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History of Telecommunication Law in Nigeria

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Abstract

The telecommunications sector is a significant contributor to the global economy and is vital to the competitiveness of the economy. Market liberalization's goal and objective encompasses both general economic growth and the advantages to consumers of lower pricing, more service options, higher service quality, and a wider selection of products. As a means of enacting regulatory changes in the telecommunications sector, telecommunications regulation is of the utmost importance. In the telecommunications sector, regulatory reform has become a crucial area. For regulatory reforms to be successful, regulatory regimes must be transparent, consistent, and all-encompassing, encompassing everything from setting up the right institutional framework to liberalizing network industries, promoting and enforcing competition law and policy, and opening both internal and external markets to trade. This article examines the historical background of telecommunications in Nigeria is traced. It examines several developments that have taken place in the Nigerian telecommunications industry. It further examines several regulatory regimes in the Nigerian telecommunications industry prior to Nigeria's independence in 1960 and post-independence till 2003.

Keywords: telecommunication history, Nigeria, Nigerian telecommunication industry, economy, laws.

1. Developments in telecommunications in Nigeria

Alexander Graham Bell developed the telephone in the nineteenth century. The telecommunications network has expanded over time to become the biggest man-made machine ever created, handling more than 1,000 billion calls yearly and covering the whole world.

The time span from the late 1960s to the present has seen the fastest increase. This is the outcome of a combination of advances in electronics, digital communication, convergence of computing and telecommunications technologies, optical fiber development, and the use of microelectronics in radio communications.

Telegraph systems, a type of early digital technology, were the first. From its conception until the early 1970s, when advances in computing started to filter into telecommunications, telephony was analog. Almost all nations had a monopoly on the supply of telecommunications up until the early 1980s, with a state-owned business often serving as the public network operator. The competitive culture of the new computing industry, which made use of the same technology to a great extent and experienced swift cost reductions and capability gains, contrasted with this monopolistic culture.

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2. Pre-independence era

The International Telecommunications Union did not foresee the necessity for global interconnectedness (ITU).[1] From colonial times until the early 1970s, British practice governed Nigeria's telecommunications standards. But the road to success in Nigeria's telecoms industry has been arduous and difficult. The colonial administration built the first telecommunications infrastructure in Nigeria in 1886,[2] but what is now the country's telecommunications industry actually got its start in 1855 when the colonial administration granted a request from its officers in Sub-Saharan African nations to build telecommunications links with the colonial officers in London.[3] The British Post Office had previously offered its services to the colonies inside the British West African areas.

3. Post-independence era: Period between 1960-1985

At the time of its independence in 1960, Nigeria had roughly 18,724 operational phone lines and a population of about 40 million.[4] Nigeria had few telephones as at the time. Within the period of 1960 and 1985, the Department of Post and Telecommunications (P&T), which was in charge of the internal network, and a limited liability corporation, the Nigerian External Telecommunication (NET) Limited, which was in charge of the external network, made up the telecommunications industry.[5] At the time, telephone penetration was still low and service quality was often subpar. The system was pricey, overcrowded, unreliable, and unwelcoming to users. Postal and Telecommunications Division of the Post and Telecommunications (P&T) was created in 1985, and it later amalgamated with Nigerian External Telecommunications (NET) to become Nigerian Telecommunications Limited (NITEL). But unlike in the UK, where a 51% part in British Telecoms was sold, NITEL was governed and financed solely by the Nigerian Federal Government until it was sold to Transnational Corporation of Nigeria Plc (Transcorp) in 2006.[6]

4. Period between 1985-1992 and privatization of telecommunications sector in Nigeria

The Federal Military Government established a Technical Committee on Privatization and Commercialization (TCPC) in July 1987 to address the subject of reforms that apply to all public firms in Nigeria, and it enacted the Privatization and Commercialization Decree No. 25 of 1988. The Decree established the required legal foundation for the government's expected programs on the commercialization and privatization of state businesses as essential components

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[1] Colin D. Long, *Telecommunications law and practice* (2nd ed.), Sweet & Maxwell, London, 1995, p. 5.

[2] Case Study: "Telecoms in West Africa", www.itlaw.strath.ac.uk/distlearn/downloads. See also: "Revising Nigeria's telecommunications Industry", www.nigeriabusinessinfo.com.

[3] Adewale, S. A. and Bamise, J. B., "The legal protection of consumers of telecommunications services". Paper presented to 2005/2006 LL.M Class of Aviation and Communications Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.

[4] See Adegbemile A. A., "Developments in telecommunications in nigeria and its impact on national development: Experience from around the world", 2007, 6(8), *Asian Journal of Information Technology*, pp. 554-884.

[5] *Ibid*. This is similar to what obtains in most countries of the world where a department of the government is in charge of all posts service, telephone and telegraph services. Telecommunications traditionally have been by a vertically integrated state-owned monopoly. Countries such as United Kingdom, Portugal, Belgium, Greece, Germany, Ghana e.t.c operated these Telecommunications Systems.

[6] *Ibid*.

of Nigeria's national economic transformation.[7] The Decree established the Technical Committee on Privatization and Commercialization (TCPC) and with the coming of the TCPC,[8]the status of NITEL changed. This was made possible with the tripartite performance contract agreement signed on 22 May 1992 by NITEL, Federal Government and TCPC which projected NITEL as a full fledged commercial entity.[9] NITEL was required under the agreement to be self-financing and to enhance telecommunications services. Between 1985 and 1992, NITEL was the primary basic provider of both domestic and international services, which was a significant development in the Nigerian telecommunications sector. Due to the industry's blatant inefficiency, high costs, and lack of widespread access, this monopoly has had detrimental impacts.[10] There was no convergence among the three arms of communications, and competition solely existed in terms of equipment supply.[11] Using digital exchange, fiber optics, and digital satellite earth stations, NITEL started the modernization of the telecommunications networks in 1986. The number of NITEL services has also risen to now include electronic mail, public payphones accepting prepaid cards, mobile phones, and cellular paging (e-mails).[12]

NITEL has implemented three initiatives, including reorganization, personnel training, and upgrades to the installation of cutting-edge exchange and transmission equipment and infrastructure, in order to achieve self-financing and improve its telecommunications services.[13] Although commercialization of NITEL began in 1992 and modernization of Telecommunications networks in 1986, partial deregulation of the Nigerian Telecommunications business began in 1991 under the regulatory arm of NITEL's Planning and Operation Division. In October 1991, five companies[14] were given approval to operate prepaid card public payphone in the six geopolitical zones of Nigeria.[15] Until the Nigerian Communications Commission was founded in 1992, this was the direction of the development of the country's telecoms sector.

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[7] Ehi Oshio, P. and Stewart N. F., The legal and institutional frameworks of privatization in Nigeria: A discourse, http://www.nigerialawguru.com/articles/company%20law/THE%LEGAL%20%AND%20INSTITUTIONAL%20FRAMEWORKS%20OF%20F%20PRIVATISATION%20IN%20NIGERIA20A%20DISCOURSE.pdf, accessed on 14 August 2010.

[8] Now Bureau for Public Enterprises (BPE). The current Act establishing the BPE is the Public Enterprises (Privatisation and Commercialisation) Act, *Cap. P 38 LFN 2004*, which, by Section 12, established the Bureau. By the Act, NITEL and its mobile section, Nigerian Mobile Telecommunications Limited (M-Tel) were partially privatized by the effect of Section 1 (1) and Part I of the First Schedule to the Act.

[9] The effect of this agreement is the change in the nomenclature of NITEL from Limited Liability Company (Ltd) to Public Limited Liability Company (Plc).

[10] Adegbemile A. A., "Developments in telecommunications in Nigeria and its impact on national development: Experience from around the world", 2007, 6(8), *Asian Journal of Information Technology*, p. 884.

[11] The three arms of Communications are Telecommunications, Information Technology and Broadcasting.

[12] Adegbemile A. A., "Developments in telecommunications in Nigeria and its impact on national development: Experience from around the world", 2007, 6(8), *Asian Journal of Information Technology*, p. 885.

[13] *Ibid.*

[14] The five companies are Chawaleks Telecommunications Ltd, SATCOMS Ltd, Nakaita Holdings Ltd, GPT Ltd and Murhi International Ltd.

[15] The six geo-political zones in Nigeria are: North-Central, North East, North West, South-South, South-West and South-East.

5. Period between 1992-2003

The Nigerian Communications Commission Act No. 75 of 1992, which founded the NCC, was passed in 1992. All telecommunications service providers are now regulated by the NCC, which was established to take over regulation of telecommunications operations from NITEL's Planning and Operation Division.

NITEL had 500,000 connections to a population of 100 million at the time of the start of deregulation in 1992.[16] The 1992 Act opened up the telecommunications sector to competition and regulation. The division of regulatory authority among the three arms of communications for a converged industry is a significant post-1992 legal framework issue.

When NCC was founded in 1992, the organization allowed private operators to participate in all sectors of telecommunications activity and compete against the then-government monopoly, NITEL.[17] However, NITEL held a monopoly over the telecommunications industry until 1999. Upon taking office in 1999, the President Olusegun Obasanjo Administration immediately got to work completely dereglementing the telecommunications industry, particularly by issuing licenses to Global System for Mobile Communications (GSM) service providers. The GSM Services were made available for purchase in August 2001, and numerous GSM operators have received licenses.[18]

The private consumer and business demand for high-quality telecommunications services at reasonable prices and competitiveness, as well as the need for shorter wait times for telephone installation and service delivery, are the driving forces behind the deregulation of telecommunications services in Nigeria.[19]

Diversification and complexity of customer wants; technological advancements; demand for increased corporate efficiency in light of constrained budgets; economic growth and job creation; and global trend. As a result of the aforementioned, the Nigerian government's decision to deregulate the telecommunications sector has had positive and far-reaching effects that are anticipated to provide the necessary leverage and serve as a catalyst for a variety of business, economic, social, and organizational developments.[20]

Strategically speaking, this means that NITEL, the national operator, has been given exclusive access to the key areas of public switches, trunks, and international services. The goal of this is to give social services and services to rural communities the appropriate cross-subsidy and incentive. Despite this, and to avoid impeding the participation of the private sector, the government has maintained that the national career, NITEL is required to provide network access and interconnectivity to other licensed operators, charge fair and competitive tariffs for such access and interconnectivity, focus its resources and efforts on the creation of the core infrastructure, i.e., the capacity of long-distance trunks and public switches.[21]

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[16] Adegbemile A. A., "Developments in telecommunications in Nigeria and its impact on national development: Experience from around the world", 2007, 6(8), *Asian Journal of Information Technology*,, p. 884.

[17] *Ibid*., 886.

[18] Osondu, C. N., Regulatory challenges in the Nigerian GSM market. Paper Presented at the Nigerian Bar Association Annual Bar Delegates Conference, Abuja, 2004.

[19] D. A. Ariyoosu, *An examination of the legal regulations and taxation of telecommunication and electronic commerce in Nigeria* (unpublished), a thesis submitted to the Faculty of Law, University of Ilorin in partial fulfillment of the award of Doctor of Philosophy in Law, 2012.

[20] *Ibid*.

[21] *Ibid*.

It was anticipated that NITEL would gain from more traffic created by private operators through its network as well as from improved revenue production and collection.

6. Conclusion

The growth of the telecommunications market in Nigeria has continued at geometric rates, thereby sustaining the market as one of the fastest growing telecommunications markets in the world. Nigeria is now officially the largest growth market for telecommunications in Africa and the Middle East, and possesses the most vibrant fixed and mobile telephony companies in Africa.[22]

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Enhancing Rule of Law and Social Justice with the Principles of Separation of Power in Nigeria

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Abstract

The principle of rule of law and separation of power is very essential in any sane democratic society. Without rule of law, life will be nasty and there will be anarchy in the society. The principle of separation of power maintains that the three arms of government in Nigeria must be separated from one another and their functions performed differently and independently, that is, one arm of government should not perform the function of the other. This paper is intended to state the rule of law and principles of separation of powers and checks and balances, its meaning and scope and its application by the makers of the 1999 Constitution of the Federal Republic of Nigeria, the level of compliance with the principles in our constitutional experience and the attitude of the judiciary towards ensuring that the principle is preserved and complied with strictly. The relationship between the rule of law and social justice cannot be overestimated while the paper concluded that the operation of rule of law and social justice cannot be effectively felt without separation of power.

Keywords: rule of law, government, Nigeria, separation of power, constitution.

1. The principle of separation of powers

The doctrine of separation of power which derived its origin from Aristotle, John Locke and later Montesquieu is a device against abuse of power or what he called political liberty! He posited that the functions of governments of western states are of three kinds: (1) The legislative or law-making function is carried out by the legislature; (2) The executive function is carried out by the executive and when the Legislative and executive powers are vested or United in the same person or body, there can be no liberty. Again, there can be no liberty if judicial power is not separated from legislative and executive.[1] Thus separation of power could be described as sharing of powers by separate institutions. But not a complete independence of organs of government. They still have to work in cooperation although the independence is to safeguard a kind of checks and balance Montesquieu was writing from his experience in Western countries where functions of government are of three types: (1) the legislative, (2) executive function which is concerned with the formulation and carrying out of policies by executive usually called government, and (3) the judicial function which consist of interpreting and applying the law by the judiciary (Judges in the courts). In Britain parliament makes laws many of which gave power

[1] Barnet Hillarie Constitutional and Administrative law 5th Edition.

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to the government to do certain things.[2] Laws are not always clear in their meanings however and it is then the function of the courts to give a decision in case of dispute.[3] Thus, this French philosopher opined in the 18th century that the three functions of government should be kept separate. He argued that their separation would prevent one man or group of men from exerting too much power; each organ of government could act as a check on the others.[4] Separation of power ensures operation of rule of law and social justice if institutionalized by the constitution.

Inherent in the doctrine of separation of powers is the principles of checks and balances. The separation of these powers to check one another and balance their operation without encroachment of one-by the other is referred to as checks and balances.

This doctrine has been embraced all over the civilized world including Nigeria.

2. Separation of power in Nigeria governance

2.1 *Legislature*

This doctrine was entrenched in the constitution of the Federal Republic of Nigeria 1999 in section. 4, 5 & 6 Section 4. It provides that the legislative power of the Federal Republic of Nigeria shall be vested in the National Assembly which consist of a Senate and House of Representatives and shall have power to make laws for e peace, order and good government of the Federation or any part thereof with respect to any matter in Executive legislative list set in out in part I of second schedule to this constitution..., while the House of Assembly of a State shall have power to make laws for peace order and good government of the State or any part thereof with respect to any matter in the con-current legislative list set out is part 11 of second schedule to the constitution. On this section the court has held in Ekeocha Vs Civil Service Commission of Imo State & Anor.[5] (Under 1979 constitution) Oputa J. (as he then was) that in all cases of interpretation, the courts should adopt such a construction which will put the federal legislative in such a position so that it can legislate for the general interest of the whole country. The decision is a protection of legislative power of the National Assembly. This was also done in See A. G. of Bendel Vs A. G. Federation.[6]

2.2 *Executive*

The constitution provide that the executive powers of the federation shall be vested in the president and may subject as a-fore-said and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice President and the ministers of the government of the federation or officers in the public service and shall extend to the execution and maintenance of this constitution, all laws made by the National Assembly and a matters with respect to which the National Assembly has for the time being power to make laws while the executive powers of state is vested in the Governor of that state who may subject to the aforesaid and to the provision of any law made by the House of Assembly of a state be exercised by him directly or through the Deputy Governor and Commissioner of the Government of that state or

[2] Cavendish Press London, 1980.

[3] Separation of Power: An overview ncls.org.

[4] O'Brien David Constitutional law politics, 1991, www.norton&company, New York.

[5] 1980 suit no HC/8/80/1981 1 NCLR 154.

[6] 1981 1 NCLR 30.

officers in the public service of the state and shall extend to the execution and maintenance of the constitution.[7]

2.3 *Judiciary*

Section 6(i) provides the judicial power of the federation shall be vested in the courts to which this section relates being court established by law subject as provided by this constitution for state. Section 6(5) of this section relates to Supreme Court, Court of Appeal, Federal High Court, State High Court, Sharia Court of Appeal, Customary Court of Appeal and any Court that may be established by law. By amendment to the constitution, the National industrial court of Nigeria has created by section 254A-D of the constitution.[8]

5. 6(6): the judicial powers shall extend to inherent power and sanctions of a court of law, all matters between persons, between government or authority and any person in Nigeria and to all actions and proceeding thereto for the determination of any questions of as to civil rights and obligations of that person.

These are the provisions of Sections, 4-6 of the 1999 constitution which clearly entrenched the doctrine of separation of powers.

The Courts in Nigeria had made educative and illuminating pronouncements in their attempt to ensure compliance with these elucidated principles of law in the constitution. In the case of Unongo vs Aper Aku.[9] The Supreme Court held The Constitution of the Federal Republic of Nigeria 1979, which is hereinafter referred as the constitution, is very unique compared with the previous constitution in that the executive, the legislature and the judiciary each established as a separate organ of government. There is what can be termed a cold calculated rigidity in this separation as shown in Section 4, 5 and 6 of the constitution which established the legislative and the executive and the judicature respectively.

The real connecting link among these three is that they provide checks and balances on one another. But though there are checks and balances, one cannot and must not usurp the function of the other.

This case was reaffirmed in Attorney General of Bendel Vs Attorney General of the Federation[10] where ESO JSC said now it is time that the legislature, especially in a country like ours which has accepted the doctrine of separation of powers and which got that doctrine embodied in constitution, is "a master of its household." The exception to this sovereignty within its own household is where the powers of such legislature have been specifically restricted under the constitution.

Having tried to show the embodiment of the doctrine of separation of powers in our constitution of 1979 and 1999 both statutory and judicially it is however pertinent to mention that in a military regime which has characterized this nation since 1966, the doctrine of separation of powers wears a different look entirely.

Under the military the executive and the legislature are fused. The Head of state is the Chief executive and at the same the lawmaker, the law maker is the supreme military council, which the Head of state chaired. At the state level, the military cover nor is the law maker through promulgation of edits the Head of state makes laws through Decrees.

[7] Section 6 of the constitution of FRN 1999 as amended.

[8] Section 6 of Section 6 of the constitution of FRN 1999 as amended.

[9] 1990 4 NWLR (Pt 143) at 254.

[10] 1972 3 NCLR 166.

2.4 *Judicial check of legislative and executive*

The judiciary having been empowered by Section 6 of the constitution is at the apex of this checks and balances. The judiciary has the primary duty of inquiring into the legality of acts of executive and the legislature. Any question on whether the executive has acted intra vires or ultra vires or has complied strictly with the procedure, manner or form prescribed by law is determined the court. In order that the judiciary may be able to perform this function effectively the independence of the judiciary is a condition. This has been guaranteed in Sections 17 (2) (e) and section 230-254 A.D.

There are quite a number of cases where the judiciary had to caution the executive when the executive is acting ultra vires or for failure to comply with the manner and form prescribed by law in administrative or governmental action. In Okiti pupa oil palm Company limited Vs Hon. J. E. Jegede and others[11] an issue of constitutional importance was raised as to whether an injunction of any kind can be ordered by a court in Nigeria against the legislature as a body or against a member there of for act purported, to have been or is being, or about to be committed in course of its operation, it was held, inter alia, that once a court is properly seized with jurisdiction it will act within its inherent and constitution power to restrain any or the said arm which in pursuit of it constitutional function tends to over step it limited jurisdiction under the constitution, and by virtue of the constitution, it is within the lot of judiciary in its supervisory capacity to ensure that all the three arms of government i.e., the legislature, the executive and the components of the judiciary itself keep within the receptive area of powers, privileges and competence under the constitution ... This is in addition to the judiciary been checked through appeals and judicial review or amendment of the law.

This position was confirmed by the Supreme Court in Governor of Lagos State Vs Chief Odumegwu Ojokwu[12] where it held that "Executive lawlessness is tantamount to a deliberate violation of the constitution, when the executive is the military government which blends both executive and the legislative power together and which permits the judiciary to coexist with it in the administration of the country, then it is more serious than imagined the essence of rule of law is that it should never operate under the rule of force or fear, to use force to effect act and while under the Marshall of that force, seek the courts equity is an attempt to infuse timidity into court and operate a sabotage of the cherished rule of law It must never be."

Moving a step further on the supervisory role of the judiciary, over the executive the supreme court in Garba Vs University of Maiduguri,[13] – said "I would add to this admirable statement by Lord Denning that to give a blanket implementation to the decision of the executive, and without reference to the elementary rule of fairness is an abdication by the judiciary of its power to the executive especially in a country like ours where the power of each of the organs of government." Executive, legislature and the judiciary are distinct under the constitution.

The judiciary has also exercised its checks, supervision and control over the executive by inquiring into the use of presidential power by the president through his minister; see the case of Alhaji Abdul Darman Shugaba Vs Minister of Internal Affairs.[14] The plaintiff in that case was deported by the minister of internal affairs on the order of the president made under the immigration Act on the ground that as at the time of his election to the House of Assembly of Bornu State, he was not a citizen of Nigeria by birth as provided in S 23 of 1979 (now S. 25 of 1999 constitution). The plaintiff having proved that his father, was of Chad Republic but his mother was

[11] 1982 suit on How/8/80/1981.

[12] 1981 1 NWLR (Pt 18) 633 at 634.

[13] 1981 1 NCLR 218.

[14] 1981 1 NCLR 25.

a Nigerian of Kanuri tribe, the court held that the deportation was illegal, null and void and unconstitutional. It has also been stated that the court can examine whether the power conferred on the Governor to appoint commissioners in accordance with S. 173 (a) of the constitution has been properly used or not. This was in issue, in the case of Governor of Kaduna State Vs House of Assembly of Kaduna state[15] where the Governor of Kaduna State Alhaji Balarabe Musa sought an order of Mandamus from the court to compel the members of the House of Assembly to approve his list of nominees for office of Commissioners of Kaduna State. The court declined to grant this application because the House of Assembly had power to approve or reject the list or any person on the list of the governor.

Therefore, nominations must be confirmed by the House Assembly before the appointments are made. That being so, if a commissioner is sworn in without his appointment being confirmed, his appointment is invalid. This section 173 has also been interpreted to mean that a Governor has a legal duty to appoint commissioners, he does not have a choice in the matter. In Alh Lawal Kagoma Vs Governor of Kaduna State[16] it was held that since the Governor is merely a chief executive, there must be an Executive council. The constitution in S. 162 (2) describes the governor as the Chief Executive and not Sole Executive and thereby implies that there are other executives.

Another important way by which the judiciary checks the executive is by way of judicial review of administrative action. Where an administrative body or tribunal refused to follow the due process of law or the rule of natural justice, the court has inherent power under S. 6 (6) (a) (b) to review any administrative action or decision that failed to comply with the rule of natural justice such as Audi Alteram par tem (hear the other side), otherwise known as fair hearing in S. 33 of 1979 and (S. 36 of 1999 constitution) and Nemo judex in causa sua (you cannot be a judge in your own cause). That means an impartial umpire must adjudicate or arbitrate dispute, prosecution and determination of rights and obligations imposed by law.

This list of occasions where the judiciary had demonstrated its willingness and ability to check and did check the executive is in-exhaustive.

2.5 *Judicial check of legislature*

Under this topic we shall approach the issue in two ways because Nigeria is a federation comprising of states, we shall succinctly examine the judicial control of the legislature both at the federal and state level.

The National Assembly in its bid to exercise its power to conduct investigation of the executive in executing and/or administering laws, and disbursement or administering moneys appropriated or to be appropriated by the National Assembly under S. 82 summoned a journalist to come to the floor of the House to come and disclose the source of his information on the report and Editorial he Wrote in the Daily Times Newspaper. The court held that the right to freedom of expression protects a journalist's right not to disclose his source of information and therefore senate cannot demand for his source of information because it would amount to an infringement of his fundament al human right.[17]

The National Assembly in exercising the power conferred on it by S. 55 of 1979 & now (S. 59 of 1999) the constitution in respect of Appropriation Bill or Supplementary Appropriation Bill or any Bill, the payment or issue or withdrawal from the consolidated Revenue Fund or any

[15] 1982 3 NCLR (Vol 3) 229.

[16] 1982 3 NCLR Vol 3 420 or 1982 LPELR Sc 64.

[17] 1982 NCLR 340.

other public fund of the federation, the bill is to be passed by both Houses of National Assembly but when there is conflict between the two Houses, the President of Senate shall within 14 days call for a meeting of joint finance committee of the house and where the joint finance committee fails to resolve the issue then the Bill will be represented at a joint session of the National Assembly, if the Bill is passed, it is then presented to the president for assent. Where the president withholds his assent after 30 days of the presentation of the bill to him, the Bill will again be presented at a joint meeting of National Assembly and the Bill will be passed by 2/3 majority, the bill shall become law without the assent of the President.

The question whether the National Assembly had complied with this provision in passing the Allocation of Revenue (Federation Account etc.) Act No. 1 1981 was in issue in the case of Attorney General of Bendel State Vs Attorney General of the federation.[18] In the case Bendel state Challenged the constitutionality of the Act on the ground that it had not been passed by the National Assembly in the manner and form prescribed or required by the constitution. In the case the two Houses had been unable to agree on the Bill as a result of which it was referred under S. 55(2) to a joint finance committee of National Assembly. The committee apparently resolved the conflict but without any subsequent reference to either House, the decision of the joint finance committee was sent to the president for Assent. The Bill was signed by the president. The Supreme Court rightly held that the Act was invalid.

2.6 *Check of state legislature*

At the state level the constitutionality of a law or an Edict can also be decided by the judiciary. See military Governor of Ondo State Vs Adewumi.[19] The essence of that decision is, that a state law or Edict must not be inconsistent with the constitution as amended or a Decree. That constitutes a check on the state legislature by the judiciary against unguided legislation that is capable of causing confusion or chaos in the body polity.

In spite of the consolidation of this judicial control of legislation by judicial activism the courts have warned that it will not allow itself to be seized with frivolity in exercise of judicial power to check the legislature. The case of Hon. Edwin-Ume Ezeoke Vs Alhaji isa Aliyu Makafi[20] where the plaintiff was a member of the House of Representatives and the defendant, the speaker of the House. The plaintiff went to court as a result of an announcement made by the speaker in the House on Wednesday 28th day of May 1980 to the effect that he had received a letter from the leader of the plaintiff's party that he has been suspended from party's membership. The said announcement tended to indicate that the defendant was empowered to suspend the plaintiff from all standing committees of the House, the plaintiff sued the speaker for a declaration that the action of the speaker was unconstitutional he sought an injunction restraining the speaker from taking any step with reference to membership of the plaintiff in the House.

The defendant raises preliminary objection to the effect that since the cause of action was an internal matter of the House, the court has no jurisdiction to interfere. This objection was overruled but the court held that except there is a specific provision in the constitution as to any particular procedure the legislature must comply with, the court will not interfere with the internal proceedings of the legislature.

It is clear from the above case that the court is not a rubber stamp for executive action, nor will it allow the legislature to be subjected to ridicule by frivolous applications.

[18] 982 3 NCLR 166.

[19] 1988 JELR 479B(SC).

[20] 1982 3 NCLR 166.

3. Legislative control of executive action

3.1 *Approval of appointment*

S. 133 of 1979 & (now S. 147 1999) constitution gives the president the power to determine the number of ministers and to appoint ministers by sending the list of his nominees to the senate to approve or reject all or any of the nominees of the president failure by the president to get the approval of the senate will make his appointment invalid. The president can remove any appointed minister and substitute it with another one, but the substitution still has to pass through the normal approval procedure. S. 192 applies to appointment of commissioners by the state governor who shall submit the list of his nominees to the state House of Assembly for approval.

The State House of Assembly can approve or reject all or any part of the list of nominees of the Governor. S. 154 empower the president to appoint chairmen and members of parastatal subject to approval of senate. There are other Acts of National Assembly that subject appointment of executive to approval of senate i.e., EFCC Act ICPC Act etc.

3.2 *Check through appropriation bill*

S. 133 of 1979 & now S. 147 of 1999 constitution the National Assembly has to approve an appropriation Bill or supplementary Bill including any other payment, issue or withdrawal from the consolidated Revenue Fund or any other public fund of the federation and a Bill for the imposition or increase in any tax, or fee or any reduction, withdrawal or cancellation thereof. This approval must conform with the procedure laid down by the section see Attorney General of Bendel State Vs Attorney General of the federation & other[21] see constitution in respect of state House of Assembly of a state.

3.3 *Impeachment procedure*

S. 132 now 5. 143 of 1999 provides that where a notice signed by 1/3 of member of National Assembly is presented to the president of Senate stating that the holder of the office of president or vice president is guilty of gross misconduct in the performance of the functions of his office detailed particulars of which shall be specified.

The President of Senate shall serve the notice on the president or vice president and members of the National Assembly within 7 days of receipt of the notice and within 14 days the president or vice president shall reply in writing stating his defense to the allegation and the National Assembly, shall resolve whether or not to investigate the allegation by 2/3 majority votes of members. A committee of 7 shall carry out the investigation within 3 months and their report will be presented to the House and if this report is adopted, the president or vice president shall stand removed from the office. This proceeding for removal from office of the president is not questionable in the court of law, see S. 170 (10) of 1979now s. 188 (10) of 1999 constitution for removal of Governor from office and Governor of Kaduna State Vs House of Assembly of Kaduna State.[22] The provision is plausible because the president cannot be prosecuted for a criminal offence while in office as per section 308, therefore the only way by which he can be censored would be under impeachment process. On the jurisdiction of the court to inquire into the propriety of impeachment proceeding in S. 143 (10) it is suggested that this- subsection should be expunged from the constitution because it is capable of making the legislature to exercise the power maliciously or absolutely. In the United States the impeachment panel of inquiry is headed by the

[21] Sections 112 of 1979 and 120 of 1999 Constitution of FRN as amended.

[22] 1981 1 NCLR 414.

Chief justice, so same procedure is recommended for Nigeria. See also S. 144 of removal of chairmen and members of federal parastatal, Boards and Commissions. Section 188(10) has been given a liberal interpretation that once a legislative House refuse to follow the procedure in section 188 (1) +(9) meticulously such impeachment procedure would be declared void by the court. See cases of Ladoja, Peter Obi and Dariye. These cases changed the trend in Balarabe musa v Kaduna State House of Assembly.[23]

4. Auditing of account and appointment of auditor

Now, sections 85 and 86 of 1999 provides for auditing of account by both Federal and State government and the Audit report to be submitted to the National Assembly in case of Federal government and to state House of Assembly in case of state government. The Auditor is vested with independence so that he can discharge his function honestly. The Federal Civil Service Commission recommends this appointment which will be confirmed by the Senate. He is also to set standards for state owned enterprises and compile list of auditors for them under the new constitution, this is to ensure probity in public enterprises.

5. Power to conduct investigation on spending of the executive

Each House of National Assembly is empowered to conduct investigation on any matter with respect to which it is empowered to make law and the conduct of affairs of any person, authority, ministry or government department charged with the responsibility of executing or administering laws enacted by the National Assembly and disbursing or administering money appropriated by National Assembly. In addition to its legislative power each of National Assembly enjoys the power of conducting, investigation in order to gather information needed to legislate, to propose constitutional amendments or to perform other constitutional actions. Under this power each house of National Assembly can conduct investigations to correct any defects in the existing laws. The House can expose corruption, inefficiency, or waste in spending of public funds. But the limit of this power had been decided in the case of Tony Momoh Vs Senate[24] supra (see section 88 and 128 of 1999 constitution). It is under this section that the legislature in Nigeria conducts public hearing on Bills.

6. Declaration of war

Section 5 (3) (a) and (b) of the constitution provides:

(a) "the president shall not declare a state of war between

The federation and another country except with the sanction of a resolution of both Houses of the National Assembly sitting in a joint session;" and

(b) "except with the prior approval of the senate, no member of the Armed forces of the Federation shall be deployed on combat duty outside Nigeria."

The above quoted section actually limits the exercise of executive powers of the president. The president cannot declare war without the prior sanction of the legislature. The Armed Forces cannot be deployed for any combat duty outside Nigeria without the prior approval

[23] Hon Mute Balonwu & others v Hor peter obi (2007) lawcarenigeria.com inakoju v Adeleke 2007 NCSC 30, 2007 4 NWLR (Pt 1025) 427 Hon Micheal Dapialing V Cheef (Dr) Joshua Dunye 2007 NGSC 148.

[24] *Ibid*.

of the Senate. And when the armed forces are deployed to any place before approval of Senate, the president must request for approval within 30 days of the deployment.

7. Legislative control of the judiciary

This is exercised by the legislature under section 9 of the constitution; this section empowers the legislature to amend any part of the constitution following the manner and form prescribed by the constitution.

8. Conclusion

It has been shown both statutorily and by judicial precedent that the constitution of the federal Republic of Nigeria 1999 made adequate provision for the operation of the principles of separation of powers and checks and balances in order to ensure a stable democratic culture in Nigeria. The provisions are far-reaching and are many steps ahead of the 1963 republican constitution that operated parliamentary democracy allowing for fusion of legislative and executive powers and this culminated into the public disorder that led to the military takeover of 1966. It must also be stressed that integration of the principle of separation of power in constitution is the foundation for democracy and good governance if the operators of the constitution can keep to it. The operation of the spirit and the letters of the provisions on the doctrine of separation of power in Nigeria will enhance the rule of law and social justice if the different organs of government perform its role without encroachment on the roles of the other organs of government. There will be a harmonious relationship among the organs of government, and this will ensure good governance. Rule of law and social justice is not restricted to those in governmental authorities alone, but it is the duty of every individual who is dealing with any other person to ensure that he complies with the rule of law.

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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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History of Telecommunication Law in Nigeria

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Abstract

The telecommunications sector is a significant contributor to the global economy and is vital to the competitiveness of the economy. Market liberalization's goal and objective encompasses both general economic growth and the advantages to consumers of lower pricing, more service options, higher service quality, and a wider selection of products. As a means of enacting regulatory changes in the telecommunications sector, telecommunications regulation is of the utmost importance. In the telecommunications sector, regulatory reform has become a crucial area. For regulatory reforms to be successful, regulatory regimes must be transparent, consistent, and all-encompassing, encompassing everything from setting up the right institutional framework to liberalizing network industries, promoting and enforcing competition law and policy, and opening both internal and external markets to trade. This article examines the historical background of telecommunications in Nigeria is traced. It examines several developments that have taken place in the Nigerian telecommunications industry. It further examines several regulatory regimes in the Nigerian telecommunications industry prior to Nigeria's independence in 1960 and post-independence till 2003.

Keywords: telecommunication history, Nigeria, Nigerian telecommunication industry, economy, laws.

1. Developments in telecommunications in Nigeria

Alexander Graham Bell developed the telephone in the nineteenth century. The telecommunications network has expanded over time to become the biggest man-made machine ever created, handling more than 1,000 billion calls yearly and covering the whole world.

The time span from the late 1960s to the present has seen the fastest increase. This is the outcome of a combination of advances in electronics, digital communication, convergence of computing and telecommunications technologies, optical fiber development, and the use of microelectronics in radio communications.

Telegraph systems, a type of early digital technology, were the first. From its conception until the early 1970s, when advances in computing started to filter into telecommunications, telephony was analog. Almost all nations had a monopoly on the supply of telecommunications up until the early 1980s, with a state-owned business often serving as the public network operator. The competitive culture of the new computing industry, which made use of the same technology to a great extent and experienced swift cost reductions and capability gains, contrasted with this monopolistic culture.

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2. Pre-independence era

The International Telecommunications Union did not foresee the necessity for global interconnectedness (ITU).[1] From colonial times until the early 1970s, British practice governed Nigeria's telecommunications standards. But the road to success in Nigeria's telecoms industry has been arduous and difficult. The colonial administration built the first telecommunications infrastructure in Nigeria in 1886,[2] but what is now the country's telecommunications industry actually got its start in 1855 when the colonial administration granted a request from its officers in Sub-Saharan African nations to build telecommunications links with the colonial officers in London.[3] The British Post Office had previously offered its services to the colonies inside the British West African areas.

3. Post-independence era: Period between 1960-1985

At the time of its independence in 1960, Nigeria had roughly 18,724 operational phone lines and a population of about 40 million.[4] Nigeria had few telephones as at the time. Within the period of 1960 and 1985, the Department of Post and Telecommunications (P&T), which was in charge of the internal network, and a limited liability corporation, the Nigerian External Telecommunication (NET) Limited, which was in charge of the external network, made up the telecommunications industry.[5] At the time, telephone penetration was still low and service quality was often subpar. The system was pricey, overcrowded, unreliable, and unwelcoming to users. Postal and Telecommunications Division of the Post and Telecommunications (P&T) was created in 1985, and it later amalgamated with Nigerian External Telecommunications (NET) to become Nigerian Telecommunications Limited (NITEL). But unlike in the UK, where a 51% part in British Telecoms was sold, NITEL was governed and financed solely by the Nigerian Federal Government until it was sold to Transnational Corporation of Nigeria Plc (Transcorp) in 2006.[6]

4. Period between 1985-1992 and privatization of telecommunications sector in Nigeria

The Federal Military Government established a Technical Committee on Privatization and Commercialization (TCPC) in July 1987 to address the subject of reforms that apply to all public firms in Nigeria, and it enacted the Privatization and Commercialization Decree No. 25 of 1988. The Decree established the required legal foundation for the government's expected programs on the commercialization and privatization of state businesses as essential components

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[1] Colin D. Long, *Telecommunications law and practice* (2nd ed.), Sweet & Maxwell, London, 1995, p. 5.

[2] Case Study: "Telecoms in West Africa", www.itlaw.strath.ac.uk/distlearn/downloads. See also: "Revising Nigeria's telecommunications Industry", www.nigeriabusinessinfo.com.

[3] Adewale, S. A. and Bamise, J. B., "The legal protection of consumers of telecommunications services". Paper presented to 2005/2006 LL.M Class of Aviation and Communications Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.

[4] See Adegbemile A. A., "Developments in telecommunications in nigeria and its impact on national development: Experience from around the world", 2007, 6(8), *Asian Journal of Information Technology*, pp. 554-884.

[5] *Ibid*. This is similar to what obtains in most countries of the world where a department of the government is in charge of all posts service, telephone and telegraph services. Telecommunications traditionally have been by a vertically integrated state-owned monopoly. Countries such as United Kingdom, Portugal, Belgium, Greece, Germany, Ghana e.t.c operated these Telecommunications Systems.

[6] *Ibid*.

of Nigeria's national economic transformation.[7] The Decree established the Technical Committee on Privatization and Commercialization (TCPC) and with the coming of the TCPC,[8]the status of NITEL changed. This was made possible with the tripartite performance contract agreement signed on 22 May 1992 by NITEL, Federal Government and TCPC which projected NITEL as a full fledged commercial entity.[9] NITEL was required under the agreement to be self-financing and to enhance telecommunications services. Between 1985 and 1992, NITEL was the primary basic provider of both domestic and international services, which was a significant development in the Nigerian telecommunications sector. Due to the industry's blatant inefficiency, high costs, and lack of widespread access, this monopoly has had detrimental impacts.[10] There was no convergence among the three arms of communications, and competition solely existed in terms of equipment supply.[11] Using digital exchange, fiber optics, and digital satellite earth stations, NITEL started the modernization of the telecommunications networks in 1986. The number of NITEL services has also risen to now include electronic mail, public payphones accepting prepaid cards, mobile phones, and cellular paging (e-mails).[12]

NITEL has implemented three initiatives, including reorganization, personnel training, and upgrades to the installation of cutting-edge exchange and transmission equipment and infrastructure, in order to achieve self-financing and improve its telecommunications services.[13] Although commercialization of NITEL began in 1992 and modernization of Telecommunications networks in 1986, partial deregulation of the Nigerian Telecommunications business began in 1991 under the regulatory arm of NITEL's Planning and Operation Division. In October 1991, five companies[14] were given approval to operate prepaid card public payphone in the six geopolitical zones of Nigeria.[15] Until the Nigerian Communications Commission was founded in 1992, this was the direction of the development of the country's telecoms sector.

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[7] Ehi Oshio, P. and Stewart N. F., The legal and institutional frameworks of privatization in Nigeria: A discourse, http://www.nigerialawguru.com/articles/company%20law/THE%LEGAL%20%AND%20INSTITUTIONAL%20FRAMEWORKS%20OF%20F%20PRIVATISATION%20IN%20NIGERIA20A%20DISCOURSE.pdf, accessed on 14 August 2010.

[8] Now Bureau for Public Enterprises (BPE). The current Act establishing the BPE is the Public Enterprises (Privatisation and Commercialisation) Act, *Cap. P 38 LFN 2004*, which, by Section 12, established the Bureau. By the Act, NITEL and its mobile section, Nigerian Mobile Telecommunications Limited (M-Tel) were partially privatized by the effect of Section 1 (1) and Part I of the First Schedule to the Act.

[9] The effect of this agreement is the change in the nomenclature of NITEL from Limited Liability Company (Ltd) to Public Limited Liability Company (Plc).

[10] Adegbemile A. A., "Developments in telecommunications in Nigeria and its impact on national development: Experience from around the world", 2007, 6(8), *Asian Journal of Information Technology*, p. 884.

[11] The three arms of Communications are Telecommunications, Information Technology and Broadcasting.

[12] Adegbemile A. A., "Developments in telecommunications in Nigeria and its impact on national development: Experience from around the world", 2007, 6(8), *Asian Journal of Information Technology*, p. 885.

[13] *Ibid.*

[14] The five companies are Chawaleks Telecommunications Ltd, SATCOMS Ltd, Nakaita Holdings Ltd, GPT Ltd and Murhi International Ltd.

[15] The six geo-political zones in Nigeria are: North-Central, North East, North West, South-South, South-West and South-East.

5. Period between 1992-2003

The Nigerian Communications Commission Act No. 75 of 1992, which founded the NCC, was passed in 1992. All telecommunications service providers are now regulated by the NCC, which was established to take over regulation of telecommunications operations from NITEL's Planning and Operation Division.

NITEL had 500,000 connections to a population of 100 million at the time of the start of deregulation in 1992.[16] The 1992 Act opened up the telecommunications sector to competition and regulation. The division of regulatory authority among the three arms of communications for a converged industry is a significant post-1992 legal framework issue.

When NCC was founded in 1992, the organization allowed private operators to participate in all sectors of telecommunications activity and compete against the then-government monopoly, NITEL.[17] However, NITEL held a monopoly over the telecommunications industry until 1999. Upon taking office in 1999, the President Olusegun Obasanjo Administration immediately got to work completely dereglementing the telecommunications industry, particularly by issuing licenses to Global System for Mobile Communications (GSM) service providers. The GSM Services were made available for purchase in August 2001, and numerous GSM operators have received licenses.[18]

The private consumer and business demand for high-quality telecommunications services at reasonable prices and competitiveness, as well as the need for shorter wait times for telephone installation and service delivery, are the driving forces behind the deregulation of telecommunications services in Nigeria.[19]

Diversification and complexity of customer wants; technological advancements; demand for increased corporate efficiency in light of constrained budgets; economic growth and job creation; and global trend. As a result of the aforementioned, the Nigerian government's decision to deregulate the telecommunications sector has had positive and far-reaching effects that are anticipated to provide the necessary leverage and serve as a catalyst for a variety of business, economic, social, and organizational developments.[20]

Strategically speaking, this means that NITEL, the national operator, has been given exclusive access to the key areas of public switches, trunks, and international services. The goal of this is to give social services and services to rural communities the appropriate cross-subsidy and incentive. Despite this, and to avoid impeding the participation of the private sector, the government has maintained that the national career, NITEL is required to provide network access and interconnectivity to other licensed operators, charge fair and competitive tariffs for such access and interconnectivity, focus its resources and efforts on the creation of the core infrastructure, i.e., the capacity of long-distance trunks and public switches.[21]

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[16] Adegbemile A. A., "Developments in telecommunications in Nigeria and its impact on national development: Experience from around the world", 2007, 6(8), *Asian Journal of Information Technology*,, p. 884.

[17] *Ibid*., 886.

[18] Osondu, C. N., Regulatory challenges in the Nigerian GSM market. Paper Presented at the Nigerian Bar Association Annual Bar Delegates Conference, Abuja, 2004.

[19] D. A. Ariyoosu, *An examination of the legal regulations and taxation of telecommunication and electronic commerce in Nigeria* (unpublished), a thesis submitted to the Faculty of Law, University of Ilorin in partial fulfillment of the award of Doctor of Philosophy in Law, 2012.

[20] *Ibid*.

[21] *Ibid*.

It was anticipated that NITEL would gain from more traffic created by private operators through its network as well as from improved revenue production and collection.

6. Conclusion

The growth of the telecommunications market in Nigeria has continued at geometric rates, thereby sustaining the market as one of the fastest growing telecommunications markets in the world. Nigeria is now officially the largest growth market for telecommunications in Africa and the Middle East, and possesses the most vibrant fixed and mobile telephony companies in Africa.[22]

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[22] D. A. Ariyoosu, *An examination of the legal regulations and taxation of telecommunication and electronic commerce in Nigeria* (unpublished), thesis submitted to the Faculty of Law, University of Ilorin in partial fulfillment of the award of Doctor of Philosophy in Law, 2012.


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Enhancing Rule of Law and Social Justice with the Principles of Separation of Power in Nigeria

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Abstract

The principle of rule of law and separation of power is very essential in any sane democratic society. Without rule of law, life will be nasty and there will be anarchy in the society. The principle of separation of power maintains that the three arms of government in Nigeria must be separated from one another and their functions performed differently and independently, that is, one arm of government should not perform the function of the other. This paper is intended to state the rule of law and principles of separation of powers and checks and balances, its meaning and scope and its application by the makers of the 1999 Constitution of the Federal Republic of Nigeria, the level of compliance with the principles in our constitutional experience and the attitude of the judiciary towards ensuring that the principle is preserved and complied with strictly. The relationship between the rule of law and social justice cannot be overestimated while the paper concluded that the operation of rule of law and social justice cannot be effectively felt without separation of power.

Keywords: rule of law, government, Nigeria, separation of power, constitution.

1. The principle of separation of powers

The doctrine of separation of power which derived its origin from Aristotle, John Locke and later Montesquieu is a device against abuse of power or what he called political liberty! He posited that the functions of governments of western states are of three kinds: (1) The legislative or law-making function is carried out by the legislature; (2) The executive function is carried out by the executive and when the Legislative and executive powers are vested or United in the same person or body, there can be no liberty. Again, there can be no liberty if judicial power is not separated from legislative and executive.[1] Thus separation of power could be described as sharing of powers by separate institutions. But not a complete independence of organs of government. They still have to work in cooperation although the independence is to safeguard a kind of checks and balance Montesquieu was writing from his experience in Western countries where functions of government are of three types: (1) the legislative, (2) executive function which is concerned with the formulation and carrying out of policies by executive usually called government, and (3) the judicial function which consist of interpreting and applying the law by the judiciary (Judges in the courts). In Britain parliament makes laws many of which gave power

[1] Barnet Hillarie Constitutional and Administrative law 5th Edition.

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to the government to do certain things.[2] Laws are not always clear in their meanings however and it is then the function of the courts to give a decision in case of dispute.[3] Thus, this French philosopher opined in the 18th century that the three functions of government should be kept separate. He argued that their separation would prevent one man or group of men from exerting too much power; each organ of government could act as a check on the others.[4] Separation of power ensures operation of rule of law and social justice if institutionalized by the constitution.

Inherent in the doctrine of separation of powers is the principles of checks and balances. The separation of these powers to check one another and balance their operation without encroachment of one-by the other is referred to as checks and balances.

This doctrine has been embraced all over the civilized world including Nigeria.

2. Separation of power in Nigeria governance

2.1 *Legislature*

This doctrine was entrenched in the constitution of the Federal Republic of Nigeria 1999 in section. 4, 5 & 6 Section 4. It provides that the legislative power of the Federal Republic of Nigeria shall be vested in the National Assembly which consist of a Senate and House of Representatives and shall have power to make laws for e peace, order and good government of the Federation or any part thereof with respect to any matter in Executive legislative list set in out in part I of second schedule to this constitution..., while the House of Assembly of a State shall have power to make laws for peace order and good government of the State or any part thereof with respect to any matter in the con-current legislative list set out is part 11 of second schedule to the constitution. On this section the court has held in Ekeocha Vs Civil Service Commission of Imo State & Anor.[5] (Under 1979 constitution) Oputa J. (as he then was) that in all cases of interpretation, the courts should adopt such a construction which will put the federal legislative in such a position so that it can legislate for the general interest of the whole country. The decision is a protection of legislative power of the National Assembly. This was also done in See A. G. of Bendel Vs A. G. Federation.[6]

2.2 *Executive*

The constitution provide that the executive powers of the federation shall be vested in the president and may subject as a-fore-said and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice President and the ministers of the government of the federation or officers in the public service and shall extend to the execution and maintenance of this constitution, all laws made by the National Assembly and a matters with respect to which the National Assembly has for the time being power to make laws while the executive powers of state is vested in the Governor of that state who may subject to the aforesaid and to the provision of any law made by the House of Assembly of a state be exercised by him directly or through the Deputy Governor and Commissioner of the Government of that state or

[2] Cavendish Press London, 1980.

[3] Separation of Power: An overview ncls.org.

[4] O'Brien David Constitutional law politics, 1991, www.norton&company, New York.

[5] 1980 suit no HC/8/80/1981 1 NCLR 154.

[6] 1981 1 NCLR 30.

officers in the public service of the state and shall extend to the execution and maintenance of the constitution.[7]

2.3 *Judiciary*

Section 6(i) provides the judicial power of the federation shall be vested in the courts to which this section relates being court established by law subject as provided by this constitution for state. Section 6(5) of this section relates to Supreme Court, Court of Appeal, Federal High Court, State High Court, Sharia Court of Appeal, Customary Court of Appeal and any Court that may be established by law. By amendment to the constitution, the National industrial court of Nigeria has created by section 254A-D of the constitution.[8]

5. 6(6): the judicial powers shall extend to inherent power and sanctions of a court of law, all matters between persons, between government or authority and any person in Nigeria and to all actions and proceeding thereto for the determination of any questions of as to civil rights and obligations of that person.

These are the provisions of Sections, 4-6 of the 1999 constitution which clearly entrenched the doctrine of separation of powers.

The Courts in Nigeria had made educative and illuminating pronouncements in their attempt to ensure compliance with these elucidated principles of law in the constitution. In the case of Unongo vs Aper Aku.[9] The Supreme Court held The Constitution of the Federal Republic of Nigeria 1979, which is hereinafter referred as the constitution, is very unique compared with the previous constitution in that the executive, the legislature and the judiciary each established as a separate organ of government. There is what can be termed a cold calculated rigidity in this separation as shown in Section 4, 5 and 6 of the constitution which established the legislative and the executive and the judicature respectively.

The real connecting link among these three is that they provide checks and balances on one another. But though there are checks and balances, one cannot and must not usurp the function of the other.

This case was reaffirmed in Attorney General of Bendel Vs Attorney General of the Federation[10] where ESO JSC said now it is time that the legislature, especially in a country like ours which has accepted the doctrine of separation of powers and which got that doctrine embodied in constitution, is "a master of its household." The exception to this sovereignty within its own household is where the powers of such legislature have been specifically restricted under the constitution.

Having tried to show the embodiment of the doctrine of separation of powers in our constitution of 1979 and 1999 both statutory and judicially it is however pertinent to mention that in a military regime which has characterized this nation since 1966, the doctrine of separation of powers wears a different look entirely.

Under the military the executive and the legislature are fused. The Head of state is the Chief executive and at the same the lawmaker, the law maker is the supreme military council, which the Head of state chaired. At the state level, the military cover nor is the law maker through promulgation of edits the Head of state makes laws through Decrees.

[7] Section 6 of the constitution of FRN 1999 as amended.

[8] Section 6 of Section 6 of the constitution of FRN 1999 as amended.

[9] 1990 4 NWLR (Pt 143) at 254.

[10] 1972 3 NCLR 166.

2.4 *Judicial check of legislative and executive*

The judiciary having been empowered by Section 6 of the constitution is at the apex of this checks and balances. The judiciary has the primary duty of inquiring into the legality of acts of executive and the legislature. Any question on whether the executive has acted intra vires or ultra vires or has complied strictly with the procedure, manner or form prescribed by law is determined the court. In order that the judiciary may be able to perform this function effectively the independence of the judiciary is a condition. This has been guaranteed in Sections 17 (2) (e) and section 230-254 A.D.

There are quite a number of cases where the judiciary had to caution the executive when the executive is acting ultra vires or for failure to comply with the manner and form prescribed by law in administrative or governmental action. In Okiti pupa oil palm Company limited Vs Hon. J. E. Jegede and others[11] an issue of constitutional importance was raised as to whether an injunction of any kind can be ordered by a court in Nigeria against the legislature as a body or against a member there of for act purported, to have been or is being, or about to be committed in course of its operation, it was held, inter alia, that once a court is properly seized with jurisdiction it will act within its inherent and constitution power to restrain any or the said arm which in pursuit of it constitutional function tends to over step it limited jurisdiction under the constitution, and by virtue of the constitution, it is within the lot of judiciary in its supervisory capacity to ensure that all the three arms of government i.e., the legislature, the executive and the components of the judiciary itself keep within the receptive area of powers, privileges and competence under the constitution ... This is in addition to the judiciary been checked through appeals and judicial review or amendment of the law.

This position was confirmed by the Supreme Court in Governor of Lagos State Vs Chief Odumegwu Ojokwu[12] where it held that "Executive lawlessness is tantamount to a deliberate violation of the constitution, when the executive is the military government which blends both executive and the legislative power together and which permits the judiciary to coexist with it in the administration of the country, then it is more serious than imagined the essence of rule of law is that it should never operate under the rule of force or fear, to use force to effect act and while under the Marshall of that force, seek the courts equity is an attempt to infuse timidity into court and operate a sabotage of the cherished rule of law It must never be."

Moving a step further on the supervisory role of the judiciary, over the executive the supreme court in Garba Vs University of Maiduguri,[13] – said "I would add to this admirable statement by Lord Denning that to give a blanket implementation to the decision of the executive, and without reference to the elementary rule of fairness is an abdication by the judiciary of its power to the executive especially in a country like ours where the power of each of the organs of government." Executive, legislature and the judiciary are distinct under the constitution.

The judiciary has also exercised its checks, supervision and control over the executive by inquiring into the use of presidential power by the president through his minister; see the case of Alhaji Abdul Darman Shugaba Vs Minister of Internal Affairs.[14] The plaintiff in that case was deported by the minister of internal affairs on the order of the president made under the immigration Act on the ground that as at the time of his election to the House of Assembly of Bornu State, he was not a citizen of Nigeria by birth as provided in S 23 of 1979 (now S. 25 of 1999 constitution). The plaintiff having proved that his father, was of Chad Republic but his mother was

[11] 1982 suit on How/8/80/1981.

[12] 1981 1 NWLR (Pt 18) 633 at 634.

[13] 1981 1 NCLR 218.

[14] 1981 1 NCLR 25.

a Nigerian of Kanuri tribe, the court held that the deportation was illegal, null and void and unconstitutional. It has also been stated that the court can examine whether the power conferred on the Governor to appoint commissioners in accordance with S. 173 (a) of the constitution has been properly used or not. This was in issue, in the case of Governor of Kaduna State Vs House of Assembly of Kaduna state[15] where the Governor of Kaduna State Alhaji Balarabe Musa sought an order of Mandamus from the court to compel the members of the House of Assembly to approve his list of nominees for office of Commissioners of Kaduna State. The court declined to grant this application because the House of Assembly had power to approve or reject the list or any person on the list of the governor.

Therefore, nominations must be confirmed by the House Assembly before the appointments are made. That being so, if a commissioner is sworn in without his appointment being confirmed, his appointment is invalid. This section 173 has also been interpreted to mean that a Governor has a legal duty to appoint commissioners, he does not have a choice in the matter. In Alh Lawal Kagoma Vs Governor of Kaduna State[16] it was held that since the Governor is merely a chief executive, there must be an Executive council. The constitution in S. 162 (2) describes the governor as the Chief Executive and not Sole Executive and thereby implies that there are other executives.

Another important way by which the judiciary checks the executive is by way of judicial review of administrative action. Where an administrative body or tribunal refused to follow the due process of law or the rule of natural justice, the court has inherent power under S. 6 (6) (a) (b) to review any administrative action or decision that failed to comply with the rule of natural justice such as Audi Alteram par tem (hear the other side), otherwise known as fair hearing in S. 33 of 1979 and (S. 36 of 1999 constitution) and Nemo judex in causa sua (you cannot be a judge in your own cause). That means an impartial umpire must adjudicate or arbitrate dispute, prosecution and determination of rights and obligations imposed by law.

This list of occasions where the judiciary had demonstrated its willingness and ability to check and did check the executive is in-exhaustive.

2.5 *Judicial check of legislature*

Under this topic we shall approach the issue in two ways because Nigeria is a federation comprising of states, we shall succinctly examine the judicial control of the legislature both at the federal and state level.

The National Assembly in its bid to exercise its power to conduct investigation of the executive in executing and/or administering laws, and disbursement or administering moneys appropriated or to be appropriated by the National Assembly under S. 82 summoned a journalist to come to the floor of the House to come and disclose the source of his information on the report and Editorial he Wrote in the Daily Times Newspaper. The court held that the right to freedom of expression protects a journalist's right not to disclose his source of information and therefore senate cannot demand for his source of information because it would amount to an infringement of his fundament al human right.[17]

The National Assembly in exercising the power conferred on it by S. 55 of 1979 & now (S. 59 of 1999) the constitution in respect of Appropriation Bill or Supplementary Appropriation Bill or any Bill, the payment or issue or withdrawal from the consolidated Revenue Fund or any

[15] 1982 3 NCLR (Vol 3) 229.

[16] 1982 3 NCLR Vol 3 420 or 1982 LPELR Sc 64.

[17] 1982 NCLR 340.

other public fund of the federation, the bill is to be passed by both Houses of National Assembly but when there is conflict between the two Houses, the President of Senate shall within 14 days call for a meeting of joint finance committee of the house and where the joint finance committee fails to resolve the issue then the Bill will be represented at a joint session of the National Assembly, if the Bill is passed, it is then presented to the president for assent. Where the president withholds his assent after 30 days of the presentation of the bill to him, the Bill will again be presented at a joint meeting of National Assembly and the Bill will be passed by 2/3 majority, the bill shall become law without the assent of the President.

The question whether the National Assembly had complied with this provision in passing the Allocation of Revenue (Federation Account etc.) Act No. 1 1981 was in issue in the case of Attorney General of Bendel State Vs Attorney General of the federation.[18] In the case Bendel state Challenged the constitutionality of the Act on the ground that it had not been passed by the National Assembly in the manner and form prescribed or required by the constitution. In the case the two Houses had been unable to agree on the Bill as a result of which it was referred under S. 55(2) to a joint finance committee of National Assembly. The committee apparently resolved the conflict but without any subsequent reference to either House, the decision of the joint finance committee was sent to the president for Assent. The Bill was signed by the president. The Supreme Court rightly held that the Act was invalid.

2.6 *Check of state legislature*

At the state level the constitutionality of a law or an Edict can also be decided by the judiciary. See military Governor of Ondo State Vs Adewumi.[19] The essence of that decision is, that a state law or Edict must not be inconsistent with the constitution as amended or a Decree. That constitutes a check on the state legislature by the judiciary against unguided legislation that is capable of causing confusion or chaos in the body polity.

In spite of the consolidation of this judicial control of legislation by judicial activism the courts have warned that it will not allow itself to be seized with frivolity in exercise of judicial power to check the legislature. The case of Hon. Edwin-Ume Ezeoke Vs Alhaji isa Aliyu Makafi[20] where the plaintiff was a member of the House of Representatives and the defendant, the speaker of the House. The plaintiff went to court as a result of an announcement made by the speaker in the House on Wednesday 28th day of May 1980 to the effect that he had received a letter from the leader of the plaintiff's party that he has been suspended from party's membership. The said announcement tended to indicate that the defendant was empowered to suspend the plaintiff from all standing committees of the House, the plaintiff sued the speaker for a declaration that the action of the speaker was unconstitutional he sought an injunction restraining the speaker from taking any step with reference to membership of the plaintiff in the House.

The defendant raises preliminary objection to the effect that since the cause of action was an internal matter of the House, the court has no jurisdiction to interfere. This objection was overruled but the court held that except there is a specific provision in the constitution as to any particular procedure the legislature must comply with, the court will not interfere with the internal proceedings of the legislature.

It is clear from the above case that the court is not a rubber stamp for executive action, nor will it allow the legislature to be subjected to ridicule by frivolous applications.

[18] 982 3 NCLR 166.

[19] 1988 JELR 479B(SC).

[20] 1982 3 NCLR 166.

3. Legislative control of executive action

3.1 *Approval of appointment*

S. 133 of 1979 & (now S. 147 1999) constitution gives the president the power to determine the number of ministers and to appoint ministers by sending the list of his nominees to the senate to approve or reject all or any of the nominees of the president failure by the president to get the approval of the senate will make his appointment invalid. The president can remove any appointed minister and substitute it with another one, but the substitution still has to pass through the normal approval procedure. S. 192 applies to appointment of commissioners by the state governor who shall submit the list of his nominees to the state House of Assembly for approval.

The State House of Assembly can approve or reject all or any part of the list of nominees of the Governor. S. 154 empower the president to appoint chairmen and members of parastatal subject to approval of senate. There are other Acts of National Assembly that subject appointment of executive to approval of senate i.e., EFCC Act ICPC Act etc.

3.2 *Check through appropriation bill*

S. 133 of 1979 & now S. 147 of 1999 constitution the National Assembly has to approve an appropriation Bill or supplementary Bill including any other payment, issue or withdrawal from the consolidated Revenue Fund or any other public fund of the federation and a Bill for the imposition or increase in any tax, or fee or any reduction, withdrawal or cancellation thereof. This approval must conform with the procedure laid down by the section see Attorney General of Bendel State Vs Attorney General of the federation & other[21] see constitution in respect of state House of Assembly of a state.

3.3 *Impeachment procedure*

S. 132 now 5. 143 of 1999 provides that where a notice signed by 1/3 of member of National Assembly is presented to the president of Senate stating that the holder of the office of president or vice president is guilty of gross misconduct in the performance of the functions of his office detailed particulars of which shall be specified.

The President of Senate shall serve the notice on the president or vice president and members of the National Assembly within 7 days of receipt of the notice and within 14 days the president or vice president shall reply in writing stating his defense to the allegation and the National Assembly, shall resolve whether or not to investigate the allegation by 2/3 majority votes of members. A committee of 7 shall carry out the investigation within 3 months and their report will be presented to the House and if this report is adopted, the president or vice president shall stand removed from the office. This proceeding for removal from office of the president is not questionable in the court of law, see S. 170 (10) of 1979now s. 188 (10) of 1999 constitution for removal of Governor from office and Governor of Kaduna State Vs House of Assembly of Kaduna State.[22] The provision is plausible because the president cannot be prosecuted for a criminal offence while in office as per section 308, therefore the only way by which he can be censored would be under impeachment process. On the jurisdiction of the court to inquire into the propriety of impeachment proceeding in S. 143 (10) it is suggested that this- subsection should be expunged from the constitution because it is capable of making the legislature to exercise the power maliciously or absolutely. In the United States the impeachment panel of inquiry is headed by the

[21] Sections 112 of 1979 and 120 of 1999 Constitution of FRN as amended.

[22] 1981 1 NCLR 414.

Chief justice, so same procedure is recommended for Nigeria. See also S. 144 of removal of chairmen and members of federal parastatal, Boards and Commissions. Section 188(10) has been given a liberal interpretation that once a legislative House refuse to follow the procedure in section 188 (1) +(9) meticulously such impeachment procedure would be declared void by the court. See cases of Ladoja, Peter Obi and Dariye. These cases changed the trend in Balarabe musa v Kaduna State House of Assembly.[23]

4. Auditing of account and appointment of auditor

Now, sections 85 and 86 of 1999 provides for auditing of account by both Federal and State government and the Audit report to be submitted to the National Assembly in case of Federal government and to state House of Assembly in case of state government. The Auditor is vested with independence so that he can discharge his function honestly. The Federal Civil Service Commission recommends this appointment which will be confirmed by the Senate. He is also to set standards for state owned enterprises and compile list of auditors for them under the new constitution, this is to ensure probity in public enterprises.

5. Power to conduct investigation on spending of the executive

Each House of National Assembly is empowered to conduct investigation on any matter with respect to which it is empowered to make law and the conduct of affairs of any person, authority, ministry or government department charged with the responsibility of executing or administering laws enacted by the National Assembly and disbursing or administering money appropriated by National Assembly. In addition to its legislative power each of National Assembly enjoys the power of conducting, investigation in order to gather information needed to legislate, to propose constitutional amendments or to perform other constitutional actions. Under this power each house of National Assembly can conduct investigations to correct any defects in the existing laws. The House can expose corruption, inefficiency, or waste in spending of public funds. But the limit of this power had been decided in the case of Tony Momoh Vs Senate[24] supra (see section 88 and 128 of 1999 constitution). It is under this section that the legislature in Nigeria conducts public hearing on Bills.

6. Declaration of war

Section 5 (3) (a) and (b) of the constitution provides:

(a) "the president shall not declare a state of war between

The federation and another country except with the sanction of a resolution of both Houses of the National Assembly sitting in a joint session;" and

(b) "except with the prior approval of the senate, no member of the Armed forces of the Federation shall be deployed on combat duty outside Nigeria."

The above quoted section actually limits the exercise of executive powers of the president. The president cannot declare war without the prior sanction of the legislature. The Armed Forces cannot be deployed for any combat duty outside Nigeria without the prior approval

[23] Hon Mute Balonwu & others v Hor peter obi (2007) lawcarenigeria.com inakoju v Adeleke 2007 NCSC 30, 2007 4 NWLR (Pt 1025) 427 Hon Micheal Dapialing V Cheef (Dr) Joshua Dunye 2007 NGSC 148.

[24] *Ibid*.

of the Senate. And when the armed forces are deployed to any place before approval of Senate, the president must request for approval within 30 days of the deployment.

7. Legislative control of the judiciary

This is exercised by the legislature under section 9 of the constitution; this section empowers the legislature to amend any part of the constitution following the manner and form prescribed by the constitution.

8. Conclusion

It has been shown both statutorily and by judicial precedent that the constitution of the federal Republic of Nigeria 1999 made adequate provision for the operation of the principles of separation of powers and checks and balances in order to ensure a stable democratic culture in Nigeria. The provisions are far-reaching and are many steps ahead of the 1963 republican constitution that operated parliamentary democracy allowing for fusion of legislative and executive powers and this culminated into the public disorder that led to the military takeover of 1966. It must also be stressed that integration of the principle of separation of power in constitution is the foundation for democracy and good governance if the operators of the constitution can keep to it. The operation of the spirit and the letters of the provisions on the doctrine of separation of power in Nigeria will enhance the rule of law and social justice if the different organs of government perform its role without encroachment on the roles of the other organs of government. There will be a harmonious relationship among the organs of government, and this will ensure good governance. Rule of law and social justice is not restricted to those in governmental authorities alone, but it is the duty of every individual who is dealing with any other person to ensure that he complies with the rule of law.

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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.

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

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 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

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

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

(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.

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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