# ACCESS TO JUSTICE IN NIGERIAN ELECTRICITY SUPPLY INDUSTRY: TOWARDS ANEW JURISPRUDENCE IN DISPUTES RESOLUTION FRAMEWORK

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**Abstract**

Arbitration is pivotal inpromoting Lord Wolfs framework of access to justice m commercial disputes resolution. Disputes remain intractable in the Nigerian Electricity Supply Industry (NESI) due to NESI's complexity and proclivity for non-compliance with regulations.Previous studies on NESI disputes focused on lawsuits which often do not guarantee access to justice, compared toother alternatives.This paper, therefore, was designed to examine arbitration and access to justice in the NESI.The study explores the arbitration process's ability to resolve complex procedures such aselectricity disputes, streamline technicalities, and reduce the burden on traditional judicial system. The descriptive design was used involvingtwo-stage sampling. Two states from each ofNigeria's six geopolitical zones (Abia andAnambra; Edo and Rivers; Lagos and Oyo; Kwara and Nasarawa; Bauchi and Gombe; and Kano and Jigawa) were selected. A total of2,036 respondents were purposively selected based on willingness to participate and assumed understanding of the subject.Dataobtained through a structured questionnaire were content-analysedusing descriptive statistics.Most respondents (70.6%) rated arbitration as effectivedispute resolution option. Majority (76.5%) viewed arbitration as satisfying Lord Woolf s access to justice criteria except cost, which could be addressed using State's aid (82.6%).Specifically, electricity-operators (75.2%), lawyers (67.6%), mediators (62.8%), consumers (62.2%), arbitrators (62%), lawmakers (55.3%) and judges (50.9%) agreed that arbitration is expensive.The **paper concludes that arbitration is most suited for promoting access to justice, and recommends appropriate cost reduction policies and legislations to aid arbitration of NESI disputes.**

**Keywords:** Access to justice, Electricity disputes, Regulation compliance, Resolution strategy

**Word count:** 244

## 1.0 Introduction

### 1.1 Background to study

Dispute is an integral and natural aspect of life in a society. It is a by-product of contractual obligations, in that a disagreement between the parties is expected to emerge from any commercial relationship. Dispute occurs when a grievance-based argument is dismissed in full or in part.Dispute is a part oflife. Acrimony is endemic within a judicial system where efforts toward dispute resolution are thwarted by technicalities, delays and sundry matters leading to inaccessible justice. The common law traditionally views civil disputes as a contest between competing 'rights' that are protected by law. Rules and procedures are clearly defined and disputes are resolved in a manner that helps ensure fairness and finality. However, trial process is costly, time consuming and confrontational.

This research is concerned with the relationship between arbitration and access to justice as propounded by Lord Woolf, in respect of disputes arising from contractual relationship in the Nigerian electricity supply industry. The contractual relationship is vulnerable on account of abysmally poor electricity supply, inadequate metering system, disagreeable over-estimated bills, illegal connections and sundry electricity theft.

Contractual relationship falling apart is inevitable, due to instability. Options available to parties are limited to self-help, litigation and alternative disputes resolution (ADR) mechanisms. Self-help is antithetical to just resolution due to undeterminable outcome. With litigation previously precluded, only ADR is being looked upon to remedy dispute resolution. Arbitration is a form of ADR which has the advantage of its binding nature and its outcome being independent of disputing parties' preferences.

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Luc Boltanski and L. Thevenot. "The Sociology of Critical Capacity." *European Journal of Social Theory,* 2 (1999): 359- 377. https://doi.org/10.l l 77/136843199002003010.Accessed 13August2024.

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Luc Boltanski and L. Thevenot. "The Sociology of Critical Capacity." *European Journal of Social Theory,* 2 (1999): 359- 377. https://doi.org/10.l 177/136843199002003010.

Parliamentarian and Haward. "STEERING COMMITTEE REPORT." (2007).https://doi.org/l 0.2307/1372635.

Lord Harry Kenneth Woolf was Lord Chief Justice of England and Wales between 2000 and 2005. He was previously Master of the Rolls from 1996 until 2000

Litigation has become so wantonly adversarial that lawyers and clients alike must adopt 'extreme modes of warlike behaviour'. Demand for viable civil dispute resolution alternatives has skyrocketed in recent years. ADR is a collection of extra-judicial processes for equitably and efficiently resolving disputes. Fed up with the cost and slow pace of litigation, corporate and individual litigants are turning increasingly to various forms of ADR to help remedy their grievances.

Globally, there is an increasing preference for alternatives that enable disputants resolve their disputes effectively. These processes often called ADR have over time gained formal recognition and acceptance in most jurisdictions. Not only is ADR incorporated into the justice system by the idea of 'multi-door courthouses' in Nigeria, but there is also a growing awareness of ADR's role in fostering public security, social harmony, economic growth and political stability.

Black's Law Dictionary describes arbitration as a dispute settlement process comprising one or more impartial third parties that are commonly agreed by the parties involved and whose decision is binding. The parties must agree to arbitrate their dispute, and often distinguish between existing and future disputes. There are essentially two forms of arbitration agreement in respect of the dispute.

The Access to Justice Principle was widely recognized sequel to the overhaul of the English and Welsh Civil Justice System. Lord Justice Woolf, in his interim report on the issues of the criminal justice system, presented eight criteria to be followed in order to promote access to justice. According to Lord Woolf, when it comes to recourse to justice, a form of dispute settlement must satisfy these outlined criteria;

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Chulyoung Kim and Chansik Yoon. "Adversarial Bias and Court-Appointed Experts in Litigation." *LSN: Litigants & the Judiciary (Topic)* (2018). https://doi.org/10.2139/ssrn.3240472.Accessed I 3August2024.

S. 0. Ojo. 'Alternative Dispute Resolution (ADR): A Suitable Broad Based Dispute Resolution Model in Nigeria; Challenges and Prospects.' *International Journal of Conflict Management* (2023).https://doi.org/10.47941/ijcm.1253.Accessed 13August 2024.

W. Erlank. "Enforcement of Multi-Tiered Dispute Resolution Clauses." (2002). https://doi.org/10.2139/SSRN.l 49l 027.Accessed 11August 2024.

Akeredolu, A. 2011. Court-Connected Alternative Dispute Resolution in Nigeria. *Unib Law Journal Vol.JNo.l.* Ibadan.p.37

JO Gardner, B.A. Ed. 2009.*Black's Law Dictionary*. 9'"ed. U.S.A.West Publishing Co. pl 19 *(1843)*

II Blackaby, N., Partasides, C., Redfern, A., and Hunter M. 2009. *Redfern and Hunter on International Arbitration.* 5'"ed. New York..OUP. p 1-2

12 Civil Procedure Rules 1998

1. The dispute resolution mechanism must be just in its outcome
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5. Its users should fully comprehend it
6. It must be responsive to the needs of its users
7. It must be certain, as the existence of specific cases requires
8. It should be effective

### 1.2 Statement of the problem

Disputes in the electricity industry pose a number of obstacles for stakeholders, which could be especially severe considering their intrinsic uncertainty and the financial implications of development delays and disturbances. This becomes exacerbated when access to justice is characterized by delays and complexities.

TheNigerian Electricity Supply Industry (NESI) comprises a number of stakeholders with inherent potentials for tensions, conflicts and disputes. Although it has theNigerian Electricity Regulatory Commission (NERC) as the principal regulator, the supply sector of the industry has many players, sequel to its unbundling into generation, transmission and distribution sub-sectors. Whereas there are six Generation Companies (Gencos) and only one Transmission Company (Transco), there are eleven Distribution Companies (Discos). In all these interactions are potential disputes and conflict spots; Genco/Transco, Transco/Discos, Disco/Disco, Disco/Consumer, Genco/Consumer, etc. NERC is mandated by the Electric Power Sector Reform (EPSR) Act, 2005 to ensure an efficiently regulated electricity supply industry that satisfies Nigerians' yearnings for safe, sufficient and reliable electricity supply. However, NESI with private actors competing for profits in an epileptic state of power supply has led to suppliers and consumers contractual relationship under incessant disputes. Section 32(d) of the Electric Power Sector Reform Act (EPSRA), 2005 provides that rates paid by licensees (suppliers) must be fair to consumers and adequate to enable appropriate earnings for efficient operation.

[13] Stiegler S. and Loftis J. 2018. Energy Sector Construction Disputes. *The Guide to Construction Arbitration.* 2ed. S. Brekoulakis and D. Thomas. Eds. Law Business Research Ltd. London. Chapter 18: 218-225 p218.

The linkage between dispute resolution and access to justice has been recognized globally but in Nigeria this link is not given its deserved attention. When a dispute resolution mechanism does not guarantee access to justice, the dispute may become intractable leading to the loss of faith in the mechanism. Many consequences naturally attend loss of faith in resolution process including self-help and lack of impetus for investments in the electricity sector. The latter consequence mirrors the parlous state of the sector as needed investments in the industry remain elusive since the mechanism to resolve contractual disputes if they arise is ineffective.

The study critically examines the mechanisms of resolving the Nigerian electricity supply industry disputes, particularly using arbitration. This is because our court system is flooded with plethora of cases awaiting resolution.

### 1.1 Objective

The aim of this study is to determine appropriate dispute resolution mechanism for the Nigerian Electricity Supply Industry (NESI) disputes, by examining dispute resolution mechanisms available to the industry. Specifically, litigation, arbitration and mediation would be compared in relation to the Lord Justice Woolf s eight criteria for access to justice.

The basic objective of the study is to examine how arbitration is able to enhance and nurture access to justice in resolving electricity disputes in Nigeria, as described by Lord Woolf

## 2.0 Literature Review

### 2.1 Electricity Disputes and Arbitration

Literature on the resolution of electricity disputes through arbitration is limited. Even the few that exist dwell on international arbitration where parties in dispute belong to different nationalities. In general, international arbitration of energy disputes is popular because arbitration has certain advantages over litigation, particularly in an international project where neutrality is useful since national courts apply procedural rules that may be unfamiliar to foreign litigants.

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[14] S. 0. Ojo. 'Alternative Dispute Resolution (ADR): A Suitable Broad Based Dispute Resolution Model in Nigeria; Challenges and Prospects.' International Journal of Conflict Management (2023). https://doi.org/10.47941/ijcm.1253.Accessed 13August 2024.

[15] Rosso, D.J and Dorgan, C.S. 2002. Arbitration and dispute resolution in the electricity industry. *Power Economics .Dispute Resolution.* p.24-7

Rosso and Dorgan (2002) also stressed the importance of arbitration in that experts skilled in the technicalities of disputed matters are appointed as the arbitrator unlike in litigation where the judge may not have the technical knowledge of the issues. Confidentiality and flexibility are other considered merits arbitration has over litigation. In comparison to court action which is available to the media and prone to undue attention, arbitration respects the secrecy of arbitral procedure. The flexibility is seen in the place and language of arbitration which parties can agree upon. The authors equally considered some of the negatives of arbitration of energy disputes as to include certain costs that are peculiar to arbitration which are not applicable in litigation. Others are the fact that arbitrators generally do not have the power to order interim and conservative measures, but must rely on the courts' benevolence to intervene in preserving the res.

Stiegler and Loftis in *Energy Sector Construction Disputes* argue that disputes in the energy industry are typically linked to recurring trends of complicated and sometimes innovative technology, high terms of the contract and system integration thresholds. The authors contended that arbitration is popular in energy disputes because of the perceived finality of the dispute resolution process, since appeals are typically not allowed unless something can be shown to be basically wrong with the arbitration process. This is not the case with litigation where multiple levels of appeal afford disputants the opportunity of *'the second bites of the cherry'* with its consequential dragging of cases.

However, a limitation of arbitration is that not all matters are subject to arbitration. Gordon Kaiser in *Disputes involving regulated utilities* conceded this point ofpotential weakness of arbitration by insisting that not all disputes are subject to arbitration. Matters which have a

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[16] L. Trakman. "Confidentiality in International Commercial Arbitration." *Arbitration International,* 18 (2002): 1-18. https://doi.org/10.1023/A:l O I4277907158.

[17] M. El-Awa. "Privacy and Confidentiality in the Judicial System." (2016): 97-147. https://doi.org/10.1007/978-3-319-39122-9_3.Accessed 23August 2024.

[IS] C.R.Drahozal. "Arbitration Costs and ForumAccessibility:Empirical Evidence." *Consumer Lawelournal* (2011).

[19] Stiegler S. and Loftis J. 2018. Energy Sector Construction Disputes. *The Guide to Construction Arbitration.* 2ed. S. Brekoulakis andD. Thomas. Eds. Law Business Research Ltd. London. Chapter 18: 218-225 p219

substantial component of the public interest are usually excluded. The strongest examples of this would be criminal matters including fraud.

Beynon **K.**S in his 2005 thesis; *Dispute Resolution and Access to Justice with particular reference to the Construction Industry in the United Kingdom* noted that arbitration has the comparative advantage over litigation in terms of access to justice. Whether 'adversarial' and 'legalistic' methods of dispute resolution are comprehensible to the layperson is disputable.Litigation has failed to meet many of the eight criteria stipulated by Lord Wolf for meeting access to justice requirement in the United Kingdom. It is better imagined what would be the case if litigation is considered in Nigeria in view of her challenging development indices.

Access to justice is one of the targets of the United Nations (UN) Sustainable Development Goals; *Promote the rule of law at the national and international levels and ensure equal access to justice for all.* Dispute resolution mechanisms must be accessible, just, fair, affordable, expedient and efficient. All critical stakeholders in the justice system including disputed parties must ensure access to justice is jealously guarded. The justification for the financial world to invest in justice is that commercial earnings are consumed by the justice deficit. Legal problems have a negative knock-on effect on businesses. Negative impacts include loss of income, business disruption, incurring of additional costs. In extreme cases, legal problems were said to have led to businesses ceasing trading. Unfulfilled legal needs transform into costs borne by business, and by societal structure as a whole.

### 2.2 Theoretical framework

The theoretical framework of this research is based on the theory of access to justice, as Lord Justice Woolf advocated.

#### 2.2.1 Theory ofAccess to Justice

From time immemorial, the cornerstone of dispute resolution is to maintain justice between parties in dispute. Supreme Court of Canada ChiefJustice; Rt. Hon. Hon. Brian Dickson

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[20] Kaiser, G.E. 2018. Disputes involving regulated utilities. *The Guide to Energy Arbitration.* 3ed. J. Rowley, D. Bishop.and G. Kaiser. Eds. **Law Business Research Ltd. London. Chapter 9: 142-165. plSO**

[21] Beynon, K.S. 2005. Dispute Resolution and Access to Justice with particular reference to the Construction Industry in the United Kingdom. PhD. Thesis. Faculty of Law. University of Wales. Swansea. xix+337-8pp.

[22] UN Sustainable Development Goals, Target 16

[23] Organization for Economic Co-operation and Development. 2019. *Equal Access to Justice for Inclusive Growth: Putting People at the Centre.* p.35.

in 1998 lamented that legal proceedings have become increasingly lengthy and protracted in the civil and criminal courts at the level of trial and appeal. Two decades after the address was delivered by the Canadian Chief Justice, precisely on 25 October 2018, Nigerian Chief Justice, Justice Walter Onnoghen, CJN (as he then was) submitted that:

*You cannot distinguish the concept of justice from access to justice. The courts are plagued by lawsuits as at today cases have been booked at the Supreme Court till 2020. You cannot get a date for hearing on appeals emanating from the Court of Appeal until 2021. It is also critical that we take advantage of ADR tools, aside from the pressing need to change our legal procedure, as deferred justice is synonymous with denied justice.*

### 2.2.1 Lord Woolrs Theory of Access to Justice

Lord Woolf expounded certain criteria necessary in a dispute resolution mechanism if such mechanism must fulfill the requirement of access to justice. The criteria are eight and include;

1. The dispute resolution mechanism must be just in its outcome
2. The disputants must be fairly treated
3. It has to deliver the best procedures at a fair cost
4. Cases have to be treated at a fair speed
5. Its users should fully comprehend it
6. It must be responsive to the needs ofits users
7. It must be certain, as the existence of specific cases requires
8. It should be effective

## 2.3 Dispute Resolution in the Nigerian Electricity Supply Industry

This study looks at the dispute resolution mechanisms in place to manage and resolve disputes arising from NESI contracts, interactions and relationships. This research is also to consider the extant provisions of our laws on dispute resolution in the electricity sector in relation to several reforms that have taken place in the industry in recent years which saw to the privatization and later the unbundling of the industry.These were done in a bit to ensure abetter

" His Lordship Hon. Justice Walter Onnoghen at the 2018 Annual Conference of the Chartered Institute of Arbitrators (Nigeria Branch) held at the Transcorp Hilton Hotel, Abuja on Thursday 25th October 2018

and cheaper service delivery to the end users. This now brings tothe fore the question of how are disputes in the industry resolved especially when it has to do with the questions of quality of service delivery, customer satisfaction, billing systems and methodologies etc. bearing in mind the nature of the services being rendered by the industry which is essential in nature.

Electricity is one of the industries that offer essential services as it can be seen as the engine room of every modem economy. Electricity is so essential that almost nothing works without electricity. The aim, objective and purpose of electricity have moved beyond lightning and cooling. It can now be safely seen as one of the factors of production in our world today. The earlier a country admits this, the better for her. The industry has become the bedrock of every other industry. Due to the nature of services offered by the industry, it generates a lot of disputes especially relating to the nature of their relationship with their customers whether it is contractual or not. But the issue here is that most times people do not know how the matters can best be resolved. So, a lot of them are left unresolved as customers are left at the mercy of the electricity providers and Distribution Companies (Discos).

### 2.2 Dispute Resolution Options

Parties to disputes have basically three options apart from 'do nothing'. These are; go to court, explore alternative means of settlement apart from thecourt or resort to self-help. While self-help is primitive and often leads to miscarriage of justice, court option and alternative dispute resolution are basically employed to resolve disputes. The EPSRA makes provision for dispute settlement that may arise between or among the stakeholders in the industry either prior to or after the enactment of EPSRA. It is instructive to note that the wording of the aforementioned provision (*...any cause of action or proceeding ... )* implies either litigation or ADR cause of action or proceedings.

#### 2.2.1 Litigation

A legal problem is commonly taken to court for adjudication in the case of a dispute with another, or any corporation, company, orgovernmental body. Ideally,judgesrely on expert

[25] M. Lenzen. "Current State of Development of Electricity-Generating Technologies: A Literature Review." *Energies,* 3 (2010): 1-130. https://doi.org/10.3390/EN3030462.Accessed 19August 2024.

[26] D. Novosel. "More Power to the Future: lndustryTrends in Electrical Powerand Energy [Leader's Corner]." *IEEEPowerandEnergyMagazine(2018).https://doi.org/10.1109/MPE.2018.2842338.Accessed31August2024.*

[21] Section 107(1),EPSRA2005

advice on technical issues such as energy, as the legal issues come under aregular judge's authority. Practice has, however, demonstrated instances where the distinctions of these two groups overlap. In these situations, judges can find it impossible to refrain from taking a stance on technical problems, and vice versa.
Nevertheless, there is growing agreement that litigation has pitfalls in settling technical conflicts. Litigation is often costly, because it is mostly beyond the financial resources of the individuals and MSMEs (Micro, Small and Medium Enterprises). It is quite time consuming just to litigate. Cases in the courts drag on for several years until it is mostly abandoned. For instance in the case of Pillars (Nig) Ltd V. Desbordes& Anor which was started in 1993 and lasted for twenty eight years! Besides these issues, litigation gives rise to adversarial relations. Such acrimonious tendencies often occur even if the disputants settle out of court. Whereas, cases abound in other jurisdictions, particularly in western countries where couples for instance, go to court for judicial pronouncements on contending issues, in our jurisdiction, litigation connotes severance of good relations.

### 2.2.1 Alternative Dispute Resolution (ADR)

Mechanisms for alternative dispute resolution (ADR) including negotiation, mediation and arbitration are popular and traditionally used to settle disputes amicably, especially in commercial and other civil matters. Apart from the slow pace, litigation's rigid nature makes it unappealing to resolve certain disputes where vindication is not animportant consideration. SomeADR mechanisms include;

#### 2.2.1.1 Negotiation

Negotiation was defined as dialogue for persuasive purposes; the pre-eminent mode of settlement of disputes. Negotiation in its broadest sense can be seen as the mechanism by which parties engage in order to manage their economic interests and private lives by finding consensus and reconciling areas of conflict.

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[28] (2021) LLJR-SC

[29] Roxana Topor and A. Bejan. "ALTERNATIVE METHODS TO RESOLVE CIVIL AND COMMERCIAL DISPUTES." *Journal of Academic Research in Economics,* 9(2017): 107-121.

[30] Goldberg, S.B. 1992. Dispute Resolution: Negotiation and Mediation and other processes, 2"dedn. Boston. Little Brown, p.37

### 2.2.1.2 Mediation

Mediation means 'negotiation undertaken with third party assistance'. Unlike an arbitrator or judge, a mediator does not have the authority to force a verdict on the disputing parties. Mediation is a collaborative mechanism where the parties to a dispute indulge in the aid of a neutral third party who works as a mediator in the dispute.

### 2.2.1.1 Arbitration

Arbitration is a dispute resolution process comprising one or more impartial persons where the disputing sides having given their consent are bound by his or their decision. Therefore, arbitration is a procedure, subject to legislative restrictions, under which specific disputes are determined by a private tribunal chosen by or for the parties in dispute. Arbitration has the legal authority and, generally speaking, an arbitrator's ruling, considered as an award, will be upheld in court as much as a judicial judgment. The advantages of arbitration compared to other ADR processes lie in its finality and its binding nature. Arbitration's obvious disadvantage is its procedural nature which is similar to litigation. Of all ADR forms, arbitration is the least flexible and the most regulated process.

### 2.2.2 Mediation compared with Arbitration

Aside from negotiation that is still between the disputing parties without an impartial third party, mediation and arbitration are undeniably the two most common methods for settling private disputes.

### 2.2.2.1 Similarities

Both mechanisms are voluntary in the sense that the parties are free to engage them as options for dispute resolution, except in the case of involuntary, non-binding, court-annexed arbitration or mediation. In fact, all procedures are based on the appointment of a neutral third party who listens to the parties in question as they make their case.

### 2.2.2.2 Contrasts

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Ibid,p.103

[32] Brown, H. &Mariott, A. 1992. ADR Principles and Practice. London. Sweet and Maxwell, p.108

[33] Mutual Life & General Insurance Ltd. v. Iheme cited in (20I4) I NWLR (pt.1389) 671

[34] Crowther, H. 1998. Introduction toArbitration. London. LLP. p.1

The roles and expectations of a third party differ in both mechanisms. While the third party who serves as an arbitrator is the arbitration decision-maker, same cannot be said of the third party in a mediation called a mediator who is no more than a facilitator. Second, the arbitration decision, called an award, is binding subject to challenge on specific grounds; the decision made through mediation is simply an agreement and can only be enforced as a contract.

Third, the level of formality that mediation requires is typically flexible and non-structured. There are nonetheless procedural rules and substantive law by which parties are required in an arbitration, albeit less rigorous in procedural terms than litigations. Fourth, in terms of the essence of the proceedings, while there is unbounded presentation of facts, claims and desires in mediation, there is ample time for each side to present proofand claims in favor of the position in arbitration. Fifth, the resolution of mediation is mutually agreed by parties, whereas in arbitration, the result is typically a principled judgment (award) backed by reasoned opinion of the third party except in a consent award. Lastly,arbitration procedure may become public when judicial review is sought. However, the procedure in mediation remains private.

### 2.2.1 Criticisms ofArbitration

For all cases, arbitration is still not perfect. The arbitrator cannot force a third party to enter, or consolidate a number of related arbitration proceedings. Delays can occur before the appointment of arbitrator(s). Since the tribunal lack coercive powers, uncooperative disputants may frustrate each other and may make it more expensive than litigation. Apart from these, arbitration cannot be deployed to resolve certain disputes, for instance questions of interpretations of statutes. Often, where an emergency order is necessary to stop damage, due to the coercive powers of state and capacity to issue injunctions, court cases are a safer choice. Likewise, where the parties wish to establish a precedent that would be equally binding in the event of similar verifiable events in the future, litigation would be preferred to arbitration.

### 2.2.2 Limitations ofArbitration Process

Although arbitration is a useful mechanism in dispute resolution, however, the process is not aone-shop for all disputes.The biggest drawback in arbitration is that, like a legal case, a one-time cash settlement is the most possible and realistic result that can be achieved. Much like courts,noarbitrator will likely issue an award requiring any long-term supervisory function.

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[35] S. Jarvin. "The sources and limits of the arbitrator's powers." *Arbitration International*, 2 (1986): 140-163. https://doi.org/10.1093/ARBITRATION/2.2.140.

Therefore, unless one deals with a very narrow issue as may arise under an existing remediation or compensation agreement, arbitration may have the same disadvantages as a court case. Also, some features of arbitration constitute a limitation to its effectiveness in dispute resolution.

### 2.2.1 Arbitration Process in Nigeria

Consistent with the primordial origin of arbitration in virtually all civilizations, arbitration was known as a judicial process in resolving disputes in almost all tribes indigenous to the present Nigeria well before the advent of colonial rule. According to Hon. Justice EphraimAkpata, JSC:

*Mediation or arbitration is not a new phenomenon in Nigeria, particularly with regard to the ancient Benin Empire. Arbitration or mediation was used for resolving conflicts because of their emphasis on moral persuasion and their ability to maintain harmony.*

However, the historical arbitration known in the territories that later became Nigeria was largely due to the beliefs and practices of such communities which are not only varied but also uncertain. Upon the complete colonization and bundling of the various communities into a country and its consequence naming as Nigeria, theformal arbitration statute; the arbitration ordinance was promulgated on the last day of 1914 for Nigeria. The ordinance was influenced by 1889 BritishArbitrationAct.

Arbitration in Nigeria has evolved immensely over time, in particular with the passage of the Arbitration and Conciliation Act which formally embraced international commercial arbitration. Although resolution of electricity disputes through arbitration is still unpopular domestically in comparison with commercial and other disputes, it is nevertheless encouraging to note that arbitration is very popular in international technical disputesresolution. Interestingly too, the regulator of the Nigerian electricity supply industry provides for arbitration as an appropriate tool for the settlement of disputes between consumers and operators.

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[36] Fisayo Samuel Falusi, James Damilola Owoeye and Aminat Abiodun Olabamiji. "Traditional Arbitration Institutions and Conflict Resolution Approaches in Nigeria: The Efficiency and Rhetorical Fallacy." *British Journal of Multidisciplinary and Advanced Studies* (2023). https://doi.org/10.37745/bjmas.2022.0295. Accessed 14August 2024.

[37] Akpata, E.O.I. 1997. The Nigerian Arbitration Law in Focus. Lagos. WABPL. p.l Promulgated as Arbitration and Conciliation Decree No. 11 of March 14, 1988.

### 3.0 Situating the Study within Quantitative Method

A review of the concepts of the two major methodological paradigms used in social sciences found that the emphasis and its goals are very distinct. While, qualitative approach focuses on word meaning and it is flexible with the aim of understanding why a phenomenon exists within a specified context, quantitative paradigm is based on numerical analysis which is highly structured and controlled process targeted at generalization as an objective.This study employs quantitative technique.

### 3.3.1 Data Collection Method

Data were collected based on random sampling and organized data collection instruments that match diverse interactions into specified categories of responses.

### 3.3.2 Instrument Development

It was decided to retain the use of the questionnaire to collect data for this study. The instrument indicated 31 questions. Only Google form questionnaire was employed. After almost a month of low response from the online questionnaire, the researcher had to produce a hard copy of the questionnaire for the study area.

### 3.3.3 Selection of the Participants

Respondents from at least two states in each of the six geopolitical zones in Nigeria were recruited. The states include; Abia and Anambra (SE); Edo and Rivers (SS); Lagos and Oyo(SW); Kwara and Nassarawa (NC), Bauchi and Gombe (NE); and Kano and Jigawa (NW). This reveals 6 states each in both the South and the North respectively. One hundred and fifty 150 questionnaires were distributed in each of the 12 selected states capitals. Questionnaires were specifically administered in the state capitals within the following premises; court, law offices,federal/state government secretariat and agencies, and universities.

### 4.0 Data Presentation,Analysis and Discussion of Findings

The data analysis and interpretation of results commences by first presenting the socio-demographic characteristics of the participants

### 3.4.1 Socio-demographic analysis of participants

There are 2,036 respondents including 511 participants through online questionnaire and 1,525 who participated from 12 states inthe six geopolitical zones ofNigeriabyadministering

the questionnaire physically. The socio-demographic characteristics obtained from the participants include; the participant's distribution in terms of their status or profession, the age of the participants, their gender, and their educational qualifications.

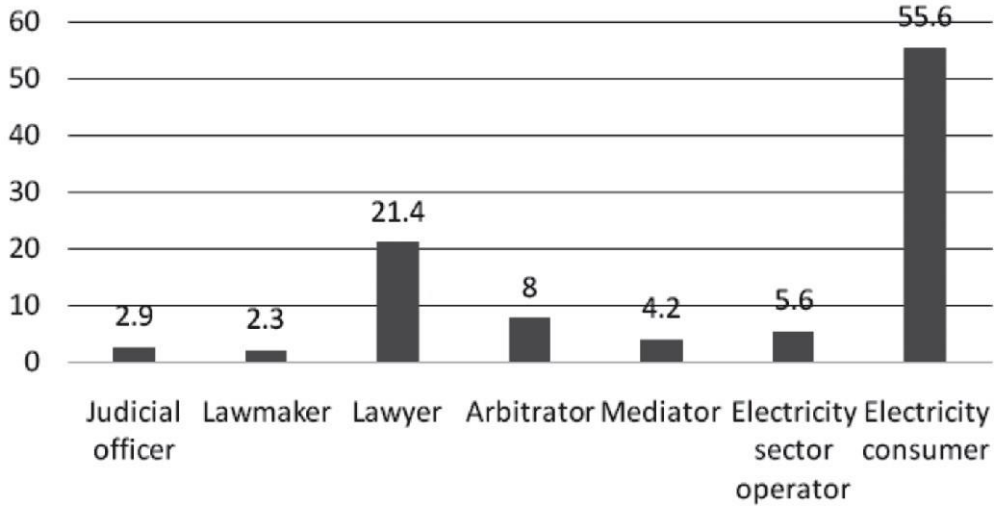


**Figure 4.1:Stakeholders involved in this study as respondents**

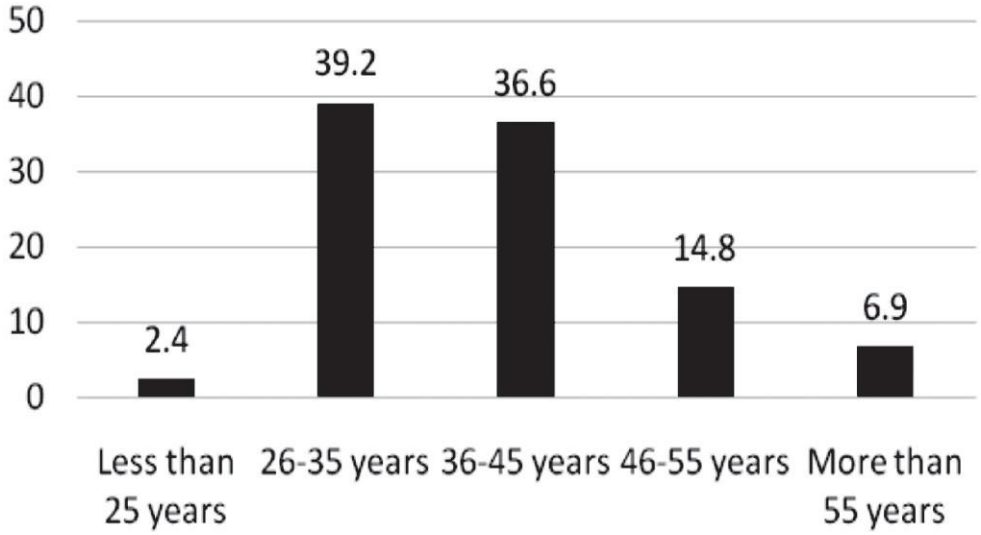


**Figure 4.2:Respondents' age group**

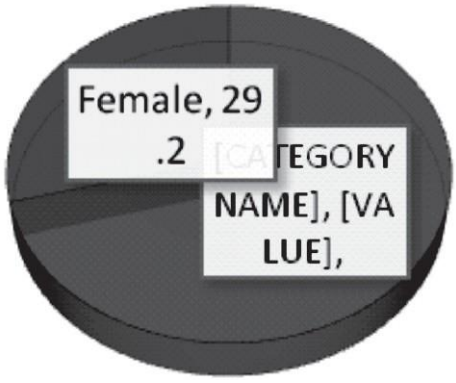


Figure 4.3Respondents' gender

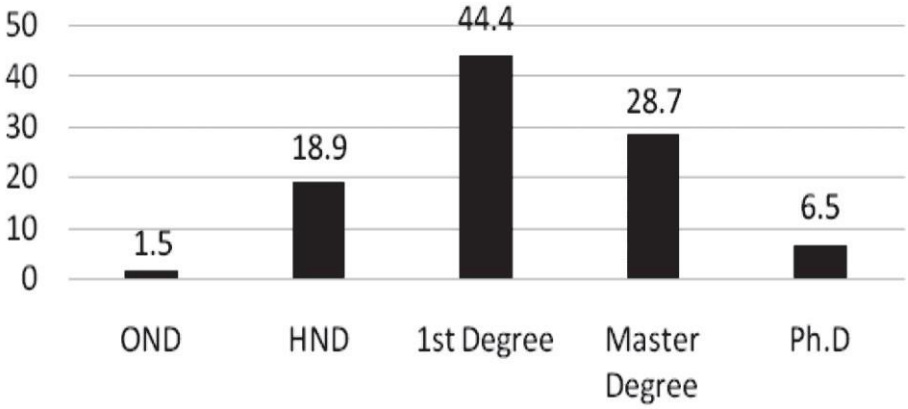


Figure4.4: Respondents' educational qualification

4.1 Examining how arbitration is able to enhance and nurture access to justice in resolving electricity disputes in Nigeria, as described by Lord Woolf

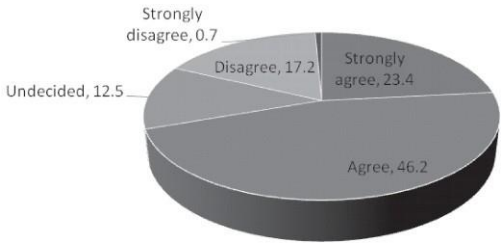


Figure 4.12:Respondents' perception on the need for the umpires to be versed in technical details

4.1. lGovernment aid in support of arbitration

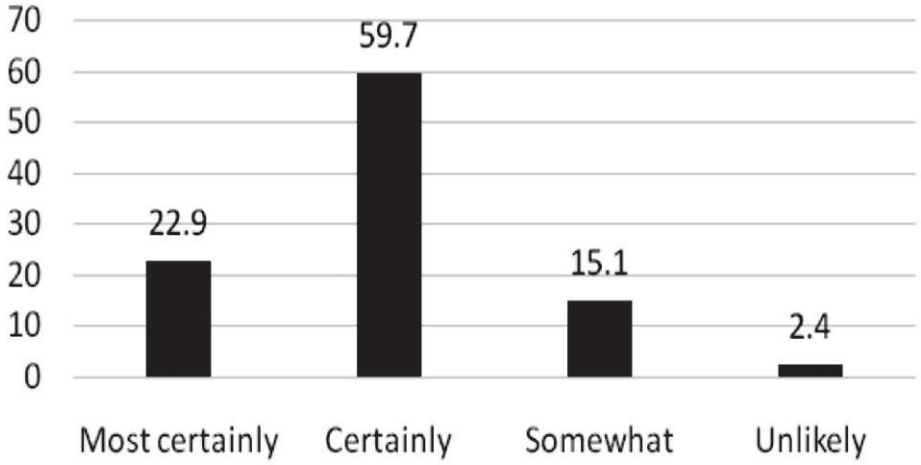


Figure4.13: Respondents' opinion on government support in aid of electricity disputes arbitration

4.1.1 Mandating Discos to provide venue for arbitration of disputes between them and their consumers

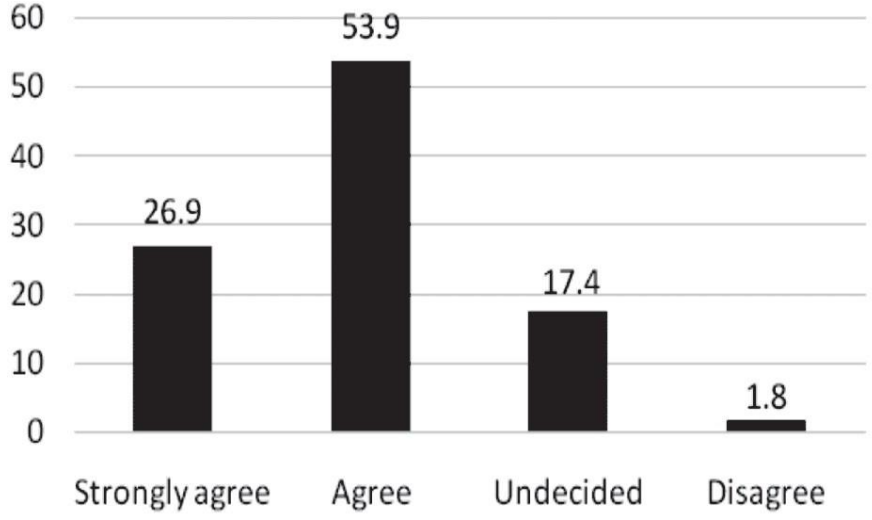

**Fig. 4.14: Respondents' opinion on Discos providing venue for electricity disputes arbitration**

### 4.3 Findings

Having highlighted results, it is pertinent to tabulate the findings with existing literature and see how they confirm and then corroborate or differ. Table 4.1 shows the summary of the results with existing literature;

**Table 4.1: Tabulation of Findings with existing Literature**

| Objective | Findings | Existing Literature |
|---|---|---|
| examine how arbitration is able to enhance and nurture access to justice in resolving electricity disputes in Nigeria, as described by Lord Woolf | Research findings indicate that arbitration substantially satisfies all the criteria stipulated by Lord Woolf for access to justice except the reasonable cost criterion. Research findings show that if State aids is granted to arbitration, it will make arbitration affordable to NESI stakeholders. | Findings corroborate existing literature that arbitration is capable of resolving electricity disputes, though participants are worried on costs of arbitration. The concern strengthens the positionin some literatures that suggest the use of mediation first for small amount disputes, more so for disputes involving Discos and individual consumers |

### 4.3 Linking findings to the theoretical framework

The theoretical framework of this research is the theory of access to justice as propounded by Lord Woolf. It is apposite to have an appraisal of the research findings to the requirements stipulated as conditions precedent by the theoretical framework. They are;

#### 4.4.1 The dispute resolution mechanism must be just in its outcome

An unjust outcome of a dispute resolution is also an enabler for self-help onone hand and impunity on the other hand. Both the empirical and theoretical data suggest that arbitration encourages just outcome. This can bepartly attributed to the fact that inmost cases an arbitrator is chosen by the parties based on his knowledge, competence, independence and impartiality. Unlike in litigation where cases are assigned to judges, arbitration entails choosing the umpires

with the parties' consent. The data shows that arbitration confers the highest rate of justice in terms ofthe user satisfaction. Hence, arbitration is compliant with this requirement.

### 4.4.2 The disputants must be fairly treated

Arbitration, mediation and litigation were perceived as enjoining fair treatment of parties. Legal representations made by lawyers, though optional, can be seen to confer an undue advantage over parties who are not represented by lawyers. In spite of this challenge, there is an in-built safeguard in arbitration where the umpire can use his powers to ensure procedural fairness.Therefore, arbitration is significantly compliant with the requirement of fair treatment of parties more than mediation and much more than litigation.

### 4.4.3 It has to deliver the best procedures at fair cost

Both arbitration and litigation were found to be expensive, but mediation is cheapest of the three, thoughexpensive in its own right as a private dispute resolution mechanism. The heightened cost of arbitration is attributable to legal representation cost and the cost of Arbitration which includes arbitrators' fees and cost of venue hire. The failure to meet the requirement can be cured with the recommendation of state funding and other alternatives recommended in this study. These include legal expense insurance, electricity supply industry specific dispute resolution pool, and introduction of a capping system.

### 4.4.4 Cases have to be treated at a fair speed

Arbitration is very efficient mechanism in terms of speed. Court cases are notorious for snail speed andan unwilling party in other ADR processes may frustrate the speed by not agreeing to resolve expeditiously. Therefore, arbitration meets Woolf s requirement on speed.

### 4.4.5 Its users should fully comprehend it

A dispute resolution mechanism that is well understood by disputants goes a long way in endearing the process and subsequently the outcome. Arbitration and mediation share the characteristic of ADR which is the comprehensibility of its procedure. Although, arbitration is slightly procedural but it is nonetheless flexible and depends largely on the parties' preferences as agreed to by parties in dispute. Arbitration, therefore, satisfies this requirement.

### 4.4.6 It must be responsive to the needs ofits users

A formalized and regimented procedure of dispute resolution process cannot validly satisfy responsiveness to the needs of its users. It is also questionable whether formalistic and legalistic procedure is flexible to the wishes of disputants. One of the strengths of ADR to which both arbitration and mediation belong is the flexible nature of its processes. Litigation is a formalistic and legalistic procedure which is inflexible to the wishes of disputants because it is solely based on the ability to determine a dispute according to the legal principle of rights and obligations. Therefore, arbitration meets the responsiveness criterion ofLord Woolf.

**4.4.4** It **must be certain, as the existence of specific cases requires**

Litigation is binding in Nigeria but the rate of appeal of judgment from the courtroom is also very high. Stay of execution pending appeal is very high and this questionsthe binding nature of court judgment. Mediation is even worse because the outcome of mediation is at best a contract between parties which depends on the good faith on the part of the agreed parties. However, arbitration has a comparative advantage over both litigation and mediation in the sense that its outcome has a very high settlement rate whereas the level of appeal is minimal. So, arbitration is compliant with the requirement of certainty and thus meets the criterion ofLord Woolf.

**4.4.5** It **should be effective**

Arbitration, mediation and litigation are effective in their various ways in dispute resolution. As the empirical data shows, the three mechanisms have been used to resolve disputes and therefore all satisfy the requirements of Lord Woolf. However, it is arguable to conclude that arbitration is the most efficient of these means of dispute resolution and therefore the most effective. In essence, arbitration meets the eighth requirement of access to justice by Lord Woolf.

**4.0 The future of arbitration on dispute resolution in the NESI**

Whereas litigation facilitates certainty in the resolution of dispute based on the concept of precedent, it has not fulfilled expedient resolution nor does it facilitate cost-effective procedure. However, the two greatest ills oflitigation happen to be some of the strongest points of arbitration. Notwithstanding the widely held opinion that arbitration is not cost-effective, it is contrary more so when the quantum of claims is high, the concept of *'costs follow the events:*

and the cost-benefit analysis of arbitration are considered.Arbitration process is prima facie seen to enable a fair procedure, a just result and in fact guarantees certainty.
The more legal resources a party deploys, the more the likelihood of obtaining favourable outcome. In Nigeria, where a party to a dispute is unable to afford the cost of legal representation, it chooses to abandon a valid claim or avoids a valid defence to unsubstantiated claims. In either case, access to justice is denied and fuels resort to self-help with its consequences. State aid ofarbitral process would be recommended as obtained from the empirical data. Other proposed aids include legal expense insurance, electricity supply industry specific (industry-specific) dispute resolution pool, andintroduction of a capping system.

Two types oflegal expense insurance are available to businesses depending on whether it is prior to the dispute or after the dispute arose. Prior to dispute legal insurance is purchased for an annual fee in form of premium to an insurance firm which underwrite legal services and representation in arbitration. However, due to the litigious attitude of Nigerians, the insurance should only be available for arbitration and there should be a reasonable chance of success clause. The policy may be adapted by making the premium a token in built in the electricity bill.

Another alternative that can be considered for funding of cost of arbitration is NESI dispute resolution pool. This scheme can be made robust with adequate funding. For instance, it is proposed that charging a token from Discos' profit before tax, for instance 0.5%, as Disputes Resolution Fund.This will increase access to justice through arbitration as stakeholders in the industry can be supported to resolve their disputes. This will discourage resort to self-help and also disincentive parties who use their financial strength to infringe onothers' rights.

The third alternative is to cap the legal cost expended on the resolution of electricity disputes through arbitration. Under this scheme, a capping system can be introduced by the regulator in such a way that the expense of each party is capped within the percentage of the other. Both parties would be mandated to submit their estimates for legal cost. If either or both parties exceed the cost, the parties would have to agree on an acceptable tolerance.Once the financial hurdle of instituting or defendingarbitral process is overcome, arbitration will provide a veritable platform to bring access to justice to the doorsteps of NESI stakeholders. The future of arbitration of electricity disputes is very bright in Nigeria.

## 4.0 Summary, Conclusion and Recommendations

### 6.1 Summary of Key Findings

The study generated some findings that were in tandem with literature on the subject-matter.

#### 6.1.1 Findings from Study Objective

Objective: Examine how arbitration is able to enhance and nurture access to justice in resolving electricity disputes in Nigeria, as described by Lord Woolf

Key findings: First,Arbitration substantially satisfies all the criteria stipulated by Lord Woolf for access to justice except the reasonable cost criterion. Second,there existsa preference for umpires who are versed in electricity technicalities apart from the knowledge of law which is better guaranteed with arbitration where parties can choose the umpire. Third, mediation can be employed where the claims are small.

### 6.2 Implications ofresearch findings

The research findings have profound findings for dispute resolution in the Nigerian electricity supply industry. The findings are also useful for lawmakers, policymakers, administrators, investors, consumers and other stakeholders. The insights that flow from this study's findings would afford the aforementioned stakeholders implement a more practical and result-driven dispute resolution option that will satisfy the yearnings of parties concerned and invariably enhance access to justice. The Nigerian electricity supply industry will be a better enabler of development if its dispute resolution is structured as to ensure access to justice as propounded by Lord Woolf. This research in its findings is able to establish the suitability of arbitration for resolution of electricity disputes flowing from these reasons.

It is also an implication of the findings of this research that mediation may be employed to resolve some of the NESI disputes. Mediation is less complex than arbitration and can in fact be better suited for simple disputes especially involving small amount of money, for instance, in claims and counter claims between distribution company (Disco) and individual consumers. However, mediation cannot possibly be a better substitute for arbitration in most of the electricity dispute cases. A neutral third party in mediation only facilitates the process, unlike an arbitrator who gives a binding opinion called an award upon hearing both parties. Also, the collaborative characteristic of mediation where parties must agree on the outcome can be abused by an unwilling party whereas decision of arbitration does not require consent of parties.

### 6.3 Recommendations

Specific recommendations from this study include;

1. The Nigerian Electricity Supply Industry (NESI) should be regulated in such a way that stakeholders are mandated to explore the use of ADR and arbitration in particular to resolve NESI disputes. Legislations encouraging the use of negotiation or mediation and if it fails, arbitration is recommended to be enacted by the legislature.
2. Dispute resolution guideline by the Nigerian Electricity Regulatory Commission (NERC) needs substantial review to achieve the goal of ADR incorporated in the Electricity Sector Power Reform (ESPR) Act 2005 and subsidiary legislation like the Market Rules.
3. The Federal Ministry of Justice and States Ministries of Justice should make available venues in the Federal Capital Territory and state capitals for the use of arbitration by NESI stakeholders who are in disputes over electricity matters, especially individual customers and Micro, Small and Medium Enterprises (SMEs) to defray venue cost of arbitration.
4. There is a need for state aid of arbitral process through provision of free legal representation to indigent consumers through the Legal Aid Council. It is therefore recommended that lawyers versed in arbitration mechanism(s) from the Legal Aid Council should provide *pro bona* legal services to deserving NESI stakeholders. This would assist to reduce the cost of arbitration of electricity disputes.
5. Itis equally instructive that this study recommends other support alternatives which are capable of alleviating the financial burden associated with pursuing or defending claims in an arbitral process. These include legal expense insurance, electricity supply industry specific dispute resolution pool, and introduction of a capping system. These alternatives have been highlighted earlier.

Although there are two valuation techniques typically adopted by an arbitral tribunal to determine quantum of compensation in arbitration proceedings; Discounted Cash Flow (DCF) and Fair Market Value (FMV), however this article recommends institution ofFMV for NESI disputes because of the price volatility and public interest concerns associated with electricity disputes. The DCF approach was employed in the celebrated arbitration case of *Process and Industrial Development (P&ID) Ltd v. Federal Republic of Nigeria.* The DCF method has been found to be inappropriate for valuing investment

[39] UNCITRALAward (January 2017)

at an early stage due to insufficient data on which the projections may be based. In the instant case, P&ID was awarded compensation of US$6.6billion, though the claimant's investment in the repudiated gas supply agreement was less than US$40million. However, the FMV approach would only put the injured party back to the economic situation in which it would have been but for the wrongful action of the other party.

### 4.1 Conclusion

Arbitration of electricity disputes in Nigeria would enhance access to justice in NESI. However, there is urgent need to address the inadequacy of membership of the dispute resolution tribunal. Similar to what operates in the telecommunications industry where many accredited dispute resolution experts are listed as panel members. In essence, the study indicates that ADR will be best suited for effective electricity disputes resolution in a setting where access to justice is limited. This study recommends the use of mediation first for disputes with small claims, though arbitration is found to be better suited for most cases.

It is hoped that the call for arbitration of electricity disputes in Nigeriais heeded by the government, lawmakers, policymakers, NERC and other stakeholders, then the Nigerian electricity supply industry would witness the much-awaited reform.