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The Application of Alternative Dispute Resolution (ADR) Mechanisms in the Resolution of
Electoral Disputes: Nigeria in Perspective

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Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the Master of Laws (LLM) with specialisation in Dispute Resolution in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

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DEDICATION

To the Lord Jesus Christ,

The Prince of Peace

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ACRONYMS

ACCORD	The African Centre for the Constructive Resolution of Disputes
ACN	Action Congress of Nigeria
AG	Action Group
AGF	Attorney-General of the Federation
ANPP	All Nigeria Peoples Party
APC	All Progressive Congress
APGA	All Progressive Grand Alliance
AU	African Union
CA	Court of Appeal
CAPCR	Center for African Peace and Conflict Resolution
CENI	Commission Électorale Nationale Indépendante (Independent National Electoral Commission)
CNMPE	Congolese National Mediation Commission of the Electoral Process
COMESA	Common Market of Eastern and Southern Africa
CPC	Congress for Progressive Change
CSSR	Centre for Social Science Research
EAC	East African Community
EC	Electoral Commission
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EDR	Electoral Dispute Resolution
ERC	Electoral Reform Committee
EU-EOM	European Union Election Observation Mission
FPTP	First-Past-The-Post

GUARDE	Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections
ICGLR	International Conference on the Great Lakes Region
IDEA	Institute for Democracy and Electoral Assistance
IEBC	Independent Electoral and Boundaries Commission
IFES	International Foundation for Electoral Systems
INEC	Independent National Electoral Commission
IPPR	Institute of Public Policy Research
LFN	Laws of the Federation of Nigeria
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of Congo
NCNC	National Council of Nigeria and the Cameroons/Nigerian Citizens
NDI	National Democratic Institute of International Affairs
NEPU	Northern Elements for Progressive Union
NPC	Northern People's Congress
ODIHR	Office for Democratic Institutions and Human Rights
PCRD	Post-Conflict Reconstruction and Development
PDC	People for Democratic Change
PDP	People's Democratic Party
PPDT	Political Parties Disputes Tribunal
SADC	Southern African Development Community
SC	Supreme Court
UNEAD	United Nations Electoral Assistance Division
USAID	United States Agency for International Development
WANEP	West Africa Network for Peacebuilding

LIST OF CASES

- Action Congress v INEC* (2007) 6 SC (Pt 11) 212.
- Aisha Jummai Alahassan v Mr Darius Dickson Ishiaku* SC/46/2016.
- Alhaji Atiku Abubakar v Attorney-General of the Federation* (2007) LPELR-SC 7/2007.
- APC v PDP* SC 113/2015.
- Atiku Abubakar & ors v Umaru Musa Yar'adua & ors* SC 72/2008.
- Barrister Handel Okoli v Hon (Dr) Okechukwu Udeh* (2007) LPELR-CA/A/102/07.
- Bashir Mohammed Dalhatu v Ibrahim Saminu Turaki* (2003) 7 SC 1.
- Dr Olusegun Agagu v Rahman Olusegun Mimiko* CA/B/EPT/342/08.
- Engr Charles Ugwu v Senator Ifeanyi Ararume* (2007) 4 SC (Pt 1) 88.
- Engr Frank Okon Daniel v INEC* SC 757/2013.
- Hon Faleke v INEC* SC/648/2016.
- Hon Patrick C Onuoha v Chief R.B.K Okafor Chairman NPP* (1983) LPELR 59/1983.
- Isah Shuaibu Lau v PDP* SC/583/2016.
- Mr Peter Obi v INEC* (2007) LPELR- CA/E/2007.
- Muhammadu Buhari v Chief Olusegun Aremu Obasanjo* (2003) LPELR-SC 133/2003.
- Rachel Agu v Christian Ozurumba Ikewibe* (1991) 3 NWLR (Pt 180).
- Rt Hon Rotimi Chibuike Amaechi vs INEC* (No. 3) (2007) 7-10 SC 172.
- Senator Christiana N Anyanwu v Hon Independence Chiedoziem Ogunewe* SC/21/2013.
- Shinkafi v Yari* SC 907/2016.
- Wike Ezenwo Nyesom v Hon. (Dr) Dakuku Adol Peterside* SC 1002/2015.

LIST OF STATUTES

Nigeria

Administration of Criminal Justice Act, 2015.

Arbitration and Conciliation Act - CAP A18, LFN, 2004.

Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Criminal Code Act - CAP C38, LFN, 2004.

Criminal Justice (Miscellaneous Provisions) Act - CAP C39, LFN, 2004.

Economic and Financial Crimes Commission (Establishment) Act, 2004.

Electoral Act No 6, 2010 (as amended).

Evidence Act No18, 2011.

National Industrial Court Act, 2006.

National Parks Service Act - CAP N65, LFN, 2004 (as amended).

Penal Code (Northern States) Federal Provisions Act - CAP P3, LFN, 2004.

Kenya

Constitution of Kenya, 2010.

Elections Act of 2011 (as revised).

Independent Electoral and Boundaries Commission Act 9 of 2011.

Political Parties Act 11 of 2011.

South Africa

Electoral Commission Act 51 of 1996.

LIST OF DELEGATED LEGISLATIONS

Nigeria

Court of Appeal Rules, GN No 160 in FRN GG No 175 (Vol 103) of 6 December 2016, available at <http://thenigerialawyer.com/wp-content/uploads/2017/01/DOC-20170118-WA001.pdf>, accessed on 2 September 2017.

Election Tribunal and Court Practice Directions, SI No 4 of 2011, available at <https://www.nigerialii.org/ng/other/election-tribunal-and-court-practice-directions-2011>, accessed on 2 September 2017.

Federal High Court (Civil Procedure Rules), SI No 3 of 2009, available at <https://www.nigerialii.org/ng/other/federal-high-court-civil-procedure-rules-si-3-2009>, accessed on 2 September 2017.

High Court of Lagos State (Civil Procedure) Rules, 2012, available at <https://www.nigerialii.org/ng/other/lagos-state-high-court-civil-procedure-rules-2012>, accessed on 2 September 2017.

High Court of Rivers State (Civil Procedure) Rules, 2010, available at [http://www.lawnigeria.com/RULES-OF-COURTS/RIVERS-STATE-HIGH-COURT-\(CIVIL-PROCEDURE\)-RULES-2010.html](http://www.lawnigeria.com/RULES-OF-COURTS/RIVERS-STATE-HIGH-COURT-(CIVIL-PROCEDURE)-RULES-2010.html), accessed on 2 September 2017.

High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004, available at <https://www.nigerialii.org/ng/other/abuja-federal-capital-territory-high-court-civil-procedure-rules-2004>, accessed on 2 September 2017.

National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Rules, 2015, available at <https://www.nigerialii.org/ng/other/national-industrial-court-nigeria-alternative-dispute-resolution-adr-centre-rules-2015>, accessed on 2 September 2017.

National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Instrument, 2015.

National Industrial Court of Nigeria (Civil Procedure) Rules, GN No 00 in FRN GG No 1 (Vol 104) of 3 January 2017.

South Africa

Electoral Commission Regulation on Party Liaison Committees, GN R824 in GG 18978 19 June 1998.

CHAPTER I

AN OVERVIEW OF ELECTORAL DISPUTE RESOLUTION IN NIGERIA

1.0 Introduction

Impeccable democratic elections are unobtainable.¹ This is because elections, by their nature, are prone to errors and disputes.² Consequently, Electoral Dispute Resolution (EDR) is an unavoidable component of an electoral system. Its effectiveness, to a large extent, determines the efficacy of an electoral system, the stability of a political system and the consolidation of democratic governance in a state.³ In realisation of this relationship, democratic states have adopted diverse mechanisms, including Alternative Dispute Resolution (ADR), to ensure efficiency in EDR.

This dissertation investigates whether Alternative Dispute Resolution (ADR) can function as an effective EDR mechanism in Nigeria, considering the nature of electoral disputes and the socio-political milieu of Nigeria.⁴ Specifically, this dissertation will address the following questions:

- What effect do the peculiar features of the Nigerian socio-political and electoral disputes setting have on the adoption of ADR in EDR in Nigeria?
- What is the impact of the current EDR legal framework and mechanism on the adoption of ADR in EDR in Nigeria?
- How viable is the application of ADR in EDR within the Nigerian socio-political environment?
- What are the indices for effective adoption and application of ADR in the Nigerian EDR system?

¹ Shaheen Mozaffar and Andreas Schedler 'The comparative study of electoral governance: Introduction' (2002) 23 *Int'l Pol Sc Rev* 5 at 6.

² West Africa Network for Peacebuilding (WANEP) *Election Dispute Management for West Africa: A Training Manual* (2013) 22.

³ Avery Davis-Roberts 'International obligations for electoral dispute resolution' (2009) 1, available at <https://www.cartercenter.org/resources/pdfs/peace/democracy/des/edr-approach-paper.pdf>, accessed on 2 August, 2017

⁴ In this dissertation the term 'dispute' means a grievance, disagreement or competing claim over an issue, manifested in a variety of ways such as protest, complaint and litigation, while 'resolution' means a reasonably satisfactory and lasting settlement of grievances, competing claims or disagreement between parties and entails a reconciliation of disputing parties and their interests for their mutual benefit and satisfaction.

1.2 Background of the study

For various reasons, elections are susceptible to errors and disputes. Elections entail human interactions that are inherently prone to dispute due to diversity of backgrounds, personalities and interests. They also involve substantial economic resources and provide opportunity for the redistribution of such resources.⁵ As such, they stimulate dispute due to competition over control of the resources, which are ordinarily scarce. Disputes are also inevitable due to human fallibility and the complex nature of elections; election officials can make mistakes or take actions that may be considered unacceptable by others, and for those so affected to protest or complain about such actions. This is especially so as these complex electoral activities are organized within a short period of time and space,⁶ and most elections are conducted in an adversarial and trust-deficient environment.⁷ Elections also trigger disputes because they provide avenues for competition over the control of political power in a setting ‘where the gains of a candidate constitute the losses of his/her opponent’.⁸ With these varieties of opportunity for stimulation, disputes usually pervade electoral processes.

If efficient steps are not taken to prevent, manage or resolve electoral disputes, elections can have grave negative impacts on a polity. Unresolved electoral disputes stimulate apathy toward the electoral process. They kindle pessimism, which weakens commitment to the rule of law and undermines the credibility of elections and democratic governance.⁹ They also inhibit the support of stakeholders for the electoral system and engender the employment of objectionable strategies in influencing the outcomes of elections. Moreover, they trigger existing social grievances and escalate them into violence,¹⁰ which can create unfavourable impressions of the democratic process and destabilise the governance and peace of the polity. Such violence can degenerate into destruction of lives and property, and can also spill over

⁵ United States Agency for International Development (USAID) *Electoral Security Framework Technical Guidance Handbook for Democracy and Governance Officers* (2010) 10.

⁶ WANEP op cit note 2.

⁷ Cheselden George V Carmona ‘Enhancing the capacity of judges to resolve election disputes: Preliminary considerations’ (2013) para 1, available at <http://www.iojt-dc2013.org/~media/Microsites/Files/IOJT/11042013-Enhancing-Capacity-Judges-Resolve-Election-Disputes.ashx>, accessed on 2 August 2017,

⁸ WANEP op cit note 2.

⁹ Robert Dahl ‘Legal frameworks for effective election complaints adjudication systems’ in Chad Vickery (ed) *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE)* (2011) 99.

¹⁰ Electoral Institute of Southern Africa (EISA) *Preventing and Managing Violent Election-Related Conflicts in Africa: Exploring Good Practices* (2009) 9.

national borders and have adverse effects on neighbouring countries.¹¹ Consequently, effective EDR is indispensable in all democracies, whether established or emerging.

Acknowledging the role of EDR in the governance and stability of states, democratic states utilise various EDR models in resolving electoral disputes, based on their legal and political traditions.¹² States such as the United Kingdom, Germany, France and Italy resolve electoral disputes through administrative and judicial bodies operating under special procedures.¹³ In Central America, South America, Eastern Europe and Greece, the jurisdiction for resolution of electoral disputes is vested in permanent electoral courts whereas in most developing countries electoral disputes are resolved by ordinary courts and special ad hoc tribunals.¹⁴

The EDR models utilised by most states basically involve litigation which is argued to be inefficient in resolving most electoral disputes due to its adversarial character, procedural rigidity, time consumption, high cost implications, lack of confidentiality, and inability to identify and satisfy the interests of disputing parties.¹⁵ As a result, there is a trend towards the adoption of ADR in EDR. Available records on such adoption, for example in Africa, disclose positive results, especially in terms of time efficiency and reconciliation of disputing parties.¹⁶

The stated benefits of ADR in EDR notwithstanding, the application of ADR in EDR is yet to be officially endorsed in Nigeria. The Nigerian EDR system is, therefore, currently litigation-based and bedevilled by the problems typically associated with litigation. Consequently, there have been calls for the adoption of ADR as a remedy to the problems of EDR in Nigeria.¹⁷ These calls appear reasonable considering the shortcomings of litigation and the recent research findings that post-election violence in Africa is mainly a consequence of the inefficiency of the current EDR systems rather than the failure of unsuccessful

¹¹ USAID op cit note 5 at 2.

¹² Denis Petit *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System* (2000) 5.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Andrew I. Chukwuemerie 'Necessity as the Mother of Trail blazing: Applying alternative dispute resolution mechanisms to political party disputes in Africa' (2009) 2 *Journal of Politics and Law* 121 at 124-6.

¹⁶ Independent Electoral and Boundaries Commission (IEBC) *Case Digest: Decisions of the IEBC Dispute Resolution Committee* (2014) 7-8.

¹⁷ — Mohamed 'Gov. Wike advocates Arbitration, ADR for electoral disputes' *Business Day* 3 November 2016, available at <https://www.businessdayonline.com/gov-wike-advocates-arbitration-and-adr-for-electoral-disputes/>, accessed on 27 November 2017; Joseph Onyekwere 'LMDC advocates ADR for election disputes' *Guardian* 6 June 2017, available at <https://guardian.ng/features/lmdc-advocates-adr-for-election-disputes/>, accessed on 27 November 2017.

candidates to admit defeat.¹⁸ However, bearing in mind the socio-political configuration and peculiar features of electoral disputes in Nigeria, they stimulate questions regarding the functionality of ADR as an effective mechanism for the resolution of electoral disputes in the country.

A review of the literature on the application of ADR in EDR in Nigeria reveals that not much research has been conducted on the subject. The literature reveals a consensus by researchers that the current Nigerian EDR system is inefficient and that there is need for a reform of the system. Also acknowledged — by researchers — are the merits of ADR and the necessity of its adoption as a response to the inefficiency of the Nigerian EDR system. Based on these premises, Chukwuemerie recommends the provision of a statutory framework for the application of ADR in EDR in Nigeria.¹⁹ Although he argues that, with the exception of election petitions, the application of ADR in EDR is not prohibited in Nigeria, Chukwuemerie maintains that a statutory framework, which expressly provides for the adoption of ADR in EDR, is essential to avoid unnecessary contentions over the applicability of ADR in such disputes.²⁰ The statutory framework, he also posits, will enable ease of enforceability of outcomes and ensure the co-operation of disputants.²¹ Supporting the essentiality of a statutory framework, Uwazie asserts:

[L]egislation will elevate the status of ADR before a sceptical disputant, will build public confidence, and will further increase ADR utilisation and promote ethical practice. Legislation will also provide a framework for reference, review and reform, as well as institutionalizing much needed education and professional training.²²

These arguments are plausible. However, the provision of a statutory framework alone is insufficient to ensure the effective utilisation of ADR in EDR in Nigeria. The failure of some earlier attempted electoral reforms in Nigeria for which statutory frameworks were provided attests to this fact.²³ Also, the recent reports of electoral violence and other vices associated with the 2017 Kenyan elections, despite the adoption of ADR in EDR in Kenya being constitutionally endorsed, indicate that more than a statutory framework is required for the

¹⁸ O'Brien Kaaba *The challenges of Adjudicating Presidential Election Disputes in Africa: Exploring the Viability of Establishing an African Supranational Elections Tribunal* (LLD thesis, University of South Africa, 2015) 122-3.

¹⁹ Chukwuemerie op cit note 15 at 127-32.

²⁰ Ibid at 127.

²¹ Ibid at 131-2.

²² Ernest Uwazie (ed) *Alternative Dispute Resolution and Peace-building in Africa* (2014) 5.

²³ For details of the reforms see Kehinde Bolaji 'Toward institutionalizing credible elections in Nigeria: A review of reform measures by the Independent National Electoral Commission' in Raul Cordenillo (ed) *Improving Electoral Practices: Case Studies and Practical Approaches* (2014) 51-73.

effective application of ADR in EDR.²⁴ In fact, experience has shown that informal arrangements that do not have statutory support are sometimes accorded binding authority within the Nigerian political setting.²⁵ This indicates that there are factors outside legal frameworks that influence the attitudes of political actors regarding compliance with rules. There is therefore a need for such factors to be identified and addressed, if a legal framework for the application of ADR must be complied with to achieve efficiency in the Nigerian EDR system.

Confirming the insufficiency of a legal framework in ensuring the effective utilisation of ADR, Uwazie identifies some key policy steps for the application and sustainability of ADR in Africa.²⁶ These steps include investment in capacity-building through training and infrastructural support for ADR providers, the creation of appropriate incentives for lawyers and judges to adopt ADR, and the creation of synergy between formal/state ADR institutions and the informal/indigenous community sector and networks.²⁷ Like the provision of a statutory framework, these steps are necessary for the application of ADR in EDR in Nigeria. Nevertheless, they are inadequate to ensure its efficiency. Although the training of ADR providers and the creation of synergy between the formal and informal sectors will equip ADR providers with some skills in the application of ADR and create more awareness about ADR, they cannot guarantee effective adoption and utilisation of ADR by the electorate if the factors — such as the value of political offices, abuse of power by political office holders, disregard for basic societal values, and corruption — which stimulate a sense of inequality and lack of confidence in the justice and electoral systems are not addressed.

To achieve efficiency in the utilisation of ADR in EDR in Nigeria, the provision of a statutory framework, training of ADR practitioners and creation of synergy between the formal and informal ADR sectors must operate within an enabling environment, which safeguards the participation and confidence of disputants in the justice system. This is because ADR is primarily a voluntary process and, as such, is more attractive and adoptable when disputants perceive a reasonable level of equality or power balance that offers a

²⁴ Article 159(2)(c) of the Constitution of Kenya, 2010; Rael Ombuor and Kevin Sieff 'At least 24 reportedly killed in post-election violence' *The Washington Post* 12 August 2017, available at https://www.washingtonpost.com/world/at-least-24-reportedly-killed-in-kenya-post-election-violence/2017/08/12/101b002c-7ef0-11e7-b2b1-aeba62854dfa_story.html?utm_term=.708701919b37, accessed on 21 August 2017.

²⁵ Aminu Adamu Bello 'Situating Alternative Dispute Resolution (ADR) in the political sphere: Thoughts on mechanisms for pre-election political dispute resolution in Nigeria' (2009) 22.

²⁶ Uwazie op cit note 22 at 5-6.

²⁷ Ibid.

promise of fairness. The functionality of ADR as an efficient EDR mechanism in Nigeria is, therefore, a function of a combination of factors,²⁸ some of which have been recommended in the literature, while some are yet to be identified or situated within the Nigerian EDR context. It is the unexplored aspects of the application of ADR in EDR in Nigeria that this dissertation addresses.

1.3 Structure of the study

Setting the stage for a good understanding of the application of ADR in EDR in Nigeria, chapter two describes the Nigerian electoral setting. It sets out some electoral trends and analyses the causes, classifications and manifestations of electoral disputes in Nigeria. Aside from disclosing the peculiar features of electoral disputes in Nigeria, which render the application of ADR necessary, the chapter demonstrates that the peculiarities of the Nigerian electoral setting impact the utilisation of ADR in EDR in Nigeria.

Chapter three examines the impact of the current EDR legal framework and mechanism on the application of ADR in EDR in Nigeria. By reviewing the current EDR legal framework and the merits and demerits of the current officially adopted EDR mechanism, the chapter affords an understanding of the position of the law on the applicability of ADR in EDR in Nigeria. It also reveals the extent to which ADR can be a panacea to the inefficiency of the current EDR system in Nigeria. While affirming the necessity of ADR by disclosing the shortcomings of the current EDR mechanism, the chapter unveils the limits of ADR and some factors that can influence the efficiency of ADR in EDR in Nigeria.

To appraise the utility and suitability of ADR in Nigeria, chapter four provides an overview of ADR and briefly reflects on its evolution and application in the resolution of disputes in Nigeria. The chapter also briefly undertakes a comparative analysis of trends in the adoption of ADR in EDR, to situate the utility and suitability of ADR within the EDR sphere. It further considers the merits and demerits of ADR in EDR with a view to assessing the viability of ADR in EDR within the Nigerian setting.

The concluding chapter, which incorporates the findings and conclusions of this research, reveals the status of ADR as a tool for ameliorating inefficiency in the Nigerian

²⁸ Steven Gray and Linda Edgeworth 'Complaints adjudication training for election management bodies and political parties' in Vickery op cit note 9 at 133; Mozaffar & Schedler op cit note 1 at 13; Bolaji op cit note 23 at 72-3.

EDR system. While subscribing to the necessity of a reform of the current Nigerian EDR system, the chapter identifies some challenges that must be overcome for the adoption of ADR to be functional in EDR in Nigeria. In summary, it provides a roadmap for the efficiency of the Nigerian EDR system.

CHAPTER II

ELECTIONS AND ELECTORAL DISPUTES IN NIGERIA

2.1 Introduction

This chapter, comprising four focal sections, unveils the peculiar features of the Nigerian electoral setting that impact the employment of Alternative Dispute Resolution (ADR) in Electoral Dispute Resolution (EDR). It shows that most electoral disputes in Nigeria are not over legitimate electoral rights but over parochial non-electoral interests and that the interests, when not carefully addressed, negatively impact entry into, and disposition to amicable resolution, of electoral disputes.

The first section lays the foundation for the chapter by providing an overview of the Nigerian socio-political setting and how manipulation of the setting by some politicians is the underlying cause of most electoral disputes in Nigeria. The second section reveals the motivation for this unhealthy manipulation. It traces the causes of some of the disputes to the underlying cause disclosed in the first section while linking some to defective structural and institutional foundations. The third and fourth sections respectively consider the classifications and manifestations of electoral disputes in Nigeria with a view to aiding understanding of the trajectories and complexity of electoral disputes and their impact on the efficiency of ADR in EDR in Nigeria.

2.2 The Nigerian electoral setting

Before colonisation by the British, the different ethnic groups in the political entity now known as Nigeria were separately governed under diverse well-established traditional political institutions, with different religious orientations.²⁹ Allegiance to governance was primarily ethnic-based and the methods of accession to political offices were traditional and peculiar to the groups.³⁰ During colonisation, the pre-existing political and religious institutions were significantly destabilised. However, they were not totally abolished as the indirect rule system enabled their survival to some extent.³¹ As a result, allegiance along ethno-religious lines was maintained after the amalgamation of the country in 1914. This, coupled with hostilities between the ethnic groups, encouraged by the British through their

²⁹ Abdulsalami Muyideen Deji 'Historical background of Nigerian politics, 1900-1960' (2013) 16 *IOSR-JHSS* 84-9.

³⁰ *Ibid.*

³¹ *Ibid.*

‘divide and rule’ style of governance, led to the transfer of ethno-religious sentiments to elections into the British-introduced political offices in Nigeria.³²

The three major political parties in Nigeria during the colonial era were ethnically aligned.³³ While the Action Group (AG) was Yoruba-dominated, the Northern People’s Congress (NPC) was Hausa/Fulani-dominated, and the National Council of Nigeria and the Cameroons (later Nigerian Citizens) was Ibo-dominated.³⁴ By 1960 when the country gained independence, the desire to gain advantage in federal elections prompted political parties to expand their membership composition and focus.³⁵ This shift in political party configuration was reinforced by electoral reforms, from 1979 onward, which led to constitutional requirements for a country-wide presence and membership composition of political parties.³⁶ As such, there are no strictly ethnic or region-based political parties in Nigeria. Notwithstanding, the ethno-religious factor still plays a prominent role in Nigerian elections.³⁷ This situation is chiefly due to the avaricious disposition of some politicians and the fact that the political parties are usually not formed based on distinctive political ideologies but on parochial interests, which endorse ethno-religious affiliations.³⁸

A significant consequence of the resort to ethno-religious affiliations for electoral advantage is the transfer of the interests and sentiments of the groups to the electoral process. Elections therefore become a competition between the groups, and not merely between the candidates or political parties.³⁹ In the process, pre-existing non-electoral group disputes are stirred and merged with electoral disputes. As a result, it is difficult to separate electoral disputes from ethnic, communal or religious disputes in Nigeria.⁴⁰ During the 2003, 2007 and 2011 presidential elections, for example, the North/South and Christian/Muslim diversities

³² Electoral Reform Committee (ERC) *Main Report* (2008) 80-4.

³³ Adele L. Jinadu ‘Nigeria’ in Ismaila Madior Fall, Mathias Hounkpe, Adele L. Jinadu & Pascal Kambale *Election Management Bodies in West Africa: A comparative study of the contribution of electoral commissions to the strengthening of democracy* (2012) 115; Bolaji op cit note 23 at 52.

³⁴ Nnamani, Desmond Okechukwu ‘Electoral process and challenges of good governance in the Nigerian state (1999-2011)’ (2014) 2 *JGGSDA* 78 at 82; Toyin Falola & Matthew M. Heaton *A History of Nigeria* (1999) xv-vi.

³⁵ Jinadu op cit note 33 at 115-17.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Olayiwola Victor Ojo ‘Turbulent Election History: An appraisal of precipitating factors in Nigeria (2014) 5 *IJPGG* 1 at 6; Abiodun Odusote ‘Nigerian democracy and electoral process since amalgamation: Lessons from a turbulent past’ (2014) 9 *IOSR-JHSS* 25 at 27.

³⁹ Ibrahim Sani *Electoral Governance: Understanding the Democratic Quality of Elections in Nigeria* (PhD thesis, University of Edinburgh, 2015) 31-2; Kaaba op cit note 18 at 73-4.

⁴⁰ Nnamani op cit note 34 at 87.

were highlighted and merged with electoral processes.⁴¹ On the 2011 presidential elections in particular, Odusote argues that ethno-religious interests impacted the attitude of voters.⁴² Reports also disclose that post-election violence erupted when the election results indicated that a Muslim/Northerner had lost the election to a Christian/Southerner.⁴³ These indicate the extent to which non-electoral interests are fused with elections in Nigeria.

Merging group interests with the electoral process escalates the electoral stakes and exacerbates the group disputes in the electoral process. It causes such disputes to degenerate into electoral violence when not properly managed or resolved.⁴⁴ For instance, during the 1964 general election, large-scale post-election violence associated with ethnic alignment of political parties and the exacerbation of contest over national census results by the regions was recorded.⁴⁵ It is also on record that all the subsequent general elections in Nigeria (1979, 1983, 1993, 1999, 2003, 2007, 2011 and 2015) occasioned grave violence.⁴⁶ According to reports, about 1000 lives were lost during the 1965-66 Western Regional election violence while the 2011 election violence claimed more than 800 lives.⁴⁷ In view of these experiences, elections in Nigeria are considered synonymous with violence.⁴⁸

Another consequence of the employment of ethno-religious sentiments in elections is the inhibition of dedication to the rule of law.⁴⁹ When electoral stakes are escalated through the transfer of group interests, parties tend to employ various strategies to outwit opponents. In the process, rules of fairness and transparency are usually jettisoned,⁵⁰ and some politicians fail 'to adhere to the basic principles of democracy and constitutionalism'.⁵¹ This failure is manifested through various corrupt practices, including the abuse of the power of incumbency and failure to adequately fund election management bodies. The overwhelming influence of political 'godfathers' and the failure of political parties to conduct or abide by

⁴¹ Sani op cit note 39.

⁴² Odusote op cit note 38 at 30.

⁴³ Ibid; Joe Brock 'Nigeria post-election violence killed 800: rights group' *Reuters* 16 May 2011, available at <https://af.reuters.com/article/topNews/idAFJJOE74G02620110517>, accessed on 16 August 2017; — — 'Nigeria: Post-Election violence killed 800/Human Rights Watch', 16 May 2011, available at <https://www.hrw.org/news/2011/05/16/nigeria-post-election-violence-killed-800>, accessed on 16 August 2017.

⁴⁴ Independent National Electoral Commission (INEC) *Report on the 2011 General Elections* (2013) 35.

⁴⁵ Ojo op cit note 38.

⁴⁶ Ibid at 4-9; Nkwachukwu Orji and Nkiru Uzodi *The 2011 Post Election Violence in Nigeria* (2012) 8; INEC op cit note 44 at 34; Bolaji op cit note 23 at 52. On the 2015 general elections, cf Chikodiri Nwangwu 'Biometric voting technology and the 2015 general elections in Nigeria' (2015) 17.

⁴⁷ Ojo op cit note 38 at 6-9; Brock op cit note 43.

⁴⁸ Orji & Uzodi op cit note 45.

⁴⁹ Nnamani op cit note 34 at 87.

⁵⁰ Kaaba op cit note 18 at 75.

⁵¹ Odusote op cit note 38.

the results of party primary elections are also part of the practices. So too are the lack of political will to enforce electoral laws, inordinate manipulation of the media, oppression of the opposition, undue influence of officials, and failure to prosecute electoral offenders. These practices have been exhibited by some politicians in the country at various points.⁵²

The utilisation of ethno-religious sentiments in elections also infests the electoral environment with distrust and acrimony. These lead to frivolous allegations, avoidable disputes and high-volume litigation. The number of election-related cases filed in courts and tribunals in the country attests to the enormity of the situation. For instance, the number of petitions filed at the election tribunals after the 2007 and 2011 general elections were 1, 290 and 731 respectively.⁵³ An addition of the number of pre-election matters filed in regular courts to these petitions discloses an alarming litigious electoral setting. In the 2007 elections, for instance, it is claimed that the number of cases filed in the electoral cycle was 6 180.⁵⁴ The report on the 2011 elections also shows that several political parties filed multiple appeals.⁵⁵ It is therefore not surprising that elections in Nigeria are regarded as being ‘coterminous with brinkmanship and legal fireworks’.⁵⁶ Such legal fireworks exert enormous pressure on the judiciary, occasioning inefficiency in justice delivery.⁵⁷

In addition to the exploitation of ethno-religious sentiments, elections in Nigeria are infused with exorbitant funds which, according to Odusote, determine the choice of candidate and largely influence the outcome of the elections.⁵⁸ The infusion of funds also induces some electorates and electoral officers to engage in corrupt practices, especially considering the rate of unemployment and poverty in the country.⁵⁹ Thus, it undermines the electoral process.

The drive for the exploitation of ethno-religious sentiments and the huge investment in elections in Nigeria is not farfetched: the economic, political and social value of political offices is unduly high. From available records, an Indian legislator will have to work for 49 years, a Swedish Senator for 12 years, an American senator for eight years, and an American

⁵² Odusote op cit note 38 at 27-35, Nnamani op cit note 34 at 84-93.

⁵³ INEC op cit note 44 at 36.

⁵⁴ Nwangwu op cit note 46 at 10.

⁵⁵ National Democratic Institute of International Affairs (NDI) *Final Report on the 2011 Nigerian General Elections* (2012) 56.

⁵⁶ Nwangwu op cit note 46 at 23.

⁵⁷ NDI op cit note 55 at 57.

⁵⁸ Odusote op cit note 38 at 32.

⁵⁹ Nnamani op cit note 34 at 89.

president for three years to earn the annual salary of a Nigerian Senator.⁶⁰ In fact, it is categorically asserted that Nigerian politicians are the highest paid in the world.⁶¹ Besides remuneration, political office offers enormous power, high social status and access to state resources. When such values are attached to political offices in a country with a high level of unemployment, poor remuneration for legitimate workers and lack of infrastructure, nothing less than a fierce electoral competition can be the result. In explaining the crisis of electoral governance in Nigeria, Jinadu alludes to this fact as follows:

This partly explains why Nigerian electoral politics has over the years increasingly assumed violent, war-like forms.... It is also why no effort has historically been spared by partisans across party lines to subvert the electoral process.... It has turned politics into a huge business enterprise, where rules designed to ensure the indeterminacy of elections are openly and crassly violated, and where regulators become active or inactive collaborators in the grand larceny of the people's electoral mandate.⁶²

The value of the political offices exudes injustice and inequality, considering the rate of unemployment and other employees' remuneration. As such, it provokes misgivings, disloyalty to the government, and reasonable but avoidable disputes, thereby undermining progressive socio-political transformation. As Ziblatt writes, reflecting on nineteenth century Germany:

While the political equality offered by universal, equal, direct suffrage was, and continues to be, regarded as potentially transformative, its impact is conditional and can be diminished if introduced into settings marked by stark socioeconomic inequalities and steep social hierarchies. Electoral fraud and manipulation are the result when democracy bumps up against economic inequality.⁶³

The value of political office is, therefore, a critical factor in electoral processes and disputes in Nigeria. Apart from engendering the exploitation of ethno-religious sentiments and other objectionable strategies in elections, it escalates the electoral stakes and negatively influences entry into and exit from electoral disputes. The more value-oriented the electoral stakes are or the more weight is attached to the values, the more difficult the refrain from dispute or a positive response to dispute resolution would be, and vice versa.⁶⁴ Moreover, the

⁶⁰ Ojo op cit note 38 at 9-10; Ogechukwu Nwabugo 'Latest outrageous salaries of top Nigerian politicians revealed', available at <https://buzznigeria.com/latest-outrageous-salaries-top-nigerian-politicians-revealed/>, accessed on 12 August 2017.

⁶¹ Denrele Animasaun 'Nigerian lawmakers are the highest paid in the world' *Vanguard* 25 August 2013, available at <https://www.vanguardngr.com/2013/08/nigerian-lawmakers-are-the-highest-paid-in-the-world/>, accessed on 17 August 2017; Ifreke Inyang 'Nigerian senators earn more than US president, Barack Obama' *Daily Post* 27 July 2012, available at <http://dailypost.ng/2012/07/27/nigerian-senators-earn-us-president-barack-obama-see-full-list-allowances/>, accessed on 17 August 2017.

⁶² Jinadu op cit note 33 at 151.

⁶³ Daniel Ziblatt 'Shaping democratic practice and the causes of electoral fraud: The case of nineteenth-century Germany' (2009) 103 *The American Pol Sc Rev* 1 at 18.

⁶⁴ Julie Macfarlane 'Why do people settle?' (2001) 46 *McGill LJ* 663 at 689-96.

influence and perceived expectations of exploited groups on the immediate disputants affects attitudes towards disputes and dispute resolution.⁶⁵ In essence therefore, the value of political office has substantial impact on the adoption and efficiency of ADR in EDR in Nigeria.

2.3 Causes of electoral disputes in Nigeria

Electoral disputes in Nigeria are often provoked and driven by underlying factors, most of which are not directly related to the electoral process.⁶⁶ Aside from such factors, there are other factors that directly stir and provide venting routes for the underlying causes of electoral disputes in Nigeria. These factors are multifarious and erratic, especially due to the multi-cultural and socio-political setting of the country. Consequently, an exhaustive discussion on the factors is beyond the allowance of this work and is not claimed. Nevertheless, some of these factors that are routine and have considerable impact on the electoral process are discussed in this section.

A notable dispute generator in elections in Nigeria is lack of respect by politicians for basic societal and electoral values. Disregard for the rules of fairness and transparency, overwhelming influence of political ‘godfathers’, and the failure of political parties to conduct party primaries or abide by the result of such primaries commonly feature during elections in Nigeria.⁶⁷ Such undemocratic practices are contrary to the basic values of the society and expectations of the electorates. When such practices are employed in elections, dissatisfaction over perceived insensitivity and violation is enflamed and disputes therefore arise.⁶⁸ As succinctly noted in a report:

An election is a value-based social experience. It is based on the understanding that the best way to rule a society is through popular consent. It is therefore required that those participating in politics would recognize and work within the ambit of this value. Disputes arise when politicians or their supporters are opposed to the basic value of an election, most especially the rule of law. In many cases, African politics is threatened by the various forms of undemocratic values that people seek to bring into political participation, including ethnicity, religion and gender bias. The matter is more compounded when the politicians themselves are not bound together by any sane political ideology; and though they belong to the same party there is bound to be clash of interest resulting into disputes.⁶⁹

There are numerous court cases that exemplify disputes over such lack of respect for basic societal and electoral values. One such case is *Amaechi vs INEC*,⁷⁰ where Rt Hon Chibuike

⁶⁵ Ibid at 678-89.

⁶⁶ See the preceding section for more details.

⁶⁷ INEC op cit note 44 at 34.

⁶⁸ Nnamani op cit note 34 at 90.

⁶⁹ WANEP op cit note 2 at 23.

⁷⁰ (No3) (2007) 7-10 SC 172.

Amaechi, who won the PDP primary election for the 2007 Rivers State Governorship election, was unlawfully substituted with Celestine Omehia as the candidate of the party. Cases based on similar facts include *Dalhatu v Turaki*,⁷¹ and *Ugwu v Ararume*.⁷²

The abuse of the power of incumbency by political office holders is also a common electoral dispute activator in Nigeria. Regarding the 2015 general elections, for instance, it was reported that the elections were marred by the ‘abuse of incumbency at state and federal levels’.⁷³ The position is not different in other elections, and it manifests in diverse ways such as unlawfully dismissing from office political office holders who belong to opposition political parties,⁷⁴ depriving opposition political parties of the right to use public facilities,⁷⁵ and manipulation of government broadcasting institutions against opposition parties⁷⁶. Such practices generate disputes by creating a sense of injustice and dissatisfaction which can have dire consequences on the electoral process if not properly resolved.

Similarly, the simple majority or first-past-the-post (FPTP) electoral system and winner-takes-all politics adopted in Nigeria generate electoral disputes by giving enormous power to the winners of elections while giving no incentives for losers to accept defeat.⁷⁷ By creating huge difference between winners and losers, they generate perceptions of exclusion

⁷¹ (2003) 7 SC 1. In this case, ANPP conducted two different party primaries in which its members, Dalhatu and Turaki participated at different times and places. While Dalhatu won the first election in which Turaki did not participate, Turaki won the second election in which Dalhatu did not participate. The party recognised Turaki as the winner of its primary election and issued him a certificate of such recognition. Aggrieved, Dalhatu challenged the recognition.

⁷² (2007) 4 SC (Pt 1) 88. In this case Ararume challenged his substitution by the PDP. His name was submitted by the PDP to INEC as its candidate for the 2007 Imo State gubernatorial election, after he emerged winner of the party primary election. Later, the PDP sent the name of Ugwu to INEC as its candidate for the same office.

⁷³ European Union Election Observation Mission (EU-EOM) *Final Report: Federal Republic of Nigeria* (2015) 4.

⁷⁴ See *Alhaji Atiku Abubakar v AGF* (2007) LPELR-SC 7/2007. The issue in this case was the purported declaration of vacancy, by the President, of the office the Vice-President, following the defection of the Vice-President to an opposition political party.

⁷⁵ See Dimeji Akinloye ‘Wike: Rivers Gov moves to shut down Port Harcourt hotel where Amaechi lodges’ *Pulse* 2 August 2017 available at <http://www.pulse.ng/news/politics/wike-rivers-gov-moves-to-shut-down-port-harcourt-hotel-where-amaechi-lodges-id7086119.html>, accessed on 13 August, 2017; Daily Post Staff ‘Amaechi hits back at PDP, says they will never use stadium’ *Daily Post* 23 January 2015 available at <http://dailypost.ng/2015/01/23/amaechi-hits-back-pdp-says-will-never-use-stadium/>, accessed on 13 August 2017.

⁷⁶ EU-EOM op cit note 73 at 4.

⁷⁷ Ahmed Issack Hassan ‘Electoral Alternative Dispute Resolution for Electoral Management Bodies in the SADC Region: Mitigating Election Related Disputes’ (2014) 7, available at <https://www.google.com/search?q=Ahmed+Issack+Hassan+‘Electoral+Alternative+Dispute+Resolution+for+Electoral+Management+Bodies+in+the+SADC+Region:+Mitigating+Election+Related+Disputes’+Paper+Presented+at+the+African+Centre+For+The+Construct>, accessed on 13 August 2017.

and injustice in the polity. These, especially in societies that are ethnically or otherwise divided, lead to electoral disputes.⁷⁸

Poor governance, the extravagant lifestyles of politicians, and lack of accountability by political office holders also trigger electoral disputes because they generate and reinforce public perceptions of injustice and inequality in the distribution of public resources. Such perceptions motivate some underprivileged electorates to form an alliance with opposition candidates and political parties to employ unwholesome strategies to effect a change of government and redistribution of wealth.⁷⁹

Electoral disputes also arise from the ‘do or die’ attitude of some politicians.⁸⁰ Due to the socio-economic value of political offices, some politicians — as strategies to remain in political offices or gain political favour and access to political offices — deliberately and maliciously provoke disputes through defamation, slander and vote rigging.⁸¹ Some go as far as using intimidation, thuggery, abduction and assassination of political opponents to achieve their selfish political ambitions.⁸² Such illegal and undemocratic acts generate dissatisfaction and electoral disputes.⁸³

The information provided by the media also generates electoral disputes.⁸⁴ Disputes ensue when the media are used by politicians to disseminate biased or politically-motivated opinions about some sensitive issues, or to spread slanderous and defamatory information about their opponents.⁸⁵ In an electoral climate that is routinely hostile, such media reportage gain rapid traction and provokes reaction. Conversely, failure to provide appropriate information induces disputes by the negative perception it provokes.⁸⁶ For instance, reports on the 2015 general elections disclosed that ‘government-controlled media failed to provide legally-required equal coverage, clearly advantaging incumbents’.⁸⁷ Such perception of ‘advantaging’ the opponent triggers electoral disputes.

The inefficient design of elections also triggers electoral disputes. Such disputes are common where the political, institutional and legal frameworks regulating elections seem to

⁷⁸ Kaaba op cit note 18 at 76.

⁷⁹ Ojo op cit note 38 at 11; Nnamani op cit note 34 at 89.

⁸⁰ INEC op cit note 44 at 34.

⁸¹ Ojo op cit note 38 at 11-12.

⁸² Nnamani op cit note 34 at 92-4; Odusote op cit note 38 at 32-3.

⁸³ INEC op cit note 44 at 34-5.

⁸⁴ Nnamani op cit note 34 at 91.

⁸⁵ INEC op cit note 44 at 35; Ojo op cit note 38 at 12.

⁸⁶ WANEP op cit note 2 at 23.

⁸⁷ EU-EOM op cit note 73 at 4.

create an unbalanced platform for competition or make provisions that are not in tune with the socio-political realities of the polity. For example, the limitations on the financial and administrative autonomy of the Independent National Electoral Commission (INEC) have been a matter of serious concern in Nigeria as they result in irregularities, such as delay in the procurement and distribution of election materials during elections.⁸⁸ The provision for the assumption of political offices, while petitions on the validity of the election or return of candidates are still pending, has also generated fierce controversies and dissatisfaction in Nigeria, as it is considered to give undue advantage to returned candidates.⁸⁹

Similarly, inefficient management of elections provoke electoral disputes. Attributed to factors like inadequate funding, lack of financial and administrative autonomy, corruption and incompetence of some staff of the INEC,⁹⁰ the inefficiency manifests in a variety of ways, including procedural irregularities, logistical blunders, poor election schedules, and non-compliance with electoral laws. In some cases the errors are insignificant. In others, however, they are significant and stimulate disputes.⁹¹ In *Agagu v Mimiko*,⁹² for example, the election of Agagu was challenged on grounds of electoral malpractices and irregularities.

Perceived inefficiency, bias and corruption of the judiciary and law enforcement agents have also been known to stimulate electoral disputes. When victims of electoral wrongs receive little or no redress because relevant authorities fail to enforce the laws, they are dissatisfied with the system and disputes consequently arise.⁹³ For instance, the 1964-65 post-election violence in Western Nigeria is attributed to dissatisfaction over the imprisonment of Chief Awolowo whose ‘supporters believe should have been the right leader to govern the affairs of Nigeria but for the decision of the court’.⁹⁴

These causes of electoral disputes can have serious negative impacts on the adoption and effective application of ADR in EDR if not properly handled because some of the basic

⁸⁸ Jinadu op cit note 33 at 133.

⁸⁹ Ibid. An example of this controversy is the case of *Muhammadu Buhari v Chief Olusegun Aremu Obasanjo* (2003) LPELR-SC 133/2003 in which the appellant sought an order restraining the 1st and 2nd respondents, the returned candidates of the 2003 presidential election from presenting themselves for swearing-in pending the determination of the substantive suit.

⁹⁰ Kaaba op cit note 18 at 79.

⁹¹ J Tochukwu Omenma, Okechukwu O Ibeanu, and Ike E Onyishi ‘Disputed elections and the role of the court in emerging democracies in Africa: The Nigerian example’ (2017) 2 *Journal of Politics and Democratization* 28 at 41-2.

⁹² CA/B/EPT/342/08.

⁹³ Nnamani op cit note 34 at 88.

⁹⁴ Akin Olawale Oluwadayisi ‘The role of the judiciary in the application of peacebuilding theory and methods to election dispute resolution in Nigeria’ (2016) 45 *JLPG* 138 at 145.

attractions of ADR are the sense of control and bargaining equality that disputants have in the process. Where such incentives are absent due to significant power imbalance between the disputants as a result of corruption or the abuse of power of incumbency, a positive disposition to dispute resolution will be lacking. Similarly, in an environment with flagrant disregard for the rule of law, disputants will be deterred from dispute resolution processes as they would be exercises in futility. This is more so where there is a serious public perception of injustice and inequality due to the value of political offices; there will be no moral or rational justification and incentive to adopt amicable methods of settlement whilst such disabling factors are intact. Accordingly, for ADR to be an efficient mechanism in EDR in Nigeria, these factors must be properly addressed.

2.4 Classifications of electoral disputes in Nigeria

Electoral disputes can be classified in a variety of ways, for example, based on the type of issue in question, the stage of the electoral process at which it arises, or the type of parties involved. Regarding the type of issue in question, the classifications include registration, eligibility, nomination, party primaries, accreditation, voting, and return of candidate.

Based on the stage of the electoral process, electoral disputes in Nigeria can broadly be categorised into three: pre-election, election and post-election disputes. Pre-election disputes are election-related disputes that arise at the preliminary stage of the electoral process, before the election day. They include disputes regarding election schedules, political party registration, voter registration, political party primaries, nomination of candidates, substitution of candidates, disqualification of candidates, electioneering campaigns, and the publication of requisite election notices. For instance, in *Amaechi vs INEC*,⁹⁵ the issue before the court was whether the substitution of the candidacy of Amaechi by the PDP was valid. In *Action Congress v INEC*,⁹⁶ the issue was whether INEC has the powers to disqualify a party's nominated candidate.

Election disputes are disputes which relate to irregularities in the course of an election—from the accreditation of voters to the declaration of results. The majority of these disputes are grievances regarding the validity of elections or return of candidates. They include the qualification of candidates to contest election, exclusion of candidates from contesting an

⁹⁵ *Amaechi* supra note 70.

⁹⁶ (2007) 6 SC (Pt 11) 212.

election, and compliance of elections with legal requirements.⁹⁷ These disputes are statutorily required to be resolved by petition only, filed within a specified period in the court of appeal and election tribunals in the country.⁹⁸

Post-election disputes are electoral disputes that arise after the return of candidates. They include grievances over the tenure of office of political office holders,⁹⁹ vacancy of political offices,¹⁰⁰ and review of political parties' expenses.¹⁰¹ In *Peter Obi v INEC*,¹⁰² for instance, the court was called upon to determine when the tenure of office of a governor begins. In *Abubakar v AGF*,¹⁰³ the issue before the court was whether the purported declaration of the vacancy of the office of the Vice-President, by the President, before the expiration of the statutory tenure was valid.

Regarding the parties involved, electoral disputes in Nigeria are classified into inter-personal, intra-party and inter-party disputes.¹⁰⁴ To these can be added a fourth category, which can be termed 'composite' electoral disputes. Inter-personal electoral disputes are election-related personal disputes between two or more persons who may or may not be members of the same political party. The persons involved are usually influential leaders with a large followership. Consequently, their personal interests and disputes determine the attitude of others and create a chain of disputes which considerably impact electoral processes. One example of this type of dispute is the dispute between former President Obasanjo and Vice-President Atiku over the presidency of the country in the 2007 elections.¹⁰⁵ The incompatible personal ambitions of the two politicians to occupy the political office led to several legal tussles, even involving INEC and the federal government.¹⁰⁶ Another example is the dispute between Rt Hon Chibuike Amaechi and Governor Nyesom Wike, which is still affecting citizens and governance of Rivers State,¹⁰⁷

⁹⁷ Sections 135 (1)(a) and 138 (1) Electoral Act 6 of 2010 (as amended).

⁹⁸ Sections 133 (1) and 134(1) of the Electoral Act. For examples see *Buhari* supra note 89; *Nyesom v Peterside* SC 1002/2015; *Shinkafi v Yari* SC 907/2015.

⁹⁹ Section 135(1)(b) of the Electoral Act.

¹⁰⁰ Section 135(1)(c) of the Electoral Act.

¹⁰¹ Section 92 of the Electoral Act.

¹⁰² (2007) LPELR- CA/E/2007

¹⁰³ *Abubakar* supra note 74.

¹⁰⁴ Bello op cit note 25 at 8-11.

¹⁰⁵ Jide Ajani 'The story of Olusegun Obasanjo and Atiku Abubakar' *Vanguard* 18 August 2013, available at <https://www.vanguardngr.com/2013/08/the-story-of-olusegun-obasanjo-and-atiku-abubakar/>, accessed 2 December 2017.

¹⁰⁶ See *Action Congress* supra note 96; *Abubakar* supra note 74.

¹⁰⁷ For examples of the impacts see note 75; — Makinde 'Wind of change: Wike set to sack over 13,000 workers employed by Amaechi' *PM* 17 June 2015, available at <http://www.naijaloaded.com.ng/news/wind-of-change-wike-set-to-sack-over-13000-workers-employed-by-amaechi>, accessed on 18 August 2017.

though it is basically about the conflicting personal ambitions of the erstwhile political allies to control the politics of Rivers State¹⁰⁸.

Intra-party electoral disputes are election-related disputes between members of the same political party. Such disputes, in Nigeria, usually arise due to distrust, indiscipline and lack of internal democracy in the political parties. These disputes manifest in various ways, including litigations and defections. Examples include the case of *Amaechi v INEC*,¹⁰⁹ and the defections of some PDP governors to APC before the 2015 general elections.¹¹⁰

Inter-party electoral disputes are election-related disputes between two or more political parties. They are ordinarily non-personal disputes over the interests of political parties. However, due to the mode of party formations in Nigeria, where the interests of political parties are usually embedded in the interests of a few politicians, disputes regarding the personal interests of such politicians commonly translate to inter-party disputes. The diverse disputes between the political parties fall in this category, with many of them typically metamorphosing into composite electoral disputes.

Composite electoral disputes are electoral disputes involving varied issues between diverse kinds of parties, without a strict line of demarcation. The dispute may involve a combination of political parties, individuals, INEC and other institutions. It may also relate to a variety or combination of issues including nominations of candidates, substitution of candidates, security, the election timetable and infringement of rights. The majority of the electoral disputes in Nigeria fall within this category, though they often begin as any of the three other categories. The case of *APC v PDP & 4ors*,¹¹¹ which involved two political parties, the INEC, an individual, the Chief of Defence Staff, and the Inspector-General of Police, typifies this class of electoral dispute.

The trajectories and interconnectedness of the various categories of electoral disputes indicate that electoral disputes in Nigeria are not stand-alone, linear disputes that can properly be resolved between the immediate parties without consideration of the interests and influence of unrepresented but significant parties. To be an effective mechanism in EDR

¹⁰⁸ Victor Edozie 'Amaechi and Wike's war of supremacy in Rivers' *Daily Trust* 03 September 2015 available at <http://allafrica.com/stories/201509031397.html>, accessed on 02 December 2017.

¹⁰⁹ *Amaechi* supra note 70.

¹¹⁰ Staff Reporter 'Defection of 5 Govs shocking - Tukur' *Vanguard* 28 November 2013 available at <https://www.vanguardngr.com/2013/11/defection-5-govs-shocking-tukur/>, accessed on 2 December 2017.

¹¹¹ SC 113/2015.

therefore, ADR must be well-designed to accommodate the complexities and inclusiveness of interests and influences in electoral disputes.

2.5 Manifestations of electoral disputes

Dissatisfaction with electoral processes can manifest in a range of behaviours, including voter apathy, debates, complaints, protests, defections, boycotts, litigations and violence. As the form of manifestation is determined by a variety of factors, including the personalities and backgrounds of the parties, the cause(s) of the dispute, the extent of external influence on the immediate parties, and the attitude of the government, dissatisfaction may be perceived easily in some circumstances, whereas it may be difficult to decipher in other circumstances.

Voter apathy is a lack of enthusiasm by the electorate in the electoral process. It is a restrained but common manifestation of electoral disputes in Nigeria.¹¹² It usually occurs when individuals, due to their disillusionment with previous poorly managed elections or over the inability to obtain redress for previous electoral wrongs, lack confidence in the electoral system and refrain from participating in electoral processes.¹¹³ The refrain is not an indication of the acceptance of the system or lack of interest in redressing perceived wrongs but a display of disregard and lack of support for the electoral system. In many instances, therefore, it is accompanied by overt behaviours that undermine the credibility of the electoral process and the legitimacy of the resultant government.

Debates are spirited arguments of divergent views on electoral issues. They are ordinarily non-violent, yet clear manifestations of discontent with particular aspects of the electoral process. Debates are conducted through diverse modes including oral, written and mass media presentations, and made at different stages of the electoral process. During the 2015 general elections, for instance, there were heated debates in various forms and at different stages of the electoral process over the use of Smart Card Readers and the rescheduling of the elections.¹¹⁴

Aggrieved parties sometimes show their grievances by lodging complaints with relevant authorities. A complaint is a formal and clear expression of discontent by an aggrieved party, lodged with an institution that is legally empowered to redress the alleged wrong. Instances abound where complaints displayed dissatisfaction during elections in

¹¹² Nwangwu op cit note 46 at 3.

¹¹³ WANEP op cit note 2 at 25.

¹¹⁴ Emmanuel Adeniran Alebiosu 'Smart Card Reader and the 2015 General Elections in Nigeria' (2016) 15 *Journal of African Elections* 69 at 71-5.

Nigeria. One such complaint arose during the 2015 general elections where a candidate of the People for Democratic Change (PDC) party petitioned INEC, calling for the prosecution of his opponent who was allegedly caught with over 4 000 Permanent Voter Cards on the election day.¹¹⁵

Protest is another method employed by aggrieved parties to display displeasure with electoral processes. It is a collective demonstration of disapproval by numerous parties who share a common grievance about a particular issue(s). It is typical in Nigerian elections and may be peaceful or violent. For instance, a peaceful protest was staged by Edo state youths on 15 October 2016 at the INEC headquarters in Abuja, following the controversy that trailed the Edo state governorship election.¹¹⁶ By contrast, the protest over the 2011 presidential election result was violent and led to over 800 deaths and loss of property.¹¹⁷

Defection is also a common means of expressing discontent in the Nigerian electoral setting. It is the transfer of allegiance from one political party to another and frequently occurs following intra-party disputes. An example is the defection of several governors from PDP to APC before the 2015 general elections.¹¹⁸

Political parties or groups sometimes register grievances by boycotting elections. The essence of a boycott is to undermine the legitimacy of elections or effect significant changes in the electoral process by refraining from participation in the electoral process. Boycott is not a common occurrence in Nigeria but has been adopted on some occasions. In 1964, for example, elections were boycotted in the East and other parts of Nigeria due to violence and intimidation.¹¹⁹

Litigation is another method of registering discontent with electoral processes in Nigeria. It entails seeking redress in courts of law or election tribunals. As exemplified by the volume of election-related suits and petitions filed in the courts and election tribunals, litigation is a common manifestation of electoral disputes in Nigeria. It is apparently the most

¹¹⁵ Austin Ogwuda 'PDC Reps candidate petitions INEC over 4,000 PVCs allegedly found with opponent' *Vanguard* April 2, 2015, available at <https://www.vanguardngr.com/2015/04/pdc-reps-candidate-petitions-INEC-over-4000-pvcs-allegedly-found-with-opponent/>, accessed on 27 August 2017.

¹¹⁶ Staff Reporter 'Youths protest against Edo poll, accuse INEC of complexity' *Nigerian Pilot* 21 October 2016, available at <http://nigerianpilot.com/youths-protest-edo-poll-accuse-INEC-complexity/>, accessed on 27 August 2017.

¹¹⁷ Nwangwu op cit note 46 at 12.

¹¹⁸ — — 'Nigerian PDP governors defect to opposition APC' *BBC News* 26 November 2013, available at <http://www.bbc.com/news/world-africa-25109513>, accessed on 27 August 2017.

¹¹⁹ Oduwote op cit note 38 at 28.

utilised method, maybe because it is overt, regulated and supported by the coercive powers of the judiciary.

The variation in the modes of manifesting electoral disputes indicates that, while some disputants can be identified easily, some may be difficult to identify. Accordingly, whereas direct and specific ADR sessions may be appropriate for the resolution of some disputes, some disputes may require indirect approaches, such as good governance, positive legislative approaches or extensive consultations outside the electoral sector. To be an effective mechanism in EDR therefore, ADR must be designed to accommodate such nuances.

2.6 Conclusion

Electoral disputes in Nigeria are basically caused by the exorbitant value of Nigerian political offices, which propels the employment of objectionable strategies, particularly the exploitation of ethno-religious sentiments and disregard for democratic practices, in electoral processes.¹²⁰ The value of political offices and the motivated strategies influence the commencement, form, manifestation, and attitude of disputants to the resolution of electoral disputes. Consequently, for ADR to be an effective mechanism in EDR in Nigeria the value of political offices must be properly reviewed and ADR processes must be designed to suit the intricacies of electoral disputes within the Nigerian context.

¹²⁰ ERC op cit note 32 at 92.

CHAPTER III

CURRENT ELECTORAL DISPUTE RESOLUTION LEGAL FRAMEWORK AND MECHANISM IN NIGERIA

3.1 Introduction

In its three main sections, this chapter examines the current Electoral Dispute Resolution (EDR) legal framework and mechanism in Nigeria, with a view to detailing their implications on the utilisation of Alternative Dispute Resolution (ADR) in EDR in Nigeria. Whereas the first section reviews the position of the law on the applicability of ADR in EDR in Nigeria, the second and third sections respectively consider the merits and demerits of litigation in EDR. These three sections shed light on some factors that impact the adoption and efficiency of litigation and may also impact the application of ADR in EDR in Nigeria.

3.2 The Legal framework for EDR in Nigeria

Nigeria operates a federal system of government. Accordingly, there are diversities and concurrences of legislative jurisdiction between the federal and state governments.¹²¹ On election matters, the National Assembly has exclusive jurisdiction to legislate on the conduct of the Presidential, Vice-Presidential, National Assembly, Governorship, Deputy-Governorship, State Houses of Assembly and the Federal Capital Territory Area Council elections, whereas it has concurrent jurisdiction with the State Houses of Assembly to legislate on Local Government Council elections.¹²² Consequently, there are differences between the laws regulating the elections regarding which the National Assembly has exclusive legislative jurisdiction and the laws regulating the Local Government Council elections regarding which it has concurrent legislative jurisdiction. In line with the focus of this research, however, discussion is based on the legal framework regulating the elections over which the National Assembly has exclusive legislative jurisdiction.

The resolution of electoral disputes in Nigeria is principally regulated by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act of 2010 (as amended). However, there are supplementary legal instruments regulating EDR. These include the Election Tribunal and Court Practice Directions of 2011, the Evidence Act 18 of 2011, the Criminal Code Act,¹²³ the Criminal Justice (Miscellaneous Provisions) Act,¹²⁴

¹²¹ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹²² Ibid (Second Sched).

¹²³ CAP C38 LFN 2004.

the Penal Code (Northern States) Federal Provisions Act,¹²⁵ and the Administration of Criminal Justice Act, 2015. In addition, as the Nigerian legal system is based on English common law, case law also regulates EDR in Nigeria.

By the provision of section 239 (1) of the Constitution, the Court of Appeal is vested with exclusive original jurisdiction to hear and determine any question as to whether-

- (a) Any person has been validly elected to the office of President or Vice-President under the Constitution;
- (b) The term of office of the President or Vice-President has ceased; or
- (c) The office of President or Vice-President has become vacant.

Under section 285(1) of the Constitution, the National Assembly Election Tribunals have exclusive original jurisdiction to hear and determine petitions as to whether-

- (a) Any person has been validly elected as a member of the National Assembly;
- (b) The term of office of any person under the Constitution has ceased;
- (c) The seat of a member of the House of Representatives has become vacant; or
- (d) A question or petition brought before the election tribunal has been properly or improperly brought.

Whereas the Governorship and Legislative Houses Election Tribunals, under section 185(2) of the Constitution, respectively have the exclusive original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house, the Area Council Election Tribunals have the exclusive original jurisdiction, under section 135(1) of the Electoral Act, to hear and determine any question as to whether-

- (a) Any person has been validly elected to the office of Chairman, Vice-Chairman or Councillor;
- (b) The term of office of any person elected to the office of Chairman, Vice-Chairman or Councillor has ceased;
- (c) The seat of a member of the Area Council has become vacant; or
- (d) A question or petition brought before the Area Council Election Tribunal has been properly or improperly brought.

¹²⁴ CAP C39 LFN 2004.

¹²⁵ CAP P3 LFN 2004.

Based on the above constitutional provisions and the provision of section 133(1) of the Electoral Act,¹²⁶ disputes over the validity of the election of a person to any political office, the termination of the tenure of office of any political office holder, the vacancy of any political office, and the propriety or impropriety of any question or petition brought before the election tribunals can only be resolved through litigation in the appropriate court or tribunal. In other words, the law clearly precludes the application of ADR in the resolution of such disputes in Nigeria.

Regarding other electoral disputes however, there are no express legal provisions on the manner or forum for resolution.¹²⁷ This lack of clear guidance, especially where the law has expressly made provisions for the above stated aspects, seems to suggest that it is the intention of the legislature that the disputing parties should make the choice of resolution methods and fora that are best suited to them. In support of this position, Chukwuemerie asserts that the judicial jurisdictions vested in the courts are not intended to compel disputants to submit disputes to the courts but to regulate the jurisdiction of the courts in the resolution of disputes when submitted to the courts.¹²⁸ This assertion debunks arguments that may be raised by virtue of sections 6, 251 and 272 of the Constitution, which vest the judicial powers of the Federation and exclusive jurisdictions over certain causes in the courts. In other words, there is currently no constitutional or statutory provision in Nigeria that precludes the resolution of other electoral disputes by ADR.

The above legal argument notwithstanding, in Nigeria the resolution of disputes by methods other than litigation is generally subject to public policy considerations.¹²⁹ The application of ADR in electoral disputes in Nigeria is, therefore, subject to permissibility by Nigerian public policy. Commenting on the permissibility, Chukwuemerie maintains that with the exception of very few disputes, such as crimes and matrimonial causes, that are restricted from arbitrability under the common law, all other disputes, including electoral disputes, are arbitrable and, as such, resolvable by ADR.¹³⁰ This implies that, apart from electoral offences that are not compoundable¹³¹ under the Nigerian law or any electoral dispute that is otherwise precluded from non-litigious resolution by Nigerian public policy,

¹²⁶ It provides that no election and return of an election under the Act shall be questioned in any manner except by a petition presented to the competent tribunal or court in accordance with the provisions of the Constitution.

¹²⁷ Chukwuemerie op cit note 15 at 128.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ That is, legally permitted to be settled out of court by the parties involved.

ADR can be utilised in the resolution of any electoral dispute that is not expressly prohibited from non-litigious resolution under the stated provisions.

Although the utilisation of ADR in EDR is not precluded under the Nigerian law, EDR in Nigeria is currently litigation-based. This, it may be argued, is because there is no legal framework that enables the application of ADR in EDR. The Arbitration and Conciliation Act¹³² only applies to commercial disputes, and there is no federal statute regulating mediation and negotiation in Nigeria. It therefore appears that the lack of provision for the application of ADR in the resolution of electoral disputes informs the choice of litigation in EDR. However, the fact that the choice is made when there is no prescription for the adoption of litigation or the preclusion of ADR in the resolution of the disputes — exception of the above stated — indicates that the choice is informed by factors other than legal provision.

One factor which informs a litigious approach is the adoption of an acrimonious culture. It is primarily stimulated by the socio-economic value of political offices and misconception of the essence of political office. Probably due to the value of political offices, some politicians conceive political offices as avenues for wealth acquisition instead of public service.¹³³ They therefore value political offices above societal cohesion and a relationship with the electorate. Gaining access to political office then becomes a goal they strive to achieve at all costs, even when it is inimical to the general good.¹³⁴ As a result, they jettison the cherished African values of peace, reconciliation and societal harmony in exchange for the culture of acrimony and discord. Accordingly, a mechanism that can afford the achievement of the goal without consideration of other non-legal interests appears more attractive than a mechanism that will consider other interests or require apologies, reparation or accountability to ensure reconciliation, relationships and societal cohesion. Since litigation fits this model of dispute settlement, it becomes preferable to ADR.

Another explanation for the adoption of litigation is a disregard for ADR and lack of trust in ADR practitioners. In pre-colonial Africa, ADR was a popular and highly valued system of dispute resolution.¹³⁵ However, with the subversion of African traditional systems

¹³² CAP A18 LFN 2004.

¹³³ ERC op cit note 32 at 103 and 107.

¹³⁴ Ibid.

¹³⁵ Jude C Onyeche 'Repositioning the African customary system: A case study of Traditional Dispute Resolution mechanism in Nigeria' in Victor E Nweke (ed) *Adjudication and other Strategies of Conflict Resolution in Nigeria: Essays in Honour of Honourable Justice Chukwunenyé Icheḡbo Uriri* (2016) 202-26;

and the introduction of British-oriented litigation by the colonialists, the regard that ADR once enjoyed in Nigeria was whittled away. The traditional structures which supported the application of ADR were destabilised and average educated Nigerians were trained and brainwashed to disregard ADR.¹³⁶ In addition, some surviving traditional ADR administering systems were politicised, resulting in the partisanship of some of its practitioners and lack of trust in the systems.¹³⁷ Resultantly, ADR and the traditional systems that administer it are disregarded in preference for litigation.

Indiscipline and lack of trust among politicians also account for recourse to litigation in EDR in Nigeria. Some politicians are undisciplined and do not keep promises.¹³⁸ They are, therefore, not trustworthy. Consequently, it does not appear reasonable to engage with them in non-binding settlements, since such efforts may be exercises in futility. To ensure enforcement of electoral dispute resolution outcomes, therefore, litigation, which offers legally-backed coercive enforcement, becomes an attractive mechanism.

3.3 The merits of litigation in EDR

One of the attractions of litigation is the coercive power of the court or tribunal to enforce its orders and decisions. The court has power to compel parties and witnesses to attend proceedings and to tender evidence. It also has powers to enforce its decisions and punish those who fail to comply with its decisions.¹³⁹ There were instances where election tribunals in Nigeria compelled the production of documents by threat of a jail term.¹⁴⁰ They have also stalled attempts by counsel and parties to unnecessarily delay trials.¹⁴¹ Thus, litigation helps to maintain discipline in the electoral setting. This feature of litigation is advantageous, considering records of indiscipline and abuse of power by some politicians and electoral officers. Without such coercive powers, the EDR system would be total chaos.

The public performance of the role of judges instils a perception of the impartiality and neutrality of the judiciary. As court proceedings and decisions are public and can be observed by interested parties, the suspicion of undue influence by either disputant is largely

Ofinite Joy Ogaji *The Viability of applying Alternative Dispute Resolution Processes in the Niger Delta Conflict* (PhD Thesis, University of Warwick, 2013) 176-200.

¹³⁶ Chukwuneye Ichegebo Uriri J 'Alternative Dispute Resolution (ADR) in historical perspective' in Nweke op cit note 135 at 55-9.

¹³⁷ Babatunde Afolabi and Sabina Avasiloae *Post-election Assessment of Conflict Prevention and Resolution Mechanisms in Nigeria: Final Report* (2015) 44-5, 58 and 69-70.

¹³⁸ Ibid at 63.

¹³⁹ Nweke op cit note 135 at 85.

¹⁴⁰ Sani op cit note 39 at 10.

¹⁴¹ Ibid at 193.

dispelled. This, coupled with the fact that the proceedings are conducted in line with pre-determined rules, promotes confidence in the justice system and aids acceptance and compliance with judicial decisions.¹⁴² Records indicate that most disputants accept and voluntarily comply with judicial decisions on electoral disputes in Nigeria, though there have been instances of non-compliance with some court orders.¹⁴³

Conducting legal proceedings according to pre-determined rules also enables consistency and fairness in the determination of cases by minimising undue influence and the subjectivity of the umpire.¹⁴⁴ It aids protection of the rights of the disadvantaged and inspires confidence in the EDR system. These merits are crucial in the electoral setting considering the typical power imbalances and suspicions among parties.

Litigation also ensures the preservation of public values.¹⁴⁵ The judicial officers are public officials, appointed through formal processes and public participation. Their authority and roles are determined by law, and their allegiance is ordinarily to the state. This, aside from instilling confidence by enabling the neutrality of the officers, ensures the preservation of public values by imposing an obligation on judicial officers to interpret and enforce legal provisions that reflect public values. Thus, litigation helps to maintain reasonable general standards and equality, which facilitate peace and harmony in the polity. The importance of this merit in EDR cannot be overemphasised. The power imbalances in the electoral setting and the egocentric disposition of some politicians in the pursuit of political offices necessitate the maintenance of such standards and equality.

The publicity of litigation enables the development of law by permitting observation and valuable response from the public. It also creates awareness of legal requirements in electoral matters. This potentially minimises non-compliance with the law and inspires confidence in the judicial and electoral systems. Where the disputes are properly settled, susceptible minds may be deterred from engaging in electoral wrongs, whereas the confidence of victims of electoral wrongs may conversely be inspired.

Another merit of litigation is the availability of appeal. This promotes justice by providing opportunities for disputes to be determined at different levels and by diverse neutrals. Such opportunities minimise the possibility of undue influence that may be likely

¹⁴² Nweke op cit note 135 at 84.

¹⁴³ Sani op cit note 39 at 7-8.

¹⁴⁴ Nweke op cit note 135 at 84.

¹⁴⁵ Ibid at 85-86; Harry T Edwards 'Alternative Dispute Resolution: Panacea or Anathema?' (1986) 99 *Harvard LR* 668 at 676.

where only one arbiter is involved in the resolution of disputes. Besides, though it is time consuming, the opportunity permits the correction of judicial errors or the affirmation of the decisions of the lower courts. There are numerous instances in Nigeria where the decisions of lower courts and tribunals were affirmed on appeal and other instances where they were set aside on grounds of error.¹⁴⁶ The corrections and affirmations stimulate a sense of justice, which boosts confidence in the justice system and stability in the polity.

Although litigation offers these merits, there are setbacks in its efficiency in EDR in Nigeria. A contributory factor to this is corruption and perceived lack of neutrality and impartiality of judges. According to Omenma et al, most court decisions in election matters in Nigeria are tainted with corruption because ‘the courts have become targets of “political investors” while justice becomes auctionable’.¹⁴⁷ It is also on record that some judges were indicted and some dismissed on grounds of corruption.¹⁴⁸ Public confidence in the judiciary has therefore declined over the years.¹⁴⁹ Interestingly, however, it is argued that reforms in the judiciary from 2003 have resulted in some improvements in the integrity of the judiciary.¹⁵⁰

One lesson from this setback is that corruption has significant implication for electoral justice in Nigeria; not just for litigation but for electoral dispute resolution generally. If the courts can become a target of political investors and corruption can permeate the hallowed chambers of justice and turn justice into an ‘auctionable’ item, then it is doubtful that the mere adoption of another EDR mechanism — without adequately addressing the issue of corruption — is the panacea to the inefficiency of the Nigerian EDR system. This doubt becomes more palpable in view of records of the corruption and partisanship of other key institutions like the INEC and police, which are also involved in electoral justice.¹⁵¹ Although Chukwuemerie argues that a private practitioner of a lucrative trade like arbitration is more likely to absolutely shun corruption than a salary earner,¹⁵² it does not appear probable that any dispute resolution mechanism can effectively operate in a corrupt environment. Susceptibility to corruption is determined by various factors — personal,

¹⁴⁶ *Anyanwu v Ogunewe* SC/21/2013; *Alahassan v Ishiaku* SC/46/2016; *Daniel v INEC* SC 757/2013; *Nyesom* supra note 98.

¹⁴⁷ Omenma *et al* op cit note 91 at 47.

¹⁴⁸ Ibid; Sani op cit note 39 at 194.

¹⁴⁹ Sani op cit note 39 at 196; Kaaba op cit note 18 at 121.

¹⁵⁰ Sani op cit note 39 at 194.

¹⁵¹ Ibid at 198.

¹⁵² Chukwuemerie op cit note 15 at 127.

cultural, institutional and organisational—and not solely the sector of employment.¹⁵³ As such, any institution in a corrupt environment can be affected. As well noted, it is only a few judges in Nigeria that are corrupt,¹⁵⁴ yet the whole judicial system is negatively impacted. Similarly, if a few private ADR practitioners are corrupt, the whole system will be affected. Even if such practitioners are disengaged by their employers and discredited by regulatory bodies, the loss of confidence due to their corruption will still affect the whole system, the same way the dismissal of some judges on ground of corruption has not fully restored public confidence in the judiciary. In other words, corruption has the potential to negatively impact the application of ADR in EDR in Nigeria if not properly addressed.

The corruption and inefficiency of other critical institutions in the administration of electoral justice have also been identified as factors that negatively affect the efficiency of litigation in EDR in Nigeria.¹⁵⁵ As the effective administration of electoral justice by the judiciary requires the cooperation and efficiency of such institutions, the efficiency of the judiciary is, to a large extent, impacted by the inefficiency and corruption of the institutions.¹⁵⁶ This position is, however, not limited to the judiciary. The effective administration of justice, generally, depends on the cooperation and efficiency of various institutions. In an electoral setting where suspicion is typical, such cooperation and efficiency are necessary to create an enabling environment for accountability and trust. They are therefore essential for the effective application of ADR in EDR in Nigeria, especially as ADR lacks coercive powers to compel compliance with outcomes.

3.4 The demerits of litigation in EDR

Apart from corruption and inefficiency of key institutions which are not peculiar to litigation, there are other drawbacks in EDR in Nigeria that are fallouts of the features of litigation. One such drawback is the expensiveness and inconvenience of litigation. Coupled with the non-negotiable fees charged for filing court processes and securing the services of witnesses, the professional fees for retaining lawyers and other experts—often necessitated by the technicalities of litigation — makes litigation expensive. On the retention of lawyers, for instance, Jinadu notes that election cases are ‘a multimillion naira big business for the

¹⁵³ Domènec Melé ‘Corruption: 10 possible causes’ *IESE Business School* 2014, available at <http://blog.iese.edu/ethics/2014/11/06/corruption-10-possible-causes/>, accessed on 4 September 2017.

¹⁵⁴ Chukwuemerie op cit note 15.

¹⁵⁵ Sani op cit note 39 at 198.

¹⁵⁶ *Ibid.*

legal profession'.¹⁵⁷ In addition to such fees, the cost implication of other processes, time and venue determined by the court outside the convenience of the disputants makes litigation highly expensive, inconvenient and dissatisfactory.

Lack of confidentiality is another demerit of litigation.¹⁵⁸ Since legal proceedings are and decisions are public, disputants lack the opportunity of preserving their privacy in respect of information disclosed in litigation. The inconvenience of such lack of privacy can deter disputants from disclosing relevant private information that can aid the effective resolution of disputes. Besides, where disputants choose or are compelled to disclose such information, the consequences of the disclosure may be damaging and dissatisfactory. This is especially so as the electoral setting is characteristically competitive and attracts great public interest and attention.

Escalation of disputes and damage to relationships have also been identified as demerits of litigation. According to Chukwuemerie, though the court can determine the rights and liabilities of disputants and may be able to compel cessation of outward expressions of grievance, it is ineffective in actually resolving disputes because it does not concern itself with the restoration of peace between the parties.¹⁵⁹ Such ineffectiveness, it is argued, sometimes results in the escalation of disputes and damage to relationships.¹⁶⁰

The escalation of disputes and damage to relationships are also attributed to other features of litigation: the involvement of advocates¹⁶¹ and competitiveness.¹⁶² The implication of this is that competition and the multiplicity of participants can have adverse effects on dispute resolution. Although these features are not common in ADR, failure to address the factors that stimulate unwholesome competition for political offices and the involvement of representatives and supporters, which is sometimes permitted during ADR proceedings, may adversely impact the efficiency of ADR in EDR.

Delay in justice delivery is another serious demerit of litigation. Due to the volume of cases filed in courts and the technicalities of litigation, the courts are regularly congested and take a long period to determine individual cases.¹⁶³ In addition, the provision for appeal

¹⁵⁷ Jinadu op cit note 33 at 137.

¹⁵⁸ Nweke op cit note 135 at 87.

¹⁵⁹ Chukwuemerie op cit note 15 at 124-5.

¹⁶⁰ Ibid; Uwazie op cit note 22 at 2.

¹⁶¹ Uwazie op cit note 22 at 2.

¹⁶² Nweke op cit note 135 at 87.

¹⁶³ Ibid at 86-7.

elongates the determination period of disputes to a frustrating point, with electoral disputes taking about three years to be finalised.¹⁶⁴

As elections are time bound, delay in the determination of cases has serious adverse implications for electoral justice delivery. For example, in the 2007 presidential election, the delay in the determination of a pre-election dispute over the eligibility of the Action Congress party presidential candidate frustrated electoral plans, resulted in the printing of 65 million fresh presidential election ballot papers within three days, and caused serious logistical problems that nearly marred the 2007 elections.¹⁶⁵ Delay in dispute determination also leads to outright injustice where rightfully elected candidates are deprived of the opportunity of exercising their mandate for over two years of a four-year term.¹⁶⁶ Apart from injustice against the elected candidates, such deprivation amounts to injustice against the electorate and the state, as the choices of the electorate are unduly kept in abeyance while unlawfully returned candidates are granted access to state resources.

In recent years, however, considerable improvement in the disposition of election petitions in Nigeria has been recorded, with over 93 per cent of election petitions being disposed of within a year.¹⁶⁷ This is attributed to some reforms of the EDR legal framework, one of which is the introduction of specific timeframes for the filing and determination of election petitions. Aside from signalling that the challenge of delay can be surmounted with proper reforms, the improvement indicates that delay is, to a large extent, not peculiar to litigation. In other words, it shows that, although the technicalities of litigation make delay more probable in litigation, other mechanisms of dispute resolution are also amenable to delay where external factors which give rise to delay are not adequately addressed. This position finds support in a report on the 2015 general elections, which stated that:

The judiciary made serious efforts to provide timely administration of justice for the high volume of pre-election suits. Nevertheless, the lack of time limits ... in combination with loopholes allowing lawyers to delay cases unnecessarily, left the majority of cases pending before the courts for after the elections, thus compromising the right to a timely remedy.¹⁶⁸

The implication of the report for the application of ADR in EDR in Nigeria is that non-prescription of timeframes and delaying strategies are factors that can adversely impact the efficiency of a dispute resolution mechanism. Bearing in mind the desperate manner in which

¹⁶⁴ Emmanuel O Ojo 'Public perceptions of judicial decisions on election disputes: the case of the 2007 general election in Nigeria' (2011) 10 *Journal of African Elections* 101 at 110; Jinadu op cit note 33 at 142.

¹⁶⁵ Jinadu op cit note 33 at 143.

¹⁶⁶ Sani op cit note 39 at 192.

¹⁶⁷ Ibid.

¹⁶⁸ EU-EOM op cit note 73 at 8.

some politicians pursue political offices and electoral disputes, it is not unlikely that delay strategies can also be employed to frustrate ADR, if relevant structures are not either put in place or demolished to foil such strategies.

3.5 Conclusion

With the exception of a limited class of electoral disputes that are required by the Constitution, statutes or public policy considerations to be determined by litigation, ADR is legally applicable in EDR in Nigeria. However, the employment of ADR in EDR in Nigeria is deterred by some factors, including the adversarial disposition of some politicians in the pursuit of political office. Coupled with the inefficiency and corruption of some officers and institutions involved in the administration of electoral justice, such disposition and the negative strategies they engender can significantly affect the application of ADR, if not properly addressed. Accordingly, for ADR to be effective in EDR in Nigeria, such factors must be properly addressed.

CHAPTER IV

ALTERNATIVE DISPUTE RESOLUTION IN PERSPECTIVE

4.1 Introduction

This chapter appraises the viability of applying Alternative Dispute Resolution (ADR) in Electoral Dispute Resolution (EDR) within the Nigerian socio-political setting. The first part of the chapter provides an overview of what is meant by ADR in the context of this research. The second part looks at the evolution and application of African Dispute Resolution and ADR mechanisms in the resolution of disputes in Nigeria, with a view to assessing its suitability and practicability in the country. Part three considers trends in the adoption of ADR in EDR while parts four and five respectively reflect on the merits and demerits of ADR in the resolution of electoral disputes. In its entirety the chapter indicates the feasibility of the adoption of ADR as an effective dispute resolution mechanism within the Nigerian electoral sector but sets out some factors that can affect the efficiency of the mechanism.

4.2 Alternative Dispute Resolution: An overview

The term ‘Alternative Dispute Resolution (ADR)’ is polysemic. It is variously defined,¹⁶⁹ and diversely termed¹⁷⁰. Notwithstanding, the term generally refers to an assortment of processes that utilise amicable means in resolving disputes outside of litigation or court-based adjudication. This does not imply that ADR comprises all non-litigation dispute resolution methods. There are other non-litigation dispute resolution processes that are not part of the ADR family.¹⁷¹ ADR essentially encompasses processes that utilise non-adversarial means of resolution and focus on the interests of the parties rather than the strict determination of legal

¹⁶⁹ See the various definitions by Robin Richardson *Alternative Dispute Resolution in Intellectual Property Law: A growing need for a viable alternative to court litigation* (LLM thesis, University of Cape Town, 2013) 34; Dorcas Quek ‘Mandatory mediation: An oxymoron? Examining the feasibility of implementing a court-mandated mediation program’ (2010) 11 *Cardozo Journal of Conflict Resolution* 479 at 480; David Kovick and John Hardin Young ‘Alternative dispute resolution mechanisms’ in Vickery op cit note 9 at 229; Edwin O Ezike ‘Developing a statutory framework for ADR in Nigeria’ 10 *Nig JR* (2012) 248.

¹⁷⁰ The acronym ‘ADR’ was initially used and accepted as representing ‘Alternative Dispute Resolution’. However, the construction of letter, ‘A’ has lost definiteness. While some users maintain that it properly represents ‘Alternative’, others argue that the word ‘Alternative’ is inappropriate for the processes. The latter group diversely posit that the ‘A’ is better understood as ‘Appropriate’, ‘Assisted’, ‘Additional’ or ‘African’. See Robyn Carroll ‘Trends in mediation legislation: ‘All for one and one for all’ or ‘one at all?’ (2002) 30 *Western Australian LR* 167; David Spencer and Samantha Hardy *Dispute Resolution in Australia: Cases, Commentary and Materials* (2014) 13-14; National Alternative Dispute Resolution Advisory Council *Dispute Resolution Terms: The Use of Terms in (Alternative) Dispute Resolution* (2003) 4.

¹⁷¹ Nweke op cit note 135 at 102-9.

rights.¹⁷² Its processes are basically regulated by the consensual decisions of the parties instead of predetermined legal technicalities.¹⁷³

The ADR family is made up of processes such as negotiation, mediation, conciliation, facilitation, fact-finding, neutral evaluation, expert determination, ombudsman, arbitration,¹⁷⁴ private judging, and regulatory agencies' formal administrative dispute resolution procedures.¹⁷⁵ It also embraces hybrid processes such as Med-Arb and Arb-Med.¹⁷⁶ The list of its processes is actually not circumscribed to these processes alone, as new processes are often developed to suit diverse kinds of disputes.¹⁷⁷ However, ADR fundamentally incorporates dispute resolution processes that emphasise mutual benefits rather than winner-takes-all outcomes.¹⁷⁸

Aside from diversity in its processes, ADR assumes diversity and flexibility in its form and process of initiation. In form, ADR may be advisory, consensual, or adjudicatory.¹⁷⁹ It may be evaluative, facilitative, transformative, or determinative.¹⁸⁰ It may also be binding or non-binding, and court-annexed or private.¹⁸¹ In terms of initiation, ADR may be court-ordered, legislatively or administratively mandated, or party contracted.¹⁸² It may also be court-referred, walk-in or direct intervention initiated.¹⁸³ The form or mode of initiation of a process in any particular circumstance largely depends on the nature of the dispute, the relationship between the parties, the intention of the parties and the administering institution. In any circumstance, however, the ultimate determinant is the appropriateness of the adopted approach for the resolution of the dispute. In other words, ADR is generally informal and

¹⁷² Richardson op cit note 169.

¹⁷³ Ibid at 35-9; Nweke op cit note 135 at 93.

¹⁷⁴ However, there is a controversy over the membership of arbitration in the ADR family. For details see Nweke op cit note 135 at 89.

¹⁷⁵ Ibid; Richard C. Reuben 'Constitutional Gravity: A unitary theory of Alternative Dispute Resolution and Public Civil Justice' (2000) 47 *UCLA LR* 952 at 964-970; Dato' Syed Ahmad Idid 'Alternative Dispute Resolution (ADR): An alternative access to justice', available at <http://www.supremecourt.gov.pk/ijc/Articles/7/5.pdf>, accessed on 2 November 2017; Kovick & Young op cit note 168 at 235.

¹⁷⁶ Nweke op cit note 135 at 99; Spencer & Hardy op cit note 169 at 19.

¹⁷⁷ Nweke op cit note 135 at 96.

¹⁷⁸ Richardson op cit note 169.

¹⁷⁹ Reuben op cit note 175.

¹⁸⁰ Tania Sourdin 'Alternative Dispute Resolution (ADR) principles: From negotiation to mediation' (2014) 179 at 180, available at <http://ssrn.com/abstract=2723652>, accessed on 1 August 2017; Guy Sinclair 'Mediation, transformation and consultation: A comparative analysis of conflict resolution models' 2007 *OBJS* 445-461.

¹⁸¹ Sourdin op cit note 180 at 180.

¹⁸² Reuben op cit note 175 at 971.

¹⁸³ Order 3, National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Rules, 2015.

flexible, yet aimed at satisfying the interests of the parties in a manner that satisfies basic standards of justice delivery.

ADR also exudes diversity in terms of its outcome. The adoption of ADR mechanisms is not limited to the resolution of disputes. It is, sometimes, aimed at the prevention and management of disputes. As a preventive mechanism, it is employed to negotiate the terms of relationships, for the avoidance of misunderstanding and ensuing conflicts. When adopted as a management mechanism, it is aimed at avoiding the escalation of conflict pending resolution. In any of these circumstances, the appropriateness of the mechanism is a key determinant of its adoption.

The adoption of ADR does not necessarily imply the loss of faith in the judicial system.¹⁸⁴ It basically reveals that litigation is not a ‘fit-all’ or impeccable dispute resolution system but only one of a variety of available dispute resolution systems. This is because ADR was not developed to replace litigation but to remedy the shortcomings of litigation which include delay, rigidity, expensiveness and inappropriateness in some situations.¹⁸⁵ Put differently, ADR is aimed at providing supplementary means of dispute resolution that will provide speedy resolution of disputes to aid decongestion in courts, be cost effective, and offer appropriate processes for resolution of disputes that are not litigation-suited.¹⁸⁶ Accordingly, rather than undermine the worth and efficacy of litigation, the adoption of ADR enhances the efficiency of litigation and improves access to justice through a reasonable degree of informality.¹⁸⁷ Nonetheless, ADR is not a ‘fit-all’ system: though it can be described as a ‘fit-many’ system, like other dispute resolution systems, it has its limitations, especially in the present Nigerian socio-political setting.

4.3 The evolution and practice of ADR in Nigeria

In Nigeria, as in other African states, the evolution of what could be termed an ‘African’ Dispute Resolution system — akin to what is now termed ADR — dates back to time immemorial.¹⁸⁸ Before the advent of the British, customary mediation, negotiation, arbitration, and litigation (not as complex and technical as the British-oriented litigation)

¹⁸⁴ Idid op cit note 174.

¹⁸⁵ Uriri op cit note 136; Mampoja Evelina Mkorosi *The Role of Alternative Dispute Resolution in Consumer Protection in Lesotho* (LLM thesis, University of Cape Town, 2015) 15.

¹⁸⁶ Mkorosi op cit note 185.

¹⁸⁷ Kovick & Young op cit note 169 at 235.

¹⁸⁸ Uriri op cit note 136.

were utilised in Nigeria for the resolution of diverse disputes.¹⁸⁹ These processes were embedded in custom and dictated by the socio-political experiences and values of the people.¹⁹⁰ They were aimed at promoting societal peace and focused on reconciliation, restitution and societal cohesion.¹⁹¹ Accordingly, the interests considered were not only of the disputants but also societal, and the processes were relatively informal, flexible and amicable.¹⁹²

African dispute resolution processes were effectively utilised in the resolution of all kinds of disputes in Nigeria before the advent of British colonialism. Following British colonisation and subjugation of traditional systems, British-oriented litigation became the predominant dispute resolution method and African processes were relegated to the background.¹⁹³ However, they were not effectively extinguished; they are still in practice in some communities (though generally at a minimal level) and some aspects are recognised under the formal legal system.¹⁹⁴

With exposure of the inadequacies of British-oriented litigation and resultant disenchantment of the populace with the system in recent times, the adoption of a supplementary or alternative dispute resolution mechanism to litigation became necessary in Nigeria. This led to the adoption of ADR, which, though slightly different especially in terms of administering institutions and procedure, is substantially the same as the African dispute resolution system. Since the system is not markedly alien to Nigeria, it is termed a ‘welcome back pack’.¹⁹⁵

The ‘welcome back pack’ officially made its debut in Nigeria in 2002,¹⁹⁶ with the establishment of the Lagos Multi-Door Courthouse.¹⁹⁷ Since then, the system has been gaining acceptance with the courts and the public. Multi-Door Courthouses have been established in other parts of the country,¹⁹⁸ and most courts have amended their Rules to

¹⁸⁹ Ibid; Onyeche op cit note 135 at 206.

¹⁹⁰ J O Asein *Introduction to Nigerian Legal System* 2 ed (2005) 150-1.

¹⁹¹ Onyeche op cit note 135 at 201-2.

¹⁹² R I Ahiakwo *Judging and Judgement Writing in Plain English* (2009) 58.

¹⁹³ Uriri op cit note 136.

¹⁹⁴ See *Agu v Ikewibe* (1991) 3 NWLR (Pt 180) at 409, where the Supreme Court held that the settlement of disputes by chiefs or elders of a community is legally recognised in Nigeria.

¹⁹⁵ Uriri op cit note 136; Ezike op cit note 169 at 249.

¹⁹⁶ This position is in view of the fact that although the Arbitration Ordinance (Act of 1958), which has subsequently been replaced, provided for arbitration, it did not provide for other ADR mechanisms, and there is controversy over the membership of arbitration in the ADR family.

¹⁹⁷ A Multi-Door Courthouse is a comprehensive court that offers access to justice by resolving disputes through several mechanisms of dispute resolution.

¹⁹⁸ For example, Kano and Abuja.

incorporate provisions that enhance the practice of ADR.¹⁹⁹ The National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre has also been established,²⁰⁰ and the practice of ADR is promoted in criminal justice administration through statutory provisions for compounding of cases, the encouragement of amicable settlement and plea bargaining.²⁰¹ Besides, some Ministries of Justice have established Citizenship and Mediation Centres that conduct and promote ADR practice.²⁰² There are also numerous private ADR centres in Nigeria.²⁰³ Interestingly, the Independent National Electoral Commission (INEC) also has an ADR unit. Thus, ADR is currently officially recognised and promoted in Nigeria.

Since its resurgence in Nigeria, ADR has been embraced and utilised by the courts, other ADR administering institutions, and the public in the resolution of varied types of cases, especially commercial disputes. Significant achievements have been recorded and satisfaction has been expressed with the utilisation of the mechanism. As Uwazie neatly captures:

Since the creation of the pioneering Lagos Multidoor Courthouse and its ADR Center in 2002, disputing parties now have the option of choosing among court-connected alternative methods to resolve their disputes... with an average of approximately 200 cases mediated monthly and resolution or settlement rates ranging from 60 to 85 percent....

In November 2009...Lagos State held its first mediation week.... Using lessons learned from earlier experiences, nearly 60 percent of the mediations resulted in agreement. Over 98 percent of disputants surveyed expressed satisfaction with the process, and nearly 70 percent said they preferred mediation to court litigation. Most of the participating lawyers also found the process satisfactory and indicated that they would recommend it to their clients.²⁰⁴

The success rate and positive response suggest that the system is in tune with African—particularly Nigerian—philosophy, custom and traditional concepts of justice.²⁰⁵ In fact, they suggest that the system is not only suitable but also viable in Nigeria.²⁰⁶ However, the success of ADR in the resolution of other types of disputes in Nigeria is yet to be recreated in respect

¹⁹⁹ See Order 16 Court of Appeal Rules, 2016; Order 39(4) High Court of Rivers State (Civil Procedure) Rules, 2010; Order 25 (2)(c) High Court of Lagos State (Civil Procedure) Rules, 2004; Order 17 High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004; Order 24 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017.

²⁰⁰ Pursuant to section 254C of the 1999 Constitution of the Federal Republic of Nigeria, as amended and sections 1(2) and 20 of the National Industrial Court Act, 2006.

²⁰¹ For examples see the National Park Service Act CAP N65 LFN 2004 and the Economic and Financial Crimes Commission (Establishment) Act, 2004. Notwithstanding, the compounding of offences is largely forbidden in the country. For example, the Criminal Code Act expressly forbids the compounding of offences in the Southern states.

²⁰² Examples are the Lagos and Rivers States Ministries of Justice.

²⁰³ An example is the Lagos Court of Arbitration.

²⁰⁴ Ernest E. Uwazie 'Alternative Dispute Resolution in Africa: Preventing conflict and enhancing stability' (2011) 4, available at <http://www.africacenter.org>, accessed on 08 August 2017.

²⁰⁵ *Ibid* at 3; Chukwuemerie *op cit* note 15 at 123.

²⁰⁶ Uwazie *op cit* note 203.

of the resolution of electoral disputes. This situation, as indicated in the previous chapter, is a consequence of several factors, one of which is the impact of colonialism on ADR practice in Nigeria. Colonisation and the consequent introduction of British-oriented legal system set a limit to the type of disputes that can be resolved through ADR. While there was no limit on the type of disputes that could be resolved under the African dispute resolution system, the type of disputes that can be resolved under the Western-influenced ADR system is determined by statutes and public policy.²⁰⁷ Another contributory factor, also indicated in the previous chapter, is the lack of an enabling federal legal and institutional framework for the application of ADR to electoral disputes that are not excluded from resolution by ADR. The major ADR enabling legal frameworks and administering institutions in Nigeria operate at the state level. The application of the Arbitration and Conciliation Act, which is an ADR-enabling federal instrument, is limited to arbitration and conciliation in commercial disputes. Similarly, the jurisdiction of the National Industrial Court of Nigeria ADR Centre, which is the only federal court-annexed ADR centre, is limited to the matters prescribed in section 254C of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and section 7 of the National Industrial Court Act of 2006 which do not include electoral matters.²⁰⁸ Regrettably, the INEC ADR unit that would have been a vanguard for the promotion and application of ADR in the resolution of electoral disputes is yet to make inroads. On the provision of ADR services by INEC and the general mood respecting the employment of ADR in the 2015 general elections in Nigeria, Afolabi and Avasiloae report:

Across the states under review, few mechanisms for consensus-building, dialogue and dispute-resolution are well-entrenched. Tensions emerged at various points during the 2015 electoral cycle, and escalated as the polls approached, but ADR was not applied effectively in response. In the states that were assessed, few if any bodies possessed the mandate, desire and capacity to intervene directly between the competing parties. INEC created in-house ADR units to resolve pre-election disputes, but hardly any interviewees described specific cases in which INEC officials provided this type of assistance.... INEC itself acknowledged that most disputes still went to the Lagos courts for adjudication and were not handled by its ADR unit.²⁰⁹

The reported situation in Nigeria does not imply that ADR cannot be an effective mechanism in the resolution of electoral disputes. According to the Nigerian Electoral Reform Committee, out of court settlement of electoral disputes has been a feature of

²⁰⁷ Chukwuemerie op cit note 15 at 123.

²⁰⁸ Article 4 (1), (4) and (5) of the National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Instrument, 2015.

²⁰⁹ Afolabi & Avasiloae op cit note 137 at 63.

Nigerian elections.²¹⁰ Though there is a credible suggestion that they are usually through ‘Party’s instructions’,²¹¹ such settlements indicate that electoral disputes can be resolved through ADR in Nigeria. The positive results from the employment of ADR in the 2015 general elections, albeit as a preventive mechanism, also lend credence to this position.²¹²

ADR has also proved effective in the resolution of electoral disputes in other states. Within Africa, good results have been achieved in various countries including South Africa and Kenya.²¹³ According to Chukwuemerie:

It has become a reoccurring event in Africa however that even when a political dispute has become so deep-set that it is insoluble through the Courts or any other medium, it can be sorted out through the ADRs. Examples abound but two recent and prominent ones should suffice. The nearly intractable post-election dispute in Kenya between President Mwai Kibaki and Mr. Raila Odinga was eventually resolved through mediation by another African, Mr. Kofi Anan the immediate past UN Secretary-General. This was after so much life and property as well as national reputation had been lost. Following the Zimbabwean national elections of 2008-9, the equally destructive and intractable dispute between President Robert Mugabe and Morgan Tsvangirira was eventually settled through the mediatory efforts of the then President Thabo Mbeki of South Africa.²¹⁴

The successful application of ADR in the resolution of electoral disputes in these States suggests that ADR is appropriate and can be effective in the resolution of electoral disputes in Nigeria. As Uwazie explains:

Conflicts in Africa have much in common, and striking parallels can be drawn between them at all levels.... lessons learned through community mediation, for example in South Africa, are applicable to the most complex and largest conflicts to be found on the continent.... As African conflict dynamics and mediation processes can be seen as analogous, on levels ranging from the community to the international arena, so too are many of the issues and interests affecting countries, political parties, ethnic groups, interest groups, and communities and civil societies.... A major premise of ADR or peace education is that lessons learned from conflict resolution in larger regional or national conflicts are applicable to community mediation, and vice-versa. Approaches that were successful in the Democratic Republic of Congo may hold keys to resolving the Niger Delta conflict.²¹⁵

²¹⁰ ERC op cit note 32 at 105.

²¹¹ Chukwuemerie op cit note 15 at 124. This position appears persuasive considering various assertions that the traditional ADR mechanisms are not used effectively to address election-related disputes. See Bello op cit note 25; Afolabi & Avasiloae op cit note 137 at 69. ‘Party’s instructions’, according to Chukwuemerie, ‘is a euphemism for hardly objective and often very unfair orders arrived at through influence peddling by party “big men” and then handed down to disputing party men through the party’s officials for willy nilly obedience.’ They do not qualify as ADR within this context.

²¹² For details see Nkwachukwu Orji and Kelechi C. Iwuamadi ‘Conflict mitigation in Nigeria’s 2015 elections: Lessons for democratic development’ (2015) 2 and 10, available at <http://www.inecnigeria.org/wp-content/uploads/2015/07/Conference-Paper-by-Kelechi-Iwuamadi.pdf>, accessed on 12 June 2017.

²¹³ Hassan op cit note 77 at 3; John Mukuna and Melvin LM Mbaao ‘Constitution-making dispute resolution mechanisms: Lessons from Kenya’ (2014) 5 *Mediterranean Journal of Social Sciences* 727.

²¹⁴ Chukwuemerie op cit note 15 at 123.

²¹⁵ Uwazie op cit note 22 at 10.

4.4 Trends in the adoption of ADR in EDR

As controversies and cynicism attend the resolution of electoral disputes in many countries, the international community has, in recent years, been focusing on the diverse means by which fair, effective and timely resolution of electoral disputes can be achieved.²¹⁶ Although there are no international instruments that specifically stipulate particular mechanisms for states to adopt in the resolution of electoral disputes, international documents on political and electoral rights establish that states have a responsibility to ensure that electoral disputes are promptly and effectively determined within the timeframe of the electoral process by an independent and impartial authority.²¹⁷ The International Foundation for Electoral Systems (IFES) has also identified standards for electoral dispute resolution. These standards are the availability of a transparent right of redress for election irregularities, a clearly defined regimen of election standards and procedures, an impartial and informed arbiter, a system that judicially expedites decisions, established burdens of proof and standards of evidence, meaningful and effective remedies, and effective education of stakeholders. While some appear, on superficial reading, to exclude non-judicial resolution of electoral disputes, these standards actually situate and necessitate the application of ADR as an important aspect of EDR.²¹⁸

Confirming this status of ADR in the electoral sector, electoral dispute resolution experts, at a meeting hosted by the Carter Centre in 2009, agreed that legal proceedings are only one of the various means by which electoral disputes can be resolved effectively.²¹⁹ They also agreed that disputes that do not involve fundamental rights or non-discriminatory state actions can be resolved outside litigation.²²⁰ The establishment of Congolese National Mediation Commission of the Electoral Process (CNMPE) in November 2011, under the auspices of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), also lend support to the international recognition of this status of ADR in EDR.²²¹

²¹⁶ Petit op cit note 12 at 3.

²¹⁷ Ibid at 6.

²¹⁸ This is because the employment of ADR helps to improve the efficiency of the judicial system regarding compliance with standards. It especially helps to ensure speedy determination of cases, meaningful and effective remedies, and access to justice.

²¹⁹ The Carter Center 'Electoral Dispute Resolution Experts' (2009), available at <https://www.cartercenter.org/resources/pdfs/peace/democracy/des/electoral-dispute-resolution-meeting.pdf>, accessed on 2 November 2017.

²²⁰ Ibid.

²²¹ The Commission was mandated to resolve election-related conflicts in the Democratic Republic of Congo.

Various continental and regional unions also recognise and support the adoption of ADR as an appropriate and effective method of resolving electoral disputes. In Africa, the African Union, in line with its main objective of promoting peace, security and stability on the continent, has put in place various organs and structures with the mandate to prevent, manage and resolve electoral disputes.²²² Its approaches to electoral disputes, through its Missions, include early warning and preventive diplomacy, election observation and monitoring, postelection mediation, technical and governance assistance, and post-conflict reconstruction and development (PCRD).²²³

The African Union has successfully mediated electoral disputes in some African states including Kenya and Zimbabwe, though the approach it mostly adopts is election observation.²²⁴ It has also contributed to the prevention of electoral conflicts in some states through pre-election preventive diplomacy and mediation.²²⁵ Similarly, regional groups such as the Southern African Development Community (SADC), Common Market of Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of West African States (ECOWAS), the International Conference on the Great Lakes Region (ICGLR) and the Economic Community of Central African States (ECCAS) have attempted mediation of electoral disputes in various African States at some points.²²⁶ Thus, ADR can be regarded as a suitable and acceptable EDR mechanism in Africa.

At the national level, governments adopt various mechanisms, depending on the political traditions and the legal and electoral frameworks of the country. The trend, however, is towards a diversified and flexible dispute resolution system. Following this trend, some African states, including South Africa and Kenya, have formally adopted ADR as part of their EDR system.

Under the South African EDR system, ADR mechanisms such as consultation, negotiation, mediation and administrative procedures are employed in the resolution of electoral disputes, particularly under the Electoral Commission Act 51 of 1996 and the Electoral Commission Regulations on Party Liaison Committees, GN R824 in GG 18978 19

²²² The structures include the Panel of the Wise and the Elections Observation and Monitoring Missions. For more details see African Union Panel of the Wise, *Election-Related Disputes and Political Violence: Strengthening the Role of the African Union in Preventing, Managing, and Resolving Conflict* (2010) 29, 48-57.

²²³ Ibid at 45.

²²⁴ Ibid at 53-57; Chukwuemerie op cit note 15 at 123-124.

²²⁵ Its effort during the 2015 Nigerian general elections is an example. See Orji & Iwuamadi op cit note 212.

²²⁶ For example, the SADC attempted mediation during the post-2007 election crises in Lesotho, and the ICGLR, COMESA and ECCAS attempted mediation during the post-2011 election violence in the Democratic Republic of Congo.

June 1998. Under section 6 of these Regulations, the Party Liaison Committees serve as vehicles for consultation and co-operation between the Electoral Commission (EC) and registered parties on all electoral matters.²²⁷ By the provisions of section 5(1) of the Electoral Commission Act, the EC is empowered to ‘establish and maintain liaison and co-operation with parties’. The EC also has the mandate to ‘promote co-operation with and between persons, institutions, governments and administrations for the achievement of its objects,’ and is vested with the jurisdiction to adjudicate disputes of an administrative nature which may arise from the organisation, administration or conduct of elections.²²⁸ Though the decisions of the EC relating to an electoral matter are appealable and subject to review by the Electoral Court,²²⁹ the empowerment of the EC to deal with disputes as they arise and the use of ADR prevent delay and promote efficiency in the system.²³⁰

In Kenya, the adoption of ADR in the resolution of electoral disputes is formally endorsed by the 2010 Constitution of Kenya, the Independent Electoral and Boundaries Commission Act 9 of 2011, the Elections Act of 2011 (as Revised), and the Political Parties Act 11 of 2011. Article 159(2)(c) of the Constitution specifically provides, without exclusion of electoral disputes, that in exercising judicial authority the courts and tribunals shall promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. The Constitution, with various laws enacted under it, also created other institutions with specific mandates to resolve electoral disputes.²³¹ For instance, by the provisions of Article 88(4)(e) of the Constitution, the Independent Electoral and Boundaries Commission (IEBC) is vested with the jurisdiction to settle electoral disputes.²³² Similarly, under section 40(1) of the Political Parties Act 11 of 2011, the Political Parties Disputes Tribunal (PPDT) is vested with powers to determine certain electoral disputes.²³³ The resolution of electoral disputes within political parties by

²²⁷ The establishment of the Committees under the Regulations on Party Liaison Committees of 1998 for the purpose is pursuant to section 5 of the Electoral Commission Act.

²²⁸ Section 5(1) (l) and (o), Electoral Commission Act 51 of 1996.

²²⁹ Sections 18-20 of the Electoral Commission Act 51 of 1996

²³⁰ Institute of Public Policy Research (IPPR) ‘Election Watch: Effective Dispute Resolution Strengthens Electoral Rights’ (2014) 1.

²³¹ The laws include the Elections Act of 2011 (as revised), with the Rules and Regulations made thereunder; the Political Parties Act of 2011, with the Rules and Regulations made thereunder; and the Independent Electoral and Boundaries Commission Act of 2011.

²³² The jurisdiction, re-echoed in section 74 of the Elections Act and section 4 of the Independent Electoral and Boundaries Commission Act, excludes election petitions and disputes subsequent to the declaration of election results.

²³³ The jurisdiction covers disputes between members of a political party, a member of a political party and a political party, political parties, an independent candidate and a political party, coalition partners, and appeal from the decisions of the Registrar under the Act

ADR mechanisms is also permitted by section 40(2) of the Political Parties Act.²³⁴ Other institutions empowered to determine electoral disputes include the Electoral Code of Conduct Enforcement Committee and the Constituency Peace Committees.²³⁵

The employment of these mechanisms in Kenya helps to decongest the courts, avoids delay, and ensures that disputes are determined by election commissioners who have practical understanding and experience of election law and regulation implementation.²³⁶ During the 2013 elections, for example, the Dispute Resolution Committee constituted by the IEBC determined close to 2000 complaints within the constitutional timelines.²³⁷ When the number of cases handled by other institutions involved in electoral dispute resolution in the country is added to this volume, the relief afforded the courts by these mechanisms can be well appreciated. In essence, therefore, the adoption of ADR increases the capacity for effective EDR in Kenya.²³⁸

Despite the successes achieved through the current Kenyan EDR system, the arrangement of the system, as the IEBC notes, ‘led to concurrent jurisdiction, characterized by forum shopping, overlapping jurisdiction and in certain instances duplications’.²³⁹ Besides, statutory provisions and institution building alone could not ‘alter the climate of zero sum competition and illegal election strategies in the absence of changed incentive structures among Kenyan political elites’.²⁴⁰ These fallouts of the Kenyan electoral system undermined the efficacy of the EDR system, resulting in its failure to effectively manage and resolve electoral disputes during the 2017 elections.

4.5 The merits of the adoption of ADR in EDR

From the successes of ADR in EDR some merits are deducible. One merit is decongestion and therefore potentially greater efficiency of the courts. As the disputes that would otherwise have been determined by litigation are resolved through ADR (especially when administered by other institutions), the courts are relieved of the burden of handling excessive case-loads.

²³⁴ The section stipulates determination by internal political party dispute mechanisms as a precondition for activating the jurisdiction of the PPDT.

²³⁵ The establishment of the Committees is pursuant to the Electoral Code of Conduct, Second Schedule to the Elections Act.

²³⁶ IEBC op cit note 16.

²³⁷ Ibid at vi and ix.

²³⁸ IPPR op cit note 230 at 2.

²³⁹ Ibid; IEBC op cit note 16 at ix-x.

²⁴⁰ David Gillies and Nana Kwamie ‘Elections and Conflict: Promoting Good Practice in Electoral Management’ (2009) 3, available at <http://www.nsi-ins.ca/content/download/FINAL3.1%20Elections%20and%20Conflict%20Conference%20Report.pdf>, accessed on 2 June 2017.

This affords the courts more time and speed in the determination of cases that are litigation-suited. This advantage is important in the electoral sector because of the time-constrained nature of electoral activities and the dire consequences of delay in the resolution of electoral disputes. It is also of immense benefit considering the general problem of sluggishness in the majority of African courts, where it is no longer news that cases drag on for years. Affording opportunity for improvement or preventing aggravation of such inefficiency is meritorious.

ADR also saves costs by enabling timely resolution of disputes that are not litigation-suited. Being largely informal, ADR is flexible and not encumbered by the technicalities that delay litigation processes. It affords disputants a reasonable level of control, familiarity and satisfaction with the resolution process. This, coupled with the amicable ambiance that the informality creates, provides incentives for timely settlement of electoral disputes by deterring disputants from taking steps or holding tenaciously to legal claims that aggravate the dispute and clog settlement. The promise of favourable outcomes that ADR offers by emphasising the exploration of opportunities for mutual benefits also stimulates a positive disposition to settlement. The speedy resolution of disputes saves disputants the time, resources and energy that would otherwise be expended on lengthy legal battles.

The confidentiality that ADR provides is also advantageous in EDR. Confidentiality encourages honesty by dispelling inhibition in giving evidence of personal and sensitive issues in the proceedings. It also precludes competitiveness since the proceedings are not open to observers, whose presence can provoke competitiveness and insistence on previously announced positions.²⁴¹ By boosting honesty and preventing negative external influences, confidentiality promotes timely resolution of electoral disputes.

The timely resolution of electoral disputes promotes peace and order in society. Due to the socio-economic values attached to elections, ethno-religious hostilities are easily triggered and escalated during elections. Delay in the resolution of the disputes poses a threat to the peace, unity and survival of society as lives and property are lost in ensuing violence. Contrariwise, timely resolution of the disputes prevents the escalation of conflicts, thereby promoting peace and order in society. The experiences of Nigeria, Kenya, Zimbabwe and the Democratic Republic of Congo as well as other African states exemplify this point.

²⁴¹ Margaret A. Neale and Max H. Bazerman 'Negotiator Cognition and Rationality: A Behavioral Decision Theory Perspective' (1992) 51 *OBHDP* 157 at 161; Tom Melling 'Dispute Resolution within Legislative Institutions' (1994) 46 *Stanford LR* 1677 at 1700.

Another merit of ADR in EDR is the opportunity it provides for good governance. According to Chukwuemerie, litigation determines cases by the delivery of a judgement that is based on the parties' legal rights and liabilities, without a consideration of the actual interests and desires of the parties.²⁴² What this achieves, in his words, is 'an imposed term for the cessation of combat' and not a resolution of the dispute.²⁴³ Such cessation of combat, he maintains, 'does not secure peace' but 'sometimes leads to a deepening of the dispute,' which hampers good governance.²⁴⁴ With examples, he concludes:

It has almost always turned out that when political disputes (such as who has been duly elected or returned in an election) are settled through the Courts, the parties may accept the verdict and the declared winner forms the government, but the parties would go on in residual disputes. It would be very difficult for them to come together and work together for the interest of the country. This has happened at one point in time or the other in Nigeria, Ghana, Liberia, Egypt, Madagascar and in countries outside Africa such as Chile and Sri Lanka. This would make room for unhealthy political rivalry most of the times.²⁴⁵

To enable good governance therefore, proper resolution of electoral disputes is crucial, and ADR facilitates such resolution. The informality, confidentiality and amiability that ADR provides stimulate honesty and cooperation in disputants. These features enable discovery and proper reconciliation of the real interests of the parties. In the process hurts are healed, relationships are restored, and satisfactory resolution is achieved.²⁴⁶ Parties are therefore potentially better disposed to work together for the interest and good governance of the polity.

ADR also offers quality resolution of disputes. This is achieved sometimes by the freedom it affords parties to determine the expertise of the third party that will assist in the resolution of their dispute.²⁴⁷ It is achieved at other times by the opportunity it provides for resolution of the disputes by institutions and persons that have experience and expertise in elections and implementation of regulations.²⁴⁸ Determinations by such persons or institutions are likely to be just, balanced, professional and more acceptable than judgements handed down by non-experts that the parties do not appreciate. Moreover, since ADR preserves relationships and offers opportunity for expression of views and control of the

²⁴² Chukwuemerie op cit note 15 at 125.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid at 123.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ IEBC op cit note 16.

resolution process by the disputants, its outcomes are more satisfactory and enforceable than imposed decisions.

The improvement of civil discourse and political culture is another advantage of ADR in EDR.²⁴⁹ The emphasis of ADR on co-operation, mutual gains and reconciliation motivates a change of attitude and orientation from hostility to civility, unlike litigation which promotes competitiveness and hostility. The resolution of disputes through ADR also reduces the number of cases that are disposed to ‘caustic language in election law judicial decisions’ and diminishes opportunity for negative and inciting reports from the media and the public.²⁵⁰ By motivating civility and reducing provocation and escalation of pre-existing political animosity, the adoption of ADR in EDR stimulates amity and concord in the polity.

Finally, the adoption of ADR in EDR provides access to electoral justice. As the processes are informal and flexible, they are more accessible and attractive to disputants. Besides, as ADR permits expression of views and control of the processes by the disputants, it affords ample opportunity for the achievement of justice in EDR. In other words, ADR leads to efficient and better justice delivery in the electoral sector and polity as a whole.²⁵¹

4.6 The demerits of the adoption of ADR in EDR

The stated merits notwithstanding, the adoption of ADR in EDR is not without demerits. One of the demerits is the lack of coercive powers for the enforcement of outcomes. The enforcement of ADR outcomes generally depends on the voluntary compliance of the parties with the outcomes. Where a party fails to comply with such outcomes, the settlement effort may be frustrated or, at best, the affected party may only have recourse to the courts for enforcement.²⁵² As such, ADR seems an inefficient mechanism for the resolution of disputes where the stakes are high or in an environment where there is distrust, acrimony and power imbalance.²⁵³ Since these are common traits in electoral settings, the effectiveness of ADR in the electoral sector is not guaranteed. Its adoption may also lead to delay and escalation of conflicts as disputes may need to be litigated afresh where there is non-compliance with outcomes. Considering that time is of the essence in elections and related activities, this raises

²⁴⁹ Joshua A. Douglas ‘Election Law and Civil Discourse: The Promise of ADR’ (2012) 27 *Ohio State Journal on Dispute Resolution* 291-310.

²⁵⁰ *Ibid.*

²⁵¹ Mauro Cappelletti ‘Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement’ (1993) 56 *The Modern LR* 282 at 289.

²⁵² Chukwuemerie *op cit* note 15 at 131.

²⁵³ *Ibid.*; Douglas *op cit* note 249.

doubt about the practicality of ADR in EDR. This doubt is especially palpable in a context where the electoral stakes are high and the electoral system is marked by disregard for basic societal norms, lack of dedication to the rule of law, and abuse of the power of incumbency. However, this demerit can be cured by making provisions for the bindingness and enforceability of ADR outcomes involving electoral disputes, as has been done for other types of disputes in the Multi-Door Courthouses in Nigeria and some other jurisdictions.²⁵⁴

Another weakness of ADR in EDR is the possibility of frustration of resolution efforts due to some disputants' non-cooperation. Since ADR is usually consensual, its efficiency may be challenged by difficulties in securing the attendance and participation of disputants because of characteristic distrust and hostility in electoral settings. The refusal of a recalcitrant party to engage in a resolution process may foil the process, especially as ADR practitioners lack coercive powers to secure the attendance of parties. Nonetheless, statutory prescriptions of how such proceedings can be conducted in the absence of a disinterested disputant can remedy this weakness.²⁵⁵

Douglas opines that the adoption of ADR in EDR may also undermine the importance of vindicating legal rights in the electoral sector.²⁵⁶ Since the outcomes of ADR processes are usually based on the negotiating power and consent of the parties, and not on established legal rights, the parties may not be able to insist on their legal rights in the settlement process. They may have to settle for less than their entitlements, especially due to the power imbalance that usually exists between parties in the electoral sector. The adoption of ADR in EDR therefore appears to have the potential of leading to injustice, breeding disregard for legal rights, and reinforcing pre-existing imbalances between parties in the electoral sector and the society at large.²⁵⁷ This defect can, however, be alleviated by subjecting certain aspects of the processes or outcomes of particular types of disputes in the sector to reasonable supervision by the courts or other regulatory agencies.

Injustice and disregard for the rule of law may also be occasioned where parties enter into agreements that are inconsistent with statutory provisions or judicial decisions on the issues in dispute.²⁵⁸ Such disregard may likely go unnoticed and unredressed since ADR proceedings are generally confidential. This demerit is of significant concern in the electoral

²⁵⁴ Chukwuemerie op cit note 15 at 131.

²⁵⁵ Ibid at 131-2.

²⁵⁶ Douglas op cit note 249.

²⁵⁷ Ibid.

²⁵⁸ Ibid at 317.

sector where the interests of the public are implicated and such agreements may affect the rights and interests of other citizens who may not be parties to the resolution process. Nevertheless, this flaw can also be diminished by provisions for reasonable supervision of the processes and outcomes by the courts.

The application of ADR in EDR may hinder the development of the law, promote uncertainty of governing rules, and occasion unfairness in the electoral sector.²⁵⁹ As ADR proceedings and outcomes are usually confidential and consensual, they do not provide precedents for reference in subsequent cases or records for review of applicable law on any particular issue. This has the potential of limiting review of the law and leading to diverse decisions in respect of similar issues in the sector. Bearing in mind that fairness and certainty of governing rules are necessary to maintain the credibility of the electoral system, this demerit of ADR renders its suitability in EDR doubtful. Making accommodations for provision of records regarding certain aspects of the processes or specific types of disputes in the sector may, however, cushion the effect of this demerit. Specifically, basic information about the nature of the dispute and reasons for decisions may be excluded from confidentiality. Apart from providing records for legal review and certainty of governing laws, this will permit functional monitoring of the processes by the public and ‘avoid the spread of false rumours and conspiracy theories’.²⁶⁰

Finally, the adoption of ADR in EDR may negatively affect public standards as the confidentiality of the processes may shield objectionable acts of politicians from public scrutiny and redress, thereby perpetuating such acts. For instance, where a politician commits a serious crime in the course of elections that directly affects the interests of the public or may likely set a precedent for commission of the crime, the resolution of such dispute by ADR may undermine public standards. As the public may be uninformed of the decisions on the issues due to the confidentiality of the proceedings, an impression of the acceptance of the conduct may be created and others may be encouraged to emulate such conduct. The adoption of ADR in such circumstances may, therefore, be detrimental. Similarly, where there is a need for interpretation or clarification of some provisions or principles of law in the sector, the adoption of ADR may be disadvantageous. To avoid this defect, it is necessary that certain issues in the electoral sector — the private resolution of which may negatively impact public values or legal standards — be excluded from resolution by ADR.

²⁵⁹ Ibid at 318.

²⁶⁰ Dahl op cit note 9 at 102.

4.7 Conclusion

This chapter indicates that ADR improves the efficiency of the judiciary and access to justice. The efficiency of the mechanism in the resolution of other types of disputes in Nigeria as well as its merits and successes in the resolution of electoral disputes in other climes elucidates its essentiality, appropriateness, and feasibility in the resolution of electoral disputes in Nigeria. However, for the mechanism to be efficient and sustainable in the sector, potential problems with enforceability of outcomes, conduct of proceedings where a disputant is recalcitrant, development of the law, vindication of rights, and maintenance of public standards must deliberately be addressed. As these require the subjection of some aspects of ADR processes to reasonable supervision and support by the courts as well as the exclusion of some disputes from resolution through ADR, the efficiency of the judiciary is vital to the success of ADR in EDR in Nigeria.

CHAPTER V

REFORMING THE NIGERIAN ELECTORAL DISPUTE RESOLUTION SYSTEM

5.1 Introduction

Encompassing the findings and conclusions of this research, this chapter is a signpost on the position of Alternative Dispute Resolution (ADR) as an effective mechanism in Electoral Dispute Resolution (EDR) in Nigeria. The first section recaps the findings and unveils the challenges of ADR as an EDR mechanism in the present Nigerian socio-political setting. The second section, basically based on lessons drawn from the past reform experiences of Nigeria as well as the experiences of other states regarding EDR, provides a road map for achieving efficiency in the utilisation of ADR in EDR in Nigeria. As a whole, the chapter advances that, despite the present challenges, ADR can be a functional mechanism in EDR in Nigeria, given an enabling environment.

5.2 The status of ADR in EDR in the present Nigerian socio-political setting

ADR is a collection of dispute resolution processes that improve the efficiency of the judicial system and access to justice. It relieves the courts of the burden of handling excessive case-loads, thereby enabling speedy and quality determination of cases by the courts. Its informality, flexibility and confidentiality enable control of the processes by the parties, provide convenience for the parties, and promote honesty and amicability in the proceedings. These, apart from boosting a positive disposition to resolution of disputes, enable discovery, reconciliation and satisfaction of the disputants' real interests. Coupled with the civility that ADR promotes in public discourse, the satisfaction of parties' interests and timely resolution of disputes stimulate concord, reduce provocation, and prevent escalation of pre-existing political animosity between parties. These promote peace, order and good governance in society.

The merits of ADR in EDR make it attractive and essential as a mechanism to remedy the inadequacy of the Nigerian EDR system, particularly as regards delay and improper resolution of disputes. Notwithstanding, ADR is currently not formally endorsed or popularly utilised for EDR in Nigeria. This is not because ADR is unsuitable for EDR in Nigeria. Rather, it is due to some peculiar features of the present Nigerian socio-political setting.

ADR is in tune with African values and traditions which aim at promoting peace and harmony in the society. It is, as research indicates, 'part of Nigeria's DNA' and 'reflects the

country's cultural and historical character more than the court system'.²⁶¹ From time immemorial, its processes, though not in the modern Western packaging, were effectively utilised in the resolution of all kinds of disputes in the diverse areas that constitute Nigeria. However, the colonisation and subsequent introduction of a new political system — with the British elective principle and formal dispute resolution system — by the British destabilised the pre-existing traditional political and dispute resolution systems. While the colonialists succeeded in merging the diverse pre-existing units into a single political entity, they failed to redirect allegiance from the various groups to the newly created entity but rather encouraged hostilities between the different groups through their 'divide and rule' style of governance. Consequently, group sentiments were transferred to and have been a part of elections in Nigeria from the colonial era till today.

Notwithstanding the initiation by the British, the life wire of the continued existence and exploitation of group sentiments in elections in Nigeria is the socio-economic worth of political offices. The value of political office, accentuated by the winner-takes-all tendency of the first-past-the-post (FPTP) electoral system practised in Nigeria, encourages some politicians to conceive political offices as avenues for the acquisition of wealth instead of an opportunity for public service. This conception breeds desperation and instigates exploitation of group affiliation and other objectionable strategies in their pursuit of political offices.

The exploitation of group affiliations in elections results in the transfer of the interests of ethnic, religious and other groups to electoral processes. The transfer stirs and merges pre-existing non-electoral disputes between groups with electoral processes, thereby escalating the electoral stakes and the group disputes. The escalation, in turn, prompts failure of adherence to basic principles of democracy and constitutionalism, lack of political will to enforce electoral laws and implement reforms, and the employment of objectionable strategies such as corruption of public officers and abuse of the power of incumbency to gain advantage in elections. It also prods a war-like disposition in some politicians to elections and EDR. Consequently, the Nigerian electoral setting is marked by violence, distrust, animosity and disregard for the rule of law and basic societal values.

The current features of the Nigerian electoral setting, coupled with the perception of injustice and power imbalance which the value of political offices projects, render the Nigerian EDR setting currently unfavourable for an efficient and sustainable application of

²⁶¹ Afolabi & Avasiloae op cit note 137 at 64.

ADR. This is because ADR is generally a voluntary and consensual process. The positive disposition of disputants to resolution through the mechanism is therefore requisite for its adoption and success. Where there is power imbalance and disregard for basic values, raising doubt regarding the fairness of the process and voluntary compliance by parties, requisite trust and positive disposition by disputants to amicable settlement will be lacking. This is more so as ADR ordinarily lacks coercive powers for enforcement of outcomes; engaging in a process that cannot be enforced when there is failure of compliance appears futile and unattractive. In addition, the war-like disposition of some politicians to elections inhibits voluntariness and cooperation that are requisite for effective utilisation of ADR. Therefore, EDR in Nigeria has been litigation-based, with all the associated demerits.

The demerits of litigation render the current Nigerian EDR system inefficient, necessitating a reform through the adoption of ADR. However, for such reform to be effective, the Nigerian electoral setting must be favourable for the application of ADR. This requires several steps, within and outside the electoral and dispute resolution systems, to be taken. The steps are the concern of the next section.

5.3 The indices for efficient application of ADR in EDR in Nigeria

Achieving efficiency in the application of ADR in EDR in Nigeria is not a stand-alone process. It requires a comprehensive approach that entails legislative, structural, political, institutional and socio-economic reforms. In this regard, the provision of a statutory framework for the adoption of ADR in EDR and investment in capacity building through training and infrastructural support for ADR providers have been identified as necessary steps.²⁶² The creation of appropriate incentives for lawyers and judges and the creation of synergy between formal/state ADR institutions and the informal/indigenous community sector have also been identified as requisite steps for the effective employment of ADR.²⁶³ These are, however, not the only steps requisite for the adoption, efficiency and sustainability of ADR in EDR in Nigeria. There are other essential steps that must be taken.

The foundational step to the efficiency and sustainability of ADR in EDR in Nigeria is to assess the effectiveness and shortcomings of the existing dispute resolution mechanism.²⁶⁴ This step will provide direction for, and focus on, the purpose and scope of the

²⁶² For details, see chapter I.

²⁶³ For details, see chapter I.

²⁶⁴ Bolaji *op cit* note 23 at 76.

reform.²⁶⁵ It will also facilitate a proper design of the ADR system necessary for its efficiency and sustainability.

A proper design enables the flexibility of ADR to appropriately address a wide-range of issues whereas an improper design can render it entirely inappropriate and ineffective.²⁶⁶ To be effective in EDR in Nigeria, therefore, the ADR system must be properly designed. Underscoring the importance of this point is the attribution of the failure of Nigeria's democracy to an 'inability to design an efficient, effective and politically non-partisan electoral process.'²⁶⁷ Another case in point is the failure of the Kenyan EDR system to effectively manage and resolve electoral disputes during the 2017 elections, though the utilisation of ADR is constitutionally endorsed. One of the identified defects of the system which occasioned the failure is its improper design which made the system complex and amenable to abuse, including forum-shopping.²⁶⁸ Accordingly, a proper design of the ADR system is essential to its efficiency and sustainability.

A proper ADR design entails appropriateness and practicability of adopted remedies to identified shortcoming. The goal(s) of ADR in EDR must therefore be specific, and its design must be driven by that goal.²⁶⁹ This requires an ADR system to be designed in a manner that is suitable and practicable for the type of issues to be addressed.²⁷⁰ It must be adaptable to the characteristics and context of the matter to be decided, and different institutions and processes must be used for different suited grievances.²⁷¹ It must also be malleable enough to satisfy the interests of the parties in dispute and equally deliver justice 'in a dynamic yet culturally sensitive manner'.²⁷²

One approach by which the appropriateness of ADR can be determined is to consider whether the disputes proposed to be resolved by ADR will impact public rights and whether the rights will have to be defined by those that the law seeks to regulate.²⁷³ Where this is the case, the application of ADR will be inappropriate, otherwise it may be appropriate. This

²⁶⁵ Cordenillo op cit note 22 at 6.

²⁶⁶ Kovick & Young op cit note 169 at 233.

²⁶⁷ Sani op cit note 39 at 10

²⁶⁸ IEBC op cit note 16 at ix-x; IPPR op cit note 230 at 2.

²⁶⁹ Kovick & Young op cit note 169 at 241-2.

²⁷⁰ Dahl op cit note 9 at 108

²⁷¹ Ibid.

²⁷² Uwazie op cit note 22 at 4.

²⁷³ Edwards op cit note 145 at 671.

consideration helps to avoid destruction of the merits of the existing mechanism, particularly in preserving public rights and values.²⁷⁴

A proper ADR design must also permit adequate synchronisation in the EDR system. An aspect of synchronisation is to avoid concurrence or overlap of jurisdictions. This is important because such allowance, as the Kenyan experience shows, can lead to abuse of process and forum shopping which can undermine the credibility and efficiency of the system. Another facet of synchronisation is creating a balance in the system by recognising the strengths of the existing mechanism and the limitations of ADR. This necessitates understanding that not all disputes can be, or should be, resolved by ADR. This is important because if ADR is not appropriate for a particular shortcoming of the EDR system, its application in the circumstance will be ineffective. To be effective and sustainable, therefore, an ADR system must be flexible enough to promote the reconciliation of interests, while also permitting the determination of rights or power for disputes that are not suited for resolution by focusing on interests.²⁷⁵

Another important factor in ADR design is the need to meet domestic and international standards.²⁷⁶ This requires that the processes be designed to satisfy basic criteria of justice delivery. It necessitates that where rights will be implicated, judicial appeal should be guaranteed or the extent to which the implementation of such rights can be negotiated should be specified.²⁷⁷ It also demands addressing certain design questions, including the determination of the parties that can bring claims through the mechanism, the extent to which outcomes can affect unrepresented parties, and the appropriateness and degree of confidentiality in the system. Questions regarding precedent setting and the scope of interaction with the formal legal system, especially in terms of the appropriateness, extent and standard of review, also need to be considered. Other crucial issues to be addressed include the method of selection and role of mediators or neutrals, the remedies and mechanisms of outcome enforcement, and the burden of proof and standard of evidence.²⁷⁸ A proper consideration of these issues is necessary because they impact the perception of the electorate regarding the credibility and legitimacy of the system and the extent to which it

²⁷⁴ Ibid at 676-680.

²⁷⁵ William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg *Getting Disputes Resolved* (1993) 3-18.

²⁷⁶ Gary & Edgeworth op cit note 27.

²⁷⁷ Kovick & Young op cit note 169 at 239.

²⁷⁸ Ibid at 246-8.

will be considered an attractive alternative to the existing mechanism.²⁷⁹ How these issues are approached, therefore, determine disposition to the adoption and efficiency of ADR.

To meet domestic standards the issues must be addressed based on adequate analysis of the peculiar circumstances of the country. The ADR design should 'be driven by national considerations' and should 'respond to the specific historical and cultural experiences of the country and the country's changing social, demographic and economic environment'.²⁸⁰ It should be consistent with the country's traditions and compatible with the values of the stakeholders.²⁸¹ This demands that the design must not be arbitrarily imposed on the stakeholders but should involve and be a collective effort of all the stakeholders. It necessitates building consensus among various classes of stakeholders including the legislature, political parties, civil society, INEC and communities. It also involves resuscitating and liaising with traditional or community-based dispute resolution institutions, especially as they are more flexible and sensitive to their environment.²⁸²

A proper design therefore requires the adoption of a bottom-up approach which takes account of the diversity and local contexts of all the stakeholders. The approach enables the stakeholders to identify with the system and precludes undue influence of the design by parochial interests. It is essential because any reform or regulation that is not driven from the bottom or with which the people do not identify is unsustainable.²⁸³ The inclusiveness of the process ensures public confidence in and acceptability of the system, thereby enhancing its efficiency.²⁸⁴ It is especially necessary considering arguments that a majority of the electoral laws in the country are non-functional because the politicians whose activities are supposed to be regulated by the laws are the ones designing the legal framework and, as such, the laws are largely influenced by their parochial interests.²⁸⁵ Records disclose that the approach

²⁷⁹ Ibid at 243-5.

²⁸⁰ Commonwealth Secretariat, IFES and UNEAD *Report to the Independent National Electoral Commission (INEC) of the Federal Republic of Nigeria* (2003) 2.

²⁸¹ Julia Ann Gold 'ADR through a cultural lens: How cultural values shape our disputing processes' 2005 *Journal of Dispute Resolution* 289 at 317; Gillies & Kwamie op cit note 240 at 5; Dahl op cit note 9 at 100.

²⁸² Ogaji op cit note 135 at 204.

²⁸³ Bolaji op cit note 23 at 73; Martin Chanock 'African constitutionalism from the bottom-up' in H Klug & S E Merry (eds) *The New Realism: Studying Law Globally* (2016) 2-35.

²⁸⁴ Victor Shale and Robert Gerenge 'Republic of Congo, Lesotho and Kenya: A comparative perspective' available at http://journals.co.za/docserver/fulltext/accordc_2016_n4_a2.pdf?expires=1513693192&id=id&accname=57709&checksum=D5131FB969007BEF741B14B0E1F23564, accessed on 2 November 2017; Bolaji op cit note 23 at 76.

²⁸⁵ Mike Igini 'Electoral laws and the conduct of the 2015 General Elections' (2015) 4-9, available at <http://www.INECnigeria.org/wp-content/uploads/2015/07/Lecture-Electoral-laws-2015-Elections-Barr-Mike-Igini-01.pdf>, accessed on 17 September 2017.

proved effective in mitigating the 2006 election conflict in the Democratic Republic of Congo and the 2007 post-election conflict in Lesotho.²⁸⁶

For inclusiveness to be achieved, the patterns of interaction in the country must change.²⁸⁷ The political class must be willing to engage in genuine negotiations with other stakeholders on a level-playing platform. Politicians must also regard other stakeholders as partners and not as subordinates. Public forums and informal meetings that will promote cooperation and participatory democracy must be actively and regularly organised by relevant agencies. The government must also be accountable to the citizenry and committed to democratic governance and development.²⁸⁸ These steps are necessary to arouse positive dispositions to employment of ADR by impressing on the electorate the sincerity and willingness of the political class to pursue mutual benefits and justice in society.

Another aspect of an EDR system that impacts the effectiveness of ADR is the legislative approach.²⁸⁹ To ensure the efficiency and sustainability of ADR in EDR, the electoral legal framework must be attractive. The laws governing elections, especially those regulating ADR, must display a reasonable degree of fairness and possibility of impartial and balanced application. The laws must not be discriminatory or afford some actors advantages to the detriment of others. They should be inclusive and objective enough to give the stakeholders a reasonable sense of recognition and fairness in the system. They should also be practicable. This is because the perception of fairness and practicability promotes satisfaction with the system and compliance with outcomes, whereas unfairness and lack of implementation structures or other factors that give the laws mere cosmetic appearance undermine the efficacy of the laws and the electorate's confidence in the system.²⁹⁰

To boost fairness in the system, the legal framework must create a platform for disputants to participate genuinely, meaningfully and freely. Such participation promotes consensuality, which largely determines the legitimacy of ADR processes.²⁹¹ Gaining such participation requires that adequate provisions should be made to address power imbalances, which is typical in the electoral sphere. Although it may be argued that the existence of

286 Gillies & Kwamie op cit note 240 at 5; Shale & Gerenge op cit note 284.

287 Afolabi & Avasiloae op cit note 137 at 50.

288 Ibid at 62.

289 Gillies & Kwamie op cit note 240 at 4-5.

²⁹⁰ Deborah R. Hensler 'Supposing it's not true: Challenging mediation ideology' 2002 *Journal of Dispute Resolution* 81 at 88.

²⁹¹ Claire Baylis and Robyn Carroll 'The nature and importance of mechanisms for addressing power differences in statutory mediation' (2002) 14 *BOND LR* 285 at 291-2.

power imbalances does not necessarily lead to an exercise of power by the more advantaged party,²⁹² power imbalances may negatively affect the disposition and participation of disputants in the process. It may incite perceptions that the process is an avenue for the imposition of the powerful party's decision on the weaker or impugn the neutrality and impartiality of the neutrals. Addressing power imbalances therefore increases the justice orientation of the system and preserves the integrity of the process.²⁹³ It also diminishes the vulnerability of the process to outcomes that are unfairly advantageous to one party and of disputants' dissatisfaction with the system due to concerns about domination of the process by another party.²⁹⁴

For ADR to be efficient in EDR, it is also important that parties perceive ADR administrators and neutrals to be accountable and trustworthy.²⁹⁵ This is necessary due to the sensitive nature of electoral disputes which may require the disclosure, in confidentiality during ADR proceedings, of issues that are important to the livelihood and reputation of the parties or have significant public implications. It is therefore crucial that the system be designed to ensure the responsibility and professionalism of practitioners. The practitioners need to assume the obligation to ensure that parties feel comfortable with the administration and conduct of the processes.²⁹⁶ They also need to appreciate the sensitivity of the processes and to 'recognize their role as one of assistance, not control'.²⁹⁷ They must, in addition, endeavour to safeguard the inclusiveness of the processes. In view of the public interest in and implication of the outcome of EDR processes, ADR practitioners ought to accept the responsibility for ensuring that the interests of parties not directly involved in negotiations, but with a stake in the outcome, are adequately represented and protected.²⁹⁸ They also ought to assume responsibility of ensuring that agreements are as fair and stable as possible, and that agreements reached are congruent with societal values.²⁹⁹ Accordingly, adequate mechanisms must be put in place for capacity building, accountability and regulation of ADR practitioners in the sector.

²⁹² Ibid at 290.

²⁹³ Ibid at 319.

²⁹⁴ Ibid at 291.

²⁹⁵ Maria R Volpe; Robert A. Baruch Bus; Gene A. Johnson, Jr.; & Christopher M. Kwok 'Barriers to Participation: Challenges Faced by Members of Underrepresented Racial and Ethnic Groups in Entering, Remaining, and Advancing in the ADR Field' (2007) 35 *Fordham Urban LJ* 119 at 121-2.

²⁹⁶ Ibid.

²⁹⁷ Bello op cit note 25 at 24.

²⁹⁸ Lawrence Susskind 'Environmental mediation and the accountability problem' (1981) 6 *Vermont LR* 18.

²⁹⁹ Ibid.

To inspire perceptions of the credibility of ADR processes, the ADR system must be designed to ensure the impartiality and neutrality of practitioners and administering institutions. The administration of the processes must not be subject to conflict of interests.³⁰⁰ For instance, the INEC must not be charged with the administration of disputes to which it is a party or otherwise has an interest in circumstances that could impugn its neutrality and impartiality. The reason for this is that perception of partiality undermines the credibility and efficiency of ADR. For example, the inefficiency of mediation efforts by the National Mediation Commission of the Electoral Process (CNMPE), AU, SADC, COMESA, ICGLR and ECCAS during the 2011 election conflict in the Democratic Republic of Congo was attributed to a lack of trust by the electoral stakeholders in the institutions due to the perceived lack of impartiality and neutrality of the institutions.³⁰¹

Achieving efficiency of ADR in EDR also necessitates the empowerment and support of ADR administering and regulatory institutions.³⁰² Apart from capacity-building through training and infrastructural provision, it is fundamental that the government, relevant agencies and politicians afford the institutions the freedom and resources to function objectively and independently. The institutions must not be financially, materially or politically manipulated for the advantage of some parties. Conversely, the stakeholders must support and cooperate with the institutions to ensure success of the processes. Any contrary action could frustrate ADR efforts and undermine the efficiency of the system. For example, according to Shale and Robert, the frustration of mediation efforts during the 2011 electoral crisis in the Democratic Republic of Congo was partly due to lack of trust by the stakeholders in the CNMPE, predicated on the manipulation of its decisions by the Commission Électorale Nationale Indépendante (CENI) chairperson who was perceived as the president's friend.³⁰³ As the authors also indicate, in the 2007 post-election crisis in Lesotho, the reason cited for the failure of the SADC-led mediation by the former president of Botswana, Ketumile Masire was the lack of cooperation from the government of Lesotho.³⁰⁴ The independence and credibility of ADR administering institutions and the support of stakeholders for the institutions are therefore critical to the effectiveness of ADR in EDR. Whereas the support of the government and stakeholders aids successful administration of the system, the

³⁰⁰ Dahl op cit note 9 at 113

³⁰¹ Shale & Gerenge op cit note 284.

³⁰² Ibid; Gillies & Kwamie op cit note 240 at 5.

³⁰³ Shale & Gerenge op cit note 284.

³⁰⁴ Ibid.

independence and credibility of ADR administering institutions excite confidence, acceptance and support of the stakeholders for the system.³⁰⁵

Other relevant institutions in the electoral sector also need to be independent and credible for ADR to be functional in EDR in Nigeria.³⁰⁶ Institutions such as the INEC, judiciary and police, even where not designed to administer ADR, must be competent, impartial and responsible. If the INEC that is charged with the conduct of elections is perceived to be incompetent, partial or corrupt in its operations, the disposition of the public to the adoption of ADR will be adversely affected because the institution would lack the trust and acceptance of the parties that are requisite for successful amicable resolution of disputes involving the institution. There may be concerns, for instance, that the institution would manipulate records of the dispute or not be reliable in its presentations. Similarly, where the judiciary is corrupt, the confidence of the public in the entire justice system would be adversely affected. This is especially so as parties may have to rely on the courts for enforcement of ADR outcomes in case of non-compliance, since ADR lacks coercive powers for enforcement. It may, therefore, be regarded an exercise in futility to adopt ADR when its outcomes may be unenforceable due to the weakness of the judiciary. In the same vein, the corruption or inefficiency of the police may negatively impact the efficiency of ADR as it would render the institution exploitable by corrupt politicians for the intimidation of adverse parties and frustration of ADR proceedings and outcome enforcement.

Achieving the efficiency of ADR in EDR also requires serious commitment and political will by the government and relevant authorities to implement reforms.³⁰⁷ This factor is important in Nigeria considering indications that several reform efforts have been hampered due to lack of commitment and political will by successive governments and politicians to implement reforms.³⁰⁸ On a proposed electoral reform after the 2007 general elections, for instance, the Nigeria Civil Society reported:

[T]he then President Umaru Yar'adua set up the Electoral Reform Committee headed by former Chief Justice of Nigeria, Mohammad Uwais, for the purpose of recommending appropriate reform measures to the electoral system and rebuild the confidences of Nigerians in holding credible elections. The Committee assembled evidences, 1,466 memoranda and public hearings were held in 12 selected States and the Federal Capital Territory (FCT) at which no less than 907 representations were made.

³⁰⁵ Bolaji op cit note 23 at 76

³⁰⁶ Uwazie op cit note 22; Afolabi & Avasiloae op cit note 137 at 49.

³⁰⁷ Dahl op cit note 9 at 100; Cordenillo op cit note 22 at 6; Gray & Edgeworth op cit note 28.

³⁰⁸ Bolaji op cit note 23 at 72; Igini op cit note 285.

Till date, this report has not seen the light of day in terms of implementing its recommendations, which would have helped the country in tackling the legal challenges it is faced with in the build up to the 2015 general elections.³⁰⁹

Particularly on the attitude towards dispute resolution, Afolabi and Avasiloae, in their report on the 2015 general elections, equally assert:

By and large, the practice of political leaders did not match their public commitments to peace. Serious gaps endure in terms of the understanding, capacity and readiness of national stakeholders to actively mitigate tensions and prevent or resolve conflicts....

Successive governments have tended to establish commissions of inquiry and then often ignore their recommendations: this does nothing to allay public mistrust of political institutions or anger at their avoidance of accountability.³¹⁰

These experiences indicate that a good ADR design, good legal framework and good election management are not enough to ensure the efficiency and sustainability of ADR in EDR in Nigeria. The political will and commitment to implement proposed reforms and to withstand and ‘overcome inertia from those comfortable with the status quo’ are indispensable determinants of the efficiency and sustainability of the system.³¹¹

Attitudinal change by stakeholders is another essential step in ensuring the efficiency and sustainability of ADR in Nigeria. Corruption, disregard for the rule of law and the exploitation of parochial affiliations for undue advantages in elections must be eschewed for ADR to be efficient and sustainable. This is to prevent dissuasion of parties from utilisation of ADR due to perception that the processes can be unduly influenced by monetary gains or ethnic affiliations, or due to doubt regarding the willingness of other disputants to comply with the outcome of the processes. Since success in ADR depends on the cooperation of the parties, the politicians must be willing to submit their disputes to resolution by ADR and accept the outcomes.³¹² The winner-takes-all attitude of some politicians, which propels war-like disposition to elections and dispute resolution, must also be jettisoned since ADR underscores the satisfaction of interests and mutual benefits.³¹³ Similarly, the apathetic and litigation-oriented attitudes of some members of the legal profession, which inform preference of litigation to ADR even where ADR is more appropriate and effective, must be

³⁰⁹ Nigeria Civil Society Situation Room Election Update ‘The Role of Judiciary in the 2015 General Elections’ available at http://www.placng.org/situation_room/sr/wp-content/uploads/2015/07/situationroom-vol-1-no-1b-2777.pdf, accessed on 17 September 2017.

³¹⁰ Afolabi & Avasiloae op cit note 137 at 63-4.

³¹¹ Commonwealth Secretariat, IFES & UNEAD op cit note 280 at 3.

³¹² H A Ajie and D B Ewubare ‘Efficient Management of the economy as an instrument of good governance for resolving socio-political conflicts in Nigeria’ in Nweke op cit note 135 at 281.

³¹³ Chukwuemerie op cit note 15 at 130.

changed to avoid a negative influence on the disposition of disputants to ADR.³¹⁴ The essence of elections and political offices must also be appreciated by stakeholders and, a non-adversarial approach to dispute resolution must be imbibed. To realise these changes, rigorous sensitisation and reorientation programmes involving all stakeholders must be undertaken by relevant agencies, including the INEC and National Orientation Agency.³¹⁵

Finally, a shift of the incentive structures of politicians from a winner-takes-all competitive approach is necessary for the success of ADR in EDR in Nigeria.³¹⁶ Other reforms are not enough to ensure the efficiency of ADR in EDR without a shift of the incentive structures.³¹⁷ The reason for this is that while such reforms are transformative, their effects are debilitated by socio-economic inequalities.³¹⁸ Shifting the incentive structures will reduce the electoral stakes, desperation of politicians, employment of unwholesome strategies, and the susceptibility of youths to manipulation by politicians.³¹⁹ It will also inspire perceptions of justice and power balance in the society, thereby promoting positive disposition to the utilisation of ADR.

Shifting the incentive structures of politicians entails affording citizens equal protection under the law, especially by not granting political office holders unfair advantages.³²⁰ It also involves meaningfully reviewing the value of political offices which propel a 'do-or-die' attitude to elections. Contrary actions would have adverse effect on the adoption of ADR. The experiences of Kenya and the Democratic Republic of Congo where ADR efforts were unsuccessful in contexts where winning elections is conceived as an avenue for wealth acquisition are instructive on this point.³²¹

5.4 Conclusion

From the history and evolution of ADR and EDR in Nigeria as well as the merits and success of ADR in EDR in other states, this research finds that ADR is essential and suitable for EDR

³¹⁴ Georgina T Wood 'Alternative Dispute Resolution (ADR): The Ghana Experience' in Uwazie op cit note 22 at xix; Chukwuemerie op cit note 15 at 130.

³¹⁵ Bolaji op cit note 23 at 75

³¹⁶ Ibid; Gillies & Kwamie op cit note 240 at 3-6.

³¹⁷ Gillies & Kwamie op cit note 240 at 3-6.

³¹⁸ Ziblatt op cit note 63.

³¹⁹ Afolabi & Avasiloae op cit note 137 at 66.

³²⁰ Ibid at 49.

³²¹ Shale & Gerenge op cit note 284.

in Nigeria. An appraisal of the Nigerian electoral setting and a brief comparative analysis of the application of ADR in other states, however, reveal that the current Nigerian socio-political ambience is not conducive for effective utilisation of ADR in EDR. Notwithstanding, established principles in justice delivery and lessons drawn from past reform experiences of Nigeria and other states indicate that efficiency in the employment of ADR in EDR in Nigeria can be achieved through a comprehensive approach, which entails rigorous legislative, political, institutional, structural, and socio-economic reforms. This research therefore concludes that despite the present challenges, ADR can be an effective mechanism in EDR in Nigeria, given an enabling environment through the adoption of the requisite approach.

BIBLIOGRAPHY

Journals and Periodicals

- Alebiosu, Emmanuel Adeniran 'Smart Card Reader and the 2015 General Elections in Nigeria' (2016) 15 *Journal of African Elections* 69.
- Alexander, Nadja 'Mediation and the art of regulation' (2008) 8 *QUTLJJ* 1.
- Anderson, Christopher J and Andrew J. Lotempio 'Winning, losing and political trust in America' (2002) 32 *BJ Pol Sc* 335.
- Banducci, Susan A and Jeffrey A Karp 'How elections change the way citizens view the political system: campaigns, media effects and electoral outcomes in comparative perspective' (2003) 33 *Journal of Political Science* 443.
- Baylis, Claire and Robyn Carroll 'The nature and importance of mechanisms for addressing power differences in statutory mediation' (2002) 14 *BOND LR* 285.
- Beetseh, Kwaghga and Tarfa Akpoo 'The analysis of the use of Smart Card Reader (SCR) and credible elections in Nigeria 2015' (2015) 3 *Intl Journal of Political Science and Development* 470.
- Bercovitch, Jacob 'Conflict and Conflict Management in Organizations: A Framework for Analysis' (1983) 5 *Hong Kong Journal of Public Administration* 104.
- Beriker, Nimet 'The conflict resolution field: Reflections on multiple realities, challenges, and geographical divides' (2015) 21 *The Brown Journal of World Affairs* 7.
- Boniface, A E 'African-Style Mediation and Western-Style Divorce and Family Mediation: Reflections for the South African context' (2012) 15 *PER/PELJ* 378/638.
- Boulle, Laurence and Allan Rycroft 'Mediation: principles, process, practice' (1998) *J S Afr L* 167.
- Breen, Timothy H and Stephen Foster 'The Puritans' greatest achievement: A study of social cohesion in seventeenth-century Massachusetts' (1973) 60 *Journal of American History* 5.

- Butler, John K Jr 'Trust expectations, information sharing, climate of trust, and negotiation effectiveness and efficiency' (1999) 24 *Group and Organization Management* 217.
- Cappelletti, Mauro 'Alternative Dispute Resolution processes within the framework of the World Wide Access-to-Justice movement' (1993) 56 *The Modern LR* 282
- Carroll, Robyn 'Trends in Mediation Legislation: "All for One and One for All" or "One at All"?' (2002) 30 *Western Australian LR* 167.
- Chase, Oscar G and Jonathan Thong 'Judging judges: The effect of courtroom ceremony on participant evaluation of process fairness-related factors' (2012) 24 *Yale Journal of Law and the Humanities* 221.
- Chukwuemerie, Andrew I 'Necessity as the mother of trail blazing: Applying Alternative Dispute Resolution mechanisms to political party disputes in Africa' (2009) 2 *Journal of Politics and Law* 121.
- Chul, Auwal Abubkar, Mohd Mahadee bin Ismail and Ku Hasnita Ku Samsu 'An assessment of the role of money in Nigerian general election' (2017) 22 *IOSR Journal of Humanities and Social Science* 61.
- Clark, Donald C 'Dispute resolution in China' (1991) 5 *Journal of Chinese Law* 245.
- Davis, William and Helga Turku 'Access to justice and Alternative Dispute Resolution' 2011 *Journal of Dispute Resolution* 47.
- Deason, Ellen E 'Enforcing mediated settlement agreements: Contract law collides with confidentiality' (2002) 35 *University of California, Davis LR* 33.
- Deji, Abdulsalami Muyideen 'Historical Background of Nigerian Politics, 1900-1960' (2013) 16 *IOSR Journal of Humanities and Social Science* 84.
- Diamond, Larry Jay 'Thinking about hybrid regimes' (2002) 13 *Journal of Democracy* 21.
- Douglas, Joshua A 'Election law and civil discourse: The promise of ADR' (2012) 27 *Ohio State Journal on Dispute Resolution* 292.

- Edwards, Harry T 'Alternative Dispute Resolution: Panacea or anathema?' (1986) 99 *Harvard LR* 668.
- Eisenstadt, Todd A 'Measuring electoral court failure in democratizing Mexico' (2002) 23 *Intl Political Science Rev* 47.
- Eisenstadt, Todd A 'Thinking outside the (ballot) box: Informal electoral institutions and Mexico's political opening' (2003) 45 *Latin American Politics and Society* 25.
- Ezike, Edwin O 'Developing a statutory framework for ADR in Nigeria' (2012)10 *The Nigerian Juridical Rev* 248.
- Fjelde, Hanne and Kristine Höglund 'Electoral institutions and electoral violence in Sub-Saharan Africa' (2014) 46 *BJ Pol Sc* 297.
- Foley, Edward B 'The analysis and mitigation of electoral errors: Theory, practice, policy' (2007) 18 *Stanford Law and Policy Rev* 350.
- Fuller, Lon L and Kenneth I. Winston 'The forms and limits of adjudication' (1978) 92 *Harvard LR* 353.
- Garimella, Sai Ramani and Nizamuddin Ahmad Siddiqui 'The enforcement of multi-tiered dispute resolution clauses: Contemporary judicial opinion' (2016) 24 *IIUMLJ* 157.
- Gold, Julia Ann 'ADR through a cultural lens: How cultural values shape our disputing processes' 2005 *Journal of Dispute Resolution* 289.
- Goldberg, Stephen B, Eric D Green and Frank E A Sander 'ADR problems and prospects: looking to the future' (1986) 69 *Judicature* 291.
- Green, Michael Z 'Debunking the myth of employer advantage from using mandatory Arbitration for discrimination claims' (2000) 31 *Rutgers LJ* 399.
- Henderson, Douglas A 'Mediation success: An empirical analysis' (1996) 11 *Ohio State Journal on Dispute Resolution* 105.
- Hensler, Deborah R 'Suppose it's not true: Challenging mediation ideology' 2002 *Journal of Dispute Resolution* 81.

- Huefner, Steven F 'What can the United States learn from abroad about resolving disputed elections?'(2010) 13 *Legislation and Public Policy* 523.
- Ichino, Nahomi and Noah L N 'Do primaries improve electoral performance? Clientelism and intra-party conflict in Ghana' (2013) 57 *American Journal of Political Science* 428.
- Imran, Khan 'Role of emotional intelligence in organizational conflict management' (2013) 2 *Intl Research Journal of Social Science* 12.
- Katz, Lucy V 'Compulsory Alternative Dispute Resolution and voluntarism: Two-headed monster or two sides of the coin' 1993 *Journal of Dispute Resolution* 1.
- Klare, Karl E 'Legal culture and transformative constitutionalism' (1998) 14 *SAJHR* 146.
- Koch, Michael and Scott Sigmund Gartner 'Casualties and constituencies: Democratic accountability, electoral institutions, and costly conflicts' (2005) 49 *The Journal of Conflict Resolution* 874.
- Kruse, Katherine R 'Client problem-solving: Where ADR and lawyering skills meet' (2015) 7 *Elon LR* 225.
- Lehoucq, Fabrice E 'Can parties police themselves? Electoral governance and democratization' (2002) 23 *Intl Political Science Rev* 29.
- Luban, David 'The quality of justice' (1989) 66 *Denver University LR* 381.
- Macfarlane, Julie 'Why do people settle?' (2001) 46 *McGill LJ* 663.
- Martinez, Stephanie Smith Janet 'An analytic framework for dispute systems design' (2009) 14 *Harvard Negotiation LR* 123.
- Melling, Tom 'Dispute Resolution within legislative institutions' (1994) 46 *Stanford LR* 1677.
- Menkel-Meadow, Carrie 'Pursuing settlement in an adversary culture: A tale of innovation co-opted or "the Law of ADR"' (1999) 19 *Florida State University LR* 1.

- Mozaffar, Shaheen 'Patterns of electoral governance in Africa's emerging democracies' (2002) 23 *Intl Political Science Rev* 85.
- Mozaffar, Shaheen and Andreas Schedler 'The comparative study of electoral governance: Introduction' (2002) 23 *Intl Political Science Rev* 5
- Mukuna, John and Melvin L M Mbaio 'Constitution-making dispute resolution mechanisms: Lessons from Kenya' (2014) 5 *Mediterranean Journal of Social Sciences* 727.
- Nealeand, Margaret A and Max H. Bazerman 'Negotiator cognition and rationality: A behavioral decision theory perspective' (1992) 51 *Organizational Behavior and Human Decision Processes* 157.
- Nnamani, Desmond Okechukwu 'Electoral process and challenges of good governance in the Nigerian state (1999-2011)' (2014) 2 *Journal of Good Governance and Sustainable Development in Africa* 78.
- Oduosote, Abiodun 'Nigerian democracy and electoral process since amalgamation: Lessons from a turbulent past' (2014) 19 *IOSR Journal of Humanities and Social Science* 25.
- Ogbeidi, Michael M 'Political leadership and corruption in Nigeria since 1960: A Socio-economic analysis' (2012) 1 *Journal of Nigeria Studies* 1.
- Ogunlola, Akinwale 'Nigerian courts, injunctions, and the electoral process' (2006), available at <http://nigeriaworld.com/articles/2006/oct/173.html>, accessed on 13 August 2017.
- Ojo, Emmanuel O 'Public perceptions of judicial decisions on election disputes: the case of the 2007 general election in Nigeria' (2011) 10 *Journal of African Elections* 101.
- Ojo, Olayiwola Victor 'Turbulent election history: an appraisal of precipitating factors in Nigeria' (2014) 5 *Intl Journal of Politics and Good Governance* 1.
- Oluwadayisi, Akin Olawale 'The role of the judiciary in the application of peacebuilding theory and methods to election dispute resolution in Nigeria' (2016) 45 *Journal of Law, Policy and Globalization* 138.

- Omenma, J Tochukwu, Okechukwu O Ibeanu and Ike E Onyishi 'Disputed elections and the role of the court in emerging democracies in Africa: The Nigerian example' (2017) 2 *Journal of Politics and Democratization* 28.
- Omotosho, Mashood 'Managing religious conflicts in Nigeria: The inter-religious mediation peace strategy' (2014) 39 *Africa Development* 133.
- Orji, Nkwachukwu 'Preventive action and conflict mitigation in Nigeria's 2015 elections' (2017) 24 *Democratization* 707.
- Pastor, Robert A 'The role of electoral administration in democratic transitions: Implications for policy and research' (1999) 6 *Democratization* 1.
- Press, Sharon 'Alternative Dispute Resolution (ADR): A Critical review of the recent literature' (1991) 14 *The Justice System Journal* 257.
- Prins, Brandon C 'Democratic politics and dispute challenges: examining the effects of regime type on conflict reciprocation, 1816-1992' (2003) 8 *Intl Journal of Peace Studies* 61.
- Quek, Dorcas 'Mandatory mediation: An oxymoron? Examining the feasibility of implementing a court-mandated mediation program' (2010) 11 *Cardozo Journal of Conflict Resolution* 479.
- Raven, Bertram H 'The bases of power and the power/interaction model of interpersonal influence' (2008) 8 *Analyses of Social Issues and Public Policy* 1.
- Reuben, Richard C 'Constitutional gravity: A unitary theory of Alternative Dispute Resolution and public civil justice' (2000) 47 *UCLA L. Rev* 949.
- Ryan, Erin 'ADR, the judiciary and justice: Coming to terms with the alternatives' (2000) 113 *Harvard LR* 1851.
- Schedler, Andreas 'Civil society and political elections: A culture of distrust?' (1999) 565 *The Annals of the American Academy of Political and Social Science* 126.
- Schneider, Andrea Kupfer 'Not quite a world without trials: Why international dispute resolution is increasingly judicialized' 2006 *Journal of Dispute Resolution* 119.

- Sinclair, Guy 'Mediation, transformation and consultation: A comparative analysis of conflict resolution models' (2007) 1 *Online Journal of Bahá'í Studies* 445, available at <http://www.ojbs.org>, accessed on 1 August 2017.
- Sourdin, Tania 'Alternative Dispute Resolution (ADR) principles: From negotiation to mediation' 2014, available at: <http://ssrn.com/abstract=2723652>, accessed on 1 August 2017.
- Sourdin, Tania 'The role of the court in alternative dispute resolution' 2013 *Asian Journal of Mediation* 80.
- Stipanowich, Thomas J 'ADR and "the vanishing trial": what we know - and what we don't' (2004) 10 *Dispute Resolution Magazine* 7.
- Susskind, Lawrence 'Environmental mediation and the accountability problem' (1981) 6 *Vermont LR* 1.
- Uwazie, Ernest E 'Alternative Dispute Resolution in Africa: Preventing conflict and enhancing stability' (2011) 16 *Africa Security Brief*, available at <http://www.africacenter.org>, accessed on 8 August 2017.
- Volpe, Maria R, Robert A, Baruch Bush, Gene A Johnson, Jr and Christopher M. Kwok 'Barriers to participation: Challenges faced by members of underrepresented racial and ethnic groups in entering, remaining, and advancing in the ADR field' (2007) 35 *Fordham Urban LJ* 119.
- Wahrhaftig, Paul 'Nonprofessional conflict resolution' (1983) 29 *Villanova LR* 1463.
- Walker, Gregg B and Steven E. Daniels 'Argument and Alternative Dispute Resolution systems' (1995) 9 *Argumentation* 693.
- Ward, Ettie 'Mandatory court-annexed Alternative Dispute Resolution in the United States federal courts: Panacea or pandemic?' (2007) 81 *St. John's LR* 77.
- Welsh, Nancy A 'Fairness: Perceptions of fairness in negotiation' (2004) 87 *Marquette LR* 753.

- Welsh, Nancy A 'Making deals in court-connected mediation: What's justice got to do with It?' (2001) 79 *Washington University LQ* 787.
- Welsh, Nancy A 'The Place of court-connected mediation in a democratic justice system' (2004) 5 *Cardozo J. of Conflict Resolution* 117.
- White, James J 'The pros and cons of getting to yes: Review of getting to yes, by R. Fisher and W Ury' (1984) 34 *Journal of Legal Education* 115.
- Williams, Gerald R 'Negotiation as a healing process' 1996 *Journal of Dispute Resolution* 1.
- Wykoff, Andrea 'Mediation & confidentiality' (2016) 4 *Bond University Student LR* 1.
- Zacharias, Fred C 'Reconciling professionalism and client interests' (1995) 36 *William & Mary LR* 1303.
- Ziblatt, Daniel 'Shaping democratic practice and the causes of electoral fraud: The case of nineteenth-century Germany' (2009) 103 *The American Political Science Rev* 1.

Books and Manuals

- African Union Panel of the Wise, *Election-Related Disputes and Political Violence: Strengthening the Role of the African Union in Preventing, Managing, and Resolving Conflict* (2010) The African Union Series, New York.
- Agumagu, P N C (ed) *Towards Excellence in the Dispensation of Justice at the Grassroots* (2011) Rivers State Customary Court of Appeal, Port Harcourt.
- Ahiakwo, R I *Judging and Judgement Writing in Plain English* (2010) Pearl Publishers, Port Harcourt.
- Anstey, Mark *Negotiating Conflict: Insights and Skills for Negotiators and Peacemakers* (1991) Creda Press, Cape Town.
- Asein, J O *Introduction to Nigerian Legal System* 2ed (2005) Ababa Press Ltd, Lagos.
- Bolaji, Kehinde 'Toward institutionalizing credible elections in Nigeria: A review of reform measures by the Independent National Electoral Commission' in Raul Cordenillo (ed)

Improving Electoral Practices: Case Studies and Practical Approaches (2014) International IDEA, Stockholm.

Burton, John W ‘Conflict resolution as political philosophy’ in Dennis J D Sandole and Hugo Van der Merwe (eds) *Conflict Resolution: Theory and Practice: Integration and Application* (1993) Manchester University Press, Manchester and New York.

Chanock, Martin ‘African constitutionalism from the bottom-up’ in H Klug and S E Merry (eds) *The New Realism: Studying Law Globally*, vol 2 (2016), Cambridge University Press, Cambridge.

Dahl, Robert ‘Legal frameworks for effective election complaints adjudication systems’ in Chad Vickery (ed) *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE)* (2011) IFES, Washington DC.

Edoh, H ‘Corruption: Political parties and the electoral process in Nigeria’ in Mvendaga Jibo and A T Simbine (eds) *Contemporary Issues in Nigerian Politics* (2004) JODAD Publication, Ibadan.

Falola, Toyin and Matthew M Heaton *A History of Nigeria* (1999), available at http://assets.cambridge.org/97805218/62943/frontmatter/9780521862943_frontmatter.pdf, accessed on 7 August 2017.

Francis, David J ‘Peace and Conflict Studies: An African overview of basic concepts’ in Shedrack Gaya Best (ed) *Introduction to Peace and Conflict Studies in West Africa* (2006) Spectrum Books Ltd, Ibadan.

Gray, Steven and Linda Edgeworth ‘Complaints adjudication training for election management bodies and political parties’ in Chad Vickery (ed) *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (2011) IFES, Washington DC.

Independent National Electoral Commission *Manual for Election Officials* (2015), available at <http://www.inecnigeria.org/wp-content/uploads/2015/02/Election-Manual-2015-.pdf>, accessed on 13 September 2017.

Jinadu, Adele L 'Nigeria' in Ismaila Madior Fall, Mathias Hounkpe, Adele L. Jinadu and Pascal Kambale (eds) *Election Management Bodies in West Africa: A comparative study of the contribution of electoral commissions to the strengthening of democracy* (2012) Open Society Foundations, available at http://www.africanminds.co.za/wp-content/uploads/2016/05/9781920489168_txt.pdf, accessed on 12 June 2017.

Kovick, David and John Hardin Young 'Alternative dispute resolution mechanisms' in Chad Vickery (ed) *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (2011) IFES, Washington DC.

Law Society of Kenya *Handbook on Election Disputes in Kenya: Context, Legal Framework, Institutions and Jurisprudence* (2013), available at http://www.judiciary.go.ke/portal/assets/filemanager_uploads/reports/Handbook%20on%20Election%20Disputes%20in%20Kenya%20-1.pdf, accessed on 14 June 2017.

Leonard, David K 'Elections and conflict resolution in Africa' in Khabele Matlosa, Gilbert M Khadiagala and Victor Shale (eds) *When Elephants Fight: Preventing and Resolving Election-Related Conflicts in Africa* (2010) EISA, Johannesburg.

Lions Clubs International *Dispute Resolution Guidelines* (2015), available at https://www.lionsclubs.org/resources/EN/pdfs/dispute_guide.pdf, accessed on 13 June 2017.

National Alternative Dispute Resolution Advisory Council *Dispute Resolution Terms: The Use of Terms in (Alternative) Dispute Resolution* (2003), available at <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRA%20Publications/Dispute%20Resolution%20Terms.PDF>, accessed on 12 June 2017.

Nweke, Victor E (ed) *Adjudication and other Strategies of Conflict Resolution in Nigeria: Essays in Honour of Honourable Justice Chukwuneye Ichehgo Uriri* (2016) Pearl Publishers International Ltd, Port Harcourt.

Onyeche, Jude C 'Repositioning the African customary system: A case study of traditional dispute resolution mechanism in Nigeria' in Victor E Nweke (ed) *Adjudication and other Strategies of Conflict Resolution in Nigeria: Essays in Honour of Honourable*

- Justice Chukwuneye Ichegbo Uriri* (2016) Pearl Publishers International Ltd, Port Harcourt.
- Orji, Nkwachukwu and Nkiru Uzodi *The 2011 Post Election Violence in Nigeria* (2012) Policy and Legal Advocacy Centre (PLAC), available at <http://www.placng.org/new/publications/PEV.pdf>, accessed on 12 June 2017.
- Petit, Denis *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System* (2000), OSCE Office for Democratic Institutions and Human Rights, available at <http://www.osce.org/odihr/elections/17567?download=true>, accessed on 2 August 2017.
- Pruitt, Dean G and Sung Hee Kim *Social Conflict: Escalation, Stalemate and Settlement* 3ed (2004) McGraw Hill Higher Education, New York.
- Reilly, Ben and Andrew Reynolds 'Electoral systems and conflict in divided societies' in Daniel Druckman (ed) *International Conflict Resolution after the Cold War* (2000) The National Academy Press, Washington DC.
- Sandole, Dennis J D, Sean Byrne, Ingrid Sandole Staroste and Jessica Senehi (eds) *Handbook of Conflict Analysis and Resolution* (2009) Routledge, New York.
- Spencer, David and Samantha Hardy *Dispute Resolution in Australia: Cases, Commentary and Materials* 3 ed (2014) Thomson Reuters (Professional) Australia Ltd, Sydney.
- United States Agency for International Development (USAID) *Electoral Security Framework Technical Guidance Handbook for Democracy and Governance Officers* (2010), available at <https://www.usaid.gov/sites/default/files/documents/1866/1-Electoral-Security-Framework.pdf>, accessed on 2 August, 2017.
- Uriri, Chukwunenye Ichegbo 'Alternative Dispute Resolution (ADR) in historical perspective' in Victor E Nweke (ed) *Adjudication and other Strategies of Conflict Resolution in Nigeria: Essays in Honour of Honourable Justice Chukwuneye Ichegbo Uriri* (2016) Pearl Publishers International Ltd, Port Harcourt.

Ury, William L, Jeanne M Brett and Stephen B Goldberg *Getting Disputes Resolved* (1993) Program on Negotiation, Harvard Law School, Cambridge MA.

Uwazie, Ernest (ed) *Alternative Dispute Resolution and Peace-building in Africa* (2014) Cambridge Scholars Publishing, Newcastle upon Tyne.

West Africa Network for Peacebuilding (WANEP) *Election Dispute Management for West Africa: A Training Manual* (2013), available at <http://www.preventiveaction.org/documents/131538358/131540984/Election+Dispute+Management+for+West+Africa-Training+Manual-FINAL.pdf/0463d093-9933-4dfc-ab30-4eb6df390877>, accessed on 2 August 2017.

Wood, Georgina T ‘Alternative Dispute Resolution (ADR): The Ghana experience’ in Ernest Uwazie (ed) *Alternative Dispute Resolution and Peace-building in Africa* (2014), Cambridge Scholars Publishing, Newcastle upon Tyne.

Reports and Papers

ACCORD and CAPCR ‘Alternative Dispute Resolution and Peace Studies in Africa Lessons, prospects and challenges’ (2015) A report on the proceedings of the Fourth International Africa Peace and Conflict Resolution Conference, Johannesburg, South Africa, 25 - 26 July 2014.

Ace Project ‘The Electoral Knowledge Network’, available at aceproject.org/ace-en/quiz, accessed 28 November 2017.

Afolabi, Babatunde and Sabina Avasiloae *Post -election assessment of conflict prevention and resolution mechanisms in Nigeria: Final Report* (2015), Centre for Humanitarian Dialogue, available at http://www.hdcentre.org/wp-content/uploads/2016/06/Post-election_assessment_of_conflict_prevention_and_resolution_mechanisms_in_Nigeria.pdf, accessed on 10 September 2017

Bello, Aminu Adamu ‘Situating Alternative Dispute Resolution (ADR) in the political sphere: Thoughts on mechanisms for pre-election political dispute resolution in Nigeria’ (2009), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1369702, accessed on 1 August 2017.

Carmona, Cheselden George V 'Enhancing the capacity of judges to resolve election disputes: Preliminary considerations', Paper presented to the 6th International Conference on the Training of the Judiciary of the International Organization for Judicial Training (IOJT), Washington DC, 3-7 November 2013, available at <http://www.iojt-dc2013.org/~media/Microsites/Files/IOJT/11042013-Enhancing-Capacity-Judges-Resolve-Election-Disputes.ashx>, accessed on 2 August 2017.

Davis-Roberts, Avery 'International obligations for electoral dispute resolution' (2009), Discussion Paper presented to the Electoral Dispute Resolution Experts Meeting, Atlanta, GA, February 2009, available at <https://www.cartercenter.org/resources/pdfs/peace/democracy/des/edr-approach-paper.pdf>, accessed on 2 August, 2017.

de Aquino, Jakson Alves 'The effect of exposure to political institutions and economic events on demand for democracy in Africa' (2015) *Afro Barometer* Working Paper No 160.

Elaiwu, J I 'Nigeria: The current state of the federation: Some basic challenges', Paper presented at International Conference on Federalism in Honour of Professor Ronald Watts, Organized by the Institute of Intergovernmental Relations, Queens University, Kingston, Canada, 18-21 October 2007.

Election Institute for Southern Africa (EISA) 'Preventing and Managing Violent Election-Related Conflicts in Africa: Exploring Good Practices' (2010), Report of the Conference Proceedings of the EISA's 4th Annual Symposium, Crowne Plaza Hotel, Rosebank, Johannesburg, 17-18 November 2009, available at <https://eisa.org.za/pdf/symp09cp.pdf>, accessed on 2 August, 2017.

Electoral Reform Committee *Main Report* (2008), available at <http://eie.ng/wp-content/uploads/2014/03/JusticeMohammedUwaisReport.pdf>, accessed on 2 August 2017.

European Union Election Observation Mission *Final Report: Federal Republic of Nigeria 2015 General Elections* (2015), available at http://eeas.europa.eu/archives/docs/nigeria/docs/eu-eom-nigeria-2015-final-report_en.pdf, accessed on 2 November 2017.

Gillies, David and Nana Kwamie ‘Elections and Conflict: Promoting Good Practice in Electoral Management’, Report of the North-South Institute Workshop and Panel Discussion (2009), available at <http://www.nsi-ins.ca/content/download/FINAL3.1%20Elections%20and%20Conflict%20Conference%20Report.pdf>, accessed on 2 June 2017.

Hassan, Ahmed Issack ‘Electoral Alternative Dispute Resolution for Electoral Management Bodies in the SADC Region: Mitigating Election Related Disputes’, Paper Presented at the African Centre For The Constructive Resolution of Disputes (Accord) Conference Durban 18th -21 August 2014, available at <https://www.google.com/search?q=Ahmed+Issack+Hassan+'Electoral+Alternative+Dispute+Resolution+for+Electoral+Management+Bodies+in+the+SADC+Region:+Mitigating+Election+Related+Disputes'+Paper+Presented+at+the+African+Centre+For+The+Construct>, accessed on 13 August 2017.

Idid, Dato’ Syed Ahmad ‘Alternative Dispute Resolution (ADR): An alternative access to justice’, available at <http://www.supremecourt.gov.pk/ijc/Articles/7/5.pdf>, accessed on 2 November 2017.

Igini, Mike ‘Electoral laws and the conduct of the 2015 general elections’, Lecture delivered at the Electoral Institute at the Conference on “Post 2015 General Elections in Nigeria: The Real Issues” 27 - 28 July 2015, available at <http://www.inecnigeria.org/wp-content/uploads/2015/07/Lecture-Electoral-laws-2015-Elections-Barr-Mike-Igini-01.pdf>, accessed on 17 September 2017.

Independent Electoral and Boundaries Commission Dispute Resolution Committee *Case Digest: Decisions of the IEBC Dispute Resolution Committee* (2014), available at <https://eisa.org.za/pdf/eh2014ken.pdf>, accessed on 2 August 2017.

Independent National Electoral Commission (INEC) *Report on the 2011 General Elections* (2013), available at <http://www.inecnigeria.org/wp-content/uploads/2013/07/REPORT-ON-THE-2011-GENERAL-ELECTIONS.pdf>, accessed on 13 September 2017.

Kerr, Nicholas ‘Perceptions versus reality: Assessing popular evaluations of election quality in Africa’ (2012) CSSR Working Paper No 305.

Melè, Domènec ‘Corruption:10 possible causes’ *IESE Business School*, available at <http://blog.iese.edu/ethics/2014/11/06/corruption-10-possible-causes/>, accessed on 4 September 2017.

National Democratic Institute of International Affairs (NDI) *Final Report on the 2011 Nigerian General Elections* (2012), available at https://www.ndi.org/sites/default/files/NDI%20Final%20Report%20on%20the%20Nigeria%202011%20Electionsnew_Part1.pdf, accessed on 17 September 2017.

Nigeria Civil Society SituationRoom Election Update ‘The Role of Judiciary in the 2015 General Elections’ (2015), available at http://www.placng.org/situation_room/sr/wp-content/uploads/2015/07/situationroom-vol-1-no-1b-2777.pdf, accessed on 17 September 2017.

Nkasah, Lydia Apori ‘Dispute Resolution and Electoral Justice in Africa: The way forward’, Paper prepared for the 14th CODESRIA General Assembly meeting ‘Creating African Futures in an Era of Global Transformations: Challenges and Prospects’ 8-12 June 2015, Dakar, Senegal.

Nwangwu, Chokodiri ‘Biometric voting technology and the 2015 general elections in Nigeria’ Paper presented at the Electoral Institute at the Conference on “Post 2015 General Elections in Nigeria: The Real Issues” 27 - 28 July 2015, available at <http://www.inecnigeria.org/wp-content/uploads/2015/07/Conference-Paper-by-Chikodiri-Nwangwu.pdf>, accessed on 13 August 2017.

Ojelabi, Lola Akin ‘Improving access to justice through Alternative Dispute Resolution: the role of community legal centres in Victoria, Australia’ (2010), Research Report of the Faculty of Law and Management, La Trobe University, available at <http://www.civiljustice.info/access>, accessed on 5 August, 2017.

Omotola, J Shola ‘Garrison’ democracy in Nigeria: The 2007 general elections and the prospects of democratic consolidation, commonwealth & comparative politics’ (2009), available at <http://dx.doi.org/10.1080/14662040902857800>, accessed on August 1, 2017.

Orji, Nkwachukwu and Kelechi C Iwuamadi ‘Conflict Mitigation in Nigeria’s 2015 Elections: Lessons in democratic development’ (2015), available at <http://www.inecnigeria.org/wp-content/uploads/2015/07/Conference-Paper-by-Kelechi-Iwuamadi.pdf>, accessed on 12 June 2017.

Ozobia, Boma ‘The electoral process and the court in Nigeria: Implication on law and democracy’ (2014), available at <http://www.fcthighcourt.gov.ng/download/UNITY%20BRANCH%20ANNUAL%20LECTURE%202014.pdf>, accessed on 13 August 2017.

Pelayo, Manuel Hallivis ‘Alternative Dispute Resolution in administrative matters’, available at https://www.aihja.org/images/users/114/files/Mexico_-_Report_2016_Mexico_-_Report_2016.pdf, accessed on 16 September 2017.

Shale, Victor and Robert Gerenge ‘Electoral mediation in the Democratic Republic of the Congo, Lesotho and Kenya: A comparative perspective’ (2017), available at <http://www.accord.org.za/conflict-trends/electoral-mediation-democratic-republic-congo-lesotho-kenya/>, accessed on 2 November 2017.

The Carter Center ‘Electoral Dispute Resolution Experts’, available at <https://www.cartercenter.org/resources/pdfs/peace/democracy/des/electoral-dispute-resolution-meeting.pdf>, accessed on 2 November 2017.

The Commonwealth Secretariat, the International Foundation for Election Systems (IFES) and the United Nations Electoral Assistance Division (UNEAD) *Report to the Independent National Electoral Commission (INEC) of The Federal Republic of Nigeria* (2003), available at <https://aceproject.org/ero-en/regions/africa/NG/ertreport/>, accessed on 12 June 2017.

Online News

— — ‘Nigerian PDP governors defect to opposition APC’ *BBC News* 26 November 2013, available at <http://www.bbc.com/news/world-africa-25109513>, accessed on 27 August 2017.

Ajani, Jide 'The story of Olusegun Obasanjo and Atiku Abubakar' *Vanguard* 18 August 2013, available at <https://www.vanguardngr.com/2013/08/the-story-of-olusegun-obasanjo-and-atiku-abubakar/>, accessed 02 December 2017.

Akinloye, Dimeji 'Wike: Rivers Gov moves to shut down Port Harcourt hotel where Amaechi lodges' *Pulse* 2 August 2017, available at <http://www.pulse.ng/news/politics/wike-rivers-gov-moves-to-shut-down-port-harcourt-hotel-where-amaechi-lodges-id7086119.html>, accessed on 13 August, 2017.

Akubo, John 'INEC ad-hoc staff protest against unpaid allowance in Kogi' *Guardian* 5 January 2016, available at <https://guardian.ng/politics/inec-ad-hoc-staff-protest-against-unpaid-allowance-in-kogi/>, accessed on 13 August 2017.

Animasaun, Denrele 'Nigerian lawmakers are the highest paid in the world' *Vanguard* 25 August 2013, available at <https://www.vanguardngr.com/2013/08/nigerian-lawmakers-are-the-highest-paid-in-the-world/>, accessed on 17 August 2017.

Chukwu, Ignatius 'Dead "corper" wins jumbo allowance for others as Wike sets panel on electoral violence in Rivers' *Business Day* 28 March 2016, available at <http://www.businessdayonline.com/dead-corper-wins-jumbo-allowance-for-others-as-wike-sets-panel-on-electoral-violence-in-rivers/>, accessed on 17 August 2017.

Daily Post Staff 'Amaechi hits back at PDP, says they will never use stadium' *Daily Post* 23 January 2015, available at <http://dailypost.ng/2015/01/23/amaechi-hits-back-pdp-says-will-never-use-stadium/>, accessed on 13 August 2017.

Edozie, Victor 'Amaechi and Wike's war of supremacy in Rivers' *Daily Trust* 3 September 2015, available at <http://allafrica.com/stories/201509031397.html>, accessed on 02 December 2017.

Fanwo, Kingsley '5 weeks after Kogi poll, INEC yet to pay ad-hoc staff' *Vanguard* 25 December 2015, available at <https://www.vanguardngr.com/2015/12/5-weeks-after-kogi-poll-inec-yet-to-pay-ad-hoc-staff/>, accessed on 13 August 2017.

Inyang, Ifreke 'Nigerian senators earn more than US president, Barack Obama' *Daily Post* 27 July 2012, available at <http://dailypost.ng/2012/07/27/nigerian-senators-earn-us-president-barack-obama-see-full-list-allowances/>, accessed on 17 August 2017.

- Makinde, — ‘Wind of change: Wike set to sack over 13,000 workers employed by Amaechi’ *PM* 17 June 2015, available at <http://www.naijaloaded.com.ng/news/wind-of-change-wike-set-to-sack-over-13000-workers-employed-by-amaechi>, accessed on 18 August 2017.
- Mohamed, — ‘Gov. Wike advocates Arbitration, ADR for electoral disputes’ *Business Day* 3 November 2016, available at <https://www.businessdayonline.com/gov-wike-advocates-arbitration-and-adr-for-electoral-disputes/>, accessed on 27 November 2017.
- Nwabugo, Ogechukwu ‘Latest outrageous salaries of top Nigerian politicians revealed’ *Buzz Nigeria* — — —, available at <https://buzznigeria.com/latest-outrageous-salaries-top-nigerian-politicians-revealed/>, accessed on 12 August 2017.
- Ogwuda, Austin ‘PDC Reps candidate petitions INEC over 4,000 PVCs allegedly found with opponent’ *Vanguard* 2 April 2015, available at <https://www.vanguardngr.com/2015/04/pdc-reps-candidate-petitions-inec-over-4000-pvcs-allegedly-found-with-opponent/>, accessed on 27 August 2017.
- Ombuor, Rael and Kevin Sieff ‘At least 24 reportedly killed in post-election violence’ *The Washington Post* 12 August 2017, available at https://www.washingtonpost.com/world/at-least-24-reportedly-killed-in-kenya-post-election-violence/2017/08/12/101b002c-7ef0-11e7-b2b1-aeba62854dfa_story.html?utm_term=.708701919b37, accessed on 21 August 2017.
- Onyekwere, Joseph ‘LMDC advocates ADR for election disputes’ *Guardian* 6 June 2017, available at <https://guardian.ng/features/lmdc-advocates-adr-for-election-disputes/>, accessed on 27 November 2017.
- Opejobi, Seun ‘Atiku: Fani-Kayode reacts to ex-VP’s resignation from APC’ *Daily Post* 24 November 2017, available at <http://dailypost.ng/2017/11/24/atiku-fani-kayode-reacts-ex-vps-resignation-apc/>, accessed on 2 December 2017.
- Staff Reporter ‘Defection of 5 Govs shocking - Tukur’ *Vanguard* 28 November 2013, available at <https://www.vanguardngr.com/2013/11/defection-5-govs-shocking-tukur/>, accessed on 2 December 2017.

Staff Reporter ‘Youths protest against Edo poll, accuse INEC of complexity’ *Nigerian Pilot* 21 October 2016, available at <http://nigerianpilot.com/youths-protest-edo-poll-accuse-inec-complexity/>, accessed on 27 August 2017.

Terzungwe, Saawua ‘APGA guber candidate petitions INEC over non-conduct of PDP primary in Zamfara’, *Daily Trust* 17 December 2014, available at <https://www.dailytrust.com.ng/news/politics/apga-guber-candidate-petitions-inec-over-non-conduct-of-pdp-primary-in-zamfara/64136.html>, accessed on 27 August 2017.

Theses

du Pisani, Andre A *Critical Evaluation of Conflict Resolution Techniques: From Problem-Solving Workshops to Theory* (PhD thesis, University of Cape Town, 1988).

Feehily, Ronan *The Development of Commercial Mediation in South Africa in view of the experience in Europe, North America and Australia* (PhD thesis, University of Cape Town, 2008).

Kaaba, O’Brien *The Challenges of Adjudicating Presidential Election Disputes in Africa: Exploring the Viability of Establishing an African Supranational Elections Tribunal* (LLD thesis, University of South Africa, 2015).

Mitchell, Shannon Kate *Bridging the Gap The Role of the Private Sector in Track-Two Diplomacy and South Africa’s Political Transition* (MSC thesis, University of Cape Town, 2012).

Mkorosi, Mampoja Evelina *The Role of Alternative Dispute Resolution in Consumer Protection in Lesotho* (LLM thesis, University of Cape Town, 2015).

Nyachieo, Abenga Elvis Begi *Reforming the Approach to Alternative Dispute Resolution in Kenyan Industrial Disputes: A Comparative Analysis* (LLM thesis, University of Cape Town, 2015).

Ogaji, Ofinite Joy *The Viability of Applying Alternative Dispute Resolution Processes in The Niger Delta Conflict* (PhD thesis, University of Warwick, 2013).

Olukotun, Deji *The Spirit of the National Peace Accord: The Past, Present, and Future of Local Forms of Conflict Resolution in the Western Cape* (MPhil thesis, University of Cape Town, 2006).

Richardson, Robin *Alternative Dispute Resolution in Intellectual Property Law: A growing need for a viable alternative to court litigation* (LLM thesis, University of Cape Town, 2013).

Sani, Ibrahim *Electoral Governance: Understanding the Democratic Quality of Elections in Nigeria* (PhD thesis, University of Edinburgh, 2015).

Sianondo, Clavel *Arbitration practice in Zambia: The process and its legal impediments* (LLM thesis, University of Cape Town, 2016).