**ENFORCEMENT OF ALTERNATIVE DISPUTE**

**RESOLUTION CLAUSES & ARBITRAL AWARDS IN NIGERIA[[1]](#footnote-0)**

By

**Hon Justice Dele Peters[[2]](#footnote-1)**

**1. Introduction**

1. This *National Workshop for Judges on Alternative Dispute Resolution* is organized by this Institute in the discharge of its statutory mandate as the only body to provide capacity building for Hon Judges and staff members of the Judiciary in Nigeria. The theme of the Workshop *Achieving the Goals of a Modern Justice System* is a reflection of the Judiciary to keep in touch with the current realities in justice delivery.It is apt. I thank His Lordship the Administrator of the Institute for the invitation to serve as a faculty member. I am also constrained to commend and congratulate His Lordship for continuously flying the flag of the Institute. My mandate here today is to lead a discussion on the topic *Enforcement of Alternative Dispute Resolution Clauses and Arbitral Awards.*

2. The exponential growth in the rate of litigation in Nigeria has continued to make imperative the need for a resort to some alternative form of dispute resolution. The Court dockets are on the rise daily. The requisite infrastructures necessary for the smooth administration and dispensation of justice are not just there. Even patrons of the Courts are not in the least satisfied with the long delays that are almost becoming associated with justice delivery. All this coupled with the cost of litigation, the rancorous nature of litigation and the rather destructive and unpredictable outcome of litigation have all combined to make users of the Court and those who seek justice to insert clauses on alternative dispute resolution in their contract agreement. Yet even when parties resort to the use of Arbitration in resolving their disputes, the arbitral award which is the end product of the process calls for enforcement especially where one of the disputants is not satisfied with the outcome. This paper sets out to examine the enforcement of ADR clauses as well as Arbitral Awards. It is divided into 4 short parts of which this part is the first. In the second part the paper examines *albeit* in brief the concept of ADR, its hybrids and benefits. In addition we bring to the fore samples of ADR Clauses. The third part of this presentation focuses on the meaning of Arbitral Awards and the different modes of their enforcement. Part 4 of the paper deals with concluding remarks.

**2. ADR[[3]](#footnote-2) & ADR Clauses**

3. Simply put the concept or idea of Alternative Dispute Resolution posits the existence of diverse dispute resolution options available to disputants. It refers to a group of flexible approaches to resolving disputes more quickly and at a lower cost than going through the tedious road of adversarial proceedings[[4]](#footnote-3). It advocates a shift of focus away from the Court as a place to commence settlement of dispute. But rather makes the Court a place of last resort. According to *Orojo and Ajomo*,[[5]](#footnote-4) *ADR* is generally used to describe the methods and procedures used to resolve disputes either as alternatives to the traditional disputes resolution mechanism of the courts or in some cases as supplementary to such mechanisms. ADR may also be defined as a range of procedures that serves as alternatives to litigation through the courts for the resolution of disputes, generally involving the intercession and assistance of a neutral or a third party.[[6]](#footnote-5) Within this context are such party friendly and party focussed methods of dispute resolution which are cheaper, less rancorous and faster in terms of result. This is what is referred to as *ADR* or Alternative Dispute Resolution. To others the *ADR* is *Appropriate Dispute Resolution.* Yet some other scholars the *ADR* is indeed *African Dispute Resolution[[7]](#footnote-6).* Some of the hybrids in this class of methods are Negotiation, Mediation, Conciliation, Mini-Trial and Rent-a-Judge among several others.

4. The Court system is adversarial in nature. It is right based as opposed to *ADR* that is interest based. A right based dispute resolution mechanism will only succeed in resolving disputes with a win-lose situation. A win-lose scenario is a winner takes all. Only one side is successful. The successful party takes the whole pie which could have been successfully expanded and shared. The consequence of this is that the losing party is dissatisfied and disgruntled. Any existing relationship in such environment is left battered with nothing to preserve. It has also being advocated by ADR practitioners that ADR procedures are quicker and cheaper than litigation. It is correct that ADR procedures are cheaper than going through the process of Litigation. However, ADR procedures are only cheap when other forms of ADR procedures are used apart from arbitration. Arbitration now appears as expensive as most litigation process if not even more.

5. Furthermore, ADR procedures results in win-win resolutions which preserves relationship between parties to the dispute. This is because the resolutions reached are usually party-generated which makes these resolutions creative and more interest based as opposed to the rights-based approach of the court system.

**Goals of ADR**[[8]](#footnote-7)

6. The goals of ADR in the administration justice are numerous. Among the major ones however is the fact that ADR sets out*to relieve the courts of their mounting workload, decongest the court dockets as well as prevent undue cost and delay.* This point is trite in cognizance of the various problems which litigation poses in different jurisdictions as already pointed out here. However, ADR experts in the United States (where the practice of ADR is well advanced) have expressed some doubt as to whether the practice of ADR can ever relieve court congestion. Undoubtedly, however, there are methods of resolving disputes, which are less expensive and more expeditious than formal litigation.

7. A second goal of *ADR*, namely *to enhance community involvement in the dispute resolution process,* is of particular importance in most developing countries, Nigeria inclusive. In Nigeria empirical research has shown that a significant section of the population is alienated from the formal court system. The development of appropriate forms of dispute resolution which encourages and enhances community involvement and bear the stamp of legitimacy is therefore of cardinal importance to those who would see disputes and conflict effectively resolved.

8. The third goal of ADR is that it *facilitates access to justice.* For example, parties, who with the assistance of a mediator are able to resolve their dispute may not regard themselves as having received justice but may simply consider that they have attained the more modest goal of settling their dispute. Undoubtedly, alternative dispute resolution in its broadest sense does, and will continue, to facilitate the increased resolution of dispute.

9. The most important goal of *ADR* is arguably the fourth goal, namely *to provide more effective dispute resolution.* As already stated, it is of the essence of the study and practice of alternative dispute resolution to provide mechanisms and processes, which will resolve disputes more effectively than an automatic recourse to litigation. Indeed, one of the most significant effects that dispute resolution practice has had in South Africa over the last decade is to challenge the view that litigation is the only means, apart from agreement, of resolving disputes.

10. The realisation of the beauties of ADR and it capabilities have led to the recognition of the need to insert in or incorporate clause for its use in contract and agreements. The rationale behind this is to make a resort to litigation not the first choice in the event of dispute arising in a venture or an endeavour. Alternative Dispute Resolution clauses are contract terms that resolve disputes as a non-binding or binding solution. They sometimes include rules that require the parties to engage in alternative disputation, such as mediation and arbitration.

11. Typical examples of such clauses are –

1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.

2. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation. If the matter has not been resolved within thirty (30) calendar days of a Party’s request for negotiation, either Party may initiate proceedings or arbitration only as provided herein.

3. In event of any dispute or misunderstanding or disagreement arising from this agreement, the Parties shall resort to Mediation for the purpose of resolving such dispute, or misunderstanding or disagreement.

12. Alternative Dispute Resolution clauses as these are better inserted in the agreement of the parties. Indeed in drafting commercial agreements in recent times, the inclusion of alternative dispute resolution clauses has become conventional and widely accepted. This is to ensure that resort is not first had to litigation in event of dispute arising. Where they are included in the contract document, they serve more or less as condition precedent which must be met before the institution of an action in Court. Where therefore an action is instituted without a resource to or compliance with the ADR clause an objection to the pre-mature nature of the suit will certainly find favour with the Court. In *Lieutenant Colonel David Emmanuel Garba (Rtd.) v. Nigerian Army & Ors. (2019) LPELR-47390(CA)*, on the need for the Claimant to comply with the stipulated requirement before filing an action, the Court of Appeal decided that -

"...It is however a settled principle of law, that where there exists a valid condition precedent to the institution of a matter, created by statue or contract, failure to fulfil the condition would mean that the Court is estopped from accommodating such litigant, and in fact is devoid of jurisdiction until the needful is done.

13. The Supreme Court had in an earlier case of *Yardua & Ors. v. Yandoma & Ors. (SC.4/2014)(LPELR) (p. 105, paras. d-f)*, authoritatively laid it down per Peter-Odili JSC that –

"Where a statute or rules of Court prescribe a condition precedent to the assumption of jurisdiction, that condition precedent must first be fulfilled before there is jurisdiction. A case must therefore come before the Court only when initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction."

**3. Enforcement of Arbitral Award**

14. According to *Romilly M.R,* arbitration is a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties[[9]](#footnote-8). To *Bersein[[10]](#footnote-9)* Arbitration is a mechanism for the resolution of disputes which takes place usually in private pursuant to an agreement between two or more parties under which the parties agree to be bound by the decision to be given by the arbitrator according to law or, if so agreed, other considerations, after a fair hearing, such decision being enforceable in law[[11]](#footnote-10). Arbitration is one of the known methods of resolving dispute. This hybrid is finding favour with disputants especially commercial disputants. The reason is not farfetched when compared with a full-fledged litigation. It is important to note however that the practice of arbitration in this clime is beginning to have the nomenclature of litigation with its attendant delay, rancour and length of time especially given the leeway to apply to set aside decisions or award of the tribunal.

15. Award is the final end product of an arbitral proceeding. It is akin to Judgment a Court of law delivers at the end of its sitting over a cause or matter. An arbitral award may be domestic or foreign. The expectation is that parties to arbitral proceedings will voluntarily comply with any arbitral award made by the Arbitrator. More often than not, these expectations are never met. Award debtors routinely employ every strategy and argument to circumvent the enforcement of the award against them. Applications may be made to set aside the award for several reasons. It may also be argued that indeed the time within which to enforce the award has lapsed and the award is unenforceable. Bearing in mind that arbitral proceedings have the semblance of litigation, whoever and whichever party has the arbitral award should be entitled to enjoy the fruit of his labour at the arbitration, how then can arbitral awards be enforced? I should quickly indicate that an arbitral award for enforcement may either be Domestic Arbitral Award or Foreign Arbitral Award. In each of the situations, there are established procedures for their recognition and enforcement.

**3.1 Enforcement of Domestic Arbitral Awards**

16. Any award made by the arbitral tribunal shall be in writing and signed by the arbitrator or arbitrators[[12]](#footnote-11). It is expected and indeed mandatory for the arbitral tribunal to state on the award the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on an agreed terms under section 25 of the Act; the date the award was made and the place of the arbitration as agreed or determined under section 16(1) of the Act and which place shall be deemed to be the place where the award was made[[13]](#footnote-12).

***3.1.1. Recognition & Enforcement under Section 31***

17. The provisions for recognition and enforcement of arbitral awards are contained in Sections 31 and 51 of the *Arbitration and Conciliation Act* as well as section 56 of the *Arbitration Law, Laws of Lagos State.* Section 31 of the Act and section 56 of the Law deal with domestic arbitral awards while section 51 of the Act relates to recognition and enforcement of international arbitration awards. Before an arbitral award is enforced in Nigeria it must first be recognized. In this respect, Section 31 (1) of the Act[[14]](#footnote-13) provides that an arbitral award shall be recognized as binding and subject to this section and section 32 of this Act, shall upon application in writing to the court, be enforced by the court.

18. In making an application for the enforcement of an award, the party relying on the award shall supply the duly authenticated original award or duly certified copy thereof; and the original arbitration agreement or a duly certified copy thereof[[15]](#footnote-14). An award may, by leave of Court or a Judge, be enforced in the same manner as a judgment or order to the same effect[[16]](#footnote-15). The law did not specify any particular mode for the recognition and enforcement of an award, this has been left for the High Court Rules; as only the High Court has jurisdiction to entertain an application for the recognition and enforcement of arbitral awards[[17]](#footnote-16).

19. An application for the enforcement of an award is to be made on notice. The imperative of putting the other side on notice is appreciated against the background of the right to fair hearing. In *Kotoye v. CBN* the apex Court had held that an application to Court in civil causes and matters must always be subject to the provision of fair hearing as enshrined in section 33(1) of the 1979 Constitution. In any event the need to put the Award Debtor on notice is also to afford an opportunity for the Court to be sure that indeed the Debtor has not settled the award or of any appeal that may be pending.

20. The application for leave is to be supported by a sworn affidavit and shall contain the facts as stated in sections 31(2) and section 51(2) of the Act as follows –

a). the duly authenticated original award or a duly certified copy thereof.

b). the original arbitration agreement or duly certified copy thereof; and

c). where the award or arbitration agreement is not made in the English Language, a duly certified translation thereof into the English Language.

21. The applicant is also required to full disclosure of any matters known to him that may affect the granting of the leave to enforce award. Except where there are grounds to refuse the prayer sought the application or leave to enforce is usually granted. Where leave is granted it is done on terms and the award is to be enforced in the same manner a Judgment or order of Court is enforced. This means that all methods for the enforcement of a Judgment of Court are also available to enforce the award including injunctive relief orders.

***Refusal of Recognition & Enforcement of Award***

22. *Section 32 of the Arbitration & Conciliation Act* deals with when a Court may refuse to recognize and enforce an Award. The section provides that any of the parties to an arbitration agreement may request the Court to refuse recognition or enforcement of the award. This section does not provide a guide as to how a party may make such request or the applicable procedure. In *United Nigeria Insurance Co v. Adene (1971) NSCC (vol. 7) 159 (SC)* the Supreme Court was called upon to determine *inter alia,* whether leave to enforce an arbitral award as a Judgment can be refused on the ground that an arbitrator mis-conducted himself or erred in law. The respondent applied to the High Court for leave to enforce an arbitration award against the appellants as a Judgment of Court.

23. The brief facts of this case are that the Respondent’s tractor and trailer were damaged beyond repairs when comprehensively insured by the appellants. The policy gave the appellants the option of repairing the vehicles or paying their pre-accident value. The appellants did neither and the Respondent claimed damages for the breach of contract of insurance including damages for loss of use of the vehicles and profit. One of the grounds of appeal was that the trial Court erred in failing to direct itself that a ground for refusing leave to enforce an award was that the award was bad on the face of it. Madarikan JSC of blessed memory relying on *In re Boks Co (1919)1 K.B 491* held that the position of the trial Judge was proper and that the summary method of enforcing an award was not intended on the application for leave to enforce an award or complicated, disputed or difficult question of law.

24. However section 52 of the Act provides a long list of grounds which must be proved for refusal of recognition and enforcement of awards. These are as follows S. 52(2) -

1. that a party to the arbitration agreement was under some incapacity.

2. that the arbitration agreement is not valid under the law in which the parties have indicated should be applied.

3. that he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings.

4. that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.

5. that the award contains decisions on matters which are beyond the scope of the submission to arbitration.

6. that the composition of the arbitral tribunal or arbitral procedure, was not in accordance with the agreement of the parties.

7. where there is no agreement, that the composition of the arbitral tribunal or arbitral procedure, was not in accordance with the law of the country where the arbitration took place.

8. that the award has not yet become binding on the parties or has been set aside or suspended by a court or under the law in which the award was made.

9. if the court finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria.

10. that the recognition or enforcement of the award is against public policy in Nigeria.

25. A scholar has suggested that a joint reading of section 32 and section 52 of the Act afford the Court an ample opportunity to exercise a discretion which should be exercised judicially and judiciously[[18]](#footnote-17). *Bernstein* has put forward 3 grounds that can be relied upon by an applicant for refusal of recognition and enforcement of award which the Court may be urged to consider. These are –

1. that there was no valid submission, so that the entire arbitration or some part of it was a nullity;

2. that the arbitrator was disqualified, in that he did not possess some required qualification as prescribed by the arbitration agreement, such as membership of a specified association; or

3. that the award, though valid when made, has ceased to be binding because it has subsequently been discharged, e. g by a subsequent agreement between the parties[[19]](#footnote-18).

***3.1.2. Enforcement by Action on the Award***

26. Enforcement of a domestic arbitral award may also be by way of an action. This is often resorted to when summary method for enforcement is for any reason unavailable. It must be necessarily implied that parties to an arbitration agreement are under an obligation to perform a resulting award from the agreement. Failure to do so is thus considered to be a breach of contract which automatically gives the successful party a right to institute an action in respect of such breach and to obtain Judgment in terms of the award. In this wise, the successful party as a Plaintiff must prove the existence of an arbitration agreement; ii. that the dispute which has arisen falls within the arbitration agreement; iii. that the arbitral tribunal was properly appointed in accordance with the agreement executed by the parties; iv. that the award was made pursuant to the arbitration agreement; and v. that the Defendant had failed to perform the award[[20]](#footnote-19). The Court before whom such an action is filed is at liberty to exercise its discretion to either accept or reject any defence that may arise against the action. However, where any defence raised touches on the fundamental breach of the principle of natural justice the Court will consider it as a good ground for refusing the recognition and enforcement of the award.

**3.2. Enforcement of Foreign Arbitral Awards**

27. Arbitral awards made outside Nigeria may also be enforced in Nigeria. The *Arbitration and Conciliation Act* provides that an arbitral award shall, irrespective of the country in which it is made, shall upon application in writing to the Court, be enforced by the Court[[21]](#footnote-20)**.** Recognition becomes automatic by this provision and the need for any form of registration of the award no longer required. The venue where an application can be made for the recognition or enforcement of foreign arbitral award in Nigeria is the court which includes the High Court of a State, the High Court of the Federal Capital Territory, and the Federal High court. The application must be made to that very High Court which would have had jurisdiction to entertain the matter but for the arbitration agreement of the parties.

***3.2.1 Enforcement under Section 51 of the Arbitration & Conciliation Act***

28. An international arbitral award may be enforced pursuant to the provisions of section 51 of the Act. That section, that is section 51 which is similar to section 31 of the Act provides *inter alia* that an arbitral award shall, irrespective of the country in which it is made, be recognized as binding and subject to this section of the Act shall upon an application in writing to the Court, be enforced by the Court. The procedure for enforcement of foreign Arbitral Award is for the party applying for it to come by way of a *motion ex parte[[22]](#footnote-21)*supported by an affidavit exhibiting the following -

a. the duly authenticated original award or a duly certified copy thereof.

b. the original arbitration agreement or duly certified copy thereof; and

c. where the award or arbitration agreement is not made in the English Language, a duly certified translation thereof into the English Language.

29. The Court before whom an application for the enforcement of a foreign award is made may however refuse to enforce same within the provisions of Section 52 of the Act.

***3.2.2. Recognition and Enforcement under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards June 10, 1958 (New York Convention)***

30. The New York Convention came into force on the 10th of June 1958. Nigeria became a signatory to it on 17th March, 1970. Enforcement under this Convention is the second method of enforcement of foreign arbitral awards. *New York Convention* applies to Nigeria by virtue of section 54(1) of the *Arbitration and Conciliation Act*. The section provides –

“Without prejudice to sections 51 and 52 of this Act, where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Award (hereafter referred to as “the Convention”) set out in the second schedule to this Act shall apply to any award made in Nigeria or in any contracting State”.

31. *Article 1.1* of the Convention provides that –

“The Convention shall apply to the recognition and enforcement of arbitral awards made in a territory of a state other than the state where the recognition or enforcement of such awards are sought and arising from out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the same state where the recognition and enforcement are sought”.

32. This is however subject to 2 important provisos. Firstly provided that such contract State has reciprocal legislation recognizing the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the Convention and secondly that the Convention shall apply only to differences arising out of legal relationship which is contractual.

33. Essentially, the Convention promotes amicable settlement of international disputes, that is, commercial disputes which are inherent in international trade and transactions. It applies to 3 sets of awards namely -

i. Arbitral awards made in the territory of a State other than where the recognition and enforcement of such awards are sought;

ii. such recognition and enforcement must have arisen out of differences between persons whether physical or legal.

iii. Arbitral awards not considered domestic awards in the State where their recognition and enforcement are sought.

34. Foreign arbitral awards made in Nigeria or in any other contracting State may be enforced under the Convention provided always that the award arose from an agreement in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration. Article 111 of the Convention provides *inter alia –*

“Each contracting State shall recognize arbitral award as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following Articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this convention applies than are imposed in the recognition and enforcement of domestic arbitral awards.”

35. From the foregoing, it is obvious that the recognition and enforcement of arbitral awards pursuant to the *Convention* are required to be in accordance with the rules of procedure of the country where recognition and enforcement are sought. It then means that in Nigeria, recognition and enforcement of foreign arbitral awards under the *New York Convention* are enforceable by leave of the Judge or Court and by application to court[[23]](#footnote-22). It needs be mentioned specifically that for an arbitral award to be enforced in Nigeria under the New York Convention, it must be shown that such a contracting State has a reciprocal legislation authorizing the recognition and enforcement of arbitral awards made in Nigeria. This is because Nigeria has made the reciprocity reservation and so only awards made in contracting states that undertake to recognize and enforce awards made in other contracting States and Nigeria will be recognized and enforced in Nigeria. The implication of this position is that arbitral awards made in a country which is not a party to the Convention or giving reciprocal treatment to Nigerian arbitral awards cannot enjoy in Nigeria the recognition or enforcement provided under the Convention.

***Procedure for recognition or enforcement***

36. The procedure for enforcement of arbitral award under the Convention is substantially the same as provided in respect of enforcement under Section 51 (2) of the *Arbitration and Conciliation Act*. Thus to obtain recognition or enforcement[[24]](#footnote-23), the party applying for it must at the time of the application supply the authenticated original award or a certified copy of it; the original arbitration agreement or a certified copy of it; and a translation of the mentioned documents if they are not in the official language of the country where enforcement is sought.

***Grounds for non enforcement under the Convention***

37. *Article V* of the Convention provides for grounds for non-enforcement of arbitral award under the *New York Convention.* The grounds include incapacity and invalidity; lack of notice or fairness; the procedure of the arbitral tribunal not being in accordance with the parties’ agreement; the arbitral award not yet binding or having been set aside; that the subject matter of the award is not capable of settlement by arbitration under the law of that country and that the arbitral award is in violation of public policy.

**3.2.3. The Recognition or Enforcement of International Centre for Settlement of Investment Disputes (ICSID) Awards**

38. The establishment of the *International Centre for Settlement of Investment Disputes (ICSID)* can be said to be attributed to the rapid increase in and development of investor-state arbitration. Also referred to as *Washington Convention* ICSID is concerned with settlement of investment disputes between states and nationals of other states[[25]](#footnote-24).

39. *ICSID* has a limited jurisdiction and scope both as to parties and subject matters. One of the parties in any proceedings made pursuant to *ICSID* must be a contracting State or any constituent, sub-division or agency thereof designated to the Centre by the State and the other party must be a national of another contracting party. The subject matter in the proceedings must be investment matter. For arbitration proceedings to be conducted pursuant to *ICSID*, the parties must have consented and agreed that *ICSID* Convention shall apply for the settlement of their dispute. Once the parties agreed as to *ICSID* Convention, the provisions of the Convention shall apply to the exclusion of all other laws[[26]](#footnote-25).

40. Each of the Contracting States to the Convention has only one duty to perform with respect to the award and that is, to recognize and enforce the award as if it is a final judgment of the court within their State[[27]](#footnote-26).

41. The applicant for the recognition or enforcement is expected to satisfy the provisions of *Article 54(2)* of the Convention. The Article provides that a party seeking recognition or enforcement in the territory of a contracting state shall be required to furnish a competent court or any other authority designated for the purpose a copy of the award by the Secretary-General of *ICSID* of the designation of a competent court or authority for the purpose and of any subsequent change in such designation. In Nigeria, the appropriate authority or court for the registration, recognition, and enforcement of ICSID award is the Supreme Court of Nigeria which is the highest court of the land. The Federal Republic of Nigeria enacted the *International Centre for the Settlement of Investment Disputes (Enforcement of Awards) Act[[28]](#footnote-27).* Section 1 of the Act provides that –

“Where for any reason it is necessary or expedient to enforce in Nigeria an award made by the International Centre for the Settlement of Investment Disputes, a copy of the award duly certified by the Secretary General of the Centre aforesaid, if filed in the Supreme Court, by the party seeking its recognition for enforcement in Nigeria, shall for all purposes have effect as if it were an award contained in a final judgment of the Supreme Court, and the award shall be enforced accordingly.”

 42. Once the *ICSID* award is registered at the Supreme Court, it ranks on the same equal level as a final judgment of Supreme Court of Nigeria, and this has the support of *Article 54(1) of ICSID* which provides that –

“Each contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligation imposed by the award within its territories as if it were a final judgment of a court in that state. A contracting state with a Federal Constitution may enforce such an award in or through its Federal Court and may provide that such courts shall treat the award as if it were a final judgment of the court of a constituent state.”

4. **Conclusion**

43. This short presentation has examined recognition and enforcement of alternative dispute resolution clauses and arbitral awards. The former is the same a s giving effect to the intention of the dispute parties as reflected in their voluntarily entered agreement. While the Court will ordinarily give effect to the intention of the parties respecting *ADR* clauses, there may be scenarios where giving such effects may be refused. For instance, where the ADR clause sought to be enforced is contrary to public policy or where the venue for the intervention of the *ADR* hybrids proposed for intervention is found to be deliberately chosen by a party with less bargaining or contracting power and to his detriment. In either of these situations, a Court or Judge is entitled to weigh the exercise of his discretion and determine whether or not to give effect to such clauses. Enforcement of arbitral awards is akin to execution of a Judgment of a Court. A successful litigant is entitled to enjoy the fruit of his labour in Court. In much the same vein a successful disputant at arbitration tribunal is entitled to enjoy the award from the arbitral tribunal. The provisions for setting aside award of arbitral tribunal, as set out in Section 48 of the *Arbitration and Conciliation Act,* by a disgruntled party appear not to be helping matter. It is for instance amazing that an arbitral award may be set aside if the subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria. Some scholars have argued that Arbitration as a dispute resolution mechanism lacks those features of the conventional *ADR* hybrids such as Negotiation and Mediation. This is often reflected in the enforcement procedure for arbitral awards. There is thus urgent need for the bottlenecks in the enforcement of arbitral awards to be removed otherwise the saying that justice delayed is justice denied will continue to play out.

44. I thank His Lordship the Administrator of this Institute for the honour to share my thoughts with your lordships distinguished participants. I cannot but express my profound appreciation to my lord the Hon the President of the National Industrial Court of Nigeria, my President Hon Justice B.B. Kanyip, *Ph. D, FNIALS* for not only nominating me for this Workshop but also approving my participation as a faculty member. My Lords distinguished participants I hope I have met some of your reasonable expectations from this presentation. But if not, I hope I have at least been able to arouse your interest in the subject of same to engender robust conversation during questions and answers session.

45. I thank your lordships for your kind attention

1. . Being the text of a paper presented on 27th June 2022 at the National Workshop for Judges on Alternative Dispute Resolution (ADR) organised by the National Judicial Institute, Abuja & held at the *Muhammed Bello Centre, Abuja* from 27th to 29th June, 2022 [↑](#footnote-ref-0)
2. . Hon. Justice Dele Peters, the Presiding & Administrative a Judge of the National Industrial Court of Nigeria, Ibadan Judicial Division, Ibadan studied Law at the *Ahmadu Bello University*, Zaria, graduated in 1987, was called to the Nigerian Bar in 1988 and obtained a Master of Laws Degree from the University of Lagos in 1991. He worked at the *Nigerian Institute of Advanced Legal Studies Lagos* from 1996 - 2007 where he rose to the position of *Senior Research Fellow* and Head, *Department of Public & Private Law.* From 2005 to 2006, he was the *Research Assistant to the Hon. the Chief Justice of Nigeria.* From 2007 to 2013, Hon. Justice Peters worked at the *National Judicial Institute, Abuja* where he was, at different times, Deputy Director of Research, Director of Research and Director of Studies from where he was appointed to the Bench as a Judge of the National Industrial Court of Nigeria in 2013. Hon. Justice Peters is the author of the following pioneering books - *Alternative Dispute Resolution (ADR) in Nigeria: Principles and Practice,* Dee Sage Nigeria Limited, *2005; MEDIATION - a practice guide,* Dee Sage Nigeria Limited, *2004; What is Alternative Dispute Resolution?,* Dee Sage Nigeria Limited, *2006* and *Arbitration & Conciliation Act Companion Including Customary Arbitration (with Cases from 1958-2005);* Dee Sage Nigeria Limited, *2006.E-mail: [delepetersng@yahoo.com](mailto:delepetersng@yahoo.com) & [justice.delepeters@nicnportal.ng](mailto:justice.delepeters@nicnportal.ng).*  [↑](#footnote-ref-1)
3. . See generally Dele Peters; *What is Alternative Dispute Resolution?,* Dee Sage Nigeria Limited, *2006.* [↑](#footnote-ref-2)
4. . See Dele Peters; *Alternative Dispute Resolution (ADR) in Nigeria: Principles and Practice* Dee-Sage Nigeria Limited, 2004 page 15. [↑](#footnote-ref-3)
5. . Orojo J. O. & Ajomo M.A. 1999. *Law and Practice of Arbitration and Conciliation in Nigeria*, Mbeyi and Associates Ltd. Nigeria. p.4. [↑](#footnote-ref-4)
6. . Brown H. J. & Marriott A. L. (Q.C). 2008. *ADR Principles and Practice,* Sweet and Maxwell, London. p.12. [↑](#footnote-ref-5)
7. . Dele Peters; *What is Alternative Dispute Resolution?,* Dee Sage Nigeria Limited, *2006* [↑](#footnote-ref-6)
8. . See generally, South African Law Commission Issue Paper 8. Available at *http:/server.law.wits.ac.za/salc/issue/ips.html*. [↑](#footnote-ref-7)
9. . *Collins v. Collins 28 L.J, Ch 186.* [↑](#footnote-ref-8)
10. . Bernsein; *Handbook of Arbitration Practice, 1988.* [↑](#footnote-ref-9)
11. . *Ibid* at p.13. [↑](#footnote-ref-10)
12. . Section 26(1), *Arbitration & Conciliation Act.* [↑](#footnote-ref-11)
13. . Section 26(3)(c), ibid. [↑](#footnote-ref-12)
14. . *Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004*. [↑](#footnote-ref-13)
15. . Section 31(2), *ibid.* [↑](#footnote-ref-14)
16. . Section 31(3) *ACA*. [↑](#footnote-ref-15)
17. . See Section 57(1) of the Act which defines a *Court* to include High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal igh Court. [↑](#footnote-ref-16)
18. . See Collins Ebi Daniel; *Arbitration and Dispute Resolution in Nigeria: Practice and Procedure,* Kraft Books Limited 2022 p.211. [↑](#footnote-ref-17)
19. . See Bernstein, 3rd edition at p. 261. [↑](#footnote-ref-18)
20. . Mustil & Boyyd*; The Law and Practice of Commercial Arbitration in England,* Butterworths (2001) London *at p. 417.* [↑](#footnote-ref-19)
21. . Section 51(1). [↑](#footnote-ref-20)
22. . See Collins Ebi Daniel *at page 215.* [↑](#footnote-ref-21)
23. . Sections 31 & 51, *Arbitration & Conciliation Act.* [↑](#footnote-ref-22)
24. . See *New York Convention, Article iv.* [↑](#footnote-ref-23)
25. . See *UNCTAD World Investment Report (WIR) 2014.* [↑](#footnote-ref-24)
26. . *Article 44, ICSID Convention, Regulations and Rules.* [↑](#footnote-ref-25)
27. . See *Section 54(1), Washington Convention.* [↑](#footnote-ref-26)
28. . *Cap. I20 Laws of the Federation of Nigeria, 2004.* [↑](#footnote-ref-27)