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Review

Assessing the efficacy of alternative dispute resolution (ADR) in the settlement of environmental disputes in the Niger Delta Region of Nigeria

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This study presents a detailed and critical review of the Alternative Dispute Resolution as a non-judicial mechanism for the settlement of environmental disputes in the Niger Delta region of Nigeria. Ordinarily, disputes whether environmental or otherwise are resolved through court processes, but due to delays, costs, publicity and technicality associated with litigation, alternative dispute resolution (ADR) mechanisms evolved. There are several bitter complaints from the victims of pollution in the Niger Delta region that the courts, conventionally the last hope of the common man, have not lived up to expectations in environmental litigations thereby justifying their recourse to ADR as a better option. A significant number of environmental cases were lost on flimsy reasons. Today, ADR procedures are considered imperative worldwide, and are used by a wide range of courts, tribunals, organizations and victims of pollution in Nigeria as tools for overcoming environmental impasse, improving the efficiency of difficult negotiations, and achieving durable settlements. It takes different forms as arbitration, mediation, conciliation, negotiation, among others. The detailed discussion of these forms, and their advantages vis-à-vis the courts' processes will facilitate an informed appreciation of the use of ADR in the environmental disputes settlement.

Key words: Alternative dispute resolution (ADR), environmental, Niger Delta, arbitration, court, pollution, right, Nigeria dispute.

INTRODUCTION

Ordinarily, the courts serve as the traditional forum for the resolution of conflicts. The judiciary arm of government is conferred with the authority to interpret the law and settle disputes between the parties to a dispute. However, the problems associated with litigation such as delays arising from long adjournments, costs, corruption, technicalities, congestion of cause lists in the courts, formalities, etc. impede the realization of the purpose of the courts' adjudicative process, with recourse to alternative dispute resolution (ADR) mechanisms as viable alternatives to judicial settlement of disputes in Nigeria (Chukwuemerie 2002). Access to justice means more access to courts, and some disputes may not even been suited for the litigation process. The biblical account of the judgment passed by King Solomon[i] between two women laying claim to a child was accompanied with such a profound wisdom that, till date, it is traditionally considered the philosophical foundation of ADR.

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ADR is not new to Nigeria but deeply rooted in our culture. In fact, the ADR processes were in practice in Africa even prior to the colonial era (Ngo-Pondi, 2007). Our traditional societies settled disputes by referring them to the elders and other respected members of the society. The pre-colonial Nigeria era was constituted by settlements, communities, families, villages, hamlets, and most especially kingdoms and empires such as the Oyo empire, the Borno empire, and the Igbo communities. These kingdoms and communities were not without conflicts; rather their disputes and challenges were adequately settled without litigation. In most cases, the disputes were referred to elders or other bodies set up for that purpose (Mazrui, 1986) maintained that:

"Public participation and mediation are not alien to Nigeria. Empirical evidence has clearly shown that a thorough understanding of local knowledge systems, institutions and social organizations is a prerequisite for supporting existing sustainable practices and for enhancing social and technological change. Negotiation and mediation have been integral parts of the traditional African decision making process. Traditionally, the elders play special roles such as managing public affairs, keeping the peace, serving as judges and looking after community welfare" (Mazrui, 1986).

The invasion of Nigeria by the British authority witnessed the introduction of the English type of courts for dispute settlement. The introduction of these courts notwithstanding, the existing traditional means of disputes settlement were not jettisoned but co-existed with the court adjudicative processes. Today, cases are still settled outside the courts through the local system of dispute settlement (Clark, 1995). These systems are recognized by the courts provided the cases are civil.

The introduction of the modern ADR process in the administration of justice in Nigeria is geared towards addressing the challenges associated with court litigations. Today, there is a growing trend to formalize and popularize the use of these mechanisms as viable alternatives to litigation. There is no doubt that recourse to this mechanism in view of the economic and political conditions of the masses in this country will enhance peoples' access to justice.

Meaning of ADR

ADR is an acronym for Alternative Dispute Resolution. It is a broad range of mechanisms and processes designed to supplement the traditional courts litigations by providing more effective and faster resolution process. It is a procedure for the settlement of disputes by means other than confrontational and relationship destroying litigation. Today, amicable settlement of disputes is preferred to litigation. The ADR mechanism was introduced into the Nigerian Legal System in the quest for speedy dispensation of justice. Its processes are not only less formal but also less expensive and more expeditious than the court processes. By this method, a mere apology is enough to bring about settlement. Court processes are bedeviled with inordinate delays, technicalities, strict adherence to the rules of evidence and pre-trial preparations which are not only time consuming and frustrating but also costly. While complex cases are preserved for the courts,[ii] other cases can be resolved through the ADR processes, thereby relieving the courts the time that would have been spent on such cases (Akomolode, 2005; Ifedayo, 2005). Congestion of cases in the courts results in pressure on the judges and poor dispensation of justice. According to (Kabir, 2011):

"Litigation has also been criticized as responsible for the high cost of justice delivery, delay and the spilling of bad blood often associated with court cases which is similar to ordinary battle field where there is always a victor and a vanquished" (Kabir, 2011).

The growing popularity of ADR worldwide attests to the wide acceptance that litigation is no longer the exclusive process of decision making in our civil justice system (Mahmud, 2005).

Today, ADR is generally perceived as a potential route to civil justice. In Australia, USA and Canada, it has gained prominence in preference to litigation (Macfarlane, 1997). English courts in *Dunnett v. Railtrack*[iii] considered it imperative to penalize successful defendants on appeal by not granting them costs because they refused mediation. The court reemphasized that to flatly turn down ADR without just cause could place the party doing so at risk of adverse consequence in costs. The decision was taken in conformity with the English Civil Procedure Rules (CPR) 1.4 which provides that the court should encourage the parties to use ADR, while the parties are required to help the courts in furthering that objective.[iv]

The encouragement and facilitating of ADR by the court is an aspect of active case management which in turn is an aspect of achieving the objectives of the courts. The court added that parties should bear in mind the overriding objective and purpose of ADR and should be careful before rejecting it especially when recommended by the court (Macfarlane, 1997).

Even the legal advisers to parties have a duty to advise them to consider seriously the possibility of ADR procedures being utilized for the purpose of resolving their claims before proceeding with court actions, especially when suggested by the court itself. In *Cowl v. Plymouth City Council*,[v] the court stated that where such advice has been given and turned down by a party, perhaps on the ground that it is inappropriate, it should be on record. Such record may be needed to demonstrate to the court that ADR has been considered but not suitable to the case.

The international petroleum contracts in China, Bangladesh and many other Asian countries provides for mediation or conciliation as a means of dispute settlement.[vi] In USA precisely, President Bill Clinton in 1996 signed Executive Order 12988 which makes the use of ADR a federal priority for all executive agencies.[vii] The process is today used in the settlement of an array of civil cases such as commercial, labour, divorce, environmental, torts and other related disputes.

In his report to the President on the Use and Result of ADR in the executive branch of the Federal Government, the then Attorney General of the US through the collaborative efforts of the Executive Branch agencies and the Federal Interagency ADR Working Group Sections and Steering Committee enumerated the benefits of ADR over litigation to include cost savings, increased workforce productivity, promotion of the efficient delivery of services, the parties' control over the outcome, and involvement of the stakeholders in the decisions that affect them (Alberto, 2007). According to the report:

"Engaging in ADR processes saves resources for other agency work through streamlining or eliminating issues in dispute. The Department of Justice Civil Division emphasizes that even if a case does not settle, involvement in ADR process routinely results in a narrowing of contested issues…. An example was its use of neutrals to negotiate case management and discovery plans in a multi-party case which served to expedite the litigation process to a large degree and thereby saved trial expenses" (Alberto, 2007).

In Nigeria, those engaged in ADR processes are trained and certified by the Institute of Chartered Mediators and Conciliators which is a body established in 1999 for the purpose of training persons aspiring to be professional negotiators, mediators, conciliators and peace builders across Nigeria (Greg, 2005, 1997) in his article entitled "Arbitrate, Avoid the Courts, Do Not Litigate" enjoined parties to disputes, lawyers and non-lawyers alike, to seek amicable settlement of their disputes rather than litigation. Though, one may not completely avoid the courts, but before you sue, try settlement which saves relationship. The erudite Professor contended that ADR is not intended to oust the jurisdiction of the courts as misconceived by the early judges but to supplement it (Greg, 2005). No doubts, the courts are indispensable in the administration of justice. In some cases, the courts on their own refer disputes to arbitrators for consideration though subject to the agreement of the parties. In his own words:

"In the Arbitration and Conciliation Act… the courts have different functions assigned to them by the Act. In fact, arbitration practice will be a mere fruitless and hopeless exercise without the courts. This is because arbitral tribunal has limited legal force to effect certain duties implicit in every arbitration practice. By section 3 of the Act, the courts… have the right to revoke arbitration agreement. Sections 4 and 5 of the Act confer on the court the discretion to stay proceedings in court for reason of arbitration agreement" (Greg, 2005).

This principle was earlier stated in *Lee v. Showman's Guild of Great Britain*[viii] where Lord Denning warned that parties cannot contract to oust the ordinary courts from their jurisdiction. In his words:

"They cannot prevent its decision from being examined by the court. If parties should seek by agreement to take the law out of the hands of the courts and put it in the hands of a private tribunal, without recourse at all to the courts in case of error, then the agreement is to that extent contrary to public policy and void".[ix]

In the English case of *Cable and Wireless Plc v. IBM United Kingdom Ltd*,[x] for instance, the parties who submitted their case to ADR returned to the court after ADR proceedings have failed. In Nigerian case of *Stabilini Visiononi Ltd. v. Mallinson and Partners Ltd*[xi] the Court of Appeal stated that "an arbitral award extinguishes any right of action in respect of the dispute and the court that ordered an arbitral award can enforce the arbitral award". This is also applicable to environmental disputes. The statutory privilege to resort to ADR in preference to litigation as a means of resolving environmental disputes should not be misconstrued as excluding or limiting the jurisdiction of the courts. Omobolaji (1989) noted that in environmental disputes, when negotiation or arbitration, or both breaks down, the victim goes to court to seek compensation (Omobolaji, 1989).

No doubt, the attenuating impact and effectiveness of the ADR will be vital to the Niger Delta Region of Nigeria where frustrations of litigation have led the victims of oil spillage to take laws into their hands by resorting to violence, taking arms and other illegal and unorthodox means of redressing grievances. Therefore, institutionalizing ADR processes in this region will reverse the trend.

Arbitration

Arbitration in Nigeria is governed by the Arbitration and Conciliation Act[xii] which is modeled after the UN Commission on International Trade Law (UNCITRAL) on International Commercial Arbitration 1985 with minor modifications (Funke, 2004). It is a process by which parties to a dispute submit their cases to a neutral third party for settlement. This involves the reference of a dispute or difference between not less than two parties for determination in a judicial manner by a person or

persons other than a court of competent jurisdiction.[xiii] Its distinguishing characteristics is that the parties not only entered into such processes voluntarily but also have a great say in designing the process and the manner in which its outcome will be formalized. The arbitrator is either appointed by the parties or the court (Greg, 1997) of which the decision may be binding or non-binding (advisory). It binds the parties when they have pre-agreed that the arbitrator's decision is final. The Court of Appeal in *Stabilini Visinoni Ltd. v. Mallinson and Partners Ltd*.[xiv]further explained arbitration as:

"… a method of dispute resolution involving one or more neutral third parties who are agreed to by the disputing parties, and whose decision is binding. In effect, arbitration is the resolution of a dispute between the parties by a person(s) other than a court of law. It is the reference of a dispute by parties thereto for settlement by a person or tribunal of their choice, rather than a court. The basis for the arbitration is consent of the parties to submit or refer their disputes to arbitration".

As the parties to a dispute decide on their own to settle by arbitration, the law requires them to obey the rules, proceedings and awards of the arbitration panel for better or worse[xv]. Therefore, appeal does not lie against such decisions neither can a party withdraw from the arbitral process. In *Igwego v. Ezeugo,*[xvi]the Court held that when parties have agreed to be bound by the decision of the arbitrator as final, they cannot thereafter resile from it if found unfavourable. Oguntade JCA in his dissenting judgment in the case of *Okpuruwu v. Okpokam* [xvii] maintained that "…if parties to a dispute voluntarily submit their dispute to a third party as arbitrator and agree to be bound by the decision of such arbitrator, then the court must clothe such decision with the garb of *estoppel per rem judicatam*." (Greg, 2005). However, parties may seek judicial relief if the arbitrator, in the course of the arbitral process, exceeded the authority conferred on him or he was in breach of the rules of natural justice, or made an obvious mistake (Kehinde, 2005).

In non-binding arbitration, the decision (award) of the arbitrator is not intended to be final and bind the parties but is advisory and persuasive in nature intended to provide guidance to the parties (Kehinde, 2005). Arbitration processes are less formal than the traditional court litigation and so may permit a waiver of certain formalities such as strict adherence to rules of evidence. Some scholars are opposed to the non-binding arbitration in the sense that 'non-binding' represents mediation while arbitration is best used for a binding process (Craig and John, 2015).

Arbitration has been very useful in the settlement of environmental disputes in the Niger Delta region of Nigeria. An instance is the Funiwa-5 oil well blow-out in Rivers State in January 1980. The community claimed N6om as compensation from the oil company. The latter agreed to pay only N6m. The federal government of Nigeria intervened and acted as arbitrator in the matter by instructing the company to pay N12m as compensation which it did through the federal government (Omobolaji, 1989). Again, from time to time, the state Ministry of Lands has intervened between the oil companies and the host communities in this region when negotiations break down, and in those cases, the parties were impressed not only with the mode but also the outcome (Omobolaji, 1989). Even when the administrative agencies serve as arbitrators, the parties have the opportunity to participate in the agencies' decisions. The arbitration forum makes it easier for the villagers to air their views. They feel at home unlike in the courts. It is interesting to note that there is a proliferation of arbitration bodies and ADR centres in Nigeria. Today, we have;

(1) The Nigerian Branch of the Chartered Institute of Arbitrators (UK)
(2) The Chartered Institute of Arbitrators (Nigeria)
(3) The Institute of Dispute Resolution, Ekpan in Delta State, Nigeria
(4) Negotiation and Conflict Management Group (NCMG), and
(5) Abuja Arbitration Forum (Gadzima, 2015).

Mediation

Mediation is a type of ADR methods of which purpose is to facilitate negotiation between the disputants so as to enable them resolve their disputes. It is a voluntary, non-binding private dispute resolution process in which a neutral person helps the parties to reach amicable settlement of their disputes (Mahmud, 2005). It requires the direct participation of the third party mainly to encourage the disputants resolve their differences themselves. Usually, the parties voluntarily enter into mediation and choose the mediator who proposes solution for the parties' consideration and acceptance. The opinion expressed by the mediator, no matter how good and fair it may be, does not bind the parties until they agree to accept it.

The duty of the mediator is not to determine rights and wrongs but to control the process leaving the outcome to the parties since he cannot impose any decision on the parties (Bercovitch et al., 1991). Prof. M.A. Ajomo sees the mediator as "a facilitating intermediary-providing a non-binding adjudicatory decision" (Ajomo, 1996). Distinguishing the role of the mediator from that of the arbitrator, (Kehinde, 2005) maintained that;

"While the latter decides the dispute for the parties, the role of the skilled neutral mediator is to act as a catalyst by helping the parties in identifying and crystallizing each side's underlying interests and concerns, carry subtle messages and information between the parties, explore bases for agreement and develop co-operative and

problem-solving approach. The common denominator to all these efforts by the mediator is the enhancement of communication between the parties in conflict" (Kehinde, 2005).

Though, legal rules may be relevant to mediation but not mandatory. It is just one of the factors to be considered in the process but more importance is accorded to the subsisting relationship and interest of the parties. That is why mediation is suitably adopted in the resolution of conflicts of a sensitive and confidential nature where the disputants would wish to settle them in private rather than in public as required in litigation. An instance is a dispute that involves a paltry sum unworthy of expenses of litigation (Ogungbe, 2003).

Negotiation

Negotiation is the most common and familiar form of Alternative Dispute Resolution mechanism. It is a dialogue or a consensual discussion with a view to reaching a compromise without the aid of third parties. Negotiation has become an indispensable part of our daily lives as it happens in almost every transaction between two or more persons. It is a means to an end and not an end in itself, the end being a mutually beneficial dispute settlement. The Black's Law Dictionary defined it as;

A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. Negotiation usually involves complete autonomy for the parties involved without the intervention of third parties.[xviii]

Therefore, unlike in arbitration and mediation, the parties in negotiation are in full control of both the process and the outcome either in persons or by proxy (Kehinde, 2005). Where decisions are reached through this process, the parties are bound since they are the architects of both the process and the solution. However, we have professional negotiators who are skilled in specific areas and can from time to time be called upon to lead ignorant or inexperienced parties in their negotiations. O.G. Amokaye maintained that in order to achieve a successful negotiation, it is important for the parties to seek the services of a legal practitioner especially in the assessment and preparations of pre-negotiation terms, and if necessary for an expert to be part of any negotiation team (Kehinde, 2005).

The principles that guide successful negotiations in other areas of our lives are also applicable to the environmental disputes. The Environmental Safety Guidelines for Petroleum Industries in Nigeria, 2002, encourages oil companies to negotiate compensation payable to the host communities in settlement of pollution related cases before embarking on litigation. In any case involving environmental damage, negotiation is the next stage after the assessment of the damage.

In some cases, to ascertain the quantum of damage and the concomitant compensation, experts may be involved. Usually, negotiation starts with the company offering some compensation arrived at by expert's assessment. Problems may occur if the victims feel that what they were paid as compensation was inadequate. Where the result of negotiation is turned down, further negotiation may be made or the aggrieved party may resort to litigation as in the case of *Joel Odum and ors v. Shell B.P.and Weco Nig.Ltd.*[xix] where the plaintiffs, being victims of pollution caused by the defendants, were paid compensation by the latter following negotiation reached between the two. Being dissatisfied with the amount paid to them as compensation, the plaintiffs brought an action against the defendants claiming the sum of N6,687.33 as the minimum unpaid balance of the compensation.

This is in respect of the same subject matter already negotiated out of court but the plaintiffs then contend that the compensation is inadequate going by the provision of the Rivers State Minimum Crop Compensation Edict No. 7 of 1973. While dismissing this action, the court held that adequate compensation as provided by the Oil Pipelines Act had been paid to the plaintiffs, and that the Rivers State Minimum Crop Compensation law is inconsistent with the Oil Pipelines Act. So, the victims lost.

It is unfortunate that most oil companies in the Niger Delta region of Nigeria prefer litigation to negotiation because of the inordinate delay of cases in Nigerian courts, and the concomitant frustrations on the victims, coupled with the possibility of striking out the cases on the ground of technicality. For instance, in *Shell Pet. Co. Nig. v. Ambah*[xx] the plaintiff went to court because the oil company has neglected, failed, and or refused to negotiate or pay reasonable or adequate compensation to the plaintiff and members of his family despite repeated demands. It is in view of this that led the judge to state that;

I shall not conclude this judgment without saying that the defendant ought not to allow this case to go to court. It is a matter they ought to have negotiated and settled out of court…[xxi]

Where negotiation is reached, the amount of compensation payable is determined. In the United States of America, for instance, a company, W.R. Grace and Co has recently agreed out of court to reimburse the federal government $250 million for the investigation and cleanup of asbestos contamination blamed for sickening hundreds of people, some fatally, in the northwestern Montana town of Libby though subject to the approval of U.S. Bankruptcy Court judge[xxii].

Also, in a pre-litigation negotiation, the U.S. Environmental Protection Agency (EPA), recently reached a $21.8 million settlement with 95 parties to

clean up the spectrum superfund site in Elkton, Maryland of hazardous chemicals caused by the parties.[xxiii]

Successful negotiators possess and exhibit perceptual, persuasive, analytical and other basic negotiation skills for effective conflict management. The same skills that diplomats use to negotiate international peace agreements can equally be used in the resolution of environmental conflicts.

Conciliation

Conciliation as a type of ADR is another process of settling disputes in a friendly manner outside the court. It is a practice of bringing together the parties in a dispute to an independent third party, a conciliator, who meets with the parties so as to resolve their differences.[xxiv]

In Nigeria, conciliation is recognized by the Arbitration and Conciliation Act as a method of conflict resolution. Section 37 of the Act provides that the parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation. The process involves a neutral and disinterested persons meeting with the disputants both separately and together and exploring how the dispute can be resolved. It involves an appointed councilor who does not intervene directly in the dispute, rather he does it indirectly by exploring the available possible avenues for settlement thereby allowing the parties do the settlement themselves (Kabir, 2011). It is advisory in nature.

The conciliation process finds its most solid and eventual success on the will of the parties to engage in a meaningful dialogue irrespective of the gravity of their differences. The conciliator usually has no authority to seek evidence or call witnesses. He neither makes a decision nor an award. He merely provides the environment for resolution of conflict. He helps them to establish communication, clarify mis-perceptions, deal with strong emotions, and build the trust necessary for cooperative problem solving. This is more imperative when the parties have little constructive communication. They see each other as enemy resulting from all they lost to the conflict. In this situation therefore, conciliation may be vital in resolving preliminary issues (Moore, 1991).

Multi-door court house

This is another alternative to litigation as was first enunciated by a Harvard Law Professor, Frank Sander, in a paper he delivered at an International Conference in 1976 (Mahmud, 2005). The concept, also known as multi-option ADR, refers to a court that provides an array of dispute resolution options and then directs the parties to choose the option most suitable to their disputes. It connotes the idea of a single courthouse with multiple doors such as mediation, conciliation, and arbitration conducted under the strict supervision of the court (Ikechukwu, 2015).

Therefore, rather than all litigants accessing the court through the single or mono door of litigation, the court itself provides them with other alternative doors. It is acourt connected ADR mechanism in the sense that though, they are independently run and managed, they are attached to specific courts, and in such cases may or may not already be within the court system. Where it is, it becomes a 'court referred case' whereby the judge refers an already existing case to the multi-door courts after the court's preliminary conference or at any other time considered due by the judge. At the end, the judgment is returned to the referring judge for sealing. In some jurisdictions such as the US, the courts use ADR processes more than private individuals (Naughton, 1990).

The Woolf Report on "Access to Civil Justice" in the UK with the attendant promulgation of the New Civil Procedure Rules in 1999 underscored the imperativeness of court-annexed arbitration and other ADR processes. The new Civil Procedure Rules enjoin the courts to actively manage cases and not only to encourage the parties to use of ADR where considered appropriate by the courts but also to facilitate the use of such procedures (Paul, 2002).

In the Nigerian case of *K.S.U.D.B. v. Franz Const. Co. Ltd*.[xxv], the Court of Appeal, Per Augie JCA stated that the same court which ordered that parties should resort to arbitration can also entertain an application for purposes of enforcing the arbitral award. Any agreement arising out of such court-connected ADR may be enforceable as court orders.

The action may also take the form of 'walk-in cases' where the parties on their own choose to apply directly to the multi-door court for settlement without first commencing normal court action. In fact, some of those doors may lead to locations outside the courthouse to other directions where the technology, experts and professionals outside law can be of immense assistance in the conflict resolution. Lisa (2012) noted that;

Trained intake workers inform the parties of the various ADR programmes available and direct them towards the most appropriate process or series of processes based on factors such as the relationship of the parties, the amount in controversy, and the type of relief sought (Lisa, 2012).

In doing this, the parties are availed the advantages of these options while at the same time enjoying the benefits of the courts system. This process has been adopted by various governments in different jurisdictions to achieve the objectives of improved access to justice. In Nigeria, the first court connected ADR was the Lagos Multi-Door Courthouse (LMDC) established in 2002 by the Lagos State government through the collaborative efforts of the Judiciary (the High Court of Justice) and the Negotiation and Conflict Management Group (NCMG), a non-profit private organization (Mahmud, 2005). The

overriding objectives of the MDC as set out in the LMDC Practice Direction include;

(1) To give access to justice for all
(2) To reduce pressure on the courts
(3) Speedy resolution of conflicts
(4) Reduction in the parties' expenses and time
(5) Accommodation and tolerance
(6) Restoration of pre-dispute relationship
(7) Sustenance of business relationship
(8) Public satisfaction with the justice system
(9) Encourage resolutions suitable to the parties' needs
(10) Increase in voluntary compliance with resolutions, and
(11) Increase in foreign investments.[xxvi]

Today, some state judiciaries in Nigeria have established their respective court annexed ADR centres. [xxvii] An example is the Abuja Multi-Door Courthouse which has, no doubt, proved effective means of dispute settlement within the Federal Capital Territory. Presently, at least thirteen judiciaries in Nigeria have shown interest in its replication. It is however sad to discover that many states, including those within the Niger Delta region, are yet to wake from slumber notwithstanding all the inherent benefits of the ADR in comparison with litigations. Kabir Dabo noted that;

Nigeria is comprised of 36 states and the Federal Capital Territory, less than 10 states have established a formal and functional MDC. This means that disputants in other states that have not established MDC have no access to court-connected ADR processes for resolution of their disputes. This is rather disgusting in view of the advantages of ADR over litigation and relative successes achieved by the MDC in Nigeria. For example, the Principal Registrar of the Lagos LMDC said that the LMDC handled over 250 cases every year and about 90% of the cases were settled between 7-90 days without recourse to litigation (Kabir, 2011).

The legal framework

As already noted, the use of ADR in the settlement of disputes in Nigeria has been in existence right from time immemorial. Unlike litigation, ADR is not an imported mechanism into the African legal system, and so not regulated by any particular statute rather the process is more of voluntary, private and parties-driven. It is contractual in nature of which the relationship between the parties is governed by the express and implied terms of the contact (Nwaneri, 2011).

In a Pakistan case of *Dalima Dairy Industries Ltd. v. National Bank of Pakistan,*[xxviii] it was held that the proper law of an arbitration agreement includes in particular the interpretation and validity of the agreement. Today, there are many statutory and institutional frameworks through which ADR has been upheld as a legitimate means of dispute settlement in Nigeria. In fact, the first statute on arbitration in Nigeria was the Arbitration Ordinance which came into force on the 31st day of December 1914. The Law was modeled after the English Arbitration Act of 1889 and was then applicable to the whole country (Rhodes-Vivour, 2006). It was after 1954 when Nigeria was regionalized with a federal structure that the Ordinance became the respective laws of the regions and thereafter the states. Four years after, the Ordinance was reenacted as Chapter 13 of the Revised Laws of Nigeria and Lagos, 1958. The Federal Military Government later repealed chapter 13 and promulgated the Arbitration and Conciliation Decree, 1988, now reenacted as an Act[xxix] under the present civilian administration. It provides a unified legal framework for the fair and efficient settlement of disputes by arbitration and conciliation in Nigeria. The Act was modeled after;

(1) The New York Convention on the Recognition and Enforcement of Foreign Arbitral Award 1958 which is international in scope,
(2) The UNCITRAL Model Law on International Commercial Arbitration, and
(3) The UNCITRAL Arbitration Rules (Akanbi, 2001).

These represent the global recognition accorded ADR, and emphasize the need to decongest courts by finding viable, efficient and purposeful means of dispute settlement. In any way, the rules are optional and the parties may opt to adopt them or other rules such as the International Chamber of Commerce (ICC).

The Arbitration and Conciliation Act, which is the leading legislation in this regard in Nigeria, provides under section 37 that the parties to any agreement may seek amicable settlement of dispute in relation to the agreement by conciliation under the provisions of the Act. A party who intends to initiate conciliation proceedings shall send to the other party a written request to conciliate and such request should contain a brief statement of the issues at stake between the parties.[xxx] Section 35 of the Act provides that the Arbitration Law should not affect any other law providing for other means of dispute settlement other than arbitration. This indicates that the practice of arbitration is not meant to counter the provisions of any other statute in force in Nigeria or encroach on the courts' jurisdiction. However, the Act supersedes any other law on arbitration in Nigeria, and thus where the provisions of other laws on this subject are inconsistent with the provisions of this Act, that other law should be void and of no effect to the extent of such inconsistency.[xxxi]

Although environmental disputes are not expressly covered by the Act, the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria

(EGASPIN) published by the Department of Petroleum Resources (DPR) in 2002 enjoins oil companies to negotiate compensation payable to the victims of pollution before embarking on litigation. A scholar contends that;

ADR is potentially useful in resolving some of the environmental disputes bordering on payment of fair and adequate compensation for land acquisition, Environmental Impact Statement (EIS), damaged ecosystem, creeks, ponds and water courses arising from oil exploration activities (Ehusani, 2011).

Sections 31 to 35 of the Environmental Impact Assessment (EIA) Act also contain provisions affirming the critical role which mediation plays in the settlement of disputes associated with development projects. Sections 31 to 36 examine extensively the issue of mediation in the EIA process.

"Mediation" in this context refers to an environmental assessment conducted with the assistance of the mediator appointed under the EIA Act.[xxxii]By section 32, for instance, where a project is referred to mediation, the Council[xxxiii]shall, in consultation with the Agency not only appoint an experienced mediator but also fix the terms of reference of the mediation. Section 33(1) alludes to the fact it is only the Council "that can determine those parties who are directly affected by or have a direct interest in the project." Section 34 assigns the responsibility to the mediator to help the participants to reach a consensus upon satisfaction that all the information required for mediation is available to all the participants.[xxxiv]

On this note, the mediator facilitates the process by improving communications, serving as interpreter, scheduling and arranging meetings, maintaining cross communication between the parties and establishing a negotiation relationship. He must maintain confidentiality of the proceedings until the final settlement of the disputes (Plater, 1992). In the absence of mediation or ADR mechanisms, many projects are likely to fail. A typical example of a project that would have been rescued through ADR process but failed in its absence is Earthline/SCA's hazardous waste facility project in Wilsonville, Ilionis (Folade et al., 2006).

The use of ADR in resolving environmental disputes is elaborately recognized by both the Petroleum Act and Oil Pipelines Act. Section 11(1) of the Petroleum Act provides that;

Whereby any provision of this Act or any regulations made there under a question or dispute is to be settled by arbitration, the question or dispute shall be settled in accordance with the law relating to arbitration in the appropriate state and the provision shall be treated as a submission to arbitration for the purposes of that law. Section 17(6) of the Oil Pipelines Act alludes to the fact that each license granted to the licensee contains, by implication, a provision that disputes arising between thePresident or the Minister and the licensee regarding the license or any matter connected therewith shall, "if it cannot be resolved by agreement, be referred to arbitration". "Any matter connected therewith" as used earlier indicated that the provision has a wider coverage which may include parties other than the President, minister and licensee, and things other than license.

In *Nig. Agip Oil Co. Ltd. v. Kemmer and ors,*[xxxv]the Federal High Court appointed an arbitrator to handle the dispute between the parties. The arbitrator in a short while carefully examined and correctly applied the relevant provisions of the Oil Pipelines Act particularly section 19 dealing with compensation for injuries. This underscores the relevance of arbitration in the settlement of dispute arising from pollution.

Some states in Nigeria have specifically enacted laws on the establishment of MDC and other institutions to enhance the use of ADR. Section 18 of the High Court Law of the Federal Capital Territory, Abuja 2004 provides that "where an action is pending, the High Court may promote reconciliation among the parties by encouraging and facilitating amicable settlement between the parties.

The provision has therefore imposed an immense obligation on the court to do this notwithstanding that the case is already before the court. Order 17 of the High Court of the FCT, Civil Procedure Rules, 2004, in like manner provides that "a court or judge, with the consent of the parties, may encourage the settlement of any matter(s) before it by either arbitration, conciliation, mediation or any other lawfully recognized method of dispute". Negotiation and other types of ADR are within the contemplation of this provision. This Order is akin to Order 25, Rule 1(1)(c) of the Lagos Model in which the judge is empowered to issue a pre-trial conference notice in Form 17 for the purpose of promoting, inter alia, peaceful resolution of conflicts through ADR.

Consequently, in the case of *Jabita v. Onikoyi*,[xxxvi]the Judge while striking out the main claim and counter-claim directed the parties to adopt ADR as a better means of resolving their disputes rather than litigation. Order 39 Rule 4(3) of the Imo State High Court Civil Procedure Rules, 2008 also provides that "an award made by an arbitrator or a decision reached at the MDC may be leave of a judge be enforced in the same manner as a judgment or order of the court. The establishment of arbitral tribunal to determine disputes and matters affecting the rights of citizens is recognized by the CFRN, 1999 (as amended). Section 36(1) provides that;

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

Arbitral tribunal and welfare tribunal are covered by this provision. On this note, the Court of Appeal held in *Nigerian Agip Oil Co. Ltd. v. Kemmer* (supra) that an appeal following "decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be contravened in relation to any person" as provided for in section 241(1)(d) of the Constitution can lie as of right from an arbitral tribunal to the Court of Appeal. Customary arbitration is also recognized and protected by the same constitution under section 315 which saved all the laws which were in existence and in force before the Constitution came into existence. Customary law which includes customary arbitration forms part of such laws. Therefore, it is not unconstitutional or out of place for council of chiefs, kings, or elders to settle disputes through customary arbitration.[xxxvii]

Why ADR in environmental cases?

Environmental law is rapidly changing on a global and national scale, perhaps on account of the abuse of the environment with impunity and especially the injustices of natural resources exploitation. ADR today is considered a more potent tool in environmental cases than the confrontational and adversarial-based system of adjudication. In South Africa, for instance, the South African Environmental Protection Agency published a policy in 1978 to use ADR methods in the resolution of disputes arising from the enforcement of environmental laws (Tropill, 1991). The Agency funded the training of some of its officials in the acquisition of ADR skills to enhance the settlement of disputes between the oil companies and the victims of pollution. Advocates of ADR are unanimous in their passion and support for its application to environmental cases with the following reasons;

Speed

Expeditious determination of cases remains one of the attributes of ADR which is unlikely to be available in the courtroom. In Nigeria particularly, litigation is extremely time consuming. It has become a culture that cases must last several years in the courts before they are determined. Even when a case has lasted up to ten years in the court and the judge handling the matter is transferred or retired, the case has to start de novo. Ogungbe (2003) rightly noted that;

Some cases have been pending in our courts for more than ten years as a result of certain constraints like retirement or transfer of judges handling the cases which have been opened and evidence had been taken. Such cases have to start de novo. The devastation, frustration, and economic stress which litigants undergo are betterimagined than experienced (Tropill, 1991).

The celebrated case of *Ariori and others v. Elemo and others*,[xxxviii] for instance, was first instituted in the Court in the month of October, 1960 thereby coinciding with the month and year Nigeria got its independence and took 23 years to reach the Supreme Court which nevertheless remitted it to the trial court for a retrial de novo. Other cases like *Atanda v. Ajani*[xxxix] took 10 years to reach the apex court which ordered a trial de novo, and *Ugo v. Chukwu Obikwe* (Ugo, 2004) took 18 years to get to the Supreme Court which ordered a trial de novo (Oyesola and Kola, 2014).

The author in his earlier article[xl] noted that sometimes, the victims of environmental damage are discouraged from litigation due to unnecessary delays and the consequent overstay of their cases in the courts. Sometimes, for undisclosed reasons, case files are alleged lost, while transfer of officers handling certain cases may result in the cases being lost sight of or even neglected. The problems of delay are consequent upon certain factors such as lawyer's inordinate frequent requests and letters for adjournment of cases[xli] coupled with administrative incapacities, including lack of modern facilities (Human Rights Watch, 1999).

Sometimes, the oil companies which cause almost 90% of the environmental damage in the Niger Delta region of Nigeria employ delay tactics deliberately to frustrate the victims of pollution when a court action is pending between them especially now that the reputation of the judiciary in Nigeria has been tainted with corruption. The case of *Ambah v. SPDC,*[xlii] for instance*,* lasted for 19 years in the courts that before its final determination, two-thirds of the litigants had died. Other instances abound. According to (Ako, 2006);

The case of *SPDC v. Tiebo VII and four others*,[xliii] a matter of oil spill that occurred in Peremabiri, Bayelsa State, Nigeria in January 1987, got to the High Court in 1992, and to the Court of Appeal in 1996. The case of *SPDC v. Chief George Uzoaru and three others*[xliv] was heard in the High Court in 1985 in relation to damage suffered on a continuous basis since 1972 was heard in the Court of Appeal in 1979, while *Elf Nig. Ltd. v. Opere Sillo and Daniel Etsemi*[xlv] was heard in the High Court in 1987 in relation to damage suffered in 1967, was heard in the Court of Appeal in 1990, and in the Supreme Court in 1994. The case of *John Eboigbe v. NNPC*[xlvi] involved a damage caused in 1979 and was first heard in 1987, appealed against in 1989 and heard in the Supreme Court in 1994.[xlvii]

The after effect is that sometimes, the citizens will forgo their rights or resort to self-help. This not only undermines the very existence of the courts but also inconsistent with the constitutional provisions on speedy

trials. Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) provides that "in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time…."A prompt and speedy trial is a first condition of fair trial which involves the element of time (Akande, 1999)". Because ADR speeds up the process, justice is served more effectively because, as earlier noted, justice delayed is justice denied.

In line with this, the Lagos State House of Assembly in 2004 enacted the High Court of Lagos Civil Procedure Law directed towards the achievement of a just, efficient and speedy dispensation of justice.[xlviii] To enhance the achievement of the set objectives, the rules introduced new radical and far-reaching innovations, and expunged many orders and rules that were inconsistent with the spirit of speedy administration of justice (Samaila, 2005). In the same vein, the High Court of the Federal Capital Territory Abuja Civil Procedure rules 2004 are designed to make justice faster and expand access by lowering costs of litigation (Samaila, 2005).

On the other hand, in the quest to decongest the courts, re-invent the judicial system and ease disputes settlement, the government of Nigeria has opened doors and encouraged the use of ADR. The idea of ADR is that it offers a quicker resolution of conflicts by speeding up the dispute resolution process with a minimum disruption. For example, the Principal Registrar of the Lagos Multi-Door Courthouse (LMDC) stated that the LMDC handled over 250 cases every year and about 90% of the cases were settled between 7-90 days without recourse to litigation (Kabir, 2011).

In the US, the use of mediation in a class action employment discrimination case in 2004 saved 1,500 hours of discovery time and two years of litigation time. The compelling need for the time consciousness is obvious because environmental issues are very sensitive and delicate and a good number of them concern survival of species and properties that may be permanently destroyed with the lapse of time. Pollution is intrinsically linked with adverse impacts on human and natural environment.

Again, the longer the period a case lingers in the courts, the more the relationship between the parties sours. With the ADR, the presence of a skilled third party can change the dynamics and facilitate the process unlike in litigation that judges unskilled in environmental law handle environmental disputes. ADR gives the parties a unique opportunity to craft the process and solution which are tailored to their own needs. The parties can decide on whom to meet and at which period which will be convenient for the parties. With this, they can identify those ADR professionals with enforcement and regulatory experience and expertise.

Again, Congestion of cases which bores the judges and remoteness of venue common with our traditional courts are not attributes of ADR. The dwindling popularity of the courts in comparison with ADR in Nigeria was underscored by the Chief Justice of Nigeria, (Mahmud, 2005) in his speech on the occasion of the swearing in of new judges for the FCT, Abuja on the 14th day of December, 2014 that he is committed to the adoption and utilization of ADR in the settlement of disputes in the country. In his words, "the sobering reality is that if the number of pending cases continues to grow at the present rate, many people might not be able to initiate and conclude a law suit within their lifetime".

Cost effective

No doubt, ADR mechanism is less expensive than litigation. This is an invaluable advantage especially today that the cost of litigation in Nigeria has soared to the extent that many litigants can no longer pursue their cases (Chukwudifu, 1989). Animashaun and Odeku rightly observed that;

Many poor people cannot access the formal legal system because they cannot afford to pay the registration and representation fees necessary to prosecute cases in the courts. This is because payment of legal fees is probably the largest barrier to formal dispute resolutions for many people in developing countries and in particular by the poor in Nigeria.[xlix]

It is worse on the Niger Delta region of Nigeria where almost 80% of the litigants live in abject poverty consequent upon loss of means of livelihood to pollution-food, water and money. The UN Development Programme described the region as suffering from "administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth, squalor and endemic conflict".[l]

Many can hardly afford adequate legal representations when they fall victims of pollution rather they go cap in hand asking for paltry sums from these multinational oil companies which requests are turned down in most cases. These companies prefer litigation because of its frustrating attributes, especially in view of the astronomical increase in the filing fees in the courts in Nigeria. Order 53(1) and Appendix 2 of the Federal High Court Civil Procedure Rules, 2000 provides that for a claim of ten million naira and above, the litigant must pay a filing fee of over fifty thousand naira which is a pre-condition for the filing of the suit (Nlerum, 2005).

The filing fees in the magistrates and High courts in Nigeria range from three to ten thousand naira. The discouraging aspect of it is that the payment of the filing fees or lawyer's fees is never a guarantee that the judgment will favour the litigant. The celebrated cases of *SPDC v. Ambah* (supra) and *SPDC v. Tiebo VII* (supra)

are instances. Ambah's case lasted 19 years in the Courts and at the end, the Supreme Court reduced N297,00.00 already awarded to him by the two courts below as damages to N27,000.00 only being the value of the property calculated at the time of its destruction despite all the expenses in the 19 year litigation. The latter case also crumbled after many years of litigation because "the respondents could not put their case across properly". Consequently, the poor litigants went home without redress even when the courts acknowledged that their means of livelihood have been lost to oil spillage.

Again, the importance of a right to a legal practitioner of one's choice as a root of fair hearing is recognized under section 36(6)(c) of the CFRN, 1999. Therefore, when a court system is backlogged, for instance, it can take months or years before a case is heard, and the cost of paying a lawyer for so long is borne by the litigant who has lost everything to pollution. On this note, (Nlerum, 2005) (supra) observed that;

Legal practitioners in Nigeria have devised method of collecting not only their professional fees but also transportation fees each time they go to court, thus invariably adding to the financial burden of the litigants. When this is considered against the background that a particular case could last up to four or five years, then the enormity of the financial burden on litigants can be better appreciated.

It is unlike the ADR process where cases can be conducted effectively within weeks without the involvement of lawyers, and the money which would have ordinarily been spent on the lawyers in a protracted litigation is saved. In fact, that is why lawyers are skeptical about ADR. This is worse when the services of an expert are required as a prerequisite for the establishment of a case. The experts are exorbitant. Some cost millions of naira to procure and the poor victims of pollution have no option than to concede their rights. It gives these companies edge over the victims.

In *George Ngbor v. Compagnie General De Geophysique (Nig.) Ltd.& anor,*[li] the plaintiff victim lost his case because he could not afford the cost of an expert witness at the cost of one million naira (N1m) to testify that the dynamite shot which allegedly caused the damage to his factory was fired at a distance which was not safe. The company was able to call such a witness who testified that the dynamite was shot at a distance considered safe by seismic standard. Such evidence was not contradicted and the Court relied on it.[lii] Ese Malemi postulates that no society can survive or prosper where justice is available only to those who can afford it, rather it breeds violence and resort to self-help (Ese, 2005).

In contrast, ADR promotes the settlement of disputes in a manner that avoids many of the transactional costs associated with litigation. In fact, the monetary savings achieved through ADR processes and the results have been acknowledged in a lot of jurisdictions. In some cases, the cost may be borne either by the government or the multinational companies desirous of sustaining its relationship with the host communities, and not the poor victims of pollution as in litigation.

Nigeria is not an island unto itself. For instance, the Office of the Attorney General of the US, in an address to the Steering Committee of the Federal Government's interagency ADR working group reported that the Federal Energy Regulatory Commission's use of mediation in electricity and natural gas disputes saved the parties an average of $100,000 in avoided costs (Edward, 1988). A study of 19 environmental cases in Florida settled through mediation including dredge and fill, air pollution, domestic waste, hazardous waste, groundwater contamination, and solid waste revealed that at the end, all the parties were happy with the process with a savings of $75,000 per party (Joseph, 2007). In his own words;

The office of Dispute Resolution of the United States Department of Justice conducted a study involving 828 civil cases in which Assistant United States Attorneys participated in ADR over a five year period. The results demonstrated that ADR added value in four-fifths of the cases….The litigation cost savings averaged over $10,000….A broad study of 5000 cases by the Oregun Department of Justice of the relative benefits of mediation, unassisted negotiations, arbitration, trial, dispositive motions and other dispute resolution processes found that the costs of mediation were lower than cases resolved through any other means (Joseph, 2007; Jeffrey, 2000).

No doubt, the impact of this advantage will be more felt in the third world countries where a lot of people are already in financial difficulties. As already noted, in the Niger Delta region of Nigeria, for instance, poverty and its pervasiveness pose a serious danger to the people. The level of poverty, in contrast with the wealth generated from oil, has become one of the world's most disturbing example of a resource curse (Dennis and Eunice, 2013).Therefore, immediate scalable interventions are imperative in this region of which should include the use of ADR in the settlement of environmental conflicts.

Equality in the bargaining power

No doubt, one of the factors that undermine the efficacy of the judicial system in Nigeria is the perceived and real inequality in the bargaining power between the parties to oil pollution claims. This is more common in the Niger Delta region of Nigeria where the parties are most often the poverty-stricken villagers against the multinational oil companies like Shell, Mobil, Chevron, etc. that cause the most serious forms of oil pollution.

The severely malnourished resources of these victims

make them susceptible to the whims and caprices of these companies. These companies are elusive to deal with through legal mechanisms. This is largely due to the abundant resources at their disposal to neutralize attempts to control their behavior. They do everything possible to influence and obstruct the institution of legal proceedings against them. That has led to the victims' distrust of the legal system which they regard as biased and favourable to these companies (Tropill, 1991).

In some cases, when such companies are asked to pay fine as punishment, they pay it with ease while in other cases, they may decline. The case of *Shell Pet. Dev. Co. (Nig.) Ltd. v. Anaro*[liii] illustrates where the advantaged position of these multinational oil companies, perhaps due to the abundant resources and connections at their disposal, has subjected the wretched victims of pollution to a disadvantage. In this case, the victims whose means of survival have been spoilt by the activities of the oil companies have already obtained the judgment against the companies with N30.5m damages already awarded them by the Courts but backed by the then military government of Nigeria, the appellants nevertheless refused to pay the damages thereby leaving the victims without redress. The primary interest of the Federal Government of Nigeria is the flow of its equity shares in these companies which it relies on mainly to finance its budget and meet its foreign exchange needs while the priority of these companies, on the other hand, is to maximize profits for their shareholders. [liv] Any other interest is subsidiary.

The case of *Ogiale v. Shell Pet. Dev. Co. (Nig.) Co. Ltd*. [lv] is also instructive. Here the respondent's oil exploration and exploitation have led to the impoverishment of the plaintiffs' land which resulted in its infertility and low yields of crops such as maize, yam, cassava, etc. The court nevertheless dismissed their claim not because they could not call expert witnesses to establish their case but because such experts were not specifically skilled in the particular field in question. The plaintiffs' inability to procure the services of experts does not mean that such crops, obviously spoilt by the companies' activities, did not have economic value. Nevertheless, the plaintiffs went home without redress. Today, Nigerians have little faith in the government as an agent of conflict resolution.

Today, the ADR has become the weapon for not only enhancing the equality effects of bargaining but also assuaging the feelings of these indigent victims of pollution. This involves equalizing the power imbalances inherent in a dispute between an oil company and the victims of pollution by the greater participant and more consensual modes of conflict resolution. This may include;

(1) Granting the parties to the ADR independent choice of representation, not strictly lawyers;
(2) Ensuring that the adopted procedures are targeted at achieving fairness and equity rather than strict adherence to an unduly burdensome or technical procedure, and
(3) Continuing its role through the process of supervising implementation of any outcomes (Anna and Megan, 2004).[lvi]

With the ADR, an independent third party acceptable to both parties is engaged. This may involve pecuniary cost but offers the greatest assurance that the third party is impartial, skilled and best fit for that purpose. The ADR mechanisms are unique that they may be tailored to suit individual preferences. For the process to be successful, it has to involve all the principal stakeholders and not solely institutions that are established and controlled by the government. With this approach, it is certain that there should be more to be gained by these parties thereby making it the best alternative to litigation.

Jurisdictional convenience

With the ADR dispensation, the jurisdictional problems of litigation which especially frustrates environmental litigants are tackled. Access to justice is impaired where the courts are located far from the homes of those who need them.

Today, about 80% of environmental cases in Nigerian courts are lost particularly on appeal for want of courts' jurisdiction, the reason being that only the Federal High Courts, as against the State High Courts, have the exclusive jurisdiction to try almost all the environmental cases, [lvii] whereas the Federal High Courts are not enough to contain the number of environmental litigants vying for their attention. By the Federal High Court (Judicial Divisions) Notice of 2003, there are 24 Judicial Divisions of the Federal High Court in Nigeria – Abeokuta, Abuja, Akure, Asaba, Benin, Calabar, Enugu, Ibadan, Ilorin, Jos, Kaduna, Kano, Katsina, Lagos, Maiduguri, Makurdi, Osogbo, Owerri, Port Harcourt, Sokoto, Umuahia, Uyo, Yenegoa, and Yola (Asein, 2005).

In some states, there is only one Federal High Court while in some states none exists, for instance, there is no Federal High Court in Gombe and Yobe States, and only one in the whole of Rivers State. The after effect is the accumulation of cases which last for years in those courts without being determined. It is unlike the state High Courts that are scattered everywhere in the states and so more proximate and accessible to these litigants than the Federal High Courts. It is on account of this that led Justice Y. Belgore, 2003) (Belgore, 2003). to state that "the Federal High Court has not established a universal presence as the State High Courts".

Cases like *Shell Pet. Dev. Co. v. Isaiah*[lviii], *C.G.G. (Nig) Ltd v. Asaagbara*,[lix]*C.G.G. (Nig) Ltd v. Amaewhile*,[lx] and *C.G.G. (Nig.) Ltd v. Ogu*[lxi]are a few of those cases where the litigants instituted actions at the State High Courts instead of the Federal High Courts as courts of first instance only to be frustrated on appeal for want of

jurisdiction after many years of litigation. In *Shell Pet. Dev. Co. v. Isaiah, the Supreme Court stated* unequivocally that only the Federal High Court has jurisdiction on the matter once it is connected with mines, minerals, including oil fields, oil mining, geological surveys and natural gas.

One advantage of ADR is the ability to serve rural populations and geographically dispersed locations. The Lok Adalat system in India was able to reach a large part of the people because they were located in the villages. The Mediation Boards in Sri Lanka were well spread not only in the cities and towns but also in the rural areas. In China, more than one million people's mediation centres are located in the villages and serve parts of the population that cannot easily reach the existing courts.[lxii]Once a neutral third party is appointed to settle the conflict, the parties' access is guaranteed. The venue for the sitting of the mediation panel may be determined by the parties to the dispute.

CONCLUSION

We have discovered in this work that disputes which are inherent in business relationship are today resolved more by ADR process than by litigation. Indeed, Alternative Dispute Resolution (ADR) processes have been fully developed in other jurisdictions as a means of resolving environmental disputes. ADR has been effectively used to enhance public confidence in environmental decisions, facilitate technical inquiries and information exchanges, and to identify creative solutions to daunting problems. As earlier stated, ADR comprises, inter alia, arbitration, conciliation, mediation, negotiation, including the court-connected ADR mechanism. This work has established the criteria for determining which particular process fits a dispute.

We have weighed the pros and cons of these mechanisms vis-à-vis the judiciary. No doubt, the merits of the ADR outweigh the judicial process especially in view of the latter's adversarial and confrontational nature. I have no wish to create the impression that ADR does not have its shortcomings. It does. For instance, engaging an outside mediator who is acceptable to both parties may not only be expensive but also take a little time to put in place. Again, it is not all kinds of cases that can be settled through the ADR mechanism (Zimmer, 2011). Nevertheless, seeing the havoc ravaging the Niger Delta region of Nigeria and the inability of the traditional courts to address such is a justification for the ADR as a necessary option, especially considering that in most countries of the world where it was introduced, it has triumphed where the courts failed.

Considering its increasing popularity world over, it is imperative that we strive to have a background knowledge of arbitration theory and practice despite our professions, such as engineers, accountants, doctors, surveyors, among others, so that the practice of arbitration should not be an exclusive preserve of the practitioners in the field. Even the judges who handle environmental cases should have basic knowledge of arbitration. Fortunately, many universities especially in Europe have included in their programmes comprehensive arbitration curriculum with in-depth study of arbitration theory and exposure to practical aspects such as how to draft arbitral awards. In Nigeria, even though arbitration is of a recent origin, it is made optional in most of our universities. The aftereffect is that a lot of students forgo it in preference to other courses such as International Law, Oil and Gas Law, etc. This should not be so; rather it should be made a mandatory course.

CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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[i] 1 Kings 3:16-28.
[ii] Matters that can be settled by accord & satisfaction can be subject of ADR. Criminal matters, for eg. cannot be so but the exclusive preserve of the courts. Again, illegal contracts or void contracts or transactions cannot be determined through ADR process.
[iii](2002) 2 All ER 850
[iv] CPR 1.3
[v] (2001) EWCA Civ 1935. In this case, an appeal was dismissed with costs because the reason for turning down the ADR was considered proper. See also the case of *Halsey v. Milton Keynes General NHS Trust & Steel v. Joy & Halliday* (2004) where the court stated that it would not deny costs to a successful party unless it was shown that he acted unreasonably in turning down the ADR option.
[vi] Ugo C. Ilegbune, supra.
[vii] E.O.12, 988 61 Fed. Reg. 4729 (Feb. 7, 1996).
[viii] (1959) 1 All ER 1175.
[ix] As above
[x] (2002)2 All ER (comm.) 1041, (2002) EWHC 2059 (comm.)
[xi] (2014) 12 NWLR pt. 782 at 145.
[xii] Cap A18 LFN 2004.
[xiii] *Kano State Urban Dev. Board v. Fanz Construction Co. Ltd*, (1990)4 NWLR (pt.142) 1 SC
[xiv] (2014) 12 NWLR pt. 782, 141
[xv] *African Re Corp. v. AIM Consultancy Ltd.* (2004) 11 NWLR (Pt.884) 223 CA
[xvi] (1992)6 NWLR pt. 249, 561 at 574
[xvii] (1988)4 NWLR pt.90, 544
[xviii] Bryan A. Garner (ed.), 9th ed.
[xix] (1974) 2 RSLR 93.
[xx] (1999)NWLR part 593 1 SC
[xxi] Page 9 of the Law Report.
[xxii] See Military Base Closures: Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA, published by the National Service Centre for Environmental Publications (NSCEP) of the U.S. available at http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P1002 PGM.TXT? zy Action D = document and Client, (last accessed 5 August, 2010).
[xxiii] As above
[xxiv] Business Dictionary, available at http://www.businessdictionary.com/definition/conciliation.ht. (last accessed 24 September 2015).
[xxv] (1990)4 NWLR pt. 142 pp.183-184, paras H-D.
[xxvi] See the speech of the LMDC founder, Kehinde Aina, presented at the official launch of the LMDC on Tuesday 11, 2002 enumerating the purpose underlying its establishment. See also Prof. M.O.Ogungbe, n. 47 above 317.
[xxvii] FCT High Court of Justice, Zone 5, Wuse Abuja.
[xxviii] (1978)2 Lloyd's Rep 223. See also *Heavy Industries Ltd. v. Oil & National Gas Commission* (1994)1 Lloyd's Rep 45 at 57 where the court stated that the proper law of arbitration covered, among others, questions as to the validity of the arbitration agreement, the validity of the notice of arbitration, the constitution of the tribunal & the question whether an award lies within the jurisdiction of the arbitrator.
[xxix] Cap A18 LFN 2004
[xxx] Section 38(1) & (2) of the Act.
[xxxi] *C.G. de Geophysique v. Etuk* (2004) 1 NWLR (pt.853) 20 CA.
[xxxii] Section 63(1) of the EIA ACT.
[xxxiii] "Council" here means the Federal Environmental Protection Council established by the FEPA (now NESREA) Act. See section 63(1) EIA Act.
[xxxiv] See also sections 26, 35, 36 & 40 EIA Act.
[xxxv] (2001)8 NWLR pt. 716, 506 at 525-526.
[xxxvi] (2004) FWLR 1625 at 1653-1654.
[xxxvii] Greg. Nwakoby (supra). See also *Agu v. Ikewibe* (1991) 3 NWLR pt.180, 385.
[xxxviii] (1983)1 SC NLR 1.
[xxxix] (1989) 3 NWLR pt. 511 at 103
[xl] Joseph Nwazi, note 52 above 267.
[xli] The case of *Wakino v. Ade John* (1999)9 NWLR pt.619 p.403, for instance, took 11 years in the High Court alone due to series of adjournments.
[xlii] (1999) 3 NWLR pt.593 SC 1.
[xliii] (2005) 4 FWLR pt. 283 p.674.
[xliv] (1994) 9 NWLR pt. 366 p.51.
[xlv] (1994) 6 NWLR pt.350 p.258.
[xlvi] (1994) 5 NWLR pt.347 p.649.
[xlvii] RT Ako, n. 87 above
[xlviii] Order 1 Rule 2.
[xlix] Oyesola Animashaun & Kola O. Odeku, n.92 above 686.
[l] UNDP Niger Delta Human Development Report, 2006, referred to in Dennis Odigie & Eunice O. Erhiagbe, "The Impact of Environmental Pollution on Women & Children's Health in the Niger Delta" (2013)14 *University of Benin Law Journal*, 169.
[li] Suit No.BHC/30/93.
[lii] See also *Seismograph Services Ltd. v. Esiso Akporovo* (1974) NSCC 308, *Seismograph Services Ltd. v. Ogbeni* (1976)4 SC 85. The victims in these cases lost because of their inability to procure the services of seismologists to contradict that called by the defendant companies. See Joseph Nwazi, n.52 above 79.
[liii] (2001) FWLR pt. 50 p.181.
[liv] RT Ako, n. 87 above 60.
[lv] (1997)1 NWLR pt.480 p. 148.
[lvi] Anna Maitland & Megan Chapman, "Oil spills in the Niger Delta: remedy & recovery" (2004) *Oil Spill in the Delta: Proposals for an Effective Non-Judicial Grievance Mechanism*, 14.
[lvii] See section 251(1)(n) & Second Schedule Part 1 of the Constitution of the Federal Republic of Nigeria, 1999, as amended. See also section 7 of the Federal High Court Act, Cap F12 LFN 2004.

[lviii] (1997) 6 NWLR pt. 508, 238
[lix] (2001)1 NWLR pt. 693, 156.
[lx] (2006)3 NWLR pt. 967, 284
[lxi] (2005) 8 NWLR pt. 927, 367.
[lxii] n.92 above 686.