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Exploring the Nexus between Corporate Governance and Alternative Dispute Resolution in Nigeria

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Abstract

Corporate governance has never been important in Nigeria's history regarding the management of private and public corporations. Prior to the phased privatization of public enterprises both the public and private corporations were touted as engines of growth by the successive governments in Nigeria. This is reflected in the current move to harmonize various codes of corporate governance in Nigeria. This paper examines the role that Alternative Dispute Resolution (ADR) can play in enhancing good corporate governance in Nigeria. The paper concludes that if ADR is effectively utilized in resolving board room squabbles and investment disputes, time and money will be saved and such money saved can be reinvested to grow the economy and generate employment for teaming youths in Nigeria administration considers private sector as the foundation for accelerated growth and development of the economy and this has re-awaken a new interest in corporate governance that will engender sustainable.

Keywords: Alternative Dispute Resolution, Nigeria, corporate governance, consumer protection.

1. Introduction

Universally, there is a groundswell of interest in corporate governance. It has become a worldwide dictum that the quality of corporate governance makes an important difference to the soundness and unsoundness of corporate organizations. Extensively speaking, corporate administration alludes to the degree to which organizations are kept running in an open and legitimate way. In this manner, successful corporate administration practice incorporates transparency, accurate reporting and consistency with statutory regulations amongst others. (Ajogwu, 2007)

Corporate governance has in recent times assumed heightened importance requiring that boards and management of companies to exhibit greater transparency and accountability in their business conduct. The consolidation of the Nigeria banking industry makes the institution of corporate governance a sine qua non. With 24 banks that emerged from 89 banks being publicly quoted, corporate governance should, in-fact, take the center stage in the management of these banks. Particularly, the need to implement good corporate governance in the banking sector becomes more apparent after the Asian financial crisis (Amupitan, 2008).

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Effective corporate governance is also closely related to efforts to reduce corruption in business dealings and make it difficult for corrupt practices to develop and take root in a company. Strong governance therefore may not prevent corruption, but it should make it more likely that corrupt practices are discovered early and eliminated accordingly (Ugowe, 2014). However, when corporate governance is effective, it provides managers with oversight and holds boards and managers accountable in their management of corporate assets. This oversight and accountability combined with the efficient use of resources, improves access to lower-cost capital just as increased responsiveness to societal needs and expectations leads to improved corporate performance. Unfortunately, some corporations are opportunistic and seek to profit, for example, from the use of child labor or without regard to environmental impact. Such examples represent not only failures of corporate responsibility and firm governance but larger failures of government to provide the framework needed to hold corporations responsible on issues that are important to a given society. The last few decades have witnesses several changes in the world economic system such as: a consolidating trend of globalization and liberalization of economies; crumbling barriers to international trade and free movement of capital due to the establishment of World Trade Organization (WTO) and shifts towards market economy in contrast to controlled or socialist economy etc. it was believed that market economy will be the "mantra" for all nations, either developing or under developed, to achieve economic salvation. However, this failed "mantra" kick started a rethinking process to develop a new one[1]

Consequently, the economic downtown indicated further that the big companies do not constitute the efficient machinery to rotate the economic circle rather micro small and medium scale enterprises (MSMEs) represent the most trusted vehicles to lead any economy towards rescue. And when this new focus on MSMEs emerged, another sea of challenges was discovered with the biggest risk posed in the disruption of traditional business models due to Information Technology. ICT not only disrupted the micro economy but also opened up market domination by medium and large domestic companies as well as establishing a new line of business strategies and supply chain implications, hitherto unknown to the traditional business model.[2]

Corporate governance allows firms to prepare for future expansion and sustainable growth principally through the core values of transparency and accountability, which will be embedded in business culture. This culture of transparency and accountability will also indicate professional management and good governance for successful and well-organized companies. Introduction of good governance will improve the prospect of obtaining funds from banks, investors and venture capitalists by micro small and medium enterprises (MSMEs). Firms that have information disclosure tend to have healthier growth rates and ratios of ordinary profits to that of capital, than firms who do not do so. Firms also will become increasingly committed to business efficiency due to the presence of external supervisory third parties. Corporate governance is of growing importance, particularly with regards to the monitoring role of the board of directors (Aderibigbe, 2015).

On appointment to the Boards and to Board Committees, all directors must receive an induction tailored to meet their individual requirements. The induction, which is arranged by the Company Secretary, may include meetings with senior management staff and key external advisors, to assist directors in building a detailed understanding of the organization operations, its strategies plan, its business environment, the key issues the organization faces, and to introduce directors to their fiduciary duties and responsibilities. Training and education of directors on issue pertaining to their oversight functions is a continuous process, in order to update their knowledge

[1] Corporate Governance for NGO's Not for Tax purposes says FRC, *The Guardian* Newspaper, 6 July 2015

[2] Corporate Governance and Board Practices in The Nigerian Companies. www.Ibs.Edu.Ng/Sites/Faculty Researchers.

and skills and keep them informed of new developments in the business and operating environment. For first time directors, trainings will be required for an exhaustive acquaintance with fiduciary responsibilities (Elumelu, 2015). For MSMEs, a perception of corporate governance as expensive and stifling for growth and expansion exists. Hence, a different approach to advocacy on corporate governance is required. This is more important because badly governed enterprises no matter how small in the volume that MSMEs represent can cripple any economy. In Africa, where the lifespan of start-ups has been reduced arguably to about 4-5 years, corporate governance is an urgent solution to economic growth and development.

Hence, effective corporate governance requires a clear understanding of the respective the role of the board and of senior management and their relationships with others in the corporate structure especially in MSMEs. The relationships of the board of management with stockholder should be characterized by candor; with employees by fairness; and with the communities in which they operate by good citizenship, as well as with government by a commitment to compliance and good corporate citizenship. This is why corporate governance is considered as having significant implications for the growth prospects of an economy or MSME segment, because best practices corporate governance reduces risks for investors attract investment capital and improve the performance of companies.

How investments, securities and board room disputes are settled and timorously too will go a long way to promote good corporate governance? That is the concern of this paper.

2. Modes of settlement of disputes in Nigeria

In Nigeria, the Constitution[3] recognizes adjudication in courts as the only means of settlement of any dispute going by the provisions of the Constitution[4], disputes of any nature can only be settled by the courts of law and tribunals established by law. Whereas, in the same Constitution, provision is made for settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication.[5] Court rules give room for arbitration, where parties are agreeable to arbitration. But arbitration is rarely used when parties have filed their claims in the court.

The companies and Allied Matters Act also recognize the court as the only avenue for adjudication of disputes and petitions relating to corporate governance in Nigeria. Such corporate disputes and petitions are protection of minority against illegal and oppressive conduct of majority shareholders in Section 299-304, power of court to avoid dissolution of a company in Section 524, winding up of a company subject to the supervision of court in Section 401-486 and the role of the court in winding up in Section 519.

The Investment and Securities Act that regulate the administration of capital market in Nigeria also recognize the Investments and Securities tribunal as the sole medium of settling investments and securities disputes. The Act makes elaborate provisions which are also fully discussed below. A tribunal in Nigeria operates like a court. In fact, the Supreme Court of Nigeria has held that there is no difference between a court and a tribunal, and that the only difference is that the tribunal in most cases, handle special cases. The tribunal has power to impose sanctions according to the law. It is a court with a specific criminal or civil jurisdiction.[6]

[3] The 1999 Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004.

[4] Section 6 (6) (b).

[5] Section 19 (d).

[6] Saraki V CCT, 2016.

3. The investments and securities tribunal

The Investments and Securities Tribunal (IST) is a creature of Section 224 of the Investment and Securities Act 1999. That Section has now been replaced by the extant Section 274 of the Investment and Securities Act 2007 (ISA).

There is established a body to be known as the Investments and Securities Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

The legal basis for the establishment of the IST by the ISA can be found in Section 6(5)(j) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which vests judicial powers of the Federation in such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly makes laws. It is undisputable that the ISA is an Act of the National Assembly and the IST being a tribunal established by an Act of the National Assembly has constitutional sanction to adjudicate on matters coming within its jurisdictional powers in the ISA.

The IST is a civil court with both original and appellate jurisdiction. The decisions of the IST are enforced as decisions of the Federal High Court (FHC). Any appeal against its decision lies directly to the Court of Appeal (Alubo & Essien, 2007).

3.1 *Composition of the IST*

By the provision of Section 275 of the ISA, the IST consists of ten (10) members to be appointed the Minister of Finance.[7] These ten members comprise of one full time Chairman who shall be a legal practitioner with fifteen years cognate experience in capital market matters; four other full-time members three of whom are legal practitioners and one person who shall be knowledgeable in capital market matters. The other five members are part-time members who are persons of proven ability and expertise in corporate and capital market matters. The IST is constituted by a panel of at least three members. Where a member is presiding on any panel as the chairman, such a member must be a legal practitioner.

3.2 *The Jurisdiction of the IST*

Section 294 of ISA empowers the IST to adjudicate exclusively on matters specified in the Act. Those matters have been specified under Section 284(1) of the Act. It is our view that Section 284(1)(a) deals with issues over which the IST has appellate jurisdiction while subsection (1)(b)-(f) provide for issues over which it has original jurisdiction. Interestingly, in the case of FIS Securities Ltd v. SEC (2004) 1 NISLR 116, the IST erroneously held that it had competence to deal with matters under the Companies and Allied Matters Act 1990 (CAMA). This decision is most erroneous because there is nowhere in the statute books that gives the IST jurisdiction over matters in the CAMA. In fact, that has been taken care of by Section 251(1)(e) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN).

3.3 *Original jurisdiction*

For the purpose of convenience, Section 284(1) (b)-(f) is set out below.

The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving:

[7] See Section 315 of ISA.

(a) the Commission and self-regulatory organization;

(b) a capital market operator and the Commission;

(c) an investor and the Commission;

(d) an issuer of securities and the Commission; and

(e) disputes arising from the administration, management and operation of collective investment schemes.

From the above it is clear that the IST has jurisdiction over matters involving the Securities and Exchange Commission (SEC). This is where most legal minds have vilified the ISA with respect to the IST. First the SEC is an agency of the Federal Government and as such the implication of Section 251 (r) of the CFRN is to the effect that the Federal High Court has jurisdiction over it. Secondly, IST is not structurally autonomous from SEC itself and in such a situation how do you guarantee structural fair hearing. Clearly, that violates the principle that a person cannot be judge over his own cause (nemo judex incausa sua) (Alubo & Essien, 2007).

3.4 *Appellate jurisdiction*

As we have submitted earlier, Section 284(1)(a) touches on the appellate jurisdiction of the IST.

The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving a decision or determination of the Commission in the operation and application of this Act, and in particular, relating to any dispute:

(i) between capital market operators;

(ii) between capital market operators and their clients;

(iii) between an investor and a securities exchange or capital trade point or clearing and settlement agency;

(iv) between capital market operators and self-regulatory organization.

Practically most matters before the IST comes under its appellate jurisdiction because investors are usually required to lay their complaints first with the SEC, who usually refers such complaints to the Administrative Proceedings Committee (APC). When the APC gives its decision, then there is room for appeal to the IST.

One of the cases where the IST exercised its appellate jurisdiction was the case of CSCS Ltd and Anor. v. Bonkolans Investment Ltd and 5 Ors.[8] – a case now popularly known as the Bonkolans case. The case became notorious because it was the case that "disvirgined" the IST. In that case the court held the Central Securities Clearing System liable for the fraudulent acts of its staff for colluding with the Respondents to bring in fake share certificates into the depository of the former. This led to losses incurred by some investors in the shares of Nestle Foods Plc. The IST further held the respondents liable to restitute the CSCS Ltd for the compensation it had to pay to the investors (Alubo & Essien, 2007).

3.5 *Jurisdiction over pension disputes*

[8] Case No. IST/OA/03/2003.

Also, by the provision of Section 93 of the Pensions Reform Act 2004 (as amended), a person that is aggrieved by the decision of the National Pension Commission (NPC) may refer the matter to the IST. One of the implications of the above is that the IST does not have original jurisdiction in pension matters.

From the brief expose' produced above, one can decipher that there is a laudable dispute resolution body for capital market disputes. Despite the legal criticisms it has faced from virtually every Tom, Dick and Harry in the legal circle and considering the number of disputes arising every day, the IST is a necessity.

4. Tax appeal tribunal

Tax Appeal Tribunal (TAT) is established under Section 59(1), Fifth Schedule of the Federal Inland Revenue Service (Establishment) Act 2007 and formally took off pursuant to the Tax Appeal Tribunals Establishment Order 2009 issued by the Minister of Finance, Federal Republic of Nigeria as published in the Federal Government Official Gazette No 296, Vol. 96, 2 December 2009. By this enactment, TAT replaces the former Body of Appeal Commissioners (BAC) and Value Added Tax (VAT) Tribunals.

As part of the ongoing reforms of the tax system in Nigeria, TAT was established by the Federal Government to adjudicate on all tax disputes arising from operations of the various Tax Laws as spelt out in the Fifth Schedule to the FIRS (Establishment) Act 2007 (Obayemi, 2015).

Specifically, and in accordance with Section 59 (2) of the FIRS Act, TAT has jurisdiction over disputes arising from the under listed laws:

- Companies Income Tax Act (CITA)
- Petroleum Profit Tax Act (PPTA)
- Personal Income Tax Act (PITA)
- Capital Gains Tax Act
- Stamp Duties Act
- Value Added Tax Act

Taxes and Levies (Approved list for collection) Act; as well as other laws, regulations, proclamations, government notices or rules related to these Acts.

Pursuant to the Tax Appeal Tribunals Establishment Order 2009, TAT is established in eight zones to cover the six geo-political zones namely: Abuja, Lagos, Ibadan, Benin, Enugu, Kaduna, Jos and Bauchi. The Coordinating Secretariat is located at Abuja.

Consequently, the Tax Appeal Tribunal Chairmen and Commissioners were inaugurated on 4 February 2010 while the secretariat staff resumed duties at their respective posts on 1 July 2010 after a two-week induction training. This marked the formal take-off of the new Tax Appeal Tribunal in Nigeria. All proceedings before the Tribunal are guided by the Tax Appeal Tribunal (Procedure) Rules 2010.

Tax Appeal is an important component of the tax system and the new tax policy offers a step-by-step objection and appeal process which gives the complainant an opportunity to explore other dispute resolution mechanisms before gaining access to the regular court system. According to the Establishment Act, both the tax payer and relevant tax authority can initiate the appeal process. A person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws administered by the Service may appeal against such action, decision, assessment or demand notice within a

period of 30 days. On the other hand, The Service, if aggrieved in relation to any person in respect of any provisions of the tax laws, can also within a period of 30 days, file an appeal at the appropriate zone of the Tribunal (Obayemi, 2015).

It is no doubt that the establishment of the TAT would reduce the incidence of tax evasion, ensure fairness and transparency of the tax system, minimize the delays and bottlenecks in adjudication of tax matters traditional court system, improve the tax payers' confidence in our tax system, provide opportunity for expertise in tax dispute resolution, provide avenue for effective involvement of parties, focus on facts rather than legal technicalities and promote early and speedy determination of matters without compromising the principle of fairness and equity.

5. Alternative dispute resolution

ADR is defined as a procedure for settling a dispute by means other than litigation. (Kehinde, 2022). Alternative Dispute Resolution (ADR) as practiced globally and by extension Nigeria is divided into arbitral and non-arbitral methods or what other called adjudicatory and non-adjudicatory processes. The scope of this paper covers both arbitral and adjudicatory processes. We shall first discuss arbitration which is adjudicatory or arbitral in nature.

5.1 *Arbitration*

Arbitration is the only known arbitral or adjudicatory process in the sense that in arbitration, evidence is taken from parties to the dispute and an award is made or a judgement entered in favor of one party whose claim is sustained by admissible evidence. This is a kind to the procedure in national or state courts but it differs significantly from litigation because arbitration, arguably, could be said to be the first step towards privatization of justice, in that as an alternative to resolution through national or state courts, the parties have greater control over the appointment of arbitrators, language of the arbitration, place of arbitration and the principles to be applied to issues under consideration whereas in litigation through national or state courts, the courts are public institutions funded by the government (Kehinde, 2022). Appointment of court officials is also done by the government and the government provides the court rooms and other facilities. On the choice of arbitration by parties, which is common place in ADR, Sawyer P. observed in the Bahamas Court of Appeal in Maycock vs Attorney General, a person in a democracy, like the Bahamas has no legal or constitutional right to choose his judge. This fact is true of all democracies in the world today. The doctrine of judicial precedent is always enforced in courts but that is lacking in ADR.

Arbitration is the submission of a dispute to one or more impartial persons for a final and binding decision, known as an "Award". Awards are in writing and are generally final and binding on the parties in each case. In Nigeria today, the statutory framework for the conduct of domestic arbitration proceedings is to be found in the Arbitration and Conciliation Act[9] which provides adequate safeguards in protecting the interest of the parties and also in ensuring smooth conduct of the proceedings.

Section 3(1) of Lagos Multi-Door Court (LMDC) Law, 2007, also provides that one of the objectives of the LMDC ids to apply arbitration in the resolution of such dispute as may from time to time be referred to it.

Arbitration is generally cheaper, faster, and more informal than litigation. Unlike litigation, the parties have far greater control in the items of choosing the judge and to determine

[9] Cap A 18 Laws of the Federation of Nigeria, 2004.

when, where and how the matter be decided. The parties also may agree to the specific rules under which the case will be heard and the type of evidence that will be accepted. For example, the parties can agree to allow evidence that might not be admissible in a court without having to incur extra-ordinary expenses. Once a decision has been reached there is no appeal. An arbitrator's award and opinion can only be set aside or vacated for very specific statutory reasons (Jemilohun, 2004).

It is a written contract in which two or more parties agree to use an arbitrator, instead of the court, to decide certain dispute. Though the arbitration agreement is ordinarily a clause in a larger contract, it may be drawn up separately, the dispute may be about the performance of a specific contract, a claim of unfair or illegal treatment in the work place, a faulty product, or just about anything else.

Courts decide whether a parties have an agreement to arbitrate, unless the arbitration agreement specifically says that question about arbitrability of the dispute are to be decided by an arbitrator.

Parties frequently decide when they are writing their contract (and long before any dispute arises) that should any dispute relating to the contract developed in the future, they will have them decided by an arbitrator. This decision to arbitrate future dispute is an "arbitration clause" in the agreement. If a dispute arises the parties cannot go to court in lieu of arbitration, they must arbitrate their dispute.

People who have a current dispute may decide that instead of going to court and proceeding with their civil law suit, they want to settle it by arbitration. Or people who have gone to court may decide that they want to arbitrate their dispute. In either case, the parties to the dispute sign a written arbitration agreement that says they will arbitrate the specific existing dispute.

Yes, it is not necessary that the arbitration clause be specifically negotiated, if it is part of the contract you agreed to, it is binding. It in fact, arbitration clauses are now standard in many types of agreement including some type of insurance, employment contract, construction contract etc.

Where a party to an arbitration agreement brings a lawsuit in lieu of arbitration proceedings, if the other party demonstrates that there is an arbitration agreement that covers the subject matter of the lawsuit, the court will stay the proceedings and order the parties to proceed to arbitrate. If the parties sign an agreement providing for arbitration, one side cannot unilaterally resort to mitigation without the consent of the other. The Arbitration and Conciliation Act provides an opportunity for arbitral proceedings to continue once a demand notice is dully served by one party on the other.

6. The Lagos multi-door court house (LMDC)

The LMDC is a court-connected Alternative Dispute Resolution Center the offers a variety of Alternative Dispute Resolution (ADR) processes. The Mission of the LMDC is to supplement litigation as the available resources for justice by the provision of enhanced, timely, cost effective and user-friendly access to justice. The Multi-Door refers to the various options available at the LMDC including mediation, Arbitration, Early Natural Evaluation and Hybrid Processes (Abifarin & Chijioke, 2014).

6.1 *The LMDC law*

The LMDC law was promulgated in 2007 to create a legal framework for the operations of the LMDC and to create the proper environment for the fulfillment of its overriding objectives;

the distinguishing court connected feature of the LMDC makes it a vital part of the judiciary of Lagos State. In order to give maximum effect to its overriding objectives, the function and roles of key justice sector stakeholders have been incorporated into the provisions of the law. These include:

6.2 *The role of the court*

The role of the court is spelt out in Section 16 of the law. This provision specifies amongst others that it shall be the responsibility of the judges of the High Court of Justice, Lagos State, to control and manage effectively proceedings in Court and issue orders which would encourage the adoption of ADR methods in dispute resolution including the mandatory referral of parties to explore settlement at the LMDC whenever one of the parties of an action in court is willing to do so (Abifarin & Chijioke, 2014).

6.3 *The role of the ADR judge*

Under Section 15 of the LMDC Law of the ADR judge is empowered to require the attendance of the defaulting party before him to explain the reasons for their neglect or refusal of the defaulting party before him to explain the reasons for their neglect or refusal to submit to ADR. Thereafter he may make directives or give orders as he may deem fit in the circumstances towards giving effect to the overriding objectives of the LMDC (Abifarin & Chijioke, 2015).

6.4 *The role of parties*

By Section 15 of the LMDC Law, disputing parties have a responsibility to the LMDC and the ADR process and are to cooperate with officers of the LMDC in the administration of their dispute. They are to consider seriously the adoption of ADR procedure for resolving their claims or issues when encouraged to do so by the court, their counsel or the LMDC (Abifarin, 2014).

6.5 *The role of the counsel*

Furthermore, the law states that the responsibility of counsel regarding ADR is to court, the LMDC and the legal profession. By Section 17(3) (a) counsel is required to give due consideration and support to suggestions orders and directions from the court for an amicable settlement of ongoing matters to the LMDC.

6.6 *Enforcement*

At the LMDC settlement are enforceable. Section 19 of the LMDC Law provides that upon the completion of an ADR proceedings, settlement agreement which are dully signed by the parties shall be enforceable as a contract between the parties and when such agreement is further endorsed by an ADR, judge, it shall be deemed to be enforceable as a judgement of the High Court of Lagos State. Order 39, Rule (4(3) of the High Court of Lagos State (Civil Procedure Rules, 2004) also states that an award made by an arbitrator of a decision reached at the Multi Courthouse may by leave of a judge be enforced in the same manner as a judgement or order of court (Akin Ibidapo Obe & William, 2006).

The non adjudicatory or non-arbitral alternative dispute resolution processes are (Kehinde, 2019):

1) Conciliation;
2) Mediation;
3) Negotiation;
4) Renegotiation;
5) Expert determination;
6) Certification;
7) Mini-trial;
8) Rent judge;
9) Early neutral evaluation (ENE);
10) Mediation arbitration (Med. Arb) 11 Summary Jury Trial, 12 Settlement Week, 13 Ombudsman;
11) Neutral case evaluation;
12) Novel media which has its origin in Nigeria.

We shall define each of these processes now.

Conciliation is described as a settlement of a dispute in an agreeable manner. It is a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved, especially by a relatively unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their settle their difference. It has been argued that conciliation and medication are the same therefore conciliations rules in the Arbitration and Conciliation Act can be made applicable to mediation procedure (Orojo & Ajomo, 1999).

Mediation is a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach mutual agreeable solution. From legal literature, conciliation and mediation have generated a lot of controversies; one school of thought believes that two the words mean the same thing and that they could be used interchangeably. The other school asserted that they are distinguishable (Abifain, 2015). This school contends that conciliation uses a third party to iron out the differences between the disputing parties and arrived at an amicable solution. But in mediation the third party plays an evaluative role by expressing his opinion whereas in conciliation, the role of the third party is a facilitative one. He does not advice parties about his own opinion and a game played with so little reserved by those taken up with it that they will sacrifice their own ultimate interest in order to win it. Garner (2000) opined that the distinction between mediation and conciliation is widely debated among those interested in ADR, arbitration and international diplomacy. Some suggest that conciliation is a non-binding arbitration whereas mediation is merely assisted negotiation. Others put it this way: conciliation involves a third party trying to bring together disputing parties to help them reconcile their differences. Whereas mediation goes further by allowing the third party to suggest terms on which the dispute might be resolved. Still others reject this attempt at differentiation and contended that there is no consensus about what the two would be convenient those who agree that usage indicates a broad synonym are most accurate (Garner, 2000). In our opinion however, conciliation is a facilitative process while negotiation goes further than facilitation to suggest terms and expression of helpful opinions in resolving the dispute.

Renegotiation comes into play when a contract is already in existence. It is a mode used to modify the term of an existing agreement, either at periodic intervals or if certain stated events occur. Re-negotiation involves adjusting and balancing of the contract terms so that neither

p[party remains at disadvantage by initial terms. For a meaningful renegotiation to be undertaken, it is important to provide for a renegotiation clause in the original contract that is precisely defined in such a way that events that could trigger renegotiation are exhaustively enumerated. It is when negotiation and renegotiation fail that resort is had to other modes of dispute resolution within ADR processes or outside them.

Expert Determination. An expert is a person who through education or experience has developed a skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact finder. Sometimes, a contract provides that any dispute arising from the transaction shall be resolved by a person acting as an expert and not an arbitrator. Such a person is not an arbitrator and is not subject to Arbitration and Conciliation Act or any other arbitration rules or regulations. He is under no obligation to hear evidence or argument although he may if he wishes. He is entitled to rely solely on expertise and any investigation he may carry out on his own. Where some price or value is to be determined, an expert can best produce the result cheaply and quickly (Abodunrin, 2010).

Negotiation is described as a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. Negotiation usually involves complete autonomy for the parties involved without the intervention of third parties.

According to Fuller, "negotiation, we may say, ought strictly to be viewed as a means to an end. It is the road the parties must travel to arrive at their goal of mutually satisfactory settlement. But, like other means, negotiation is easily converted into an end in itself; it readily becomes a game played for its own sake" (Abifarin & Bello, 2015).

Valuation is described as the process of determining the value of a thing or entity or the estimated worth of a thing or entity.

Often, experts in various fields are invited to carry out a task of valuation for the benefit of parties to a transaction. A common example is where a rent review clause in a lease provides that a new rent should be fixed by a qualified valuer or surveyor, so where the articles of association of a private company provides that the company's auditor shall determine the price at which shares are to be sold when an existing shareholder decides to sell his shares to the directors (Ezejiofor, 1998).

Certification. Building contracts usually provide that some acts should be done to the satisfaction of a third party who is required to issue a certificate as evidence of such satisfaction. For example, a contract may provide that a third party, such as an architect, has to indicate his satisfaction with a party's performance of a contract before that party's right to payment arises. If the certifier is employed by both parties- he is an arbitrator but if the certifier is employed by one of them, he is not an arbitrator but the process is certification (Ezejiofor, 1998).

Mini-Trial. Mini-trial is a form of evaluation mediation which as a non-building ADR process assists the parties to a dispute to gain a better understanding of the issues in dispute, thereby enabling them to enter into settlement negotiations on a more informal basis. Mini-trial usually takes the form of a short presentation of the issues by the respective in-house lawyers of the parties who now sit together on the opposite side of the table facing disputants, or in the case of corporations, their chief executive decision makers. The disputants literally become the jury assisted by a neutral expert who may be a former judge or some other person with authority in the field of the dispute selected as neutral adviser to elucidate any problem which may arise during presentation. The executives then retire and try to negotiate a settlement. This enables them to review the dispute in a better perspective and helps them to settle in a more dispassionate manner. Here again, the neutral as in mediators can have a significant role by acting as a facilitator of the parties' negotiation (Orojo & Ajomo, 1999).

Med-ARB. In Med-Arb which is an abbreviation for "mediation arbitration" attempt is first made to resolve a dispute by agreement through mediation, and if that fails, then it proceeds to a binding arbitration, the advantage of this is that if settlement cannot be reached, the initial mediator can now be appointed the arbitrator entrusted with the duty of making a binding determination, especially if during the course of the mediation, a relationship of trust has developed between the mediator and the disputants (Akanle, 2015).

In Med-Arb process, the decision to go to arbitration if mediation is unsuccessful is one to which the parties commit themselves in advance before the process commences. In this regard, it has been said that this offers the advantages, real or perceived, the first is that the process will produce a resolution, one way or another, secondly that parties may perhaps try harder to be reasonable and to resolve the matter during the mediation phase; and thirdly that if adjudication is required, there will be no loss of time or cost in having to re acquaint a new neutral with the facts of the case and the issues between the parties (Akanle, 2015).

Early Neutral Evaluation. Early neutral evaluation is generally used to assess the likely outcome of a legal action. This evaluation provides a quick method of obtaining a neutral advisory opinion, which may assist the parties in the negotiation. The evaluation word, Early Neutral Evaluation (ENE) is a non-binding process designed to improve case planning and settlement processes by giving litigants an early advisory evaluation of the case. Like mediation, ENE is thought to be applicable to many types of civil cases including complex disputes. In ENE, a neutral evaluator usually a private attorney with expertise in the subject matter of the dispute holds a confidential session with the parties and counsel early in the litigation generally before much discovery has taken place to hear both sides of the case. The evaluator then helps the parties clarify issues and evidences, identifies strengths and weakness of the parties' position and gives the parties a binding assessment of the value or merits of the case. Depending on the role of the program, the evaluator also may mediate settlement discussion or offer case management assistance such as developing a discovery plan (Peters, 2007).

Summary Jury Trial. The summary trial is a non-binding ADR process designed to promote settlement in trial ready cases. A judge presides over the trial where attorneys for each party present the case generally without calling witnesses but relying instead on submission of exhibits. After this abbreviation trial the jury deliberates and then delivers an advisory verdict. After receiving the jury's advisory verdict, the party may use it as a basis of subsequent negotiations or proceed to trial. A summary jury trial is typically used after discovery is complete (Peters, 2007).

Settlement Week. In a typical settlement week, the court suspends a normal trial activity and aided by volunteer mediators, sends numerous trial ready cases to mediation sessions held at the court house. The mediation session may last several hours with additional sessions held as needed cases unresolved during settlement week's return to the court's docket for further pre-trial or proceedings as needed (Peters, 2007).

Case Evaluation (Michigan Mediation). Cases evaluation provides litigations in trial ready cases with a written, non-binding assessment to the case value. A panel of three attorneys makes the assessment after a short hearing. If all parties accept the trial panel's assessment, the case proceeds to trial. This arbitration like process has been referred to as "Michigan mediation" because it was created by the Michigan state courts and subsequently used by the Federal court in Michigan as well (Peters, 2007).

Ombudsman. The ombudsman is an official appointed by the government to investigate and report on complaints made by citizens against public authorities. The parties are obliged to attempt resolutions seriously before passing on the dispute to the ombudsman. Decisions are usually based upon written evidence, although there is an increasing trend towards meeting with the parties both jointly and individually. The ombudsman in Nigeria is the Public

Complaints Commission which has functional branches in all the states of the federation. It is a creation of statutes in Nigeria and other states (Aina, 2012).

Novel Media. The last but not the least is the novel media type of ADR which is indigenous to Nigeria. Novel media are local television programs like *Gboromiro* meaning "hear my plight", of NTA channel 7 Lagos, *Mogbejomide* – this is my complaint, a Lagos television channel 8 program, *Agborodun* "sympathizer", an NTA Ibadan program or *Olowogbogboro* "the long arm that delivers," an NTA Abeokuta program and *so da bee?* Is it right? a BCOS television program of Ibadan. These programs are either conducted in English or Yoruba and it is popular in all the states in South Western Nigeria (Peters, 2007).

Under these programs, complaints are written to the coordinator of the program in any of these television houses who will summon both complainant and defendant to come with their witnesses. When they appear, they state their cases and the panel will attempt to settle them. The settlement is a non-binding one but because of the public ridicule that may follow non-co-operation and compliance with the decision of the panel, most disputing parties abide by the outcome of the decision of the panel. This list is not exhaustive of the type of ADR available; there are others like Party Directed Mediation and Online Dispute Resolution.

7. Consumer protection in Nigeria and ADR

The enforcement of consumer right is a serious problem in Nigeria. Consumers are often reluctant to enforce their rights for a variety of reasons, including, ignorance of their rights, poverty, and the judiciary's rigid adherence to strict legal rules that make it very difficult for consumer to win cases in court.

When a consumer alleges that the defects in a particular product are the results of negligence for example, the consumer must prove the facts or commission in the production process that constitute negligence. This issue is complicated by the defense of fool proof system. The practice adopted by the manufacturers is to demonstrate an impeccable system of production with a view to convincing the court that such a system is incapable of admitting any defect as alleged by the consumer. Decided cases show judicial inclination to accepting such fool proof system as a defense.[10]

Given this scenario, the establishment of State Consumer Protection Committees is seen by consumer's activists as a development that has the potential to engender interest in the enforcement of consumer rights. The Consumer Protection Council Act provides for the establishment of a Council at the federal level and a state committee in each state of the federation. The Consumer Protection Council is a federal consumer enforcement agency with the mandate to provide redress to consumer complaints through negotiation, mediation and conciliation.[11]

Among others, though the Council has power to apply to court to prevent the circulation of any product which constitutes an imminent danger or public hazard, it also supervises the activities of state committees. Although the Act came into force in 1992, the provision relating to state committees was not implemented until 2000/2001, when the first state committees were inaugurated. After a long break, the implementing authority (the CPC) resumed the exercise in 2005 and has so far established seven, additional committees in different states (Eleamu V Guiness Nig Ltd, 1982). But this is far from meeting the ever-increasing needs of consumers in the 36 states and the FCT.

[10] Boardman V Guiness Nig Ltd., 1990.

[11] Okonkwo V Guiness Nig Ltd., 1990.

The State Committees are empowered to receive inquiries into the causes and circumstances of injuries, loss or damage suffered or caused by a company, trade association or, individual and where appropriate, recommend to the Council the payment of compensation by the offending person to the injured consumers.

The committees adopt the system of negotiation, mediation and conciliation. Each State Committee is composed of representatives of designated ministries and agencies. The Committee is a non-judicial alternative compensation scheme. The advantage of this procedure is that the consumer does not have to go through the rigors of litigation to obtain redress. He can simply lodge his complaints with a State Committee. But this does not preclude a consumer from taking redress in court for any substandard or defective product.

It is also worthy of note that the services of the Council and State Committees are rendered to the consumers free of charge as the Act does not prescribe any fee to be paid to register complaints either orally or in writing. No mediation, arbitration or conciliation fee is also charged.

7.1 *Nigerian Communication Commission (NCC) and ADR*

The NCC knowing that dispute can be enormously disrupt the communication sector and that effective dispute resolution in the sector is increasingly central to successful deployment of modern information infrastructure initiated a landmark move that offered a user-friendly dispute resolution mechanism for the telecommunication industry. The guidelines were made applicable to small claims of not more than one million (Obegolu, 2012).

Acting under its inherent powers under the enabling Act, NCC in September 2004, came up with the NCC Dispute Resolution Guidelines which among other things provides for payment of registration fee for any complaint or dispute filed before the mediators and arbitrators (Kehinde, 2019). It also includes codes of ethical conduct for mediators and arbitrators. The Act provides that the Commission has the duty to protect and promote the interest of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and quality of communication services equipment and facilities. The Commission, also has the function of examining and resolving complaints and objections filed by consumers and dispute between licensed operators, subscribers or any other person involved in the communications industry using such dispute resolution methods as the commission may determine from time to time including mediation and arbitration.

The Act empowers the Commission to resolve dispute between persons who are subject to this Act regarding any matter under this Act or its subsidiary legislation (Obegolu, 2012).

A pertinent question has been raised by scholars on the issue of funding of the ADR mechanism by NCC instead of disputants or consumers who are already indigent paying registration fees. This argument was premised on the fact that under Article 8(4) of the European Commission Framework Directive, regulators must act to promote the interests of the citizens of the European union by ensuring a high level of protection for consumers in their dealing with suppliers, in particular by ensuring the availability, of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved (Obegolu, 2012).

This section guarantees provision of ADR mechanism to consumers at no cost while it is also contended that in Romania when any dispute is referred to the regulator, the parties are offered the chance to resolve the dispute through a mediation scheme which is sponsored but not administered by the regulatory authority.

India has a similar system where the telecom dispute settlement and appellate tribunal (TDSAT) was established in 2000 by an amendment to the Telecom Regulatory Act of India 1997.

This step separates the dispute resolution process from regulatory process in India. This is recommended for Nigeria so as to ensure fairness, neutrality and cost friendly resolution of disputes.

8. Settlement of investment disputes in Nigeria

Investment disputes differ remarkably from other commercial cooperative disputes, in that it involves an enterprise and not merely its products. The very existence of the enterprise must be threatened by the issue leading to the dispute, usually resulting from an action of Government/Regulatory Agency (Ogbuanya, 2010). For example, the revocation of operating license of telecom operator by Nigeria Communication Commission constitutes investment dispute over cancellation of distributorship contract between the telecom operator and its franchise dealer amounts to commercial dispute and the dispute over accrued dividend of the preferential shareholder of the telecom company is a corporate dispute.

Investment disputes also involve disputes arising from diverse selection of economic activities, ranging from the infrastructural concession, production, exploration of mineral resources and distribution. It usually relates to an investment project substantial and relatively of long or medium term with assumption of risk on both the host government and investor.

8.1 *Investment Dispute Resolution Procedure under the Nigerian Investment Promotion Commission (NIPC) Act*

The Nigerian Investment Promotion Commission Act provides the legal framework for resolution of investment disputes between an investor (local/foreign) and any level of government in Nigeria. Although litigation is not foreclosed, the effective dispute resolution provided for under the NIPC Act forward alternative dispute resolution (ADR) and arbitration.

By Section 26(1) NIPC Act, where a dispute arises between an investor and Government of the Federation in respect of the enterprise, all effort shall be made through mutual discussion to reach an amicable settlement. Otherwise, the appropriate mode of resolution of the investment dispute depends on whether it is local or foreign investor and the existing mode of dispute resolution that may be reserved in any bilateral or multilateral agreement between Nigeria and the Government of any of the disputing foreign investor.

a. Nature of dispute covered by dispute resolution procedure under the NIPC Act

- The dispute must involve any level of Government in Nigeria – Local, State or Federation.
- The dispute must involve the business enterprise; the investment. Thus, it must be investment dispute.
- The dispute may involve local or foreign investor.

b. How to resolve investment dispute under the NIPC Act?

- The first step is to exhaust alternative dispute resolution (ADR) option to amicable settlement, which can be by the parties doing direct negotiation or indirectly, through their appointed negotiators or through mediation.
- If the amicable settlement falls within the reasonable time, the aggrieved has an option to resort to Arbitration.
- If the aggrieved party opts for Arbitration, if it is a local investor, the rules or arbitral procedure under the Arbitration and Conciliation Act Cap. A18 LFN 2004 shall apply.

- If the dispute involves a foreign investor, if there is any bilateral or multilateral agreement on investment protection to which the Federal Government and the country of which the investor is a national are parties, then the Dispute would be resolved within the framework of such Agreement.
- If there is no Bilateral or Multilateral agreement on investment protection covering such foreign investor, the dispute would be resolved in accordance with any other national or international machinery for the settlement of investment dispute agreed on by the parties. Example of such dispute resolution mechanisms are contained in the UNCITRAL Conciliation Rules 1980 and rules of Lagos Regional Center for International Commercial Arbitration, established under the Auspices of the Asian-African legal Consultative Committee in cooperation with Nigerian Government, as well as other Institutions/Organizations involved in Alternative Dispute Resolution, such as the Chartered Institute of Arbitrators (London), Nigeria Branch, Negotiation and Conflict Management Group (NCMG) and Center for Dispute Management and Resolution administered by Nocs Consults and ADR Practice Group International.
- In the event that the parties disagree on the particular mode of settlement of the investment dispute and the foreign investor and the Federal Government failed to agree on the method of dispute settlement to be adopted, the parties must use the International Center for Settlement of Investment Dispute Rules. (ICSID) Rules.

These steps are clearer explanation of the provisions so as to cover investment disputes that may involve other level of governments and foreign investors. The Federal Government can intervene to advise on the mode and where the foreign investor disagrees with the federal government, then ICSID Rule applies. In the case where the federal government is a party with the foreign investor, they can directly discuss and where they disagree, ICSID Rule shall apply. This would obviate the apparent difficulty of a narrow interpretation that the provision would occasion.

The Nigeria Shippers Council's resort to alternative dispute resolution instead of litigation has reduced the cost of doing business in Nigerian ports. The move has led to the saving of not less than N200 million by the Council. It is reported that between April and December 2011, the Council received a total of 66 complaints, resolved 54 to save over N800 million, equivalent of $93,000 and other currencies.

8.2 *Dispute resolution mechanism under cooperative societies law in Nigeria*

The cooperative society's law of various states in Nigeria makes provision for settlement of disputes outside the court or judicial system. In this discussion, one shall use the Kwara State Cooperative Law as a model (Kehinde et al., 2022).

The law makes elaborate provisions on the procedure to settle disputes relating to cooperative societies matter. By Section 57 of that law, if any dispute touching the business of a registered society arises:

> (1) a. Among members, past members and persons claiming through members, past members and deceased members; or
>
> b. Between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or servant of the society; or
>
> c. Between the society or its committee and any officer, agent or servant of the society; or

d. Between the society and any other registered society, such dispute shall be referred to the registrar for decision.

(2) A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir, legal personal representative or estate of the deceased member, whether such debt or demand be admitted or not, shall not be deemed to be a dispute touching the businesses of the society within the meaning of subsection (1).

(3) The registrar shall on receipt of such reference:

a. Decide the dispute; or

b. Subject to the provisions of any regulations, refer it for disposal to an arbitrator.

(4) Subject to the provision of any regulations, the registrar may withdraw any reference transferred under paragraph (a) of that subsection.

(5) The registrar may of his own motion or on the application of a party to a reference reverse any decision there on by an arbitrator to whom it was referred.

(6) Any decision given by the registrar under:

a. Paragraph (a) of subsection (3) or under subsection (5) shall save as otherwise provides in subsection 7 be final.

b. Any decision given by the arbitrator under paragraph (b) of subsection (3) shall, save as otherwise provided in subsection (5) be final.

c. The decision shall on application of the party in whose favor it is given be enforced by any court which would have jurisdiction in civil suit, between the parties to the dispute to give a judgment for the payment of the amount awarded or where the decision does not relate to the payment of money, he gives a similar decision in the same manner as if the decision had been a judgment for decision of such court.

(7) Any party aggrieved by any order of the registrar made under provision of subsection (5) or (6) may appeal to the Commissioner within thirty days from the date of such order and decision of the Commissioner shall be final and conclusive.

The law empowers the Registrar or Commissioner to refer a case to the High Court on question of law by way of case stated, on application to Chief Judge, Chief Judge may refer the case to any High Court judge (Emiaso, 2011).

From the above provisions of law, the cooperative society's laws in Nigeria prefer dispute resolution mechanism by the Registrar of Cooperative or Director of Cooperative or the Commissioner for Cooperative matters in form of mediation or arbitration than court process. This accounts for little or no reported cases on cooperative society's dispute in Nigeria.

8.3 *Settlement of trade dispute*

There are basically two components of machinery for settlement of trade disputes. These are:

(a) Internal Machinery – Collectively negotiable (i.e., management and workers agree on what to do).

(b) External Machinery – This is the statutory (it has legal backing).

In Nigeria, once there is a failure to resolve a trade dispute under internal procedure; parties are obliged to invoke the provisions of the statutory machinery. An important point to note here is that when a dispute is being dealt with or negotiations are underway, parties must not resort to strike or lockouts according to Section 17 of the Trade Dispute Act.

Statutory Machinery

If the parties to a dispute state in writing that they have exhausted the procedure for internal settlement, the Minister for Employment, Labor and Productivity may take any of the following steps:

- Appoint a Mediator
- Appoint a Conciliator
- Refer the matter to Industrial Arbitration Panel; and or
- National Industrial Court (NIC)

Mediator

A Mediator is somebody who is acknowledgeable to both conflicting parties (Management & Union). He occupies a middle position. He has seven days within which to resolve the dispute. Failure to do this, he will report back to the Minister who will now appoint a Conciliator. This method of mediation is guided by Section 8(1) of the Trade Dispute Act (Kehinde, 2019).

Conciliator

The Conciliator, usually an official of the Ministry of Labor and Productivity will endeavor to bring about a settlement. Conciliation is a procedure whereby a third party brings the parties together, encourages them to discuss their differences and assist them in developing their own proposed solutions.

Conciliation could either be voluntary or compulsory. Conciliation is deemed to be voluntary when the parties are free to make use of it as they wish. It is compulsory when they are required to participate in or make use of the procedure. It should however be noted that compulsory conciliation as practiced in Nigeria does not mean that the parties have to accept the terms of settlement proposed by the conciliator. If no settlement was reached within 14 days the conciliator is expected to inform the Minister of Labor and Productivity accordingly. The Minister will then decide on what next to do to settle the dispute. This shows that conciliation like collective bargaining and mediation has its limitations. There is no guarantee that such a method will always solve trade disputes. In fact, there are some disputes which do not lend themselves to conciliation.

8.4 *Industrial Arbitration Panel (IAP)*

The law provides that within 14 days of the failure of the Conciliator to settle the dispute, then Minister of Labor and Productivity is empowered to refer the dispute for settlement to the Industrial Arbitration Panel. The IAP consists of a Chairman, a Vice-Chairman and not less than ten other members appointed by the Minister. Two each of the persons are employers' and workers' nominees.

The IAP has 21 days to consider a trade dispute and make an award called Arbitral Award. If this is accepted by both parties it becomes legally binding on them. The parties are also free to reject the Award in which case the Minister may refer the matter back to the panel or to the National Industrial Court.

8.5 *National Industrial Court (NIC)*

The Trade Dispute Act, 1976 established the NIC. The NIC has been upgraded into the status of a Superior Court of record by the Constitution. Before the Constitutional amendment The

National Industrial Court Act 2006 was enacted but it cannot lift the court to superior court of record except by Constitutional amendment.

According to Section 25 of Trade Dispute Act, the President of the court must have been a judge of a High or a legal practitioner of at least ten years' experience. Before now, other members of the court need not be lawyers but must be persons who are very knowledgeable in the fields of economics, industry and trade. The President of the court may appoint four Assessors from the list of Assessors submitted to him by the Minister of Employment, Labor and Productivity. The Assessors are to assist in advising the court on matters that need expert advice. Since the Constitutional amendments that reposition the court appointment of judges to the court is in accordance with constitutional provisions.

The court is vested with Exclusive and Original Jurisdiction in respect of disputes involving workers employed in any essential service. It has exclusive jurisdiction to make awards for the purpose of settling trade disputes to determine questions as to interpretation of any collective agreement, any award by the IAP or the court itself and the terms and settlement of any trade dispute as recorded in any memorandum the court has appellate jurisdiction in respect of cases which have been heard by the IAP and to which objection has been raised. The court was first established by the National Industrial Court Act and later by Sections 254A – F of the 1999 Constitution as amended. The Constitution also allows the National Industrial Court to set up Alternative Dispute Resolution Centers within the court to settle industrial or trade disputes. The court has power to enforce any award by any arbitrator appointed under this section.

8.6 *Board of Inquiry*

Reference of dispute could be made to a board of inquiry to look into the causes and circumstances of the disputes. The Board of Inquiry is a means of informing the government and members of the public regarding the facts and underlying causes and circumstances of a dispute, where these are not easily discerning and the application of the appropriate machinery for their settlement therefore, becomes difficult.

It is usually appointed as a last resort when the dispute is likely to have a serious effect on public interest and it is necessary to clear the air and dispose of it expeditiously. The Board's duty would be to inquire into the matter referred to it and to report thereafter to the Minister.

8.7 *Interfaith Mediation Center, Kaduna*

This center is also known as Interfaith Mediation Center of Muslim Christian Dialogue Forum – IMC/MCDF. The Center was started by former enemies, Imam Mohammed Ashafa, a Muslim cleric and Pastor James Wuye a Christian minister. It is a non-governmental, non-partisan, non-profit making faith-based organization. Its mandate is to promote and facilitate the use of faith-based approach in conflict prevention. It also has the mandate to mediate and encourage dialogue among youths, women, religious leaders and the government to inculcate and promote the culture of self-respect and acceptance of diversity of each other's cultural, historical and religious inheritances (Abifarin & Bello, 2014). IMC also cooperated with organizations with similar objective at local and international levels.

The organization began in 1995 in Kaduna and it is registered with the Corporate Affairs Commission, Abuja, Nigeria. For over a decade IMC has provided high quality services that have assisted public agencies and communities in conflict intervention, mediations and mitigation including training of youths, women and religious leaders in conflict management and trauma counseling. In the recent past, IMC has used its unique interactive capacity with government to serve as in-house technical adviser and has facilitated the signing of the famous Kaduna Peace

Declaration of religious leaders and the Shendam Peace Accord in Plateau state (Abifarin & Bello, 2014).

It has also recommended faith-based initiative for conflict prevention and peace building at the United Nations headquarters in New York. The core values that drive the organization are accountability, mutual respect across religious beliefs, responsibility, empowerment and team work. The aspiration of the organization is the re-affirmation of the Biblical and Quranic affirmations of the common bond of the human family. It also designs flexible process to bring about solutions that are creative, fair, efficient and durable (Gofwen, 2004). But the organization has been hampered by fund, therefore its effect has not been felt in Nigeria. Other institutional and specialist ADR mechanism in Nigeria include Construction Industry Arbitrators of Nigeria, Maritime Arbitrators of Nigeria, Center for Peace in Africa, etc.

Presently, there is a call for the Banking, Insurance and the Taxation practitioners to also embrace the use of ADR for timely and effective facilitation of their transactional disputes' resolution. The same call goes to the Association of Chambers of Commerce and Industry in Nigeria.

9. The court and ADR in Nigeria

The various High courts in Nigeria incorporated Alternative Disputes Resolution into their civil procedure rules. For instance, the Federal High Court civil procedure Rules 1999 in order 18 provides for Arbitration of disputes between disputing parties before a full trial before the court. The National Industrial Court which is a national court also provides for multi-door courthouse as one of the Alternative Dispute Resolution methods in addition to arbitration, conciliation, mediation and negotiation.

State High Court, civil procedure rules were harmonized and labeled High Court uniform civil procedure Rules adopted by most states of the federation. For instance, Kano State uniform High Court civil procedure Rules 1988 provides for arbitration in order 19 while that of Kwara State in order 21 provides for arbitration before adjudication in court. Order 23 of the same rule provides for pre-trial conference which is geared towards settlement of disputes which if successful may terminate the trial in court. The National Industrial Court also enacted the National Industrial Court's ADR center instrument and Rules 2015 to facilitate effective ADR in that court on labor related disputes (Ogbuanya, 2016) pursuant to the power conferred on the court by Section 254C (3) of the constitution of Nigeria as amended. This is the only court that the constitution deliberately vested power to mount ADR processes in settlement of disputes.

10. Conclusion

From the above analysis, these are a lot of laws, rules and orders that make provisions for the use of all forms of alternative dispute resolution in resolving board room, investments and securities disputes in Nigeria which will greatly enhance Corporate Governance if effectively utilized by disputants. It has been shown beyond reasonable doubt that litigating corporate governance disputes in court causes unnecessary delay, erases the confidentiality of business and consumes a lot of money that would have been re-invested to generate more profit and consequently generate more employment, which will in turn reduce the social vices witnessed in Nigeria presently.

The tribunals like the Investments and Securities Tribunal and Tax Appeal Tribunal should be strengthened financially and institutionally to perform optimally. More tribunals may be set up because of its obvious advantages that it operates within limited time and saves cost.

A viable National Arbitration Center that can handle both local and international investment disputes is inevitable in Nigeria. The Federal and State Government can collaborate to set up a globally acceptable Arbitration and Mediation Center in Nigeria.

The rules and procedure of the non-adjudicatory alternative dispute resolution methods should also be clearly spelt but by the law including ethical rules for the professional conciliators, mediators and negotiators. The fees of the arbitration, conciliators, mediators can be also be fixed by the rules just as the National Industrial Court ADR Rules 2015 has done.

The legal practitioners in Nigeria should be enlightened on the need for them to explore all rules of court that promote amicable settlement of disputes rather than insisting on the full trial of cases in court.

The society for Corporative Governance in Nigeria should extend its monitoring and supervisory tentacles to ensuring that Alternative Dispute Resolution is effectively utilized by corporate bodies in order to reduce dissipation of energy in squabbles and waste of human and material resources on avoidable disputes. The States of the Federation should also ensure that Alternative Dispute Resolution mechanisms are entrenched in their legal system.

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