

INTRODUCTION

This paper seeks to draw upon the experiences of Nigeria as a growing mediation movement to serve as a blueprint for emerging mediation movements.

Nigeria, often described as the most populous black nation has a current estimated population of 200 million (200,963,599)¹ and is divided into 36 states with the Federal Capital Territory (F.C.T.) as the political seat. The commercial centre which is Lagos state, is about 3, 577 sq.km in size and has a current estimated population of 14,862,111². With this population and the number of businesses based in Lagos, it is inevitable that there will be substantially a greater number of disputes in Lagos State than all the other States in Nigeria.

Pre-colonial African societies normally resolved disputes through four hierarchically related options.³ First, the disputants tried to resolve the disputes by themselves; what is now known as negotiation. If that failed, they sought the assistance of kinsmen; what is now known as mediation. If this also failed, the dispute was taken to the Headman of the defendant's neighbourhood; what is now known as 'neutral evaluation'. If this also failed, the matter was then taken to the High Chief or King for a binding decision; what is now known as arbitration.⁴ This hierarchical approach was also practised by the three predominant tribes in Nigeria; Yoruba, Igbo and Hausa, prior to colonisation⁵ This system was jettisoned with the advent of colonialization and traditional legal systems branded as "repugnant to natural justice"⁶ The growing demands for "modern justice" relegated the better understood traditional channels to the background.⁷

The Nigerian Legal System is a reflection of the federal character of the Nigerian society. The sources of the Nigerian Legal system are; received English Laws which comprised mostly of the common law of England, the doctrines of equity and statutes of general application in force in England on or before October 1900. We also have Nigerian Legislation, Case Law, Islamic Law (which is applicable to Muslims) and a part of our Customary Law.⁸

in Nigeria, there is one centralized apex court, known as the Supreme Court of Nigeria⁹ The Court of Appeal¹⁰ is next which hears appeals from all High Courts of the States¹¹ and the Federal High Court.¹² Appeals also lie to the Court of Appeal from the High Court of the

¹<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=NG> Accessed 26 March 2021.

²<https://worldpopulationreview.com/world-cities/lagos-population> Accessed 26 March 2021.

³K. Aina: 'Commercial Mediation: Enhancing Economic Growth and the Courts in Africa', NCMG International and Aina Blankson LP, 2012, p. 11

⁴ *ibid*

⁵ *ibid*

⁶ K. Aina: Dispute Resolution, NCMG International and Aina Blankson LP 2012 P.22

⁷ *ibid*

⁸A.U. Alkali et al, *Nature and Sources of Nigerian Legal System: An Exorcism of a wrong system*, International Journal of Business, Economics and Law, Vol. 5, No. 4, 2014,p. 4, <http://ijbel.com/wp-content/uploads/2014/12/LAW-3-Nature-And-Sources-Of-Nigerian-Legal-System-An-Exorcism-Of-A-Wrong-Notion.pdf> Accessed 26 March 2021.

⁹ Section 230 Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)

¹⁰ Section 237 CFRN 1999 (as amended)

¹¹Section 270 CFRN 1999 (as amended). This section establishes High Courts for the various states.

¹² Section 251 CFRN 1999 (as amended)

Federal Capital Territory (FCT).¹³ The National Industrial Court¹⁴ with jurisdiction over employment and labour matters only nationwide through the divisions scattered across the Country. There is also the Sharia Court of Appeal of the FCT and of a State¹⁵, the Customary Court of Appeal which exercises supervisory and appellate jurisdiction in cases involving issues of customary law¹⁶, the Magistrates' Courts in the Southern part of Nigeria and District Courts in the Northern part of Nigeria.¹⁷

HOW WAS MEDIATION INTRODUCED IN YOUR COUNTRY?

Mediation has always been in existence in Nigeria prior to the introduction and adoption of litigation¹⁸ through the Courts system as identified earlier in this paper. What is obtainable now is simply a modernized version of a practice that has always been in existence.¹⁹

However, mediation can be said to have been formally introduced in Nigeria with the establishment of the first court connected ADR centre in Africa, the Lagos Multi Door Courthouse (LMDC) in 2002 as a public-private partnership between the High Court of Justice, Lagos State and the Negotiation and Conflict Management Group (NCMG), a non-profit private organization. The LMDC was however statutorily established in 2007.²⁰

The main purpose for its establishment was to serve as an avenue for the promotion of ADR in Lagos State and to support the development and functioning of the Judicial System through Alternative Dispute Resolution mechanisms. The three doors or options by which disputing parties are able to resolve their disputes at the Lagos Multi-Door Courthouse are through early neutral evaluation, arbitration and mediation.

WHAT WERE THE CHALLENGES FACED INTRODUCING MEDIATION INTO YOUR COUNTRY?

Some of the challenges associated with the formal introduction of mediation into Nigeria include:

- a. Low level of public awareness: despite the fact that mediation seems to be gaining ground, there is still a low level of public awareness. Most disputants would rather approach the courts to resolve their disputes. Litigation is the default mode for most disputants in Nigeria post colonization.
- b. Seen as inferior to litigation: one reason why most people will prefer litigation to mediation is the perception that mediation is inferior to litigation (and perhaps

¹³ Section 255 CFRN 1999 (as amended). This court is essentially for the Federal Capital Territory, Abuja

¹⁴ Section 254A CFRN 1999 (as amended)

¹⁵ Section 260 CFRN 1999 (as amended) establishes the Sharia Court of Appeal of the FCT and Section 275 establishes for the states. It should be noted that the establishment of a Sharia Court of a state is not compulsory for each state.

¹⁶ Section 265 and 280 CFRN 1999 (as amended)

¹⁷ These courts are not provided for in the constitution but are established by a law of the State House of Assembly.

¹⁸A. Akeredolu, *Institutionalising Alternative Dispute Resolution In the Dispute Resolution Spectra In Nigeria Through Law: The Lagos Multi-Door Courthouse Approach*, (2015), <http://www.davidpublisher.com/Public/uploads/Contribute/550690603ae2b.pdf> accessed 26 March 2021.

¹⁹ *ibid*

²⁰ <https://lagosmultidoor.org/about-us/> Accessed on 25-3-2021

arbitration) due to the lack of statute and state machinery in support of enforcement of settlement Agreements directly unlike Court judgements/Arbitral awards.

- c. Voluntariness of mediation: due to the fact that a party can walk out anytime and settlement agreement (until when entered as a consent judgment by the court or produced for pronouncement as an agreement) cannot be enforced adds to the distrust of the process by members of the public.
- d. Open to misuse: Despite the usefulness of mediation as an excellent dispute resolution mechanism, the fact that it is non-binding (and thus dependent on the volition of the disputing parties) makes it vulnerable to misuse.
- e. Resistance to mediation: this resistance is both from counsel and parties who refuse to submit to mediation.
- f. Lack of understanding of the mediation process by both counsel and parties they represent.²¹
- g. Lack of a mediation law: unlike arbitration which is governed by the Arbitration and Conciliation Act (ACA), there is no single unifying law for mediation in Nigeria that supports its enforcement countrywide like Arbitration. Although the ACA makes reference to mediation, it does not have robust provisions concerning mediation. Rather, what we have are Multi Door Courthouse Laws/Rules of the various states, where the Multi Door concept have been embraced in the High Courts.²²

HOW HAVE YOU/THE COUNTRY ADDRESSED THESE CHALLENGES?

1. The enforcement regimes provided by the Different State High Courts- have encouraged the use of mediation especially for matters referred from the Court dockets.
2. In Lagos state, the introduction of the Lagos Settlement Week for both Magistrates and High Courts in the State has improved the knowledge and awareness about Mediation. During this week, specific courts aim to clear the back log of cases which include mandatory referrals to the LMDC for possible resolution through mediation.²³
3. In some cases, matters from the Federal High Court and other high courts in other jurisdictions are also referred to the LMDC.²⁴ This has led to further awareness about mediation.
4. Furthermore, the enactment of laws on mediation by some states that are major commercial centres such as Akwa Ibom, Rivers State, Delta State, Enugu State, Ogun

²¹ J.O. Akinwunmi: "How effective is the use of mediation in the resolution of commercial disputes in Nigeria? A case study of the Lagos Multi – Door Courthouse" LLM Thesis (University of South Wales) June 2020

²² To date 16 of the 36 States in Nigeria have established Court connected Multidoor Courthouses created by Law . Rivers State has passed the Law but yet to implement the concept.. Mediation is the preferred ADR mechanism used in these ADR centers.

²³ Section 31 Lagos Multi Door Courthouse (LMDC) Law 2007

²⁴ K. Aina, *Court Annexed Mediation: Challenges and Possibilities, Lessons from Africa Session (Nigeria)*, <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> accessed 26 March 2021.

State, Edo State, Kano State have, with the most significant being Lagos State²⁵ have further helped in making mediation accessible and known to the public.²⁶

5. The establishment of free Community Mediation centres tagged Citizens Mediation Centre which started in Lagos State and now replicated across the country has also improved awareness about and increased the use of mediation in dispute resolution in Nigeria.
6. There is currently before the National Assembly an amendment to the Arbitration and Conciliation Act (ACA) to include far reaching provisions in support of Mediation. The ACA is the Federal Law that regulates ADR in Nigeria.
7. The inclusion of Multi-tiered or just Mediation clauses in most Agreements by Mediators, Mediation Advocates and Legal practitioners like me is also one of the ways of promoting Mediation in Nigeria as this increase awareness about and potentials of Mediation.

WHAT ARE THE FACTORS SUPPORTING THE GROWTH OF MEDIATION IN YOUR COUNTRY?

The inclusion of provisions encouraging mediation in the High Court Laws of some states (such as Lagos State²⁷ have served to promote mediation.

The training of judges in ADR particularly mediation by the different state judiciaries has encouraged referrals by the courts to mediation further to a better understanding of the process. The establishment of Court of Appeal Mediation Centre (CAMC) gives a framework for the conduct of settlement by mediation in the Court of Appeal will further encourage mediation. Also, the NIC has established a mediation centre for the resolution of matters referred to the centre.²⁸ On Monday 29th March 2021, the President of the Court of Appeal officially launched the ADR system of the Court ²⁹

Furthermore, the introduction of ADR in the curriculum of law students in the universities and the law school is changing attitude to ADR including Mediation.³⁰ Lawyers in Nigeria were hitherto trained solely as Advocates to thrive in an Adversarial system and not to collaborate to find resolution to Disputes. The Rules of Professional Conduct for Legal Practitioners 2007 in Nigeria now mandates Lawyers to inform clients about the option of ADR before or even during litigation.³¹ In aid of this duty, particularly where no formal ADR system had been agreed by the parties prior to the dispute arising, the courts will not be seen as a first stop for dispute resolution, but rather as a place where disputes end after alternative methods of

²⁵ <https://www.lexology.com/library/detail.aspx?g=fb0fe072-267d-4366-bb1e-04a5459997a9> accessed 26 March 2021

²⁶ <https://lagosministryofjustice.org/offices/citizens-mediation-centre/> accessed 25-3-2021

²⁷ Order 2 Rule 1 (c) (a), High Court of Lagos State (Civil Procedure) Rules 2019

²⁸ This Centre was established jointly by Section 254C(3) CFRN 1999(as amended) and Article 4 (5) (a) – (e) of the Instrument of the Alternative Dispute Resolution Centre. <https://icmcng.org/> accessed 26 March 2021.

²⁹ <https://thenigerialawyer.com/court-of-appeal-president-conducts-maiden-mediation-appeals/accessed> 31-3-2021

³⁰ In recent years ADR institutions like the Institute of Chartered Mediators (ICMC), Chartered Institute of Arbitrators Nigeria Branch visit the different campuses of the Nigerian Law School and offer their courses at a discounted rate to students to encourage them to sign up.

³¹ Rule 15 (3) d) RULES OF PROFESSIONAL CONDUCT FOR LEGAL PRACTITIONERS MADE PURSUANT TO SECTION 12(4) OF THE LEGAL PRACTITIONERS ACT 1990(AS AMENDED)

resolving such have failed. There will be less instances of cases being refereed to mediation and more cases of parties voluntarily approaching mediators to resolve their disputes.

Furthermore, judicial support in Nigeria in recognising mediated settlements has also supported the growth of Mediation. In the case of **EGESIMBA V ONUZIRIKE**³² it was held that individuals are free to determine how their disputes are settled. Hon. Justice Karibi- Whyte held that if parties have agreed to refer disputes to a body or institution for determination under agreed rules and guidelines and accordingly this done, then, the decision is as binding as one from a court and indeed acts as estoppel.

Also, the realisation that Mediation allows for timely resolution which is certainly shorter than litigation or arbitration, as well as cost effectiveness of mediation have contributed to the growth of mediation in Nigeria.³³

WHERE DO YOU SEE MEDIATION IN YOUR COUNTRY IN THE NEXT FIVE (5) YEARS?

Improved awareness about the benefits of Mediation and training by ADR Organisations like Institute of Chartered Mediators and Conciliators (ICMC), the Lagos Multidoor Courthouse (LMDC), Nigeria Chartered Institute of Arbitrators, (NCIARB) Lagos Court of Arbitration (LCA) and ODRAFRICANETWORK amongst others is improving capacity and knowledge about Mediation and online Mediation particularly due to the outbreak of the Covid 19 pandemic and the attendant lock down and government restrictions.

As more people become aware of the option of using mediation to resolve their disputes, there will be a much higher demand for skilled and experienced mediators and a much more ready market for these mediators to utilise their skills. The training Institutes will have a ready market to deploy these highly trained and skilled mediators. It is hoped that Mediation will be the first call for resolving disputes.

The United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) adopted in December 2018, of which Nigeria is a signatory is intended to facilitate international trade by providing a framework where international mediated settlement agreements may be enforced in signatory countries.³⁴ The ratification of this Convention by Nigeria will give the much-needed encouragement to businesses to embrace mediation.

Also, with the wider spread of enforcement regimes across the States and internationally by the SINGAPORE CONVENTION, mediation will not be seen as inferior to or less effective than litigation or Arbitration but a valid means of resolving disputes.

³² (2002) 15 NWLR Part 791 SC 466

³³ J.O. Akinwunmi: "How effective is the use of mediation in the resolution of commercial disputes in Nigeria? A case study of the Lagos Multi – Door Courthouse" LLM Thesis (University of South Wales) 2020

³⁴ <https://www.lexology.com/library/detail.aspx?g=fb0fe072-267d-4366-bb1e-04a5459997a9> accessed 26 March 2021

Also, with the proposed amendment to the ACA, mediation will have a Federal Legislative backing, just like Arbitration, in addition to the mediation laws that exist in various states at the moment.

With the lockdown in 2020 of both magistrates and high courts and the ripple effect on the already existing backlog in the court system, parties will begin to look more towards mediating disputes both offline and even online as was done during the lockdown in Lagos State under the auspices of the LMDC from April 2020 when the courts were at a complete lockdown due to the Federal Government directive in the wake of the corona virus pandemic.

WHAT ARE THE CONCERNS OF ACCESS TO MEDIATION/ODR SERVICES YOUR COUNTRY FACES?

One of the concerns of access to mediation in Nigeria/ ODR services is a lack of awareness amongst the general public. Although there is a growing awareness of mediation/ODR services, the vast majority of people are still largely unaware of mediation and/or Online Mediation as an alternative to face-to-face Mediation. Most of the cases handled by mediation centres are often cases referred by the courts to Court connected ADR Centres for or large organizations who are aware of the benefits of mediation.

Another concern is the fact that internet connection and access in Nigeria is poor in some areas. There is also a huge disparity amongst disputing parties as regards access to internet services or technology generally as a result of their Geographical location in Nigeria, level of education, financial capacity and even access to legal representation. This can result in frustration of the process.

Also, the dearth of adequate and qualified Mediators who can mediate matters effectively online. Mediating online is not just video mediation using zoom. There are standards that must be adhered to like those published by the International Council for Online Dispute Resolution (ICODR). ODRAFRICANETWORK trained in conjunction with Mediate.com about 60 Accredited and certified Mediators in 2020 on moving their Mediation practice online and continues to train and educate Practitioners in the space..³⁵

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³⁵ www.odrafrica.acom