AN EVALUATION OF THE ARBITRATION AND MEDIATION ACT, 2023 OF NIGERIA: AN ANALYSIS OF ITS IMPACT ON DISPUTE RESOLUTION IN NIGERIA.

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Abstract

The field of arbitration and mediation has witnessed remarkable developments over the years, with legislative changes significantly reflecting evolving global practices. In an attempt to get up to speed with the evolving nature of global best practices in the arbitration and mediation ecosystem, Nigeria enacted the Arbitration and Mediation Act[1] to repeal the 35-year-old Arbitration and Conciliation Act of 2004, which was first enacted in 1988. The Arbitration and Mediation Act aims at providing a comprehensive framework for Alternative Dispute Resolution in Nigeria. The Act addresses the deficiencies of the Arbitration and Conciliation Act and goes a step further in introducing some innovative provisions, which have been examined in this paper. The paper critically evaluated the Act and its impact on dispute resolution in Nigeria. Using the doctrinal research approach, the paper analysed the key provisions of the Act, its alignment with international best practices, and its potential effects on the judiciary, the legal profession, and businesses. The findings revealed that the Act represents a significant improvement over previous legislation, though faced with several limitations and potential challenges. Ultimately, the paper contributed to the ongoing debate on the role of arbitration and mediation in Nigeria's dispute resolution landscape. It was recommended that, even though the Act is a major step towards bringing Alternative Dispute Resolution in Nigeria in tune with global best practices, more work needs to be done to close up the apparent loopholes therein.

Keywords: Arbitration, Mediation, Alternative Dispute Resolution, International Best Practice.

1. Introduction

The last few decades have witnessed a growing fervor, a sweeping gale of civilisation designed to refine litigation through a less cumbersome, more amicable and speedier means.[2] Where two or more people are involved in contractual synergies, the inevitability of disagreement and conflicts is as comparable to oxygen in the daily life of humans.[3] After thirty-five years of being the principal legislation regulating arbitration practice in Nigeria, it became clear that the Arbitration and Conciliation Act[4] needed to be refreshed to bring it in line with international best practices and to address some of its gaps and limitations. Although the Nigerian House of Representatives passed the Bill for repeal of the ACA in 2020, it was not until May 2023 that the Bill was finally signed into law.[5] The Arbitration and Mediation

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1 2023

2 Nnamani, G., *Customary Law in Nigeria: Practice and Procedure in the Customary Court and the Customary Court of Appeal*, Enugu, Chenglo Limited, 2020, 78.

3 Abdulrahman, S.T., and Rilwanu, S.M., *The Statutory Regime of Resolution of Trade Disputes in Nigeria: A Critical Overview*, Asian Journal of Social Science and Management Technology, Volume 2 Issue 5, September – October, 2020, www.ajssmt.com. Accessed on 9th March, 2025.

4 Hereinafter referred to as ACA.

5 Azikiwe, U., Onyia, F., and Ugah, M., *Nigeria*, The Middle Eastern and African Arbitration Review, 2024, *globalarbitrationreview.com*. Accesse4d on 9th March, 2025.

Act, 2023[6] is the major legal framework for Alternative Dispute Resolution[7] in Nigeria. There are various mechanisms for ADR which include: arbitration, mediation, conciliation, negotiation, early neutral evaluation, mini-trial amongst others. By the wording of the title of the Act, it would appear that the Act covers only arbitration and mediation. Quite unlike the previous legislation, the ACA, which previously governed conciliation, the AMA 2023 makes no specific provisions for conciliation. However, by virtue of the definition of *mediation* in *section 91 (1)* of the AMA, the Act seems to have included conciliation in its definition of mediation. Hence, it would appear that conciliation in Nigeria is also governed by the AMA, 2023.

The importance of ADR cannot be overemphasized. Little wonder why there has been a recent repeal of the over 35-year old ACA. The Courts have also emphasized the all-important role of ADR in dispute resolution. In the defining case of *NNPC v Fung Tai Eng Co. Ltd*.,[8] the Supreme Court of Nigeria delivered a judgment of significant importance to the nation's arbitration landscape. The decision stands out for its firm endorsement of arbitration principles. It underscores the finality of arbitration awards and the limited role of judicial review, establishing a precedent of immense value for the future of arbitration in Nigeria.[9] Given that society is prone to conflict due to human nature and the pursuit of self-interest, the social conflict theory, as postulated by Karl Marx, is pertinent to this paper. This is because conflict resolution ultimately rests with the people. ADR strategies can be used as a practical guide to figuring out how people can get along peacefully without doing away with disagreements entirely.

2. Explanation of Keywords

2.1 Arbitration

Arbitration is the fair resolution of a dispute between two or more parties by a person or persons other than by a court of law.[10] This is the most popular form of Alternative Dispute Resolution, as evident in many local and international arbitral institutions already in place.[11] An exercise is not arbitration, strictly so-called, if it does not answer to this definition, notwithstanding that it is described as arbitration.[12] Thus, in *Nigeria Ports Authority v Panalpina World Transport Nigeria Limited & ors*.,[13] it was held that an arbitration board appointed not to settle a dispute but to determine the value of certain assets taken over by the government from certain companies is not an arbitration within this definition.

Arbitration is a procedure for the settlement of disputes, under which the parties agree to be bound by the decision of an arbitrator whose decision is, in general, finally and legally binding on both parties.[14] The process derives its force principally from the agreement of the parties

6 Hereinafter referred to as AMA 2023 or the Act.
7 Hereinafter referred to as ADR.
8 (2023) 15 NWLR (Pt. 1906) 117.
9 Broderick Bozimo Company, *Arbitration in Nigeria: Insights from NNPC v. Fung Tai*, 2023, *broderickbozimo.com*. Accessed on 9th March, 2025.
10 Ajogwu, F., *Commercial Arbitration in Nigeria: Law and Practice*, 2nd Ed., Centre for Commercial Development, 2013, 5.
11 Lagos Court of Arbitration, London Court of International Arbitration, American Arbitration Association, United Nations Commission on International Trade Law (UNCITRAL),, Permanent Court of Arbitration at the Hague, Singapore International Arbitration Centre, China International Economic Trade Arbitration Commission, *inter alia.*
12 Ezejiofor, G., *The Law of Arbitration in Nigeria*, Longman Nigeria Plc., 1997, 3.
13 (1974) 4 U.I.L.R., 89.
14 Orojo, O.J., and Ajomo, A.M., *op. cit*, 3.

and, in addition, from the State as supervisor and enforcer of the legal process.[15] So where two or more persons agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more impartial persons of their choice, in a judicial manner, the agreement is called an *arbitration agreement*.[16] Arbitration, in its general sense, is a process of dispute resolution in which a neutral third party known as an arbitrator renders a decision after the conduct of proceedings in which both parties each has an opportunity to be heard.[17] It is also an arrangement for taking and abiding by the judgment of selected persons in some disputed matter, instead of carrying it to established tribunals of justice, and is intended to avoid the formalities, delay, expense and vexation of ordinary ligation.[18]

2.2 Mediation

Mediation is a voluntary and non-binding process of dispute resolution distinct from arbitration.[19] Here, a trouble shooter (a third party) known as the Mediator kindles dialogue between the disputing parties with a view to getting them to mend fences.[20] The mediator tries to help the parties come to a settlement on their own terms.[21] A mediator is a person who is trusted and accepted by both parties to a dispute.[22] His role is to assist the parties to reach an agreed settlement of the dispute. The procedure he adopts to achieve this is to meet each party privately, so as to understand that party's own side of the story.[23] Thereafter, he tries to bring the parties together so that they may themselves work out a compromise solution to the dispute. He does not himself suggest a solution to the parties and cannot compel them to reach a settlement.[24]

Mediation is a form of non-adversarial Alternative Dispute Resolution.[25] It is a negotiation facilitated by a third party neutral. It is a structured, interactive process where an impartial third party, the mediator, assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques.[26] Mediation is a form of non-adversarial Alternative Dispute Resolution.[27]

2.3 Alternative Dispute Resolution

ADR refers to any method of resolving disputes without litigation.[28] The term *Alternative Dispute Resolution* is generally used to describe the methods and procedures used to resolve disputes either as alternatives to the traditional dispute resolution mechanism of the court or in some cases, as supplementary to such mechanism.[29] ADR regroups all processes and techniques of conflict resolution that occur outside of any governmental authority.[30]

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15 *Ibid*.
16 *Ibid*.
17 Nnamani, G., *op. cit*, 85.
18 *Wauregan Mills Inc. v. Textile Workers Union of America A.F.I.O.C.I.O.*, 21 Conn. Sup. 134, 146A2d592; Black's Law Dictionary, 6th Ed., 105; Nnamani, G., op. cit, 85.
19 Nnamani, G., *op. cit*, 83.
20 *Ibid*.
21 *Ibid*.
22 Ezejiofor, G., *op. cit*, 7.
23 *Ibid.*
24 *Ibid*.
25 Bone, S., Osborn's Concise Law Dictionary, 9th Ed., London, Sweet & Maxwell, 2001, 249.
26 WikiCleaner Bot, *Mediation*, *en.m.wikipedia.org*. Accessed on 9th March, 2025..
27 *Ibid.*
28 Wex Definitions Team, *Alternative Dispute Resolution*, Cornell Law School, 2021, www.law.cornell.edu. Accessed on 14/10/2024.
29 Orojo, O.J. and Ajomo, A.M., *Law and Practice of Arbitration and Conciliation in Nigeria*, Lagos, Mbeyi & Associates (Nigeria) Limited, 1999, 4.
30 Wex Definitions Team, *op. cit*.

Alternative Dispute Resolution is a process in which a neutral third party - a mediator or arbitrator – helps parties who are embroiled in a dispute to come to an agreement.[31] It is an alternative means of resolving disputes as opposed to the traditional routine of going to Court for the sole purpose of settling disputes.[32] As earlier stated, disputes are inevitable. They may be civil, commercial or domestic in nature. In a bid to settle the conflict, the affected parties usually go to Court in order to seek redress or to have the issue(s) resolved. These matters could be heard for about two years or more as a result of the complexity of judicial proceedings, copious amount of cases to be heard by a single Judge or Magistrate and the financial burden borne by the parties in trying to obtain justice. For the apparent inconvenience, a need to consider alternative methods of settling disputes arose.[33] In *Harsley v Milton Keynes General NHS Trust*,[34] ADR was defined as a collective description of the methods of resolving dispute otherwise than the normal trial process.

The importance of ADR is now pivotal to the Nigerian legal system. *Section 19(d)* of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the settlement of disputes by arbitration, mediation, conciliation, negotiation and adjudication. Generally speaking, ADR has gained widespread acceptance in trade and commercial disputes, to the extent that in some jurisdictions, the Court Civil Procedure Rules now require some parties to resort to some type of ADR, usually in the form of mediation, before permitting the parties' cases to be tried.[35] The Federal High Court (Civil Procedure) Rules, 2019[36] provides for supportive Court interventions in arbitral proceedings. High Court (Civil Procedure) Rules of various States also provide for reference of cases to ADR.[37] More so, *Rule 15(3)(d)* of the Rules of Professional Conduct for Legal Practitioners, 2023 mandates lawyers to attempt an Alternative Dispute Resolution before bringing any matter before the Court for hearing. Alternative Dispute Resolution is the collective name given to the several methods of dealing with disputes without going to Court. The methods used in ADR are negotiation, mediation, conciliation, arbitration, early neutral evaluation, facilitation, mini trials expert appraisal, summary jury trials, mediation-arbitration[38] *inter alia*.[39]

2.4 International Best Practice

Internal Best Practice is a method or approach to a procedure that has been globally accepted as superior to any alternative technique used in doing that same thing, because it has become a gold standard.[40] International Best Practice means using standards, practices, methods and procedures conforming to applicable law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected of a skilled and

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31 Shonk, K., *Dispute Resolution*, Harvard Law School, pon.harvard.edu, 2024. Accessed 30/10/2024.

32 Adenekan, A.F., *Alternative Dispute Resoluttion in Nigeria*, Michaelmas Chambers www.michaelmaschambers.com, 2020. Accessed 30/10/2024.

33 Ogbiti, P.O., *Reasons for the Increasing Acceptability of Alternative Dispute Resolution (ADR) Mechanism in Nigeria*, Paper presented at a seminar themed "Construction Arbitration for Quality Surveyors & Other Professionals, June, 2015, 4.

34 (2004) E.W CA 576.

35 Ajogwu, F., *Commercial Arbitration in Nigeria: Law and Practice*, 3rd ed., Thomson Reuters ProView, www.fabianajogwu.com. Accessed 31/10/2024.

36 *Order 19*.

37 See *Order 19* of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018*; Order 28* of Lagos State High Court (Civil Procedure) Rules2019; *Order 3 Rule !2* and *Order 25 Rule 6* of Imo State High Court (Civil Procedure) Rules, 2017.

38 Otherwise known as med-arb.

39 Adenekan, A.F., *op. cit*.

40 Archibong, F., *et al*, *International Best Practice:* ***Understanding the Core Difference between Medical Laboratory Science and Clinical Laboratory Medicine in Nigeria*****, Nigerian Journal of Medicine, March – April, 2021,** ***journals.lww.com*****. Accessed on 9th March, 2025.**

experienced person engaged in a similar type of undertaking under similar circumstances.[41] While often used interchangeably, International Best Practice and Global Best Practice have slightly different connotations. Global Best Practice encompasses practices that are widely recognized and implemented worldwide, regardless of geographical boundaries or cultural differences.

3. Arbitration Framework Prior to the Enactment of the AMA

The first piece of arbitration legislation in Nigeria was the Arbitration Ordinance, 1914, which was based on the English Arbitration Act, 1889. The Ordinance was subsequently re-enacted as the Arbitration Ordinance, 1958,[42] The Arbitration Ordinance, 1958 which had 19 sections, was applicable to the Northern, Western and Eastern Regions and to Lagos and the Southern Cameroons as if they were each a Region[43] and it related only to domestic arbitration. Each of the regions later adopted the Arbitration Ordinance, 1958 and incorporated it into their respective regional laws.[44]Although the Arbitration Ordinance, 1914 became inadequate and could not deal with many of the new situations that arose after its enactment, it remained the principal arbitration legislation in Nigeria for a long period until the Arbitration and Conciliation Decree (later the ACA) was promulgated in 1988 under military rule. The ACA was enacted to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation and to make the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) applicable to any award made in Nigeria or any contracting state arising out of international commercial arbitration.[45]

The Arbitration Rules of the United Nations Commission on International Trade Law[46] were applicable in Nigeria, having been enacted as the Arbitration Rules in the First Schedule to the ACA. The ACA substantially conformed to the UNCITRAL Model Law. Although the UNCITRAL Model Law was revised in 2006, Nigeria did not amend the ACA to incorporate the revised provisions of the Model Law. The AMA incorporates the revised provisions of the Model Law.

4. Key Provisions and Innovations in the Arbitration and Mediation Act, 2023.

The Act introduced several novel provisions which remarkably modify the existing legislative arbitration framework and has the potential to transform the landscape of arbitration in Nigeria. According to its Explanatory Memorandum, the AMA repealed the ACA and aims to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation. It makes the New York Convention applicable to any award made in Nigeria or any contracting state to the Convention arising out of international commercial arbitration. This paper does not attempt to undertake an exhaustive section-by-section comparison of the AMA with the ACA; rather its focus is to highlight some of the most impactful or innovative provisions of the AMA. In appropriate cases, comparisons are made with the ACA to show how the AMA has either improved or completely changed the provisions of the ACA. Some of the notable provisions of the Act are:

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41 Law Insider, *International Best Practice Definition, lawinsider.com/dictionary/international-best-practice*. Accessed on 9th March, 2025.

42 Laws of the Federation of Nigeria and Lagos, 1958, Cap 13.

43 Arbitration Ordinance, 1958, *section 1(2)*.

44 See, for example, Laws of Western Region of Nigeria, 1959, Cap 8, Arbitration Law.

45 Azikiwe, U, *et al, op. cit*.

46 Referred to as UNCITRAL in this paper.

1. *Creation of a review mechanism for arbitral awards:*

A significant innovation of the Act is its provision for the creation of an Award Review Tribunal,[47] an opt-in mechanism that gives the parties the option to specify in their agreement that arbitral awards may be reviewed by a second arbitral tribunal in the event that a party seeks to make application based on *section 55(3)* of the Act which provides for grounds for application for setting aside an award. The Award Review Tribunal, constituted in the same way as the tribunal in the original arbitration, shall endeavour to give its decision within 60 days from the date of its constitution;[48] and during this time any enforcement proceedings must be stayed pending the decision of the Tribunal.[49]

2. *Expanded definition of in writing*

The meaning of the word *writing* as a requirement for a valid arbitration agreement was broadened in *section 2(2)* of the AMA, which provides that an arbitration agreement shall be considered to be in writing if its content is recorded in any form, regardless of whether the agreement or contract was concluded orally, by conduct or by any other means.

Section 2(4)(a) provides that the in-writing requirement is also met if it is drafted by a means of electronic communication, as defined in *section 91*, and the information contained in it is accessible for subsequent reference. *Section 91* defines *electronic communication* to mean any communication that the parties make by means of data messages, that is, any information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange, electronic mail, telegram, telex or telecopy.

The definition of the word *writing* in the AMA is markedly broader and more robust than in the equivalent ACA provision, which seems to lean more in favour of a document signed by the parties or that is in physical form. The AMA, therefore, reflects modern commercial realities whereby contracts are entered into electronically.[50]

3. *Death or change of status of a party to an arbitration agreement*

Section 3 of the ACA provided that an arbitration agreement shall not be invalidated by reason of the death of any party to the agreement, but shall, in that event, be enforceable by or against the personal representative of the deceased. *Section 4* of the AMA is wider in scope. In addition to providing that an arbitration agreement shall not be invalidated owing to the death of any of the parties to the agreement, it also provides that the authority of an arbitrator shall not be revoked by the death, bankruptcy, insolvency or other change in the circumstances of any party by whom the arbitrator was appointed.

4. *Courts' power to stay proceedings pending reference to arbitration*

The contradictory provisions of *sections 4(1)* and *5(2)* of the ACA created confusion regarding whether the Courts are mandated to order a stay of proceedings pending arbitration or whether their power in this regard is discretionary.[51] While *section 4(1)* provided that, upon the request of any of the parties, the court shall order a stay of proceedings and refer the parties to arbitration before the parties' submission of their first statements on the substance of the dispute, *section 5(1)* provided that if any party to an arbitration agreement commences an action in any court with respect to a matter that is the subject of the agreement, any party

47 *Section 56*.
48 *Section 56(6)*.
49 *Section 56(7)(a)*.
50 Azikiwe, U, *et al, op. cit*.
51 *Ibid.*

to the agreement may apply to the court to stay the proceedings at any time after appearing but before delivering any pleadings or taking other steps in the proceedings.

The ACA further provided that the court may make an order staying the proceedings if it is satisfied that:

(1) there is no sufficient reason why the matter should not be referred to arbitration under the arbitration agreement, and
(2) the applicant was, at the time the action was commenced, and remains ready and willing to do all things necessary to the proper conduct of the arbitration.

The Courts interpreted *section 5(2)* of the ACA to mean that a party applying for stay of proceedings needed to have commenced arbitration, which was unduly burdensome considering that it is not the party that applies for stay of proceedings that has a claim. The Court of Appeal in the case of *UBA v Trident Consulting Limited*[52] held that the party applying for a stay of proceedings pending arbitration must demonstrate unequivocally by documentary evidence that it is willing to arbitrate. The decision was affirmed by the Supreme Court in July 2023[53] when it held that the party applying for a stay of proceedings pending arbitration must demonstrate unequivocally by documentary evidence that it is willing to arbitrate. This means that, but for the intervention of the AMA, the position under Nigerian law would have been that, to succeed in an application for a stay of proceedings, the party applying must demonstrate unequivocally by documentary evidence that it is willing to arbitrate.[54]

The confusion caused by the contradiction between *sections 4(1)* and *5(1)* of the ACA has been resolved by *section 5(1)* of the AMA, which makes it mandatory for a court to grant an application for stay of proceedings pending arbitration unless the arbitration agreement is found to be void, inoperative or incapable of being performed. This referral should occur before the parties' first statement on the substance of the dispute.[55]

5. Mediation

Part II of the AMA provides for mediation. Unlike the ACA which did not provide for mediation, the AMA provides for the settlement of both domestic and international disputes through mediation, subject to Nigerian law.

6. Default number of arbitrators

Under the AMA, a notable alteration is the adjustment of the default number of arbitrators from three to one.[56] This alteration carries substantial significance, particularly in the context of domestic arbitrations, where the burden of compensating three arbitrators has posed a hindrance for participants. This shift aligns Nigeria's arbitration framework with established global standards, mirroring provisions of the UNCITRAL Model Law. In cases where the involved parties cannot agree on a single arbitrator, an intriguing provision in *section 7(3)* empowers the non-defaulting party to seek recourse through the Court or, remarkably, any arbitral institution operating in Nigeria to facilitate the appointment process.[57]

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52 (2013) 4 CLRN 119.
53 *UBA PLC v. Trident Consulting Limited* (2023) 14 NWLR (Pt. 1903) 95.
54 Azikiwe, U, *et al, op. cit*.
55 *Ibid.*
56 *Section 6(2)*.
57 Aderoju, T., *The Nigerian Arbitration and Madiation Act 2023: A Comparison with the Arbitration and Conciliation Act 2002 and Global Practices*, International Bar Association, 2023, *ibanet.org*. Accessed on 9th March, 2025.

7. Emergency arbitrators

Another noteworthy provision in the AMA is the introduction of the emergency arbitrator proceedings, outlined in *section 16*. This provision enables parties to seek interim relief before the formation of the Arbitral Tribunal by applying to their designated arbitral institution of the Courts for the appointment of an emergency arbitrator. This provision is designed to streamline and expedite the arbitration process in Nigeria.[58] It aligns with the arbitration procedure rules of leading global arbitral institutions such as the London Centre for International Arbitration[59] and the International Chamber of Commerce.[60]

8. Arbitrator's immunity

The AMA acknowledges and grants immunity to arbitrators, appointing authorities, and arbitral institutions executing their duties, except in cases of proven bad faith.[61] This provision is aimed at protecting arbitrators while carrying out their responsibilities. It is similar to the protection given to judicial officers. It ensures impartial decision-making by alleviating concerns about personal liability, allowing arbitrators to focus solely on the merit of the cases and to exercise independent judgment without fear of legal consequences from their decisions.[62]

Other notable innovations in the AMA 2023 are:

i. the use of accessible electronic communication;
ii. recognition and enforcement of interim measures;
iii. statute of limitation for arbitral proceedings;
iv. consolidation of arbitral proceedings;
v. joinder of parties; and
vi. third-party funding.

5. Impact of the AMA 2023 on Dispute Resolution in Nigeria

The AMA 2023 has had significant impact on the judiciary, on legal practitioners and on businesses. They are examined, *inter alia*, as follows:

1. Impact on the judiciary

a. Reduction of the workload of the judiciary, as more cases are likely to be resolved through arbitration and mediation. This is because the Act provides a more efficient and effective framework for ADR, encouraging parties to resolve their disputes outside the courts;[63] and
b. Increased autonomy of arbitral tribunals, which are now empowered to grant interim measures, such as temporary injunctions and preservation of assets. This reduces the need for parties to approach the Courts for interim reliefs, thereby streamlining the arbitration process.

58 *Ibid*.
59 Referred to as LCIA in this paper; *Article 9B*, LCIA Arbitration Rules.
60 Hereinafter referred to as ICC; *Article 29*, ICC Rules of Arbitration.
61 *Section 13*(1).
62 Aderoju, T., *op.cit*.
63 *Ibid*.

2. *Impact on the legal profession*

   a. New opportunities for lawyers: The AMA recognizes third-party funding and emergency arbitrator proceedings. This provides new opportunities for lawyers in these areas;
   b. Shift in focus: The AMA's emphasis on mediation as a mechanism of dispute resolution may lead to a shift in focus for lawyers, with more emphasis on ADR;
   c. Need for specialization: The complexity of the provisions of the AMA may lead to a need for lawyers to specialize in arbitration and mediation, requiring additional training and expertise;[64] and
   d. Global Best Practices: The AMA's alignment with global best practices in arbitration and mediation may lead to an increase in international arbitration cases in Nigeria, creating new opportunities for lawyers.

3. *Impact on businesses*

   a. As a result of the provision of a more efficient and effective legal framework for ADR, businesses can resolve disputes quickly and cost-effectively; and
   b. Third-party funding: The Act allows third-party funding which enables businesses with limited financial resources to pursue ADR.

6. Challenges to the Implementation of the Arbitration and Mediation Act, 2023

The laudable innovations of the AMA notwithstanding, the AMA is faced with several clogs in the wheels of its effective implementation. Some of these have been identified briefly as follows:

   i. The Act does not specify any other means of enforcement of awards arising from the arbitral tribunal, other than resort to the same courts that were intended to be avoided when resort was had to ADR;
   ii. The Act is fraught with loopholes which pose great challenges to the effectiveness of ADR in Nigeria. The loopholes include: Courts' intervention; unethical conduct of Counsel as a result of shortage of a binding uniform code and worldwide authority to enforce same; no prescribed time frame for arbitration; and no standard or precise cost fixed for arbitration;
   iii. The challenge of non-standardization of the AMA, 2023 with ADR procedures and protocols. This makes the Act to not align with International Best Practices in ADR, which can hinder the effective resolution of cross-border disputes.

7. Conclusion/Recommendations

The Arbitration and Mediation Act has established a legal framework that promotes the transparency, speed, autonomy and enforceability of arbitral awards and mediation settlement agreements. These critical elements are essential for a robust and efficient arbitration system that solves the evolving needs of businesses and individuals seeking fair and effective dispute resolution by impartial tribunals, free from unnecessary delays or costs. The Act also demonstrates Nigeria's commitment to bolstering its reputation, promoting arbitration within its borders and aligning its practices with global standards in international arbitration. However, no legislation is flawless. Challenges may arise during the

[64] *Ibid*.

implementation and interpretation of the Act which call for ongoing evaluation and potential amendments to address emerging issues appropriately.

To achieve a foolproof legal framework for ADR in Nigeria, it is recommended as follows:

1. The Act should specify other means of enforcement of arbitral awards other than resort to the Courts. Having to go back to the Courts to enforce the decisions of arbitral tribunals defeats the very aim of ADR, which is to avoid long and time-consuming litigation;

2. More should be done to ensure that the obvious lacuna in the Act are closed up. The Act should be amended to specify uniform codes for behavior of Counsel involved in ADR. There should be specific time frame provided for arbitration and mediation. Cost of arbitration and mediation should be set out to prevent corruption.

3. The AMA should be standardized with ADR protocols and procedures so that it can align with international best practices in ADR.