ADVOCACY FOR THE ADOPTION OF ARBITRATION FOR THE RESOLUTION OF COMMERCIAL DISPUTES IN NIGERIA*

Abstract*

This paper advocates the adoption of arbitration for the resolution of commercial disputes in Nigeria. The two burning questions which the paper interrogates are: What is the legal framework for the resolution of commercial disputes in Nigeria? And to what extent has this legal framework meets the resolution of commercial dispute? To answer these questions, this paper adopts doctrinal methodology in legal research and relied heavily on desktop search for information. The paper finds that advancement in commercial transactions the world over has largely been positively impacted by globalisation, liberalisation of markets, bilateral and multilateral agreements leading to the opening of more windows for commercial interactions at local and international space and therefore rendering the traditional court litigation process for resolution of commercial transactions ineffective. The paper observes that the shortcomings inherent in judicial process call for radical paradigm shift to arbitration as viable alternative to litigation in the resolution of commercial dispute. The paper concludes with recommendation among other for the adoption of arbitration as a major method for settlement of commercial dispute in Nigeria as antidote to the shortcomings in court litigation.

Keywords: Advocacy, Adoption, Arbitration, Resolution and Commercial Dispute

1. Introduction

Arbitration is a private justice system born out of the parties' will. It is a process of settling disputes that occurred in the local or international scenes by referring the dispute(s) to a neutral person (arbitrator) or institution selected by the parties for a decision based on the evidence and arguments presented to the panel or tribunal.[1] As alternative to dispute resolution mechanism, arbitration has continued to attract attention and patronage from the business and legal community domestically and at international level. The term "arbitration", according to Adedoyin,[2] is used generically to refer to a non-judicial procedure to resolve disputes between parties, be they individuals or groups.[3] The central thrust of arbitration is conflict resolution method with the least acrimony possible so that some form of cordiality survives in the relationship of the disputant.[4] Modern arbitration procedures have been statutorily and institutionally established to varying degrees in Nigeria.[5] The emergence of arbitration has become imperative on the account of massive commercial activities and shortcomings of the mainstream judicial system. These shortcomings in the word of Ibe[6] include congestion, delay, crippling formalism, and undue reliance on technicalities over justice, conflict of culture, exorbitant costs and blatant political interference, amongst other negative factors.

The emergence of arbitration as an alternative dispute resolution mechanism to court litigation has taken the same directions at the federal and state levels with federal level focusing more on commercial arbitration.[7] It is to be noted that the boom in commercial transactions in not too distance past are traceable to factors such as globalization and liberalisation of markets, bilateral and multilateral agreements which have opened more windows for commercial interactions at local and international space. One of the major effects of these commercial windows is plethora of

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[1] Rand Institute for Civil Justice. (2011) *Business to Business Arbitration in the United States: Perceptions of Corporate Counsel*<https://www.rand.org/content/ddam/rand/pubs/tech> accessed 10 October, 2019, 30.

[2] R Adedoyin, 'Recent Arbitration related Developments in Nigeria'(2010) 41 *Arbitration Journal,* 76

[3] For more definitions of arbitration see JO Orojo& MA Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Lagos: Mbeyi& Associates Nig. Ltd, 1999) 37; Hailsham, V, *Halsbury's Law of England* 4th edition, Vol. 2 (London: Butterworth & Co (Publishers) Limited, 1978) para 501and JA Aremu (2009) 'Foreign Investment Policies and Practices', paper presented at the Nigerian Institute of Advance Legal Studies, Lagos, pp. 14-15.

[4] CE Ibe, 'Arbitration Practice in Nigeria: A Review of Arbitration Law and Guidelines' (2014) 23 *Journal of Law, Policy and Globalization,* 56-66

[5] A Akin (2008) 'Arbitration in Africa'. Paper presented at the Conference for Promotion of Arbitration in Africa, 9-11.

[6] Ibe(n 4) p 57

[7] Adedoyin (n 2) p 125.

commercial disputes from time to time, which must be settled, most often through litigation in the courts. In addition, the judgment from such litigation usually has far reaching effects on the parties' future relations. Similarly, issues which may likely disrupt the judicial process such as delay and reluctance of parties especially foreign businessmen to submit their disputes to National Courts for determination before the decision is reached are likely to occur.[8]

The truth, as rightly expressed by Buruma,[9] is that settlement of commercial disputes through litigation in national courts faces more challenges most especially dispute that has ethnic, technical and foreign character. Although, the problems of businessmen are not with the legal rules of the common law that might have been modified by statutes that would be applied when conflicts occurs, rather they are more concerned about time, certainty of outcome and equality of parties in adjudication process.[10] Unfortunately these desires appear elusive with the court as main dispute resolution method.[11] Commercial actors have therefore continued to accuse the courts of having legal procedures that are complicated, technical, indirect, dilatory, and wasteful of their time and that of everyone else in commercial dispute settlement. Hence, they are not ready anymore to continue taking an avoidable risk with litigation.[12]

In Nigeria, litigation in the civil courts has remained the traditional and popular method for the resolution of commercial disputes.[13] The scopes of National Courts in this context are boundless as they treat both local and foreign commercial disputes of all kinds. The overloading of the court's docket with commercial cases is seen as part of what make the courts in Nigeria not to live up to the expectations of the society, the businessmen and other stakeholders in the areas of commercial activities despite globalisation and liberalisation of commercial transactions.[14] Hence, the shift to arbitration for the resolution of commercial transaction has become highly imperative in the country due to advancement in trading and commercial activities worldwide. Supporting this view, Ibe,[15] also observed that commercial arbitration of disputes instead of litigation is important in this era of globalisation and integrated economic relation, where commercial activities, its participation and consequent disputes may not only be local but cut across national borders.[16]

To surmount various problems inherent in court settlement processes, arbitration as alternative to court litigation has attracted entrepreneurs, investors, development consultants, industrialists, manufacturers etc as mean of settling their disputes as quickly and cost-effectively as possible so that they can continue to make profit from their commercial activity.[17] This paper advocates the adoption of arbitration for the resolution of commercial disputes in Nigeria. To do this effectively, the two burning questions which the paper interrogates are: What is the legal framework for the resolution of commercial disputes in Nigeria? And to what extent has this legal framework meets resolution of commercial dispute in Nigeria? In answering these questions, this paper is divided into six parts. Following this introduction, part two narrates the evolution of arbitration and forms of commercial arbitration in Nigeria. In order to make case for the adoption of arbitration for the resolution of commercial dispute, part three highlights the existing legal framework for arbitration in Nigeria. Part four briefly reveals the problems of litigation system in

[8]GC Nwakobi, *The Law and Practice of Commercial Arbitration in Nigeria* (2nd edition, Enugu: Snap Press Nigeria Limited, 2014), 24

[9]A Buruma, 'International Commercial Arbitration' (2013) 18 *Journal of Law, Policy and Globalization,* pp. 118 126: 128.

[10]Akin (n 5) p.15.

[11]J Fricks, 'Arbitration in Complex International Contracts' (2001) 8 (Issue 4) *Journal of Chartered Institute of Arbitrations, London*, 28-31

[12]P Landolf, 'The Contributions of Civil Law Systems to International Arbitration' (2011) 2 *Journal of Transnational Dispute Management,* 10-21.

[13]J Olagunju, *Commercial Mediation: An Alternative Dispute Resolution Mechanism* (Kaduna: Multiform Limited, 2013) 7-10

[14]G. Etomi, 'Arbitration in Resolution of Commercial Disputes' (2019) <https://geplaw.com> accessed 21October, 2019

[15]CE Ibe, 'Arbitration Practice in the Communication Industry' (2014) 24 *Journal of Law, Policy and Globalization,* 18-16

[16]*Ibid*

[17]IO Smith, *Secured Credit in a Global Economy: Challenges and Prospects*. (Lagos: Folar Prints, 2003) 251-259.

Nigeria. In part five, the paper discus arbitration as a transnational judicial system. Part six concludes with recommendation for the adoption of arbitration as major method for resolution of commercial dispute in Nigeria.

2. Evolution of Arbitration and Forms of Arbitration in Nigeria

Arbitration is usually determines by the parties' agreement or contract to submit their future differences to arbitration.[18] Generally, commercial arbitration is of two types – domestic and international arbitration.[19] It is international, if the parties to the arbitration agreement have their places of business in different countries or the parties expressly agreed that the subject matter of the arbitration agreement relates to more than one country, or the parties, despite the nature of the contract, expressly agree that any dispute from the commercial transaction shall be treated as an international arbitration.[20] Domestic arbitration, on the other hands, is arbitration in which parties to the transactions have their places of business in one country and it is immaterial whether the parties are citizen of one country or foreigners, provided they all carry on business in one country and the arbitration is held in that same country.[21]

Basically, three types of arbitration exist in Nigeria – customary, domestic[22] and international arbitration. Customary arbitration, according to Akanbi *et al,*[23]is arbitration indigenous to the various communities in the country and it is determined by the customs and traditions of the individual community. Customary arbitration tribunal is generally constituted by elders of the community. The tribunals derive their authority from the custom and tradition of the community, which are accepted by members as binding on them.[24] Although, customary arbitration varies from one community to another, it is however recognised under the Nigerian law as a valid dispute resolution mechanism and worked perfectly among the indigenous Nigerian till date.[25] Before the advent of colonial rule in Nigeria, and indeed Africa, the traditional societies had coherent processes of conflict and dispute resolution based on the cultural and sociological paradigms of the people.[26] The pattern of arbitration/dispute resolution in traditional African society depended largely on whether such societies were chiefly or acephalous.[27]

International arbitration, on the other hands, was imported into Nigeria from the general law of England. The arrival of British Colonialist in the 19th century had a radical impact on the hitherto existing system of customary arbitration. Initially, the Colonial masters reacted positively to the customary law including customary arbitration in existence on their arrival. However, it was for a while, as commercial arbitration soon gained tremendous acceptance among businessmen therefore relegating customary arbitration to secondary option by few indigenous people till date. Premised on the foregoing, the advent of commercial arbitration in Nigeria is usually treated under the three broad sub-headings of the pre-colonial period, the colonial period and the post-colonial period.[28] These

[18] Guidelines for the arbitrators conduct of the pre-hearing phase of domestic commercial arbitrations and international arbitrations <http://www.nysba.or/arbitrationguidelinesbooklet> accessed 14 November, 2019

[19]R Zerbe& M Howard, 'Failure of Market Failure' (1999) 18 (4) *Journal of Policy Analysis and Management,* 558-578: 558.

[20]KN Nwosu (2005) 'Alternative Dispute Resolution as a Tool for Attraction and Protection of Business Investment in Nigeria'. Paper delivered at the Nigerian Bar Association Annual General Meeting, Jos, p.15.

[21] See B Weirman& H John, 'The Leading Arbitrators Guide to International Arbitration' (2004) (Issue 44) *Journal of international dispute settlement,* 195. See also GG Otuturu, 'Some Aspect of the Law and Practice of Commercial Arbitration in Nigeria' (2014)6 (4) *Journal of Law and Conflict Resolution*, 69

[22] This was discussed earlier.

[23]MM Akanbi, LA Abdulrauf& AA Dabiu, 'Customary Arbitration in Nigeria: A Review of Extant Judicial Parameters and the Need for Paradigm Shift' (2015) 6 (1) *Journal of Sustainable Development Law and Policy,*199

[24] Ibid, see further CI Umeche 'Customary Arbitration and the Plea of Estoppels under Nigerian Law' (2009) 35 (2) *Commonwealth Bulletin,* 293.

[25]Akanbi, Abdulrauf & Dabiu, (n 23) 205. See also SA Fagbemi, 'Scope and Relevance of Customary Arbitration as Mechanism for Settlement of Dispute in the 21st Century' (2019) 10 (1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ),* 32-40

[26]Etomi, (n 14) 34.

[27] For instance, Nwakobi observed that despite modernity, the customary arbitral system has survived with constant resort to its processes in rural areas, which constitute 80 per cent of the Nigerian population. See Nwakobi. (n 8) 39.

[28] See generally VC Igbokwe, 'Law and Practice of Customary Arbitration in Nigeria: Agu V. Ikewibe and Applicable Law Issues Revisited', (1997) 41 (2) *Journal of African Law,* 201 and O Oluduro, 'Customary

three periods fit into the three classical types of arbitration in Nigeria, namely, customary,[29] common law and statutory arbitrations.

With the advent of English colonialist, arbitration practice modeled after the English system attracted merchants and traders especially those of them dealing in perishable commodities and the need to dispose of the disputes expeditiously and in accordance with mercantile law and custom.[30] However, as the value of this mode of dispute settlement became more pronounced it was discovered that the practice under the common law was not entirely satisfactory and needed amplification.[31] Consequently, provisions were made in successive statutes to improve upon the common law practice. Nigeria was the first African country to adopt the Model Law. For this reason, most of the sections of the Arbitration and Conciliation Act (ACA) are derived from the Model Law.[32]

Two forms or models for the conduct of international commercial arbitration are 'institutional' or '*ad hoc'*. *Ad hoc* arbitration is where the parties have set up their own rules for arbitration. In this context, parties themselves appoint the arbitrator (s), determine the applicable rule and forum for arbitration etc.[33]In institutional arbitration, parties must agree to have an arbitral institution administer the disputes. Institutional arbitration is one in which the arbitrator is appointed, the proceedings conducted, and the award issued in accordance with the rules of trade or arbitral organisation. Institutional Arbitration arecentres, establishments or organisations that are created to resolve disputes arising between parties; they administer and supervise the arbitral process irrespective of the parties' locations or system of law. Dozens of institutions specialising in the resolution of cross border disputes administer international commercial arbitrations provides rules for the process and space for hearing and also trains qualified arbitrators amongst other services.[34]

The emergence of international arbitral institutions as we know today can be relatively traced to the globalisation of international commercial arbitration. Globalisation of international arbitration is also traceable to the Geneva Protocol of 1923, which was sponsored by the International Chamber of Commerce (ICC) with the objectives of ensuring international enforcement of arbitral agreements and to ensure that awards could be enforced in the territory of the state in which they were made. Shortly after this was the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 whose main purpose was to widen the scope of the Geneva Protocol to allow enforcement of awards in all contracting states rather than just in the state in which the award was made. However, these international instruments were largely ineffective and so they went the way of the League of Nations which had sponsored them.[35] The failure of the 1927 Geneva Convention for the enforcement of foreign arbitration awards added impetus to the creation of a more effective mechanisms which include the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), the America Arbitration Association (AAA), the New York Convention of 1958[36] the UNCITRAL Arbitration Rules of 1976,[37] and International Centre for the Settlement of Investment Disputes (ICSID).[38]Institutional Arbitration operating in Nigeria for the resolution of commercial arbitration include the Regional Centre for International Commercial Arbitration, Lagos; the Arbitration

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Arbitration in Nigeria; History and Developments' in T Kupolati (ed) *Current Issues in Nigerian Jurisprudence Essays in Honour of Chief Adegboyega Awomolo SAN* (Lagos: Renaissance Law Publishers, 2007) 3

[29] Which was discussed in passing above

[30]G Born, *International Commercial Arbitration* (The Hague: Kluwer Law International, 2013) 15.

[31]G Ezejiofor, *The Law of Arbitration in Nigeria* (Ikeja; Longman Nigeria Plc, 1982) 35.

[32]Examples are sections 1 to 28 of the Act, which correspond with Articles 7 to 33 of the Model Law. Sections 29 to 36 of the Act are purely for domestic arbitration while sections 37 to 42 of the Act deal with conciliation in domestic proceedings. Sections 43 to 55 of the Act are additional provisions on international commercial arbitration. Essentially, sections 48, 51 and 52 of the Act correspond with Articles 34, 35 and 36 of the Model Law. See M Ojielo, *Alternative Dispute Resolution* (1st edition. Lagos: Gibson Publishers, 2014) 35

[33]SA Fagbemi, 'Recognition and Enforcement of Arbitral Awards: The Law and Practice' (2006) 5, *Journal of Private and Business Law,* 120.

[34]*Ibid*

[35]FS Nariman, 'International Arbitration in the Twenty-First Century: Concepts, Instruments and Techniques. Trade, Law and Development' (2009) 1 (2) <www.tradelawdevelopment.com/index.php/tld/article/view> accessed 12 October, 2019

[36] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York ,10 June 1958

[37] UNCITRAL Arbitration Rules 15 December 1976 G.A Res 31/98 UN Doc A/RES/31/98

[38]Fagbemi S. A (n 33) 121.

Commission of the International Chamber of Commerce – Nigerian National Committee (ICCN); the Chartered Institute of Arbitrators, UK - Nigeria Branch; the Maritime Arbitrators' Association; and the Lagos Court of Arbitration.[39] These institutions are located in Lagos, being the commercial nerve centre of the country. The institutions are playing significant role in the resolution of commercial arbitration faster and better than court litigation. Hence, the need to adopt arbitration for the settlement of commercial dispute in Nigeria

3. Legal Framework for Commercial Arbitration in Nigeria

The federal enactment for both domestic and international commercial arbitrations in Nigeria is the Arbitration and Conciliation Act (ACA).[40] The ACA has been impacted substantially by international norms on dispute resolution, namely: The New York Convention on Recognition and Enforcement of Foreign Arbitration Awards, which has been incorporated into the Nigerian ACA as Schedule II of the Act.[41]The Nigerian Arbitration law is largely derived from statutes both foreign and local. The foreign statutes include: The UNCITRAL Model Law 1985; The UNCITRAL Arbitration Rules and the New York Convention. Local Statutes on arbitration in Nigeria are: Arbitration Act 1914 and Arbitration and Conciliation Decree 1988.[42] The provisions of these legal instruments are highlighted hereunder.

The UNCITRAL Model Law

UNCITRAL means the United Nations Commission on International Trade Law. This was approved because of the need to liberalise international commercial arbitration by limiting the role of national courts and allowing the parties freedom to choose how their disputes should be determined. It was also to provide for a framework for the conduct of international commercial arbitrations, so that in the event of the parties being unable to agree on procedural matters, the arbitration would nevertheless be capable of being completed. The law has the advantage that it is not a treaty but a Model Law which may be adopted with necessary amendments to suit each jurisdiction. Furthermore, it is limited to disputes relating to international contracts leaving each nation which adopts it freedom to make provisions for purely domestic arbitration.

The UNCITRAL Arbitration Rule

This is major arbitral institutions which have its own up-to-date rules for the resolution of dispute. The UNCITRAL Arbitration Rules has been incorporated as First Schedule to the Nigerian Arbitration and Conciliation Act, which are for both domestic and international arbitrations.

New York Convention

This is regarded as the most important international treaty relating to international commercial arbitration. It is an improvement on the Geneva Convention of 1927 because it provides for a much more simple and effective method of obtaining recognition and enforcement of foreign arbitral awards. The convention has now been made expressly applicable to Nigeria by section 54 of the ACA. The convention provides for the recognition of arbitration agreement and the arbitral award.

Arbitration Act 1914

This was the first Arbitration statute established in Nigeria, the Act was predicated on the English Arbitration Act, 1889 and was applied to the whole country which was then governed as a unitary state. The provisions of the Act included the number and mode of appointment of arbitrators, the making of awards, the umpire, and examination of witnesses and others on oath and the costs of the reference.

Arbitration and Conciliation Act

This ACA contains provisions relating to both domestic and international arbitration. It also provides for conciliation. The Act incorporates the New York Convention, 1958 which is set out as the Second Schedule to the Act. The Act is divided into four (4) parts and three (3) schedules. The ACA is currently the applicable law on

[39]IT Akomolede & EM Akpabong, 'Good Governance, Rule of Law and Constitutionalism in Nigeria' (2010) 3.*UNAD Law journal*, 24

[40] Cap. A18 of LFN 2004.

[41] New York Convention 1958

[42]EA Ugonna, 'Legal Framework of Arbitration in Nigeria', <https://www.academia.compublic> accessed 12 November, 2019

arbitration and conciliation throughout the Federation of Nigeria except in Lagos state.[43] It provides a unified legal framework for the fair and efficient settlement of domestic and international commercial disputes in Nigeria. Moreover, it supersedes any other law on arbitration in Nigeria.[44] A bill to repeal and re-enact the ACA was passed by the Senate on 1st February, 2018 and has passed its second reading in the House of Representative on 12 April, 2018 and awaiting the final stage for its enactment into law.

4. Problems of Litigation System in Nigeria

As noted in this paper, arbitration is a method for the resolution of disputes outside the courts system, where the parties to a dispute refer it to one or more persons – arbitrators, by whose decision they agree to be bound. Due to ever increasing court case load, arbitration has gained widespread acceptance in business circles and for these reason, the plan to reform arbitration in Nigeria is to promote arbitration by making Nigerian courts more arbitration friendly.[45] It is observed that commercial arbitration is used increasingly in the oil and gas sectors, telecommunication and construction. Some of the strong points of arbitration over litigation and which makes it more attractive to businessmen includes: speed, due to the congestion of courts list in commercial and non-commercial transactions and thus making arbitration more often faster than litigation, arbitration can be cheaper and more flexible than litigation. The ability to elect suitably qualified adjudicators in complex and technical disputes is another hallmark of arbitration. Again confidentiality of the process is guaranteed, since the proceedings are generally non-public. In arbitral proceedings, the language of arbitration may be chosen, whereas in judicial proceedings the official language of the competent Court will be automatically applied. There are also very limited avenues for appeal of an arbitral award. Arbitration is not without its own disadvantages. For instance, Arbitrator may be subject of pressures from the powerful parties. The choice of Arbitration means the parties have waived their rights of access to Courts and in some arbitration agreements, the parties are required to pay for the arbitrators, which is an additional cost, especially in small consumer disputes. Another major disadvantage of arbitration is that in few cases, the losing party may resist enforcement of the award in high value dispute by instituting setting-aside applications, which of course are seldom successful.[46]

In spite of these disadvantages, the advantages of arbitration are far greater than litigation. According to Smith[47] with the myriad of advantages inherent in the arbitral process as compared with court system, one cannot but advocate a quick movement away from litigation to arbitration in Nigeria. This is because time is often of the essence in commercial dealings and parties to such transactions often abhor delay. Using Lagos as case study of problems of litigation problems in Nigeria, Orojo and Ajomo[48]observed that the litigation process in Lagos State is the main legal process for resolving commercial disputes, which is a major drawback to commercial actors due to delay in the resolution of commercial disputes.[49] Another fundamental problem in Nigeria for the resolution of commercial dispute is the court structures. Pursuant to section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the judicial powers of the Federation and the States are vested in a restricted list of courts established by the Constitution and these courts are expressly designated as the only superior courts of record

[43] Lagos State enacted its Arbitration Law in 2009, which draws heavily on the 1996 Arbitration Act of England, Wales and Northern Ireland

[44] See the case of *C.G de Geophysique v. Etuk*(2004) 1 NWLR (Pt. 853) 20 CA and 1999 Constitution ss. 4 (5) 315 (3)

[45]F Adekoya, 'Arbitration Procedure and Practice in Nigeria: Overview' (2017) *Arbitration Guide,*<global.practicallaw.com/arbitration/guide> accessed 18 October, 2019,1. See also Ikenga Oraegbunam, Meshach N. Umenweke & Chienye Okafor, 'Appraisal of the Legal Regime for Maritime Industry and Arbitration in Nigeria: Recipe for Economic Growth', *International Journal of Business and Law Research* 3(2):61-72, April-June 2015. http://seahipaj.org/journals-ci/april-june-2015/IJBLR/abstract/IJBLR%206.html; See also Ikenga K.E. Oraegbunam & Chienye Okafor, 'Problems of Litigation in Settlement of Maritime Disputes for Nigeria Today: The Preference for Arbitration',*Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* Vol. 4, 2013, pp. 31-38. Available at http://www.ajol.info/index.php/naujilj/article/view/136289.

[46]*Ibid*

[47]Smith (n 17). See also Ikenga K.E. Oraegbunam & Tochukwu N. Anaje, 'Arbitration *versus* other Alternative Dispute Resolution (ADR) Mechanisms in Settlement of Maritime Conflicts in Nigeria: A Comparative Analysis', *Benue State University Law Journal*, vol. 7 No.1, 2016, 161-181;

[48]Orojo & Ajomo (n. 3)

[49]Olagunju (n 13) pp. 7-10

in Nigeria[50].According to Ibe,[51]out of the ten courts created by the 1999 Constitution, five that are most significant for the purpose of commercial dispute settlement are the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the High Courts of the States and the Federal Capital Territory, Abuja and the National Industrial Court with the Supreme Court at the Apex of Courts in Nigeria.[52] The three courts of first instance listed in the Constitution namely: the Federal High Court, the High Courts of the States and the Federal Capital Territory, Abuja are the primary judicial institutions for the resolution of commercial disputes in Nigeria. These three courts are courts of coordinate jurisdiction and appeals from their decisions go straight to the Court of Appeal.[53]

One of the obstacles to litigation of commercial disputes in Nigeria is the determination of the question of jurisdiction between the Federal High Court and the High Court of the States.[54] This has proved problematic ever since the establishment of the Federal High Court in 1973. The enabling legislation by which the Federal High Court and the High Courts of the FCT and the States were created makes provision for their respective jurisdictions. These provisions are further supplemented by the provisions of the 1999 Constitution, which allocates specific causes such as aviation, banking, trademarks and copyright, insolvency, receivership, shareholding, company taxation, shipping and other allied corporate issues, to the exclusive jurisdiction of the Federal High Court and leaving the residue to be determined by the State High Courts.[55] Despite these provisions, the issue of jurisdiction is not always clear-cut. Some of the matters that come before these courts are borderline cases that offer a mixed-bag of causes of action that arguably fall within the jurisdiction of one or the other of these courts and this has led to interminable jurisdictional challenges and major clog in the wheel of justice, which to some extent has affected all aspect of dispute resolution process in Nigeria including commercial transactions.[56]

Today, there is sufficient evidence to prove that civil courts have not been able to live up to expectation as effective units of conflict management system .Justice imparted by civil courts has legal and rational elements but that dispensed by informal institutions includes a third element, that of emotions. Baxi[57]asserted that while verdicts of formal courts are impersonal, those of informal institutions take into account personal wants and needs in the larger context of societal harmony and maintenance of relationship. According to Rani,[58]while each person has the right to have access to justice through the formal state structure, in practice this is often denied. Apart from a host of intractable bottlenecks, both structural and procedural emanating from long and turgid proceedings multiplied by delays and adjournments, prohibitive cost of employing legal brains and travel costs incurred due to long distances, the factor which stands out is that justice administered by the state has failed in meeting commercial transactions. The gaps in formal legal system as certainly led to the growth of informal system such as arbitration it should be embraced with both arms in the resolution of commercial dispute.[59]

5. Arbitration as a Transnational Judicial System

Arbitration is a transnational judicial system in the new global order especially in the commercial sector. The current global order recognised arbitration and its legal system as very necessary to existing justice system beyond the state. Certain degrees of independence in the settling of local and international commercial disputes will bring about justice internationally by preventing the centralisation of power in a few influential states.[60] According to Paolo,[61]

[50]Smith (17) p.12.
[51]Ibe(n 15) pp.18-16.
[52]AA Ibidapo, *Case Management in Lagos State* (University of Lagos, Faculty of Law, 2012) p.42.
[53]AO Ladapo, 'Where does Islamic Arbitration fit into the Judicially Recognised Ingredients of Arbitration in Nigeria Jurisprudence' (2008) 8 (2) *African Journal of Conflict Resolution,* 106.
[54]MT Ladan, 'Negotiation: Elements, Principles, Characteristics, Theory and Methods' (1998) 1 (3) *Journal of the Institute of Construction Industry Arbitrators,* .8-16; OT Abia & IT Ekpoattai, 'Arbitration as an Alternative Method of Conflict Resolution among the Ibibio of South-East Nigeria' (2014) 4 (1) *American Journal of Social Issues and Humanities,* 3.
[55] Smith (n 17) p. 14
[56]*Ibid*, p. 18
[57]U Baxi, *The Crisis of the Legal System* (New Delhi: Vikas Publishing House, 1982) p. 21
[58]B Rani, 'The Role of Informal Case Management in India' (2014) 1 (10) *International Journal of Humanities, Social Sciences and Education (174552),* pp.114-123.
[59]RA Bendy, 'The Problem of Litigation' (1960) 3 *Journal of Law and Jurisprudence,* pp.1-44.
[60]M Pryles, 'Assessing Dispute Resolution Procedures' (1998) 48 (7) *Journal of Chartered Institute of Arbitrators, London,* pp.106-116.

the autonomy of commercial arbitration may put human rights in a better shape by the distribution of power among all members of the global society, including states and non-governmental entities. In the words of Pinsolle,[62] transnational private legal system potentially prevents powerful states from monopolising commercial disputes resolution for their own interests. Given that an independent arbitral tribunal can play an intermediary role, it will guarantee the interests of both first-world countries and developing countries by creating a balanced and neutral legal system to resolve local and international commercial disputes. Supporting this view, Frick,[63]asserted that the recognition of an autonomous arbitral legal system has the capacity of potentially redistributing power and solving inequalities in international society.

There is no doubt that globalised economy has played significant roles in the transformation of Local and International commercial disputes. For instance, it has led to the promotion of the widespread use of commercial arbitration and forcing arbitration to be transformed into a more effective mechanism based on the new demands and market reality.[64] Accordingly merchants are chosen arbitration as the most effective dispute resolution mechanism to cope with the economic risks and legal uncertainty of cross-border exchanges. Berman,[65]further affirmed that globalisation has integrated the world's economy such that Merchants around the globe have found domestic markets saturated, and to expand their businesses, have stepped beyond borders to enter the ever-growing global competition with more favourable method for resolution of conflicts which is an indices of commercial transaction. It is observed that this requirement makes arbitration more attractive in comparison to other mechanisms for resolution of disputes. For instance, the flexibility of arbitration allows parties to design their legal framework. Parties are able to choose procedural laws, a chance of which they may be deprived in national courts, given that procedural law comes within the national court. They may choose a transnational law as an applicable law, which is not recognized in national courts.[66]

Globalised economy led to a redistribution of power in the international environment and has caused a shift in power from the state sector to the private sectors.[67] Hitherto, states have been the only dominant players in shaping international law, in this context; the relevant sources of international law were derived from sovereign state activities in the form of bilateral or multilateral treaties or customary law.[68] However, due to globalised economy, the importance of political borders has diminished and the sovereignty of nation-states has been challenged given rise to the emergence of many powerful transnational non-governmental institutions and organizations. Today, multinational and transnational companies dominate the world's economy. In addition, the age of information explosion has provided the entire world with communication facilities and massive online databases that have made it easier than ever to share ideas as well as to access information. Technological advances and public access to them have increased the role of non-state-actors in shaping new legal orders.[69] Affirming this position, Mathews[70] described global economy as "the most powerful engine of change in the relative decline of states and rise of non-state actors. Thus, the role of transnational corporations and non-governmental organizations in influencing the policy- making process cannot be overemphasized.[71] For instance, the states do not make new policies, instead, the global market is generating de facto rules and governments merely need to adopt them in the process of adapting themselves to globalisation. The private sector, including international institutions, transnational corporations, and

[61]C Paolo, 'International Commercial Arbitration: The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (1959) 8 (3) *The American Journal of Comparative Law*, pp.283-809.
[62]P Pinsolle,'Towards a Uniform International Arbitration Law' (2012) 7 *Journal of Law and Economic*. pp.267-277.
[63] Frick (n 10), pp.28-31
[64]MI Margaret, 'The Struggle for Economic Supremacy' (2015)8 (3) *Indian Journal of Economic and Urban Studies*, pp.61-85.
[65]P Berman, 'From International Law to Globalization' (2005) 43 (2) *Columbia Journal of Transnational Learning*, 455 at 493.
[66]Olagunju (n. 13)
[67]C Guthrie, 'Misjudging' (2007) 7 *Nev. Law Journal*, pp. 451-453.
[68]V Heiskanen, 'State as a Private Entity: The Participation of State in International Commercial Arbitration' (2010) 1 *Journal of Transnational Dispute Management*, pp.18-95.
[69] Margaret (n 64)
[70]J Mathew, 'Power-Shift' (1997) 76 *Foreign Affairs*, 50 at 52.
[71]T Muller, 'Customary Traditional Law: Attacking the Last Resort of State Sovereignty' (2008) 44 (25) *Columbia Journal of Transnational Learning*, 289 at 292

non-governmental organizations, is playing significant role in shaping the global order. what is now require is for cooperation between states and the private sector which could benefit both sides.[72] Commercial arbitration is no exception in this power struggle between the private sector and states and the need to embrace it in the resolution of commercial dispute in Nigeria.

6. Conclusion

Premised on the exposition of the nature and advantages of arbitration as discussed in this paper and coupled with the fact that it has developed over the years with legislative interventions and presently recognised as one of viable alternative mechanisms for the resolution of dispute to court litigation the world over. The time has ripe in Nigeria to adopt it as major method for the resolution of commercial dispute. It is a fact that the Nigerian Arbitration law derived its sources from the foreign statutes such as the UNCITRAL Model Law; The UNCITRAL Arbitration Rules and the New York Convention which are still viable for the resolution of commercial dispute. Furthermore, the emergence of globalised economy and advancement in technology are fast shaping the world order in commercial transactions. In the present new global commercial context, the private sector, including international institutions, national and transnational corporations and companies and non-governmental organizations now dominate commercial space and thus rendering traditional judicial system obsolete due to its stark adherence to legalism, jurisdictional issues and technicality. The apparent gap in traditional judicial system is therefore the major reason why this paper advocates and recommends the adoption of arbitration in the resolution of commercial disputes as antidote to the shortcomings of court litigation. The National Assembly is therefore urged to quickly pass into law the proposed bill for the re-enactment of the extant ACA in line with the amended UNCITRAL Model Law of 2006 to bring arbitration law in Nigeria at par with global best practice.

[72]Ibe (n 15)