



# IFE JURIS REVIEW

*Journal of Contemporary Legal and Allied Issues,  
Published by the Department of Jurisprudence and Private Law,  
Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria  
IFJR, 2017 Vol. 11 (1) (January-April) ISSN: 0794-1048*

## ARTICLES

- ▶ *Babafemi Odunsi & Ife Oluwayimika Bamidele: Environmental Pollution and Women's Reproductive Health Rights in Perspective.* - 1 - 19
- ▶ *Suzzie Onyeka Oyakhire & Anwuli Irene Ofuani: "Reverse onus" Provisions in the fight against Corruption in Nigeria: A Radical Therapy For a Stubborn Ailment?* - 20 - 40
- ▶ *Ibijoke Patricia Byron: Customary Arbitration as a Tool for ensuring Access to Justice for Women in Nigeria: A Case Study of the Women's Law Clinic, Faculty of Law, University of Ibadan.* - 41 - 55
- ▶ *K.O. Fayokun: Laws Governing University Administration in Nigeria, Discipline of Staff and Fair Hearing.* - 56 - 70
- ▶ *Aderonke Esther Adegbite: Baby-Making Factories in Nigeria A 'Crime' begging for Legal Identity?* - 71 - 87
- ▶ *Aderemi Olatubora: An Examination of the Onus of Proof and the Rule against Hearsay Evidence in Election Petition.* - 88 - 113
- ▶ *Abiodun Amuda-Kannike: International Law and Human Rights Implications of Communal Violence in Nigeria.* - 114 - 123
- ▶ *Ganiat Mobolaji Olatokun: Feminism and Feminists' Perspectives: The World Toda.* - 124 - 138
- ▶ *Okafor Amalachukwu & Olusegun Olaitan: Human Rights in a Democracy Nigeria in Perspective.* - 139 - 157
- ▶ *Awoniyi A. Alabi: Impacts of a free Press on National Development.* - 158 - 172
- ▶ *N. A. O. Ijaiya: The Supreme Court's Decision in the Olofa of Offa's Chieftaincy Matter A Critique.* - 173 - 186
- ▶ *Alaka Oladipupo & Awoma Kunle Andrew: Applicability of the UNIDROIT Principles of International Commercial Contract in Courts and Arbitration Proceedings.* - 187 - 209
- ▶ *Oyeniyi Abe: International Climate Change Governance: Lessons for Nigeria.* - 210 - 229
- ▶ *Bello Adesina Temitayo: Arbitration as a Panacea for Investment Disputes Resolution.* - 230 - 246
- ▶ *Moruf O. Mimiko: A Nigerian Perspective on Terrorism.* - 247 - 261
- ▶ *Hilary Nwaecheifu & Olanrewaju Abel Adedeji: Legal, Public Health and Environmental Issues arising from Mining activities at Itangunmodi Community of Atakumosa West Local Government Area of Osun State.* - 262 - 274
- ▶ *Fatimoh Funsho Abdulrazaq: Child Labour in Kwara State: Causes and Implications.* - 275 - 294

**CUSTOMARY ARBITRATION AS A TOOL FOR ENSURING  
ACCESS TO JUSTICE FOR WOMEN IN NIGERIA: A CASE STUDY  
OF THE WOMEN'S LAW CLINIC, FACULTY OF LAW,  
UNIVERSITY OF IBADAN**

*Ibijoke Patricia Byron\**

**ABSTRACT**

*Using the Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria, as a case study, this paper examines the use of customary arbitration as a tool for ensuring access to justice. Further, the paper examines the need to have a remedial system of resolving disputes for the good of the society. The remedial system of law is referred to as customary arbitration. The paper identifies the challenges facing access to justice and advances the argument on the perception of access to justice as a human right, as well as the need to promote access to justice especially where people are disadvantaged. The papers concludes examining the effectiveness of customary arbitration in Nigerian community and its applicability as a tool in ensuring access to justice.*

**1. INTRODUCTION**

In any society, disputes and conflicts are bound to arise when there are interactions between people of diverse experiences, backgrounds or regions.<sup>1</sup> An important function of law is therefore, to provide legal mechanisms for resolving disputes and conflict and to ensure that people live amicably together.

Customary arbitration is an avenue where disputes are settled in accordance with the customs and traditions of the people. Surprisingly, this practice has been in existence in Nigeria and African societies for centuries. The terminology is coined out of arbitration and therefore, the misinterpretation that it is a new development is not valid. In modern times, an alternative to court mode of settling disputes is referred to as Alternate Dispute Resolution

---

\*Lecturer, Department of Private and Property Law, Faculty of Law, University of Ibadan, Ibadan, Nigeria. E-mail: [ibijokepat@yahoo.com](mailto:ibijokepat@yahoo.com).

<sup>1</sup> Mendel-Meadow, C. (2003) *Dispute Processing and Conflict Resolution Theory, Practice and Policy*. Burlington: Ashgate Publishing Co., p.6

which is a method of settling disputes outside the court. This process is re-introduced as a “foreign package” that is meant to cure the challenges plaguing the formal justice system in developing countries as well as in developed nations. The formal justice system in developing countries is plagued by corruption, inefficiency, case backlog, lack of enforceability especially in relation to domestic laws, and hence, the need for an alternative dispute resolution mechanism to alleviate the plight of the Nigerian woman.<sup>2</sup>

Access to justice is a basic principle of law and human right and it is an essential component of a civilized society.<sup>3</sup> In the absence of access to justice, people are unable to have their voice heard, be able to exercise their rights and challenge discrimination or hold decision-makers accountable.<sup>4</sup> Therefore, respect and protection of human rights as in any other legal system can be guaranteed only by the availability of effective judicial remedies. When a right is violated or any other form of damage is caused, access to justice is considered a fundamental importance for the victim and is an essential component of the rule of law.<sup>5</sup> Furthermore, access to justice as a human right thereby combines all of the mechanisms and procedure that ensure this right is implemented in order to provide a response to a problematic situation, that is, human rights violation, which is based on the law whether on an individual or group basis.<sup>6</sup>

However, access to justice remains a myth rather than a reality to the many citizens in Nigeria, especially the indigent and vulnerable<sup>7</sup> despite the

<sup>2</sup> Santos, A. *The World Bank's Uses of the "Rule of Law" Promise in Economic Development*, 253-300 David Trubek & Alvaro Santos, eds., *The New Law and Economic Development: A Critical Appraisal* (New York: Cambridge University Press. Available at [scholarship.law.georgetown.edu/cgiiv...](http://scholarship.law.georgetown.edu/cgiiv...) on June 20, 2016

<sup>3</sup> Oba, C.O. (2013) *Third Party Litigation Funding and Access to Civil Litigation: Prospects and Challenges in Nigeria*. *African Journal of Clinical Legal Education and Access to Justice*. 2013 Volume 2. ISSN:2315-5728. See also United Nations and the Rule of Law. *Access to Justice*. Available at <https://www.un.org/ruleoflaw/thematic-areas/access/> on March 30, 2017

<sup>4</sup> United Nations and the Rule of Law. *Access to Justice*. Available at <https://www.un.org/ruleoflaw/thematic-areas/access/> on March 30, 2017

<sup>5</sup> Francioni, F. (2012) *Access to Justice as a Human Right*. Available at <http://www.oxfordscholarship.com/view/10.1093/acp> Oxford Scholarship Online on March 30, 2017

<sup>6</sup> Sen, A. *How Access to Justice can reduce Poverty*. Available at <http://www.asf.be/wp-content/uploads/2013/03/Access> on March 30, 2017

<sup>7</sup> See *Comptroller of Prisons v. Adekanye & Ors.* (1999) 10 N.W.L.R. (Pt.623), p.400 at 426; cited in Omolade, O, et.al (2012) *Community Lawyering: An Intervention of the University of Ibadan Women's Law Clinic in the case of stray bullet killings at Arulogun-Idi Omo Community: a Case Study*. *African Journal of Clinical Legal Education and Access to Justice*. 2012 Volume 1. ISSN: 2315-5728

provision in the Constitution of the Federal Republic of Nigeria.<sup>8</sup> In attempting to alleviate the plight of indigent people, particularly, women, access to justice could be seen to promote qualitative justice for disadvantaged groups. Access to justice does not just encompass access to lawyers and courts. It lays down a recognition that everyone is entitled to the protection of the law and that an individual's rights are protected and aggrieved persons are treated fairly.<sup>9</sup> A significant means of realizing this goal is through the Alternative Dispute Resolution process.<sup>10</sup> For decades, and prior to colonial rule in Nigeria, the traditional method of settling disputes was through village heads, elders and family heads.<sup>11</sup>

Customary arbitration of the various indigenous communities had existed long before the advent of the British legal system of court litigation into the country.<sup>12</sup> Customary law before the colonial era operated freely in its areas of influence as a complete and independent legal system,<sup>13</sup> which was based on the individual customary law of each community is generally referred to as customary arbitration.<sup>14</sup> Customary arbitration tribunals therefore, constituted of elders of the particular community who then adjudicate on any matter before them.<sup>15</sup> Customary arbitration is a valid dispute resolution mechanism under the Nigerian legal system;<sup>16</sup> and is considered as one of the modes of resolving disputes in contemporary indigenous communities in Nigeria.<sup>17</sup> The Arbitration and Conciliation Act regulates arbitration, mediation and

<sup>8</sup> Section 46(4) of The Constitution of the Federal Republic of Nigeria, 1999

<sup>9</sup> The Nation. Challenges of Access to Justice. Retrieved from <https://thenationonlinenet/access-to-justice-the-challenges> on March 30, 2017

<sup>10</sup> Appiagyei-Atua, k. (2013) Alternative Dispute Resolution and its Implications for Women's Access to Justice in Africa- Case Study of Ghana. *Frontiers of Legal Research*, Vol. 1, No.1, 2013, pp. 36-57. ISSN 1929-6630

<sup>11</sup> Customary Arbitration as an Alternative Dispute Resolution Mechanism in Nigeria. Available at <https://www.scholarsworks.com/> on June 27, 2016

<sup>12</sup> Gadzama, J.K. (2004) Inception of ADR and Arbitration in Nigeria. A paper presented at the Nigerian Bar Association. Available at [unilorin.edu.ng/publications/imami](http://unilorin.edu.ng/publications/imami) on June 20, 2016

<sup>13</sup> Oba, A.A. (2008) "Juju Oath in Customary Arbitration and Their Legal Validity in Nigerian Courts" 52 (1) *Journal of African Law*, 140

<sup>14</sup> Umeche C.I (2009), *ibid.*, at p. 291; Akanbi M.M, "A Critical Assessment of the History and Law of Domestic Arbitration in Nigeria: Trends in Nigeria Law" in Oluduro *et al* (eds.), *Essays in Honour of Oba DVF Olatere-Olagbegi III, Olowo of Owo Kingdom* (Constellation Nig. Publishers) 462.

<sup>15</sup> The tribunals derive their authority from the custom and tradition of the community, which are accepted by members as binding on them

<sup>16</sup> *Okoye v Oblaso* (2010) 8 NWLR (Pt. 1195) 145, 171-172; *Achor v. Adejoh* (2010) 6 NWLR (Pt.1191) 537, 569; *Okereke v. Nwanko* (2003) 9 NWLR (Pt. 826) 592; *Egesimbe v. Onwuzurike* (2002) 15 NWLR (pt. 791) 446; *Agu v. Ikewibe* (1991) 3 NWLR (Pt.178) 385; *Idlka v. Erisi* (1988) 2 NWLR (Pt. 78) 563.

<sup>17</sup> Idornigie P.O. (2007) Overview of ADR in Nigeria Arbitration. *Journal of African Law* Vol. 3 No 1, p. 73

conciliation in Nigeria.<sup>18</sup> The practice of dispute settlement using the process of arbitration could be said to be as old as the existence of the Nigerian society.<sup>19</sup> Customary arbitration was [and still is] part of the customary norms of Nigeria.<sup>20</sup>

Despite the provision of access to justice in the Constitution of the Federal Republic, a lot still needs to be done in relation to access to justice rights. Though, not a novel process, customary arbitration ensures the peaceful harmony between parties. This paper therefore seeks to focus on examining the benefits of customary arbitration and how it can effectively be used as a tool for ensuring access to justice in Nigeria.

## 2. DEFINITION OF TERMS

It is of essence to define some key terminologies for better understanding. These include terms such as alternative dispute resolution, arbitration, customary arbitration, and, access to justice.

### 2.1 Alternative Dispute Resolution

Alternative Dispute Resolution, also known as ADR, is defined as procedures for settling disputes by means other than litigation such as arbitration and mediation.<sup>21</sup> It has been used to refer to both procedures and to institutional structures solution for dispute resolution. It invokes the combination of dispute resolution institutions that do not involve the courts, including intra-industry treaties to arbitrate disputes, etc. Procedurally, it invokes dispute resolution tactics that depart from the litigation norm- that is, summary jury trials, judicial referral of cases to magistrate judges and settlement masters- whether employed by the courts or by extrajudicial dispute resolution bodies. In essence therefore, ADR refers to a variety of techniques, each addressing different levels of privatization.<sup>22</sup>

<sup>18</sup> Malemi, E. (2010) *The Nigerian Legal System*. (1<sup>st</sup> Edition) Princeton Publishing Co.

<sup>19</sup> Igbokwe V.C. (1997) "Law and Practice of Customary Arbitration in Nigeria: *Agu V. Ikewibe and Applicable Law Issues Revisited*." *Journal of African Law*; Vol. 41. No. 2, 201

<sup>20</sup> Umeche C.I. (2009) "Customary arbitration and the Plea of Estoppel Under Nigerian Law" (35) 2 *Commonwealth Law Bulletin* 293

<sup>21</sup> Garner, B. (2009) *Black's Law Dictionary*. 9<sup>th</sup> Edition. Minnesota: Thomas Reuters at p. 91

<sup>22</sup> Weinstein, J.B. (1996) Some Benefits and Risks of Privatization of Justice through ADR. 11 *Ohio St. J. on Disp. Resol* 241. p. 3-4

Therefore, alternative dispute resolution is any extrajudicial procedure through which private persons agree to resolve legal disputes.<sup>23</sup>

## 2.2 Arbitration

This is the process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially and with binding effect by the application of law by one or more persons instead of by a court of law.<sup>24</sup> Arbitration has also been defined as a procedure for the settlement of disputes, under which the parties agree to be bound by the decision of an arbitrator whose decision is, in general, final and legally binding on both parties.<sup>25</sup> Arbitration can also be defined as a device whereby the settlement of a dispute/disputes, which is of interest for two or more persons is entrusted to one or more persons, that is, arbitrator or arbitrators who derive their powers from a private agreement and who proceed and decide the case on the basis of the agreement.<sup>26</sup>

## 2.3 Customary Arbitration

Customary arbitration which was coined out of arbitration is essentially a native arrangement by selected elders of communities who are vast in the customary law of the people and take decisions, which are mainly designed or aimed at bringing some amicable settlement, stability and social equilibrium to the people and their immediate society or environment.<sup>27</sup> The nature of customary arbitration was further explained by Karibi Whyte JSC in *Agu v. Agu*<sup>28</sup> that:

*It is well accepted that one of the many African Customary models of settling disputes is to refer the dispute to the family head or an elder or elders of the community for a compromise solution based upon the subsequent acceptance by both parties of*

<sup>23</sup> Dayton, K. (1991) The Myth of Alternative Dispute Resolution in Federal Courts, 76 Iowa Law Review 889 at 897

<sup>24</sup> Halsbury's Laws of England (1999) 4<sup>th</sup> edition. Butterworths para. 601, 332

<sup>25</sup> Orojo, O. J. and Ajomo A. M. (1999) Law and Practice of Arbitration and Conciliation in Nigeria

<sup>26</sup> David, R. (1985) Arbitration in International Trade, Netherlands: Kluwer Law and Taxation Publishers at p.5

<sup>27</sup> Ariyoosu, D.A. Customary Arbitration as a Dispute resolution Mechanism and its operational Framework as Estoppel Per Rem Judicatam. Available at [unilorin.edu.ng>arivoosuda>Customar...](http://unilorin.edu.ng>arivoosuda>Customar...) on June 14, 2016

<sup>28</sup> *Agu v. Agu* (1991) 3 NWLR (Pt. 180) 358, 407

*the suggested award, which becomes binding only after such signification of its acceptance, and from which either party is free to reconcile at any stage of the proceedings up to that point...*

#### 2.4 Access to Justice

Access to Justice has been defined by the United Nations Development Programme (UNDP) as the methodology of improving an individual's access to courts or guaranteeing legal representation and ensuring that legal and judicial outcomes are just and equitable.<sup>29</sup> Furthermore, it has been established that not only must laws and remedies be just, but it must also be sensitive to the needs of the poor and the marginalized.<sup>30</sup> Access to justice is ancillary to the right to a fair trial and also, respect for the principles of natural justice.<sup>31</sup> It attempts to dismantle the structural barriers that marginalized people face in their attempts to obtain legal representation and a remedy where their rights are violated. That is, it relates to how to attain qualitative justice at the end of the legal process for the poor generally, children, women, persons with disability and indigenous minority groups and other marginalized entities. Qualitative justice is about justice that is sensitive, responsive and effective – it recognizes the peculiar and unique perspectives and concerns of the marginalized entities and provides mechanisms for responding to these concerns which in the end provides a kind of justice that brings satisfaction to the victim.<sup>32</sup>

The characteristic feature of access to justice is the right of every individual to require the state to provide a means of dispute resolution that is equally accessible and socially just.<sup>33</sup>

<sup>29</sup> UNDP, Access to Justice: Practice Note (Draft 1), 8/3/2004 at 3.

<sup>30</sup> Global Rights. Access to Justice. Available at <http://www.globalrights.org/indexng.html> on March 30, 2017

<sup>31</sup> Tilda Hum et al, (2006) *The Right to a Fair Hearing and Access to Justice*. Submission of the New South Wales Young Lawyers Human Rights Committee to the Senate Legal and Constitutional Affairs Committee: Inquiry into Access to Justice Available at <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=2688b824-7dd8-4046-b04d-cbd8d1d7c1c6>. Accessed on June 10, 2016

<sup>32</sup> Tilda Hum et al, (2006) *The Right to a Fair Hearing and Access to Justice*. Submission of the New South Wales Young Lawyers Human Rights Committee to the Senate Legal and Constitutional Affairs Committee: Inquiry into Access to Justice Available at <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=2688b824-7dd8-4046-b04d-cbd8d1d7c1c6>. Accessed on June 10, 2016

<sup>33</sup> Cappelletti, M. and Garth, R. (1978) 'Access to Justice: The Worldwide Movement to Make Rights Effective', *A General Report*, in Mauro Cappelletti and Robert Garth (eds). 'Access to Justice: A World Survey; Vol 1 Milan, Dott. A Guiffre Editore at 6

## 2.5 Challenges of Access to Justice in Nigeria

In any society, disputes are inevitable. While the law seeks to avoid such disputes, it also provides different methods for resolving them when they arise. Litigation is therefore considered the most obvious method of resolving disputes. In addition, the high cost of litigation, the length of time required for conducting the law suit and the technical rules of procedure have given rise to a number of extra-judicial methods and procedures which is known as Alternative Dispute Resolution.<sup>34</sup> Despite the law's promise of a remedy for every right, the ability of aggrieved parties to access the courts and the law has been constrained as a practical matter.<sup>35</sup>

Access to justice basically, is about access to procedures for making rights effective through state-sponsored public and fair dispute resolution processes. It implies equal access to authoritative enforceable rulings and outcomes that reflect the merits of the case in light of relevant legal principles.<sup>36</sup> Access to justice in any society is critical and fundamental. It is considered the most basic requirement of any system of justice and also the most basic human rights of any system that purports to guarantee legal rights which is the hallmark of any sane and civilized society.<sup>37</sup>

The challenges of access to justice in Nigeria are those ranging from incompetence of some of the judicial officers, poor remuneration for court administrators which invariably gives rise to corrupt practices within the court system.<sup>38</sup> Other major challenges, which act as barriers in accessing justice is the cost of legal advice and the high cost of legal representation.<sup>39</sup> Access to justice including the right to fair hearing and access to legal representation is important when protecting human rights. Inadequate protection of human

<sup>34</sup> Otuturu, G.G. (2014) *Some aspects of the law and practice of commercial arbitration in Nigeria*. Journal of Law and Conflict Resolution. Vol.6(4) Available on <http://www.academicjournal.org/JCLR> Accessed on June 10, 2016

<sup>35</sup> See Stempel, W.J. (1998) *Contracting Access to the Courts: Myth or Reality? Boon or Bone?*, 40 *ARIZ. L. REV.* 965, 967; Reuben, R.C. (1997) *Public Justice: Toward a State Action Theory of Alternative Dispute Resolution*, 85 *CAL. L. REV.* 577, 631-41

<sup>36</sup> Genn H, (2009) 'ADR and Civil Justice: what's justice got to do with it?' in *Judging Civil Justice*

<sup>37</sup> Wahab, S. (2015) *The Challenges of access to justice*. Available on [m.guardian.ng/opinion/the-challenges](http://m.guardian.ng/opinion/the-challenges). Accessed, on June 23, 2016

<sup>38</sup> Mohammed M. (2015) *Addressing Hurdles of Access to Justice: ADR in focus*. Available on [www.mynewswatchtimesng.com/](http://www.mynewswatchtimesng.com/) accessed on June 15, 2016

<sup>39</sup> United Nations and the Rule of Law. *Access to Justice*. Available on <https://www.un.org/ruleoflaw/thematic-areas/access/> on March 30, 2017



rights and all other inequalities in the legal system can have far-reaching consequences for people who are already experiencing disadvantage or in some form of crisis or the other.<sup>40</sup>

In Nigeria, there are noticeable social inequalities and apart from poverty, other factors militating against access to justice includes mass illiteracy, lawlessness of the executive arm of government and its agents, procedural rules (criminal and civil) and constitutional limitations.<sup>41</sup>

### 3. CUSTOMARY ARBITRATION AS A TOOL IN ENSURING ACCESS TO JUSTICE IN NIGERIA

Customary arbitration is not alien to customary jurisprudence and it has been in existence prior to colonialism. The mode was to a large extent, dependant on the mode of the community, that is, whether centralized or not centralized.<sup>42</sup> In addition, the choice of a dispute mechanism within a particular society is also strongly influenced by the peculiarities of traditions, culture and legal evolution of that particular society.<sup>43</sup> Access to justice before the advent of colonialism was through native law and customs and any transgression was met with stiff sanctions and the offender would be ostracized.<sup>44</sup> The system of customary arbitration was therefore binding on the parties. In *Nwankpa v. Nwogu*,<sup>45</sup> the Court of Appeal held thus:

*One of the many African customary modes of settling dispute is to refer the dispute to the family head or an elder or elders of the community for a compromise solution based upon the subsequent acceptance by both parties of the suggested award, which becomes binding only after such signification of its acceptance...*

<sup>40</sup>Human Rights and Access to Justice. (2009) Available on <https://www.aqoss.org.au/sites/default/files/QCOS> on March 30, 2017

<sup>41</sup> Omolade, O., et.al. (2012) Community Lawyering: An Intervention of the University of Ibadan Women's Law Clinic in the case of stray bullet killings at Arulogun-Idi Omo Community: A Case study. *African Journal of Clinical Legal Education and Access to Justice*. Volume 1

<sup>42</sup> Amazu, A. (2001) *International Commercial Arbitration and African States: Practice, Participation and Institutional Development*. Cambridge University Press at p. 115

<sup>43</sup> Quashigah, K. (1989-1990) Reflections on the Judicial Process in Traditional Africa. 4 *Nigerian Juridical Review*.

<sup>44</sup>Onibokun, A.J. (2011) Access to Justice and Right to Fair Hearing as Democratic Correlates. *University of Ibadan Law Journal*. Vol. 1 No.1 at p.231

<sup>45</sup> Nwankpa v. Nwogu (2007) 2 NWLR (Pt. 964) p. 251

Customary arbitration is an informal arrangement and a common method of settling disputes which is generated from the customs and practices of the people from time immemorial whereby people submitted their disputes to the family or other classes of authority for settlement.<sup>46</sup>

Access to justice has been viewed as an essential component of any civilized society and it is the ability to use courts and other legal institutions effectively in order to protect one's rights and pursue claims.<sup>47</sup> Justice is regarded as a human need while access to justice a human right.<sup>48</sup> It is not enough for there to be a justice system, but the system must be easily accessible for all in accessing this right. However it is trite that the cliché that the law is no respecter of persons does not guarantee access to justice.<sup>49</sup> Therefore, in a society where there is no access to justice, it will be difficult for individuals to achieve legal representation.

Prior to access to justice, the lack of access to justice for the "legally underprivileged"<sup>50</sup> was a growing problem.<sup>51</sup> There is no access to justice where citizens (especially marginalized groups) fear the system and see it as alien and cannot access it or where the justice system is financially inaccessible. Access to justice through customary arbitration is a welcome process for the underprivileged, the underrepresented and in general, the voiceless. It invariably means access of an individual to a legal practitioner. This mode is what is practiced in the Women's Law Clinic.

Most rural litigants do not have confidence in formal courts because they are unfamiliar with the principles and language of the court.<sup>52</sup> Thus, informal forums, such as traditional courts administered by traditional leaders supplement the formal justice system and invariably provide accessible means

<sup>46</sup> Kolajo, A.A. (2001) Customary Law in Nigeria through the Cases. Ibadan. Spectrum Books Ltd.

<sup>47</sup> Wanyama, E. (2013) Unpacking the Dialectics of Accessing Justice through Legal Aid in East Africa: An Overview of the Constitutions of Uganda and Kenya. *African Journal of Clinical Legal Education and Access to Justice*, Nigeria: Network of University Legal Aid Institutions (NULAI) p.59

<sup>48</sup> Oba, C.O., (2013) Third Party Litigation Funding and Access to Civil Litigation: Prospects and Challenges in Nigeria. *African Journal of Clinical Legal Education and Access to Justice*, Nigeria: Network of University Legal Aid Institutions (NULAI) p.23

<sup>49</sup> *ibid*

<sup>50</sup> Legally underprivileged are those who cannot afford legal representation and the costs of litigation is unreachable

<sup>51</sup> Bradway, J. S. (1974) *The Legally Underprivileged*, 10 CAL. W.L. REV. 228

<sup>52</sup> Oomen, B. (2005) *Chiefs in South Africa: Law, Power and Culture in the Post-Apartheid Era*, Oxford, James Currey at 205

of dispute resolution to many rural litigants.<sup>53</sup> These informal forums are considered quicker, cheaper, and more compatible with their cultural ideologies and it is believed that such forums are able to resolve disputes in accordance with understandable customs and practices.<sup>54</sup>

One of the main objectives of customary arbitration is that there will be peaceful co-existence between the disputants. Peace and harmony would be restored through compromise and reparation for the wrong committed. There is therefore the belief in and commitment to good relationship after the case has been concluded. It is important to note that in practice, the traditional concept looks beyond legal rights of the parties to see what type of relationship is likely to prevail between the parties after the matter has been resolved.<sup>55</sup> It is pertinent to note that when parties submit to customary arbitration, it must be done voluntarily and they must consent willingly.<sup>56</sup>

#### 4. ACCESS TO JUSTICE THROUGH CUSTOMARY ARBITRATION IN THE WOMEN'S LAW CLINIC, UNIVERSITY OF IBADAN IN NIGERIA

The Women's Law Clinic is a specialized Clinic in the Faculty of Law, University of Ibadan and it is majorly for indigent women in the society. The Clinic is a laboratory for practical learning and students are exposed to the real world of legal practice. In addition, the law students are also exposed to the alternative modes of dispute resolution without recourse to the Court of Law. The Clinic is a clinical programme model with a faculty of law based in-house clinic.<sup>57</sup>

The goals of the Women's Law Clinic are to train law students in the practice of law whilst utilizing techniques of Clinical Legal Education; and to provide legal services to the less advantaged women in society. In order to

---

<sup>53</sup> *Ibid.* at p.205

<sup>54</sup> Olivier, N. (2006) 'Recent developments in respect of policy', Manfred O.H. and Helgard K Patemann, *The Shade of New Leaves: Governance in Traditional Authority, A South African Perspective*, Berlin, Lit Verlag at 76

<sup>55</sup> Wud Makee, J. (1988) *The Customary Law of the Dinka People of Sudan*. Page 221

<sup>56</sup> In *Ohiaeri v. Akabueze* (1974) ECSR 251 where the Supreme Court of Nigeria held *inter alia* that the constituents of a valid customary arbitration were express or implied intention to be bound by the arbitral award and non-withdrawal of the parties. It was further held that such arbitration is conclusive and unimpeachable once it is proved and that it was in accordance with customary law and general usages

<sup>57</sup> Omolade, O., et.al. *op.cit* at p. 45

access justice for the indigent and underprivileged women, the Women's Law Clinic utilizes the tools of Alternative Dispute Resolution (ADR), particularly, customary arbitration as a method of resolving disputes between disputing parties. The rationale behind the customary type of arbitration is to facilitate settlement quickly and without any cost implications; and also, it does not require any involvement of the legal system and so the approach to achieving settlement will not depend on reference to the legal rights or merits of the dispute.<sup>58</sup>

The strategies which are used in the Women's Law Clinic include the following:

- a. Alternative lawyering methods, such as customary arbitration.
- b. Community lawyering<sup>59</sup>
- c. Street law programmes<sup>60</sup>

When clients come to the Clinic, they are attended to by well-seasoned lawyers who are experts in that area of law. The clients are made to fill a form stating their grievances. The intervention of the clinic is always a combination of strategies. The clinic after reviewing the case, steps in and the disputing parties are invited. It is an informal process which has ethical elements imbibed. That is, all information retrieved from clients are highly confidential when resolving disputes. Customary law arbitration is therefore distinctive because agreement to arbitrate is usually oral and its proceedings and decisions are not normally recorded in writing. Both parties consent freely to the proceedings and decisions made at any of the session. The arbitration exercise in the clinic is not done once but several times and there are follow-ups on whether or not the clients have compiled or are compiling. However, it is popular among people in the community and villages and is recognized by courts.<sup>61</sup> An essential feature is that all forms of ADR are conducted in private; in terms of both the process and outcome and also, like the customary

<sup>58</sup> Bradway, J. S. (1974) *The Legally Underprivileged*, 10 CAL. W.L. REV. 228.

<sup>59</sup> Community Lawyering entails providing the community with free legal services. The Clinic offers free legal services for women when they come for legal aid

<sup>60</sup> These strategies are used in order to promote and ensure access to justice in the Women's Law Clinic. The clinic in order to create awareness to the women in Ibadan, embarks regularly on sensitization drives and outreaches. Different communities, markets, religious houses, hospitals, schools and any place where there is a high population of women will be educated on their rights. This is what is referred to as Street Law.

<sup>61</sup> Born, G.B. (2011) "International Arbitration Cases and Materials." , p.1

arbitration which is done in the clinic, all the proceedings are private.<sup>62</sup> The West African Court of Appeal stated thus:

*... Where matters in dispute between parties are, by mutual consent, investigated by arbitrators at a meeting held in accordance with native law and custom and a decision given, it is considered binding on the parties and the Supreme Court (which is the highest court system in Nigeria) will enforce such a decision".<sup>63</sup>*

Customary arbitration is termed as a convenient forum for settlement of disputes which cannot be raised to the status of a court of law.<sup>64</sup> A decision therefore by a court of competent jurisdiction is binding on the parties to it so also is a decision of a customary arbitration. However, for a customary arbitration to effectively work, the following ingredients must be proved. The ingredients are:

- (i) That there was a voluntary submission of the matter in dispute to an arbitration of one or more persons;<sup>65</sup>
- (ii) That there is agreement between the parties which is stated expressly or by implication that the decision of the arbitrator(s) would be accepted and binding
- (iii) That the arbitration was in accordance with the custom of the parties or their trade or business;
- (iv) That the decision was accepted at the time it was made<sup>66</sup>

Suffice to state that the submission of parties to arbitration must be voluntary. Parties should not be induced, coerced, intimidated or unduly influenced in submitting to customary arbitration.<sup>67</sup>

<sup>62</sup> The Women's Law Clinic is a Clinic that uses the techniques of Alternative Dispute Resolution effectively in all its cases as it does not resort to law courts to solve disputes

<sup>63</sup> *Assampong v. Amuaku* (1932) 1 W.A.C.A. 192 at p.192 at p.196

<sup>64</sup> *Ibid.* See the dictum of Tobi JSC in *L'fomba v. Ahuchaogu* (2003)4 SC Pt. 11 65 at 90

<sup>65</sup> The parties in dispute must voluntarily submit to the Law Clinic for the settlement of their disputes. The Women's Law Clinic ensures that the parties in dispute come freely to submit themselves in the determination of their dispute

<sup>66</sup> It is pertinent to note that after the arbitrator(S) have made their decisions, the parties are bound by their decisions which must be followed

<sup>67</sup> *Ibid.* Customary Arbitration as a dispute resolution. Available on

<https://unilorin.edu.ng/.../Customary%20Arbitrator%20as%20a%20Dispute...> Accessed on June20, 2016

It is significant to clarify at this point that Access to justice is more than improving an individual's access to courts or guaranteeing legal representation. It supports sustainable peace by affording the population a more attractive alternative in resolving personal and political disputes.<sup>68</sup>

In the Women's Law Clinic, parties come voluntarily for the resolution of their legal problems. The meetings and discussions with the clients are private when it is conducted. All the meetings are conducted informally and in a comfortable atmosphere. Therefore, clinicians (that is, legal practitioners) mediate between the disputing parties.

Proponents have argued that mediation—that is, the informal, confidential intervention of a third-party "neutral" is more efficient and effective than courts, particularly in countries where the judiciary is corrupt, is less costly, is more responsive to the poor and disenfranchised, is more culturally appropriate, promotes greater social harmony, and helps the judiciary provide a better quality of justice by reducing caseloads and therefore enhancing courts' work.<sup>69</sup>

Therefore, the Women's Law Clinic, is well respected both within and outside the University of Ibadan community as the clinic has been able to ensure access to justice.

#### 4.1 Case Study of the Women's Law Clinic

The Women's Law Clinic was inaugurated on 18 July 2007. The cases that are treated by the Clinic are usually matrimonial cases which includes, issues pertaining to Maintenance, Custody of Children, Landlord and Tenancy, Land matters and other areas of human rights. Since inception, and as of the time of writing this paper, the Clinic has treated more than three hundred and fifty-one (351) cases. Out of the three hundred and fifty-one cases (351), the clinic has been able to successfully close one hundred and eighty (180) cases.

---

<sup>68</sup> United States Institute of Peace. Necessary Condition: Access to Justice. Retrieved from [www.usip.org/7-rule-law/access-justice](http://www.usip.org/7-rule-law/access-justice) on June 29, 2016

<sup>69</sup> See, e.g., Leon, *supra* note 15 (arguing, *inter alia*, that ADR can support and Complement court reform, increase access to justice and facilitate other social change); Wanis-St. John, A. (2000) *Implementing ADR in Transitioning States: Lessons Learned From Practice*, 5 HARV. NEGOT. L. Rev. 339, 339

The following case studies highlight the Clinic's ability in resolving issues amicably between parties to a dispute.

1. *WLC/CAS/311*

A case was brought to the clinic and the information reiterated by the lady in question was that she had been impregnated by her private tutor. Upon learning that the lady was pregnant, the private tutor denied paternity of the child. After the child had been born, he changed his mind and informed the lady that he wanted the custody of the child. There had also been threats by the father of the child to involve the Police and deny access of the child to the mother.

Intervention by the Clinic: The Women's Law Clinic, in its usual character to ensure access to justice, sent a letter of invitation to the father of the child for further questioning, counselling and debriefing between the disputants. The matter was thereafter settled amicably between the parties and they were able to resolve their issues.

The case has since been closed.

2. *WLC/CAS/293*

A widow approached the clinic to intervene in her deceased husband's family who wanted to take custody of the two children born during the union of the parties. The reasons for the action taken by the family was that the father of the children was deceased and also, that the wife of the deceased is not from the tribe of the deceased man's family. Intervention by the Clinic: The Clinic at this stage noted that the case was very sensitive and in order not for the case to be aggravated, a report was made at the Welfare Unit, one of our collaborating partners who handle children affairs. The Unit became aware of the situation and also notified the Nigeria Police Force about it, in order to prevent kidnapping of the children from their school. The school principal was also given an order not to authorize release of the children to anyone other than the children's mother or grandmother.

The Clinic was therefore able to control the situation. All the parties involved were invited to the Clinic and counselled on the need to ensure harmony. After regular sessions with the disputants, the matter was settled amicably and they were able to come to an agreement on their differences. The matter has since been closed.

## 5. CONCLUSION

In the Women's Law Clinic, Customary Arbitration has come a long way in ensuring access to justice for indigent women. The reasons for this are not far-fetched. It has been observed that customary arbitration brings the disputing parties to an amicable end. A goal of the Women's Law Clinic is to ensure that harmony is restored after any arbitration session. The saying "*You cannot go to court and come back as friends,*" is significant in the Women's Law Clinic and the Clinic is a respecter of different customs and culture in Nigeria taking cognizance of the different ethnic groups and communities. In essence therefore, customary arbitration as a tool for ensuring access to justice can be seen as a welcome development in the Nigerian legal system and the Women's Law Clinic due to the success stories in the Women's Law Clinic. Customary arbitration exists in our society both at the rural and urban areas and should therefore be recognized as a tool for promoting dispute settlement mechanism which is simple, less formal, less costly and non-litigious.

UNIVERSITY OF IBADAN LIBRARY