

## **THE PLACE OF ARBITRATION PRACTICE IN RESOLVING ETHNIC AND RELIGIOUS VIOLENCE/CONFLICTS IN NIGERIA**

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**ABSTRACT:** *Disputes/conflicts/violence is generally an inevitable part of human interaction. They have a common place in the affairs of men and are bound to arise at one stage or the other in all human interactions like matrimonial, socio-political, industrial, family, ethnic, religious and commercial disputes/conflicts/violence. One thing is clear and that is that disputes/conflicts/violence certainly occur daily in our private and public life. No contract is totally without problems. No two parties are ever totally agreed on everything that arises in connection with whatever it is that binds them together. Conflicts/violence/disputes have to be resolved. In some circumstances many are resolved amicable before they even cross inter party's borderline. In others, an unbiased third party has to intervene in the resolution of the disputes/conflicts/violence. Different methods exist for the resolution of disputes/conflicts/violence namely litigation, negotiation, mediation conciliation and arbitration. We are concerned here mainly with arbitration practice which has a vital role in resolving ethnic/religious crisis in Nigeria. Nigeria has suffered a lot of ethnic/religious crisis since 1960 till date. Examples are: the Biafran war, Niger Delta crisis, Boko Haram crisis etc and other minor ethnic/religious crisis. Arbitration has played a vital role in resolving some of these crises. In this paper we will be looking at the meaning of arbitration, types of arbitration, and the place of arbitration over litigation in resolving ethnic/religious crisis in Nigeria, examples of where arbitration practice was used in resolving ethnic/religious crisis in Nigeria and the recommendations on how to manage ethnic/religious violence/conflicts through arbitration practice. The method that will be employed in undertaking this research exercise will be mainly the primary sources. Emphasis will also be placed on oral interviews, questionnaires and data analysis. Materials will also be sourced from the literature texts, articles in journals, judicial decisions, statutes from within and outside the Nigerian jurisdictions for the legal analysis of the subject matter of the topic. Articles published in relevant journals in Nigeria, papers presented by eminent scholars on the area and judicial decisions from superior courts throughout Nigeria will be used. The internet will also be used for accessing relevant materials and data wherever available throughout the world.*

**KEYWORDS:** Arbitration Practice, Resolving Ethnic, Religious Violence, Conflicts

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### **INTRODUCTION**

Arbitration has played a significant role in the settlement of ethnic/religious crisis in Nigeria. Nigeria has suffered and still suffering a lot of ethnic/religious crisis. Litigation has helped tremendously but has not done much in the settlement of ethnic/religious crisis. This is because of so many factors militating against litigation in Nigeria. Some of these factors include cost, complexity of procedure, rancor, slowness, Right of choice of procedure,

inconvenience, exposure etc. as a result of all these, litigation has not efficiently help to settle ethnic/religious crisis in Nigeria.

Arbitration which is an alternative to litigation has helped in no small way in resolving ethnic/religious conflicts in Nigeria because of its numerous advantages over litigation in Nigeria. In this paper we will be looking at the meaning of arbitration, types of arbitration in Nigeria, the advantages of arbitration over litigation in resolving ethnic/religious crisis in Nigeria, instances where arbitration practice was used in resolving ethnic/religious violence and the way forward on how to manage ethnic/religious violence through arbitration practice.

### **Meaning of Arbitration**

According to Ronald Bernstein, arbitration is an agreement of the parties that a dispute between them be settled by a tribunal of their choice<sup>1</sup>

Romilly M.R. in *Collins vs. Collins*<sup>2</sup> defined arbitration as a reference to the decision of one or more persons either with or without umpire, of a particular matter in difference between the parties.

For Fulton Maxwell, J, arbitration is a private process whereby a private disinterested person called an arbitrator, chosen by the parties to a dispute... acting in a judicial fashion, but without regards to legal technicalities, applying either existing law or norms agreed by the parties, and acting in accordance with equity, good conscience and the perceived merit of the dispute...<sup>3</sup>.

Halsbury's Laws of England defines arbitration as the reference of a dispute or differences or differences or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction<sup>4</sup>.

Russell defines the term arbitration to mean a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not<sup>5</sup>.

Section 57(1) of the Nigerian Arbitration and conciliation Act defined arbitration as a commercial arbitration whether or not administered by permanent arbitral institution<sup>6</sup>.

From all these definitions we can rightly say that arbitration must involve a reference of a dispute or difference to a third unbiased party, there must be two or more parties to the dispute and the hearing must be in a judicial manner, by a competent person other than court.

However, arbitration should not be confused with other alternative dispute resolution process such as negotiation, mediation and conciliation.

Negotiation involves discussions or dealings about a matter, with a view to reconciling differences and establishing areas of agreement, settlement or compromise that would be

<sup>1</sup> Ronald Berstein, Handbook of Arbitration practice, 8

<sup>2</sup> 28 LJCH 186

<sup>3</sup> Fuiton Maxwell .J., Commercial Alternative Dispute Resolution, The Law Book co.Ltd. 1989, 55

<sup>4</sup> Halsbury's Laws of England, 3<sup>rd</sup> ed. 38

<sup>5</sup> Russel on Arbitration, 18<sup>th</sup> ed. 38

<sup>6</sup> Chapter A18 Laws of the Federation of Nigeria 2004.

mutually beneficial to the parties or that would satisfy the desire and aspiration of each other to the negotiation. The role of the negotiator is to assist the parties in reaching a compromise and settlement in their matter. He assists the parties in deciding for themselves.

Mediation is a facilitative process in which disputing parties engage the assistance of a neutral third party respected by them who acts as a mediator- a facilitating intermediary- providing a non-binding evaluation of the merit of the disputes if so mandated, but who cannot make any binding adjudicatory decision. A mediator is actually not a decision maker. He is usually taken to be a person accepted by parties whose role is to help them reach an agreed settlement. He would see each party privately and listen to their respective view points. He would try to make sure that each party understands the other's points of view. He would also try to bring the parties together in order that they may themselves achieve as a compromise solution.

Conciliation is a process in which the terms of an agreement is drawn and proposed which is designed to represent a fair compromise of a dispute after having discussed the case with the parties. A conciliator draws up and proposes the terms of an agreement designed to represent what is, in his view, a fair compromise of a dispute after having discussed the case with the parties.

In other words, arbitration has nothing in common with negotiation, mediation and conciliation. Arbitration involves helping people by deciding for them whereas mediation/conciliation/negotiation involves helping people to decide for themselves. Arbitration proceedings result in a binding and enforceable award whereas conciliation/mediation/negotiation terms are subject to acceptance of the parties do not. Also neither the negotiator/mediator/conciliator can compel the parties to neither reach a settlement nor impose an award on them.

### **Types of arbitration in Nigeria**

In Nigeria, we have domestic and international arbitrations.

Under domestic arbitration we have:-

1. Customary law arbitration
2. Common law arbitration
3. Arbitration under the Act
1. Customary Law Arbitration

In *Agu v Ikewibe*<sup>7</sup> a Nigerian case the Court defined customary law arbitration as “arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either chiefs or elders of their communities and the agreement to be bound by such decision...”

It 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<sup>8</sup>.

<sup>7</sup> 1991 3 NWLR (pt 180) 385 at 407

<sup>8</sup> Gaus Ezejiofor, “The Pre-requisite of Customary arbitration” Journal of Private and Public Law

T. O. Elias described customary law arbitration as a mode of referring a dispute to the family head or an elder of the community for a compromise solution based upon subsequent acceptance by both parties of the suggested award, which becomes binding only after such signification of its acceptance from which either party is free to reside at any stage of the proceedings up to the point of making the award<sup>9</sup>.

In Nigerian traditional communities, extrajudicial settlement of disputes by arbitration is very popular and an important feature of the customary law. Customary law arbitration is an important institution among the non-urban dwellers in the country and the rural people often resort to it for the resolution of their difference because it is cheaper, less formal and less rancorous than litigation. It also ensures harmony and eradicates all forms of anarchy and misunderstanding within the community.

### **Common law arbitration**

The common law is one of the sources of the arbitration law in Nigeria. The common law arbitration agreement is oral and it is concerned with present dispute which had arisen. A written award based on the oral agreement of the parties under the common law is not award under the Arbitration and Conciliation Act but an award under common law. At common law, an arbitrator who is appointed by oral agreement can be removed at any time before he makes his award. A party to a common law arbitration agreement can abandon the arbitration proceedings and proceed with an action in a court.

The only remedy available to the offended party is to ask for damages for breach of contract to arbitrate under the common law which is a valid contract. It needs not be emphasized that the English Common law rules on arbitration form part of the Nigerian law by virtue of the rules applicable under the Received English law. Common law arbitration is hardly resorted to because of its parole nature which makes its terms uncertain and also because common law arbitration operates in respect of an existing dispute and not future ones. Also the authority of the arbitrator appointed under the common law can be revoked at any stage of the proceedings before he makes his award and a party to the arbitration agreement under the common law can abandon the same at any stage of the proceedings to the detriment of the other party who had given consent to the arbitration

### **Arbitration under the nigerian arbitration and**

#### **Conciliation act**

Arbitration under the Act in Nigeria is governed by the provisions of the Nigerian Arbitration and Conciliation Act, chapter A18 Laws of the Federation of Nigeria. There are State laws on the subject matter and rules of Court of the various States of Nigeria. Also there are High Court rules governing court proceedings in each State and they contain provisions on arbitration. Under chapter A18 of the Laws of the Federation of Nigeria, 2004, two forms of arbitration agreements are recognized namely, the domestic and international arbitration agreements and proceedings.

To constitute a valid arbitration agreement under the Act, there must be a valid contract in writing to submit differences to arbitration whether such differences are present or future and

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<sup>9</sup> T. O. Elias, Nature of African Customary Law

whether or not an arbitrator is named in the agreement. Also the arbitration agreement must be signed by the parties.

### **International Arbitration**

Section 57 (2) of the Nigerian Arbitration and Conciliation Act states that an arbitration is international if:

- (a) The parties to an arbitration agreement have at the time of the conclusion of their agreement, their places of business in different countries; or
- (b) One of the following places is situated outside the country in which the parties have their places of business
  - (i) The place of arbitration, if such place is determined or pursuant to the arbitration agreement
  - (ii) Any place where a substantial part of the obligation of the commercial relationship is to be performed or the dispute is most closely connected; or
- (c) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country;
- (d) The parties, despite the nature of the contract, expressly agree that any dispute arising from the commercial transaction shall be treated as an international arbitration.

We have basically two main forms of international arbitration namely institutional and ad hoc arbitration but we also have arbitration between states, arbitration between states and private individuals and arbitration between private individuals

1. **INSTITUTIONAL ARBITRATION:** An institutional arbitration is one conducted under the auspices and rules of permanent arbitral institution, centres, organization or agency.
2. **AD-HOC ARBITRATION:** Ad-hoc arbitration is different from institutional arbitration. Unlike the institutional arbitration where the institution established their rules, ad hoc arbitration has no standing rules or procedure; the parties to the agreement established their own rules of procedure which may be made to fit the facts of the dispute between them. Ad hoc arbitration takes place wherever the arbitration clause in the original agreement of the parties provides for arbitration without designating any arbitration institution and without referring to any particular set of institutional rules.
3. **ARBITRATION BETWEEN STATES:** Arbitration between states which is popularly referred to as inter-state arbitration occurs where two or more states have agreed to refer their disputes to an arbitration tribunal.
4. **ARBITRATION BETWEEN STATES AND PRIVATE INDIVIDUALS:** This occurs where one party is a state which is sovereign entity and a private individual or party. The private individual or party in this case is usually a juristic personality in the form of a corporation or company.
5. **ARBITRATION BETWEEN PRIVATE PERSONS:** This is the most common form of arbitration and this includes arbitration between private persons and also arbitration between private persons and corporations.

## **The place of arbitration over litigation in resolving**

### **Ethnic/Religious Crisis in Nigeria**

Ethnic/religious crisis are common occurrence in Nigeria. They are bound to arise at one stage or the other. Resolving crisis without recourse to self help, court or to prolonged methods of conflict resolution is what arbitration has come to serve. Conflict resolution is essentially aimed at the intervention to change or facilitate the course of conflict. In general conflict resolution provides an opportunity to interact with the parties concerned with the hope of at least reducing the scope, intensity and effects of conflict. During formal and informal meetings conflict resolution exercises permit a reassessment of views and claims and counterclaims as a basis for finding options to the crisis and to divergent points of view in arriving at solutions to the conflict.

Conflict resolution performs a healing function in societies. It provides opportunity for the examinations of alternative pay offs in a situation of positioned disagreements, and restores normalcy in societies by facilitating discussions and placing parties in conflict in situations in which they can choose alternative positive decisions to resolve differences.

The question then is why arbitration when we have series of courts in Nigeria?. Why must conflict be resolved by arbitration instead of litigation? The essence and place of arbitration in resolving ethnic/religious crisis are obvious. Arbitration offers advantages that litigation from its nature can never provide. These advantages are:

1. **EXPERTISE:** An arbitrator is normally selected for his expert knowledge of a particular field whereas a judge rarely has any particular experience let alone the technicalities of the field in which the crisis arises. According to Ronald Bernstein, even if as some times it happens that an arbitrator has been chosen regardless of, or even because of his ignorance in a particular field, it will be because he has qualities that stem from experience of other kind<sup>10</sup>. In litigation, often as is the practice, a single judge presides over disputes unless in the Court of Appeal or Supreme Court. The judge who, however is trained in law alone may know nothing in those areas and in which case he is an illiterate in those areas but still want to handle those areas.
2. **SPEED AND EFFICIENCY:** Another important attribute of arbitration in the resolution of ethnic/religious crisis in Nigeria is the element of speed that is the period between the time the crisis arises and the time it is resolved by a neutral third party with a binding award.
3. **SIMPLICITY OF PROCEDURE:** Simplicity of procedure at the arbitration is one of the major advantages which arbitration has over litigation. The procedure in the regular courts is governed by established standards that must be followed and which, in most cases, lead to unnecessary bureaucracy, as speed is usually crucified by unnecessary standard procedure.
4. **RIGHT OF CHOICE OF PROCEDURE:** The parties in a crisis have wider choice of procedure than in litigation and each can represent himself or be represented by any one of his choice who may not even be a lawyer. Right of audience is not limited to lawyers as in litigation and in particular a company or corporation can be represented by its

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<sup>10</sup> Ronald Bernstein, Handbook of Arbitration Practice, Sweet and Maxwell, London, 1987, 3.



director or manager. Arbitration is acceptable to many states and state institutions which for diplomatic reasons may be unwilling to submit to the jurisdiction of a foreign court.

5. **CHEAPNESS AND COST:** The cost of arbitration and expense are minimized particularly in respect of domestic arbitration. Filing fees are not paid as in litigation but this must not be overemphasized particularly with respect to foreign arbitration where the place and seat of arbitration proceedings may be a foreign country and where there would be a possibility of employing translators and experts for the translation of documents into foreign languages. Even at that, this may not be compared with cost of litigation in foreign countries which may be very high especially litigation in the international court at the Hague. As time is money, arbitration saves time and when the time saved at arbitration is compared with the unnecessary delay one experiences in litigation, it will be obvious that arbitration is far cheaper than litigation both in terms of cost and time.
6. **CONFIDENTIALITY:** Litigation exposes secrets of the parties particularly as journalists have right to publish every detail of the matter in the National dailies as against arbitration where journalists do not have right of entry and also in which arbitrators have a duty to maintain confidentiality of all the documents and information generated during the arbitral proceedings. Arbitrators, the parties and their advisers have traditionally respected not only the privacy of the hearing but also the confidentiality of the proceedings and documents. As a result of all these, conflicts tend to be settled faster in arbitration than litigation.
7. **LACK OF HOSTILITY:** Arbitration has also the merit that settlement through it shuns brinkmanship and violence, hostility, rancor and prevents the parties from losing face after the settlement exercise might have been over, breed less hostility and antagonism.
8. **CONVENIENCE:** On the issue of convenience, a good arbitrator fixes and arranges the arbitration proceedings and time to suit the convenience of the parties and all their representatives. In the regular courts, cases are arranged to suit the convenience of the court and counsel. The interest of the litigants and their witnesses are the last things to be considered. During the pre-arbitral meetings, the arbitrator(s) agree with the parties as to issue of convenience of time so as to ensure speed, efficiency and convenience of parties.

### **Instances where religious/ethnic conflicts were resolved through arbitration practice**

The agitation of the Niger Delta region in Southern Nigeria over Resource control or derivation principle in the allocation of the Nigerian Federation Resources: The Niger Delta region believes that the 13% of oil revenue is too small; therefore, the people of the area agitate for a limit of 50% before the constitutional review committee. With their agitation and through arbitration process, there came an agreement that it would be pegged at 25%.

The Nigerian Civil war of 1967-70, the claims of Biafra side and counter-claims of Nigeria over unresolved issues raised at Aburi Accord led to the collapse of all hopes of realization of peace on both sides which led to the declaration of police action by Gowon regime against Ojukwu-led eastern Regional government which if not there would not be one Nigeria today.

Also the agreement on power shift from the North to South in 1999 which saw the emergence of Obasanjo as President of Nigeria and to return power to the North after an expiration of eight years rule was done by arbitration process and eventually the North carried the day when Alhaji Umaru Musa Yar'adua was enthroned as the President of Nigeria after the 2007 polls.

In Nigeria, there has been a lot of religious crisis vis A Catholic reverend father Gajere was murdered in Maiduguri because of the controversial Danish cartoons that were published in far away Denmark. A teacher Christiana Oluwasein was murdered by the school children in Gombe State because he said that we should root out the terrorist moles in government.

Also there are sheer volume of the blood crying out from the streets of Kaduna, Kano, Gombe, Zaria Zango, Funtua, Maiduguri, Zamfara, Katsina, Sokoto, Ilorin, Jigawa, Kafanchan, Yola, Kazaure, Damaturu, Wuse and many other places in Nigeria. Also the nefarious activities of Boko Haram are becoming alarming.

Litigation has not resolved this religious crisis but Arbitration process is on-going to resolve these crises.

## CONCLUSION

Every community and nation needs peace in order to survive, develop and exist, a nation that has no peace is always in disarray, its people tend to mitigate to safer grounds. Perhaps, the best move for mutual existence today is the introduction of peace education in the family, community and the nation.

Peace education activities that attempt to end hatred and violence among the polity, can be carried out informally within communities or formally within institutions of learning. Arbitration is one of the methods of resolving conflict in our society. It is a process by which a peace maker arbitrator or a peace panel settles the conflict through appealing to the conscience of those in conflict. He may be viewed as the use and assistance of a neutral third party in conflict who hears the evidence from both parties and there after renders a decision usually called an award, which is expected to be binding on the parties. It is commonly used to resolve conflicts than litigation because of a number of perceived advantages over litigation.

### **The way forward:**

Proper awareness should be canvassed in respect of arbitration so that members of the public will resort to it in the event of conflict.

The Law of arbitration should be introduced in the School curriculum both in the Universities and Secondary schools.

Our judges and Magistrates should encourage parties to a conflict to settle their differences through arbitration because of its numerous advantages.

If all these are done, religious/ethnic violence/conflict will be on the decrease in Nigeria.