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ASSEMBLY

ON

THEME:

**ENHANCING THE QUANTITY SURVEYORS CAPACITY IN BUILDING,
ENGINEERING AND INFRASTRUCTURE DEVELOPMENT CONTRACTS,
DISPUTES MANAGEMENT AND RESOLUTION**

SUB-THEME:

PROBLEMS WITH CONSTRUCTION ARBITRATION IN NIGERIA

AT

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1.0 Introduction

The Nigerian construction sector is dynamic and complex, often involving multiple stakeholders with competing interests. Inevitably, disputes arise. Arbitration has traditionally been the preferred method for resolving construction disputes, given its flexibility, confidentiality, and perceived cost-effectiveness compared to litigation. However, in practice, construction arbitration in Nigeria faces several critical challenges that undermine its utility. This paper examines these problems, explores alternatives such as mediation and the multi-door court system, analyses the impact of the "National Policy on Arbitration and Alternative Dispute Resolution (ADR) 2024," and suggests practical reforms to enhance the efficiency and reliability of dispute resolution mechanisms in the construction sector.

2.0 Overview of Arbitration in Construction Disputes

Arbitration is a structured, private dispute resolution mechanism where parties submit their disputes to one or more impartial arbitrators whose decision (award) is binding. The Arbitration and Conciliation Act (ACA) and the newly enacted Arbitration and Mediation Act (AMA) 2023 provide the legal backbone for arbitration in Nigeria. Sections 1-3 of the AMA 2023 affirm the autonomy of parties to determine their arbitral procedures and enforce arbitration agreements.

The "National Policy on Arbitration and ADR 2024" complements this framework by advocating for user-friendly, accessible, and credible ADR processes. According to Section 2.1 of the ADR Policy 2024, the goal is to "promote timely, cost-effective, and fair dispute resolution mechanisms as an integral part of national economic development."

3.0 Problems with Construction Arbitration in Nigeria

3.1 High Cost of Arbitration

Although arbitration is touted as cost-effective, in reality, arbitration in Nigeria often incurs prohibitive costs. Arbitrators' fees, venue rentals, expert witness fees, and legal counsel fees can rival, or even exceed, the costs of litigation. This disproportionately affects small and

medium-sized construction firms, discouraging them from pursuing claims. Section 49 of the AMA 2023 encourages reasonable cost management, and the National Policy, under Section 3.4.2, advocates for transparent, standardized pricing models to make ADR affordable.

3.2 Delays in Arbitration Proceedings

Delays in arbitral proceedings are commonplace. Multiple adjournments, voluminous submissions, and arbitrator unavailability often mirror the very inefficiencies arbitration was meant to avoid. Although Section 16 of the AMA 2023 imposes a duty of expedition, there is little enforcement. The National Policy, under Section 3.4.3, calls for the development of expedited procedures, especially for high-volume sectors like construction.

3.3 Lack of Expertise Among Arbitrators

The technical complexity of construction disputes requires arbitrators who possess not only legal knowledge but also technical and industry-specific expertise. The current pool of arbitrators often lacks specialized construction training, leading to decisions that inadequately address the nuances of construction projects. The National Policy (Section 4.2) and the Chartered Institute of Arbitrators (CIArb) standards advocate for capacity building and accreditation of sector-specific ADR practitioners.

3.4 Judicial Interference

Despite Nigeria's arbitration-friendly statutes, judicial intervention persists, particularly at the enforcement or setting aside stages. Section 55 of the AMA 2023 seeks to limit such interference, but inconsistent judicial interpretations undermine arbitral autonomy. The National Policy (Section 5.1) emphasizes judicial education and proactive court support for ADR processes.

3.5 Non-Enforceability of Arbitral Awards

Successful parties often encounter frustrating delays or resistance when trying to enforce arbitral awards. The cumbersome process, exacerbated by appeals and applications to set aside awards, diminishes confidence in arbitration. Sections 56-57 of the AMA 2023 streamline enforcement processes, and the National Policy (Section 5.4) mandates strict timelines and simplified procedures for the enforcement of arbitral awards.

3.6 Corruption and Ethical Issues

Corruption allegations, ranging from arbitrator bias to outright bribery, erode trust in arbitration outcomes. Ethical lapses deter good-faith participation in arbitration processes. The Legal Practitioners' Code of Conduct, CIArb Ethics Rules, and the National Policy (Section 4.4) demand high ethical standards, proposing stricter accreditation and disciplinary regimes.

4.0 Differences Between Arbitration, Mediation, and the Multi-Door Court System

4.1. Arbitration vs. Mediation

Feature	Arbitration	Mediation
Decision-Maker	Arbitrator (neutral third party)	Mediator (facilitates negotiation)
Outcome	Binding decision	Non-binding settlement agreement
Process	Formal, rules-based	Informal, collaborative
Court Involvement	Limited judicial review	No court involvement unless enforcement needed
Cost	Higher	Lower

4.2 Arbitration vs. Multi-Door Court System

The **Multi-Door Court System** (MDCS) institutionalizes ADR options within the judiciary, offering parties a choice of dispute resolution methods based on the nature of their disputes.

Feature	Arbitration	Multi-Door Court System
Forum	Private setting	Court-connected ADR Centre
Options Available	Arbitration only	Mediation, conciliation, negotiation, arbitration
Court Oversight	Minimal	Court-supervised
Flexibility	Structured process	Highly flexible
Enforceability	Legally binding	Depends on selected ADR mechanism

5.0 The Emerging Trend: Incorporating Mediation Clauses in Construction Contracts

Recognizing arbitration's limitations, construction stakeholders are increasingly incorporating mediation clauses in contracts. Section 89 of the AMA 2023 mandates that parties consider amicable settlement options before initiating arbitration. The National Policy explicitly encourages this trend.

Advantages of inserting mediation clauses include:

- Early settlement of disputes without adversarial proceedings.
- Preservation of professional relationships essential in long-term projects.
- Significant savings in costs and time.
- Flexibility in solutions, enabling win-win outcomes.

Internationally, standard form contracts such as FIDIC, JCT, and NEC have already embraced tiered dispute resolution clauses. Similarly, in Nigeria, contract templates developed by professional bodies like the NIQS and NSE increasingly adopt "mediation-first" frameworks.

6.0 Recommendations for Improving Arbitration and Mediation in Nigeria

1. **Cost Management:** Introduce standardized fee structures as recommended by the National Policy (Section 3.4.2) and enforce cost-control provisions under Section 49 of the AMA 2023.
2. **Time Efficiency:** Mandate expedited procedures for construction disputes and adopt fast-track arbitration protocols in line with Section 3.4.3 of the ADR Policy.
3. **Specialization of Arbitrators:** Establish a national roster of construction-specialized arbitrators vetted for expertise and ethics as outlined in Section 4.2.
4. **Judicial Support:** Intensify judicial training programs under Section 5.1 to promote arbitration-friendly court practices.
5. **Award Enforcement:** Streamline court procedures for recognizing and enforcing arbitral awards, aligning with Sections 56-57 of the AMA 2023 and Section 5.4 of the ADR Policy.
6. **Ethical Regulation:** Create a regulatory framework for monitoring and disciplining ADR practitioners, anchored in Section 4.4.
7. **Promotion of Mediation:** Encourage construction firms to integrate mediation clauses, supported by the policy directives in Section 2.3 of the National ADR Policy.

7.0 Conclusion

Construction arbitration in Nigeria has the potential to deliver quick, efficient, and just outcomes, but only if systemic challenges are addressed. Through concerted reforms—anchored in the Arbitration and Mediation Act 2023 and the National Policy on Arbitration and ADR 2024—Nigeria can transform its dispute resolution landscape.

Stakeholders must embrace innovation, prioritize capacity building, and promote alternative mechanisms like mediation to ensure that dispute resolution supports, rather than disrupts, the growth and sustainability of Nigeria's construction sector.