International Journal of Law, Politics & Humanities Research
Published by Cambridge Research and Publications
Vol. 8 No. 6
June, 2025.

COURT INTERVENTION IN ARBITRATION AND THE NATIONAL POLICY ON ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION 2024 VIS-À-VIS THE ARBITRATION AND MEDIATION ACT 2023: PATHWAYS AND PITFALLS

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DOI: https://doi.org/10.70382/caijlphr.v8i6.021

Abstract

In order to bring the law and practice of arbitration in Nigeria to the level of contemporary international best practice, the Federal Government of Nigeria recently passed into law the Arbitration and Mediation Act 2023 and formulated the National Policy on Arbitration and Alternative Dispute Resolution 2024. This paper examines Nigeria's national policy approach to Alternative Dispute resolution (ADR) mechanisms through the lens of the Arbitration and Mediation Act of 2023. It analyzes how this legislation represents a significant shift in Nigeria's dispute resolution framework, aligns with international best practices, and supports Nigeria's economic development goals. The paper further explores the policy implications of this Act on Nigeria's justice system, business environment, and international trade relations, while also examining the socio-political context that necessitated this legislative reform and the anticipated impact on various stakeholders in the Nigerian legal and business landscape. The paper made recommendations on how to efficiently use these legislative and executive interventions in arbitration as a tool to ensure there is reduction in use of court intervention to frustrate the law and practice of arbitration in Nigeria and engender economic growth.

Keywords: Arbitration, Alternative Dispute Resolution (ADR), Arbitration and Mediation Act 2023, Court Intervention, National Policy on Arbitration

Introduction

Concerns regarding costs and delays in legal proceedings, coupled with the rise of globalization, have prompted the adoption of more flexible dispute resolution methods that serve as alternatives to traditional court litigation, which is bound by the laws and procedures of individual countries. Disputes are an unavoidable part of human interaction, manifesting in various forms such as domestic, international, civil, commercial, or economic conflicts. The practice of resolving disputes, both formally and informally, has existed long before recorded history.

In Nigeria, the Judiciary is the institution empowered to resolve disputes through the use of the courts and its processes.[1] However, studies have shown that there are about 25 million legal issues every year[2] and with this huge volume of cases and couple with inefficiencies such as bureaucracy, time wasting, costly, adversarial nature and lack of privacy of Nigeria courts, Alternative Dispute Resolution (ADR) especially Arbitration has become an increasingly popular means of dispute resolution globally. The landscape of arbitration and alternative dispute resolution (ADR) in Nigeria has been historically marred by inadequate institutional support, courts interference, lack of stakeholder confidence, and insufficient alignment with international best practices.

The first part of the paper made some conceptual clarifications in order to aid the understanding of the scope and intent of some terms in the paper. The second part analyses the applicable provisions in the Arbitration and Mediation Act 2023 with respect to instances of Court intervention in arbitration while the third part will discuss court intervention provisions in the National Policy of Arbitration and Alternative Dispute Resolution (ADR) 2024. The fourth part of the paper will examine the pitfalls of the implementation of the provisions on court intervention in the National Policy of Arbitration and Alternative Dispute Resolution (ADR) 2024 as well as the Arbitration and Mediation Act 2023. The fifth part of the paper will discuss the pathways for the implementation of the provisions on court intervention in the National Policy of Arbitration and Alternative Dispute Resolution (ADR) 2024 as well as the Arbitration and Mediation Act 2023. The sixth part ends with recommendations and conclusion on the anatomy of court intervention within the confines of the National Policy of Arbitration and Alternative Dispute Resolution (ADR) 2024 as well as the Arbitration and Mediation Act 2023.

Conceptual Clarifications

Some concepts will help the understanding of this paper. Some of these concepts are briefly discussed as follows:

Arbitration: Arbitration is a form of Alternative Dispute resolution in which the parties work out the disputed issue without going to court. An impartial third party, known as an Arbitrator, is chosen by the parties to listen to their case and decide. The meeting takes place outside court, but it is in form of a hearing, in that both sides present testimony and evidence. As arbitration has been set as a method of relieving the congestion of court calendars, the decision the arbitrator makes is almost always final, and the courts will only rarely reconsider the matter[3]. Halsbury's Laws of England[4] define arbitration as the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.[5] Also, in the case of *C N Onuselogu*

[1] Constitution of the Federal Republic of Nigeria 1999, s 6
[2] Okere C., Akinola O. B., Awoyale O., 'A Review of the Innovations of the Arbitration and Mediation Act 2023'. In, 'The Dialectic of Alternative Dispute Resolution: Selected Essays in Honour of His Lordship, Hon. Justice Adedotun Grace Onibokun, PhD'. Law Lexis Int. (2023) p 104
[3] Definition of Arbitration <Arbitration - Definition, Examples, Cases, and Processes> accessed on 23 March 2025
[4] Q Hogg, Halsbury's Law of England (4thedn, LexisNexis 2003), p 15.
[5] The Supreme Court of Nigeria in the case of ***NNPC V LUTIN INVESTMENT Ltd*** (2006) 12 NWLR (pt 96) at page 504, in defining arbitration relied on the definition by Halbury's Laws of England.

Enterprises Ltd V Afribank (Nig) Ltd[6], the Court of Appeal defined arbitration as an agreement, where two or more persons agree that a dispute or potential dispute between them shall be resolved and decided in a legally binding way by one or more impartial persons in a judicial manner, upon evidence put before him or them. Arbitration, therefore, is a method of resolving disputes outside the courts, where an independent third party (the arbitrator) makes a binding decision.

Alternative Dispute Resolution: Alternative Dispute Resolution (ADR) is a mechanism for basket of procedures outside the traditional system of litigation or strict determination of legal rights.[7] It may also be elucidated as a range of procedures that serves as alternatives to litigation though the courts for the resolution of disputes, generally involving the intercession and assistance of a neutral and impartial third party.[8] Those Mechanisms exist in different forms, such as mediation, arbitration, negotiation, conciliation, rent – a – judge, mini trial, med-arb, etc. The Constitution of the Federal Republic of Nigeria, 1999 gave the foundation on the use of ADR in Nigeria[9]. By implication, it provides that settlement of disputes can be done by arbitration, mediation, conciliation, negotiation and adjudication.

Court Intervention in Arbitration: Court intervention in arbitration entails invitation for the courts to intervene or interfere in arbitral proceedings either by making pronouncement in line with public policy or in line with legal provisions requesting courts to intervene as of necessity. The essence of court intervention in arbitration is to ensure procedural compliance and attainment of justice within the confines of the tenets of justice in all ramification.

A Review of the Provisions of the Arbitration and Mediation Act, 2023 Vis-À-Vis Court Intervention in Arbitration

Arbitration in Nigeria has deep historical roots, influenced by both traditional dispute resolution mechanisms and the colonial legacy of English law. Customary arbitration practices prevailed before colonialism, which introduced formal legal systems. Following independence, Nigeria sought to modernize its arbitration framework, leading to the enactment of the Arbitration and Conciliation Act of 1988 (ACA), which was designed to incorporate international standards, particularly the UNCITRAL Model Law and the New York Convention. The framework for arbitration in Nigeria has evolved significantly since the colonial era, where traditional and customary practices often took precedence over formal legal systems. The introduction of the Arbitration and Conciliation Act (ACA) of 1998 marked a major shift, aligning Nigeria's arbitration laws with international standards, particularly the UNCITRAL Model Law. This was aimed at providing a more efficient and reliable mechanism for resolving commercial disputes without reverting to the court system. The recent enactment of the Arbitration and Mediation Act (AMA) 2023 further modernizes this framework, incorporating contemporary practices and addressing gaps in the Arbitration and Conciliation Act 1988.

[6] [2005] 1 NWLR (pt 940) 577.
[7] O. Agbakoba, 'Need for National Arbitration Institution in Nigeria' in O. D Amucheazi and C. A Ogbuabor (eds) *Thematic Issues in Nigerian Arbitration Law and Practice* (Varsity Press Ltd, 2008) 1-8, at 2.
[8] P. O. Idornigie, 'Alternative Dispute Resolution Mechanisms' in A. F Afolayan and P. C Okorie (eds), *Modern Civil Procedure Law* (The Dee-Sage Nigeria Ltd, 2007), 563-585 at 563.
[9] CFRN 1999 (as amended) s. 19(d)

The National Assembly passed the Arbitration and Mediation Act 2023, which seeks to repeal the Arbitration and Conciliation Act Chapter ACT.18, Laws of the Federation of Nigeria, 2004 which came into force on the 14th of March 1988.[10] This current Act which was passed as a Bill on Tuesday, 10 May 2022 and was assented to by former President Muhammadu Buhari on May 26, 2023.

Considering the fluid landscape of international arbitration, international trade and foreign investment, Nigeria was long overdue for a modern arbitration and mediation legislation which caters to the complexity of the times. The trajectory of the legislative reform was not linear, with several attempts at legislative amendment preceding the 2023 Act. Notable among these was the Arbitration and Conciliation Act (Repeal and Re-enactment) Bill of 2017, which passed the National Assembly but did not receive presidential assent.[11] This iterative process reflects the complex stakeholder dynamics and competing interests that characterized the legislative reform journey.

There are instances which would necessitates court intervention in arbitration such as public policy, misconduct of an arbitrator, stay of proceedings, appointment of emergency arbitrator to mention but a few. For example, in the case of *A.G. Ondo State v. A.G. Federation*,[12] the court set aside an award on public policy grounds, creating concerns about the unpredictability of enforcement. The vague nature of the public policy exception has led to inconsistent judicial decisions. Secondly, the slow pace of judicial proceedings in Nigeria can hinder the timely enforcement of awards, impacting the overall effectiveness of arbitration as a dispute resolution mechanism.

Appointment of Emergency Arbitrator

A notable innovation in the Act is the introduction of emergency arbitrator provisions, which allow parties to obtain urgent interim relief before the constitution of the arbitral tribunal.[13] An emergency arbitrator is a person appointed to provide urgent interim measures in an arbitration case, particularly when the main arbitral tribunal has not yet been formed. They act quickly to address immediate threats or harm, allowing parties to obtain necessary relief before the full arbitration process begins. Section 20 of the Act empowers emergency arbitrators to grant interim measures, addressing a significant gap in the previous framework.[14] This provision reflects a policy recognition of the importance of quick response mechanisms in commercial disputes where time is often of the essence.

Section 16(1) of the Arbitration and Mediation Act 2023 provides that a party that require emergency relief may, concurrent with or following the filing of a request for a dispute to be referred to arbitration but before the constitution of the arbitral tribunal, apply for the appointment of an emergency arbitrator to any arbitral institution designated by the parties, or, failing such designation, to the court as defined in section 91. The court as defined in section 91

[10] Arbitration and Conciliation ACT,2004
[11] Nigerian Investment Promotion Commission. (2022). *Investment Climate Assessment Report*. Abuja: NIPC Press
[12] *A.G. Ondo State v. A.G. Federation* (2002) 9 NWLR (Pt. 772) 222.
[13] S 16 of the Arbitration and Mediation Act 2023
[14] Queen Mary, (2022). *International Arbitration Survey: The Evolution of International Arbitration*. London: Queen Mary University of London.

of the Arbitration and Mediation Act 2023 means the High Court of a State, High Court of the Federal Capital Territory or the Federal High Court, unless the parties otherwise agree, and except for the purpose of appointment of an arbitrator (including an emergency arbitrator). Court further means the Chief Judge of any of the courts referred to in section 91 of the Arbitration and Mediation Act 2023 sitting as a Judge in Chambers.

The inclusion of emergency arbitrator provisions aligns with similar developments in major arbitration jurisdictions and institutional rules, including the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA).[15]

Stay of Proceedings

Under the repealed Arbitration and Conciliation Act 1988, the court had the discretion to allow or reject an application for a stay of proceedings depending on the ability of the Applicant to show *sufficient reason* or willingness to proceed with arbitration as per the arbitration agreement.[16] Alatise is of the opinion that one of the ways through which courts support arbitral tribunal is judicial intervention in the conduct of arbitration, either before, during or after the arbitral proceedings.[17]

Section 5(1)(2)(3) of the Arbitration and Mediation Act 2023 provides for stay of proceedings in certain instances except such arbitration agreement is void or inoperative or incapable of being performed. AMA provides that the court shall not later than when submitting their first request, if any of the parties must have submitted its first statement on the substance of the dispute refer parties to arbitration.[18] The law has tactically shut the door against using it as a means to stay proceedings in an arbitration. Section 5(2) of the Arbitration and Mediation Act 2023 has now authorized the Arbitral tribunal to continue with the proceedings pending when the court decides.[19]

However, where a court makes an order for stay of proceedings under section 5(1) of the Arbitration and Mediation Act 2023, the court may for the purpose of preserving the rights of parties, make an interim or supplementary order as may be necessary.[20]

By the Supreme Court decision in *The Owners of MV Lupex v Nigerian Overseas Chartering &Shipping Ltd (MV Lupex)*[21] the court overruled the decisions of the lower courts that had refused to grant the stay of an action commenced by a party who had agreed to arbitration in London, had submitted to the jurisdiction of the arbitral tribunal and had even filed a counterclaim before the tribunal. In the lead judgment, Mohammed JSC summarized the principle thus: "where parties have chosen to determine for themselves that they would refer any of their dispute to arbitration instead of resorting to regular courts a prima facie duty is cast upon the courts to act upon their agreement.[22]

[15] s 20, Arbitration and Mediation Act, 2023.
[16] s 5 of the repealed Arbitration and Conciliation Act 1988
[17] Ibid.
[18] Gbenga Bamodu, Judicial Support for Arbitration in Nigeria: On Interpretation of Aspects of Nigeria's Arbitration and Conciliation Act. Journal of African Law, University of London, 2018, p 6
[19] S 5(2) Arbitration and Mediation Act 2023
[20] Ibid. s 5(3)
[21] (2003) 15 NWLR (Part 844) 469
[22] Gbenga Bamodu, Judicial Support for Arbitration in Nigeria: On Interpretation of Aspects of Nigeria's Arbitration and Conciliation Act. Journal of African Law, Univerisyt of London, 2018, p 6

Invitation to Appoint Judicial Officer as Arbitrator

Judicial officers usually appoint arbitrators in two capacities: where the arbitration agreement names a judicial office holder, in which case he is constituted an appointing authority; and where the intervention jurisdiction of the court is invoked. It is necessary to draw a distinction between a judicial officer as appointing authority by agreement of the parties and appointment of an arbitrator by the court in default of the parties. In the former, the judicial officer performs a personal and not a judicial function, and as such, the judicial process need not determine the procedure for appointment.[23] In such a case, the judicial officer acts as appointing authority by agreement of the parties in the same manner as any qualified office holder could act as appointing authority if the parties agree. The situation is different when the judicial officer exercises the default appointment powers under section 7(3)[a][b][c][d] of the Arbitration and Mediation Act 2023. Where the parties have agreed that a judicial officer should appoint the arbitrator, they merely need to ask the judicial officer to do so. The default mode of appointment by the courts is activated only when the Arbitration Institution has failed or is unable to appoint the arbitrator pursuant to the parties' agreement and the parties are unable to resolve this.

Enforcement of Arbitral Award

For purposes of amplification, section 57 of AMA mandates the courts to recognize and enforce arbitral awards in Nigeria. The above section operates in respect of awards from a domestic arbitration. However, sometimes the award to be enforced is issued outside the territory of Nigeria, nevertheless, the AMA and the National Policy on Arbitration and ADR 2024[24] has similar provisions urging courts to recognize and enforce international arbitral awards upon application to the court, and irrespective of the country that issues the award. By this provision, the requirement for enforcement by the court is to apply in writing to the court seeking leave of the court for the enforcement of the award. Besides the mandatory exhibits which the application must attach; which are the award and the original arbitration agreement, the AMA does not specify the mode of this application.

In practice, as always, the case, the unsuccessful party often challenges the award in court. The unsuccessful party may have grounds upon which he prays the court to set aside the award and thus avoid compliance. In both cases, parties will revert to courts which they have earlier avoided to litigate the dispute. We are therefore of the opinion that the provisions of enforcing arbitral award change their initial spot of an amicable settlement to the customary litigation process. Section 57(3) of the Arbitration and Mediation Act 2023 provides that an award may by leave of the court, be enforced as judgment or order to the same effect. This process is typically governed by international treaties, such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. [25] Courts in Nigeria have reinforced the principles of the New York Convention, emphasizing that arbitral awards should be recognized and enforced

[23] s 7(3) of the Arbitration and Mediation Act 2023
[24] s 51 of ACA
[25] Okekeifere, A. I. (1997). "Enforcement and Challenge of Foreign Arbitral Awards in Nigeria" *Journal of International Arbitration* (1997) 14, 223.

unless there are compelling reasons not to do so, thus illustrating the legal framework surrounding the enforcement of arbitral awards.

Extent of Court Intervention in Arbitration the Arbitration and Mediation Act 2023

The Arbitration and Mediation Act explicitly limits court intervention, stating that a court shall not intervene in any arbitration matter except where expressly permitted by law. Section 64 of the Arbitration and Mediation Act 2023 provides for the extent of court intervention in arbitration as follows: A court shall not intervene in any matter governed by this Act, except where it is provided in this Act.[26]

Judicial intervention in the enforcement and recognition of arbitration awards is primarily governed by Sections 57 and 58 of the AMA. The court is empowered to recognize and enforce arbitral awards but may refuse such enforcement on specific grounds, including incapacity of a party, invalid arbitration agreements, or if the award is against public policy.

Award Review Tribunal

The New Act introduced an Award Review Tribunal. The Court is still left with an unregulated extent of freedom to defer or interfere with the arbitral processes. For instance, section 54(2) of the Act[27] provides that a default party who has failed to pay the arbitrator fees can apply to the court for an order with respect to the delivering of the arbitral award. The amount of the fees and expenses payable shall also be determined by the means and upon the terms as the court may direct. The creation of the Arbitration Review Tribunal (ART) reflects Nigeria's commitment to enhancing the arbitration process and addressing the challenges previously faced in the arbitration landscape. The ART serves as a specialized body designed to handle challenges against arbitral awards. Its key functions include:

i. The ART provides a platform for parties aggrieved by an arbitral award to seek a review, thus ensuring that disputes can be resolved without resorting to lengthy court processes.
ii. According to the AMA, parties may agree to have their awards reviewed by the ART, which consists of the same number of arbitrators as the original tribunal.[28]
iii. The ART is mandated to conduct its proceedings efficiently, with a timeline for rendering decisions, which helps maintain the momentum of dispute resolution. The ART is expected to render its decision within 60 days of being constituted.[29]
iv. By providing a review mechanism outside the traditional court system, the ART aims to minimize unnecessary judicial intervention, thereby respecting party autonomy. This aligns with the principles of the National Policy on Arbitration and ADR, which advocates for a culture of minimal judicial interference.[30]

[26] s 64 of AMA 2023
[27] *Ibid.*
[28] Ibid. s 56 of AMA 2023.
[29] Ibid s 56(6)
[30] The National Policy on Arbitration and ADR 2024, Section 1.0.

While the ART presents various benefits, it could also face some challenges. There may be a lack of awareness among stakeholders about the ART's existence and its functions, which could lead to underutilization. Secondly, the effectiveness of the ART relies on the availability of qualified arbitrators who can serve on the tribunal. There may be concerns about the expertise required to handle complex commercial disputes adequately. Thirdly, the ART might face challenges in maintaining consistency in its rulings, especially in light of varying interpretations of the law by different tribunals.

Analysis of the National Policy on Arbitration and Alternative Dispute Resolution (ADR), 2024 Vis-À-Vis Court Intervention in Arbitration in Nigeria

The National Policy on Arbitration and Alternative Dispute Resolution (ADR), 2024, represents a pivotal shift in Nigeria's approach to dispute resolution. The policy aims to position Nigeria as a leading arbitration hub by addressing historical challenges such as inadequate institutional support, lack of confidence in the arbitration system, and judicial intervention.[31] By prioritizing ADR and promoting a culture of arbitration, the policy signals a commitment to modernize Nigeria's justice system and align it with international standards, particularly under the UNCITRAL Model Arbitration Law (UNCITRAL, 2023). This alignment is essential for attracting foreign investment, as investors typically seek jurisdictions with robust and reliable dispute resolution mechanisms.[32] However, the effectiveness of these reforms in achieving their stated goals remains uncertain, particularly in light of existing challenges and the need for effective implementation.

The 2024 Policy was approved by the Federal Executive Council (FEC) on July 15, 2024, and aims to position Nigeria as a preferred arbitration hub in Africa by addressing historical challenges, such as a lack of confidence in the arbitration system and inadequate institutional frameworks.[33] The policy is designed to align Nigeria's legal framework with international best practices, particularly those established by organizations like UNCITRAL and international treaties such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[34]

The primary objectives of the National Policy include the following:

i. The policy seeks to enhance the growth and practice of ADR in Nigeria, thereby reducing reliance on traditional court litigation (National Policy on Arbitration and ADR, 2024).
ii. It aims to ensure that Nigerian arbitration laws comply with various international arbitration conventions and treaties, reinforcing the country's commitment to international trade and investment.[35]

[31] Templars, 'National Policy on Arbitration and ADR: A Positive Step for Nigeria?' https://www.templars-law.com last accessed 21st March, 2025.
[32] Amaechi, S. 'Judicial Intervention in Arbitration: Perspectives from Nigeria' *Nigerian Journal of Arbitration*, (2023) 12(2), 45-67.
[33] Templar's, '*National Policy on Arbitration and ADR: A Positive Step for Nigeria?* <https://www.templarslaw.com> last accessed on the 21st March, 2025.
[34] United Nations Commission on International Trade Law, *UNCITRAL Model Law on* <https://uncitral.un.org/en/model-laws> last accessed on the 21st March, 2025.
[35] ibid n(1)

iii. The policy promotes a judicial culture that respects arbitration agreements and minimizes court interference, thereby enhancing the autonomy and finality of arbitral awards.[36]

iv. By establishing Nigeria as a hub for arbitration, the policy aims to stimulate economic growth and attract foreign investments, ultimately leading to improved business environments.[37]

Several key provisions in the policy are noteworthy, such as:

a) The introduction of small claims arbitration aims to provide an accessible and efficient dispute resolution mechanism for individuals and small businesses, with claims not exceeding NGN 5,000,000 (National Policy on Arbitration and ADR, 2024).[38]

b) The policy emphasizes the role of courts in supporting arbitration, mandating them to respect arbitration agreements and stay litigation proceedings in favor of arbitration.

c) An Advisory Council composed of arbitration experts is established to oversee the implementation of the policy, ensuring continuous evaluation and adaptation to emerging trends in arbitration. [39]

The policy requires Federal and State Ministries of Justice to maintain registers of ongoing arbitration cases and agreements, promoting transparency and accountability in arbitration practices. Also, a significant aspect of the National Policy is its emphasis on reducing court interference in arbitration proceedings. The policy instructs courts to respect arbitration agreements and refrain from entertaining actions that should be resolved through arbitration.[40] This directive aims to foster a judicial culture that supports arbitration, thereby enhancing the efficacy of the arbitration process. However, while it encourages courts to stay proceedings in favor of arbitration, the effectiveness of this provision depends on consistent judicial adherence and the implementation of specialized rules to expedite arbitration-related matters.[41]

Pitfalls in the Effective Implementation of the New Act and Policy

While the Arbitration and Mediation Act 2023 is a worthwhile piece of legislation with many innovations, it still had some inherent problems notably with regards to freeing itself from the apron string of the court when a party challenges or wishes to activate an arbitral award.

Absence of Clear Regulations on Third-Party Funding (TPF)

Third-party funding (TPF) occurs when an external entity finances a party's legal costs in exchange for a portion of any financial settlement awarded through arbitration. This mechanism enhances access to justice by assisting parties who lack the financial resources to pursue

[36] Amaechi, S '*Judicial Intervention in Arbitration: Perspectives from Nigeria*' *Nigerian Journal of Arbitration,* (2023) 12(2), 45-67.
[37] Mubarak Opeyemi Nurudeen, *et al* '*Adaptive Strategies for Investor-State Arbitration: A Framework for Emerging Economies to Safeguard National Interests and Attract Investment*' *Global Journal of Research in Multidisciplinary Studies*, (2024) 2(01), 050-067.
[38] National Policy on Arbitration and ADR, 2024
[39] The National Policy on Arbitration and ADR, 2024
[40] Templars, 'National Policy on Arbitration and ADR: A Positive Step for Nigeria?' https://www.templars-law.com last accessed 21st March, 2025.
[41] Amaechi, S. 'Judicial Intervention in Arbitration: Perspectives from Nigeria' *Nigerian Journal of Arbitration*, (2023) 12(2), 45-67.

arbitration. However, the Arbitration and Mediation Act 2023 does not provide explicit regulations governing third-party funding.

Award Review Tribunal

Even though the New Act introduced an Award Review Tribunal, the Court is still left with an unregulated extent of freedom to defer or interfere with the arbitral processes. For instance, section 54(2) of the Act[42] provides that a default party who has failed to pay the arbitrator fees can apply to the court for an order with respect to the delivering of the arbitral award. The amount of the fees and expenses payable shall also be determined by the means and upon the terms as the court may direct.

The National Policy on Arbitration and Alternative Dispute Resolution (ADR) 2024 is an unequivocal demonstration of some bold steps towards the enhancement of Arbitration practice in Nigeria. Some of the provisions truly represents a constructive and useful milestone to push the frontiers of arbitration practice.

The National Policy on Arbitration and ADR (2024-2028) provides some roles for the court such as encouraging the courts to respect arbitration agreements but the policy seems to lack enforcement power. The 2024 policy also advocates for expedited arbitration procedures.

Notable among them is the introduction of the 'Small Claim Arbitration" as a welcome development as it expands the scope of people or parties, especially the disadvantaged who hitherto may not have access to these mechanisms. While the N5 million threshold is commendable for small claims, however given the economic realities of the exchange rate, the amount is less than $3500 and many Small and Medium Scale Enterprises enter into contracts above this amount and would have benefited from Arbitration and ADR in resolving disputes arising from their business transactions.

In the same vein, the requirement that only the Attorney General of the Federation or State for the approval of arbitration of disputes up to N50 Million may lead to further bottleneck and bureaucracy which may undermine the intent of the policy. It should have a included a timeline which such approval shall be given by Attorney General.

The 60-day timeline prescription for the filing and conclusion of the arbitration process is a very important step. Additionally, the 270-day timeline for the filing, hearing and determination of appeal is another welcome development. This will ensure that at least there is a finality to the arbitration process. In the same vein, the recommendations for the Court of Appeal to be the final court that can hear appeals is a welcome development but the amount should have been pegged to a threshold and the issues that can be beyond the court (Appellate Court) in the interest of justice.

The registration and establishment of records of all arbitration matters is commendable. This against the background of some recent case where some national assets have been put in jeopardy as a result of lack of coordination by the state and Federal government in arbitration cases.

[42] *Ibid.*

Pathways in the Effective Implementation the New Act and Policy

The courts' role should be supportive rather than obstructive, focusing on administering justice without stifling the arbitration process. The balance between judicial oversight and party autonomy remains a contentious topic in Nigerian arbitration discourse. However, legislative and policy implementation must have at the back of their mind, the original intention of the parties to avoid the court. Hence, their recourse to arbitration. The court should therefore not be the last resort but a means to an end, which end is settlement of the disputes between the parties through arbitration.

The implications of the National Policy for legal practice and business are profound. By fostering a robust arbitration framework, the policy enhances the attractiveness of Nigeria as a destination for international arbitration, which could lead to increased foreign direct investment (FDI). Legal practitioners will need to adapt to the evolving landscape, ensuring they are well-versed in the provisions of both the National Policy and the Arbitration and Mediation Act of 2023. This includes understanding the new small claims arbitration procedures and the impact of third-party funding arrangements, which were introduced in the AMA. Additionally, businesses can expect faster and more efficient dispute resolution processes, which are critical for maintaining competitive advantages in the marketplace.

Introduction of Timelines for Resolution of Cases

The 60-day timeline prescription for the filing and conclusion of the arbitration process is a very important step. Additionally, the 270-day timeline for the filing, hearing and determination of appeal is another welcome development. This will ensure that at least there is a finality to the arbitration process. In the same vein, the recommendations for the Court of Appeal to be the final court that can hear appeals is a welcome development but the amount should have pegged to a threshold and the issues that can be beyond the court (Appeal Court) in the interest of justice.

Establishment of an Advisory Council

The policy proposes the establishment of an Advisory Council comprising arbitration and alternative dispute resolution experts, along with the President of the Nigerian Bar Association (NBA), to provide necessary advice to the Attorney General of the Federation (AGF). The council is saddles with responsibilities of:

(a) Monitoring and Evaluation which entails overseeing the implementation of the policy and assessing its effectiveness
(b) Stakeholder Engagement which entails collaborating with relevant stakeholders to ensure alignment with industry best practices
(c) Policy Review and Improvement which entails advising the Attorney General of the Federation on necessary amendments and enhancement to the policy as require.
(d) Regional and International Advisory entails providing insights on regional and global developments in arbitration and ADR to keep Nigeria's dispute resolution framework competitive and up to date.

Engagement of Counsel

The policy looks to promote the engagement and development of Nigerian counsels in arbitration proceedings as it implores Federal and State MDAs to adopt a clear and transparent process in engaging Nigerian counsel in arbitration and ADR proceedings[43]. In the event that a foreign counsel is engaged on the grounds of experience and expertise, the foreign counsel must partner with a Nigerian counsel[44] ensuring that the Nigerian counsel gains hands on experience in the course of the prosecution of the case.

Arbitration Selection Process

The policy seeks to prioritize the appointments of "Nigerian Arbitrators" in the arbitration selection process by providing that where parties agree to appoint sole arbitrator, the appointee must be a suitably qualified and competent "Nigerian arbitrator". Additionally, the policy provides that where parties fail to agree on the appointment procedure or appointing authority, the Attorney General of the Federation or the State, as the case may be, shall request the Regional Centre for International Commercial Arbitration Lagos (RCICAL) or another recognized arbitration centre or institute to appoint qualified and competent Nigerian arbitrators for the Federal or State MDAs.

Approval of the Attorney General in Claims exceeding Fifty Million Naira

The policy also states that for disputes involving claims exceeding N50,000,000 (Fifty Million Naira), any appointment can only proceed with the approval of the Attorney General of the Federation or the state[45]. For claims below this threshold, parties may appoint arbitrators without requiring any such approval.

Some Pitfalls in the Implementation of the National Policy on Arbitration and ADR, 2024 and AMA 2023

Despite the benefits and institutional backing for Arbitration and Mediation in Nigeria, the effectiveness of these methods in resolving disputes continues to be a topic of considerable discussion among legal, commercial, and academic professionals. Key factors influencing the success of these alternative dispute resolution mechanisms include the degree of awareness and acceptance within the business community, the enforceability of Arbitration and Mediation results, and the proficiency of ADR practitioners.

Nigeria is a Federation with a Federal constitution. In the event of conflict between the National Policy on Arbitration and ADR 2024 and state arbitration laws; 'the poser is which one prevails'. Is it the laws of the legislative house or the executive policy of the Federal Government? This poser is necessary because there would be instances where there would be conflict of interest in adherence to arbitration agreements by the sub nationals. A policy remains a policy and therefore a mere guidepost which may be merely persuasive and toothless.

[43] Ibid 7.0
[44] ibid
[45] Ibib 6.0

With the doctrine of covering the field, the Arbitration and Mediation Act 2023 may prevail in case of conflict with state laws on arbitration but it seems arbitration falls into the concurrent list in the constitution which allows both tiers of government to make laws in respect thereof. Where this is so, states should be monitored to ensure they do not violate treaty provisions regards to entering to international contracts, loan obligations, International arbitration agreements and efficient coordination from the Debt Management Office. In this wise, the states must be guided by the checkmating provisions of the National Policy on Arbitration and ADR, 2024.

In addition, the statutory requirements for the formation of arbitration agreements under the Act remain insufficiently defined, especially with respect to the procedural and formal criteria that must be met to ensure enforceability. This lack of clarity leads to practical difficulties when arbitration agreements are called into question, as it is not always clear what evidence or documentation is necessary to demonstrate the formation of a binding agreement. In practice, this uncertainty may result in costly legal disputes over the validity of arbitration clauses, ultimately undermining the effectiveness of arbitration as a preferred mechanism for resolving commercial conflicts. This situation is particularly problematic for parties engaged in international business transactions, where clear and unambiguous arbitration agreements are essential to facilitate dispute resolution across jurisdictions.

Furthermore, while the Arbitration and Mediation Act of 2023 introduces a range of reforms aimed at modernizing Nigeria's arbitration practices, concerns remain about the alignment of these reforms with international standards. One area of particular concern is the Act's ability to effectively address issues related to cross-border arbitration agreements. As Nigeria increasingly becomes a hub for international commerce and investment, it is critical that its arbitration framework is fully compatible with global arbitration standards, particularly the conventions and treaties that govern the recognition and enforcement of foreign arbitral awards. If the provisions of the Act are not harmonized with international best practices, there may be significant challenges in ensuring the recognition and enforcement of arbitration agreements and awards in jurisdictions outside Nigeria. This could deter international parties from selecting Nigeria as a forum for arbitration, undermining the country's position as an attractive destination for international business and investment.

Although the Act aims to limit court intervention[46], it retains significant judicial oversight, particularly concerning the enforcement of interim measures and awards. This duality may create uncertainty for parties seeking to resolve disputes without court interference. Certain provisions, particularly regarding the appointment of arbitrators and the grounds for challenging awards, may be ambiguous, leading to potential litigation and disputes.

Foreign investors may perceive excessive judicial intervention as a risk, potentially discouraging investment in Nigeria due to fears of arbitrary court decisions. In the event of a conflict between the National Policy and the AMA, the AMA will prevail due to its statutory nature as legislation passed by the National Assembly, which has the force of law. The AMA explicitly states that the provisions of the Act apply, and since it is legislation, it takes precedence over policy

[46] Ibid s 64

documents.[47] The AMA states, that it is applicable to all arbitration agreements concerning arbitration that commences after its enactment, which includes state laws.[48]

In the same vein, the requirement that only the Attorney General of the Federation or State for the approval of arbitration of disputes up to N50 Million may lead to further bottleneck and bureaucracy which may undermine the intent of the policy. It should have a included a timeline which such approval shall be given by Attorney General.

Judicial intervention can be viewed as a hindrance to party autonomy, as it introduces an element of court oversight that may undermine the finality of arbitration. However, the AMA seeks a balance by allowing limited judicial oversight, which is essential for safeguarding parties' rights. The Courts shall not intervene in matters governed by the AMA unless explicitly provided for in the Act.[49]Judicial intervention can threaten party autonomy when courts refuse enforcement based on broad interpretations of public policy or incapacity, potentially leading to increased litigation and uncertainty.

Conclusion and Recommendations

Both instruments aim to promote arbitration and ADR, the National Policy on Arbitration and ADR serves as a strategic roadmap, whereas the Arbitration and Mediation Act, 2023, provides legal enforceability, the policy focuses on institutional development and best practices, while the Act ensures statutory compliance and enforceability. Together, they strengthen Nigeria's dispute resolution landscape and improve investor confidence. Policy executioners must avoid the pitfalls highlighted as challenges above and ensure they follow the pathways in alignment with the law and practice of arbitration in line with global best practices. This will put a stop to the embarrassment Nigeria faces in terms of placing a lien its assets in foreign countries when enforcing foreign arbitral award against Nigeria or any of its contracting subnational.

In order to tackle some of the pitfalls of the policy and AMA 2023 with respect to court intervention and related developments in the new Act and Policy, it is apposite to make the following recommendations:

i. Implement comprehensive awareness campaigns targeting legal practitioners, businesses, and investors to educate them about the new policy's objectives and benefits.
ii. Invest in training programs for arbitrators and members of the ART to ensure they possess the necessary skills and knowledge to handle disputes effectively.
iii. Establish a framework for the regular review of the ART's operations and its alignment with international best practices to ensure its effectiveness and relevance.
iv. Ensure that the workings of the ART are aligned with the objectives of the National Policy on Arbitration and ADR, fostering a cohesive approach to dispute resolution in Nigeria.
v. The policy should provide clearer guidelines on how state laws will interact with federal laws to prevent jurisdictional conflicts and ensure that state-level initiatives do not

[47] Ibid s 89
[48] Ibid s 89(1))
[49] Ibid s 64(1)).

undermine the national objectives of the policy. Under 1999 Constitution of Nigeria, arbitration falls under the concurrent legislative list, allowing both federal and state governments to legislate on arbitration matters.

vi. Ensure periodic reviews of both the AMA and the National Policy to address emerging challenges and align with global best practices.

IJLPHR: E-ISSN 3027-0634 P-ISSN 3027-1754