

MEDIATION, CONCILIATION AND THE CONSTRUCTION INDUSTRY IN NIGERIA: CATALYSTS OR CLOGS?

Omoniyi Bukola Akinola*

Abstract

Prompt dispute resolution is a catalyst for economic growth because it boosts investors confident in any economy. The Nigerian construction industry is susceptible to disputes that necessitate sector specific experts in Alternative Dispute Resolution (ADR) mechanisms. Litigation and lately the victim of litigation status which arbitration seems to be suffering in the hands of litigation through remedies such as stay of proceedings has made this author proffer other workable mechanisms. In view of this, this paper addressed the roles and benefits of mediation and conciliation as effective ADR mechanisms specifically in the Construction industry in Nigeria. The paper adopts doctrinal methodology through review of the existing body of literature on the topic. The paper therefore, highlighted the contributions of professional bodies such as the Institute of Chartered Mediators and Conciliators (ICMC) and the Institute of Construction Industry Arbitrators (ICIArb) in promoting, training, and certifying ADR practitioners. The paper identified challenges of the use of mediation and conciliation in this industry such as the scarcity of specialized construction ADR experts, the recurrent judicial interference and the need for broader public awareness.

Keywords: Mediation, Conciliation, Construction Industry, Alternative Dispute Resolution

* PhD, Professor of Law, Department of Private and Commercial Law, Baze University, Abuja. Email: omoniyi.akinola@bazeuniversity.edu.ng

1.0 INTRODUCTION

The construction industry is an inevitable pillar for national and international development. It is largely responsible for the existence of roads, ports, railways, housing and other structural projects across nations. The Nigerian construction industry is not left out of this. Be that as it may, it is inherently prone to complex disputes arising from factors like lack of regulatory expertise, ambiguity in contractual requirements, poorly defined project scope, improper risk allocation matrix, combative contracting culture, lack of sophistication of the project team, border controls and currency control risk, poor risk planning and performance management of resources, and costs and disruption in the supply chain.¹¹ Claims in this industry commonly arise in relation to variations, extensions of time, retention of payments, delays in performance or payment, defective or product quality issues, termination and valuation or professional negligence.²

While these disputes may be resolved by litigation or arbitration, both mechanisms have their unique concerns. Litigation, on the one hand, has become bedeviled with issues like: slow speed of the judicial process, high likelihood of appeals, lack of confidentiality, lack of party autonomy, cumbersome nature of court proceedings, to mention but a few. Arbitration, on the other hand, though efficient, has also developed significant drawbacks over time some of which include: high cost of arbitration sometimes even surpassing litigation costs³ arbitration often adopts an

¹ Babatunde Fagbohunlu and Ngo-Martins Okonmah, *The Construction Dispute Law Review* (Law Business Research Ltd 2021) 75 <<https://www.aluko-oyebode.com/wp-content/uploads/2022/02/The-Construction-Disputes-Law-Review-Nigeria-Chapter.pdf>> accessed 14 June 2025

² Ibid.

³ <http://ijbel.com/wp-content/uploads/2015/05/Law35_CONFERENCE-

adversarial approach, which, similar to litigation, can irreparably damage crucial business relationships in an industry that thrives on collaboration and repeat business, instances where the arbitration process is perceived as abused lead to increased costs and a resurgence of the need to refer cases back to courts for final decisions, thus undermining its intended efficiency and making it a 'last resort' for many.⁴

In view of these, the need for more adaptable, cost-effective, and relationship-preserving ADR mechanisms like: mediation and conciliation have gradually become an increasingly attractive option for optimum resolution of construction disputes spanning both cross-border and domestic contracts.

The first part of the paper addresses certain relevant concepts relating to mediation and conciliation in Nigeria while the second part of the paper addresses the theoretical and historical framework of both mechanisms. The third part of the paper reviews the position of some of authors on the topic while the fourth part of the paper further appraises the legal and institutional frameworks that relate to the subject matter and addresses the practical application of mediation and conciliation in the construction industry in Nigeria. The fifth part of the paper focuses on impacts of mediation and conciliation in facilitating an efficient dispute resolution process in the construction industry in Nigeria. The paper ends with findings for recommendations to solve the challenges analysed earlier.

PAPER_D35.pdf>accessed 15 June 2025

⁴ Ibid.

1.1 BRIEF OVERVIEW OF THE HISTORY OF ALTERNATIVE DISPUTE RESOLUTION

The history of dispute resolution dates back to as far as the evolution of human race vis-à-vis conflict management. Humans have been negotiating and settling disputes formally and informally well before historical platforms recorded human endeavor in the field of dispute resolution. The earnest desire of humans to resolve conflicts means that dispute resolution is one of the oldest disciplines known to mankind. The formalization of ADR was arguably brought about by an American litigation lawyer called Eric Green, who first used the term ADR in an article titled: ‘Settling Large Case Litigation: An Alternative Approach’.⁵ Green was instructed on a large-scale commercial dispute involving the alleged infringement of certain patent devices.⁶ Legal proceedings had been commenced and Green estimated that both parties had spent several hundreds of thousands of dollars during the two and half years of preparation for the hearing of the case for which a date had not been set at the time they were looking out for an alternative method of resolving the dispute, without recourse to litigation. The parties agreed to run a mini trial.

⁵ Nimisore Akano and others, *Alternative Dispute Resolution I* (National Open University of Nigeria 2011); See also: (1978) 11 Loyola of Los Angeles L. Rev 493

⁶ Ibid.

that involved the two parties attending a two-day ‘information exchange’ chaired by a neutral third-party advisor, who was a former judge. The information exchange was to present each party’s version of the dispute. The third party’s neutral’s role was to moderate proceedings and not to influence a compromise of the dispute. Certain rules as to the proceedings were agreed upon by the parties. After two days, settlement was reached that saved parties in excess of \$1M in further litigation costs and possibly years of anxiety waiting for a hearing and judgment.⁷ Green’s approach went on to become what we now know as alternative dispute resolution.

Traditionally, Nigerian societies resolved their disputes through customary practices that are well established. These customary practices were deeply rooted in the social fabric of the community. Dispute resolution was majorly a communal affair, which was aimed at restoring peace rather than punishing offenders. Chiefs, community elders, and other respected figures played important roles in the mediation of disputes. These leaders were trusted to be fair and impartial, utilizing their experience and wisdom to guide the conflicting parties towards consensus and reconciliation. In essence, dispute resolution was basically community-oriented. The focus was on maintaining social harmony, restoring relationships, and reintegrating individuals into the community. This restorative technique ensured that disputes did not escalate and that the social fabric remained intact. Commercial disputes, usually involving breaches of informal agreements or trade disagreements, were handled within this framework, with community heads facilitating settlements and negotiations.

The advent of British colonial rule introduced significant changes to the

⁷ *ibid*

existing traditional dispute resolution mechanisms. The colonial administration introduced legal systems and formal courts based on the British common law, equity, and statutes of general application.¹⁰ ⁸These new legal structures began to co-exist with (or even replace) the customary methods, leading to a dual legal system in Nigeria. The colonial authorities created courts to handle both civil and criminal matters, including commercial disputes. These English-typed courts were modelled after the British judicial system, emphasising legal formalities and procedures that were unfamiliar to many indigenous Nigerians. Although, the English-typed courts handled a growing number of cases, customary courts remained operative, particularly in rural areas. This dual legal system gave rise to a complex landscape where formal and traditional legal practices coexisted, sometimes giving rise to inconsistencies and conflicts in dispute resolution. Following the independence of Nigeria in 1960, the new government carried out significant legal reforms aimed at unifying and modernising the legal system. Efforts were put in place to integrate customary law with formal judicial systems which is targeted at establishing a cohesive legal framework.

⁸ English Law, <<https://www.learnnigerianlaw.com/>> accessed 29th July, 2025

The government sought to streamline the legal system by passing laws that addressed the shortcomings of both colonial and customary legal practices. This was the period when laws and regulations were introduced to improve access to justice and the resolution of commercial disputes more effectively. Albeit these reforms, the Nigerian judicial system faced quite a number of challenges, including high costs, delays, and a backlog of cases. These challenges highlighted the need for alternative mechanisms of dispute resolution.

The emergence of Alternative Dispute Resolution in Nigeria in the 1990s was a response to the limitations and inefficiencies of the formal judicial system. The mechanisms of ADR, such as arbitration, mediation, and conciliation were recognized as viable alternatives to traditional litigation. Recognizing the advantages of ADR, stakeholders in the business and legal communities started to advocate for its adoption. ADR offered a way to resolve disputes that was more conducive, faster, and less formal and support the preservation of business relationships. Significant legislative institutions and frameworks were established to support Alternative Dispute Resolution. The Arbitration and Conciliation Act, 1988, made provisions for a legal basis for arbitration and conciliation processes in Nigeria. Furthermore, the establishment of arbitration and mediation centers institutionalized ADR in Nigeria. The 2000s saw the institutionalization and growth of ADR in Nigeria, with key initiatives and institutions promoting its use. Notable ADR institutions, like the Lagos Multi-Door Courthouse (LMDC) which was established in 2002, and the Abuja Multi-Door Courthouse (AMDC), played vital roles in the promotion and facilitation of ADR. These institutions provided structured environments for conciliation, mediation and arbitration.

Recent trends in Alternative Dispute Resolution in Nigeria include the increased awareness and acceptance among legal practitioners and businesses, as well as the passing into law of the Arbitration and Mediation Act in 2023 by the President Bola Ahmed Tinubu-led administration.

3.1 CONCEPTUAL CLARIFICATION

3.2 Alternative Dispute Resolution

ADR is a term often used to describe a wide variety of dispute resolution mechanisms that are short of or alternative to full scale court processes. ADR also refers to the set of mechanisms a society utilizes to resolve disputes without resort to costly adversarial litigation. It is an approach designed as a substitute to the rigorous and time-consuming litigation approach to dispute settlement.

ADR offers a more conciliatory means, quicker and less expensive platform for resolving disputes in contrast to the procedures of seeking justice and fairness or even redress, in a law court. More importantly, ADR mechanisms are flexible, promotes and protects the privacy of aggrieved parties, creates calm and friendly atmosphere for parties to discuss, agree and disagree before reaching amicable and endorsable agreement.⁹ Some ADR mechanisms include: Arbitration, Mediation, Conciliation and Negotiation, Neutral Evaluation, etc.

3.2 Mediation:

Mediation is an ADR process whereby a neutral third party facilitates the resolution of the dispute in line with the parties' agreement. If the parties

⁹ Ibid.

are unable to agree on terms, the mediator cannot make binding decisions.¹⁰ This process involves a neutral third party whose intervention facilitates communication and negotiation between the disputing parties to foster a mutually agreed settlement between them. Here, an impartial third party (called a mediator) assists parties to reach a negotiated settlement. The mediator is actively involved in the negotiation process but, unlike a judge or arbitrator, he has no power to impose a settlement, rather, he assists in suggesting solutions to meet the parties' mutual interests and achieve reconciliation.

It can be court-directed or a voluntary decision of the parties to mediate. Mediation can therefore be best described as an interest based-negotiation under the guidance of a third party.¹¹

The core principle of mediation that parties retain control over the outcome and the mediator facilitates without imposing a decision cannot be overemphasized. This is not merely a procedural detail; it represents a fundamental philosophical difference from traditional litigation. The "win-win scenario" is a direct and logical consequence of this party control, as individuals are inherently more likely to commit to and abide by a solution they have actively helped to craft.

This causal link, where party control leads to mutual agreement and ultimately relationship preservation, underscores a key benefit for the construction industry, where long-term partnerships and a positive reputation are often more valuable than a purely legal victory. In essence,

¹⁰ Babatunde(n1) 80

¹¹ Ibid.

mediation is a voluntary, non-binding process in which a neutral third party helps the disputing parties reach a mutually acceptable resolution. Mediation has become increasingly popular in the construction industry due to its collaborative nature, which promotes better communication between parties.¹²

3.3 Conciliation

Conciliation is similar to mediation, but the conciliator plays a more active role in proposing solutions to the dispute. The conciliator seeks to bring the parties together and may suggest terms for a settlement. Conciliation is therefore a process by which one or more independent person(s) is selected by the disputing parties to facilitate a settlement of their dispute through a particular procedure. Essentially the role of the conciliator is facilitative. The process and outcome are also non-binding. Like mediation, agreements reached in conciliation amounts at best to gentleman's agreement. A key distinguishing factor is that a conciliator actively evaluates each party's claim from a legal standpoint and can offer legal opinions, acting more akin to a neutral third-party attorney. While they may draw up and propose terms of agreement that, in their wisdom, represent a fair settlement, their recommendations are not binding unless explicitly accepted by the parties

¹² Ogunmakin, T. O., & Alade, A. B. 'Mediation as an effective tool for resolving construction disputes in Nigeria' *African Journal of Law and Conflict Resolution* (2022) (9) (1) 89-103.

4 LITERATURE REVIEW

Some scholars have offered their views on the role of mediation and conciliation across some sectors of the world economy. It is therefore pertinent to review literature relating to the construction industry across the globe especially Nigeria.¹³

On the issue of disputes in the Construction Industry, Ibrinke, Ekundayo & Asaolu, while commenting on what is obtainable in Lagos State noted that disputes in the Lagos construction industry frequently arise due to a variety of factors, including payment issues, variations in project scope, contract ambiguities, and poor communication among stakeholders.¹⁴ Dada & Jagboro also noted that these disputes can escalate, causing delays that disrupt project timelines and result in significant financial losses. In many cases, the root cause of disputes is the lack of clarity and understanding of contract terms, which leads to differing interpretations and expectations among the parties involved.¹⁵

Projects in the Construction industry are extremely complex and involves multiple stakeholders which include clients, contractors, consultants, and subcontractors. These sequences of professionals often engage in conflicts leading to disputes making the selection of appropriate Dispute Resolution Mechanisms (DRMs) essential for the

¹³ Ibid.

¹⁴ Ibrinke, O. T., Ekundayo, D., & Asaolu, M. 'Evaluating the challenges of managing construction workforce in Nigeria' *Journal of Civil Engineering and Construction Technology* (2013) (4) (2) 82-92.

¹⁵ Dada, M. O., & Jagboro, G. O. 'An evaluation of the impact of risk on project delivery in Lagos, Nigeria' *International Journal of Construction Project Management* (2012) (4) (2) 141-157

delivery period and cost effectiveness of the project whilst maintaining the production quality.¹⁶ Ejohwomu, Oshodi, and Onifade noted that Construction projects are susceptible to a high frequency of disputes due to their intricate nature. Numerous stakeholders are engaged in a single endeavor, with a multitude of tasks to complete and a variety of interests of taskmasters to satisfy. The taskmasters are selected from a variety of backgrounds in order to collaborate and to accomplish a shared construction objective. These individuals are most likely to have varying perspectives, opinions, and approaches regarding a specific issue.¹⁷

These among many other positions necessitate the need for a firm grasp of mediation and conciliation alongside rugged legal and institutional frameworks in this regard for resolution of construction industry related disputes as they arise.

5.1 LEGAL AND INSTITUTIONAL FRAMEWORKS FOR MEDIATION AND CONCILIATION IN NIGERIA

5.2 LEGAL FRAMEWORK

5.2.1 The Constitution of the Federal Republic of Nigeria, 1999

¹⁶ Inobemhe Jude Osigbemhe and Prince Oluleye Akanni, 'Effectiveness of Dispute Resolution Mechanisms in Construction Project Delivery: A Case Study of Lagos State' *Global Scientific Journals* (2024) (12) (12) 363
<https://www.globalscientificjournal.com/researchpaper/EFFECTIVENESS_OF_DISPUTE_RESOLUTION_MECHANISMS_IN_CONSTRUCTION_PROJECT_DELIVERY_A_CASE_STUDY_OF_LAGOS_STATE_.pdf> accessed 29 July 2025

¹⁷ Ejohwomu OA, Oshodi OS, Onifade MK 'Identifying the critical causes of conflict in construction projects in Nigeria' *Nigerian Journal of Technology (NIJOTECH)* (2016)(35)(2) 290 – 296 <<http://dx.doi.org/10.4314/njt.v35i2>>

One of the Fundamental Objectives and Directive Principles of State Policy as contained in Section 19 of the Constitution is the settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication. This foreign policy objective offers a constitutional guarantee for the use of ADR methods like mediation and conciliation for resolution of international disputes – even in the construction industry.

5.2.2 The Arbitration and Mediation Act (AMA) 2023

The most significant legal development in Nigeria's ADR landscape is the enactment of the Arbitration and Mediation Act (AMA) 2023, signed into law on May 26, 2023. This Act repeals the Arbitration and Conciliation Act 1988 (ACA) and establishes a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation. The AMA 2023 is now the principal legislation governing mediation in the country. The AMA 2023 introduces several key provisions that significantly enhance the framework for mediation as follows:

- i. **Scope and Application:** The Act explicitly identifies the classes of cases that can be mediated, including international commercial mediation, domestic commercial mediation, domestic civil mediation, and domestic and international settlement agreements resulting from mediation that are concluded in writing to resolve a commercial dispute. It also specifies certain disputes that are excluded from its scope.¹⁸
- ii. **Electronic Conduct of Mediation:** Recognizing technological advancements, the AMA provides for the electronic conduct of mediation sessions, including through digital transmission of voice and/or images,

¹⁸ Section 67(2) of the AMA itemises the class of disputes excluded from the scope of the Act.

provided that the identity of participating parties is verified and established mediation principles are adhered to.¹⁹ This provision aligns Nigeria with global best practices in online dispute resolution.

- iii. **Immunity for Mediators and Providers:** Mediators and mediation providers are granted immunity from liability for any act done or omitted in the discharge or purported discharge of their functions, unless the act or omission is proven to have been done in bad faith. This provision aims to protect neutrals and encourage their participation.²⁰
- iv. **Enforceability of Settlement Agreements:** Settlement agreements reached through mediation are binding on the parties and can be enforced in court as a contract, consent judgment, or consent award. The AMA also facilitates the enforcement of international settlement agreements from mediation made in countries other than Nigeria, provided the foreign state is a party to the Singapore Convention and the dispute originated from a legal relationship considered contractual or commercial under Nigerian laws. This is a significant step towards global recognition and enforceability of mediated outcomes.²¹
- v. **Suspension of Limitation Period:** Upon commencement of mediation proceedings, the running of the limitation period is suspended, meaning the time between the start and termination of proceedings is tolled. This prevents parties from being time-barred while pursuing amicable resolution.²²
- vi. **Admissibility of Evidence:** Statements or admissions made during mediation, including documents and proposals, are inadmissible in arbitral, judicial, or other proceedings. This ensures the confidentiality and "without

¹⁹ S 73(5) of the AMA

²⁰ S 81 of the AMA

²¹ S 82(2) of the AMA

²² S 81(1) of the AMA

prejudice" nature of mediation discussions.²³

- vii. **Responses to Invitation:** Responding parties to an invitation to attend a mediation session are required to accept within 30 days, with failure to respond potentially treated as a rejection.²⁴

The AMA 2023's objective to provide a unified legal framework for commercial disputes by arbitration and mediation is critical. The Act has successfully created clarity in mediation practice and instances where the court may intervene in arbitration proceedings. This comprehensive legislative reform addresses previous challenges, such as the lack of a unified legal framework for ADR forms like mediation and negotiation, which led to inconsistencies in application and uncertainty regarding enforceability. By providing clear legal provisions, the AMA aims to confer binding status on mediation agreements, similar to arbitration awards, thereby building confidence among disputants and enhancing access to justice.

5.2.3 **The Federal Capital Territory High Court (Civil Procedure) Rules, 2018**

The FCT High Court (Civil Procedure) Rules highlight a commitment to alternative dispute resolution (ADR) as an essential component in civil litigation, emphasising the role of the court in promoting efficient and amicable resolutions. Order 19 (of the Rule) illustrates the court's proactive stance on settling disputes outside the traditional courtroom setting. It places a duty on the court or a judge to encourage the resolution of disputes through various ADR methods, such as arbitration, conciliation, and mediation.

²³ S 77(1) of the AMA

²⁴ Ss 70(1) & (2) of the AMA

This provision reflects a broader judicial strategy to ease the burden on the court system and foster more collaborative and less adversarial solutions to conflicts.

Rule 1 of the Order mandates that the court or judge should actively promote the use of ADR methods.²³²⁵ This directive aims to encourage parties to explore alternative avenues for resolving their disputes, which can lead to quicker and potentially more satisfactory outcomes.

By recommending arbitration, mediation, or conciliation, the court helps parties avoid prolonged litigation, thus saving time and resources. The provisions in Order 19 effectively institutionalise ADR within the civil procedure framework, promoting its use as a viable alternative to traditional litigation. The rules improve the efficiency and effectiveness of dispute resolution by requiring courts to encourage and prioritise ADR before moving forward with litigation. This strategy not only speeds the judicial process, but it also encourages a more conciliatory attitude to conflict settlement, which is consistent with current best practices in legal dispute resolution.

5.2.4 **Rules of Professional Conducts for Legal Practitioners, 2023**

The Rules of Professional Conduct for Legal Practitioners contains the body of rules that regulate the professional as well as ethical conducts of legal practitioners in Nigeria. The rules are made pursuant to the Legal Practitioners Act, 2004, with its recent update in 2023.

²⁵ Order 19 Rule 1 FCT High Court (Civil Procedure) Rules 2018

Specifically, Rule 15(3)(d) provides that: ‘In his representation of his client, a lawyer shall not fail or neglect to inform his client of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of his client’.

The above provision enjoins a legal practitioner to advise his client of the option of alternative dispute resolution before embarking on litigation. It is, thus, considered a professional misconduct for a legal practitioner not to inform his client of the option of alternative dispute resolution mechanisms for cases that are solvable by alternative dispute resolution before proceeding with or the commencement of an action in a court of law. This provision further strengthens the relevance and importance of ADR mechanisms like mediation and conciliation in the Nigerian legal system.

5.3 INSTITUTIONAL FRAMEWORKS

5.3.1 Institute of Chartered Mediators and Conciliators (ICMC)

The Institute of Chartered Mediators and Conciliators (ICMC) is Nigeria's leading body dedicated to the promotion, training, certification, and professional development of mediators and conciliators across various sectors. Established in 1998 as the National Association of Mediators (NAM), it pioneered the distinction of mediation within the broader field of ADR, advocating for it as a more inclusive, accessible, and human-centered approach to resolving disputes, especially when arbitration was gaining prominence. The ICMC offers a wide array of services towards enhancing mediation and conciliation of commercial disputes, including:

- i. **Professional Certification Training:** The ICMC provides extensive training in ADR, offering courses for Associate Members, Members, and Fellows, along with Continuing Professional Development (CPD) and

Nigerian Law School Training.

- ii. **Dispute Resolution Services:** The Institute offers direct dispute resolution services, encouraging organizations and institutions to adopt mediation and conciliation as primary means for conflict resolution.
- iii. **Online Dispute Resolution (ODR) Centre:** The ICMC provides a secure online platform to help individuals and businesses resolve conflicts efficiently and professionally, covering issues like contract disputes or customer complaints, without the need for courtrooms or delays.
- iv. **Community Engagement and Publications:** It fosters a community of ADR professionals and publishes a "Mediation Bulletin".

The ICMC's efforts are vital in addressing the challenge of limited legal awareness and expertise among legal practitioners and judges regarding ADR mechanisms. By providing comprehensive training and certification, the ICMC helps to bridge the knowledge gap, ensuring a more qualified workforce capable of recommending and effectively utilizing ADR processes. This commitment to professional development is crucial for promoting an ADR culture and enhancing the overall effectiveness of dispute resolution in Nigeria.

5.3.2 **INSTITUTE OF CONSTRUCTION INDUSTRY ARBITRATORS (ICIARB)**

The Institute of Construction Industry Arbitrators (ICI Arb), formerly known as the Society of Construction Industry Arbitrators (SCIARB), was established in 1993 as a specialist Arbitration and Alternative Disputes Resolution (ADR) body specifically for the Construction Industry. This specialization is critical given the complex technical and contractual issues prevalent in construction disputes, which often require mediators with industry-specific knowledge. ICI Arb offers tailored ADR services for construction disputes, including:

- i. **Arbitration:** Providing neutral arbitrators for private dispute resolution.
 - ii. **Conciliation:** Acting as third-party conciliators to facilitate mutual settlements.
 - iii. **Adjudication Dispute Board:** Expediting and delivering legally binding court resolutions.
 - iv. **Mediation:** Playing the mediator's role to expedite dispute resolution in the construction industry, promoting understanding, facilitating communication, and using creative problem-solving techniques.
 - v. **Professional Accreditation and Certification:** In collaboration with other institutions like the Mediation Training Institute (MTI – Nigeria), ICIArb offers professional ADR skills accreditation and certification training, enabling members to become certified arbitrators and accredited mediators.
 - vi. **Research Hub:** ICIArb supports students seeking information on dispute resolution in the construction industry. The existence of a specialized body like ICIArb is crucial for ensuring that construction disputes are handled by experts who possess the necessary technical know-how. The lack of adequate mediation experts specifically in construction dispute resolution has been identified as a major challenge in Nigeria, with most ADR Centre mediators typically handling general land or matrimonial disputes rather than complex construction matters. ICIArb directly addresses this gap by providing specialized training and a panel of experts, thereby contributing to the effective and prompt resolution of construction-related conflicts and helping to reduce the caseload on judges who may lack practical construction experience.
- 5.3.3 **Multi-Door Courthouses and ADR Centers:** A significant development in Nigeria's ADR history was the establishment of the Lagos Multi-Door Courthouse (LMDC) in 2005, which marked the judiciary's acceptance of ADR. Since then, many states have established similar Multi-Door

Courthouses and incorporated ADR provisions into their High Court Civil Procedure Rules, actively encouraging disputants to explore ADR. These court-annexed ADR centers play a vital role in integrating ADR into the formal justice system, providing a pathway for cases to be referred from courts to mediation or conciliation. These institutions are effective in resolving disputes and improving access to justice. However, challenges remain, such as inadequate funding, reluctance among some legal practitioners to embrace ADR due to insufficient research and knowledge, which can lead to low referral rates from judges and magistrates. Despite these issues, the AMA 2023 is expected to serve as a springboard for the promotion of Multi-Door Courthouses, as it establishes a framework for the administration of mediation in Nigeria that will foster confidence in the Nigerian economy and enhance access to justice. To align with global best practices, MDCs will need to re-examine their enabling statutes and practice directions to incorporate applicable provisions from the AMA, such as those concerning confidentiality waivers and the requirements for relying on and refusing settlement agreements.

6 CHALLENGES AND PROSPECTS OF MEDIATION AND CONCILIATION IN THE NIGERIAN CONSTRUCTION INDUSTRY

The adoption of mediation and conciliation in Nigeria's construction industry offers a multitude of benefits that directly address the sector's unique challenges and foster a more sustainable and collaborative environment. This does not come on a platter as there still exists some challenges in its application and workability. Both prospects and challenges would be discussed below.

6.1 PROSPECTS

6.1.1 Preservation of Relationships and Future Collaborations: One of the most significant advantages of employing mediation and conciliation in construction disputes is their unparalleled ability to preserve crucial business relationships between contractors, owners, subcontractors, and other stakeholders. Unlike traditional litigation, which often fosters an adversarial environment leading to strained relationships and animosity, these ADR methods actively promote open communication and collaboration. They provide a structured platform for parties to express concerns, understand diverse perspectives, find common ground, and work collaboratively towards mutually beneficial resolutions. This preservation of positive relationships is particularly vital in the construction industry, which often relies on repeat business, long-term partnerships, and a network of trusted collaborators for future opportunities. Mediation, in particular, helps preserve relationships, whereas litigation has a high chance of destroying them due to its often-acrimonious nature. ADR mechanisms generally contribute to preserving relationships or reputation among parties.

The recurring emphasis on relationship preservation in the context of construction ADR signifies a strategic shift from a purely legalistic "win-lose" paradigm to a commercially pragmatic "win-win" approach. This indicates that the value proposition of ADR extends beyond merely resolving immediate disputes; it actively contributes to long-term business sustainability, market reputation, and the fostering of a more collaborative industry ecosystem. The consistent mention of "preserving relationships" across multiple sources forms a strong thematic link. In the construction industry, where projects are often complex, long-term, and involve a finite pool of key players, damaging relationships through adversarial litigation has a direct and detrimental impact on future business

prospects, reputation, and the ability to secure new contracts. ADR, by fostering a cooperative and communicative approach, directly mitigates this risk. This implies that the adoption of mediation and conciliation is not merely a legal or procedural choice but a strategic business imperative for continuity, growth, and maintaining a competitive edge in the Nigerian construction sector.

- 6.1.2 **Cost-Effectiveness and Time Efficiency:** Mediation and conciliation offer substantial cost and time savings when compared to traditional litigation and, often, even arbitration. These ADR processes typically require significantly less time to conclude and demand fewer financial resources. This efficiency stems from avoiding the substantial expenses associated with court fees, extensive discovery procedures, prolonged attorney fees, and the costs of expert witnesses. Mediation processes, for instance, can be as short as 1-2 days, depending on the mediator's skill, in contrast to litigation which typically takes much longer due to court backlogs. The rapid resolution afforded by these methods is particularly beneficial in construction disputes, where project delays can have a severe ripple effect, impacting ongoing project timelines, straining stakeholder relationships, and potentially jeopardizing the financial solvency of the parties involved. By resolving issues promptly, mediation and conciliation enable projects to resume progress swiftly, thereby reducing overall project costs and mitigating financial losses. Litigation and arbitration are often time-consuming and expensive, directly contributing to project abandonment. ADR mechanisms generally lead to a quick dispensation of justice and are cost-effective. The consistent emphasis on cost and time efficiency points to a critical economic imperative driving the adoption and promotion of ADR in Nigeria's construction sector. In an industry where "time is money" and project delays can lead to significant financial losses, contractual

penalties, and even complete project abandonment, ADR offers a direct and tangible solution to mitigate these economic risks. This, in turn, contributes significantly to project viability, enhances investor confidence, and supports the overall economic stability and growth of the industry. The information consistently draws a clear contrast between the "high costs" and "delays" associated with litigation and arbitration, and the "cost-effectiveness" and "timely resolution" offered by ADR. This establishes a direct cause-and-effect relationship: the inherent problems of traditional dispute resolution methods necessitate the adoption of ADR. The implication for the construction industry is profound: faster dispute resolution directly translates into reduced project abandonment, improved cash flow for businesses, and ultimately, a healthier and more productive industry. This demonstrates that ADR provides a significant economic benefit, extending far beyond mere procedural advantages.

6.1.3 **Flexibility, Customization, and Creative Solutions**

Construction mediation and conciliation offer unparalleled flexibility and customization, allowing the dispute resolution process to be tailored precisely to the unique needs and complexities of the parties and the specific construction project involved. Unlike rigid court proceedings that adhere to strict legal procedures and precedents, ADR methods enable contractors and owners to shape the process according to their respective needs, focusing intently on the specific issues at hand. This flexibility empowers parties to explore a wide array of options and craft creative solutions that may not be available or permissible within a conventional courtroom setting. Such solutions can extend beyond monetary compensation to include adjustments to project timelines, alternative payment arrangements, agreements on future work, or even the introduction of new Key Performance Indicators (KPIs) to ensure ongoing satisfaction

and relationship improvement. Mediation, in particular, allows for a wide range of creative remedies, as parties are not confined to strict legal remedies. ADR mechanisms are generally flexible due to their informality and simplicity, allowing parties to agree on their own procedures. The recurring emphasis on flexibility and the ability to generate creative solutions signifies a departure from the rigid, "one-size-fits-all" approach of traditional litigation. This adaptability is particularly crucial in construction, where disputes often involve highly technical, interconnected issues that require bespoke solutions rather than standardized legal remedies. This characteristic of ADR directly addresses the complex, multi-faceted nature of construction projects, fostering more satisfactory and durable resolutions that genuinely meet the commercial and operational needs of the parties involved. The ability to craft solutions that go beyond monetary awards, such as adjusting project timelines or establishing future work agreements, provides a more holistic approach to conflict resolution. This fosters a sense of empowerment among parties, as they actively participate in shaping the outcome, leading to higher satisfaction and a greater likelihood of adherence to the agreement. This directly contributes to project continuity and overall industry health.

- 6.1.4 **Confidentiality and Control over Outcome:** Confidentiality is a significant advantage of construction mediation and conciliation. The discussions and negotiations that occur during mediation are strictly confidential, providing a safe and open environment for parties to discuss their concerns without fear of public disclosure. This privacy is particularly advantageous in construction disputes, where there are often multiple parties involved, or where parties may wish to avoid the reputational damage or commercial risk associated with public litigation. Unlike litigation, which involves public hearings and the publication of judgments, mediation proceedings and their outcomes are strictly confidential. All disclosed

documents for settlement are confidential and cannot be released without consent or court order. Furthermore, construction mediation empowers contractors and owners by giving them a sense of control over the outcome of the dispute. Unlike litigation, where a judge or jury makes the final decision, mediation allows the parties to actively participate in the decision-making process. This empowerment leads to a higher degree of satisfaction with the resolution, as parties are more likely to adhere to an agreement they have actively helped to craft. In mediation, agreements are not binding unless the parties' consent, and the mediator does not determine the outcome, ensuring that parties retain ultimate authority over the resolution. This contrasts sharply with litigation, where the judge controls the outcome, and parties have no control over the choice of judge, language, times, venue, or procedural rules. The emphasis on confidentiality and party control highlights ADR's capacity to protect sensitive commercial information and empower stakeholders. In a competitive industry like construction, maintaining privacy over dispute details can be crucial for preserving business reputation and competitive advantage. The ability for parties to actively shape their own solutions, rather than having a decision imposed upon them, not only increases satisfaction but also fosters a greater sense of ownership and commitment to the agreed-upon terms, leading to more sustainable resolutions. This directly contributes to a more stable and predictable business environment, encouraging investment and long-term collaboration.

6.2 CHALLENGES OF APPLYING MEDIATION AND CONCILIATION IN THE CONSTRUCTION INDUSTRY IN NIGERIA

6.2.1 Lack of Comprehensive Legal Framework for Conciliation: Conciliation is not provided for under the Arbitration and Mediation Act,

2023. The AMA replaced the Arbitration and Conciliation Act (ACA) and specifically removed conciliation from its provisions focusing instead on arbitration and mediation. As a result, the legal landscape for an ADR mechanism like conciliation in Nigeria is somewhat inconsistent.

For instance, while conciliation is increasingly recognised as a valuable tool for dispute resolution, there is no equivalent legal framework to the Arbitration and Mediation Act that standardizes its practices or ensures the enforceability of conciliation agreements. This gap creates uncertainty and may deter parties from opting for conciliation, knowing that the outcomes might not be legally binding or easily enforceable.

6.2.2 **Judicial Interference:** Judicial interference presents a significant challenge to the effectiveness of Alternative Dispute Resolution (ADR) mechanisms in resolving commercial disputes in Nigeria²⁶. Despite the fundamental principle of minimal judicial intervention that underpin ADR processes, Nigerian courts sometimes engage in actions that interfere with these proceedings²⁷. One common form of judicial interference in ADR is the staying of proceedings²⁸. In some cases, courts may issue orders to halt ongoing arbitration or other ADR processes. This can occur for different reasons, such as disputes over jurisdiction or challenges to the validity of the arbitration agreement²⁹. While judicial oversight is necessary to ensure fairness and adherence to legal standards, excessive or unjustified stays can disrupt the momentum of ADR proceedings, causing delays and increasing costs for the parties that are involved. Such delays can negate one of the

²⁶ O. Fagbohun, 'The Fragmented Legal Landscape of ADR in Nigeria', *Lagos Law Review* (2023) (11) (1) 78-95

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ P.T. Osagie, 'The Enforcement of ADR Outcomes in Nigeria: Arbitration versus Mediation' *Nigerian Arbitration Journal* (2023) (15) (2) 50-68

primary benefits of ADR, its ability to provide quicker resolutions compared to traditional litigation.

- 6.2.3 **Limited Awareness and Expertise:** The limited legal awareness and expertise among legal practitioners and judges regarding Alternative Dispute Resolution mechanisms³⁰ specifically as it relates to construction industry disputes is a significant barrier to the effective utilization of ADR in resolving commercial disputes in Nigeria. While traditional litigation remains the predominant method for the resolution of disputes, the growing need for more efficient, cost-effective, and amicable resolution processes emphasises the importance of ADR mechanisms like mediation and conciliation. However, the unfamiliarity and lack of proficiency in ADR among many legal professionals can hinder its integration and effectiveness. This gap in knowledge and skills can manifest in various ways. For instance, legal practitioners may be hesitant to recommend ADR to their clients, favouring litigation due to their familiarity and comfort with the court system. Even when ADR is pursued, the lack of expertise can lead to suboptimal outcomes. Lawyers who are not well-versed in arbitration or mediation may struggle to effectively advocate for their clients or draft clear and enforceable agreements. Similarly, judges who are not adequately trained in ADR principles may not fully support or facilitate ADR processes, potentially leading to unnecessary judicial intervention or misinterpretation of ADR outcomes. The consequences of this limited awareness and expertise are complex. Clients may miss out on the benefits of ADR, such as faster resolution times, reduced costs, and the preservation of business relationships. Furthermore, the potential for innovative and tailored solutions that ADR offers is often underutilized, as legal

³⁰ C.O. Eze, "Legal Frameworks for Mediation in Nigeria: The Missing Link." *Journal of African Law*, (2022) (35) (2) 112-128

practitioners may be more inclined to more adversarial and rigid approaches inherent in litigation. Furthermore, the judiciary's occasional reluctance or inability to recognize and enforce ADR agreements can undermine the confidence of disputants in the effectiveness of these mechanisms.

6.2.4 Inadequate Institutional Support: While ADR offers numerous benefits, such as efficiency, cost-effectiveness, and the preservation of business relationships, its success is heavily dependent on a robust institutional framework. Unfortunately, the existing infrastructure, including arbitration centres and mediation facilities, often falls short in providing the necessary support, thereby undermining the credibility and effectiveness of ADR mechanisms.³¹

Mediation facilities play a crucial role in the administration of ADR processes.³² They provide the physical spaces, administrative services and technical support required to conduct ADR proceedings smoothly. However, in Nigeria, the availability and quality of such institutions are often insufficient. Many regions lack well-equipped ADR centers, forcing parties to either travel long distances to access facilities or rely on inadequate local resources. This scarcity can discourage the use of ADR mechanisms, particularly for small and medium-sized enterprises that may not have the means to engage in ADR proceedings far from their base of operations.

7.0 RECOMMENDATIONS

7.1 Encourage Collaborative Practices: Stakeholders must actively educate

³¹ A. K. Ibrahim, 'Uniformity in ADR Practices: The Need for Comprehensive Legislation' *Nigerian Business Law Journal* (2023) (12) (2) 102-119

³² Effect of Appeals on Course of Trials- Litigation, Mediation & Arbitration – Nigeria <<https://www.mondaq.com/nigeria/trials-appeals-compensation/309008/effect-of-appeals-on-course-of-trials>> accessed 29th July, 2025

the community about collaborative law and mediation through training programs, workshops and setting up of mediation and conciliation centers – especially in remote areas. This will raise awareness and knowledge of these methods so that they can be used in future projects.

- 7.2 **Use of Technology:** Due to popularity around online dispute resolution, there is scope for construction companies to invest in digital platforms for timely and efficient dispute resolution. In doing so, it will simplify processes and ensure that they are more reachable to all stakeholders across the board.
- 7.3 **Utilization of Hybrid Methods:** Promotion of the use of hybrid forms of dispute resolution like mini-trials that combine aspects of conciliation, mediation and negotiation would go a long way to uphold some flexibility and adaptability in terms of the specific challenges to be addressed by way of a construction dispute.
- 7.4 **Encourage Early Communication:** Promote preemptive communication among project stakeholders to uncover any problems early on. Creating a culture of open dialogue can help significantly decrease the chances disputes come to fruition.

8.0 CONCLUSION

Mediation and conciliation have emerged as indispensable mechanisms for dispute resolution within Nigeria's construction industry, offering profound advantages over traditional litigation and, in many instances, arbitration. The inherent disputatious nature of construction projects, coupled with the escalating costs, protracted timelines, and relationship-damaging adversarial character of conventional legal processes, has necessitated a

fundamental shift towards more collaborative and efficient alternatives. The distinct roles of mediators, as facilitators of communication and mutual agreement, and conciliators, as evaluators offering legal insights within a non-binding framework (except as agreed by parties), provide a flexible spectrum of interventions. This allows stakeholders in the construction sector to select the most appropriate method tailored to the specific complexities of their dispute, fostering solutions that prioritize relationship preservation, cost-effectiveness, and project continuity. The capacity of these ADR methods to generate creative, customized outcomes that extend beyond mere monetary compensation directly addresses the multi-faceted needs of construction projects, promoting a "win-win" scenario that benefits all parties. The legal and institutional landscape in Nigeria has significantly evolved to support this transition. The Arbitration and Mediation Act (AMA) 2023 represents a landmark legislative reform, providing a unified and comprehensive framework for mediation, including provisions for electronic conduct, mediator immunity, and the enforceability of settlement agreements. Complementing this legal foundation are vital institutional structures such as the Institute of Chartered Mediators and Conciliators (ICMC) and the Institute of Construction Industry Arbitrators (ICIArb). These bodies are instrumental in professionalizing the field through specialized training, certification, and the provision of expert dispute resolution services tailored to the construction sector. Furthermore, the increasing recognition of Multi-Door Courthouses underscore a broader societal acceptance and integration of ADR into Nigeria's justice system. Despite these advancements, challenges persist, notably the scarcity of specialized construction ADR experts, instances of judicial interference, and the need for greater public awareness and acceptance among legal practitioners. Addressing these areas through continued legislative refinement, enhanced training and capacity- building

initiatives, and sustained advocacy will be crucial. By further strengthening these legal and institutional pillars, Nigeria can fully leverage the transformative potential of mediation and conciliation, fostering a more stable, efficient, and productive construction industry that is better equipped to drive national development.