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OYELADE OLUTUNJI SUNDAY

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DR. SHEHU ABDULLAHI ZURU AND BARRISTER MRS. JAMILA ISAH

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HADIZA HAMMA AND HAUWA KONTAGORA

LANDLOCKED STATES AND THE RIGHT TO FREEDOMS OF THE HIGH SEAS
DR. Y. A. FOBUR

A CRITICAL APPRAISAL OF SPOUSAL RAPE: NIGERIA, ENGLAND, UNITED STATES AND AUSTRALIA IN FOCUS
DR. OCHEM CHARLES, EMEKA AND DR. C. T. EMEJURU

THE THREAT, REALITY AND TRAGEDY OF MARITIME ENVIRONMENTAL POLLUTION IN NIGERIA
DR. A. O. ABDULKADIR AND A. E. ARIKEWUYO-AJUMOB

AN OVERVIEW OF CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW
DR. MARYAM ISHAKU GWANGNDI

DEFINING ISRAEL'S OFFENSIVE ON GAZA: SELF-DEFENCE OR WAR CRIMES?
ABDULRASHID LAWAN HARUNA

FAST TRACKING EFFECTIVE MECHANISM FOR JUSTICE DELIVERY TO VICTIMS OF SEXUAL VIOLENCE IN COMMUNAL CONFLICT
DR. FRANCIS M. KWEDE,

THE STRUCTURAL DEVELOPMENT OF NIGERIAN FEDERALISM: HISTORICAL PERSPECTIVE
DR KAMAL ALHAJI DA'UD

LESSON FROM THE NETHERLAND JUDICIAL PRECEDENCE IN FRIDAY APAN VS. ROYAL DUTCH SHELL PLC. ON ENVIRONMENTAL PROTECTION FOR NIGERIA COURTS
DR. HAKEEM IJAIYA AND AGBOOLA, T. O.

CRITICAL ANALYSIS OF THE LEGAL REFORM POLICIES IN THE NIGERIAN ELECTRICITY INDUSTRY
KABIRU ADAMU

THE DYNAMISM OF THE NIGERIAN LEGISLATIVE PROCESS
DR. ABDULKARIM A. KANA & DR. ELIJAH OLUWATOYIN OKEBUKOLA

THE ROLE OF PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT (EIA) IN NIGERIA: A REFLECTION.
BABA KURA ALHAJI AND SULEIMAN USMAN SANTURAKI

APPLICATION OF HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW IN ARMED CONFLICTS: A CASE OF COMPLIMENTARITY OR STRANGE BED FELLOWS?
AKPOGHOME THERESA U

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TABLE OF CONTENT

REFLECTIONS ON THE VICTIMS OF CRIME UNDER THE PROPOSED CRIMINAL JUSTICE (VICTIM'S REMEDIES) BILL IN NIGERIA
DR. YAHAYA ABUBAKAR MUHAMMAD... 1

LABOUR DISPUTES IN NIGERIA: THE CONCEPTUAL CHALLENGES
A.M MADAKI AND PAUL ABRAHAM... 19

THE LAGOS STATE ARBITRATION LAW AND THE DOCTRINE OF COVERING THE FIELD IN NIGERIA: A REVIEW
ABDULRAZAQ ADELODUN DAIBU... 35

THE APPLICATION OF RIGHT OF SILENCE AT THE PRE-TRAIL STAGE: THE ROLE OF THE POLICE
M. A. UMAR ESQ., D. G. HASSAN ESQ. AND A.U. LIMAN ESQ. 50

EXAMINING ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN AFRICAN INDIGENOUS SOCIETY: NIGERIA IN PERSPECTIVE
OYELADE OLUTUNJI SUNDAY... 62

THE SHAM AND REALITY OF LEGAL PROTECTION OF INDIGENOUS PEOPLES IN OIL EXPLORATION AND DEVELOPMENT AREAS OF NIGERIA'S NIGER DELTA
DR. SHEHU ABDULLAHI ZURU AND BARRISTER MRS JAMILA ISAH... ... 83

AN ANALYSIS OF THE CONCEPT OF RIGHT TO HEALTHY ENVIRONMENT AND THE IMPACT OF THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT
HADIZA HAMMA AND HAUWA KONTAGORA... 103

LANDLOCKED STATES AND THE RIGHT TO FREEDOMS OF THE HIGH SEAS
DR. Y. A. FOBUR, ... 116

A CRITICAL APPRAISAL OF SPOUSAL RAPE: NIGERIA, ENGLAND, UNITED STATES AND AUSTRALIA IN FOCUS
DR. OCHEM CHARLES, EMEKA AND DR. C. T. EMEJURU... 137

THE THREAT, REALITY AND TRAGEDY OF MARITIME ENVIRONMENTAL POLLUTION IN NIGERIA
A. O. ABDULKADIR (Ph.D) AND A. E. ARIKEWUYO-AJUMOBI... 157

AN OVERVIEW OF CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW
DR. MARYAM ISHAKU GWANGNDI 169

THE LAGOS STATE ARBITRATION LAW AND THE DOCTRINE OF COVERING THE FIELD IN NIGERIA: A REVIEW

By

Abdulrazaq Adelodun Daibu*

Introduction

Lagos[1] is a metropolitan city[2] located in the south west geo-political zone of Nigeria. It has long been a trading/commercial hub of Nigeria and West Africa because of its commercial/economic importance and is now one of the largest and fastest growing urban cities in the world.[3] The commercial and economic position of the state naturally gives rise to disputes among business men and parties to commercial transaction as disputes are inevitable in all human relation especially business transactions.[4] Litigation is the traditional method of settling such disputes but because of its attendant problems of prolong time, excessive cost, rigid procedures, unnecessary publicity and adversarial nature as well as the need to preserve and further their business relationships, parties in recent times now embrace arbitration and other Alternative Dispute Resolution (ADR) mechanisms which is faster, cheaper, less cumbersome, more effective and efficient to resolve their disputes.[5]

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[1]Lagos state is one of the 36 states of the Nigerian federation. See section 3 (1) of the Constitution of the Federal Republic of Nigeria 1999(as amended).See also part 1 First Schedule thereof; Lagos is undoubtedly the most populated, fastest growing and the largest commercial city in Nigeria. It has surpassed Cairo as Africa's largest city and recently rated the 7th fastest growing city/urban area in the world. See City Mayors Statistic, "The world's fastest growing cities and urban areas from 2006 to 2012" available on line at http://www.citymayors.com/stastics/urban_growth1.html accessed 24th July 2014

[2]Comprising of 57 local governments (including Local Community Development Areas or LCDAs) with over 21 million populations is roughly about the size of states like New Mexico, Nevada and Arizona of the United State. See The New York times available on line at http://mobile.nytimes.com/2012/04/15/world/africa/in-a-preview-of-an- overcrowded-planet.html?_r=2& accessed 25th July, 2014; http://en.m.wikipedia.org/wiki/Lagos accessed 26th July, 2014

[3]According to Financial Times, Lagos generate about a quarter of Nigeria's gross domestic product. See Xan Rice report in Financial Times available on line at http://m.theatlantic.com/international/archive/2012/07/this-is-africa-news-bigest-city-lagos-nigeria-population-21-million/259611 accessed 25th July, 2014

[4]Akanbi M.M. " Contending Without Being Contentious : Arbitration, Arbitrators And Arbtrability" Being the 152nd University of Ilorin Inaugural Lecture Delivered at the University of Ilorin Auditorium on 13th November, 2014. p.3; Adekilekun M. T., Olatunji O. A., Gan C.C. and Akanbi M.M. "Public-Private Partnership Initiative in Nigeria and its Dispute Resolution Mechanism: An Appraisal" Journal of Malaysian and Comparative Law (2013) vol. 40 pp. 67-68; Olorunfemi J. O. "The Effect of Arbitration Agreement on The Jurisdiction of the Court in Nigeria" *Nigeria Journal of Public Law* (2009) vol. 2 No. 1 p. 310

[5]Daibu A. A."Application of the Rules of Natural Justice in Arbitral Proceedings in Nigeria" *Ife Juris Review (2013)* vol. 1, p. 56; Bukar B. A. "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door" Arbitration (2013) vol. 79 No. 1 p. 72; Akanbi M.M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges* (Lambert Academic Publishing

Arbitration is one of the most suitable means of resolving commercial disputes in Nigeria.[6] It is an alternative method of dispute resolution in which a neutral third party (arbitrator) hands down a decision after a hearing, of which both parties have an opportunity to be heard.[7] Arbitration involves a fair resolution of disputes between not less than two parties for determination in a judicial manner by person(s) other than a court.[8] Arbitration is principally regulated by the Arbitration Conciliation Act.[9] However, after several years of its application, recent trends of

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Germany, 2012) p. 32; Olorunfemi J. O. " The Effect of Arbitration Agreement on the Jurisdiction of the Court in Nigeria" p. 310; Ajogwu F. *Commercial Arbitration in Nigeria: Law and Practice* (Lagos: Mbeyi & Associates Nig. Ltd. Lagos 2009) p. 5; Orojo J. O. and Ajomo M. A. *Law and Practice of Arbitration and Conciliation in Nigeria (* Mbeyi & Associates Nig. Ltd. Lagos 1999) pp. 42 – 46; Akpata F, The Nigerian Arbitration Law in Focus (West African Books Pub. Ltd., Lagos 1997) p. 11

[6]Daibu A. A." Application of the Rules of Natural Justice in Arbitral Proceedings in Nigeria" pp. 58-59

[7]Abdulrauf L. A. and Daibu A. A. "*Challenges of Section 20 of the Nigerian Admiralty Jurisdiction Act to International Arbitration Agreements" Journal of Contemporary Law vol. 2 (2013-June 2014) Pp. 33-34;* Daibu A. A. "Application of the Rules of Natural Justice in Arbitral Proceedings in Nigeria" p. 56; Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 47; Adewuyi T. A.. "The Effect of Section 20 of the Admiralty Jurisdiction Act No 59 of 1991 on International Arbitration Clauses" *University of Ilorin law Journal 2006,* vol. 1 p. 1;Bernstein R. *et al., Handbook of Arbitration Practice* (3rd edition, Sweet & Maxwell, London 1998), p.13; *Black's Law Dictionary* 6th ed. (Centennial Edition) (US: West Group Publishing Co., 1990), p. 105

[8]Olorunfemi J. O. " The Effect of Arbitration Agreement on The Jurisdiction of The Court in Nigeria" p. 310; *Sambo A. O. and Akanbi M. M. "Sulh as a form of Dispute Resolution " in Adnan Trakic (eds), Islamic Banking & Finance: Principles, Instruments & Operations (The Malaysian Current Law Journal Sdn Bhd, Malaysia 2012) p. 375;* Ajogwu F. *Commercial Arbitration in Nigeria: Law and Practice* p. 5 ; Akanbi M.M. "Contending Without Being Contentious: Arbitration, Arbitrators And Arbtrability" p. 4; *Halsbury's Laws of England* (vol. 2,3rdedn., London: Butterworths.,1964), p.256 para. 501

[9]Cap. A18 *Laws of the Federation of Nigeria 2004* herein after referred to as the "Act" or "ACA". The Act was passed during the military regime as a Decree in 1988 and is deemed to be an Act of the National Assembly by virtue of Section 315 of the Constitution of the Federal Republic of Nigeria 1999(as amended) and is stated to apply throughout the federation of Nigeria. See section 58 thereof. See also Bukar B. A. "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door" p. 78; Emilia O. "A Critique of the New 2009 Arbitration Law of Lagos State" Apogee Journal of Business, Property & Constitutional Law (2010) vol. 2 No. 5 p. 1 available on line at http://eprints.soas.ac.uk/1258o/ accessed 7th December, 2014; Akanbi M.M. "The Nigerian Arbitration Act 1988 s.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" Arbitration (2006) vol. 72 No.3p. 283; Bukar B.A, "Mandatory and Other forms of Arbitration under Some Selected Oil, Gas and Investment Legislation in Nigeria" *OGEL*, (2010) available at http://www.ogel.org accessed 6th November, 2014; D. Okorie, "Does the Regime of Statutory Arbitration of Investment Disputes in Nigeria Negate the Sanctity of Party Autonomy in relation to the Agreement of Parties to Arbitrate? Available on line at http://www.dundee.ac.uk/cepmlp/gateway/?news=31248 (accessed 28th June 2013); Akanbi M.M. "Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations" Arbitration (2012) vol. 78 No. 4 p. 325; Adekoya F. "A Review of Lagos State Arbitration Laws" A.....LEX Quarterly, 4th Quarter Issue 2010 p. 1 available on line at http://www.aelex.com/media/newsletter/2/The_Review_of_the_Lagos_State_Arbitration_Laws.pdf

development in investment, social -economic and commercial relation in Nigeria revealed that there is the need to review and probably amend the Act to meet the contemporary realities and developments in order to ensure its continuing efficacy and effectiveness.[10] Also the much touted advantages of arbitration over litigation is often in practice bedeviled with one snag or the other thereby making arbitration an alternative to litigation only in theory.[11] Hence, the need to ensure a responsive legal frame work for the conduct of arbitral proceedings to meet the contemporary international standard relevant to the social- economic circumstance of Lagos State, the commercial nerve centre of Nigeria necessitated the enactment of Lagos State Arbitration law.[12] Prior to this development, the principal law regulating the practice of commercial arbitration in Lagos State and Nigeria in general is the Arbitration and Conciliation Act[13] which seeks to provide for a unified legal framework for the fair, effective and efficient settlement of commercial disputes by arbitration and conciliation.[14]

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accessed on 29th November, 2014;Idornigie P. O. "Overview of ADR in Nigeria" Arbitration (2007) vol. 73 No. 1 p. 75; Orojo J. O. and Ajomo M. A. *Law and Practice of Arbitration and Conciliation in Nigeria* p. 166; Idornigie P. O. "Anchoring Commercial Arbitration on Fundamental Principles" Arbitrator and Mediator (2004) 23 (1) p.65; Yakubu J. A..." Constitutional Law in Nigeria (Demyaxs Ltd. Nigeria (2003) pp.62-65

[10]Criticisms include delays in enforcement of awards and confusion caused by the effect of inconsistent provisions e.g. sections 4 and 5 of the Act. See generally Akanbi M.M. "Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations" p. 325-351; Idornigie P. O. " Overview of ADR in Nigeria" Arbitration (2007) vol. 73 No. 1 p. 75-76; Idornigie P. O. " The 1988 Nigerian Arbitration and Conciliation Act: Need for Review ? " (2003) 2 Intl. A.L.R.at pp. 50-58; Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" available on line at http://www.google.nl/search?client=ms-rim&hl=en&g=lagos+state+arbitration+law&ie=UTF-8&channel=browser&gws_rd=cr&ie=oq2CVOOjBYXkUvGygugP accessed on 7th December, 2014 p. 1

[11]Akanbi M.M. "Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations" pp. 325, 329; Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" p. 1 See also Ogundare JSC in the case of A. Savoia Ltd v. A. O. Sonubi (2000)12 NWLR(Pt.682) 539

[12]Lagos State Arbitration law No.1 which came into force on the 18th May, 2009 see Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" p. 1; Adekoya F. "A Review of Lagos State Arbitration Laws" p. 1

[13]Emilia O." A Critique of the New 2009 Arbitration Law of Lagos State" p.1; Adekoya F. "A Review of Lagos State Arbitration Laws" p. 1; Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" p. 1

[14]Akanbi M.M. "Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations" p. 325; Bukar B. A. "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door" p. 78; Emilia O. "A Critique of the New 2009 Arbitration Law of Lagos State" p. 1 ; Akanbi M.M. "The Nigerian Arbitration Act 1988 s.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 283; Bukar B. A. "Mandatory and Other forms of Arbitration under Some Selected Oil, Gas and Investment Legislation in Nigeria" *OGEL*, (2010) available at http://www.ogel.org accessed 23nd July, 2014;Okorie D. "Does the Regime of Statutory Arbitration of Investment Disputes in Nigeria Negate the Sanctity of Party Autonomy in relation to the Agreement of Parties to Arbitrate? Available on line at http://www.dundee.ac.uk/cepmlp/gateway/?news=31248 (accessed 28th June 2013). See also the long

This paper examines the historical evolution of arbitration laws in Nigeria and the reasons for the enactment of the Lagos State Arbitration Law. The paper further appraised the doctrine of covering the field and notes that the Arbitration and Conciliation Act has covered the whole spectrum of commercial arbitration in Nigeria. This paper thereafter examines the validity or otherwise of the Lagos state Arbitration law vis-à-vis the Arbitration and Conciliation Act bearing in mind the constitutional doctrine of covering the field in the Nigeria Jurisprudence and contends that the Lagos State Arbitration Law will remain in abeyance as far as commercial arbitration is concerned in Nigeria.

The Nigerian Arbitration and Conciliation Act: An Appraisal

The Nigerian arbitration law like many other laws is a reflection of the British laws as a result of the colonial historical link.[15] The presence of the British colonialist created a new political and commercial order in Nigeria as the country witnessed more sophisticated form of commercial life because of the increase trade links with other countries.[16] English laws were thus administered by way of statute of general application to regulate the new forms of commerce such as patents, copyright, oil exploration etc. which were alien to the natives.[17] After the eventual colonisation of Nigeria, there was an upsurge in commercial and human interaction, which necessitated changes in the administration of justice. In order to maintain stability in the communities, the colonial masters retained the application of customary law subject to repugnancy test to govern the relationship between the indigenous members of the communities.[18] However in their transactions with the English, the natives were subjected to English law.[19] The first arbitration law in Nigeria was the

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title of ACA available at http://www.nigeria-law.org/ArbitrationAndConciliatioAct.htm (accessed 29th June 2013)

[15]See generally Daibu A. A. "The Significance of the Rules of Natural Justice in the Nigerian Administration of Justice" The Jurist (Law Students' Society, University of Ilorin 2014) vol. 19 p. 213 ; Bukar B. A. "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door" p. 72; Idornigie P. O. " Overview of ADR in Nigeria" p. 73; Arthur-Worry F. and Osibanjo O. Cross Examination Mastering the Trial lawyer's Most Potent Weapon (lexis Nexis BUTTERWORTHS 2006) p.1; Asein J. O. Introduction to Nigeria legal System 2nd Edition (Ababa Press Ltd. Lagos 2005) pp. 98- 104; Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 73; Gluckman M. "Cross-examination and the substantive law in African Traditional Courts' in Mac Cormick D. (ed) *Lawyers in their Social Setting.* 1976 pp. 30-62; Adewoye O., *The Legal Profession in Nigeria* 1865-1962 (Nigeria: Longman 1977) p.7; Doherty O. *Legal Practice and Management in Nigeria* (London: Cavendish Publishing Ltd. 1998) pp. 6-7; Fashakin Y. *"Right to Legal Practice in Nigeria*" in Nwosu K. N. (ed.) Legal Practice and Skills (Lagos DCON Consulting 2004) pp. 90-91; Tobi N. *Sources of Nigerian Law* (MIJ Professional Publishers, Lagos, 1996) p.3; Obilade A. O. *The Nigerian Legal System* (Spectrum Books Ltd, Ibadan 1979)

[16] Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* pp. 30-31

[17] Park A. E. W. The Sources of Nigeria Law (Sweet & Maxwell, London 1963) p. 163;Tobi N. *Sources of Nigerian Law p.3;* Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* pp. 73-74

[18]Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 74

[19] ibid

Arbitration Ordinance of 1914,[20] a semblance of the English arbitration Act of 1889 which basically borders on domestic arbitration.[21] After the departure of the British colonialist, it was only realistic for the new government to retain the English laws, since the customary laws of the communities were not in a position to accommodate the sophisticated form of modern commerce introduced by the English as it would not only be herculean but pointless and preposterous to start fashioning out customary law principles that will govern the administration of patents, copyrights, companies, professions and federalism among other things.[22] Hence the Arbitration ordinance was retained as an Act of the federal legislature. Shortly after independence, the Regions also enacted their own arbitration laws, which were identical to the provisions of the 1914 Act.[23] Over time, the need arose for the country to enact a more dynamic arbitration law to deal with disputes arising from commercial transactions, for five reasons.[24] Thus, as a result of these fundamental inadequacies of the old arbitration laws to satisfy the needs of arbitration consumers, the Arbitration and Conciliation Decree (No.11 of 1988 now Act) was enacted by the then military government of Nigeria to regulate the law and practice of commercial arbitration in Nigeria.[25] The Act unlike its predecessors is more comprehensive and regulates both the practice of domestic and international

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[20]Akpata E. *The Nigeria Arbitration law in Focus* p.3; Akanbi M.M. "A Critical Assessment of the History and law of Domestic Arbitration in Nigeria" in The learned 3rd Edition Kwara State College of Arabic and Islamic legal studies Ilorin 2006 p. 44; Orojo J.O. and Ajomo M. A. *Law and Practice of Arbitration and Conciliation in Nigeria* p. 36

[21]Idornigie P. O. " Overview of ADR in Nigeria" 1 p. 73

[22]Ajaiyi F. A. " The interaction of English Law with Customary Law in Western Nigeria" (1960) 4 JAL 98; Ayua " The blend of Customary Law with English Law" (1986-90) 4-8 Ahmadu Bello University Law Journal p.1; Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 75

[23]Orojo J.O. and Ajomo M. A. *Law and Practice of Arbitration and Conciliation in Nigeria* p. 36; Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 75; Akpata E. *The Nigeria Arbitration law in Focus* p.3

[24] First, the 1914 Act and the Regional Arbitration Laws could not meet up with the challenges posed by the ever-increasing sophistication of commerce and the rapid developments in international trade. Secondly, after independence, the status of the trade relationship between the natives and the colonialists changed to that of foreign trading partners with different legal systems, so that, the 1914 Act, being a domestic arbitration Act could not effectively regulate an international dispute. Thirdly, the old laws were subjected to excessive control of the courts. The most notorious aspect of these laws was the case- stated provision, which allows the arbitrator to state a case for the opinion of the court on the application of one of the parties to arbitration. Foreigners viewed this provision with much mistrust, especially where they were engaged in arbitrations with nationals within their local jurisdiction or otherwise where the local law was the applicable law governing the substantive issues. Fourthly, Nigeria witnessed both structural and juridical changes; there was an increase in the level and volume of international and domestic commerce and consequently an increase in commercial disputes. Finally, there was a desire by the Nigerian government to update its laws to meet internationally accepted standards. See Akanbi M. M. "A Critical Assessment of the History and Law of Domestic Arbitration in Nigeria" in Oluduro (eds.) Trends in Nigerian Law (Constellation Nig. Pub. Ibadan 2007) p. 475; Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 76-77

[25] See section 58 of the ACA

arbitration.[26] Apart from the fact that it retained some provisions of the 1914 Act, the law also derives from three other sources, namely; (a) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, (b) The UNCITRAL Arbitration Rules, and (c) The UNCITRAL Model Law. [27]

There are however certain limitations to the application of the Act. First, it only applies to written arbitration agreements.[28] Secondly, unlike the wide scope of its predecessor the subject matter of the Act is restricted to commercial disputes only.[29] Thirdly, even though the Act is meant to apply throughout the Federation, it does not expressly repeal the Arbitration Laws of the then Regions (now states).[30] Consequently, informal arbitration agreements that are neither written nor covered by customary arbitration laws are left out of the purview of the Act. However, it can be argued that the regulation of these types of parole agreements fall under the common law rules still in existence as part of the Nigerian legal jurisprudence.[31] Furthermore there is the vexed issue of whether the operation of the Act throughout the Federation, implies a repeal or suspension of the various States' Arbitration Laws. It is for these reasons among other snags that the Lagos state legislature enacted the Lagos State Arbitration Law.

Lagos State Arbitration Law

Because of the inadequacies enumerated above, the then Attorney General of Federation and Minister of justice[32] in the year 2005 motivated by the need to ensure that arbitration and ADR processes continue to meet the needs of users constituted a National Committee with the mandate to submit proposals for the reform of Nigeria's Arbitration/ADR laws.[33] The work of the Committee resulted in a Draft Federal Arbitration Act and a proposed Uniform States Arbitration and Conciliation Law recommended to States for adoption. The Committee recommended and proposed a draft bill which is yet to be enacted into law.[34] However, Lagos state

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[26]Emilia O. "A Critique of the New 2009 Arbitration Law of Lagos State" p. 1-2; Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 78

[27]Nigeria acceded to the New York Convention on 17th March, 1970 and adopted the UNCITRAL Model Law with modifications on 14th March 1988. See Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" p. 1; Emilia O. "A Critique of the New 2009 Arbitration Law of Lagos State" p. 1; Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 78

[28] See section 1 ACA

[29] See section 78 ACA

[30]Akanbi M.M. "The Nigerian Arbitration Act 1988 s.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" Arbitration p. 283

[31] Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges"* p. 78

[32]Chief Bayo Ojo, SAN

[33]Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" p. 1;Emilia O. "A Critique of the New 2009 Arbitration Law of Lagos State" p. 1

[34]The discussion paper of the Committee highlight the essential features of the rules to be front loading of evidence and written submission, fast tracking and case management mechanism applicable at both trial and appellate state. The rules provide that a court may order that an

seeing itself as developing into the arbitration hub of West Africa and Nigeria in particular enacted her own arbitration law otherwise referred to as Lagos State Arbitration law[35] to respond to recent trends of development in a commercial and economic relation in Nigeria after over two decades of the application of the Arbitration and Conciliation Act reveals its inadequacies.

An Examination of the Doctrine of Covering the Field in Nigeria

Nigeria is a federation composed of the federal government, 36 states and a federal capital territory Abuja.[36] The federal government and states have defined legislative powers clearly stated in the constitution.[37] The doctrine of covering the field is an age long constitutional principle probably imported from older democracies such as the United States and Australia.[38] The doctrine is to the effect that where the Federal or Central Legislative Authority had legislated on a matter in the concurrent legislative list in a manner that clearly showed an intention to cover the whole spectrum of a subject matter, a State or Regional Legislature could not again lawfully enact a law to cover the same field even where there is no conflict.[39] It applies where concurrent legislative powers are validly exercised on the same subject matters by the federal and state legislature in a federal system of government whereby powers of the government within the country is shared between a national or central and a number of regional of authorities.[40] In the Australian case of *Ex-parte Mchean*[41] the court held that where the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and it appeared that of the Commonwealth law is expressly intended to completely, exhaustively, and or exclusively govern a particular subject matter or conduct, it is inconsistent for a state law to govern the same subject matter or conduct. The inconsistency does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience, it depends on the intention the paramount legislature express by its

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arbitration claim be heard either in public or in private. See Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" p.1

[35]Lagos State Arbitration Law No. 10 which came into force in May 2009. See Adekoya F. "A Review of Lagos State Arbitration Laws" p. 1; Emilia O. "A Critique of the New 2009 Arbitration Law of Lagos State" p. 1 ; Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" p.1

[36]See section 3(1) and(4) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

[37] Section 4 of the Constitution of the Federal Republic of Nigeria 1999(as amended) ; Emilia O. "A Critique of the New 2009 Arbitration Law of Lagos State" p. 1

[38]See the U S Supreme Court of decision in the case of Houston v. Moore (1820) 5 Wheat,1 which was cited with approval about 22 years after by Storty J. in the case of Priggs v. Pennsyania (1842) 16 Pet at page 617-618. See also the famous Australian case of *Ex-parte Mchean* (1930) 43 CLR 472 at pp.483.

[39]Nwabueze B. O, Federalism in Nigeria under the Presidential Constitution 2nd edition (Spectrum Books) p. 43

[40]Galadima JSC in A. G. Federation v. A. G. Lagos State (2013) 16 NWLR (Pt.1380) 249 at 306; Nwabueze B. O, Federalism in Nigeria under the Presidential Constitution p. ; Akanbi M.M. "The Nigerian Arbitration Act 1988 s.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 283

[41](1930) 43 CLR 472 at pp.483-845 Dixon J

enactment and when it is intended to completely govern the subject matter, it is inconsistent for a State Legislature to legislate on the same subject matter.[42] Although the doctrine emanated from foreign jurisdictions, it had found footing in Nigeria Courts by reason of its adoption at the Supreme Court of Nigeria[43] n the case of *A.G. Ogun State v. A.G. Federation*[44] Per Fatai Williams CJN expounded the doctrine succinctly thus:

> *where identical legislation on the same subject matter are validly passed by virtue of their constitutional powers to make laws by the National Assembly and a State House of Assembly, it would be more appropriate to invalidate the identical law passed by the State House of Assembly, on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter.*[45]

Notwithstanding the lucid exposition on the doctrine of covering the field by the Supreme Court, the justices of the court seem not to be in *ad idem* on the effect and consequence of a state law found to be guilty of legislating on a subject already covered by a Federal Act.[46] While some felt that a verdict of guilt passed on such state laws should render the entire law invalid and void,[47] others are of the view that such laws can only be rendered inoperative and subordinate to the Federal Act for as long as the latter continues to exist and in the event of its abrogation, the state law becomes operational.[48] The dichotomy of consequential effect appears to have arisen by the use of the word 'inconsistent' in the dictum of Dixon J. in *Ex-parte Mchean* when he stated thus:

> *"The 'inconsistency' does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience, it depends upon the intention of the paramount legislature to express by*

[42]See the cases of Lakanmi v. A.G Western Nigeria & Ors. (1970) 6 NSCC 143; *A.G. Ogun State v. A.G. Federation* (1982) 3 N.C.L.R. 166 or (1982) 13 N.S.C.C. 1; A.G Abia State v.A.G Federation (2002) 6 NWLR (Pt.763) 264; *C.G. de Geophysique v Etuk* (2004) NWLR (Pt. 853) 20; A. G. Lagos State v. A. G. Federation (2003) 12 NWLR (Pt.831) 1; A. G. Abia State v. A.G. Federation (2006) 16 NWLR (Pt. 1005) 265; A. G. Federation v. A. G. Lagos State (2013) 16 NWLR (Pt.1380) 249 at 306; INEC v. Musa (2003)NWLR(Pt.806) 72

[43]See Lakanmi v. A.G Western Nigeria & Ors.(1970) 6 NSCC 143

[44](1982) 3 N.C.L.R. 166 or (1982) 13 N.S.C.C. 1 at 35

[45]See also A.G Abia State v.A.G Federation (2002)6 NWLR (Pt.763) 264 at 474 -475

[46]Akin AkintoyeII " The Doctrine of Covering the Field and Blue Pencil Rule in Legislative Enactments a Judicial Revisitation" Nigerian Bar Journal (2006) vol. 4 No.2 p. 58

[47]Idigbe JSC in A.G Ogun State v. A.G Federation(1982)13 NSCC 1 at 11

[48]Fatayi Williams CJN in A.G Ogun State v. A.G Federation(supra)

> *its enactment, completely, exhaustively or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statue discloses such an intention, it is inconsistent with it for the law of a state to govern the same conduct or matter" .(underlined mine for emphasis).*

Williams CJN,[49] is of the view that to invalidate the state law for its inconsistency will not sufficiently portray clarity or precision of language. Idigbe JSC however contends that if it appears from the provisions of the Federal law on the subject that the Federal legislature intends to cover the entire field of the subject matter and thus provided what the law on the subject should be for the entire Federation, the state law on the subject is inconsistent with the Federal law and the Federal must prevail and the state law on the subject is invalid.

Eso JSC adopted a midstream approach when he stated thus:

> *"...where the two legislations are in pari material, I respectfully take the view that the state legislation is in abeyance and becomes inoperative for the period the Federal legislation is in force. I will not say it is void. If for any reason the Federal legislation is repealed, it is my humble view that the state legislation which is in abeyance is revived and becomes operative until there is another Federal legislation that covers the field".*

The Supreme Court in a latter case seems to have adopted the reasoning and approach of Eso JSC when Ogundare JSC and his brother judges[50] in the case of *A.G. Abia State vs. A.G. Federation*[51] when called upon to void the Electoral Act 2001 on grounds of inconsistencies with the 1999 Constitution held as follows:

> *"In my respectful view, where the doctrine of covering field applies there is no inconsistency in the strict sense of that word. To be inconsistent, the two legislations that are the Federal legislation and that of the state must be mutually repugnant contradictory of each other so that both cannot stand. The acceptance or establishment of the one implies the abrogation or abandonment of the other... The doctrine however, renders the*

[49] In A.G Ogun State v. A.G Federation (supra)
[50] M.L. Uwais CJN, I.L. Kutigi, E.O. Ogbuegbu, U. Mohammed, U.A. Kalgo, and A.O. Ejiwumi JJSC
[51] Supra

> *paramount legislation predominant and the subordinate legislation goes into abeyance and remains inoperative so long as the paramount legislation remains operative. Where of course, there is obvious inconsistency, the subordinate legislation is void".*[52]

It is submitted that the question of whether a state law on a concurrent matter can co-exist with a federal enactment validly made on the same subject matter cannot arise where the latter evinced an intention to cover the whole field of the subject matter by providing a complete and exhaustive statement of law on the subject matter. In Nigeria, the doctrine of covering the field has also been extended to cover areas in which any law either federal or state touches on the subjects already covered by the constitution.[53]

Lagos State Arbitration law Vis-À-Vis the Arbitration and Conciliation Act

By section 2 of the Lagos State Arbitration Law, the law is applicable to all arbitrations within the state except where parties expressly agree otherwise. The pertinent question now is whether in view of the provision of section 58 of the ACA which make it applicable throughout the federation and the doctrine of covering the field, Lagos State Arbitration law is valid and can continue to operate in Lagos state which is part of Nigeria? A careful examination of the Constitution of the Federal Republic of Nigeria 1999 (as amended) reveals that arbitration is neither on the Exclusive Legislative List[54] nor is it on the Concurrent Legislative List[55] and therefore some scholars have argue that it should be a matter within the residuary[56] legislative competence of the states.[57]

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[52]Per Ogundare JSC

[53]Akin AkintoyeII "The Doctrine of Covering the Field and Blue Pencil Rule in Legislative Enactments a Judicial Revisitation" p. 61 See also Ogundare JSC in A. G. Abia State v A. G. Federation (2002) 3 SCNJ 158 at 247-248 where more than half of the provisions of the Electoral Act 2001 were struck out by the Supreme Court on the grounds that they have been covered by the constitution.

[54]Exclusive Legislative List refers to matters which are within the exclusive legislative competence of the federal legislature(the National Assembly) and are set out in Pat I of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999(as amended).

[55]Concurrent Legislative List refers to matters which both the federal and state legislative authority has concurrent powers to legislate on. Both the National Assembly and the House of Assembly of a state have powers to legislate on matters in the concurrent legislative set out in Pat II of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999(as amended). However where there is a conflict or inconsistency between the laws enacted by both the National Assembly and a State House of Assembly on matters in the concurrent legislative list, the law passed by the National Assembly shall prevails and that of the state House of Assembly shall be null and void to the extent of its inconsistency. See section 4(5) the Constitution of the Federal Republic of Nigeria 1999(as amended)

[56]Residual matters are not listed/stated in the constitution. They are matters which are neither in the exclusive list nor in the concurrent list. The House of Assembly of a state has exclusive power to legislate on residual matters; that is, matters that are not in the exclusive and concurrent legislative

However by the provision of section 57 of the Arbitration and Conciliation Act, "arbitration" means "commercial arbitration", why "commercial" means "all relationships of commercial nature including any trade transaction". Consequently, only the National Assembly has exclusive power to make laws regulating commercial arbitration in Nigeria.[58] By section 4(2) of the constitution, the National Assembly is empowered to make laws to the exclusion of the Houses of Assembly of State with respect to any matter under the Exclusive legislative list. A look into the Exclusive list shows that item 62(a) mentions "trade and commerce" and item 68 provide for "any matter incidental or supplementary to any matter mentioned elsewhere in the exclusive list".[59]

From the above analysis of the doctrine of covering the field vis-à-vis the provisions of the constitution, the question is whether the Lagos State Arbitration Law is valid having regard to the provision of section 58 and the preamble of the Arbitration and Conciliation Act which makes the Act to be applicable throughout the federation? The courts have generally held that where a state law on a subject matter with a federal law on the same subject matter where the later expressly or impliedly evince an intention to cover the whole field, or provides a complete statement of the law governing the matter, it is more appropriate to invalidate the state law.[60]

Some scholars have argued that by the doctrine of covering the field the Arbitration Laws of States (including the Lagos State Arbitration Law) cannot

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lists. The House of Assembly of a state has powers to make laws for the state or any part thereof on any matter(s)not included in the exclusive legislative list, on matters in the concurrent legislative list (subject to the overriding power of the National Assembly in case of conflict or inconsistency).

[57]Adekoya F. "A Review of Lagos State Arbitration Laws" p. 1; Chukwuemerie A. "International Commercial Arbitration and the UNCITRAL Model Law under written Federal Constitutions: necessity versus constitutionality in Nigeria legal frame work" (law house books, Port-Harcourt, 2002) p 103; Akanbi M.M. "The Nigerian Arbitration Act 1988 s.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk"p. 286 Orojo J. O. and Ajomo M.A "law and practice of Arbitration and conciliation in Nigeria"(Mbeyi & Associate Nigeria Limited 1999) p. 25; Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" p. 2

[58]Akanbi M.M. "The Nigerian Arbitration Act 1988 s.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 286

[59]Second schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Asouzu A. "Arbitration and Judiciary Power" in Nweze(ed.), justices in judicial process (Fourth Dimension pub, Enugu 2002) p. 362 ; Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" pp-2-3. Akanbi M.M. "The Nigerian Arbitration Act 1988 S.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 286

[60]Akanbi M.M. "The Nigerian Arbitration Act 1988 S.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 283. See the cases of A.G Ogun State v. A.G Federation (Supra); A. G. Lagos State v. A. G. Federation (2003) 12 NWLR (Pt.831) 1; A. G. Abia State v. A.G. Federation (2006) 16 NWLR (Pt. 1005) 265; A. G. Federation v. A. G. Lagos State (2013) 16 NWLR (Pt.1380) 249 at 306; INEC v. Musa (2003) 3 NWLR(Pt.806) 72 at 201-205; *C.G. de Geophysique v Etuk* (2004) 1NWLR (Pt. 853) 20 at 53-55

operate.[61] This submission finds judicial support in the opinion of Olagunju JCA, in *C.G. de Geophysique v Etuk*. Where the Court stated that:

> *....In any case, any scepticism about implied repeal of all State Laws on arbitration created by section 35 of the Act is put to rest by the force of the prevailing legal order at the time the Arbitration and Conciliation Act was promulgated which placed the Decree of the Federal Military Government above the Constitution as manifested between the twin prime legislations of the period, namely, Constitution (Suspension and Modification) Decree and Federal Military Government (Supremacy and Enforcement of Powers) Decree Nos. 1 and 13 of 1984, respectively, now Caps. 64 and 137 of the Laws of the Federation of Nigeria 1990. Between them they prowled the legislative field and backed into corner the State legislations that became emasculated and are confined to limited areas where they operated on sufferance ... as a corollary, any existing State law on the subject matter became obsolete and is by implication repealed by operation of law.* [62]

Idornigie[63] contends that it is implicit in the provisions of the Arbitration Act an intention to make it applicable to all commercial arbitrations throughout the country, i.e. to "cover the field" of arbitration. He, further submit that because the Arbitration Act restricts arbitration to commercial arbitration, the arbitration laws of the states are still valid in respect of non-commercial arbitration in that even though the Federal Government intended to cover the field, it has not done so completely, exhaustively and exclusively. Consequently, the State laws dealing with non-commercial arbitration are valid in so far as they are not inconsistent with the Act, despite its provision that it covers all arbitration in Nigeria.[64] Akanbi seems to have agreed with this contention when he stated that there is nothing in the arbitration Act to suggest an intention to repeal the Arbitration Laws of states with respect to non-commercial arbitration.[65]

It is humbly submitted that although the Act is of national application, it has nonetheless protected and preserved other laws regulating arbitration such as

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[61]See generally Idornigie P. O."The doctrine of covering the field and arbitration laws in Nigeria" (2000) 66 Arbitration pp.193 - 198 ; Nwadialo F., Civil Procedure in Nigeria (MIJ Professional Publishers Ltd. Lagos 1990) p. 871 -872; Akanbi M.M. "The Nigerian Arbitration Act 1988 S.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" pp. 283-287; Chukwuemerie "Commercial and Investment Arbitration in Nigeria's Oil and Gas Sector" (2003) p. 4. Note that the proposition was in respect of the old state arbitration laws which will be impliedly repealed by the enactment of the arbitration Act

[62]*C.G. de Geophysique v Etuk* (2004) 1NWLR (Pt. 853) 20 at 54-55

[63]Idornigie P."The doctrine of covering the field and arbitration laws in Nigeria" (2000)66 Arbitration pp. 193 - 198

[65]Akanbi M.M. "The Nigerian Arbitration Act 1988 S.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p.287

customary law and state arbitration laws.[66] In the case of *Chikelue v Ifemeludike*[67] it was held that for the doctrine of covering the field to be invoked, the federal Act must bear out the same tenets, intendments and purposes of the state laws.[68] Hence, the Lagos state Arbitration Law will be void to the extent of it inconsistency with the provision(s) of the Arbitration Act while provisions therein in respect of non-commercial arbitration may still be valid.[69] The states laws will only be void to extent of their inconsistency with the federal Act and thus aspects dealing with non-commercial arbitration remain valid in so far as they are not inconsistent with the Arbitration Act. In *C.G. De Geophysique v Etuk*[70] the Court of Appeal in respect of similar interpretation stated thus:

> "*Undoubtedly, the Arbitration and Conciliation Act 1990 (i.e the Arbitration Act) and the Cross River State Arbitration Law, Cap.12 (applicable to Akwa Ibom State) are existing laws under our constitution. But the vital question is which of them is applicable to the arbitration in the present case? ... I am of the opinion that the Arbitration and Conciliation Act, 1990, has covered the whole spectrum or field of arbitration and conciliation and should prevail over the Arbitration Law of Cross River State Arbitration law, Cap,12 (applicable to Akwa Ibom State). In other worlds, I hold that the applicable law to the arbitration in the instant case is the Arbitration and Conciliation Act, 1990.*"[71]

In support of the above, Olagunju J.C.A. stated that:

> "*.... As a corollary, any existing State law on the subject matter became obsolete and is by implication repealed by operation of law.*"

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[66]See sections 35(b) of ACA; Bukar B. A. "Mandatory and Other forms of Arbitration under Some Selected Oil , Gas and Investment Legislation in Nigeria"(2010) OGEL, February available on line at http://www.ogel.org accessed 27th November 2013; Bukar B. A. "Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door" Arbitration p .78

[67](1997)11 NWLR (Pt. 529) 403

[68] ibid

[69]Section 57 Arbitration and conciliation Act; Idornigie P. O. "The doctrine of covering the field and arbitration laws in Nigeria" (2000)66 Arbitration pp. 193 - 198

Akanbi M.M. "The Nigerian Arbitration Act 1988 S.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 287

[70](2004) 1 NWLR (Pt. 853) 20 at 48 -49

[71]Per Ekpe JCA

It is submitted that the state legislature and Lagos state in particular cannot validly legislate on a matter that has been covered by the provisions of the Arbitration and Conciliation Act which is applicable to the whole federation.[72] Thus the Lagos state Arbitration law cannot validly operate on commercial arbitration which has been covered by the Act, but may however govern non-commercial arbitration and or any other form of arbitration not covered by the Act. [73] The Act unlike the 1914 Arbitration Act, which dealt with disputes arising from both commercial and non-commercial transactions, the object and purpose of the Arbitration and Conciliation Act, is to provide for a unified legal framework for the fair and efficient settlement of commercially related disputes by arbitration and conciliation.[74] It is therefore clear that the Arbitration Act does not intend to cover the whole spectrum or field of arbitration but commercial arbitration only. Consequently, with respect to disputes arising from non-commercial transactions and those envisaged under section 35(b) ACA, the applicable laws are still the Arbitration Laws of the states and the doctrine of covering the field will not apply.[75]

Conclusion

This paper traces the history of arbitration laws in Nigeria, the reasons for the promulgation the Lagos State Arbitration Law and the constitutional doctrine of covering the field in a federal system of government and notes that the Arbitration Act has covered the whole spectrum of commercial arbitration in Nigeria. The paper argued that the Lagos State Arbitration Law remains in abeyance as regard commercial arbitration in Nigeria.

It is settled law that if it appears from the provision of an Act of the federal legislature that it intends to cover the entire field of a particular subject-matter by providing what the law on the subject-matter should be for the entire federation, any state law on the same subject becomes invalid and inoperative to extent of their inconsistency with the federal law.[76] The Arbitration and Conciliation Act having not being shown to have intended to cover all spheres of arbitration in Nigeria thereby impliedly repealing the arbitration laws of the states, make state arbitration laws (including that of Lagos state) valid only to areas not covered by the Act. Before a federal law can abrogate a state law, its aims and objectives must be exactly the same as those of the state law and not

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[72]See section 58 of the Arbitration and Conciliation Act

[73]Indeed the ACA itself recognize that arbitration may be conducted in accordance with the provisions of such other law. See section 35 (b) and 57of the Arbitration and Conciliation Act

[74]Akanbi M.M. "The Nigerian Arbitration Act 1988 S.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 287

[75]Idornigie P.O. "The doctrine of covering the field and the Arbitration laws in Nigeria" pp.197-198; Orojo J. O. and Ajomo M. A. law and practice of Arbitration conciliation in Nigeria p. 27; Akanbi M.M. "The Nigerian Arbitration Act 1988 S.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 287

[76]A.G. Ogun State v A.G. Federation (supra) ;See also section 4(5) of the 1999 constitution

merely be alike.[77] The intention of the Arbitration Act does not to cover all the fields of arbitration in Nigeria[78], a combined reading of sections 35(b) and 57 of the Arbitration and Conciliation Act shows that the aim of the Arbitration Act is to regulate disputes arising out of commercial transactions only.[79] The intention of the federal law must be expressed by the enactment of a law which is complete, exhaustive or exclusive on the particular subject-matter to which it is directed and then, any state law on the same subject will be inconsistent.[80] It is respectfully submitted that the aspects of the Lagos state arbitration law that is in *pari material* with the Arbitration Act is in abeyance and becomes in operative while those provisions not provided for and or envisaged by the Act are valid until there is another federal legislation that covers the entire field and spectrum of arbitration in Nigeria. Hence there is the need to review and probably amend the Act to meet the contemporary realities and developments in order to ensure its continuing efficacy and effectiveness more so when the inadequacies inherent in prompted the enactment of the Lagos State Arbitration Law.[81]

[77]Ckikelu v. Ifemeludike (1997) 11 N.W.L.R. (Pt.529) 403

[78]Akanbi M.M. "The Nigerian Arbitration Act 1988 S.58 and the doctrine of covering the field: C.G.de Geophysique v Etuk" p. 286

[79]The Act does not for example apply to trade disputes laws, customary arbitration and non-commercial arbitration. See section 9 Trade Dispute Act CAP. T8 Laws of Federation of Nigeria 2004 and section 35(a) and (b) Arbitration and Conciliation Act

[80]A.G. Ogun state v. A.G. Federation (supra)

[81]Akanbi M.M. "Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations" pp. 325-351; Idornigie P. O. " Overview of ADR in Nigeria" Arbitration (2007) vol. 73 No. 1pp. 75-76; Idornigie P. O. "The 1988 Nigerian Arbitration and Conciliation Act: Need for Review?" (2003) 2 Intl. A.L.R.at pp. 50-58; Rhodes-Vivour A. "The Federal Arbitration Act and the Lagos state Arbitration Law: A Comparison" pp. 1- 3