

The Prospects of Enforcing Settlement Agreements under the Singapore Convention on Mediation – A Comparative Study of Nigeria and China

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I. INTRODUCTION

The focus on litigation and arbitration as the main traditional and dominant forms of resolving international commercial disputes is gradually turning with an increase of multi-tier dispute resolution clauses in international commercial transactions.¹ Mediation is now on track to gradually gain prominence, especially as a global framework for enforcing mediated settlement rules “is not just visionary, but a necessary tool for encouraging mediation”.² This development is underscored by the United Nations Convention on International Settlements Agreements Resulting from Mediation of 2018 (“the Convention”). The Convention defines mediation as “a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute”.³ Aiming to deliver a harmonised legal framework for the fair and efficient settlement of disputes arising in international commercial relations,⁴ the Convention was introduced to ensure the enforceability of cross-border settlement agreements on international commercial disputes. The 2018 United Nations General Assembly Resolution also emphasised the need for “the adoption of a convention ... that is acceptable to States *with different legal, social and economic systems*.”⁵ The Convention complements the existing legal framework on international mediation and contributes to the development of harmonious international economic relations.⁶ It also aims to develop “consistent standards on the cross-border enforcement of international settlement agreements resulting from mediation.”⁷ The ideology underpinning the Convention is that, subject to Article 1(3)(a) of the Convention,⁸ all international commercial mediation settlement agreements reached between parties should be enforced by signatory parties to the Convention.

¹ Petsche also illustrated how adverse court decisions “can discourage parties from agreeing to multi-tier dispute resolution clauses providing for preliminary mediation”. See Markus Petsche, “The Enforceability of Mediation Clauses: A Critical Analysis of English Case Law” (2021) 5(1-2) *Journal of Strategic Contracting and Negotiation* 43, 57; see generally, Weixia Gu, “Mapping the Rise of Multi-tiered Approaches to the Resolution of International Disputes across the Globe” in Anselmo Reyes and Weixia Gu (eds), *Multi-Tier Approaches to the Resolution of International Disputes: A Global and Comparative Study* (Cambridge University Press 2021) 3-24.

² David S Weiss and Michael R Griffith, “Report on Empirical Study of Business Users Regarding International Mediation and Enforcement Mechanisms (2019) 20 *Cadozo Journal of Conflict Resolution* 1133, 1148.

³ Art 2(3) of the Singapore Convention.

⁴ Resolution adopted by the General Assembly on 20 December 2018 [on the report of the Sixth Committee (A/73/496)] 73/198. United Nations Convention on International Settlement Agreements Resulting from Mediation (Resolution A/RES/73/198 hereinafter) page 1 < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/456/53/PDF/N1845653.pdf?OpenElement>>

⁵ Resolution A/RES/73/198, 1 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/456/53/PDF/N1845653.pdf?OpenElement>

⁶ Resolution A/RES/73/198, 1.

⁷ Resolution A/RES/73/198, 2.

⁸ Essentially, the Convention does not apply to settlement agreements reached during judicial proceedings and recorded as judgments or arbitral awards.

With a wide implementation of the Convention on the horizon,⁹ international commercial mediation will be conducted “between parties from hugely different, if not diametrically opposed, cultural backgrounds” as Rees predicted back in 2014.¹⁰ As the Convention does not apply the “state of origin” or “seat” to mediation,¹¹ the success of the Convention is predicated on the enforceability of a mediation settlement agreement by the enforcing court which determines the validity of the settlement agreement reached in the foreign jurisdiction (“abroad”).¹² In this context, parties who seek to enforce settlement agreements will do so in compliance with the law of the enforcing court and the scope of the Convention.¹³

Considering the EU’s publication of the position paper on the Singapore Convention,¹⁴ the purpose of this paper is to use two jurisdictions, China and Nigeria (both of which have signed the Convention although Nigeria has also ratified) to undertake comparative analysis in two respects. First, there is a need to examine potential international differences from the perspective of enforcement. Second, it is also necessary to understand how mediation is incorporated in the culture, policy, and judicial involvement of both countries. This latter point is instructive for the EU because of the doubt expressed as to whether “European tradition and the principles of the European legal system” can accommodate aspects of the Singapore Convention.¹⁵ Furthermore, EU Member States need to understand how non-EU countries approach the enforcement of settlement agreements resulting from international commercial mediation if they are to ratify the Convention.¹⁶ This analysis has not been conducted from a comparative (Africa-Asia) perspective before.

⁹ As of 31 December 2023, 13 countries across different continents ratified the Convention between 2020 and 2023. 56 countries have also signed the Convention as of 10 February 2024:

<https://www.singaporeconvention.org/jurisdictions>

¹⁰ Peter J. Rees, ‘Mediations: Fit for Purpose?’ (2014) 80(1) *Arbitration* 28, 33.

¹¹ This is because “only the place of application matters” and this removes “yet another obstacle in the face of enforceability”. See Itai Apter, “The Singapore Convention on Mediation; The Right Instrument at the Right Time” (2021) 115 *Proceedings of the ASIL Annual Meeting* 120, 123. See also *Shou Yu Chong and Nadja Alexander*, “Singapore Convention Series: Why is there no ‘Seat’ of Mediation?” *Kluwer Mediation Blog (Blog Post, 1 February 2019)*, <http://mediationblog.kluwerarbitration.com/2019/02/01/singapore-convention-series-why-is-there-no-seat-of-mediation/>

¹² Anne Wang, ‘Transplanting Public Policy: From Arbitration To Mediation’ (2021) 24(1) *Int. A.L.R.* 1, 7

¹³ *ibid.* See also Art 3(1) of the Convention.

¹⁴ ADR- SAB Working Group 3: position paper on the Singapore Convention on Mediation 2022, https://secure.euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/adr/Position_Paper_Singapore_Convention_en.pdf

¹⁵ Malacka made this argument in the context of “unification in the field of mediation” as possibly “problematic”. See Michal Malacka, “The Relations between the Singapore Mediation Convention and the European Mediation Directive” (2022) 9(2) *European Studies* 243,251.

¹⁶ There are divergent views on whether the Convention is attractive or should be ratified. Stute argued that the Convention does not offer any advantage over “conventional methods of enforcing mediated settlements” even though he also observed that the EU Mediation Directive 2008/52 has been of limited impact. See David J Stute, “The Singapore Convention: Not Much There, There” (2021)3(1) *Journal of the Institute of Transnational Arbitration* 32, 34 and 56. For the argument that EU Member States should ratify the Singapore Convention despite certain concerns, see Sascha Ferz and Tetiana Tsuvina, “The Singapore Convention on Mediation: National Implementation Practices and EU Prospects” in Ottavio Quirico and Katarzyna Kwapisz Williams (eds), *The European Union and the Evolving Architectures of International Economic Agreements* (Springer 2023) 303.

Nigeria and China are both signatories to the Singapore Convention.¹⁷ Nigeria is one of the most important destinations for Chinese foreign commercial activities in Africa and *vice versa*.¹⁸ The increase in trade relations has been mutual. For example, from 1995 to 2020, the exports of China to Nigeria “have increased at an annualized rate of 20.9%, from \$151M in 1995 to \$17.4B in 2020”¹⁹; similarly the exports of Nigeria to China “increased at an annualized rate of 16.9%, from \$51M in 1995 to \$2.54B in 2020”.²⁰ Major international activities and investments are also illustrated through the Chinese Belt and Road Initiative, the “flagship of Chinese economic diplomacy”.²¹ In this international commercial scheme, mediation is one of the key dispute resolution mechanisms²² and subject to the call for a deliberate improvement of regimes that govern mediation²³ as an efficient and effective means of dispute resolution in a significant index of business climate.²⁴ A positive climate, in turn, contributes to attracting foreign direct commerce.²⁵

The Singapore Convention can address the claims of inefficacy²⁶ and out-of-proportion legal costs²⁷ to improve the business climate.²⁸ Nevertheless, the success of international commercial mediation for both countries is not merely about a resolution, but a resolution which can be mutually enforced to aid commerce. Article 1(3)(a) of the Convention clearly excludes settlement agreements that (1) have been “approved by a court” and are “enforceable as a judgment in the State of that court” or (2) “have been concluded in the course of proceedings before a court” and are “enforceable as a judgment in

¹⁷ Nigeria 20/08/19 (Nigeria ratified 27/11/23) and China 7/8/19. Many African and Asian countries are also signatories and the treaty entered into force on 12 September 2020 pursuant to Art 14(1) https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=_en

¹⁸ <http://www.sais-cari.org/chinese-investment-in-africa>

¹⁹ [https://oec.world/en/profile/bilateral-country/chn/partner/nga#:~:text=Telephones%20\(%24560M\).-,During%20the%20last%2025%20years%20the%20exports%20of%20China%20to,Raw%20Copper%20\(%2436.8M\).](https://oec.world/en/profile/bilateral-country/chn/partner/nga#:~:text=Telephones%20(%24560M).-,During%20the%20last%2025%20years%20the%20exports%20of%20China%20to,Raw%20Copper%20(%2436.8M).)

²⁰ <https://oec.world/en/profile/bilateral-country/chn/partner/nga>

²¹ Huiqin Jiang, “China’s International Commercial Court: A Dispute Settlement Mechanism for the Belt and Road Initiative” (2020) 39(1) *Civil Justice Quarterly* 47.

²² Jiang mapped the connection between the relevant dispute resolution mechanisms, noting that China’s International Commercial Court system “provides a one-stop mechanism that connects litigation, mediation and arbitration” to ensure efficiency. Huiqin Jiang, “China’s International Commercial Court: A Dispute Settlement Mechanism for the Belt and Road Initiative” (2020) 39(1) *Civil Justice Quarterly* 47, 48.

²³ Mohammed A Umar, Mohammed M Deji, and Garba U Kwagyang, “Re-Thinking Binding Mediation in Commercial Disputes in Nigeria” (2015) 6(4) *South East Asia Journal of Contemporary Business, Economics, and Law* 55, 60; Molly Riley, “On The Rule Of Law And The Role Of Courts In China” (2005) 16(4) *International Company and Commercial Law Review* 151, 152.

²⁴ Commercial Dispute Resolution: Unlocking Economic Potential Through Lighthouse Projects Chapter Andreas Baumgartner in Peter Quayle and Xuan Gao (eds), *International Organizations and the Promotion of Effective Dispute Resolution* (Brill 2019) 188-207, 189.

²⁵ Commercial Dispute Resolution: Unlocking Economic Potential Through Lighthouse Projects Chapter Andreas Baumgartner in Peter Quayle and Xuan Gao (eds), *International Organizations and the Promotion of Effective Dispute Resolution* (Brill 2019) 188-207, 189. Commercial Dispute Resolution: Unlocking Economic Potential Through Lighthouse Projects Chapter Andreas Baumgartner in Peter Quayle and Xuan Gao (eds), *International Organizations and the Promotion of Effective Dispute Resolution* (Brill 2019) 188-207, 189.

²⁶ Litigation can easily span a decade in Nigeria. For two important commercial cases that lasted a decade, see *Statoil Nigeria Limited v Inducon Nigeria Limited* [2021] 7 NWLR (Pt 1774) 1 (SC); and *VAB Petroleum v Momah* [2013] 14NWLR (Pt 1347) 284.

²⁷ Emilia Onyema, “The Doctrine of Separability under Nigerian Law” (2009) 1(1) *Apogee Journal of Business, Property and Constitutional Law* 65, 66.

²⁸ Christina G Hioureas, “Singapore Convention on International Settlement agreements Resulting from Mediation: A New Way Forward? (2019) 37 *Berkeley Journal of International Law* 215, 224.

the State of that court". These exclusions delineate mediation from judicial involvement, which goes against the judicial promotion of mediation in Nigeria and the practice of judicial mediation in the Chinese civil justice system.

The position in China can be contrasted with the general non-involvement of courts in mediation with respect to the Nigerian states (such as Lagos State) discussed in this article. Besides private mediation, Li and Verschoof pointed out that the majority of mediation operates in a judicial context in China, and stated: "Chinese judicial mediation functions in a different context: judges do not only have their own interests of cleaning dockets and avoiding adjudicating difficult cases, but also because *guanxi* (connection) or judicial bribery is an important challenge facing the Chinese legal system."²⁹ For both countries, it is argued that the Convention "has great potential to impact the conduct of international dispute resolution".³⁰ To attain such ends, an understanding of how mediation is structured or embedded in the civil justice system of both jurisdictions will be essential for an effective implementation of the Convention. Furthermore, it is also critical to assess the legislative, procedural and policy gaps that need to be considered. This assessment is necessary because lawmaking, procedural rules and policy overlap in mediation, especially with respect to the countries under consideration.³¹

With more frequent use of mediation to resolve international commercial disputes in Nigeria and China, this article examines how the Convention can gain traction in both countries, especially in terms of the enforcement of international settlement agreements in the following areas: (1) appropriate procedural rules on the state level and discretion which can be strategic in deciding what agreements to enforce in the Nigerian courts, (2) awareness of the practice of oral mediated settlement agreement and judicial mediation in China and (3) where such issues must be considered in mutual enforcement after ratification. To do so, the investigation firstly involves a consideration of why the Convention is necessary in Nigeria and China. This will be followed by an examination of the legislative frameworks and practices which are linked to the practical use of the Convention. Furthermore, a critical analysis will be provided as regards whether settlement agreements emanating from both jurisdictions can be enforced under the Convention. The research will conclude that ratification of the Convention, despite its shortcomings, will set the foundations to prepare both countries to benefit from an evolving commercial dispute resolution world order that reflects variety in dispute resolution. However, there should be a clarification and understanding of how mediation will be embedded in the respective civil justice systems.

²⁹ Yedan Li and Rick Verschoof, 'Mediating Judges in China and the Netherlands: An Empirical Comparison' (2017) 9(1) International Journal for Court Administration 21, 32; also see Tania Sourdin, 'Judicial Involvement In Settlement Conferences: Opportunities And Issues' (2019) 38(1) C.J.Q. 78, 83; Anne Wang, 'Transplanting Public Policy: From Arbitration To Mediation' (2021) 24(1) Int. A.L.R. 1, 7.

³⁰ Eunice Chua, "The Singapore Convention on Mediation –A Brighter Future for Asian Dispute Resolution (2019) 9 Asian Journal of International Law 195, 203.

³¹ Art 3(1) of the Convention, A. K. C. Koo, 'Pre-Trial Mediation In Mainland China And Hong Kong: Rationales, Regulations And Ramifications' (2013) 32(3) C.J.Q. 385, 386. For insights into how the policy of Nigerian law is to encourage mediation, see *Williams v Adold /Stamm Intl (Nig) Ltd* (2022) LEPLR-56593 (SC) 72.

II. DISPUTE RESOLUTION CULTURES AND POLICIES

There is a strong argument that the drafters of the Convention “saw value in a mediation settlement framework applicable in diverse legal and economic cultures”.³² However, the same diversity also implies that different cultures have traditional or historical approaches to amicable settlement. It is thus necessary to compare Nigeria and China in this regard.

A. Cultural Factors in Nigeria and China

The current notion of adversarial litigation is the result of colonisation in Nigeria. Before colonisation and the establishment of regular courts, Nigerians had a “simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom”.³³ It is thus well established that, unlike the litigious tendency that has now influenced dispute resolution, in indigenous Nigerian societies parties can voluntarily ask family heads or elders of a community to seek “a compromise solution” and can withdraw at any point before a decision is reached.³⁴

The traditional approach favouring amicable dispute resolution also applies to China.³⁵ Unlike Western jurisdictions where the practice of mediation “is regarded as co-operative, voluntary and party-centered”, Chinese mediation is predicated on an adjudicatory and interventionist basis.³⁶ No perfect standard can be used to assess this perception since there are exceptions which are sometimes found in literature. For example, it was argued that well into the 1950s there was “little evidence that intellectuals, businessmen, and the like appealed to the state. Most, as befitting the view that conflicts should not be overtly displayed, sought out mediation”.³⁷ According to this view, peasants and the working class were more likely to resolve their disputes overtly and litigiously.³⁸ In both countries, nevertheless, the common denominator is that the use of mediation has witnessed an upward trend in commercial dispute resolution.³⁹

³² Mark E Appel, “The new United Nations Convention on International Settlement agreements Resulting from Mediation” (2019) 35(8) Construction Law Journal 481,482.

³³ *Okpuruwu v Okpokam* (1998) 4 NWLR (Pt 90) 554, 586 (CA).

³⁴ *Agu v Ikewibe* (1991) 3 NWLR (Pt 180) 385 SC

³⁵ On the use of “an administrative-type mediation resolution of commercial disputes” in the pre-1949 period, see John A Spanogle and Tibor M. Baranski, “Chinese Commercial Dispute Resolution Methods: The State Commercial and Industrial Administration Bureau” (1987) 35(4) American Journal of Comparative Law 761, 771

³⁶ Weixa Gu, “Combinations of Mediation and Arbitration: The Case of China” in Anselmo Reyes and Weixa Gu, *Milti-Tier Approaches to the Resolution of International Disputes: A Comparative Study* (Cambridge University Press) 69-91, 70-71.

³⁷ Neil J Diamant, “Conflict and Conflict Resolution in China: Beyond Mediation-Centered Approaches” (2000) 44(4) Journal of Conflict Resolution 523, 538.

³⁸ Neil J Diamant, “Conflict and Conflict Resolution in China: Beyond Mediation-Centered Approaches” (2000) 44(4) Journal of Conflict Resolution 523, 536.

³⁹ Emilia Onyema and Monalisa Odibo, “How Alternative Dispute Resolution Made a Comeback in Nigeria’s Courts” <https://www.africaresearchinstitute.org/newsite/publications/counterpoints/alternative-dispute-resolution-made-comeback-nigerias-courts/> ; Peter H Corne and Matthew S Erie, “China’s Mediation Revolution? Opportunities and Challenges of the Singapore Mediation Convention” <http://opiniojuris.org/2019/08/28/chinas-media-revolution-opportunities-and-challenges-of-the-singapore-mediation-convention/> . For the argument (and relevant rationale) that “mediation has grown rapidly” since

B. Policy Factors in Favour of Mediation

The current policies in Nigeria and China favour mediation. One of Nigeria's foreign policy objectives is the "respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication".⁴⁰ In Nigeria, "the policy of the law is to encourage settlement".⁴¹ This policy is so engrained in Nigerian law that the Supreme Court, in explaining the need to promote settlement and the public policy that underpins "without prejudice" correspondence, observed that "this legal principle of privilege should extend to statements made by mediators in the course of their attempt to settle a dispute".⁴² Most efforts to settle out of court and encourage settlement have traditionally taken place at the lower courts and courts of first instance. However, the increasing drive to promote settlement has also extended to the appellate court level.⁴³ As such, the Nigerian Court of Appeal noted that it would be rare but "in deserving cases upon a successful mediation program, consent judgment can be entered by even this court".⁴⁴ Using Lagos State as an example,⁴⁵ there have been efforts to facilitate the amicable settlement of disputes, such as the enactment of the Citizens Mediation Centre Law 2015,⁴⁶ including "debt related matters"⁴⁷ whose settlement agreement ("Memorandum of Understanding") is stipulated as enforceable upon the endorsement of the Magistrate or Judge.⁴⁸ From a statutory standpoint, the Lagos State High Court Rules⁴⁹ have supported such efforts which culminated in the Lagos Multi-Door Courthouse Law ("the LMDC Law").⁵⁰ The LMDC Law has become the most important legislation concerning mediation in Lagos and influenced the enactment of very similar laws in several states within Nigeria.⁵¹

2004, see Yedan Li, Joris Kocken and Benjamin van Rooij, "Understanding China's Court Mediation Surge: Insights from a Local Court" (2018) 43(1) Law and Social Inquiry 58, 59.

⁴⁰ See 19(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴¹ *Williams v Adold /Stamm Intl (Nig) Ltd* (2022) LEPLR-56593 (SC), 72.

⁴² *Williams v Adold /Stamm Intl (Nig) Ltd* (2022) LEPLR-56593 (SC), 73.

⁴³ The Court of Appeal Mediation Rules 2018. Rule 5(2): the "Court may *suo motu* or upon the application of parties" refer civil appeals pending before the court to the Court of Appeal Mediation Centre. Also see Order 1. However, the mediator may "formulate the terms of a possible settlement and submit it to the Parties for their consideration". See Order 17 R 1.

⁴⁴ *Ogbe v Arumemi-Ikhide* (2021) LPELR – 53507 (CA), 58.

⁴⁵ Lagos is the commercial capital of Nigeria.

⁴⁶ Of Lagos State.

⁴⁷ S 3(d) of the Civil Mediation Centre Law.

⁴⁸ S 14(1)(b)(d)(e) and 14(4) of the Civil Mediation Centre Law.

⁴⁹ Lagos State High Court (Civil Procedure) Rules 2019. E.g., Order 5 Rule 8 provides for "Screening of ADR". Also, under Order 27 Rule 1 (2)(c), one of the roles of the judge is to promote "amicable settlement of the case or adoption of ADR". The main import of the Order with respect to ADR is that the flexibility remains for parties to explore amicable settlement at any stage.

⁵⁰ The law took effect in 2007. See Ch 13, Laws of Lagos State 2015. Also, the Lagos High Court Rules are made pursuant to the High Court Law of Lagos State.

⁵¹ E.g., the Plateau Multi-Door Courthouse Law 2017 and the Enugu State Multi-Door Courthouse Law 2018. Similar laws are gradually being enacted in other states in Nigeria and relevant provisions are stated in relevant parts of this article.

Mediation is similarly seen as the preferred method for resolving disputes in China,⁵² particularly in its movement towards the promotion of “the Mechanism for Pluralist Dispute Resolution”.⁵³ This mechanism aims to provide an integrated platform⁵⁴ for both modern specialised mediation and the traditional establishment of “people’s mediation committees” guided by local governments and courts under the Chinese Constitution, civil procedural law and customs.⁵⁵ China has a “mediation first policy” in Chinese civil dispute resolution.⁵⁶ It is insightful that in Asia generally, “mediation is seen as a valuable tool to resolve commercial disputes as it is consistent with Asian sensibilities and culture”.⁵⁷ There is even potential to build on the increasing emphasis on mediation in investment disputes.⁵⁸ This is evident in Article 128 of the Chinese Contract Law⁵⁹ which highlights the disputants’ right to choose mediation to resolve disputes arising from a contract. The emphasis on the value of mediation

⁵² A. K. C. Koo, ‘Pre-Trial Mediation In Mainland China And Hong Kong: Rationales, Regulations And Ramifications’ (2013) 32(3) C.J.Q. 385, 386 where the author wrote: “The pro-mediation policies in mainland China for two millennia”; Zhiqiong June Wang and Jianfu Chen, ‘Alternative Dispute Resolution To Pluralist Dispute Resolution: Towards An Integrated Dispute Resolution Mechanism In China’ (2020) 16(2) Int. J.L.C. 165, 165 stated that private mediation can be traced back as early as the Xia period (2070-1600 BC); Zhen Jing, ‘A New Insurance Dispute Resolution Mechanism: The Linked Litigation-Mediation Scheme In China’ (2018) JBL 40, 41-42 where the author describes the concept of litigation-free” and mediation as a means to realised such a concept in the Chinese history; Tao Li and Zuoli Jiang, ‘Human Rights, Justice, and Courts in IEL: A Critical Examination of Petersmann’s Constitutionalisation Theory’ (2018) 21(1) Journal of International Economic Law 193, 211; Qingxiu Bu, ‘The cultural sensitivity in harmonisation of international arbitration: lessons from China’ (2020) 2391 Int. A.L.R. 70, 72; A.F.M. Maniruzzaman, ‘The Problems And Challenges Facing Settlement Of International Energy Disputes By ADR Methods In Asia: The Way Forward’ (2003) 6 International Energy Law & Taxation Review 193, 194-195, 197.

⁵³ Zhiqiong June Wang and Jianfu Chen, ‘Alternative Dispute Resolution To Pluralist Dispute Resolution: Towards An Integrated Dispute Resolution Mechanism In China’ (2020) 16(2) Int. J.L.C. 165, 165.

⁵⁴ The Reform of Diversified Dispute Resolution Mechanism of China’s Court, page 52 https://www.court.gov.cn/upload/file/2021/02/20/16/19/20210220161916_60128.pdf

⁵⁵ Zhiqiong June Wang and Jianfu Chen, ‘Alternative Dispute Resolution To Pluralist Dispute Resolution: Towards An Integrated Dispute Resolution Mechanism In China’ (2020) 16(2) Int. J.L.C. 165, 166; Article 111 of the 1982 Constitution stipulates that “[t]he village and resident committees shall establish committees for people’s mediation, public security, public health and other matters in order to manage public affairs and social services in their areas, mediate civil disputes, help maintain public order and convey resident opinions and demands and make suggestions to the people’s government.” Helena H. C. Chen, ‘The Impact of the 2012 Amendments to the Civil Procedure Law of the People’s Republic of China on the Arbitration Regime in China’ (2012) 15(6) Int. A.L.R. 247, 247.

⁵⁶ Art 122 of the Chinese Procedure Law.

⁵⁷ Eunice Chua, “The Singapore Convention on Mediation –A Brighter Future for Asian Dispute Resolution (2019) 9 Asian Journal of International Law 195, 203.

⁵⁸ Guiguo Wang and Rajesh Sharma, “The International Commercial Dispute Prevention and Settlement Organization: A Global Laboratory of Dispute Resolution with an Asian Flavor” (2021) 115 AJIL Unbound 22, 23.

⁵⁹ Christoph J. Vaucher, “Possibilities of Impartial and Effective Dispute Resolution in International Business Transactions with China’ (2002) 5(4) Int. A.L.R. 119, 123. The Contract Law of the People’s Republic of China of 1999.

as the “first defence”⁶⁰ or “mediation first, mediation and adjudication together” policy⁶¹ in its access to civil justice was put in place by the promulgation of the Law on People's Mediation in August 2010 (The Mediation Law 2010).⁶² Apart from the Pluralist Dispute Resolution Mechanism mentioned above, the prime role enjoyed by mediation can be seen in Koo’s commentary pointing out that mediation is now a pre-requisite for the commencement of civil proceedings in all appropriate cases,⁶³ based on Articles 6 and 97 of the Law on Civil Procedures of the PRC (Trial Implementation) 1982. Koo further used the word “urge”⁶⁴ to explain the attitude held by the people’s courts at different stages of the civil justice system: both pre-litigation and during litigation. Accordingly, it imposes a duty on the disputants to engage with a mediation process prior to any court proceedings. This requirement applies to all civil cases accepted for trial, appeal or re-trial.

C. Judicial Eagerness in Favour of Mediation

The eagerness of judges to promote mediation is expressed differently in China and Nigeria. This section examines how Nigerian judges promote mediation and considers the judicial eagerness of Chinese judges to engage with judicial mediation to resolve disputes. In other words, Chinese courts actively and directly intervene to mediate while Nigerian courts refer and urge.⁶⁵

There is a need to set out how Nigerian judges promote mediation, essentially through referrals to court-annexed multi-door courthouses and leaving the door to amicable settlement open at both trial and appellate stages of court proceedings. Nigerian judges are obligated to promote mediation, although there is some discretion with respect to how they can do so. There are three major elements of the High Court Rules in this regard. First, “all Originating Processes filed in the Registry shall be screened to determine suitability for ADR”.⁶⁶ This screening is an obligation on the courts in the sense that the registry is a part of the court. Second, the Originating Processes “may be referred to the Lagos

⁶⁰ Zhiqiong June Wang and Jianfu Chen, ‘Alternative Dispute Resolution To Pluralist Dispute Resolution: Towards An Integrated Dispute Resolution Mechanism In China’ (2020) 16(2) Int. J.L.C. 165, 167. Also see the Notice of the Central Public Security Comprehensive Management Commission, the Supreme People's Court, the Supreme People's Procuratorate, and Other Departments on Issuing the Guiding Opinions on Further Promoting the Multipartite Mediation of Conflicts and Disputes [CLI Code] CLI.3.260190(EN).

https://www.pkulaw.com/en_law/206fac07533cd097bdfb.html; Zhen Jing, ‘A New Insurance Dispute Resolution Mechanism: The Linked Litigation-Mediation Scheme in China’ (2018) JBL 40, 42; Chao Zhou and Dan Banik, ‘Access to Justice and Social Unrest in China's Countryside: Disputes on Land Acquisition and Compensation’ (2014) 6(2) Hague Journal on the Rule of Law 254, 264.

⁶¹ Cui Zhou, ‘Recent Developments in Litigation Involving Intellectual Property in China International Review of Intellectual Property and Competition Law’ (2012) 43(1) IIC 21, 33.

⁶² Promulgated on 28 August 2010, came into force on 1 January 2011.

⁶³ A. K. C. Koo, ‘Pre-Trial Mediation in Mainland China and Hong Kong: Rationales, Regulations and Ramifications’ (2013) 32(3) C.J.Q. 385, 386.

⁶⁴ A. K. C. Koo, ‘Pre-Trial Mediation in Mainland China And Hong Kong: Rationales, Regulations and Ramifications’ (2013) 32(3) C.J.Q. 385, 390.

⁶⁵ In this article “Nigerian courts” or “Nigeria” refers to the law and practice in Lagos (as the major example chosen for reasons already stated) and other Nigerian states cited. However, as the multi-door courthouse laws cited apply to different regions of Nigeria, they largely represent the law and practice concerning mediation in their respective regions.

⁶⁶ Lagos State High Court (Civil Procedure Rules) Rules 2019 Order 5 Rule 8.

Multi Door Court House or any appropriate ADR institution or practitioner in line with the Practice Directions issued by the Chief Judge”. The discretionary power of the court regarding screening will be discussed in detail later.⁶⁷ For now, it is important to understand that the LMDC is not the only body that can administer mediation following a court referral. It is also particularly important to understand that cases may be referred to ADR practitioners (not just institutions). This option of referring to an ADR practitioner, although yet to gain momentum, falls within the prerogative of the Chief Judge. The option further underscores the high-level policy of judges encouraging mediation.

The powers of the Lagos High Court to adopt such approaches are enhanced by the flexibility provided by Practice Directions.⁶⁸ Anybody can act as a mediator if parties agree, especially in private mediation.⁶⁹ In Nigerian practice, however, there will be a list of neutrals from which parties can select where “the mediation process occurs within a structure such as the multi-door courthouse, citizens’ mediation centre and the Court of Appeal mediation process”.⁷⁰ Inevitably, there are cases where matters will not be successfully resolved through ADR. In such cases, “the ADR Judge shall issue a status report and the matter shall be remitted for assignment to a trial judge”.⁷¹

In the case of China, apart from the policy embedding mediation within the Chinese civil justice system, Riley noted judges’ eagerness to resolve disputes through mediation: “[i]n China, a judge-sponsored mediation is a part of nearly every non-criminal case (the so-called “economic” cases). If the parties can reach a settlement, the judge will assist in getting the terms written up in the form of a settlement agreement, and will oversee the signing of the contract by each party to the case, thereby ending the lawsuit permanently by agreement of the parties.”⁷² This includes smart ADR, using WeChat (an instant messaging platform), to administrate pre-trial mediation.⁷³ According to relevant data, the percentage of the civil cases concluded by judicial mediation constitute 40.64% of the number of civil cases disposed in courts in 2011. A similar reading of 40% was also reported in 2021.⁷⁴ Such a high level of engagement in mediation indicates the intertwined relationship between mediation and the Chinese civil justice system, which highlights that mediation should not be viewed as a simple alternative to adjudication.⁷⁵ Moreover, such eagerness in settling disputes through

⁶⁷ See section III (D) of this article on the role of discretion”.

⁶⁸ E.g. Lagos State Multi-Door Court Practice Directions on Mediation. For the argument that “the general trend in private mediation has been to have a flexible mediation process without any specific rules”, see Caroline Omojavwe Oba, *Civil Procedure in Nigeria* (Wolters Kluwer 2022) para 670.

⁶⁹ Ibid. 673.

⁷⁰ Ibid.

⁷¹ Lagos High Court Rules Order 28 Rule 5. Order 8 contains detailed provisions on ADR proceedings.

⁷² Molly Riley, ‘On the Rule of Law and the Role of Courts in China’ (2005) 16(4) *International Company and Commercial Law Review* 151, 154.

⁷³ Mimi Zou, ‘Smart courts’ in China and the future of personal injury litigation’ (2020) 2 *Journal of Personal Injury Law* 135, 139.

⁷⁴ A. K. C. Koo, ‘Pre-Trial Mediation in Mainland China and Hong Kong: Rationales, Regulations and Ramifications’ (2013) 32(3) *C.J.Q.* 385, 390; The Reform of Diversified Dispute Resolution Mechanism of China’s Court. Page 65 https://www.court.gov.cn/upload/file/2021/02/20/16/19/20210220161916_60128.pdf

⁷⁵ A. K. C. Koo, ‘Pre-Trial Mediation in Mainland China and Hong Kong: Rationales, Regulations and Ramifications’ (2013) 32(3) *C.J.Q.* 385, 389.

mediation leads to a high level of engagement in cases which are “approved by a court or concluded in the course of proceedings before courts.”⁷⁶

III. LEGAL FRAMEWORK IN NIGERIA AND CHINA

A. In General

The policy in favour of mediation provides statutory support for mediation in Nigeria and China. This statutory codification is set out in each country, although substantive codification is a much more recent development in Nigeria.⁷⁷ The repealed Nigerian Arbitration and Conciliation Act did not refer to mediation, but the major elements of mediation were present in the provisions concerning conciliation.⁷⁸ The scope of the new Arbitration and Mediation Act 2023⁷⁹ specifically includes international commercial mediation and international settlement agreements resulting from mediation.⁸⁰ This Act incorporates the Singapore Convention and reflects the desire of the Nigerian legislator to fast-track the practice of international mediation, especially from the standpoint of facilitating international commercial transactions, alongside arbitration.⁸¹ Any country that will benefit from this legal development in Nigeria needs to be a party to the Singapore Convention.⁸²

Under the Nigerian Constitution, only the federal legislature can legislate on the execution of judgments, decrees, orders, “and other decisions of any court of law outside Nigeria”.⁸³ From the perspective of Nigerian law, any settlement agreement that is endorsed by a court would amount to a court decision. By way of illustration, Part II of the Arbitration and Mediation Act which addresses mediation does not apply to “cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement, unless the parties agree otherwise.”⁸⁴ Furthermore, the Act also does not apply to “cases that have been approved by a court or concluded in the course of proceedings before a court, unless the parties agree otherwise.”⁸⁵ Mediation under the Convention is independent of litigation proceedings or court decisions.⁸⁶ The Act clearly promotes the efficacy of multi-tiered dispute resolution clauses, especially where “parties have agreed to mediate and have expressly undertaken not to initiate arbitral or judicial proceedings with respect to an existing or future dispute during a specified time or until a specific event has occurred”.⁸⁷ In this way and based

⁷⁶ Singapore Convention, Article 1(3)(a)(i).

⁷⁷ Before the Nigerian Senate passed the Arbitration and Mediation bill 2022 (s 67 provides for mediation) and until it is assented to, it had been persuasive to observe that “In Nigeria, there is no substantive legislation on mediation.” Caroline Omojavwe Oba, *Civil Procedure in Nigeria* (Wolters Kluwer 2022) para 670.

⁷⁸ Art 37-42 of the ACA Cap A18, LFN 2004; Sched 3 (Conciliation Rules).

⁷⁹ The Act provides “a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation”. This statute was enacted on 26 May 2023. See the long title.

⁸⁰ See s 67(1), Arbitration and Mediation Act 2023.

⁸¹ See s 81, 83 and 87, Arbitration and Mediation Act 2023.

⁸² See s 87(a), Arbitration and Mediation Act 2023.

⁸³ Para 57 of the Exclusive Legislative list.

⁸⁴ See s 67(2)(b), Arbitration and Mediation Act 2023.

⁸⁵ See s 67(2)(d), Arbitration and Mediation Act 2023.

⁸⁶ See later discussions on exclusions of agreements emanating from litigation.

⁸⁷ S 80, Arbitration and Mediation Act 2023.

on party autonomy, Nigerian law facilitates the relatively simple mechanism of mediation rather than allowing parties unnecessarily to engage in litigious or even arbitral proceedings.

Although Nigeria has ratified the Singapore Convention,⁸⁸ there is currently no specific legislative or procedural framework for enforcing such settlement agreements pursuant to the Convention. The Arbitration and Mediation Act merely provides that settlement agreements under the Convention “shall be enforced in accordance with the rules of procedure of [Nigeria], and under the conditions laid down in [Part II of the Act which applies to international commercial mediation].”⁸⁹ Therefore, the states (e.g., Lagos) will remain the first port of call regarding enforcement. To this extent, the state laws *vis-à-vis* civil procedural rules are relevant. This relevance applies to all 36 states and the Federal Capital Territory (each of which has a high court), the Federal High Court, and the National Industrial Court.

Governmental interest in mediation is not limited to Nigeria. In the context of China, it was argued that “while mediation initially developed as a private process, the government has always had an interest in it”.⁹⁰ Efforts of the Chinese government to provide guidance for mediation date back many centuries.⁹¹ More recently, this can also be observed in the retention of the mediation committee in the People’s Mediation Law 2010. Based on the Chinese Constitution Law,⁹² the People’s Mediation Law was introduced in 2010 to resolve civil disputes on the basis of voluntariness,⁹³ equality,⁹⁴ lawfulness and state policy.⁹⁵ People’s mediation committees / commissions (the key players in traditional mediation) at different levels of civil justice system are retained in the People’s Mediation Law. Accordingly, “People’s mediation commissions are mass-based organizations legally formed to settle disputes among the people”.⁹⁶ Their operation is guided by the administrative department of justice under the State Council or local people’s government on the national and local levels respectively.⁹⁷ For specialised mediation, the Linked Litigation-Mediation Scheme (LLMS) linking insurance industry mediation with judicial mediation and adjudication to resolve insurance disputes was established following the issuance of the “Opinions on Promoting the Construction of the Mechanism of Linking Litigation and Mediation for Insurance Disputes Nationwide in China” 2016.⁹⁸

⁸⁸ Ratified 27 November 2023 and will enter into force on 27 May 2024:

<https://www.singaporeconvention.org/jurisdictions>

⁸⁹ S 86(1), Arbitration and Mediation Act 2023. See also s 67(1).

⁹⁰ Zhiqiong June Wang and Jianfu Chen, “From Alternative Dispute Resolution to Pluralist Dispute Resolution: Towards an Integrated Dispute Resolution Mechanism in China” (2020) 16(2) International Journal of Law in Context 165, 166.

⁹¹ In making this point, Wang and Chen went as far back as the “Qin dynasty (211-207 BC)” and “Ming dynasty (1368-1644)”. Zhiqiong June Wang and Jianfu Chen, “From Alternative Dispute Resolution to Pluralist Dispute Resolution: Towards an Integrated Dispute Resolution Mechanism in China” (2020) 16(2) International Journal of Law in Context 165, 166.

⁹² People’s Mediation Law of the People’s Republic of China 2010, Article 1.

⁹³ People’s Mediation Law of the People’s Republic of China 2010, Article 2, 3(1).

⁹⁴ People’s Mediation Law of the People’s Republic of China 2010, Articles 3(2), 21.

⁹⁵ People’s Mediation Law of the People’s Republic of China 2010, Article 3(3).

⁹⁶ People’s Mediation Law of the People’s Republic of China 2010, Article 5.

⁹⁷ People’s Mediation Law of the People’s Republic of China 2010, Article 5.

⁹⁸ the Supreme People’s Court of China (SPC) and the China Insurance Regulatory Commission (CIRC), “Opinions on Promoting the Construction of the Mechanism of Linking Litigation and Mediation for Insurance Disputes Nationwide in China” 14 November 2016; http://www.gov.cn/xinwen/2016-11/14/content_5132361.htm

Such an integrated platform delivers the Mechanism for Pluralist Dispute Resolution, comprised of people's mediation, administrative mediation, institutional mediation, specialised mediation, mediation/arbitration and judicial mediation.⁹⁹ Among them, judicial mediation evidently plays a prominent role in the Chinese mediation system.

Accordingly, subject to the supervision of the People's court,¹⁰⁰ the mediation committee set up under Articles 7 and 8 of the People's Mediation Law 2010 provides a free service¹⁰¹ in cities, townships¹⁰² and villages.¹⁰³ The People's mediator serving on the committee is required to have the quality of awareness of culture, knowledge, policy and law¹⁰⁴ for the appointment. Once appointed, mediators can be challenged and removed on the grounds of bias, insulting a party, bribery or breach of parties' personal privacy or trade secret.¹⁰⁵ Parties can submit their disputes to the mediation committee. Alternatively, the mediation committee can take the initiative to mediate disputes on a voluntary basis. Once the settlement is reached, the People's mediator shall record the settlement in the format of a written or oral settlement agreement¹⁰⁶ which binds the parties legally.¹⁰⁷ Where a settlement agreement has been breached, a party can seek enforcement in the People's court¹⁰⁸ within thirty days after the agreement takes effect.¹⁰⁹ If the settlement contains illegality, the parties can reach a new settlement or bring an action in the People's court.¹¹⁰ The Supreme People's Procuratorate or People's Procuratorate can file a protest if the settlement is in breach of the state's interest or public policy.¹¹¹ In China, mediation is also stipulated as one of the dispute resolution mechanisms in agricultural holding disputes according to the Law of the People's Republic of China on the Mediation and Arbitration on Rural Land Contract Disputes 2009.¹¹² This includes such a nature of disputes arising from international investment. Disputes arising from agricultural land, such as tenancy, transfer, exchange, leasing, ownership, management, and so on,¹¹³ can be settled or referred to mediation by the disputants.¹¹⁴ Such a referral can be submitted in a written or oral form.¹¹⁵ Unlike the oral option in the Mediation Law 2010, the settlement agreement reached between the disputants shall be

⁹⁹ Zhiqiong June Wang and Jianfu Chen, 'Alternative Dispute Resolution to Pluralist Dispute Resolution: Towards an Integrated Dispute Resolution Mechanism in China' (2020) 16(2) *Int. J.L.C.* 165, 168; See generally Zhang Weiping, 'China's Litigation Mediation: Evolution, Institution and Recent Trend' (2014) 4(2) *Int. J.P.L.* 256, 256.

¹⁰⁰ People's Mediation Law of the People's Republic of China 2010, Article 11.

¹⁰¹ People's Mediation Law of the People's Republic of China 2010, Article 4.

¹⁰² People's Mediation Law of the People's Republic of China 2010, Article 5, 10.

¹⁰³ People's Mediation Law of the People's Republic of China 2010, Articles 8 and 9; See generally Bobby K.Y. Wong, 'Dispute Resolution by Non-Official Institutions in Traditional China Arbitration' (2006) 72(3) *International Journal of Arbitration* 178, 179 on how non-official mediation institutions take root in China.

¹⁰⁴ People's Mediation Law of the People's Republic of China 2010, Article 14, 20.

¹⁰⁵ People's Mediation Law of the People's Republic of China 2010, Article 15.

¹⁰⁶ People's Mediation Law of the People's Republic of China 2010, Article 28.

¹⁰⁷ People's Mediation Law of the People's Republic of China 2010, Article 30,31.

¹⁰⁸ People's Mediation Law of the People's Republic of China 2010, Article 32, 33.

¹⁰⁹ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 201.

¹¹⁰ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 202.

¹¹¹ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 215.

¹¹² Promulgated on 27 June 2009, came into force on 1 January 2010.

¹¹³ The Law of the People's Republic of China on the Mediation and Arbitration on Rural Land Contract Disputes 2009, Article 2.

¹¹⁴ Chao Zhou and Dan Banik, 'Access to Justice And Social Unrest in China's Countryside: Disputes On Land Acquisition And Compensation' (2014) 6(2) *Hague Journal on the Rule of Law* 254, 261; The Law of the People's Republic of China on the Mediation and Arbitration on Rural Land Contract Disputes 2009, Article 3.

¹¹⁵ The Law of the People's Republic of China on the Mediation and Arbitration on Rural Land Contract Disputes 2009, Article 8.

recorded in writing with the signatures of or seals used by the disputants and mediators by the village or township committee involved.¹¹⁶

Apart from the Mediation Law 2010, the practice of mediation is also provided in Chapter 8 of the Civil Procedure Law of the People's Republic of China (2021 Amendment; hereinafter the Chinese Civil Procedure Law), where mediation can also be used during the court proceedings. According to Article 9 of the Civil Procedure Law, civil court judges shall observe the principles of voluntariness¹¹⁷ and legality to conduct mediation during the court proceedings if the matter is suitable for mediation;¹¹⁸ mediation can also be conducted prior to the court proceeding.¹¹⁹ The major difference between Nigeria and China is that Nigerian judges do not mediate in court but can suggest or promote the exploration of mediation that will take place outside the court while Chinese judges operate in a proactive manner often through direct intervention at their court.

B. Judicial Involvement in Mediation

Nigeria and China have different approaches to mediation from the perspective of judicial involvement. Judicial mediation does not apply to Nigeria because Nigerian courts are not involved in mediation although they are obliged to promote it and refer parties to multi-door courthouses in relevant cases. The Lagos High Courts will refer the parties to the LMDC for mediation in such cases.¹²⁰ However, such divergence deserves specific attention due to the number of mediation settlement agreements reached through this practice, although such agreements fall outside the scope of the Convention. In contrast, considerable detail is required in the case of China because there is a practice of non-written mediation settlement and a high degree of judicial engagement in mediation.

Based on party autonomy, in China, civil court judges can conduct mediation when they deal with civil disputes submitted to the court.¹²¹ Mediation can be conducted by a sole judge or a panel of judges¹²² who have the coercive power to subpoena parties or witness to the court to give evidence.¹²³ If necessary, organisations or individuals who are asked to attend the proceeding are legally obliged to attend the hearings and provide assistance to the court.¹²⁴ When the settlement is reached, the People's court has the duty to provide a written settlement agreement signed by the judge(s) and clerk(s).¹²⁵ The requirement of a written settlement does not apply to those disputes which can be

¹¹⁶ The Law of the People's Republic of China on the Mediation and Arbitration on Rural Land Contract Disputes 2009, Article 10.

¹¹⁷ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Articles 9, 99, 125.

¹¹⁸ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 125, 145.

¹¹⁹ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 136(2).

¹²⁰ Upon screening Originating Processes filed in the Registry, appropriate matters may be referred to the LMDC "or any appropriate ADR institution or Practitioner in line with the Practice Directions issued by the Chief Judge". See Order 5 Rule 8 of the LSHC CPR 2019.

¹²¹ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 96.

¹²² The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 97(1).

¹²³ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 97(2).

¹²⁴ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 98.

¹²⁵ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Articles 100(1), 179.

performed without delay¹²⁶ or do not need to be recorded in the settlement agreement.¹²⁷ The settlement agreement takes effect upon delivery to the parties¹²⁸ who will be legally bound to perform the agreement.¹²⁹ Failing to reach a settlement, judges shall deliver a judgment to settle the dispute. Parties can also follow Article 52 (1) to request mediation during the proceedings or reach a settlement based on Article 53 of the Civil Procedure law.¹³⁰

Judicial mediation is regulated in the Chinese Civil Procedure Law and some Opinions and Provisions issued by the Supreme People's Court for all civil and commercial disputes and "Regulations on Certain Issues regarding Establishment of the International Commercial Courts" (the Regulations) (25 June 2018 and amended on 5 December 2018) for international commercial disputes. Chapter 8 of the Civil Procedure Law (the CPL) sets out the basic principles and procedures for judicial mediation. Furthermore, six pieces of judicial guidance on mediation in the form of the Supreme People's Court Opinions and Provisions were issued to deal with mediation. They are: The Provisions of the Supreme People's Court (SPC) on Several Issues Concerning the Civil Mediation Work of the People's Court (16 September 2004),¹³¹ the Several Opinions of the SPC on Further Displaying the Positive Roles of Litigation Mediation in Building a Harmonious Socialist Society (1 March 2007),¹³² the Notice of the SPC on Issuing Several Opinions on Further Implementing the Work Principle of "Giving Priority to Mediation and Combining Mediation with Judgment" (7 June 2010),¹³³ Chapter 4 of The Interpretations of the SPC Concerning the Application of the Civil Procedure Law of the People's Republic of China 2014,¹³⁴ the Provisions of the SPC on People's Court Invited Mediation (23 May 2016; entering into force on 1 July 2016),¹³⁵ and the Opinions of the SPC on the People's Court Further Deepening of Reform on Multi-Mechanisms for Dispute Resolution (28 June 2016).¹³⁶

The practice of judicial mediation is also applied in the International Commercial Courts (the CICC), a division of the Supreme People's Court, the CICC being set up as an international commercial dispute resolution platform in 2018 aiming to provide an efficient integration of mediation, arbitration and litigation for international commercial disputes. The CICC was established under the Regulations on Certain Issues regarding Establishment of the International Commercial Courts (the Regulations)

¹²⁶ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 101(1)(3).

¹²⁷ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 101(1)(4). For those disputes, the settlement should be added to court record in accordance with the Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 101(2).

¹²⁸ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 100(3).

¹²⁹ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 243.

¹³⁰ The Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 102.

¹³¹ <http://www.china.com.cn/chinese/law/662178.htm>

¹³² http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=89041

¹³³ http://news.xinhuanet.com/legal/2010-06/28/c_12271040.htm

¹³⁴ <http://www.court.gov.cn/fabu-xiangqing-13241.html>

¹³⁵ <http://www.court.gov.cn/fabu-xiangqing-22752.html>

¹³⁶ <http://www.chinacourt.org/law/detail/2016/06/id/148740.shtml>

promulgated by the Supreme People's Court when these came into effect on 1 July 2018,¹³⁷ further supported by the Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation)¹³⁸ and the Working Rules for the International Commercial Expert Committee (For Trial Implementation).¹³⁹ Headquartered in Beijing with two further courts set up in both Shenzhen and Xi'an, the CICC is a forum providing disputants a platform for multi-dispute resolution methods for international disputes,¹⁴⁰ such as litigation, arbitration and mediation.¹⁴¹ The CICC provides a "three-in-one" dispute resolution mechanism;¹⁴² namely litigation, arbitration and mediation. International parties may choose the CICC as the forum for arbitration, mediation or litigation being submitted to the CICC or being referred to the CICC by the Higher People's Courts of China. Accordingly, pre-litigation mediation is provided in Article 17 of the Regulations. Parties are allowed to appoint mediator(s) from the International Commerce expert commitment or two listed private international mediation institutions, such as the China International Economic and Trade Arbitration Commission and the Shanghai Commercial Mediation Centre for settlement.¹⁴³

VI. THE MEDIATION SETTLEMENT AGREEMENT

A. Effect and Interpretation of the Agreement

Nigeria

Traditionally the Nigerian courts have supported the amicable settlement of disputes and, by logical extension, the enforcement of settlement agreements.¹⁴⁴ Parties can reach agreements during

¹³⁷ <https://cicc.court.gov.cn/html/1/218/19/278/1122.html>; The Supreme People's Court, Notice of the General Office of the Supreme Peoples' Court on Inclusion of the First Group of International Commercial Arbitration and Mediation Institutions in the "One-Stop" Diversified International Commercial Dispute Resolution Mechanism, 2018-12-05; See generally, Wei Cai and Andrew Godwin, Challenges and opportunities for the China International Commercial Court, (2019) 68(4) ICLQ 869, 873 where the author expressed their concerns over an unfavourable environment for the CICC's international competitiveness caused by corruption and a lack of neutrality among China's judges and its judicial system. See generally, Huiqin Jiang, "China's International Commercial Court: a dispute settlement mechanism for the Belt and Road initiative" (2020) 39(1) CJQ 47; Zhengxin Huo and Man Yip, "Comparing the International Commercial Courts of China with the Singapore International Commercial Court" (2019) 68(4) ICLQ 903.

¹³⁸ <http://cicc.court.gov.cn/html/1/219/208/210/1183.html>

¹³⁹ <http://cicc.court.gov.cn/html/1/219/208/210/1146.html>; Zhengxin Huo and Man Yip, "Comparing the International Commercial Courts of China with the Singapore International Commercial Court" (2019) 68(4) ICLQ 903-942, 925-926.

¹⁴⁰ Zhengxin Huo and Man Yip, "Comparing the International Commercial Courts of China with the Singapore International Commercial Court" (2019) 68(4) ICLQ 903, 916.

¹⁴¹ Regulations on Certain Issues regarding Establishment of the International Commercial Courts' (the Regulations), Article 1.

¹⁴² Siyi Lin, "China's International Commercial Court under the Belt and Road Initiative" (2018) 29(11) International Company and Commercial Law Review 664, 667.

¹⁴³ <https://cicc.court.gov.cn/html/1/218/321/286/292/index.html>; institutions are selected by an International Commercial Expert Committee (ICEC) set up under Article 11 of the Provisions of the SPC on Several Issues concerning the Establishment of International Commercial Court (the Provisions). Those institutions are to establish an integrated dispute resolution platform together with the CICC.

¹⁴⁴ As discussed earlier in the Nigerian aspect of Section II(C) of this article on judicial eagerness in favour of mediation. Although s 82(2) of the Arbitration and Mediation Act provides that settlement agreements are "binding on the parties and enforceable in Court as a contract, consent judgment or consent award", this should be interpreted in the light of Article 1(3) of the Singapore Convention.

litigation and the terms of the settlement are registered as the judgment of the court.¹⁴⁵ This is called a consent judgment. To have a consent judgment under Nigerian law, “the parties must be *ad idem* as far as the agreement is concerned; and the terms of settlement must be filed in court. When the court makes an order based upon such terms of settlement, there emerges a consent judgment, from which the parties could appeal only by leave of the court”.¹⁴⁶ The broad judicial discretion to approve or reject terms of settlement does not extend to including any other specific terms. The court can reject terms, within legal confines, but cannot include other terms, otherwise this will be outside the remit of the consent judgment.¹⁴⁷ Thus, it was decided that a court order that sanctions the merger of two companies does not amount to a consent judgment.¹⁴⁸

The agreement on terms of settlement does not necessarily insulate the consent judgment from any attack. This can be illustrated through *Agbareh v Mimra*.¹⁴⁹ When the matter came up for hearing, the parties informed the court that they wanted to settle out of court which terms the court endorsed. However, they interpreted two clauses of the consent judgment differently. The main issue related to “the interpretation of the Consent Judgment as a whole and not just that of paragraph/Clause 4) in isolation”.¹⁵⁰ The Supreme Court observed that the consent judgment referred to the two agreements between the appellants and respondents: “Of course, it is also settled that if parties enter into an Agreement, they are bound by its items and that one or the other court, cannot legally or properly, read into the Agreement, the terms on which the parties have not agreed and did not agree to.”¹⁵¹ The Supreme Court, in allowing the appeal, decided that the Court of Appeal disregarded rules of interpretation “by ignoring or amending so to speak, the said agreement of the parties that are binding on them by confining itself to paragraph/Clause 4 and interpreting it in isolation to the other paragraph/Clauses of the said Consent Judgment”.¹⁵² The Supreme Court emphasised that the Agreements were relevant by incorporation in the Consent judgment, but the respondents had argued that “the said Agreements were never before the court as exhibits to enable the court examine the contents and determine the periodicity of payments”.¹⁵³ This argument was rejected. In short, the majority opinion focused on *pacta sunt servanda* concerning the agreements which the parties entered into before the settlement agreement.

Akintan JSC delivered the sole dissenting but important opinion. He held the view that “what the consent judgment covered is what was *specifically stated in the clause 4 of the agreement*. Any claim outside that “could be the subject of a new cause of action” (emphasis added).¹⁵⁴ There is an important issue of what should happen where the terms of settlement expressly mention something (else) even though it had already incorporated an agreement before the consent judgment. The cardinal rule of

¹⁴⁵ Ibid.

¹⁴⁶ *Woluchem v Wokoma* (1974) 2 SC 153, 166-168.

¹⁴⁷ *Ojora v AGIP Nigeria Plc* (2005) 4 NWLR (Pt 916) 515, 537-538 (CA).

¹⁴⁸ This is especially so in the context of s 241(2)(c) of the Nigerian Constitution on leave to appeal consent judgments.

¹⁴⁹ (2008) LPELR-43211 (SC).

¹⁵⁰ *Agbareh* *ibid.* 19

¹⁵¹ In this regard, the Court referred to an earlier Supreme Court judgment: *Evbomwan v Eleme* (1994) 7-8 SCNJ (Pt II) 243. See *Agbareh* *ibid.* 23

¹⁵² *Agbareh* *ibid.* 27.

¹⁵³ *Ibid.* 43.

¹⁵⁴ *Ibid.* 72.

interpreting instruments, documents or agreements is that words must be given their simple and ordinary meaning. This rule may be departed from where it will lead to “some absurdity or some repugnancy or inconsistency with the rest of the instrument”.¹⁵⁵ This exception can be challenging to apply because discretion is necessary. In agreements, this will involve discovering the “intention of parties which is deducible from the language used”.¹⁵⁶ But discovering this intention without frustrating the “meaning of the document which clearly or expressly embodies the terms both parties have agreed to bind them” is not always straightforward.¹⁵⁷

Agabreh does raise the question of how the terms of settlement agreements are recorded, as the Convention does not apply to settlement agreements that have been approved by the court or concluded during judicial proceedings.¹⁵⁸ Thus, parties may be able to circumvent such potentially challenging terrain. Given how complex international commercial agreements can be, there is always a real likelihood of incorporating terms of a settlement by reference, by referring to a prior settlement agreement or a judgment. For international settlement agreements, it would be prudent to either incorporate prior agreements without any specific mention of terms or set out all the terms of agreement, as a stand-alone document, so that there is no need to refer to prior agreements. Parties should aim to focus on the settlement agreement as a definitive source of the terms of the settlement agreement.

In fact, one of the grounds for refusing to grant relief under the Convention is where granting such relief would be “contrary to the terms of the settlement agreement”.¹⁵⁹ Thus, cases such as *Agbareh* have practical implications for how the Convention may be applied in Nigeria. It is entirely conceivable that some parties will try to highlight prior agreements with a view to attaining fair or just outcomes. In this regard, however, the Convention instead provides that the competent authority of the country where a party seeks enforcement may refuse to grant relief if the obligations in the settlement agreement are “not clear or comprehensible”.¹⁶⁰ To this extent, the dissenting opinion of Akintan JSC in *Agbareh* is particularly illuminating and even instructive. Also, for the purposes of the Convention, the rationale behind that dissenting opinion may well be prescient. The Convention clearly discourages reopening of prior agreements. In such a situation, therefore, the court should examine whether the terms of the settlement agreement are “clear and comprehensible”. If they are, then the settlement agreement should be enforced.

China

As stated above, in China, international mediation settlement agreements can be administered and reached by the limited number of private mediation institutions, village or township committees and courts. The intertwined relationship between mediation and national courts has resulted in 40% of

¹⁵⁵ *Ogbunyiya v Okudo* (1979) 6-9 SC 32, 42. The Court of Appeal followed this in *Jumbo v Sasime* (2019) LPELR – 48668 (CA).

¹⁵⁶ *Unilife Development Co. Ltd. v Adeshigbin* (2001) SC.

¹⁵⁷ *Unilife Development Co. Ltd. v Adeshigbin* (2001) SC.

¹⁵⁸ Art 3(a)(i). Also, the Convention does not apply to settlement agreements that are enforceable as judgments in the foreign court or recorded and enforceable as arbitral awards.

¹⁵⁹ Art 5(1)(d).

¹⁶⁰ Art 5(1)(c).

cases¹⁶¹ where mediation settlements were reached before and during the court proceedings under Article 9 of the Chinese Civil Procedure Law.¹⁶² Consequently, a written settlement agreement will be drafted by the judge(s) and signed by both judge(s) and clerk(s).¹⁶³ For disputes arising from agricultural holdings, the settlement agreement reached between the parties shall be recorded in writing with the signatures or seals of the parties and mediators by the village or township committee involved.¹⁶⁴ Other settlement agreements reached by the mediation committees can be in written or oral forms.

In the case of international mediation settlement agreements delivered by the CICC, where parties have agreed on an outcome within the CICC framework, the court may issue a settlement agreement according to the law or in a judgment, upon the disputants' request.¹⁶⁵ Such mediation settlements issued by the CICC have the same legal effects as a court judgment. Where no settlement agreement is reached, the CICC is obligated to draw up a judgment which binds both parties. The rationale for the judicial input is that settlement agreements reached through mediation are no more than oral contracts. Their binding effect can be called into doubt as there is no guarantee that the parties will comply with the agreements. The provisions attempt to make up for this deficiency by granting legal effects to the mediation agreements achieved by the parties, thus encouraging the parties to choose mediation for dispute resolution. Failing to reach a settlement, the CICC will draw up a judgment and serve it to the parties at their request.

A mediation settlement agreement drawn up in a judgment will fall outside the scope of the Singapore Convention which excludes any settlement agreement reached "approved by a court or concluded in the course of proceedings before courts."¹⁶⁶ However, a judgment will be drawn up upon the parties' request. If parties do not make the request, there is some scope to consider whether settlement agreements between the parties themselves fall within the scope of the Convention before requesting judicial endorsement with a view to enforcing such agreements in Nigeria.

B. Enforcement of Convention Settlement Agreements – Current Jurisprudence

An examination of how settlement agreement may be enforced under Convention requires some understanding on the current law and practice. Settlement agreements are usually enforceable in Nigeria and China.

Nigeria

¹⁶¹ The Reform of Diversified Dispute Resolution Mechanism of China's Court, https://www.court.gov.cn/upload/file/2021/02/20/16/19/20210220161916_60128.pdf, 65.

¹⁶² the Civil Procedure Law of the People's Republic of China (2021 Amendment), Article 136(2).

¹⁶³ the Civil Procedure Law of the People's Republic of China (2021 Amendment), Articles 100(1), 179.

¹⁶⁴ The Law of the People's Republic of China on the Mediation and Arbitration on Rural Land Contract Disputes 2009, Article 10.

¹⁶⁵ The Provisions of the SPC on Several Issues concerning the Establishment of International Commercial Court (the Provisions), Article 12.

¹⁶⁶ The Singapore Convention, Article 1(3)(a)(i).

Settlement agreements from abroad remain enforceable by bringing a fresh claim in court as would be the case to enforce any other contract.¹⁶⁷ This is how settlement agreements are enforced as contracts essentially, except where there is any special framework for enforcement. There is a strong case to be made for avoiding that long process (and potentially convoluted process) in certain states in Nigeria which have enacted relevant multi-door courthouse laws. There are several states in this regard, as earlier mentioned.¹⁶⁸ Avoiding any long or convoluted process with respect to the enforcement of settlement agreements resulting from international commercial mediation is a major reason to promote the use of the Singapore Convention in Nigeria.

Under the LMDC, dealing with disputes that originate from the court is just one of the body's functions and powers.¹⁶⁹ The LMDC is empowered to encourage disputing parties to appear before it to resolve their disputes.¹⁷⁰ It is also empowered to assist disputing parties "in the resolution of their disputes and act as administrators in the conduct of ADR proceedings locally or internationally".¹⁷¹ There is scope to argue that enforcement of arbitration awards "as provided for in the Arbitration and Conciliation Act" presents some deductions.¹⁷² First, the LMDC Law suggests that there is no other way of enforcing such settlement agreements apart from the traditional option of bringing a claim in court. Second, the legislator saw the LMDC as the functional equivalent of the arbitral awards enforcement regime anchored to the Arbitration and Conciliation Act.

Progressive amendments of the High Court Rules have "further improved the use of the LMDC".¹⁷³ This is because of the express reference to mediation processes. However, the High Court Rules do not expressly refer to specific details of mediation processes, as already explained.¹⁷⁴ This improvement is largely focused on cases pending before the High Court. The LMDC creates a double-track procedure (court referral and walk-ins), although both still converge at the enforcement stage.¹⁷⁵ The LMDC, in pursuit of its objectives, can cause settlement agreements to become binding and enforceable. Such settlement agreements must be duly signed and endorsed by an ADR Judge or

¹⁶⁷ There is a view that "a settlement agreement is not a contract like any other. It is a contract that terminates a dispute, like a judgment or an arbitral award". Boulet further argued that "this special subject matter of the settlement agreement justifies that it benefits from an appropriate status for its enforcement". See Jean-Christophe Boulet, "The Singapore Convention and the Metamorphosis of Contractual Litigation (2019) 20 *Cardozo Journal of Conflict Resolution* 1209. While this view is insightful in highlighting how it is a special agreement, the reality is that the agreement attains a special status only after enforcement is sought. Until then, the settlement agreement is essentially an agreement like any other.

¹⁶⁸ Such as those highlighted in this article – see Lagos State High Court (Civil Procedure) Rules 2019. The Lagos Multi-Door Courthouse, established in 2002, was the first court-connected Alternative Dispute Resolution Centre in Africa". See Security, Justice and Growth, "Alternative Dispute Resolution: Multi-Door Courthouses" (2010) https://www.britishcouncil.org.ng/sites/default/files/multidoor_courthouse.pdf

¹⁶⁹ S 3(1)(a) of the LMDC Law.

¹⁷⁰ S 3(2) of LMDC; s 5(b) of the PMDC Law.

¹⁷¹ S 3(3) of LMDC; for a similar provision, see s 5(c) of the PMDC Law.

¹⁷² Art 26(2) of the LMDC and 19(4) of the PMDC; s 28(2) of the EMDC.

¹⁷³ Akeredolu argued that through s 16(1) of the LMDC, cases in the High Court are screened to determine the most appropriate dispute resolution track. See Alero Akeredolu, "Institutionalising Alternative Dispute Resolution in the Public Dispute Resolution Spectra in Nigeria Through Law: The Lagos Multi Door Court House Approach" (2015) 12 *US-China Law Review* 104, 116.

¹⁷⁴ The LSHC CPR 2019 provides for referrals to the LMDC. See Order 5 Rule 8.

¹⁷⁵ LMDC Law at s 4; ss 26(a)(h)(i) of the PDMC Law; S 25(a)(h)(i) of the EMDC Law.

Magistrate pursuant to the directive of the Chief Judge.¹⁷⁶ Such agreements need to be filed at the LMDC supported with relevant documents.¹⁷⁷ Parties to such agreements also need to appear before the ADR Judge or Magistrate before the endorsement.¹⁷⁸ The further endorsement of the ADR Judge or Magistrate takes the settlement agreement beyond enforceability “as a contract between the parties” and makes it enforceable under the Sheriff and Civil Process Law.¹⁷⁹ Such navigation between relevant mediation enforcement regimes of individual states arguably provides some scope to consider whether the ratification of the Singapore Convention in Nigeria can streamline enforcement rules pursuant to the Arbitration and Mediation Act. Such an approach could provide more (relative) predictability for foreign parties since they only need to refer to one set of rules. However, such an approach will need to factor in the fact that there are various state high court rules and that such courts are invariably involved in enforcement. Another practical way of addressing the issue of multiple state mediation regimes from the standpoint of enforcement is to ensure that core provisions (the point of departure or template could be a set of federal rules) are replicated across individual states of the Nigerian Federation in which case it will be of little or no consequence in which state a foreign party seeks to enforce any settlement agreement resulting from international commercial mediation. If any state regime differences result in healthy competition, this should be to the benefit of local and foreign parties. In any case, currently, individual state regimes on mediation are generally similar and there seems to be no reason to anticipate any marked change regarding core provisions in the foreseeable future, especially where state high courts are involved.

It may be argued that the close relationship between the judiciary and mediation practice gives “credibility and assurance” to the process of mediation.¹⁸⁰ Otherwise, a settlement agreement is no more than a contract.¹⁸¹ In Nigeria, clearly, “a party alleging oral agreement is duty bound to prove such an agreement to the hilt”.¹⁸² In other words, an exceptionally high threshold is required. China presents an insightful context for comparative analysis in this regard.

China

In terms of formality, an oral mediation settlement agreement reached under Article 28 of the Chinese People’s Mediation Law 2010 will also face difficulties with respect to its enforcement in Nigeria. This

¹⁷⁶ Actual enforcement is then anchored to the Sheriffs and Civil Process Law or other relevant legislation. See S 4(1)(b); S 6(1)(a) of the EMDC Law.

¹⁷⁷ S 4(2) LMDC; S 6(2) EMDC.

¹⁷⁸ S 4(3) LMDC; S 6(3) EMDC.

¹⁷⁹ S 26(1) of the LMDC Law. See s 19(1) of the PMDC. See s 24(5) of the EMDC.

¹⁸⁰ Alero Akeredolu, “Institutionalising Alternative Dispute Resolution in the Public Dispute Resolution Spectra in Nigeria Through Law: The Lagos Multi Door Court House Approach” (2015) 12 US-China Law Review 104, 108.

¹⁸¹ In the context of Nigeria, Alero argued that “a mediated agreement has the status of a contract simpliciter”. If a party does not comply, “the other would have to seek redress afresh in court”. See Alero Akeredolu, “Institutionalising Alternative Dispute Resolution in the Public Dispute Resolution Spectra in Nigeria Through Law: The Lagos Multi Door Court House Approach” (2015) 12 US-China Law Review 104, 108-109. The Akwa Ibom Multi-Door Courthouse as long ago as 2009 had provided that “upon the completion of the ADR proceedings, Settlement Agreement which is duly signed by the parties shall be enforceable as a contract between the parties and when such agreements are further endorsed by an ADR Judge, it shall become a Consent Judgment enforceable by law”. Order 36 of the Akwa Ibom Multi-Door Courthouse (2009).

¹⁸² See *NSITF v Access Bank* (2015) LPELR-25790 1, 11(CA); The Court of Appeal also relied on the following cases in this regard: *Archibong v Ita* (2004) 2 NWLR (Pt 858) 590 SC; *Odutola v PaperSack (Nig) Ltd* (2006) 18 NWLR (Pt 1012) 470. *A-G Lagos State v Purification Tech. (Nig) Ltd* (2003) 16 NWLR (Pt 845).

is because the signatory states to the Convention can only enforce written settlement agreements.¹⁸³ A further issue requiring clarification is the status of the People's mediator and the mediation committee in the townships; judicial or non-judicial. These issues pose practical challenges. If an international commercial dispute was submitted to either jurisdiction, should the people's mediator or the committee members who do not have a judicial role (but approved and endorsed by Chinese courts under Article 8 and 9 of the Mediation Law 2010) be regarded as private mediators to take advantage of enforcement under the Convention, or should they be accorded a judicial capacity because of the intertwined arrangement?¹⁸⁴ An appropriate approach would be to consider practical benefits to the parties with a focus on their interests and the outcomes of mediation processes contained in settlement agreements.

Similar to the argument supporting parallel proceedings, the disputants' procedural rights¹⁸⁵ place the mediation settlement agreement at a level not inferior to court judgments within the current enforcement or re-trial framework. Following the summary court procedure,¹⁸⁶ a mediation settlement would be enforced except on the grounds of a violation of mandatory provision of the law or administrative law, breach of the national, social and public interests, infringement of non-party rights, criminality involved, ambiguity in the settlement agreement, or breach of due process or public policy.¹⁸⁷ Similar to the situation in Nigeria, this list ~~can leave~~ provides the Chinese courts discretion to grant non-enforceability of an international mediation settlement agreement, particularly given the fluid concept of public policy.

Ambiguity in public policy stipulated in the Convention further complicates the issue of judicial discretion with respect to enforcement. The lack of clear definition in public policy ground for refusal of a mediation settlement agreement provided in art.5(2)(a) was categorized as being "transplanted", hence "the Singapore Convention could also become a major barrier to achieving efficient enforcement of settlement agreements. Broad and varied interpretations of public policy could therefore be fatal to the effectiveness of the Singapore Convention."¹⁸⁸ This is particularly so as

¹⁸³ See art 1(1) and 2(2) of the Convention. For the challenges in trying to rely on the "in writing" requirement merely to mean contents "recorded in any form", see Jean-Christophe Boulet, "The Singapore Convention and the Metamorphosis of Contractual Litigation (2019) 20 Cardozo Journal of Conflict Resolution 1209, 1220-1221. See also Report of Working Group II (Dispute Settlement) on the work of its sixty-fifth session (Vienna, 12-23 September 2016) [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/V16/085/10/PDF/V1608510.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/V16/085/10/PDF/V1608510.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/V16/085/10/PDF/V1608510.pdf?OpenElement) para 44. See further Report of Working Group II (Dispute Settlement) on the work of its sixty-eighth session (New York, 5-9 February 2018) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/008/77/PDF/V1800877.pdf?OpenElement>

¹⁸⁴ People's Mediation Law of the People's Republic of China 2010 Articles 8 and 9; See generally Bobby K.Y. Wong, 'Dispute Resolution By Non-Official Institutions In Traditional China Arbitration' (2006) 72(3), 178, 182

¹⁸⁵ Supreme People's Court, Several Opinions of the Supreme People's Court on Establishing a Sound Conflict and Dispute Resolution Mechanism that Connects Litigation and Non-litigation, 24 July 2009, <http://www.lawinfochina.com/display.aspx?lib=law&id=7744&CGid=>

¹⁸⁶ Several Opinions of the Supreme People's Court on Establishing a Sound Conflict and Dispute Resolution Mechanism that Connects Litigation and Non-litigation 2009 (PRC), Art.23.

¹⁸⁷ Several Opinions of the Supreme People's Court on Establishing a Sound Conflict and Dispute Resolution Mechanism that Connects Litigation and Non-litigation 2009 (PRC), Art.24.

¹⁸⁸ Anne Wang, 'Transplanting Public Policy: From Arbitration to Mediation' (2021) 24(1) Int. A.L.R. 1, 2.

“public policy could include issues relating to national security or national interest.¹⁸⁹ The fact that these perspectives of public policy were presented in the context of the Convention underscore the need to have a practical awareness of possible challenges in implementing the Convention. Such challenges could be further exacerbated by the intended lack of seat or state of origin in the Convention.¹⁹⁰ It was argued that the non-applicability of seat may lead to the issue of parallel proceedings potentially being filed at multiple jurisdictions at the enforcement stage,¹⁹¹ as well as highlighting the ambiguity between the applications of domestic or international public policy by the enforcing court of the signatory states.¹⁹²

Furthermore, the practice of judicial mediation results in exclusion of the settlement agreements under the Convention. This is underscored by Chapter 8 of the Chinese Civil Procedure Law. However, it also means that, with the high percentage of judicial mediation delivered through the civil court proceedings, around 40% of civil mediation settlement agreements¹⁹³ would not be able to take advantage of the Singapore Convention, if they are international in nature. Instead, they will have to seek enforcement under the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments. This would defeat the concept of global enforcement embodied in the Singapore Convention and raise the question whether the Convention should include judicial mediation in its scope of application by placing the emphasis on the settlement, rather than the body which facilitates and delivers the settlement.

Further questions arise regarding the status of settlement agreements reached by the mediation commissions (“mass-based organizations”) in the Chinese civil justice system. It was pointed out that the commission is not an official body but approved and endorsed by the judicial officials.¹⁹⁴ Hence it is necessary to question whether such a body is a judicial office or a private office for the purpose of the Singapore Convention. Accordingly, an international commercial dispute settled through a committee defined as a private office is within the scope of application of the Convention, while otherwise the effect is non-applicability of the Convention. Furthermore, the practice of oral settlement, such as the agricultural holding disputes mentioned in the Law of the People’s Republic of China on the Mediation and Arbitration on Rural Land Contract Disputes 2009,¹⁹⁵ evidently will be further excluded from enforcement under the Singapore Convention.

¹⁸⁹ Jean-Christophe Boulet, “The Singapore Convention and the Metamorphosis of Contractual Litigation (2019) 20 *Cardozo Journal of Conflict Resolution* 1209, 1224.

¹⁹⁰ Anne Wang, ‘Transplanting Public Policy: From Arbitration To Mediation’ (2021) 24(1) *Int. A.L.R.* 1, 7.

¹⁹¹ Anne Wang, “Transplanting Public Policy: From Arbitration to Mediation” (2021) 24(1) *Int. A.L.R.* 1, 7; the possible application of art 6 of the Singapore Convention was also raised by Shou Yu Chong and Nadja Alexander, “An Implied Ground for Refusal to Enforce iMSAs Under the Singapore Convention on Mediation: The Effect of Article 6”, *Kluwer Mediation Blog* (Blog Post, 17 February 2019) <http://mediationblog.kluwerarbitration.com/2019/02/17/an-implied-ground-for-refusal-to-enforce-imsas-under-the-singapore-convention-on-mediation-the-effect-of-article-6/>

¹⁹² Anne Wang, ‘Transplanting Public Policy: From Arbitration to Mediation’ (2021) 24(1) *Int. A.L.R.* 1, 7.

¹⁹³ The Reform of Diversified Dispute Resolution Mechanism of China’s Court, https://www.court.gov.cn/upload/file/2021/02/20/16/19/20210220161916_60128.pdf, 65.

¹⁹⁴ People’s Mediation Law of the People’s Republic of China 2010, Articles 8 and 9; See generally Bobby K.Y. Wong, ‘Dispute Resolution by Non-Official Institutions in Traditional China Arbitration’ (2006) 72(3) *International Journal of Arbitration* 178, 182.

¹⁹⁵ Promulgated on 27 June 2009 and came into force on 1 January 2010.

C. Settlement Agreements Reached During Judicial Proceedings

The exclusion of settlement agreements that are reached during judicial proceedings, but without the endorsement of the court, adds limited value if not outright disadvantage. The exclusion proved to be a matter for special deliberation as the Convention was negotiated. Earlier, the Working Group had been in favour of the position that “settlement agreements reached during judicial proceedings but not recorded as judicial decisions should fall within the scope of the instrument” if they were not recorded as court decisions or arbitral awards.¹⁹⁶ Indeed, “it was widely felt that they should fall within the scope of the instrument. It was mentioned that even if the parties initially sought to resolve their dispute through judicial or arbitral proceedings, that should not result in excluding the settlement agreement from the scope of the instrument, as long as the agreement resulted from conciliation and was not recorded in a judicial decision or an arbitral award”.¹⁹⁷ Also, in a later report, “views were expressed that exclusion of those settlement agreements from the scope of the instrument would result in depriving the parties of the opportunity to utilize the enforcement regime envisaged by the instrument”.¹⁹⁸ These views did not find their way into the Draft Convention, which excluded such agreements from the scope of the Convention.¹⁹⁹

A major reason for such exclusion, at least initially, was the need to avoid overlaps with other treaties on dispute resolution such as the Hague Judgments Convention and the Hague Convention on Choice of Court Agreements.²⁰⁰ While this harmonious interaction between both treaties is important, it is doubtful how helpful the interaction is to parties who are actively trying to avoid litigation or to countries where there are close ties between mediation and the courts. On the contrary, the very nature of endorsing settlements reached during proceedings presupposes a significant level of litigation. This is especially so where commercial litigants are likely to explore settlement only after they have tested the waters with respect to core claims before the court. If they were so keen to avoid litigation, they would arguably not have been to court in the first place. Thus, the harmonious relationship between the Hague Judgments Convention and the Mediation Convention is at the expense of parties who seek to avoid litigation. The deliberate simplicity of the latter is otherwise important. This is especially so because, unlike court proceedings where judges preside, mediation is often driven by different categories of professionals including non-lawyers.

Furthermore, the aim of the Singapore Convention ostensibly to insulate itself from litigation is not particularly realistic. Under the Convention, settlement agreements will be enforced “in accordance

¹⁹⁶ Para 12 of Secretariat, United Nations Commission on International Trade Law Working Group II (Dispute Settlement) Sixty-seventh session Vienna, 2-6 October 2017 (/CN.9/WG.II/WP. 202). <http://undocs.org/A/CN.9/WG.II/WP.202>

¹⁹⁷ See para 125 of <http://undocs.org/A/CN.9/867> United Nations Commission on International Trade Law Forty-ninth session New York, 27 June-15 July 2016.

¹⁹⁸ Para 48 of <http://undocs.org/A/CN.9/896>

¹⁹⁹ <http://undocs.org/A/CN.9/929>

²⁰⁰ Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters Art 11. Specifically, settlements that are concluded “as a result of mediation are covered by Article 11 if they are subsequently approved by the Court”.²⁰⁰ This ensured that there were no overlaps. See para 297 of the Hague Judgments Convention Explanatory Report.

with its rules of procedure and under the conditions laid down in this Convention”.²⁰¹ In both Nigeria and China, there is currently no other way to enforce settlement agreements apart from judicial endorsement and enforcement by the courts (subject to any specific enforcement rules that may be provided pursuant to the ratification of the Singapore Convention in Nigeria). The crucial role of courts in the validation and enforcement of settlement agreements has two implications. The first is the need for courts to adopt a pro-enforcement attitude to settlement agreements vis-à-vis the Singapore Convention. This first point has been an overarching theme in this article. The second is the need to carefully assess the scope of judicial discretion in the mediation process and the enforcement of settlement agreements. Taking the CICC as an example, doubts can be raised as to the applicability of the Convention in the following scenarios. They are: (1) a settlement agreement reached between the disputants after the dispute was referred to the listed mediation institution by the CICC, then returned to the CICC, (2) parties’ joint submission to the CICC but with a delivery of a settlement agreement with the judicial involvement, (3) parties’ joint submission to the CICC but with a delivery of a settlement agreement by the CICC committee and (4) disputes referred to the CICC by the lower civil courts and mediated by the private mediation institutions through the CICC’s referral.

D. The Role of Discretion

In Nigeria, initiating the mediation process by judicial referral is predicated on the exercise of judicial discretion. When originating processes are filed in the Lagos High Court, they are screened to determine if the claim is suitable for ADR.²⁰² The case is then assigned to an ADR judge who deals with any preliminary issues, and transfers the case to the LMDC so that the parties can try to resolve the matter through mediation.²⁰³ A case marked for ADR must undergo this process. The criteria for this screening process are in line with Practice Directions of the High Court. Thus, in addition to any mandatory rules or public policy considerations, such criteria may include subject matter and complexity of issues. This is one layer of discretion. Even where a case is not marked for ADR, judges can refer a case to ADR with the consent of parties. They do so if they think certain cases can be resolved amicably. This is another layer of discretion.²⁰⁴

These layers of discretion can be compared to what parties must do in complying with pre-action protocols. In complying with the protocols, litigants must provide evidence of efforts to resolve the dispute amicably. The claimant is obliged to provide this evidence.²⁰⁵ Otherwise, reasons must be provided for not doing that but, even so, claimants must still set out their “options for settlement”.²⁰⁶ The claimant is specifically obliged so that a party who does not include the relevant documents²⁰⁷ may find that the originating processes will not be accepted at the High Court Registry.²⁰⁸ The writ will

²⁰¹ Art 3(1) of the Convention.

²⁰² Order 5 Rule 8 of the LSHC CPR 2019.

²⁰³ Order 5 Rule 8 of the LSHC CPR 2019.

²⁰⁴ On the NICN referral to “the Centre at the discretion of the President of the Court or a Judge of the Court”, see Art 4(c)(iii) of the National Industrial Court of Nigeria Instrument 2015.

²⁰⁵ Para 2(a) of the Pre-action Protocol Form 01; Order 5(2)(c); Order 5 R 1(2)(e); Order 5 R 5(3)(d) of the Lagos High Court Rules 2019.

²⁰⁶ Para 2(b) of the Pre-action Protocol Form 01.

²⁰⁷ Pre-action Protocol Form 01.

²⁰⁸ *Spog Petrochemicals Ltd v P.P.L. Ltd* (2018) 1 NWLR (Pt 1600) 321 (CA).

not be invalidated but the processes will be rejected for filing until there is compliance.²⁰⁹ This does not impede access to justice because there is no conflict with the Nigerian public policy of encouraging amicable settlement of disputes. Thus, exploring “extra-litigious means of dispute resolution” including the negotiation of a compromise with judicial endorsement can be “pragmatic”.²¹⁰ Such exploration of amicable dispute resolution should be distinguished from situations where aspects of pre-action protocols serve to confer undue advantage on certain government parastatals.²¹¹ At the interface of the High Court and ADR, therefore, there is a justifiable hybrid of compulsory and discretionary elements that clearly covers mediation.

In *Agbareh*,²¹² the Nigerian Supreme Court did not expressly refer to discretion. However, the approach of the majority clearly reflects a discretionary approach subsumed under contractual interpretation. Thus, the majority relied on the view that a consent judgment must be “construed in the light of any admissible evidence of surrounding circumstances, but without direct evidence of the parties’ intention ... Evidence of surrounding circumstances, in my opinion, includes evidence as to the nature of the dispute compromised by the order”.²¹³ Elsewhere, there was an argument against exercising judicial discretion in assessing whether a valid mediation agreement should be given effect.²¹⁴

Such indirect exercise of discretion would be contrary to the Convention. Under the Convention, generally, there is no discretionary ground on which the enforcement of settlement agreements can be refused. Relief may be refused on the application of the party against whom it was granted “only if that party furnishes to the competent authority proof” that certain requirements have been met.²¹⁵ For example, if the settlement agreement is not capable of being performed under the law to which parties validly subjected it.²¹⁶ The intention was clearly to eliminate or minimise any scope to exercise discretion at the enforcement stage. It was initially suggested to add “substantially” to clarify that any minor modifications should not constitute a basis to refuse enforcement of a modified settlement agreement. The response was that “substantially” would then “introduce a discretionary or subjective assessment by the competent authority and was therefore not desirable”.²¹⁷ There were even attempts to remove “if it considers proper” with respect to parallel applications or claims to further restrict any exercise of discretion but this suggestion did not get support.²¹⁸

²⁰⁹ *Bras Ventures Ltd v West Star Associates Ltd* (2020) LPELR-51682, 17-20 (CA); *Sagoe v Ojo* (2019) LPELR-51013, 12-14 (CA).

²¹⁰ Pontian N Okoli, “Access to Justice and Fair Hearing: An Evaluation of Pre-Action Notice in Nigerian Jurisprudence” (2012) 20(1) African Journal of International and Comparative Law 70,77.

²¹¹ For insights into how certain pre-conditions inherited from colonial rule can impede access to justice, see Pontian N Okoli, “Access to Justice and Fair Hearing: An Evaluation of Pre-Action Notice in Nigerian Jurisprudence” (2012) 20(1) African Journal of International and Comparative Law 70, 78-80.

²¹² *Agbareh* (2008) LPELR-43211 (SC).

²¹³ In this regard, the court quoted from and relied on an English decision: *General Accident Fire Assurance Corporation Ltd v Inland Revenue Commissioners* (1963) 1 All E.R. 618, 627.

²¹⁴ Markus Petsche, “The Enforceability of Mediation Clauses: A Critical Analysis of English Case Law” (2021) 5(1-2) Journal of Strategic Contracting and Negotiation 43, 56-57.

²¹⁵ Art 5(1).

²¹⁶ Art 5(1)(a).

²¹⁷ Para 45 of <http://undocs.org/A/CN.9/WG.II/WP.202>

²¹⁸ Para 68 of <http://undocs.org/A/CN.9/WG.II/WP.202>

The only arguable scope for some degree of discretion is the public policy ground.²¹⁹ However this is not a classic case of exercising discretion because the task is to determine what would amount to a violation of national public policy since this has traditionally been rather challenging to pin down.²²⁰ Given the tenor of the Convention and the voluntariness that drives much of the process, it is expected that courts will adopt a strict interpretation of public policy, especially as the Convention concerns commercial disputes.

Thus, placing parties at the centre of the mediation discourse is necessary. This placement necessarily complements the argument for the need ideally to focus on the settlement agreement, rather than the body that facilitates and delivers the settlement outcome. Complying with the Convention *vis-à-vis* the enforcement of settlement agreements requires principled flexibility.²²¹ This means that undue technicalities should not be used to frustrate agreements that are valid and do not violate mandatory rules or public policy. This approach requires the support of institutional stakeholders. Such stakeholders (including lawyers) should not impede the mediation process, including enforcement of settlement agreements. The National Industrial Court of Nigeria (NICN) Rules are instructive in this regard. Although parties and their counsel will often work together,²²² the Rules clearly provide that a “party is at liberty to execute the terms of settlement on his or her or its own” if amicable settlement has been reached through mediation but any counsel refuses to sign in the case of Nigeria.²²³

The focus of the Convention on simplicity and the exclusion of settlement agreements that emanate from court proceedings indicate the need to promote what parties want, rather than what their lawyers or judges think they should want, as much as possible. In other words, clear provisions of the Convention should not be disregarded or undermined under the guise of promoting party autonomy. It is necessary to build on clear contractual principles. Mediation settlements are strongly anchored to relevant contractual principles such as the freedom to contract under Nigerian law.²²⁴ The court should not be allowed to import external elements especially when such an exercise will amount to replacing the clear intentions of parties.²²⁵ This line of reasoning is illustrated through *Ariguzo v Osobu*.²²⁶ The main issue was whether the Court of Appeal could adopt the particular terms of settlement as a judgment of the court. The Court decided that the settlement which parties signed at the appellate stage should be enforced regardless of whether the settlement “does not flow with the

²¹⁹ Art 5(2)(a) of the Convention. Other grounds such as the subject matter of the dispute being incapable of settlement by mediation under any mandatory law is not determined based on discretionary grounds. This is arguably assessed against much more objective criteria. Art 5(2)(b) concerns the subject matter of the dispute being incapable of mediation under the law of the country where a party seeks enforcement.

²²⁰ *Dale Power Systems Plc v Witt & Busch Ltd* [2001] 8 NWLR (Pt 716) 715 (CA) 714-715.

²²¹ An example of this “principled flexibility” is that parties will enforce under their procedural rules but based on conditions in the Convention.

²²² The role of lawyers in encouraging mediation. See Art 6(2) of the NICN Instrument 2015.

²²³ Art 6(8) of the NICN ADR (Centre) Instrument 2015.

²²⁴ E.g., on the practical effect of “mutual agreement to settle”, see *Adedeji v Olosu* (2007) LPELR-86 (SC) on “free and voluntary” consent, “complete and final agreement” on relevant issues and being “*ad idem*”, see *Vulcan Gases Ltd v G. Fur Ind. C.A.G.* [2001] 9NWLR (Pt 719) 610, 645.

²²⁵ On the need for terms of settlement that are “ascertainable and capable of being enforced”, see *Ariguzo v Osobu* (2016) LPELR-41286 (CA), 8.

²²⁶ *Ariguzo v Osobu* (2016) LPELR-41286 (CA), 8.

Ruling delivered by the lower court”.²²⁷ Otherwise, as the court observed, it would amount to compelling parties to accept the ruling of the lower court or compelling them to proceed with the appeal.²²⁸ These dicta and reasoning arguably point towards the enforcement of settlement agreements driven by party autonomy. However, there remains the issue of residual discretion as retained by Nigerian courts. For example, “the Court has a discretion or jurisdiction to examine the entire circumstance of a case in order to determine whether the alleged terms of settlement entered into by the parties to a suit should be scrutinized and made an order of the court...”.²²⁹

Reining in such discretion may be attempted by first trying to delineate the extent to which courts should intervene in the enforcement of settlement agreements. This is a critical point for reflection because, as earlier argued, the Convention has certain expectations which clearly have implications for judicial discretion. One way of extricating the problematic aspects is to realise that settlement agreements which emanate from court proceedings and those which emanate from an *ab initio* initiation of mediation should be categorised differently. The Convention already maintains this distinction, and this is the first reason for differentiating in this way. The second reason is that the Nigerian context for this discretion seems anchored to judicial intervention powers in mediation settlements that emanate from litigation proceedings. In *S.P.M v Adetunji*, the Supreme Court in explaining the discretion of the court referred to “the role of the judex”.²³⁰ Thus, there is a need to maintain a conceptual and practical distinction between court proceedings and mediation. This is so, while dealing with the reality that the same courts (that would otherwise exercise discretion) must enforce settlement agreements subject to very narrow exceptions.

Judicial discretion analysed in the Nigerian context is at another level in China. Motivated by social stability concerns, court-sponsored mediation has been seen as a tool to intervene in the dispute resolution process.²³¹ Judges whose salary and career development are strongly linked with the success of mediation²³² would be over-zealous²³³ to enquire into parties’ willingness in engaging in judicial mediation.²³⁴ This is not something new and can be observed in the heavy emphasis in the earlier version of the Chinese Provisional Civil Procedure Act 1982, which stipulated: “When trying civil cases, the People’s Courts are required to stress the importance of mediation; where mediation is not successful, the court must issue its judgment in a timely fashion.”²³⁵ The dual role played by

²²⁷ Ibid. 7.

²²⁸ Ibid. 9.

²²⁹ *S.P.M. Ltd v Adetunji* [2009] 19NWLR (Pt 1159) 647, 667 (SC). This case was cited with approval in *Ariguzo*, 9.

²³⁰ *S.P.M. Ltd v Adetunji*, ibid 667.

²³¹ Qingxiu Bu, ‘The cultural sensitivity in harmonisation of international arbitration: lessons from China’ (2020) 23(1) Int. A.L.R. 70, 77.

²³² Qingxiu Bu, ‘The cultural sensitivity in harmonisation of international arbitration: lessons from China’ (2020) 23(1) Int. A.L.R. 70, 77.

²³³ Hairong Zhou, ‘The Re-Establishment Of The Chinese Legal System: Achievements And Disappointments’ (1991) 10(Jan) CJC 44, 54 where Zhou criticised the courts’ over-emphasis on mediation.

²³⁴ Du Juan and K.H. Pun, ‘Legal Remedies For Software Copyright Owners In China’ (2001) 7(6) Computer and Telecommunications Law Review 149, 151.

²³⁵ The Chinese Provisional Civil Procedure Act 1982, Article 6.

judges/mediators in the Chinese civil justice system is underestimated.²³⁶ Judges' eagerness in performing their dual role will see the non-applicability of the Convention to mediation settlement agreements reached during Chinese judicial proceedings. Judges' discretion is also evident in their power to refuse to grant stay of court proceedings in judicial mediation to safeguard parties' right to litigate.²³⁷ In other words, speed is of the essence in the Chinese civil courts. Judges may enquire into parties' wishes to mediate but will not wait for a settlement and can go ahead and give a judgment. Therefore, for international disputants engaged in mediation in China, it is important for them to know that there is no stay of court proceedings in judicial mediation. Using judicial mediation does not give rise to an automatic stay of court proceeding in China,²³⁸ and there is a real likelihood of parallel proceedings.

III. CONCLUSION

The Singapore Convention presents a strategic opportunity to consolidate and facilitate the enforcement of mediated settlement agreements. The cultures, economic and commercial realities in Nigeria and China provide the foundational and philosophical context to assess an overarching issue examined in this article. This is the promotion of commercial mediation and the enforcement of settlement agreements under the Convention. Nigeria and China, which signed the Convention on the same day, although only Nigeria has ratified so far, can adopt proactive approaches (such as those argued for in this article, including a principled approach to discretion) to ensure that Convention settlement agreements are enforced.

In Nigeria, there are two main layers of analysis in exploring how the Convention can be implemented. The first is the legal framework. Allowing State Parties to devise appropriate procedural rules should not impede the enforcement of settlement agreements.²³⁹ The fact that federal legislation promotes mediation, but enforcement is arguably possible at the state levels is more advantageous than disadvantageous. Although federal law may have the effect of coordination, regulating enforcement at the state level encourages healthy competition among states (e.g. Lagos State) and affords parties several options in terms of enforcement. None of the Nigerian mediation regimes expressly provides any guidance on enforcing foreign mediation settlements (apart from the traditional way of enforcing such agreements as contracts). However, a case is made for the state multi-door court houses (e.g., the LMDC) to do so. Such an approach will be subject to any prescriptive federal rules provided pursuant to the ratification of the Singapore Convention in Nigeria. The second layer is the use of

²³⁶ For this argument, see Zhen Jing, 'A new insurance dispute resolution mechanism: the linked litigation-mediation scheme in China' (2018) JBL 40, 44-45; Cui Zhou, 'Recent developments in litigation involving intellectual property in China' (2012) 43(1) International Review of Intellectual Property and Competition Law 21, 33.

²³⁷ A. K. C. Koo, 'Pre-Trial Mediation in Mainland China And Hong Kong: Rationales, Regulations and Ramifications' (2013) 32(3) C.J.Q. 385, 389.

²³⁸ Several Opinions of the Supreme People's Court on Further Implementing the Work Principle of "Giving Priority to Mediation and Combining Mediation with Judgment" 2010 (PRC), arts 9, 11.

²³⁹ Eunice Chua also made this argument in comparing the New York Convention. See Eunice Chua, "The Singapore Convention on Mediation –A Brighter Future for Asian Dispute Resolution (2019) 9 Asian Journal of International Law 195, 198.

discretion which can be strategic in deciding what agreements to enforce. The tendency to exercise discretion in the interpretation of settlement agreements and give effect to such agreements and should be bridled, based on a principled approach. This will help to avoid legal uncertainty and promote predictability.

Under the Convention, parties will face some significant challenges in their efforts to enforce mediated settlement agreements. Settlement agreements reached through judicial involvement or based on the practice of oral agreements are particularly affected. These would prejudice any effective implementation of the Convention in China. In Nigeria, however, the practice of judicial enforcement of mediation (rather than judicial involvement in mediation) is compatible with relevant provisions of the Convention. To this extent, therefore, the enforcement of Convention settlement agreements has better prospects in Nigeria compared to China. As it stands, parties who wish to mediate in the Chinese civil justice system would be better off avoiding the practice of oral agreement and judicial involvement in mediation. Otherwise, their settlement agreements would be viewed as falling outside the scope of the Convention by the Nigerian courts. Where they engaged with either practice, parties to the settlement agreements would be advised to try enforcing settlement agreements *as agreements* or contracts in Nigerian courts. In principle, parties will have to discharge the onerous burden of proving the oral agreements. However, a strict interpretation of the Convention's provisions precludes the enforcement of oral agreements. In this regard, the multi-door courthouses are of no help because they require the agreements to be in writing. The challenges examined in this article can discourage countries from signing or ratifying the Convention.

Although Nigeria and China differ with respect to judicial mediation, the court-annexed multi-door courthouse and the "Mechanism for Pluralist Dispute Resolution" ensure considerable proximity between courts and mediators with a view to attaining practical complementarity. A key deduction, therefore, is that the support of courts is critical to the practical effectiveness of settlement agreements and their enforcement. There is much for other countries to learn from these different, but in practice complementary, approaches to judicial mediation in Nigeria and China.