

AN OVERVIEW OF DISPUTE RESOLUTION MECHANISMS AND INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT) IN NIGERIA

Matilda Adedoyin Chukwuemeka*

Munta L. Abimbola**

Wilson Sakpere***

Abstract

In the Nigeria context, this paper explores the complex interactions that exist between Information and Communications Technology (ICT) and dispute resolution mechanisms. It clarifies the varied terrain of ICT-related issues and investigates several forms of dispute resolution mechanisms, with an emphasis on Online Dispute Resolution (ODR). The regulatory environment in Nigeria is analyzed by looking at the legislative structure that oversees these systems. In order to provide light on the complex nature of disputes that arise in the digital sphere, including those involving

* LL.B,B.L,LLM, Lecturer and PhD candidate, Faculty of Law, Lead City University, Oyo State, Nigeria chukwuemeka.matilda@lcu.edu.ng

** LLB,BL,LLM, Lecturer and PhD candidate, Faculty of Law, Lead City University, Oyo State, Nigeria. Email: labima58@gmail.com

*** BEng (Electrical), MTech(Information Technology), PhD(Computer Science and Engineering) Lecturer, Department of Computer Science, Lead City University, Oyo State, Nigeria. Email: sakperc.wilson@lcu.edu.ng

cybersecurity, intellectual property, and commercial disputes, the paper classifies ICT disputes into several kinds. The legal framework is examined in detail in order to determine which laws and rules control ICT-related dispute resolution. The difficulties encountered in putting in place efficient dispute resolution procedures are covered in detail, including matters like jurisdictional complications, technology obstacles, and the requirement for specialist legal knowledge. The paper employs a descriptive technique. To sum up, the paper intends to advance our understanding of the complex interplay that exists in Nigeria between ICT and dispute resolution mechanisms. In order to build a more responsive and robust framework for resolving ICT-related disputes in the Nigerian setting, policymakers, legal practitioners, and stakeholders can benefit from the insights this research offers by breaking down the complexity and problems.

Keywords: Dispute, Resolution, Mechanisms, ICT, Online

1.0. Introduction

Dispute is believed to be the engine of change and it is undeniable that change follows every dispute. This is because a well and skillfully managed dispute can be of great value to the parties involved. Disputes arise when one party adopts or takes an action or some actions that the other party considers to be

inconsistent with the ‘expected’ obligations owed.¹ It follows that dispute is a natural phenomenon and an unavoidable consequence of human interaction in any society. Thus, it is expected that the evolution and sustenance of an efficient dispute management system must involve a good blend of theory with practice, and vice versa.²

In modern times, the problems of dispute resolution have gone beyond the threshold of self-help and litigation in the traditional courts. Dispute resolution has been enriched with the ascendancy of dispute resolution procedures which are designed or devised to resolve dispute outside the court arrangement. Bearing in mind that disputes, sometimes, generate a lot of bitterness and acrimony which could bind the parties to their interests, the essence of these new dispute resolution methods or mechanisms is the utilization of the needed skills and ability to assist the disputants to identify and concentrate on their real interest as against their legal rights, in reaching agreements which are mutually beneficial without leaving any bad taste in the mouths of the disputants. This new system is called Alternative Dispute Resolution (ADR).³ ADR therefore presents a series of advantages to resolve ICT disputes, and parties to ICT transactions must anticipate the right means to resolve

¹Nayla Comair-Obeid, ‘Dispute Avoidance and Resolution in Times of Crisis’(2018)84(1) *The International Journal of Arbitration, Mediation and Dispute Management*, 2

²*Ibid.*

³AdeolaOlufunkeKehinde, ‘Alternative Dispute Resolution: A Panacea to the Nigerian Judicial System’ (2022)<https://www.researchgate.net/publication/360710539_Alternate_Dispute_Resolution_a_Panacea_to_the_Nigerian_Judicial_System> accessed 25 October 2023

potential disputes out of court in a time-and-cost-effective manner to avoid lengthy and costly court proceedings.

Globally, cross-border ICT transactions are growing in numbers and complexity.⁴ The international dimensions of ICT projects often involves complex questions related to intellectual property rights, such as patents, trademarks, copy rights including software or expertise. ICT transactions are multi-faceted, so are the various disputes arising from these transactions.⁵ If lengthy litigations are entertained, it may disrupt technology development, investment and consumer interests. When parties to ICT transactions are in dispute, they must find the right mechanisms to settle their differences in a time-and-cost-effective-manner. Thus, in the field of ICT, there are several disputes and dispute resolution mechanisms that can be employed to address disagreements and conflicts that often arise during business dealings between or among parties.⁶

Additionally, ICT disputes can be brought before national courts, however, litigation is not always well equipped to deal with the peculiarities of this type of disputes because the conflicts are often complex and require specialized expertise.⁷

There are known difficulties with litigating intellectual property and technology disputes, particularly where the disputes are global and involve rights protected in different jurisdictions.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) recognizes alternative dispute resolution as a method

⁴*Ibid.*

⁵ IMTIC 5th International multi-topic ICT conference (2018) <<https://ieeexplore.ieee.org/document/8467261>> accessed 25 October 2023

⁶*Ibid.*

⁷The International Court II: The work of the court (2001) International Dispute Settlement, 156–181

of dispute settlement. The Constitution lists several out-of-court dispute resolution procedures, including arbitration, conciliation, mediation, negotiation, and adjudication.⁸ By virtue of the provisions of the Nigerian Communication Commission Act, the Nigerian Communication Commission (NCC) encourages dispute resolution mechanism for customer disputes.⁹ The Commission may resolve disputes in a manner including but not limited to alternative dispute resolution processes and upon such terms and conditions as it may deem fit.¹⁰ Additionally, the Commission in carrying out its functions shall always be guided by the objective of establishing a sustained dispute resolution process that is fair, just, economical and effective and not be bound by technicalities, legal form or rules of evidence and at all times act according to the ethics of justice and merits of each case.¹¹

Pursuant to the provisions of the NCC Act, the customers with complaints are required to first exhaust the licensee's dispute resolution procedures through negotiation before the involvement of the NCC.¹² The decision made by the NCC may be enforced by the court as if the decision is a judgment of such court subject to issuance of a certificate to the complainant for leave to proceed to the court for enforcement of the decision.¹³ The licensees are also required to negotiate their disputes in accordance with the principles of neutrality, transparency, non-

⁸ The Constitution of the Federal Republic of Nigeria 1999 (as amended) s 19(d)

⁹ The Nigerian Communications Commission Act 2003, s 73

¹⁰ *Ibid.* s 76(1)

¹¹ *Ibid.* s 76(2)

¹² *Ibid.* s 105(2)

¹³ *Ibid.* s 78(2)

discrimination, fair competition, cost orientation, universal coverage, and access to information, equality of access and equal terms and conditions.¹⁴ Indeed, the NCC has published rules and guidelines to resolve disputes or a class of disputes. These include; Telecommunications Networks Interconnection Regulations, Guidelines on Interconnection of Communications Network to deal with interconnection disputes¹⁵; Arbitration Scheme & Mediation Rules for Interconnection Dispute Resolution for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees. The field of ICT is an ever evolving one. With the advent of internet, the amount of disputes arising from transactions has doubled over the years.

2.0 Types of Dispute in ICT

1. Contractual Dispute

A contractual dispute typically arises when a party or the party's client disagrees with the terms or definitions of the contract. Contractual issues, if not managed properly, can be expensive, time-consuming, lead to litigation, and harm your business relationships and reputation.¹⁶

2. Intellectual Property Dispute

Such disputes can include infringements of a party's intellectual property (IP) rights by third parties or the third parties alleging that the party has infringed upon their IP rights. Both cases can

¹⁴*Ibid.* s 96

¹⁵*Ibid.* s 17

¹⁶Kolawole Mayomi & Matthias Dawodu, *The Utility and Effectiveness of ADR Mechanisms in Nigeria: A Review of Contemporary Legal Trends in Nigerian Law* (LexisNexis: Pinetown Printers, 2017) p. 13

potentially result in legal proceedings, demanding to cease IP asset(s) and/or compensation payments or injunction.¹⁷

3. Data Security and Privacy Dispute

Data privacy focuses on concerns with data collection, storage, and retention as well as data transfers within the parameters of any applicable rules and legislation, such as the Nigerian Data Protection Act. Data security is the safeguarding of data from loss, tampering, and illegal access throughout the data lifecycle. A significant disagreement may arise if a system breach exposes client information to the wrong person.¹⁸

3.0 Common Dispute Resolution Mechanisms in ICT

i. Negotiation

The parties involved in the dispute may attempt to resolve through direct negotiations. Negotiation is a problem-solving process in which two or more parties voluntarily discuss their differences and attempt to reach a joint decision on their own on their common concerns.¹⁹ According to Lee and Marrie, negotiation includes all cases in which two or more parties are communicating, each for the purpose of influencing the other party's decision.²⁰ Negotiation may take any form, either face-to-face communication, advanced technology communication or

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Obi Okoye A. *Law in Practice in Nigeria: (Professional Ethics and Skills)*(2nd ed. Snaap Press Nigeria Limited 2015) p.412

²⁰ Lee Simon *et al*, *Learning Legal Skills*(2nd ed. London, Blackstone Press Ltd, 1994) p.140

written communication.²¹ This means that negotiation involves only the parties to the dispute. Negotiation is known to be the most popular non-litigious method of resolving disputes between parties.²²

ii. Mediation

If negotiation fails, the parties can also opt for mediation. Mediation is a process by which a neutral person called the mediator facilitates the negotiation between the parties in dispute and assists them in developing options, consider alternative, and reach a consensual settlement that will accommodate their needs. The mediator has no determinative role concerning the content of the dispute or the outcome of its resolution, but may advise on or determine the mediation process; that is, the steps and stages involved in the process, whereby resolution is attempted. Mediation is non-binding confidential process in which the confidentiality is protected by an agreement between the parties and the mediator.²³

iii. Arbitration

Arbitration is a process whereby an independent third party, after hearing submissions from the parties in dispute, makes an arbitral award binding upon the parties. The process includes many elements of courtroom trials: a formal hearing, examination and cross-examination of witnesses, the use of experts and the submission of evidence. Arbitration is an enforceable process and often subject to the governance of law enforcement. Arbitration is often based on international conventions, national legislation and the common law. In Nigeria, the main legislation governing arbitration is the newly

²¹ Costanzo M, *Problem Solving*,(London, Cavendish Publishing Ltd, 1995) p.24

²² *Ibid.*

²³ <<https://www.nycourts.gov/ip/adr/mediation>> accessed 30 September 2023

enacted Arbitration and Mediation Act, 2023 (the “New Act”). The morality of arbitration lies in a decision according to the law of contract. In most jurisdictions, a court may not set aside or remit an award on the ground of error of fact or laws on the face of the award.²⁴

Arbitration can be used to prevent ICT disputes, resolve them at an early stage, or settle them prior to formal litigation. Not only is the inclusion of arbitration clauses in ICT agreements beneficial to parties when a dispute arises, but these clauses can also help prevent conflicts in the first instance.

iv. Litigation

While negotiation, mediation and arbitration present a series of advantages to resolve ICT disputes, however, there are circumstances in which court litigation is preferable to these three ADR mechanisms. For example, the consensual nature these mechanisms makes it less appropriate if one of the parties is extremely uncooperative, which may occur in the context of an extra-contractual infringement (for example, piracy of counterfeiting).²⁵

Litigation is a context in the court of law for the purpose of enforcing a right or seeking a remedy (*Ubi jus ibi remedium*). In addition, and in relation to dispute, the court has powers to adjudicate disputes between parties in accordance with the rule of law. The court can make orders as to costs and orders for

²⁴Joongi K. ‘Arbitration Procedure: International Arbitration in Korea’ (2017)Oxford Legal Research

Library<<https://olrl.ouplaw.com/display/10.1093/law/9780198755432.001.0001/law-9780198755432>> accessed 30 September 2023

²⁵Lodder A.R. & Zelenznikov J. *Enhanced Dispute Resolution Through the Use of Information Technology: Dispute Resolution for the 21st Century* (Cambridge University Press, 2010)

possession; order a stay of execution, appoint arbitrators, and deal with indictable offences.²⁶

v. Expert Determination

A dispute or difference between the parties is submitted to one or more experts who make a decision on the topic presented to them in the process known as expert determination. Except as otherwise agreed by the parties, the decision is legally binding. Compared to more formal conflict resolution procedures like litigation and arbitration, expert determination has a tendency to be less confrontational. Expert determination is done in private, and the outcome is typically kept secret (unless it needs to be made public or is contested in court, for example). Rather than relying on the law, they reach a binding conclusion.²⁷

vi. Online Dispute Resolution

Online dispute resolution is an enhanced type of alternative dispute resolution that avoids the need for parties to physically be present at a location and instead resolves disputes virtually using ICTs like computers, mobile devices, and the internet. It is the deployment of software and computer networks for using ADR to settle conflicts.²⁸ This type of alternative dispute resolution makes use of the benefits of rising internet and technical device usage.²⁹ It is frequently considered to be the

²⁶LucillaMacgregor, Charlotte Peacey, & Georgina Ridsdale, *Civil Litigation* (Oxford University Press, 2021)

²⁷ Gaitskell R. *International Arbitration, mediation and expert determination*(Keating Construction Dispute Resolution Handbook, 2016) p. 143

²⁸ Esther van den Heuvel, 'Online Dispute Resolution as a Solution to Cross-Border E-Disputes' (2000)8 University of Utrenht

²⁹Oreniyi A, 'Online Disputes Resolution in Nigeria: Intricacies, Challenges and Prospects'(2022)

<[https://Online_Dispute_Resolution_\(ODR\)_in_Nigeria_Intricacies_Challenges_and_Prospect - DigiLaw](https://Online_Dispute_Resolution_(ODR)_in_Nigeria_Intricacies_Challenges_and_Prospect - DigiLaw)> accessed 4 October 2023

online equivalent of ADR in this regard.³⁰ ODR involves the settling of conflicts through online communications between the parties.³¹ ODR is a type of conflict resolution that uses alternative dispute resolution techniques.³² It encompasses conflicts that are partially or entirely resolved online after being started in a cyberspace but coming from a source outside of it. It is important to highlight that ODR developed as a result of the need to settle conflicts that emerged in online communities.³³ In other words, ODR technology is a collection of legal technology programs that essentially makes it easier for parties to resolve disagreements. Since its founding in 1996, ODR has influenced legal systems all around the world.³⁴

Many nations have implemented the ODR system to settle disputes resulting from inter-personal e-commerce. Due to the speed, ease, and growth of e-commerce in Nigeria, ODR operation is crucial for any technologically advanced country, including Nigeria.³⁵ In the emerging economies, technology has

³⁰Rabinovich-Einy O. &KatshE., 'Digital Justice: Reshaping Boundaries in an Online Dispute Resolution Environment' (2014) 22(1) *International Journal of Dispute Resolution*, 7

³¹JimohMujibAkanni, 'Advancing Online Dispute Resolution in Nigeria: Opportunities, Legal Challenges and the Ways Forward'(2020) 11(2)*The Journal of Sustainable Development Law and Policy*, 408

³² Karoline Mania, 'Online Dispute Resolution: The Future of Justice'(2021)1(1) *International Comparative Jurisprudence*, 76-86

³³IkubaniOluwaseye, 'Impact of Technology on Alternative Dispute Resolution in Nigeria and the Birthand Challenges of Online Dispute Resolution' (2022)*Global Journal of Politics and Law Research*,5

³⁴*Ibid.*

³⁵Aishat S. 'Using ADR to Resolve Online Disputes' (2004)10(3) *Richmond Journal of Law and Technology*, 1-14 cited in Arinze-Umobi&OkonkwofeanyiTagbo, 'Alternative Dispute Resolution in Nigeria

been used to administer justice and settle disputes for almost 20 years. Online dispute resolution developed in the 21st century as a result of advancements in ADR and its capacity to adapt to the unique characteristics of the online environment.³⁶ The necessity to implement cutting-edge information technology innovation to facilitate access to justice gave rise to online dispute resolution.³⁷ The closure of courts and different ADR facilities after the implementation of Covid-19 added to the uncertainty surrounding the administration of justice and the inevitable rise of online dispute resolution.

Due to technology replacing clerical positions like cashiers, secretaries, and bookkeepers, automation of service delivery was formerly seen as a danger to labor in non-legal areas with job losses.³⁸ Experts foresee a paradigm shift in the way attorneys practice law toward automation of the conflict resolution procedures in the area of justice delivery.³⁹ This might be interpreted as posing a challenge to the established legal systems. ODR could end up being useful to the courts.⁴⁰ The majority of courts throughout the world use ADR techniques to

and the Effect of Covid-19 Pandemic' (2021) *International Journal of Law and Clinical Education*, 2

³⁶ Ethan K, Ethan M, & Janet R, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (John Wiley & Sons, Inc, 2001)

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Mohamed S. Abdel Wahab, Katsh Ethan & Rainey Daniel, *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution* (ed., The Hague, Netherland: Eleven International Publishing, 2021) p. 21-33

administer justice. As a result, the regional and international legal framework now includes peaceful conflict resolution.⁴¹

However, in recent years, ADR has shown to be the most efficient and practical way for resolving disputes resulting from business and financial transactions.⁴² However, the introduction of Covid-19, e-commerce, and the rise in international trade and conflicts need ADR reform and the use of the ODR method of dispute resolution. Even with a significant amount of minor claims complaints, it must be acknowledged that the ODR judicial system suffers from a fundamental setback due to the absence of a legal framework for strict complaint management.⁴³

ODR has the ability to automate dispute resolution procedures in the administration of justice, which experts believe might soon put the legal profession in danger and alter how attorneys conduct their practices.⁴⁴ In addition to the physical hurdles that the ICT revolution has eliminated, the number of economic operations conducted online makes online dispute resolution desirable.⁴⁵

ODR is not tied to geography, so disputants can reach resolution even if they are located on different continents. Websites such as ‘Cybersettle’, ‘SettlementOnline,’ and ‘ClickNsettle’ offer services that are entirely online and focus primarily on

⁴¹ Steven S *et al.* ‘International Commercial Dispute Resolution’ (2010) 44 *International Law Journal*, 113

⁴² Joseph Nwazi, ‘Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in The Niger Delta Region of Nigeria’ (2017) 9(3) *Journal of Law and Conflict Resolution*, 27

⁴³ Rule C, Rogers V & Del Duca L, ‘Designing a Global Consumer Online Dispute Resolution (ODR) System for Cross-Border Small Value-High Volume Claims—OAS Developments’ (2010) 24 *UCC Law Journal*, 221

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

negotiating monetary settlements.⁴⁶ In the United States of America, Modria is a prime example of an ODR platform and a cutting-edge innovation. The Modria Software has been able to resolve some 400 million disputes between online buyers and sellers on ebay, which has been observed to be more than all the suits filed in the entire USA court systems.⁴⁷ Online Dispute Resolution emulates ADR in its utilization of negotiation, mediation or arbitration for resolving disputes. Under the same vein, various methodologies are used for communication and resolution. Synchronous ODR has parties communicating in real-time by means of various video-conferencing applications.⁴⁸

4.0 Classification of ODR Mechanism

1. Online Arbitration

When the arbitration processes are done entirely or largely online, including files, submissions, hearings, and awards, this is known as electronic arbitration or online arbitration.⁴⁹ The

⁴⁶ Edwards I. & Wilson C. 'Redress and Alternative Dispute Resolution in EU Cross-Border Ecommerce Transactions'(2007)21(3) International Review of Law, Computers and Technology, 315-333

⁴⁷FeranmiAdeoye,'The Practical Application of Online Dispute Resolution (ODR) Technology to Modern Law Practice in Nigeria vis-à-vis The Nigerian Legal System: A LegalTech Analysis' (2021)<https://www.researchgate.net/publication/356903525_The_Practical_Application_of_Online_Dispute_Resolution_ODR_Technology_to_Modern_Law_Practice_in_Nigeria_vis-a-vis_The_Nigerian_Legal_System_A_LegalTech_Analysis_1> accessed 6 October 2023

⁴⁸*Ibid.*

⁴⁹ Mohamed S.A.W,'ODR and E- Arbitration' (2013)Online Dispute Resolution Theory and Practice, Chapter 18 <<https://www.mediate.com/pdf/ebnerl.pdf>> accessed 20 October 2023

contemporary definition, however, is wide and covers any arbitration that makes use of electronic submissions or conducts the hearing process by teleconference or video conferencing.⁵⁰ Online dispute resolution is often referred to as cyber-arbitration, cybitration, virtual arbitration, or electronic arbitration.⁵¹

The description above makes it apparent that e-arbitration follows the same rules and procedures as traditional arbitration, with the addition of some type of electronic media, either entirely or in part. There were issues with this sort of arbitration's enforceability when it first emerged in the U.S.A. According to the argument, electronic arbitration clauses were most frequently found in digital contracts, such as license agreements, and because they were exclusively digital; they broke the Federal Arbitration Act's need for written provisions.⁵²

However, courts have addressed issue and determined that, in accordance with the Federal Electronic Signatures in Global and National Commerce Act, electronic signatures are just as valid as traditional signatures and will give legal force to arbitration agreements that are electronically signed.⁵³ The conventional arbitration process, in which the parties and the arbitrators are present at a place, looks to be changed by electronic arbitration. Additionally, it has been stated that e-arbitration offers quick

⁵⁰*Ibid.*

⁵¹NwademOsinachi Victor, 'Online Dispute Resolution: Scope and Matters Arising' (2014) <https://www.academia.edu/11881903/ONLINE_DISPUTE_RESOLUTION_SCOPE_AND_MATTERS_ARISING> accessed 20 October 2023

⁵²*Ibid.*

⁵³*Ibid.*

decision-making within which the full process may be carried out, is affordable, accessible, and effective for case management.⁵⁴

2. Online Negotiation

The participants to an online negotiation must contact with one another by the phone, fax, email, and video conferencing. Even though phone conversations are a convenient way to interact, it is hard to assess document contents over the phone unless video conferencing is used.⁵⁵ Any video conferencing software program, including Zoom, Skype, Netscape Conference, Microsoft Netmeeting, and VocalTec's Internet Conference Professional, may be used for this.⁵⁶ Fax and email are more appropriate than video conferencing for the exchange of documents between parties in this scenario. Online negotiations enable time savings and increased financial savings. It has been deemed to be extremely important in conducting a thorough negotiation process with individuals throughout the globe regardless of who the parties are which in the present globalization environment is crucial.⁵⁷

The most advanced ODR practice in the US is said to be online bargaining. For the resolution of conflicts, there are a variety of

⁵⁴ *Ibid.*

⁵⁵ Janice Nadler and Donna Shestowsky, 'Negotiation, Information Technology, and the Problem of the Faceless Other' (2010) Northwestern University Pritzker School of Law, 145-178

⁵⁶ David B. Lipsky & Ariel C. Avgar, 'Online Dispute Resolution Through the Lens of Bargaining and Negotiation Theory: Toward an Integrated Model' (2007) 38(1) University of Toledo Law Review, 101-142

⁵⁷ David Hernandez, Carlos Monne & Maria Luisa Sein-Echaluce, 'Online Negotiation: Theoretical Proposal' (2021) <<http://ceur-ws.org/Vol-3129/paper061.pdf>> accessed 20 October 2023

negotiation platforms.⁵⁸ One of the most popular of these negotiation platforms is “blind-bidding,” which is an automated negotiation.⁵⁹ The platform is intended for the economic resolution of cases when culpability is undisputed but parties cannot agree on the amount of compensation to be paid.⁶⁰ It is interesting to note that no humans are involved in this platform’s operation.

3. Online Mediation

This is also an ODR technique, which is similar to the conventional mediation technique except that, it is carried out virtually as opposed to the conventional mediation technique, which is carried out physically. Online mediation is thought to be prospering more and more in the US and Europe. In the US, it is regarded as the most prevalent and improved type of ODR.⁶¹ In addition to traditional contacts, online mediation uses technology like chat rooms, emails, and video conferencing to resolve disputes. Even if the mediator’s job is the same in online mediations, it has been suggested that the selection procedure may change.⁶²

5.0 Advantages of using ODR Mechanisms

1. It is cost saving

⁵⁸Ikubami O.O & Saheed A.A. ‘Impact of Technology on Alternative Dispute Resolution in Nigeria and the Birth and Challenges of Online Dispute Resolution’ (2022) 10(4) Global Journal of Politics and Law Research, 1-13

⁵⁹*Ibid.*

⁶⁰*Ibid.*

⁶¹*Ibid.*

⁶² Cortes P. ‘Can I Afford Not to Mediate? Mandatory Online Mediation for European Consumers: Legal Constraints and Policy Issues’ (2008) 35(1) Rutgers Computer and Technology Law Journal, 75

The cost efficiency of the different strategies is one of the most important considerations that parties in dispute always take into account when choosing the choice for conflict resolution. ADR includes financial considerations, much like litigation. Both traditional litigation and alternative dispute resolution (ADR) are extraordinarily expensive processes since parties frequently have to hire expensive attorneys to protect their interests.⁶³ However, ODR best meets both parties' financial needs. ODR entails the electronic delivery (by email) of all the paperwork required to speed up the process. This method of resolving disputes is far less expensive than going to court since it requires less documentation and document delivery.⁶⁴

2. Convenience of the Procedure

One benefit of ODR is that, unlike offline ADR or litigation, if parties to a dispute do not dwell in the same area, one or both parties will have to go to the venue of mediation and make travel and lodging arrangements.⁶⁵ Sometimes, these costs deter disputants from advancing their position. Offline ADR or litigation is typically more advantageous to wealthy disputants. However, ODR equalizes the playing field for all parties. When witnesses are needed, they are also called by video conference, eliminating the need for face-to-face interaction.

In addition, unlike with litigation or offline ADR, parties may resolve disputes as soon as they arise rather than having to wait weeks or months for a decision. In ODR, parties can start the dispute-resolution process practically instantly by exchanging

⁶³George H. Friedman, 'Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities' (1997)19 *Hastings Comm. &Ent. Law Journal*, 695-712

⁶⁴Aashit Shah, 'Using ADR to Resolve Online Dispute'(2004)10(3) *Richmond Journal of Law and Technology*

⁶⁵*Ibid.*

emails.⁶⁶ ODR has no such issues because parties can schedule or take part in a meeting whenever they are ready and at a convenient moment, in contrast to the scheduling issues that may arise with offline ADR.⁶⁷

3. Time saving

With the rapid spread of broadband internet access, the use of ODR to resolve disputes can speed up the procedure since have more flexibility when using ODR synchronous communications. This is because ODR allows parties to work at any convenient time 24/7.⁶⁸

6.0 Disadvantages of using ODR Mechanisms

There are certain challenges or disadvantages with the utilization of ODR operations in Nigeria. These issues are widespread throughout the nation and have an impact on both ODR and the usage and enjoyment of new technologies. These disadvantages include, but are not limited to:

i. Poor, expensive or nonexistent internet services

The access rate to the internet is not the same everywhere in the world.⁶⁹ While some nations have very high internet access, like developed nations, other nations, particularly emerging and developing nations like Nigeria, do not have as high an internet access. However, it is a typical occurrence that these internet

⁶⁶*Ibid.*

⁶⁷*Ibid.*

⁶⁸Ikubami O.O & Saheed A.A. 'Impact of Technology on Alternative Dispute Resolution in Nigeria and the Birth and Challenges of Online Dispute Resolution' (2022) 10(4)Global Journal of Politics and Law Research, 1-13

⁶⁹ Amy J. Schmitz, 'There's an "App" for That: Developing Online Dispute Resolution to Empower Economic Development' (2018) 32(1) Notre Dame Journal of Law, Ethics and Public Policy

services are frequently very bad or even unavailable, making it hard to initiate or complete a transaction, which causes substantial loss⁷⁰ or setback to clients and eventually has an effect on the nation's economy.⁷¹ It has been stated that many companies and individuals in developing nations like Nigeria does not have reliable internet connectivity because they prioritize other more pressing needs like access to clean water, energy, shelter, and other essentials of life.⁷²

Without the usage of standard internet services, ODR cannot function in Nigeria. It is cliché to say that Nigeria is the most populated nation in Africa and has the most internet users.⁷³ Nevertheless, because internet connectivity is expensive, not many people can afford it.⁷⁴ This is because online conflict resolution may need spending hours online during each conference session.

ii. Inadequate Power Supply

One of the fundamental conveniences or infrastructure assets that support a country's economic growth is power. Businesses

⁷⁰ Rob Rachwald, 'Is Banking Online Safer than Banking on the Corner' *Computer Fraud and Security*

(2008) <https://www.researchgate.net/publication/250726752_Is_banking_on_line_safer_than_banking_on_the_corner> accessed 25 October 2023

⁷¹ Tarhini C, Trab M.S.A & Mosa'deh R. 'User Adoption of Online Banking in Nigeria: A Qualitative Study' (2015) 20(1) *Journal of Internet Banking and Commerce*, 3

⁷² Robin V Cupido, 'The Growth of E-Commerce and Online Dispute Resolution in Developing Nations: An Analysis' (2016) 10 *International Journal of Social, Behaviour, Education, Economics, Business and Industrial Engineering*, 3254-3257

⁷³ Uchenna Jerome Orji, 'Technology Mediated Dispute Resolution: Challenges and Opportunity for Dispute Resolution' (2012) 18(5) *Computer and Telecommunication Law Review*, 131

⁷⁴ Henry E.I., 'Factors that Influence Customers' Attitude Toward Electronic Banking in Nigeria' (2018) 17(3) *Journal of Internet Commerce*, 325-328

become more productive as a result. Practically every area of the Nigerian economy is impacted by poor power supply. ODR necessitates the use of a computer and other internet technologies, which needs electricity to run. In Nigeria, the power supply is quite inconsistent, which makes it difficult to use ICTs.⁷⁵ If Nigeria's electricity industry is improved by incorporating renewable energy into the electricity generation mix, ODR will prosper more effectively.⁷⁶

iii. Insufficient ICT Knowledge and Technical Knowhow

One obstacle to ODR's widespread acceptance in Nigeria is this. Information and communication technology (ICT) has without a doubt been adopted by almost all of the world's nations, whether they be developed or underdeveloped like Nigeria. ICT facilitates new communication channels and improves information availability, which promotes development in the fields of business, culture, leisure, and education. The World Bank defines ICT as computer hardware, software, networks, and media for information collection, storage, processing, transmission, and presentation, as well as related services.⁷⁷ ICT is used to meet the information and communication needs of individuals and organizations. Nigeria, unfortunately, has a low degree of ICT proficiency. This is because of a number of things, including the price of a personal computer and the government's disinterest in educating Nigerians about ICT. The majority of Nigerians do not possess the necessary computer use

⁷⁵*Ibid.*

⁷⁶*Ibid.*

⁷⁷ Walle Peter, 'Information and Communication Technology (ICT) in Education in Sub-Saharan Africa: A Comparative Analysis of Basic E-readiness in Schools'(2015)UNESCO Institute for Statistics,1-30

and operating knowledge and abilities needed to effectively utilize ODR.⁷⁸

In the same way, many people and business entities are not even prepared to spend a lot of money to hire qualified ICT experts. One of the biggest obstacles to ODR's widespread acceptance in Nigeria is this issue.

iv. Absence of legal Framework

The Arbitration and Mediation Act⁷⁹ repealed the Arbitration and Conciliation Act,⁸⁰ which governs dispute settlement in Nigeria, is a piece of legislation. However, neither the Act nor any particular rules or laws that govern ODR in Nigeria contain any provisions regarding it. ODR's widespread acceptability is hampered by the lack of regulatory rules for its operation. The fact that ODR is governed by law increases its dependability and legitimacy. Where there is no legislation that recognizes the methods used for dispute resolution, it may be difficult and impractical to enforce the ruling following a successful online arbitration.⁸¹

However, a Draft Framework on Alternative Dispute Resolution for the Information and Communications Technology (ICT) Sector 2020 (the "Draft Framework" or "Framework") was recently released by the National Information Technology Development Agency (NITDA), which is Nigeria's principal data protection agency and the main force behind information technology-related policies. The Framework recognizes the need for a more efficient, smooth, and technologically advanced

⁷⁸Udobi-Owoloja P.I, Akhigbe B.E, Ubi A.E., Gbajumo-Sheriff M.A., &Umoru, B. 'Digital Banking and Bank Profitability in Nigeria' (2020)20(2) Nigerian Journal of Management Studies, 24-34

⁷⁹ Arbitration and Mediation Act 2023

⁸⁰ Cap. 18, Laws of Federation of Nigeria, 2004

⁸¹ *Ibid.*

method of resolving technology conflicts without necessarily sacrificing the parties' business goals. The Draft Framework aims to provide an institutional framework for alternative dispute resolution that would be accessible to contracting parties throughout the Nigerian ICT sector. In particular, it acknowledges the significance of establishing an efficient dispute resolution framework for ICT projects and contracts that not only facilitates the prompt and efficient settlement of ICT disputes but also fosters innovation and the expansion of tech companies in Nigeria⁸² but still excludes ODR from its provisions.

v. Inherent lack of protection of privacy and security

Confidentiality is one of the most valued ethical principles in ADR. High levels of secrecy and security are required for the data, information, and documents communicated during the dispute settlement process. Regrettably, security and secrecy are among the ODR's most contentious issues. Throughout ODR, parties are supposed to communicate openly throughout conversations and debates when they are confident their comments would not be used against them.⁸³ The entire procedure is put in danger if this trust and confidence are breached. ODR is unable to ensure data security since third parties may breach some websites and get documents shared between parties, printing them out without the parties' permission and disseminating them to the general public. This is

⁸² DOA (2020) <<https://www.doa-law.com/an-overview-of-the-nitda-draft-framework-on-alternative-dispute-resolution-for-ict-sector-2020/>> accessed 25 October 2023

⁸³ Katsh, E. 'Dispute Resolution in Cyberspace' (2002)28, CONN. Law Review,971

why ODR's secrecy is compromised by a lack of security, which deters individuals from utilizing it to settle disputes.⁸⁴

7.0 Conclusion and Recommendations

Since technology has made people's lives easier, electronic transactions will always occur in this age of rapid technical development. In this age, ICT has significantly improved cross-border commerce. One of the numerous effects of technology on business is ODR which is an alternate ADR mechanism. Unfortunately, ODR has not been widely adopted in Nigeria as a result of the particular problems that have hampered its adoption. However, given the rise in international business transactions, it is still a factual conclusion that ODR is the future of dispute resolution.

ODR processes appear to be the most efficient way to give online users access to justice because they can offer impartial, speedy, and affordable redress for users. However, unless there is a unique legislative framework on ODR in Nigeria, the acceptance and acknowledgment of ODR in that country would remain a mirage. One of the main reasons why people do not view online alternative dispute resolution as a realistic option for the resolution of business conflicts is that there is insufficient legal framework in Nigeria to govern it. Therefore, it is advised that the Arbitration and Mediation Act be changed to account for internet disputes and the Draft Framework on Alternative Dispute Resolution for the Information and Communications Technology (ICT) Sector 2020 be enacted. By adopting this,

⁸⁴Jaberi M.S. 'Online Arbitration: A Vehicle for Dispute Resolution in Electronic Commerce'(2012)<https://www.academic.edu/1842719/online_Arbitration_A_Vehicle_for_Dispute_Resolution_in_Electronic_Commerce> accessed 25 October 2023

MA Chukwuemeka, ML Abimbola, W Sakpere: An Overview of Dispute Resolution Mechanisms and Information and Communication Technology in Nigeria

Nigerian legislation would effectively address concerns regarding electronic signatures and enforcement, and it would acquire legal force.

Additionally, the ODR platforms or websites need to be appropriately protected in order to increase trust in the entire ODR process. To ensure the legitimacy and integrity of the process, third parties are not allowed to view the information or data that is shared between parties during the ODR sessions. In order to promote the growth of users and to ensure strict compliance with the security of customer data and confidentiality of information within their data base, it is also necessary for the government to take proactive measures to restore a stable power supply in the country and to strictly monitor the activities of telecommunication companies in Nigeria for affordable and good internet services.