, dispute resolution has followed the path of adjudication² and has relegated other forms of dispute resolutions to the background.³ However, in the last two decades, there has been greater awareness and resort to alternative dispute resolution (ADR) mechanism such as mediation, conciliation, neutral evaluation and negotiation.⁴ According to Dike et al, these ADR mechanisms particularly mediation and conciliation, have been transformed from primitive means of dispute resolution to an egalitarian choice.⁵ As this consciousness for alternative dispute resolution blossom, Mediation is thrown up as the most used form. In Nigeria, the Arbitration and Conciliation Act⁶ was repealed and replaced with Arbitration and Mediation Act 2023, perhaps, to reflect and underscore the pride of place Mediation now occupy. In furtherance of this new consciousness, this work undertakes to interrogate the legal framework for Mediation in Nigeria. In the progress of this paper, the relevant laws containing mediation provisions, are highlighted. Of course, the Arbitration and Mediation Act 2023 was extensively discussed. Furthermore, the key distinction between the provisions of mediation the Arbitration and Mediation Act 2023 and that of various states in Nigeria are discussed. The paper ends with recommendations that will strengthen the institutional framework for mediation.

2. Constitution of the Federal Republic of Nigeria 1999 (as amended)

The 1999 Nigerian Constitution does not explicitly provide for Mediation. However, mediation can be considered implicitly supported by the Constitution's emphasis on access to justice and fair hearing. Mediation aligns with the principle of fair hearing, and its outcomes are legally recognized and enforced by the courts, constituting *res judicata* and preventing further litigation.⁷ Section 19 of the Nigerian Constitution states that the country's foreign policy objectives include respecting international laws and treaties and resolving international disputes through negotiation, Mediation, conciliation, arbitration, and adjudication.⁸ Contextually, it appears that only the settlement of international disputes by Mediation is provided for in the Constitution. This is not entirely correct. After all, it was in keeping with this respect for international law and treaties that brought about the domestication of the Singapore Convention, which in turn led to

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¹ This definition conforms substantially with the definition mediation according to the Singapore convention.

² Litigation and Arbitration are two forms of dispute resolution that are adjudicatory in nature. The Judge and Magistrate in litigation and Arbitrator in arbitration are said to perform judicial functions and are therefore partners in the business of dispensing justice. See GC Nwakoby, *The law and Practice of Commercial Arbitration in Nigeria (2nd ed*, Enugu: Snaap Press Ltd, 2014) p. 9; A Rhodes-Vivour, 'Immunity of Arbitrators'. Available Online at: <https://drvlawplace.com/wp-content/uploads/2020/09/Immunity-of-Arbitrators-PDF-Version.pdf>. Accessed on 18 August 2024.

³ K Aina, *Dispute Resolution*, (Lagos: NCMG International and Aina Blankson LP, 2012) p.22

⁴ SC Dike, BG Toby, & DF Elekima, 'Transforming Mediation and Conciliation Practices for Effective Dispute Resolution in Nigeria' (2020). 12:1 *Journal of Property Law and Contemporary Issues*, 230-246, Available Online at SSRN: <https://ssrn.com/abstract=3767723>. Accessed on 20 August 2024.

⁵ Ibid.

⁶ Arbitration and Conciliation Act Cap 18 LFN 2004

⁷ See s.86 (2) of the Arbitration and Mediation Act, 2023.

⁸ See s.19 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

displacing of the provision for conciliation in the old Act,⁹ and replacing same with elaborate provisions for Mediation. While Mediation, in the domestic sense, was not expressly provided for in the Constitution, the Chief Judge of various States regulates Mediation by making Mediation procedure rules under s.274 of the Constitution.¹⁰ It goes without saying that once the power to regulate a process is derived from the Constitution, what is so regulated, *ipso facto*, acquires Constitutional backing in that process.

Furthermore, it is now fashionable to include Mediation clauses in contracts; these clauses emphasize that any dispute that may arise under the contract shall be submitted to Mediation following certain procedures that the parties may design. Where such a clause is inserted into a contract, it is said that it forms a condition precedent as no other party can approach the court without complying with the provision set out in the contract. There has been a huge debate as to whether such a provision amounts to an ouster clause and derogates from s.36 of the Constitution of the Federal Republic of Nigeria, 1999, which provides that

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.¹¹

There are two reasons why there is no case law about Mediation. Firstly, Mediation was once seen as non-binding.¹² Thus, parties could withdraw without consequences. Secondly, there is no legal framework for submitting to Mediation before going to Court. However, the Arbitration and Mediation Act 2023 has changed this by providing a legal framework for enforcing Mediation settlement agreements and making a submission to Mediation a condition precedent. The law provides thus:

Where parties have agreed to mediate and have expressly undertaken not to initiate arbitral or judicial proceedings concerning an existing or future dispute during a specified time or until a specified event has occurred, such an undertaking shall be given effect by the arbitral tribunal or the Court until the terms of the undertaking have been complied with, except to the extent necessary for a party, to preserve its rights but initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the Mediation proceedings.¹³

With the above provision, the stage is now ripe to discuss the import of such a law on the right to access justice. Can the parties, by agreement, oust the jurisdiction of the courts? Does this provision constitute a clog on the wheel of justice? As indicated earlier, there is no judicial pronouncement on this provision yet. But the issue seems fairly settled as a similar provision obtained in Arbitration, and regarding its import, the Courts have maintained that the Arbitration clause does not fetter access to justice. In the words of the Court of Appeal,

...an arbitration clause in an agreement is only procedural in that a provision whereby the parties agree that any disputes should be submitted to arbitration does not exclude or limit rights or remedies but simply provides a procedure under which the parties may settle their grievances. It is not, as I said, an exclusion or ouster clause properly to be called. Thus, the parties are free, such clause notwithstanding, to pursue their claims in the Courts subject, of course, to the rights of the Court to grant a stay of proceedings.¹⁴

Finally, s.315 of the Constitution of the Federal Republic of Nigeria 1999 contains a saving provision which not only recognizes the existence of incidents of customary law as 'existing law'¹⁵ but also stipulated the conditions for its distortion: it must be inconsistent with the Constitution.¹⁶ The Constitution nonetheless stipulates that an existing law can be subjected to such modifications as are necessary to bring it to conformity with the Constitution. This entails that only where an existing law does not admit of mediation or is irredeemably offensive to the constitution that it will be jettisoned. If customary mediation is a way of settling disputes in the precolonial times before the advent of the Constitution, then

⁹ The old Act is titled the Arbitration and Conciliation Act, but the new Act is titled the Arbitration and Mediation Act, 2023. The provisions for conciliation were all subsumed in the provisions for Mediation found in the Act. See s.91 of the Arbitration and Mediation Act, 2023.

¹⁰ S.274 of the Constitution states, 'Subject to the provisions of any law made by the House of Assembly of a State, the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State'.

¹¹ S.36 (1) of the Constitution of the Federal Republic of Nigeria.

¹² Until recently, many scholars describe Mediation as a non binding procedure. See B. Ewelum, 'Alternative Dispute Resolution Mechanism, Plea Bargain and Criminal Justice System in Nigeria'. (2017) NAUJILJ 8 (2). Available online at: <https://www.ajol.info/index.php/naujilj/article/download/156748/146355>. Accessed on 16 March 2023.

¹³ See s.80 of the Arbitration and Mediation Act 2023.

¹⁴ *Omeaku & Sons Ltd v. Rainbownet Ltd & Ors* (2013) LPELR-22055(CA). See also *Confidence Insurance Ltd v The Trustees of the Ondo State College of Education Staff Pension* (1999) 2 NWLR (Pt.591) 373 and more recently, *United Bank for Africa Plc v. Trinedent Consulting Limited* (2023) LPELR-60643(SC).

¹⁵ S.315 (4)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) defines existing law to mean any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date.

¹⁶ See s.315(3)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

it qualifies as existing law and is therefore recognized by the Constitution. Consequently, one can say that Mediation is not only found in the Constitution but also is recognized by it.

3. Arbitration and Mediation Act 2023

The Arbitration and Mediation Act 2023 (AMA) is the primary law regulating Mediation in the Federal Republic of Nigeria. Before this time, Nigeria was stuck with the Arbitration and Conciliation Act, passed in 1988. In 2005, the Orojo Committee was set up by Chief Bayo Ojo, SAN.¹⁷ Unfortunately, the draft of the bill lay in the National Assembly for 18 years and was passed in May 2023, just a few days before the end of the tenure of President Buhari. The passage of the AMA replaced Nigeria's old Arbitration and Conciliation Act, governing both domestic and international arbitration and Mediation. AMA consists of three parts: Part I focuses on arbitration, while Part II, comprising 20 sections, addresses Mediation, establishing a comprehensive legal framework for Mediation in Nigeria for the first time. Our focus is to examine the provisions of Part II and assess their significance in Nigerian Mediation practice.

Scope of Application

The scope of application of Part II is limited to the following: international commercial Mediation, domestic commercial Mediation, domestic civil Mediation; domestic and international settlement agreements resulting from Mediation and concluded in writing by parties to resolve a commercial dispute and, where parties agree in writing that this part should apply to the dispute.¹⁸ Section 67 of the Act clarifies the scope of Mediation covered, avoiding ambiguity about its application. However, it overlooks crucial aspects such as Mediation in elections, trade unions, criminal and matrimonial cases, as well as those conducted by traditional rulers. This omission limits the Act's effectiveness in addressing significant issues within Nigeria's justice system. Notably, Section 67 emphasizes the flexibility of Mediation proceedings, allowing parties to agree in writing to its application. Yet, Section 67(2) outlines disputes exempt from the Act unless parties mutually opt for Mediation.¹⁹

Commencement of Mediation Proceedings

A Mediation proceeding may be commenced either as prescribed by a special statute as a condition for the conduct of a judicial proceeding or when parties have agreed to resolve a dispute with Mediation before resorting to judicial or other proceedings.²⁰ The invitation to mediate must be accepted within 30 days or as specified. Failure to accept is considered a refusal. Parties can opt for Mediation at any stage, independent of ongoing legal proceedings. Mediation may be recommended by a body overseeing legal proceedings. The start date of Mediation varies based on the agreement, court recommendation, or mediator's initiative.²¹ The flexibility of these provisions is a result of the very nature of Mediation, and failure to give room for flexibility would probably truncate or inhibit the speedy resolution of disputes.

Suspension of Limitation Period

Section 71 of Nigerian Mediation law is highlighted as an innovative measure that suspends the limitation period of a claim once Mediation proceedings commence. If Mediation fails to resolve the dispute, the limitation period resumes. However, there are concerns about potential abuse of this provision, such as parties exploiting the pause in the limitation period to delay justice. To prevent this, parties should agree on a timeframe for Mediation in writing.

Number and Appointment of Mediators

Section 72(1) of AMA 2023 allows for one Mediator in a Mediation proceeding. A single Mediator is recommended to avoid complexity, but parties may choose more Mediators if they do not trust each other. Section 72(2-4) provides for a Mediation provider who keeps a list of qualified Mediators for recommendation. Mediators must have unquestionable integrity. If they detect any conflict, they must inform the parties.

Conduct of Mediation Proceedings

The Act permits parties to agree on Mediation procedures. Mediators can conduct proceedings as appropriate when parties disagree. Electronic Mediation sessions are allowed with verified identities. Mediators can propose solutions only with the parties' agreement. Video conferencing is also allowed in Mediation.²² The guiding principles of modern Mediation remain *uberima fidei*, fair treatment, and effective communication.

Disclosure and Confidentiality

Sections 75 and 76 of the Act emphasize the need for confidentiality and also state the conditions upon which disclosure is permitted. Suffice it to reproduce the content of section 76 hereunder:

¹⁷ Chief Bayo Ojo, SAN, was the Attorney General at that time. The members of the committee included Prof Idornigie, SAN, and Chief James Akinola. Incidentally, the trio of Chief Bayo Ojo, Prof Idornigie and Chief Akinola were still part of the team that worked on the draft at various stages for 18 years the bill was in the National Assembly.

¹⁸ See Section 67 of AMA 2023

¹⁹ See S. 67(2) (b) of the AMA 2023.

²⁰ See Section 70(1) of AMA 2023.

²¹ See Section 70(4) of AMA 2023.

²² See Section 73 of the AMA 2023.

‘76. Unless otherwise agreed to by the parties, all information relating to the Mediation proceedings shall be kept confidential, except where disclosure is required -

- (a) under the law;
- (b) for implementation or enforcement of a settlement agreement;
- (c) necessary in the interests of preventing or revealing -
 - (i) the commission of a crime (including an attempt or conspiracy to commit a crime),
 - (ii) concealment of a crime, or
 - (ii) a threat to a party; or
- (d) necessary to protect public order, but only under the conditions and in the scope prescribed by law.’

Section 77 of the Act prohibits the use of any document, statement, or proposal made during Mediation as evidence in any court or arbitration proceeding. It also prohibits the disclosure of such information, making it inadmissible. This reinforces the confidentiality of Mediation proceedings, although this may not apply in cases, where a crime is being committed or national security is at risk. The principle of ‘what happens in Mediation, stays in Mediation’ is a fundamental principle of Mediation worldwide, but its extent is uncertain.

Termination of Mediation Proceedings

The Mediation proceedings are terminated by -

- (a) the conclusion of a settlement agreement by the parties on the date of the agreement;
- (b) a declaration of the mediator, to the effect that further efforts at Mediation are no longer justified, on the date of the declaration;
- (c) a declaration of the parties addressed to the mediator to the effect that the Mediation proceedings are terminated on the date of the declaration;
- (d) a declaration of the Mediation provider administering the Mediation, if any, on the date of the declaration; or
- (e) a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the Mediation proceedings are terminated on the date of the declaration.²³

Although the intent of this provision is fairly comprehensible, it is, however, not clear the form which the declaration ought to take. But suffice it to suggest that since Mediation strives to dispense with all the technicalities and complexities of litigation, an easy-to-read letter by the Mediator or either party would suffice to terminate the Mediation proceedings by the provisions of section 78 of the Act. We must point out the extent of the mediator's powers under the Act. By section 79 of the AMA 2023, unless otherwise agreed by the parties, a Mediator shall not act as an arbitrator in respect of a dispute subject to Mediation proceedings or another dispute from the same contract or legal relationship. It is further provided that where parties have agreed to mediate or have expressly undertaken not to initiate arbitral or judicial proceedings, initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of Mediation proceedings.²⁴

Immunity

All Mediators and Mediator providers have immunity in the discharge or purported discharge of their functions except when their action or omission is shown to have been in bad faith.²⁵ This provision seeks to protect the Mediator from unnecessary litigations, especially where the Mediator can show that their actions or decisions were done in consonance with the law and with utmost good faith.

Finality of Settlement Agreements

When Parties conclude on an agreement, the Mediator shall participate in drafting the settlement agreement, and such settlement agreement shall be binding on the parties and enforceable in Court as a contract, consent judgment, or consent award.²⁶ Doubts have always been expressed as to the finality of Mediation agreements. These doubts are, however, misconceived, and if anything, section 82 has laid to rest the finality of the settlement agreements. A party to a Mediation settlement cannot, therefore, resile after the issue has been brought to a conclusion by agreement of the parties and reduced into writing. Where a party decides to run afoul of this provision, the duty falls on the court to enforce the Mediation agreement as either a contract, consent judgment, or consent award. Where that becomes the case, there is no outer clause that can rob the court of jurisdiction in this regard.

Conditions for Reliance on Settlement Agreements by Court

By Section 83 of the AMA 2023, the requirements for reliance on settlement agreements before the Courts are that the settlement agreement is signed by the parties and evidence that the settlement agreement resulted from Mediation, such as (i) the Mediator’s signature on the settlement agreement, (ii) a document signed by the Mediator indicating that the

²³ See Section 78 of the AMA 2023.

²⁴ See Section 80 of the AMA 2023.

²⁵ See Section 81 of the AMA 2023.

²⁶ See Section 82 of the AMA 2023.

Mediation was carried out, (iii) an attestation by the Mediation provider that administered Mediation; or (iv) in the absence of (i), (ii), or (iii), any other evidence acceptable to the Court. The essence of this section is to ensure that a court that is seeking to rely on a Mediation settlement agreement is furnished with convincing evidence that the parties did mediate and arrive at the agreement.

Grounds for Refusal to recognize and enforce

The grounds upon which the court may refuse to grant the reliefs provided in the settlement agreement include:

- (a) a party to the settlement agreement was under some incapacity or
- (b) the settlement agreement sought to be relied upon —
 - (i) is void, inoperative, or incapable of being performed under the law to which the parties have validly subjected it or, under the law deemed applicable by the Court,
 - (ii) is not binding, or is not final, according to its terms, or
 - (iii) has been subsequently modified;
- (c) the obligations in the settlement agreement —
 - (i) have been performed, or
 - (ii) are not clear or comprehensible;
- (d) granting relief would be contrary to the terms of the settlement agreement;
- (e) there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence, and the failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

The Court may also refuse to grant relief(s) if it finds that granting the relief(s) would be contrary to public policy or the subject matter of the dispute is not capable of settlement by Mediation under relevant state laws.²⁷

4. The Singapore Convention

The United Nations Commission on International Trade Law ('UNCITRAL') adopted a Convention and a Model Law in December 2018, designed to reinforce Mediation as a viable dispute resolution mechanism in cross-border commercial disputes. The Convention provides a uniform and efficient framework for enforcing international settlement agreements resulting from Mediation. Forty-six countries signed it in Singapore. So far, fifty-six States have signed it, and eleven countries have ratified it. The Convention is similar to the New York Convention but for Mediation instead of arbitration. The Convention allows parties to enforce a mediated international settlement agreement before the courts or any competent authority of a State that is a Party to the Convention, regardless of where the agreement was concluded. Even if it was made in a non-party State, it can still be enforced in any one of the ratifying States. Parties must ensure that the agreement qualifies for enforcement in the state where they seek to enforce same. Above all, the Singapore Convention offers solutions for enforcing international settlement agreements and promotes the growth of Mediation. However, its effectiveness is yet to be determined through usage as there are no case laws highlighting challenges inherent in it. AMA 2023 provides for the application of the Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention), where the enforcement of an international settlement agreement made in a State other than the Federal Republic of Nigeria is sought, provided that the State is a party to the Singapore Convention and the difference arises out of a legal relationship, whether contractual or not, considered commercial under the Laws of Nigeria.²⁸ Meanwhile, Mediation is guaranteed as a form of dispute resolution in Nigeria by other statutes even before the Arbitration and Mediation Act 2023. It is to those statutes that we now turn to.

5. Environmental Impact Assessment Act 1992

The Environmental Impact Assessment Act envisages that certain projects may, in the opinion of the Council,²⁹ be likely to cause significant adverse environmental effects that may not be mitigable or public concerns respecting the environmental effects of the project may warrant some action. In such a situation, the Act provides that after taking into consideration the mandatory study report and any comments filed under section 24(2) of the Act, the Council shall refer the project to Mediation or a review panel.³⁰ All the law requires is that either the Mediation panel or a review panel must consist of persons who 'possess the required knowledge or experience.'³¹ The project will be referred to Mediation where the council is satisfied that (i) The parties who are directly affected by or have a direct interest in the project have been identified and are willing to participate in the Mediation through representatives and (ii) the Mediation is likely to produce a result that is satisfactory to all of the parties³²

²⁷ See Section 84 of AMA 2023.

²⁸ See Section 87 of the AMA 2023.

²⁹ The Council is created by the Act.

³⁰ See S. 25(a) of the Environmental Impact Assessment Act, 1992.

³¹ See S. 35 Op. Cit.

³² See S. 30 op. cit

6. Consumer Protection Council Act 1992

One of the core functions of the Consumer Protection Council, created under the Consumer Protection Council Act,³³ is to provide 'speedy redress to consumer's complaint through negotiation, Mediation and conciliation'.³⁴ The Act provided for a State Committee, under the control of the Council, and the duty of that State Committee, among other things, is to 'negotiate with the parties concerned and endeavor to bring about a settlement'.³⁵ However, one may wonder if finality is not intended by the settlement the Council may engender. The reason for this is that the Act further provides for any consumer to approach the Court once the Council establishes any wrong, not minding the remedy or redress the Council may impose.³⁶ Unfortunately, no reported case has settled or determined the propriety or otherwise of this provision.

7. Nigerian Communications Act 2003

The Nigerian Communications Act 2003 is designed to create and provide a regulatory framework for the Nigerian communications industry.³⁷ In that regard, the Act created a Nigerian Communications Commission³⁸ empowered to resolve disputes and complaints that may from time to time arise between licensed operators, subscribers, or any other person involved in the communication industry. Although the Act stipulates that the Commission may determine and use any method of dispute resolution it prefers in examining and resolving complaints and objections, the Act went ahead to recommend the use of Mediation or Arbitration as inclusive of those methods the Commission may use.³⁹

8. Enugu State Citizens' Rights and Mediation Centre Law 2004.

Perhaps, Enugu State Citizens' Rights and Mediation Centre Law 2004 (the Law) passes as a model law for promotion of Mediation and its institutionalization in the Nigerian Justice System many ways. One, it is one of the few Mediation Centre Laws that give omnibus jurisdiction to the Centre to handle any subject matter the Courts of the State have jurisdiction over.⁴⁰ To this extent, the law empowers Mediators to deal with all manner of disputes once the centre deems it fit, without any encumbrances.⁴¹ According to the Director of the Centre, Mrs Felicia Okwu, the centre as a matter of practice, do not entertain capital offences at all but may deal with misdemeanor considering that the parties before it are usually indigent persons without any resources to prosecute matters in court.⁴² Even if the capacity of the centre to deal with criminal matters is questioned, the law expressly empowers them to deal with family matters⁴³ and in a closely knitted communities like Enugu State, almost all forms of disputes can pass as family matters. Another distinctive feature of the law is that it is not restricted to commercial or contractual disputes but have express jurisdiction to deal with other non-contractual or commercial matters such as Town Union matters, Chieftaincy matters, Wills and intestate matters or even Tort or Trust issues so long as the State Courts have jurisdiction to deal with that kind of dispute. Finally, the Law does not make provision for any party to a mediation to have it set aside on any ground, including an allegation of failure to disclose circumstances that may impinge impartiality and independence as in the Arbitration and Mediation Act 2024.⁴⁴ According to Okwu, 'in my 12years of practicing as a mediator, I have not seen one person who went to court to challenge a mediation settlement agreement duly and voluntarily signed by the parties'.⁴⁵ Her answer reaffirms our conviction that the only purpose that clause serve is to create confusion and help dubious parties avoid their obligation under a contract.

9. The Citizens Mediation Centre Law of Lagos State 2007

The Lagos State Citizen's Mediation Centre (CMC) Law is, unarguably, the first effort in the institutionalization of Mediation in Nigeria. The CMC is a 'totally government inspired, initiated, sponsored and administered ADR program aimed at resolving civil disputes at the communal level informally, speedily and cheaply'.⁴⁶ The CMC runs on grants from the government, donations cum endowment from local and international organizations,⁴⁷ and as such does not render professional or institutional services for which it charges fees or does it charge for the use of its facilities.⁴⁸ As part of its core mandate, the Centre periodically organize training in Mediation and ADR for traditional rulers and persons in authority so that the core values of resolution of disputes through Mediation may get to the grassroots.

³³ S.1 of the Consumer Protection Council Act, 2004

³⁴ S.2 of the Consumer Protection Council Act, 2004.

³⁵ S.5 (b) of the Consumer Protection Council Act, 2004.

³⁶ See s.8 of the Consumer Protection Council Act, 2004.

³⁷ S.1 of Nigerian Communications Act 2003.

³⁸ S.3 of the Nigerian Communications Act 2003.

³⁹ S. 4 (1) (p) Nigerian Communications Act 2003

⁴⁰ See S.14 (2) of the Enugu State Citizen's Rights and Mediation Centre Law, 2004.

⁴¹ See S.5(a) (v) of the Enugu State Citizen's Rights and Mediation Centre Law, 2004.

⁴² Oral interview, 15 July, 2024.

⁴³ See S.5(c) of the Enugu State Citizen's Rights and Mediation Centre Law, 2004.

⁴⁴ See s. 84(1)(e) of the Arbitration and Mediation Act 2024.

⁴⁵ Oral interview, 15 July 2024.

⁴⁶ See s. 2 of the Citizen's Mediation Centre Law, 2007

⁴⁷ See s. 18(2)(a)(b) Ibid.

⁴⁸ See s. 10 of the CMC Law, 2007.

10. Anambra State's Citizen's Rights Directorate Law 2008

The Anambra State Government through Anambra State's Citizen's Rights Directorate is a practical illustration of biblical aphorism, 'the spirit is willing but the body is weak'.⁴⁹ Poised to surpass its Enugu State counterpart, the Directorate was designed to be a one-stop shop for civil redress with four units: (1) Local Mediation Centre (2) Human Rights Units (3) Information Unit and (4) Consumer Rights Unit.⁵⁰ Its first Director understudied its counterpart in Enugu and further went to Lagos to have an edge over any other, at least in the South East.⁵¹ Like its Enugu counterpart, the law gave omnibus jurisdiction to the Centre to handle any subject matter the Courts in the State have jurisdiction over.⁵² But unlike its Enugu counterpart, it is not for the indigent but for all parties who 'voluntarily agree to the mediation of dispute by the Directorate'.⁵³ The Law provides for Governing Council for the Directorate comprising of nine (9) members including the Attorney General, Solicitor General, the Director of the Centre, representative of the NBA and others⁵⁴ but in the last 10 years or more, no such Council exist and no such Council have sat.⁵⁵ In fact, the Directorate have no sign board, is located in one obscure part of the Government House, Awka and has no budget as provided for by the law.⁵⁶ Yet, to the extent the law empowers Mediators to deal with all manner of disputes once the Directorate deems it fit, without any encumbrances,⁵⁷ the Directorate is ensuring that those who come into the centre crying, leave with smiles.⁵⁸ On the nature of disputes they deal with, Mrs Mokwe averred that nothing stops the centre from entertaining criminal matters. However, the centre rarely, as a matter of practice, entertain criminal matters and the aversion increases with the nature of the offence. For capital offences, the centre on their own, without any prompting, shy away from it. Mrs Mokwe further explained that in entertaining misdemeanors, they consider the nature of parties and the capacity to pursue justice elsewhere.⁵⁹ Of course, nobody has questioned their authority to deal with such matters since, even the Ministry of Justice meant to be working with them do not recognize them as playing pivotal roles. In fact, since the centre was set up, no Attorney General as reckoned with the Directorate when enumerating the successes or challenges of his office at any legal year.

The Anambra State Citizen's Right Directorate Law like the Enugu State Citizen's Rights and Mediation Centre Law is stands out for not restricting its operation to commercial or contractual disputes. The law gives the centre, express jurisdiction to deal with other non-contractual or commercial matters such as Town Union matters, Chieftaincy matters, Wills and intestate matters or even Tort or Trust issues so long as the State Courts have jurisdiction to deal with that kind of dispute.⁶⁰ This provision is in *pari materia* with section 5 of the Enugu State Citizen's Right and Mediation Centre Law. Finally, none of the parties to the mediation can apply to have it set aside on any ground. The provision empowering parties to apply to set aside a mediation settlement agreement on any ground, including an allegation of failure to disclose circumstances that may impinge impartiality and independence as found in the Arbitration and Mediation Act 2024⁶¹ has no place in the Anambra State Citizen's Right Directorate Law. One thing is clear, the challenge of funding and awareness spotted with the Arbitration and Mediation Act 2024 affect the Anambra Citizen's Right Directorate and until the Directorate is prioritized, it will continue to be an example of many laws without enforcement mechanism.

11. Secured Transactions in Movable Assets Act 2017

The Act established a Mediation and Dispute Resolution Panel, which serves as the resource for Mediation and settlement over any civil dispute which may arise between the Creditor and the Grantor in the course of implementing the Act.⁶² It behooves the Governor of the Central Bank of Nigeria to set out modalities and guidelines for the operation of the panel whose membership must be three persons.⁶³ Although the Act did not expressly state that any dispute must first be submitted to the panel since speed and efficiency are the cardinal objectives of the Act, it goes without saying that the courts are likely to interpret this section as constituting condition precedent for recourse to the Courts.

⁴⁹ This idiom first recorded in Matthew 26:41 is now used a rueful admission of weariness or other physical depravity.

⁵⁰ S.3 (3) of the Anambra State Citizen's Right Directorate Law, 2008.

⁵¹ Oral interview with the Acting Director Mrs Mokwe. 20 July 2024.

⁵² See s. 5 of the Anambra State Citizen's Right Directorate Law, 2008.

⁵³ See s. 4 of the Anambra State Citizen's Right Directorate Law, 2008.

⁵⁴ See s. 6 of the Anambra State Citizen's Right Directorate Law, 2008.

⁵⁵ Oral interview with the Acting Director Mrs Mokwe. 20 July 2008.

⁵⁶ On my visit to the centre, I discovered that they do not have branded case files. Upon enquiries, I was told that since the 1st set produced when the centre was opened ran out, no further files have been produced. The imprest given to the office barely cover out of pocket expenses for the lawyers who work as public defenders. No training of personnels have happened in the last 10years or more and no awareness or seminars have been organized.

⁵⁷ See S.5 (a) (v) of the Anambra State Citizen's Right Directorate Law, 2008.

⁵⁸ Oral interview with the Acting Director Mrs Mokwe. 20 July 2024.

⁵⁹ Oral interview, 20 July, 2024.

⁶⁰ See s. 5 of the Anambra State Citizen's Right Directorate Law, 2008.

⁶¹ See s. 84(1)(e) of the Arbitration and Mediation Act 2024.

⁶² S. 41 of the Secured Transactions in Movable Assets Act, 2017.

⁶³ S. 41(3) Ibid

12. Conclusion and Recommendations

One thing certain in the 10 statutes and the International Convention on Mediation reviewed above is that there is a deliberate desire to entrench mediation practice in Nigeria. Although some of these efforts began as far back as 1992, the Arbitration and Mediation Act 2023 did not in the least evince understanding of these laws and intention to improve on them. Thus, while some of these laws, especially the mediation laws of Lagos, Anambra and Enugu state extend the practice of mediation beyond commercial transaction, the Arbitration and Mediation Act 2023 circumscribe the ambits of mediation. Of course, this does not augur well for mediation practice in Nigeria. In the light of the foregoing, this work recommends a rejig of the Arbitration and Mediation Act 2023 extending its reach to non-commercial disputes, thereby creating synergy between the Arbitration and Mediation Act 2023 and those other laws. This study insists that only such thorough legislative updating will ensure that Mediation practice in Nigeria contributes optimally to swift and efficient justice dispensation in Nigeria.