

REIMAGINING CONCILIATION PROVISIONS UNDER THE ARBITRATION AND MEDIATION ACT 2023

Omoniyi Bukola Akinola*

Abstract

This paper examined the nature, historical and theoretical foundations, and statutory regulation of conciliation under the repealed 1988 Act. It considered the implications of its replacement with mediation under the Arbitration and Mediation Act 2023. It argued that the legislative shift should not be understood as rendering conciliatory practice unlawful or practically extinct; rather, it reflects the international movement towards mediation as an umbrella term for consensual third-party-assisted settlement processes. The paper concludes that the most satisfactory approach is to recognize mediation under the 2023 Act as sufficiently broad to accommodate conciliatory techniques while preserving conciliation as a professional and institutional practice where parties choose to use it. It recommends institutional standardization, professional training, incorporation of conciliatory options into ADR rules and, where necessary, legislative amendment or subsidiary regulation to eliminate uncertainty and strengthen Nigeria's position as a modern center for domestic and international commercial dispute resolution.

* LLB (Hons), LL.M, PhD, Barrister at Law and Professor of Law, Faculty of Law, Baze University, Abuja. Former Dean of Law, Faculty of Law, Redeemer's University, Ede, Osun State, Nigeria. Former Dean of Law, School of Law, Kampala International University, Uganda, and Former Deputy Director of Academics, Nigerian Law School. Email Address: profobakinola77@gmail.com, omoniyi.akinola@bazeuniversity.edu.ng

Keywords: Conciliation, Alternative Dispute Resolution; Arbitration and Mediation Act 2023; UNCITRAL; Singapore Convention; Settlement Agreements

1.0 INTRODUCTION

Conciliation is one of the oldest forms of consensual dispute resolution. Before the emergence of modern courts, communities relied upon elders, chiefs, family heads, religious leaders and other respected persons to assist disputants in restoring peace. The process was ordinarily directed not merely at declaring a winner, but at restoring social equilibrium. In modern commercial practice, conciliation developed into a more structured process involving a neutral third party who assists parties to negotiate a mutually acceptable settlement.

The *Arbitration and Mediation Act 2023* fundamentally altered this structure. It repealed the former legislation and introduced a modern framework for arbitration and mediation. Part II of the Act regulates mediation and provides detailed rules for its practice and procedure, giving it a new status in terms of settlement agreements and the application of the Singapore Convention on Mediation.

The legislative change creates a significant question: has conciliation been abolished, or has it merely been absorbed into the broader statutory concept of mediation? The answer is important because legal terminology can affect the appointment and professional identity of neutrals, the applicable procedural rules, the interpretation of settlement agreements and the ability of parties and institutions to rely on established conciliatory practices.

This paper examines the legal framework governing conciliation in Nigeria, with particular emphasis on the Arbitration and Mediation Act 2023. It analyses the concept, historical development, theoretical foundations and legal regulation of conciliation, as well as its treatment under the repealed Arbitration and Conciliation Act 1988. The paper further considers relevant international instruments, including the UNCITRAL Conciliation Rules, the UNCITRAL Model Law on International Commercial Conciliation, and comparative developments relating to consensual dispute resolution.

This paper further intends to examine whether and to what extent conciliation is recognised and incorporated within the *Arbitration and Mediation Act 2023*, particularly in light of the Act's definition of mediation as including a process referred to as "conciliation." The latter part of the paper evaluates the adequacy of the legal framework for conciliation in promoting effective, flexible and amicable dispute resolution in Nigeria.

2.0 CONCEPTUAL CLARIFICATIONS

2.1 Alternative dispute resolution

Alternative dispute resolution is a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.¹ Alternative Dispute Resolution (ADR) refers to a range of processes through which disputes are resolved outside the formal court system. It encompasses consensual and adjudicatory mechanisms designed to provide parties with quicker, less expensive, confidential, and more flexible means of

¹ Bryan A Garner (ed), *Black's Law Dictionary* (12th edn, Thomson Reuters 2024) 95 (definition of 'Alternative Dispute Resolution').

resolving disputes. ADR commonly includes negotiation, mediation, conciliation, arbitration, and other hybrid dispute resolution processes².

In Nigeria, ADR has received statutory recognition under the *Arbitration and Mediation Act 2023*, which establishes a modern legal framework for arbitration and mediation while encouraging the amicable settlement of disputes. ADR has also become an integral part of the Nigerian justice system through the establishment of Multi-Door Courthouses and court-connected ADR programmes aimed at reducing court congestion and promoting access to justice.

2.2 Conciliation

In the expansive field of conflict resolution, conciliation stands as a pivotal and sophisticated mechanism designed to address the multifaceted needs and interests of parties engaged in a dispute. This process is fundamentally defined by the intervention of a neutral, third-party facilitator being the conciliator who assists the opposing sides in reaching a voluntary and mutually acceptable settlement. Unlike more rigid legal frameworks, conciliation is characterized by its flexibility and its focus on the restoration of relationships³. Conciliation can however only be resorted to in relation to disputes arising out of, or relating to a contractual or other legal relationship. A legal description of conciliation is that it is a settlement of a dispute in an agreeable manner; a process in which a

² Emilia Onyema, *The Multi-Door Courthouse (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC* (Nigerian Institute of Advanced Legal Studies 2013) 9–12.

³ Mohammed Looti, 'Conciliation' (13 March 2026) *Encyclopedia of Psychology* accessed 24 June 2026.

neutral person meets with the parties to a dispute and explores how the dispute might be resolved⁴.

Conciliation has been known over the years as a method of settling disputes by consensus rather than by adjudication. It involves reconciling, appeasing, uniting and winning over the other party.⁵

2.2.2 Mediation

Mediation is a voluntary and confidential dispute resolution process in which an impartial third party, known as the mediator, assists disputing parties in communicating effectively and negotiating a mutually acceptable settlement. Unlike a judge or arbitrator, the mediator does not impose a decision but facilitates dialogue and encourages consensus between the parties⁶. It is a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution⁷.

Mediation and conciliation although closely related have been erroneously used interchangeably. They are both voluntary and non-adjudicatory methods of Alternative Dispute Resolution (ADR) in which a neutral third party assists disputing parties in reaching an amicable settlement. However, they differ primarily in the role played by the neutral third party. In mediation, the mediator mainly facilitates communication and negotiation between the parties without proposing solutions, except where

⁴ Bryan A Garner (ed), *Black's Law Dictionary* (7th edn, West Group, 1999) 284.

⁵ Longman's Dictionary of English Language 2nd ed. p. 331.

⁶ Nolan-Haley JM, *Alternative Dispute Resolution in a Nutshell* (6th edn, West Academic Publishing 2018) 63–67.

⁷ Bryan A Garner (ed), *Black's Law Dictionary* (12th edn, Thomson Reuters 2024) 1178.

requested. In conciliation, the conciliator adopts a more active role by not only facilitating discussions but also suggesting possible terms of settlement or recommendations to assist the parties in resolving the dispute⁸.

2.3 Negotiation

Negotiation is the most fundamental method of Alternative Dispute Resolution (ADR), involving direct communication between disputing parties with the objective of reaching a mutually acceptable agreement without the intervention of a third party. It is characterized by voluntary participation, flexibility, and party autonomy, allowing the parties to control both the process and the outcome of the dispute. Negotiation is commonly employed in commercial, contractual, employment, family, and international disputes because it promotes cooperation, preserves relationships, and minimizes the time and cost associated with litigation⁹. It is a formal discussion between people who are trying to reach an agreement¹⁰.

2.4 Arbitration

Arbitration is an adjudicatory method of Alternative Dispute Resolution in which disputing parties voluntarily submit their dispute to one or more impartial arbitrators for determination. Unlike mediation and conciliation, arbitration culminates in an arbitral award that is generally final and binding upon the parties, subject to limited grounds for judicial review. It

⁸ Uchenna Jerome Orji, 'Law and Practice of Conciliation in Nigeria' (2012) 56(1) Journal of African Law 132, 136–140.

⁹ N2 (5-8)

¹⁰ Merriam-Webster Dictionary, 'Negotiation' <https://www.merriam-webster.com/dictionary/negotiation> accessed 17 July 2026.

is seen as the most formal method of alternative dispute resolution, merging the semi-formality of a rigid legal and institutional framework with the ease of out-of-court settlement and flexibility of the process.

In Nigeria, arbitration is principally governed by the Arbitration and Mediation Act 2023, which regulates both domestic and international commercial arbitration. The Act incorporates internationally accepted arbitration principles, including party autonomy, competence-competence, separability of the arbitration agreement, limited judicial intervention, and recognition and enforcement of arbitral awards¹¹

3.0 BRIEF HISTORY OF CONCILIATION

Conciliation is one of the oldest methods of dispute resolution and predates the establishment of formal judicial systems. In ancient societies, disputes were commonly resolved through respected elders, religious leaders, community heads, and other neutral persons who facilitated dialogue between disputing parties with the aim of restoring peace and maintaining social harmony. Unlike litigation, which focuses on determining legal rights and liabilities, conciliation emphasized compromise, reconciliation, and the preservation of relationships within the community¹².

With the development of organized legal systems and the expansion of international trade, conciliation gradually evolved from an informal customary practice into a recognized legal mechanism for resolving disputes. Its flexibility, confidentiality, cost-effectiveness, and ability to

¹¹ N3 (15-25)

¹² N10, 134–136.

preserve commercial relationships contributed to its acceptance as an important component of Alternative Dispute Resolution (ADR). The international recognition of conciliation was significantly strengthened by the adoption of the *UNCITRAL Conciliation Rules 1980* and the *UNCITRAL Model Law on International Commercial Conciliation 2002*, both of which established internationally accepted principles governing conciliation proceedings and influenced domestic legislation across many jurisdictions. More recently, the adoption of the *United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) 2018* further demonstrated the growing global preference for consensual methods of dispute resolution and reinforced the international recognition of settlement agreements reached through conciliatory processes¹³.

In Nigeria, the history of conciliation is deeply rooted in indigenous customary dispute resolution mechanisms that existed long before the introduction of the English legal system. Disputes within families, villages, and communities were traditionally resolved through the intervention of elders, traditional rulers, chiefs, religious leaders, and family heads, whose primary objective was to restore harmony and preserve communal relationships rather than determine legal rights.

During the colonial period, the introduction of the formal court system reduced the prominence of customary dispute resolution mechanisms. Nevertheless, traditional methods of amicable settlement continued to

¹³ United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Conciliation Rules* (1980); UNCITRAL, *Model Law on International Commercial Conciliation* (2002); United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) (2018).

operate alongside the formal judicial system, particularly in rural communities where customary institutions retained significant authority over dispute resolution. The first statutory recognition of conciliation in Nigeria occurred within the sphere of labor relations through the *Trade Disputes (Arbitration and Inquiry) Ordinance 1941*, which empowered the relevant Minister to appoint conciliators to facilitate the settlement of industrial disputes between employers and employees. This marked the beginning of legislative recognition of conciliation as a formal dispute resolution mechanism in Nigeria¹⁴.

A major milestone in the evolution of conciliation was the enactment of the *Arbitration and Conciliation Decree No. 11 of 1988* and repealed by the *Arbitration and Mediation Act of 2023*. The Act established a comprehensive statutory framework for commercial conciliation and largely adopted the *UNCITRAL Conciliation Rules 1980*, thereby bringing Nigerian law into conformity with internationally accepted standards. It provided for the voluntary submission of disputes to conciliation, the appointment of conciliators, confidential proceedings, and the recording of settlement agreements reached by the parties.

Despite its significance, the *Arbitration and Conciliation Act* was widely criticized for failing to reflect subsequent developments in international ADR practice, particularly the emergence of mediation as a preferred dispute resolution mechanism and the provisions of the *UNCITRAL Model Law on International Commercial Conciliation 2002*. These shortcomings

¹⁴ Trade Disputes (Arbitration and Inquiry) Ordinance 1941; National Industrial Court of Nigeria, *History of the National Industrial Court of Nigeria*.

generated calls for legislative reform to modernize Nigeria's ADR framework and align it with contemporary international standards¹⁵.

3.0 THEORETICAL FRAMEWORK

The theories of conciliation as a method of alternative dispute resolution distinguished from other methods of settling disputes out of court have their eminent factors rooted in the foundation of conciliation. Unlike litigation, which is adversarial and rights-oriented, conciliation is premised on preserving relationships, encouraging cooperation, and facilitating mutually acceptable outcomes. This study is therefore anchored on the Interest-Based Theory of Dispute Resolution, the Consensus Theory of ADR, and the Conflict Transformation Theory.

3.1 Interest-Based Theory of Dispute Resolution

The Interest-Based Theory is founded on the principle that disputes are more effectively resolved by identifying and satisfying the underlying interests of the parties rather than concentrating on their legal rights or rigid positions. The theory maintains that parties often become attached to stated demands while the real causes of disagreement lie in their needs, concerns, expectations, and objectives. Consequently, the resolution process should focus on uncovering these interests and facilitating solutions that accommodate them¹⁶.

¹⁵ John Funsho Olorunfemi, 'Resolving the Juridical Tangle on the Concept of Conciliation under the Nigerian Arbitration and Conciliation Act' (2022) 9(1) *Nnamdi Azikiwe University Journal of Commercial and Property Law* 49–68.

¹⁶ Roger Fisher, William Ury and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (3rd edn, Penguin Books 2011) 42–58.

This theory is directly applicable to conciliation because conciliation is not intended to determine which party is legally right or wrong. Rather, it seeks to assist parties in identifying common interests, improving communication, reducing hostility, and exploring settlement options that are mutually beneficial. The conciliator therefore facilitates negotiations in a manner that enables the parties to voluntarily arrive at an acceptable settlement. Although the theory has been criticized on the ground that it assumes parties possess relatively equal bargaining power and are willing to negotiate in good faith, it remains highly relevant to conciliation because it explains the fundamental objective of resolving disputes through mutual understanding and accommodation of interests rather than adversarial determination of rights¹⁷.

3.2 Consensus Theory of Alternative Dispute Resolution

The consensus theory is based on the proposition that disputes are best resolved through agreements voluntarily reached by the parties rather than through decisions imposed by external authorities. The theory emphasizes party autonomy, cooperation, dialogue, and mutual participation throughout the dispute resolution process. It views consensus as the most legitimate and durable means of resolving disputes because the parties themselves determine the terms of settlement¹⁸.

Within the context of conciliation, the theory explains the role of the conciliator as a neutral facilitator whose primary responsibility is to

¹⁷ Carrie Menkel-Meadow, 'Toward Another View of Legal Negotiation: The Structure of Problem Solving' (1984) 31 *UCLA Law Review* 754, 790–796.

¹⁸ Frank EA Sander, 'Varieties of Dispute Processing' in A Leo Levin and Russell R Wheeler (eds), *The Pound Conference: Perspectives on Justice in the Future* (West Publishing 1979) 65–87.

encourage communication, reduce areas of disagreement, and assist parties in reaching a mutually acceptable agreement. The conciliator does not exercise adjudicatory powers or impose a binding decision but instead promotes consensus through persuasion and constructive dialogue.

A limitation of the theory is that consensus may not always produce equitable outcomes where there are significant disparities in bargaining power between the parties. Nevertheless, the theory remains an appropriate framework for this study because it explains the collaborative and non-adversarial character of conciliation under the Arbitration and Mediation Act 2023¹⁹.

3.3 Conflict Transformation Theory

This theory views conflict not merely as a problem to be resolved but as an opportunity to improve relationships, address underlying causes of disagreement, and create conditions for long-term cooperation. Rather than focusing solely on achieving an immediate settlement, the theory seeks to transform the attitudes, perceptions, and interactions of the disputing parties so that future conflicts may be prevented or managed more effectively²⁰. The theory is particularly relevant to conciliation because the conciliation process extends beyond resolving the immediate legal dispute.

Despite its advantages, the theory may not be appropriate for every category of dispute, particularly where the relationship between the parties

¹⁹ Leonard L Riskin, 'Understanding Mediators' Orientations, Strategies and Techniques' (1996) 1 *Harvard Negotiation Law Review* 7, 18–29.

²⁰ John Paul Lederach, *The Little Book of Conflict Transformation* (Good Books 2003) 13–32.

has completely broken down or where public policy considerations require authoritative judicial determination. Nonetheless, the theory remains relevant because one of the principal objectives of conciliation under *the Arbitration and Mediation Act 2023* is to facilitate sustainable settlements that preserve relationships wherever possible²¹.

4.0 LITERATURE REVIEW

Omobolanle's work²² defined conciliation to be an interest-based process which involves the intervention of a neutral third party who supports communication between disputants. The emphasis here is laid on the phrase 'support communication', meaning that the conciliation process involves merely assistance to resolve the parties who are already willing to settle but are in need of neutral assistance. However, the work compares conciliation with only one other mode of dispute resolution being mediation by stating that the main difference is that the conciliator at some point will be asked to draft a non-binding settlement proposal which is not obtainable in mediation²³ and distinct from other methods of dispute resolution.

Oluduro and Oluwadayisi²⁴, after describing conciliation to consist of the third party (conciliator) meeting with the disputants separately in an effort

²¹ Robert A. Baruch Bush and Joseph P. Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (2nd edn, Jossey-Bass 2005) 55–80.

²² F.P Omobolanle, "Exploring innovative approaches in alternative dispute resolution," in *The Dialectics of Alternative Dispute Resolution* (Lawlexis International 2023)

²³ Hamburg "Conciliation" <https://www.dispute-resolution-hamburg.com/information/conciliation>

²⁴ O.O. Oluduro and A.O. Oluwadayisi "Arbitration and ADR: a tool for conflict resolution and additional career professionals" in the *Nigerian Institute of Chartered Arbitrators Journal of Arbitration* (June 2021)

to establish mutual understanding of the dispute and promote its resolution, goes further to state that it is often the first step and at times sufficient enough to resolve disputes. The conciliator guides and advises parties by making proposals. This serves an inaccurate depiction of the conciliation process, portraying it to merely be a conversation where a third-party chips in neutral ideas for settlement and not recognizing the serious nature of the whole process.

Ufot²⁵ in relation to this discusses how the Arbitration And Conciliation Act aimed to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation, and to make applicable the convention *on The Recognition And Enforcement of Arbitral Awards (New York convention)* to any award made in Nigeria or any contracting state rising out of international commercial arbitration. Unlikely to this topic, this work recognizes the enforcement of awards under the arbitration and conciliation act as a somewhat pre-adventous method of the enforcement of alternative dispute resolution awards before the advance of the arbitration and mediation act of 2023. The Author seemed to be one-sided as only arbitral awards were discussed whereas the subject of the enforcement of conciliation agreements was left untouched.

Orji²⁶ examines the nature, practice, and legal framework of conciliation in Nigeria. The work highlights the importance of developing conciliation as an effective dispute resolution mechanism and considers the need for

²⁵ D.U Ufot “Challenges of recognition and enforcement of arbitral awards under the Arbitration and Mediation Act 2023” in ‘The Dialectics of Alternative Dispute Resolution (Lawlexis International 2023)

²⁶ N 10, 321.

an adequate legal framework to support its practice. However, the work predates the Arbitration and Mediation Act 2023 and therefore does not examine the current statutory framework or the enforceability of conciliation settlements. This gap is addressed by subsequent literature on the enforcement of settlement agreements arising from consensual ADR processes.

Liang²⁷ speaks on the legal status and enforceability of mediation settlement agreements. The work highlights the difficulty of enforcing consensual settlements where the defaulting party refuses to comply and considers whether such agreements should be enforced as contracts, court judgments, or through a special statutory mechanism. However, its focus on the Chinese legal system limits its application to Nigeria and does not address the *Arbitration and Mediation Act 2023*. This limitation is addressed by literature examining the broader international enforcement of mediated settlement agreements.

Koo²⁸ scrutinizes the challenges involved in enforcing mediated and conciliated settlement agreements across national borders. The author argues that the absence of a simple and uniform enforcement mechanism may discourage parties from relying on consensual ADR. However, the work focuses primarily on international enforcement and does not provide a detailed analysis of the Nigerian legal framework or the Arbitration and Mediation Act 2023. This deficiency is addressed by Nigerian scholarship on the enforcement of ADR settlements under the current legislation.

²⁷ Jiaqi Liang, 'The Enforcement of Mediation Settlement Agreements in China' (2003) 19(3–4) *American Review of International Arbitration* 455.

²⁸ A K C Koo, 'Enforcing International Mediated Settlement Agreements' (2018) 19(3) *Asian International Arbitration Journal*.

Umenweke and Nwachukwu²⁹ further discusses the challenges of enforcing mediation settlement agreements under the *Arbitration and Mediation Act 2023*. The authors identify issues such as incapacity, invalidity, uncertainty, lack of finality, and concerns regarding the mediator's impartiality as factors that may affect enforcement. However, the work focuses primarily on mediation and gives limited attention to the distinct legal status and enforceability of conciliation settlements. This gap is addressed by Rabi'u's comparative examination of settlement terms arising from arbitration, mediation, and conciliation.

Rabi'u³⁰ discusses the legal validity and enforceability of settlement terms arising from different ADR processes. The work is significant for distinguishing between arbitral awards and consensual settlements and for considering the legal status of conciliation agreements. However, it does not comprehensively examine the conciliation provisions of the *Act* or fully analyse the relationship between conciliation settlements, consent awards, and enforcement mechanisms.

Ige-Olaobaju³¹ goes ahead to examine the development of ADR and collective conciliation within Nigeria, focusing on the roles of employers,

²⁹ M N Umenweke and T N Nwachukwu, 'Challenges of Enforcing Mediation Settlement Agreement in Nigeria under the Arbitration and Mediation Act 2023' *International Review of Law and Jurisprudence*.

³⁰ Abdul-Nafiu Mustapha Rabi'u, 'The Validity of Executed Terms of Settlement in Arbitration, Mediation, Conciliation and in Some Selected Rules of Court' (LLM Dissertation, The British University in Dubai).

³¹ Ade Ige-Olaobaju, 'Alternative Dispute Resolution and Collective Conciliation in Nigeria: A Review of Contemporary Literature' (2017) 12(8) *International Journal of Business and Management* 261–273.

trade unions, the State, and conciliators. The work affirms the continuing importance of conciliation but identifies institutional and structural weaknesses that frustrate its effective operation in practice. However, the work primarily focuses on collective conciliation and the weakness of state machinery without sufficiently examining the broader trend towards the increasing prominence of mediation and the possible marginalization of conciliation within modern ADR practice. This deficiency is addressed by literature examining the conceptual and practical overlap between mediation and conciliation.

Alexander³² goes further by discussing the development and increasing use of mediation as a major form of dispute resolution internationally. The work demonstrates how mediation has become increasingly institutionalized through legislation, international instruments, and court-connected dispute resolution schemes. Although the work is valuable in explaining the growth and modern importance of mediation, its emphasis on mediation contributes to the broader concern that conciliation receives comparatively less attention in contemporary ADR scholarship and practice. The present study therefore seeks to address this gap by examining whether the statutory recognition of conciliation under Nigeria's *Arbitration and Mediation Act 2023* sufficiently preserves its distinct role alongside the increasingly prominent process of mediation.

Abimbola and Akinola³³ center this to the development of Nigeria's modern ADR framework through the *Arbitration and Mediation Act 2023*

³² Nadja Alexander, *International and Comparative Mediation: Legal Perspectives* (Kluwer Law International 2009).

³³ Abimbola M L and Akinola O B, 'Court Intervention in Arbitration and the National Policy on Arbitration and Alternative Dispute Resolution 2024 vis-à-vis the Arbitration

and the *National Policy on Arbitration and ADR 2024*. The work demonstrates the growing institutional and legislative recognition of ADR in Nigeria and highlights the importance of modernizing dispute resolution mechanisms to meet contemporary needs. However, its broad focus on arbitration, court intervention, and national ADR policy does not specifically examine whether the increasing prominence of mediation has overshadowed or weakened the distinct role of conciliation. This deficiency is addressed by the present study, which focuses specifically on the continued relevance and legal treatment of conciliation under the Arbitration and Mediation Act 2023.

Okeke³⁴ brings to light the role of ADR in addressing the delays, expense, technicality, and adversarial nature associated with traditional litigation. The work argues that ADR provides quicker, more flexible, and less costly mechanisms for resolving disputes while preserving relationships and promoting economic activity. However, its broad focus on ADR does not sufficiently examine the specific contribution of conciliation as a distinct process within the wider ADR framework. This deficiency is addressed by literature focusing specifically on the role of conciliation in promoting peaceful settlement and institutional harmony.

Onyema and Odibo³⁵ addressed the development of court-connected ADR in Nigeria, particularly through the Lagos Multi-Door Courthouse. The

and Mediation Act 2023: Pathways and Pitfalls, *International Journal of Law, Politics and Humanities Research* (2025) 8(6) 1

³⁴ Agatha A Okeke, *Alternative Dispute Resolution (ADR) as a Means to Improve Access to Timely Justice and a Pathway to Economic Growth in Nigeria* (Master's thesis, University of Nevada, Reno 2019).

³⁵ Emilia Onyema and Monalisa Odibo, 'How Alternative Dispute Resolution Made a Comeback in Nigeria's Courts' (Africa Research Institute, 23 June 2017).

authors demonstrate that ADR can improve access to justice by providing faster, less expensive, and more amicable methods of dispute resolution while complementing, rather than replacing, the formal court system. However, the work discusses ADR broadly and does not provide a detailed examination of the specific importance of conciliation or the legal framework governing its continued development under *the Arbitration and Mediation Act 2023*. The present study addresses this gap by focusing specifically on conciliation and its continuing relevance within Nigeria's modern ADR framework.

5.0 LEGAL AND INSTITUTIONAL FRAMEWORK

5.1 Legal Framework

The legal framework governing conciliation in Nigeria has undergone significant changes over the years. While the Arbitration and Conciliation Act 2004 expressly provided for conciliation as a distinct Alternative Dispute Resolution (ADR) mechanism, the enactment of the Arbitration and Mediation Act 2023 repealed the former legislation and replaced conciliation with mediation as the principal consensual dispute resolution mechanism. Consequently, the current legal framework raises questions regarding the legal status of conciliation and whether its omission was deliberate or merely a terminological shift³⁶.

5.1.1 UNCITRAL Model Laws on Conciliation

The development of conciliation at the international level has largely been influenced by the work of the United Nations Commission on International Trade Law (UNCITRAL). The *UNCITRAL Conciliation Rules 1980* established internationally accepted procedures for conducting

³⁶ Arbitration and Mediation Act 2023, Preamble and Parts I–II.

conciliation proceedings in commercial disputes and served as the model upon which many national conciliation laws, including Nigeria's former Arbitration and Conciliation Act, were based.

Subsequently, UNCITRAL adopted the Model Law on *International Commercial Conciliation 2002*, which sought to harmonize national legislation relating to conciliation and promote uniform standards governing voluntary dispute resolution. The Model Law emphasizes party autonomy, confidentiality, impartiality of conciliators, and the voluntary nature of settlement agreements. In 2018, UNCITRAL further adopted *the United Nations Convention on International Settlement Agreements Resulting from Mediation* (Singapore Convention on Mediation), reflecting the increasing international preference for the term "mediation" rather than "conciliation." This development influenced several jurisdictions, including Nigeria, in restructuring their ADR legislation around mediation.

Although international practice increasingly favours mediation terminology, neither the UNCITRAL instruments nor comparative ADR practice suggests that conciliation has become obsolete. Rather, many jurisdictions continue to recognize conciliation as a distinct or complementary consensual dispute resolution mechanism.

5.1.2 Arbitration and Conciliation Act 2004

Before its repeal, *the Arbitration and Conciliation Act, Cap A18, LFN 2004*, constituted the principal legislation regulating both arbitration and conciliation in Nigeria. The Act was originally enacted as *the Arbitration and Conciliation Decree No. 11 of 1988* and substantially adopted *the UNCITRAL Conciliation Rules 1980*.

The Act devoted an entire part to conciliation, providing detailed procedures governing the commencement of conciliation proceedings, appointment of conciliators, conduct of proceedings, confidentiality, termination of proceedings, and the recording of settlement agreements reached by the parties. These provisions established conciliation as a distinct statutory ADR mechanism independent of arbitration.

Despite its strengths, the Act was criticized for failing to reflect developments in international ADR practice, particularly the emergence of mediation as the preferred terminology under the Singapore Convention and other contemporary international instruments. These criticisms ultimately contributed to its repeal and replacement by *the Arbitration and Mediation Act 2023*³⁷.

5.1.3 Arbitration and Mediation Act 2023

The *Arbitration and Mediation Act 2023 (AMA 2023)* is the principal legislation governing arbitration and mediation in Nigeria. Enacted to modernize Nigeria's ADR regime, the Act repealed the Arbitration and Conciliation Act 2004 and aligns Nigerian arbitration law with contemporary international standards. It incorporates provisions of the UNCITRAL Model Law on International Commercial Arbitration and introduces a comprehensive legal framework for mediation. Unlike the repealed *Arbitration and Conciliation Act*, however, the AMA 2023 does not expressly recognize conciliation as a separate form of Alternative Dispute Resolution. The Act is structured around two principal

³⁷ Tiwalade Aderoju, 'The Nigerian Arbitration and Mediation Act 2023: A Comparison with the Arbitration and Conciliation Act 2004 and Global Practices' *International Bar Association* (20 December 2023).

mechanisms arbitration and mediation and contains no provisions regulating conciliation proceedings or defining the role of a conciliator.

This omission has generated considerable academic and professional debate. One view is that the legislature intentionally replaced conciliation with mediation because contemporary international practice increasingly treats the two concepts as substantially similar. Another view argues that conciliation possesses unique procedural characteristics and should have been retained as an independent dispute resolution mechanism, particularly given its longstanding recognition under Nigerian law and the UNCITRAL Conciliation Rules³⁸.

Accordingly, while the *Arbitration and Mediation Act 2023* represents a significant advancement in Nigeria's ADR framework, its failure to expressly preserve or regulate conciliation remains one of the major issues requiring critical examination, which this work aims to achieve.

5.2 INSTITUTIONAL FRAMEWORK

5.2.1 Lagos Multi-Door Courthouse

The Lagos Multi-Door Courthouse (LMDC) is Nigeria's foremost court-connected Alternative Dispute Resolution institution. Established in 2002 and subsequently given statutory backing under the Lagos Multi-Door Courthouse Law, the LMDC was created to provide litigants with efficient, affordable, and accessible alternatives to litigation. The LMDC offers several ADR processes, including mediation, arbitration,

³⁸ Amazu A Asouzu, 'Conciliation under the 1988 Arbitration and Conciliation Act of Nigeria' (1993) 5(4) *African Journal of International and Comparative Law* 825–849; Uchenna Jerome Orji, 'Law and Practice of Conciliation in Nigeria' (2012) 56(1) *Journal of African Law* 132–150.

negotiation, early neutral evaluation, and hybrid dispute resolution mechanisms

The institution has contributed significantly to reducing court congestion, promoting access to justice, and encouraging the peaceful resolution of commercial and civil disputes. It also demonstrates that despite the omission of conciliation under the *Arbitration and Mediation Act 2023*, the principles underlying conciliation continue to influence ADR practice in Nigeria³⁹.

5.2.2 Abuja Multi-Door Courthouse

The Abuja Multi-Door Courthouse was established to promote the use of Alternative Dispute Resolution within the Federal Capital Territory. It provides mediation, arbitration, neutral evaluation and other ADR services aimed at reducing the burden on courts and encouraging amicable settlement of disputes. Like the LMDC, the AMDC demonstrates Nigeria's increasing institutional preference for mediation, although many of its dispute resolution objectives are consistent with the philosophy underlying conciliation.

5.2.3 Institute of Chartered Mediators and Conciliators (ICMC)

The Institute of Chartered Mediators and Conciliators is the only Nigerian professional institution specifically established to promote mediation and conciliation. It regulates professional standards, trains and certifies mediators and conciliators, conducts research on ADR, and advocates the use of amicable dispute resolution. Despite the omission of conciliation

³⁹ Emilia Onyema, *The Multi-Door Courthouse (MDC) Scheme in Nigeria: A Case Study of the Lagos Multi-Door Courthouse* (NIALS 2013).

from the Arbitration and Mediation Act 2023, the Institute continues to recognize conciliation as a distinct ADR process and remains one of the strongest institutional proponents of its continued relevance in Nigeria.

6.0 CHALLENGES OF RECONCILING CONCILIATION PROVISIONS UNDER AMA 2023

i. Absence of a distinct statutory framework:

One of the principal challenges confronting the development of conciliation is the absence of a distinct statutory framework specifically regulating conciliation. Although *Section 91 of the Act* defines mediation to include ‘a process referred to as “conciliation,” the Act does not provide a separate and comprehensive regime dealing specifically with the appointment, powers, duties, conduct, and termination of conciliation proceedings. This represents a significant departure from the repealed *Arbitration and Conciliation Act*, which expressly contained provisions governing conciliation⁴⁰. The present approach creates uncertainty as to whether conciliation continues to exist as an independent ADR process or has effectively been absorbed into the broader statutory concept of mediation.

ii. Perceived Marginalization of conciliation by mediation

A related challenge is the possible marginalization of conciliation by mediation. The statutory structure of the 2023 Act is predominantly organized around arbitration and mediation, with conciliation appearing principally through the definition of mediation. This may cause

⁴⁰ Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004, Third Schedule.

practitioners, ADR institutions, courts, and disputing parties to regard conciliation as merely another name for mediation rather than as a process with potentially different characteristics. Traditionally, conciliation has often been associated with a more interventionist neutral who may identify the issues in dispute, propose solutions, or formulate settlement terms, whereas mediation is frequently understood as a more facilitative process⁴¹. By failing to clarify whether these distinctions remain legally relevant, the Act may limit the development of conciliation as a distinct and identifiable form of ADR.

iii. Uncertainty in the Scope of the Conciliator's Authority

Another challenge concerns the uncertainty surrounding the powers and functions of a conciliator. Under the former legal framework, the conciliator's role and functions were more expressly defined, including the ability to assist the parties and formulate proposals for settlement. The *Arbitration and Mediation Act 2023*, however, principally regulates the role of the mediator. Although the broad definition of mediation may technically include conciliation, the Act does not clearly state whether a conciliator may adopt a more evaluative or interventionist approach than a mediator. This uncertainty may discourage practitioners from developing specialized conciliation procedures and may also make it difficult for parties to determine in advance the precise nature of the process to which they are submitting their dispute.

iv. Enforceability of settlement agreements

The enforceability of settlement agreements also presents a significant challenge. The Act provides that a mediated settlement agreement may be

⁴¹ N29, 87

enforced as a contract, consent judgment, or consent award. This is a major development in Nigerian ADR law. However, because conciliation is subsumed within the statutory concept of mediation, the Act does not independently explain the legal status of a settlement reached through a process specifically described by the parties as conciliation. The practical effect is that the enforceability of a conciliation settlement depends upon its treatment as a mediation settlement. While this may provide a route to enforcement, it also reinforces the lack of an independent legal identity for conciliation.

v. Lack of institutionalization

A further challenge is the potential lack of uniformity in institutional and professional practice. Where the legislation does not clearly distinguish mediation from conciliation, different ADR institutions and practitioners may apply different standards to processes described as conciliation. Some may adopt a purely facilitative approach, while others may permit the neutral to make proposals or express opinions on the dispute. Without clearer statutory or institutional guidelines, this variation may create uncertainty for parties and may affect confidence in the process.

vi. International movements towards mediation and none on conciliation

The development of conciliation is affected by the wider international movement towards the use of the term mediation. UNCITRAL has explained that the terms “mediation” and “conciliation” have historically been used interchangeably and that its 2018 Model Law adopted the term “mediation” to reflect contemporary practical usage and increase the

visibility of the process⁴². Although UNCITRAL stated that the change in terminology was not intended to create substantive or conceptual differences, the development demonstrates the growing international dominance of the term mediation. This trend creates a challenge for the continued recognition and development of conciliation as a distinct process within Nigeria's ADR framework.

7.0 PROSPECTS OF CONCILIATION

i. Development of a Distinct Regulatory Framework for Conciliation

The absence of a separate statutory framework for conciliation under the Arbitration and Mediation Act 2023 creates uncertainty regarding the independent identity and operation of the process. However, this challenge presents an opportunity for legislative development. The Act may be amended, or supplementary regulations may be enacted, to provide specific provisions addressing the commencement, conduct, appointment of conciliators, termination, confidentiality, and settlement of conciliation proceedings. Such provisions would preserve the flexibility of the existing framework while ensuring that conciliation is not completely overshadowed by mediation. The *repealed Arbitration and Conciliation Act* provides a useful starting point because it contained specific provisions regulating conciliation, which could be modernized and adapted to the present legal environment. A distinct framework would therefore provide greater certainty while allowing conciliation to maintain its own identity.

⁴² United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation* (2018).

ii. Preservation of Conciliation as a Distinct ADR Mechanism

The increasing prominence of mediation creates the risk that conciliation may gradually become marginalized. However, the broad definition of mediation in *Section 91 of the Act*⁴³ also provides an opportunity for conciliation to continue operating within the statutory framework. ADR institutions and practitioners can therefore preserve conciliation as a distinct process by developing rules that recognize its particular characteristics. Institutional rules may clarify that a conciliator may adopt a more interventionist approach, identify the issues in dispute, propose solutions, and assist the parties in formulating settlement terms, subject to the parties' consent. This would enable conciliation to coexist with mediation rather than being completely absorbed by it.

iii. Clarification of the Powers and Functions of the Conciliator

The uncertainty surrounding the powers and functions of the conciliator can be addressed through legislative amendment, judicial interpretation, and institutional rules. A future regulatory framework should expressly identify the functions of a conciliator and clarify the extent to which the conciliator may evaluate the dispute or propose terms of settlement. The former *Arbitration and Conciliation Act* provides a useful model in this regard by recognizing the conciliator's role in assisting parties and formulating proposals for settlement. Clearer regulation would improve legal certainty and enable parties to understand the nature and limits of the conciliator's authority before commencing proceedings. It would also assist practitioners and courts in distinguishing between a facilitative mediator and a more interventionist conciliator where such a distinction is relevant.

⁴³ Arbitration and Mediation Act 2023, s 91.

iv. Strengthening the Enforceability of Conciliation Settlements

The enforceability of settlements represents one of the most important prospects for the future of conciliation. *Section 82 of the Arbitration and Mediation Act 2023* provides that a mediated settlement agreement may be enforced as a contract, consent judgment, or consent award. Since *section 91* includes conciliation within the statutory definition of mediation, a settlement reached through conciliation may potentially benefit from this enforcement framework. This provides parties with greater confidence that the outcome of a successful conciliation will not be rendered ineffective by the subsequent refusal of one party to comply. Nevertheless, further clarification may be desirable to expressly confirm that settlements reached through a process identified by the parties as conciliation are entitled to the same enforcement mechanisms.

v. Development of Institutional Rules and Professional Guidelines

The absence of detailed statutory provisions on conciliation creates an opportunity for ADR institutions to develop specialized rules and professional guidelines. Institutions may establish rules dealing specifically with the appointment and qualifications of conciliators, the conduct of proceedings, the extent of intervention permitted, confidentiality, termination, and the recording and enforcement of settlement agreements. The UNCITRAL Model Law demonstrates the importance of clear procedural rules in ensuring the effectiveness and predictability of consensual dispute resolution. Institutional rules would therefore provide practical guidance while legislative reform remains pending.

vi. Increased Training and Professionalization of Conciliators

The uncertainty surrounding the role of the conciliator can also be addressed through specialized training and professional development other than just the ICMC. ADR institutions, universities, professional bodies, and dispute resolution centers can develop training programs specifically focused on conciliation techniques. Such training should distinguish between facilitative mediation and more interventionist conciliation and should address ethical obligations, impartiality, confidentiality, settlement drafting, and the limits of the conciliator's role. The professionalization of conciliators would improve the quality and consistency of the process and increase public confidence in conciliation.

vii. Greater Public Awareness and Accessibility of Conciliation

The limited public awareness of ADR constitutes another challenge to the development of conciliation. This challenge can be addressed through public education, institutional outreach, and the integration of conciliation into court-connected ADR programs. Increased awareness would enable disputing parties, lawyers, businesses, and public institutions to make informed choices regarding the most appropriate dispute resolution process⁴⁴. ADR has been recognized as an important means of improving access to justice by providing alternatives to lengthy and expensive litigation. Conciliation can contribute significantly to this objective because of its flexibility, informality, and potential to preserve relationships.

⁴⁴ N 45

viii. Judicial Recognition and Clarification of Conciliation

The courts also have an important role to play in determining the future development of conciliation under the 2023 Act. As disputes concerning the interpretation of section 91 and the enforcement of settlement agreements arise, judicial decisions may clarify the relationship between mediation and conciliation. Courts may determine whether conciliation is merely a different name for mediation or whether the statutory framework permits the process to retain distinctive procedural characteristics. Such judicial clarification would promote consistency and reduce uncertainty concerning the legal status of conciliation and its outcomes.

ix. Harmonisation with International Standards

The international development of mediation and conciliation also creates prospects for improving Nigeria's framework. The UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation provides a useful international framework for the recognition and enforcement of settlement agreements. Nigeria can continue to draw from international standards while preserving the aspects of conciliation that are relevant to its domestic legal and institutional context. This would enhance the predictability of Nigerian ADR practice and potentially strengthen Nigeria's position as a regional centre for dispute resolution.

8.0 SUMMARY OF FINDINGS

This study examined the provisions relating to conciliation under the Arbitration and Mediation Act 2023, with particular emphasis on the legal status of conciliation, the effect of its apparent absorption into mediation, the enforceability of settlements, the challenges affecting its development, and its prospects in Nigeria.

In relation to the first research question, the study found that the *Arbitration and Mediation Act 2023* represents a significant departure from the repealed Arbitration and Conciliation Act 2004. While the former legislation provided a distinct statutory framework for conciliation, the 2023 Act does not establish a separate regime regulating conciliation proceedings. Instead, section 91 includes a process referred to as “conciliation” within the definition of mediation⁴⁵. The implication is that conciliation has not been completely abolished, but its independent statutory identity has been substantially weakened.

With respect to the second research question, the study found that the statutory treatment of conciliation creates uncertainty concerning its relationship with mediation. Although both processes are consensual ADR mechanisms, conciliation has traditionally been associated with a more interventionist role for the neutral, including the possibility of proposing solutions or settlement terms. The failure of the Act to expressly preserve these distinctive characteristics creates the possibility that conciliation may gradually be regarded merely as another name for mediation.⁴⁶

The study further found that the *Arbitration and Mediation Act 2023* provides an important framework for the enforcement of settlement agreements. Section 82 allows a mediated settlement agreement to be enforced as a contract, consent judgment, or consent award. Since *Section 91* includes conciliation within the statutory definition of mediation, settlements arising from conciliation may potentially benefit from these

⁴⁵ S. 91

⁴⁶ N10

enforcement mechanisms. However, the absence of an express provision specifically addressing the enforcement of conciliation settlements creates some uncertainty and reinforces the argument

9.0 RECOMMENDATIONS

In view of the findings of this study, the following recommendations are made:

- i. The Arbitration and Mediation Act 2023 should be amended or supplemented with specific provisions on conciliation. Such provisions should clarify the commencement and termination of conciliation proceedings, the appointment and functions of conciliators, confidentiality, settlement procedures, and the legal effect of settlement agreements.
- ii. The distinctive features of conciliation should be preserved. Although mediation and conciliation may be used interchangeably in some contexts, the law should recognize that a conciliator may, with the consent of the parties, adopt a more interventionist approach by identifying issues, proposing solutions, or assisting in the formulation of settlement terms.
- iii. The enforceability of conciliation settlements should be expressly clarified. The Act should expressly state that a settlement agreement resulting from conciliation is enforceable through the same mechanisms available to a mediated settlement agreement under *Section 82*.
- iv. ADR institutions should develop specialized rules and guidelines for conciliation. These rules should clarify the role of conciliators and establish consistent standards for the conduct of proceedings. This would reduce uncertainty while legislative reform is being considered.

- v. Greater professional training and public awareness should be encouraged. Lawyers, judges, businesses, government institutions, and members of the public should be educated on the nature and benefits of conciliation. Specialized training should also be provided to conciliators to ensure consistency and professionalism in the process.
- vi. The courts should adopt a purposive approach in interpreting *the Arbitration and Mediation Act 2023*. Where questions arise regarding the relationship between mediation and conciliation, judicial interpretation should seek to preserve the practical usefulness of conciliation rather than treating its inclusion within the definition of mediation as an abolition of the process.

10. CONCLUSION

This study contributes to existing scholarship by examining the position of conciliation under the *Arbitration and Mediation Act 2023* following the repeal of the *Arbitration and Conciliation Act 2004*. It highlights the important distinction between the abolition of conciliation and its absorption into the statutory concept of mediation. The study further examines the consequences of this approach for the identity, functions, and enforceability of conciliation settlements. It also proposes ways through which conciliation may continue to develop as a meaningful and distinct ADR process within Nigeria's modern legal framework.

Further research may examine the practical application of *Section 91 of the Arbitration and Mediation Act 2023* by Nigerian courts and ADR institutions. Comparative research may also be undertaken on the treatment of conciliation and mediation in other jurisdictions. In addition, future studies may empirically examine the extent to which Nigerian

disputants and ADR practitioners continue to use conciliation as a distinct process or have increasingly adopted mediation as the preferred terminology and procedure.

This study has examined the provisions relating to conciliation under *the Arbitration and Mediation Act 2023*. It has established that the Act represents a significant modernization of Nigeria's ADR framework but has adopted an approach that places conciliation within the broader statutory definition of mediation rather than preserving it as an independently regulated process.

Although this approach may promote simplicity and align with international trends in ADR terminology, it creates uncertainty concerning the independent identity, procedure, powers of the conciliator, and enforceability of conciliation settlements. The apparent marginalization of conciliation is therefore a significant issue requiring legislative, institutional, and judicial attention.

Nevertheless, conciliation remains relevant to Nigeria's justice system. Its flexibility, informality, consensual nature, and potential to preserve relationships make it a valuable ADR mechanism. The future of conciliation should therefore not be viewed as one of inevitable disappearance. Through legislative clarification, institutional development, professional training, public awareness, and effective enforcement of settlements, conciliation can continue to develop alongside mediation and contribute meaningfully to access to justice in Nigeria.