

Guerrilla Tactics in Arbitration: Challenges, Ethical Implications, And Prospects for Reform in Nigeria

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Abstract

Guerrilla tactics in arbitration represent a growing threat to the integrity, efficiency, and finality of dispute resolution. These deliberate acts designed to frustrate, delay, or derail arbitral proceedings, blur the line between zealous advocacy and procedural abuse. This article examines the manifestations of guerrilla tactics across the lifecycle of arbitration, from the pre-arbitral stage through to post-award enforcement. It analyses the ethical burdens these tactics place on arbitrators and counsel, and evaluates recent legislative innovations under Nigeria's Arbitration and Mediation Act 2023, including the Award Review Tribunal, arbitrator immunity, and restricted court interference. The article argues that a combination of robust procedural case management, a strengthened sanctions regime, expedited procedures, and harmonised ethical standards offers the most viable path toward insulating arbitration from strategic abuse.

Keywords: *Guerrilla tactics, arbitration, Nigeria Arbitration and Mediation Act 2023, Award Review Tribunal, arbitrator immunity, procedural abuse, enforcement of arbitral awards.*

Introduction

Arbitration has long been celebrated as a mechanism that delivers speed, neutrality, and decisiveness in dispute resolution³. Yet these very attributes have made it a target for parties' intent on deploying guerrilla tactics (deliberate acts meant to frustrate, delay, or derail the arbitral process)⁴. Such tactics often blur the line between zealous advocacy and outright procedural abuse. For parties genuinely seeking a fair and efficient resolution, the deployment of such strategies can be deeply unsettling, if not damaging. The impact of guerrilla tactics is not limited to any single phase of arbitration. Rather, it arises at critical junctures: before proceedings begin, during the hearing process, and even after an award is issued⁵. From challenging the jurisdiction of the tribunal, to stalling the appointment of arbitrators, to attempting to set aside a valid award, these actions compromise the spirit of arbitration. This article explores the various manifestations of guerrilla tactics across the different stages of arbitration, examines their ethical implications for arbitrators and counsel, and considers the prospects for reform under contemporary Nigerian law.

Manifestations of Guerrilla Tactics Across the Arbitral Lifecycle

Guerrilla tactics often begin long before the arbitration tribunal is constituted. At this stage, parties seeking to delay or derail proceedings may exploit legal and procedural loopholes to

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³ Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 1204.

⁴ Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015) 451.

⁵ Gary B Born (n 1) 1445.

frustrate the commencement of arbitration. These tactics threaten the core principles of party autonomy and procedural efficiency that underpin arbitration⁶.

The arbitration agreement serves as the foundation of any arbitral process, reflecting the mutual consent of parties to resolve disputes outside the traditional courtroom⁷. Yet it is often the first target of guerrilla tactics. Parties acting in bad faith may exploit ambiguities, inconsistencies, or technical errors in the arbitration clause to challenge its validity or applicability, thereby delaying proceedings or avoiding arbitration altogether⁸.

A common guerilla tactic involves questioning the enforceability of the arbitration agreement on grounds such as lack of proper consent, capacity, or authority. Others may argue that the subject matter is non-arbitrable or falls outside the scope of the agreement⁹. In cross-border disputes, forum shopping and conflicting jurisdictional claims may be employed to undermine the clause, resulting in protracted preliminary litigation before arbitration can even commence¹⁰. Another strategy is the deliberate inclusion or exploitation of vague or pathological clauses: agreements that are poorly drafted, internally inconsistent, or silent on critical elements such as the seat, governing law, or appointing authority¹¹. These flaws create confusion and provide fertile ground for guerrilla-style objections, often requiring court intervention to interpret or enforce the agreement. Even where the intention to arbitrate is clear, a party may still attempt to frustrate proceedings by disputing the procedural rules or institution stipulated in the agreement. These challenges are particularly problematic because they strike at the root of the tribunal's jurisdiction. Until the validity of the arbitration agreement is confirmed, the arbitral process remains in limbo, causing delays, increased costs, and undermining confidence in arbitration as an efficient dispute resolution mechanism¹². In light of these risks, parties are encouraged to draft clear, comprehensive, and enforceable arbitration agreements, while institutions and tribunals must be proactive in curbing tactical abuses through procedural rules and early determination mechanisms¹³. A common guerrilla tactic deployed before arbitration proceedings is the application for a stay of proceedings, particularly when litigation has already been initiated in court despite the existence of a valid arbitration agreement¹⁴. This manoeuvre is often used to stall or derail arbitration, creating procedural confusion and tactical advantage for the party seeking to avoid a neutral forum. While a stay of proceedings is intended to uphold the parties' contractual commitment to arbitrate, bad-faith actors may weaponize this tool to create delay¹⁵. A party may file a court action and then request a stay only after wasting significant judicial time, thereby forcing the opposing party to incur unnecessary legal costs¹⁶. Alternatively, a party may argue that the matter falls outside the scope of the arbitration agreement, or that the agreement is null, void, or inoperative, in an effort to

⁶ Article III of Convention on the Recognition and Enforcement of Foreign Arbitral Awards (opened for signature 10 June 1958, 330 UNTS 38) (New York Convention).

⁷ See the case of *Premium Nafta Products Ltd v Fili Shipping Co Ltd* (The Fiona Trust) [2007] UKHL 40, [2007] 1 AC 1 [12].

⁸ Nigel Blackaby and others (n 2) 127.

⁹ See the case of *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of Pakistan* [2010] UKSC 46, [2011] 1 AC 763 [26].

¹⁰ Gary B Born (n 1) 452.

¹¹ Nigel Blackaby and others (n 2) 131.

¹² Gary B Born (n 1) 445.

¹³ Article 16 of UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006).

¹⁴ Section 5 of Arbitration and Mediation Act 2023 (Nigeria).

¹⁵ Section 9 of Arbitration Act 1996 (UK).

¹⁶ See the case of *Enyelike v Ogoloma* [2012] LPELR-7837 (CA).

oppose the stay¹⁷. In some jurisdictions, courts may exercise discretion when determining whether to grant or deny the stay and guerrilla litigants may exploit this judicial leeway¹⁸. They may rely on jurisdictional ambiguities, claim procedural irregularities, or introduce extraneous legal arguments to confuse the court and delay the transition to arbitration¹⁹. The consequence is multifaceted: not only does it delay the commencement of arbitration, but it also imposes additional financial and emotional strain on the party seeking genuine redress. In international disputes, the problem is compounded by differences in how various legal systems interpret stay provisions under instruments like the New York Convention or national arbitration laws²⁰.

To counter this, legislative and institutional reforms have been proposed to ensure that courts exercise restraint and give primacy to arbitration clauses, especially where the intention to arbitrate is evident²¹. Arbitral tribunals must also remain vigilant by asserting jurisdiction proactively and discouraging dilatory tactics²². Additionally, parties should ensure that their arbitration agreements are clearly worded and explicitly preclude recourse to litigation, thereby minimising the risk of delay through stay applications²³.

Another area where guerrilla tactics predominate is the issue of Anti-arbitration injunction. An anti-arbitration injunction is a court order restraining a party from commencing or continuing arbitration proceedings, typically granted by a national court that considers the arbitration agreement to be invalid, inoperative, or that itself has exclusive jurisdiction. In practice, such injunction is another opportunity to introduce guerrilla tactics by a party seeking to frustrate or derail the arbitral process. A party may file a parallel court action in a favourable jurisdiction seeking an anti-arbitration injunction to create a jurisdictional conflict, force the opposing party into costly satellite litigation, delay the constitution of the tribunal, and pressure a settlement. While courts in pro-arbitration jurisdiction like England, Singapore and France generally refuse to grant them in favour of principle of *Kompetenze-Kompetenze*, their tactical use in less arbitration- friendly seats remains a classic example of procedural abuse aimed at undermining the tribunal's authority. Challenging the jurisdiction of the arbitral tribunal is a classic guerrilla tactic designed to obstruct or delay proceedings before they properly begin²⁴. Though jurisdictional challenges are a recognised procedural right, they are often abused by parties acting in bad faith to derail the process or exert pressure on the opposing party.

A jurisdictional challenge can be based on multiple grounds: the alleged invalidity or inapplicability of the arbitration agreement, claims that the tribunal was improperly constituted, or assertions that the dispute itself is not arbitrable under applicable law. In some cases, the challenging party may initiate parallel proceedings in court to argue that the tribunal lacks competence, creating a conflict of jurisdiction and undermining the efficiency and finality that arbitration seeks to ensure. The principle of *Kompetenz-Kompetenz*, which empowers an arbitral tribunal to rule on its own jurisdiction, was developed to address this very challenge²⁵. However, some legal systems allow concurrent court review of jurisdictional questions, enabling recalcitrant parties to delay arbitration by seeking judicial determination on issues the

¹⁷ Article II (3) of Convention on the Recognition and Enforcement of Foreign Arbitral Awards (opened for signature 10 June 1958, 330 UNTS 38) (New York Convention).

¹⁸ See the case of *NNPC v Lutin Investment Ltd* [2006] 2 NWLR (Pt 965) 506.

¹⁹ See the case of *Stalwood Ltd v Alubo* [2012] 5 NWLR (Pt 1293) 251.

²⁰ Article II of Convention on the Recognition and Enforcement of Foreign Arbitral Awards (opened for signature 10 June 1958, 330 UNTS 38) (New York Convention).

²¹ Section 64 (1) of Arbitration and Mediation Act 2023.

²² Article 16 of UNCITRAL Model Law.

²³ Section 5 of Arbitration and Mediation Act 2023.

²⁴ As seen in *Heyman v Darwins Ltd* [1942] AC 356.

²⁵ *Ibid* Article 16 of UNCITRAL Model Law.

tribunal is fully competent to decide²⁶. Such duplicative proceedings generate unnecessary costs, delay the resolution of the substantive dispute, and erode party confidence in arbitration. Moreover, these objections can be repetitive and strategically timed to coincide with key phases in the proceedings, such as immediately before a merit hearing or shortly after the tribunal has been constituted. The goal is to disrupt momentum, burden the process with procedural uncertainty, and wear down the opposing party.

The appointment of arbitrators is a critical step, and as such it is often a target of guerrilla tactics aimed at stalling or compromising the integrity of the proceedings²⁷. Challenging the appointment of arbitrators particularly under claims of bias, conflict of interest, or procedural irregularities, is a strategic tool used to manipulate the system²⁸.

These challenges can be genuine when rooted in legitimate concerns about impartiality or independence²⁹. However, when used as a guerrilla tactic, they are often baseless, excessive, or deliberately timed to disrupt proceedings³⁰. A party may wait until the arbitration is well underway before raising an objection that could have been made earlier, forcing delays and procedural complications³¹. In some cases, challenges may be raised against every proposed arbitrator, regardless of merit, with the aim of frustrating the constitution of the tribunal or compelling the use of a less suitable candidate³².

Such tactics are particularly prevalent in *ad hoc* arbitrations, where institutional oversight is limited and appointments are more susceptible to manipulation³³. Even in institutional arbitrations, repeat challenges may strain the process and force the administering body to expend resources investigating unfounded claims³⁴. A party may attempt to use nationality, gender, professional background, or even academic writings of an arbitrator as grounds for disqualification, despite the absence of any actual conflict³⁵. In doing so, they exploit the procedural safeguards intended to protect fairness, twisting them into instruments of delay and disruption. The impact of such conduct is severe: it hampers the efficient constitution of the tribunal, increases cost, delays case management, and may undermine the parties' trust in the neutrality of the system. It can also demoralise experienced arbitrators who are unfairly targeted, thereby weakening the broader pool of willing professionals. To combat this, arbitral institutions and tribunals must enforce strict timelines for raising challenges and discourage frivolous objections³⁶.

Once arbitration proceedings are underway, parties who are determined to delay or derail the process may escalate their use of guerrilla tactics. At this stage, the focus often shifts from pre-hearing procedural attacks to more disruptive conduct aimed at undermining the tribunal's authority, exhausting the opposing party, or manipulating the flow of the proceedings. These tactics may include frivolous challenges to the arbitrator's powers or impartiality, repeated requests for interim or interlocutory relief, and obstructive behaviour such as refusal to produce

²⁶ Section 14(3) of Arbitration and Mediation Act 2023.

²⁷ General Standard 2 of IBA Guidelines on Conflicts of Interest in International Arbitration (adopted 23 October 2014).

²⁸ General Standard 3 of IBA Guidelines on Conflicts of Interest in International Arbitration (adopted 23 October 2014).

²⁹ Article 10 of LCIA Arbitration Rules 2020.

³⁰ Article 11 of LCIA Arbitration Rules 2020

³¹ See *AT&T Corp v Saudi Cable Co* [2000] 2 Lloyd's Rep 127

³² Article 10.5 of LCIA Arbitration Rules 2020.

³³ Article 14(1) of ICC Rules of Arbitration 2021.

³⁴ Article 16 of SIAC Arbitration Rules 2016

³⁵ General Standard 2 (d) of IBA Guidelines on Conflicts of Interest in International Arbitration (adopted 23 October 2014).

³⁶ General Standard 7 of IBA Guidelines on Conflicts of Interest in International Arbitration (adopted 23 October 2014).

documents, late submissions, or procedural non-cooperation. Unlike pre-arbitration tactics that delay commencement, these in-proceeding strategies directly target the efficiency, fairness, and integrity of the ongoing process.

Challenging the powers of arbitrators is a common guerrilla tactic employed to undermine the authority of the tribunal and disrupt the arbitration process³⁷. Although parties have a legitimate right to question the scope of an arbitrator's mandate, this right is sometimes abused by parties seeking to delay proceedings or pressure the tribunal into a more favourable procedural or substantive approach. These challenges often revolve around alleged overreach by the tribunal in procedural rulings, interim orders, or interpretation of the arbitration agreement³⁸. A party may, for instance, claim that the arbitrator lacks the authority to decide on a specific issue, especially if that issue was not explicitly mentioned in the arbitration clause. In some cases, parties attempt to revisit already-settled procedural orders under the guise of challenging jurisdiction, thereby stalling progress and inflating costs.

Such challenges may be brought before national courts or raised repeatedly before the tribunal, creating uncertainty and distraction. This tactic is particularly disruptive when it occurs close to the hearing date or after critical procedural decisions have been made. The arbitrators, placed under increased scrutiny, may feel pressured to act conservatively, undermining the decisiveness and flexibility that arbitration is meant to offer.

To mitigate this, modern arbitration rules incorporate the principle of *Kompetenz-Kompetenz*, empowering tribunals to determine the extent of their own jurisdiction³⁹. This doctrine helps prevent premature court interference and reinforces arbitral autonomy⁴⁰. Additionally, procedural timetables and case management conferences provide a mechanism to address such challenges early and prevent recurrence⁴¹. Ultimately, frivolous challenges to an arbitrator's powers waste time, burden parties with unnecessary expenses, and weaken confidence in the arbitration process. The removal of arbitrators is a grave step, typically reserved for instances where there is serious doubt as to an arbitrator's independence, impartiality, or conduct⁴². However, in the hands of party's intent on deploying guerrilla tactics, the challenge of arbitrators becomes a strategic weapon used to delay proceedings, increase costs, or psychologically unsettle the tribunal⁴³.

Bad-faith parties may initiate unfounded or repetitive challenges for removal, alleging bias without substantiating it, citing prior professional affiliations, published articles, or even nationality as grounds for disqualification⁴⁴. In some cases, removal requests are filed late in the process, often after an unfavourable procedural or interim ruling has been made, clearly aimed at punishing or replacing an arbitrator perceived to be unsympathetic to their case⁴⁵.

These challenges can cause significant disruption. They suspend the arbitral timeline while the challenge is resolved, often requiring involvement from an arbitral institution or national court, depending on the applicable rules⁴⁶. If successful, a removal may trigger the reappointment of a new arbitrator and, in some cases, the repetition of hearings or re-evaluation of evidence⁴⁷. If

³⁷ Article 16 of UNCITRAL Model Law

³⁸ Section 14 of Arbitration and Mediation Act 2023.

³⁹ Article 16 of UNCITRAL Model Law.

⁴⁰ Section 14(6)-(7) of Arbitration and Mediation Act 2023

⁴¹ Article 22(2) of ICC Rules of Arbitration 2021.

⁴² Article 10 of LCIA Arbitration Rules 2020.

⁴³ Article 57 of ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, 575 UNTS 159).

⁴⁴ *Ibid* General Standard 2 of *IBA Guidelines on Conflicts of Interest*.

⁴⁵ *Ibid* Article 10.3 of LCIA Arbitration Rules 2020.

⁴⁶ Article 14(4) of ICC Rules of Arbitration 2021.

⁴⁷ Article 16 of SIAC Arbitration Rules 2016.

unsuccessful, it may still influence the dynamics of the tribunal and create undue pressure on the challenged arbitrator. Institutional rules provide robust procedures for handling such challenges, requiring parties to act promptly and to present credible, concrete evidence of bias or misconduct⁴⁸. Additionally, the IBA Guidelines on Conflicts of Interest serve as a global standard for assessing conflicts, setting a threshold that discourages frivolous objections⁴⁹. Nonetheless, arbitrators and institutions must remain vigilant. While every allegation must be taken seriously to preserve the legitimacy of arbitration, it is equally crucial to identify and deter abuse of the removal process. Interim injunctions in arbitration are vital tools that preserve the status quo, prevent irreparable harm, or secure assets pending the final resolution of a dispute⁵⁰. However, when weaponised as a guerrilla tactic, they become instruments of delay and obstruction⁵¹. A party acting in bad faith may file frivolous or exaggerated requests for interim relief, either before the arbitral tribunal or in domestic courts, not for genuine protection, but to disrupt the opposing party's operations or delay the substantive hearing. Such applications may be based on exaggerated claims of urgency or harm, or may be repeated several times with minimal variation in facts, each time stalling the momentum of proceedings⁵². In cross-border disputes, parties may even file for interim injunctions in foreign jurisdictions, hoping to exploit procedural complexities and cause confusion⁵³. These tactics not only consume valuable time and resources but may also foster mistrust between parties and the tribunal. One of the greatest risks is the potential overlap between court-granted interim measures and those requested from the tribunal⁵⁴. While most arbitration laws and institutional rules allow concurrent jurisdiction, this dual system may be misused by guerrilla litigants who engage in forum shopping to obtain more favourable rulings or to create jurisdictional deadlocks. Such conduct can undermine arbitral efficiency and create conflicting obligations. Interlocutory injunctions which regulate the conduct of parties during the pendency of proceedings can be similarly abused. Guerrilla litigants may file multiple applications for interlocutory relief, sometimes in different forums, concerning matters already dealt with by the tribunal⁵⁵. Others may request overly broad injunctions, knowing that the opposing party must divert significant time and resources to resist them. In more aggressive scenarios, such parties might intentionally violate interlocutory orders, compelling the tribunal or court to divert attention from substantive issues to enforce compliance⁵⁶. The overlap between court-ordered interlocutory injunctions and tribunal-ordered procedural directions can create jurisdictional tension and undermine the arbitral process. In jurisdictions where courts have wide discretionary power to issue interlocutory relief even in matters referred to arbitration, this tactic can lead to fragmented proceedings and inconsistent orders. In international disputes, this may also raise issues of comity and enforcement⁵⁷. Arbitral institutions have taken steps to minimize these risks. Many now permit the appointment of emergency or expedited tribunals specifically empowered to grant interim and interlocutory relief, helping to ensure such orders align with the underlying arbitration

⁴⁸ *Ibid* Article 10. 1 of LCIA Arbitration Rules 2020.

⁴⁹ *Ibid* General Standard 3 of *IBA Guidelines on Conflicts of Interest*.

⁵⁰ Article 17 of UNCITRAL Model Law.

⁵¹ *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334.

⁵² Article 28 of ICC Rules of Arbitration 2021.

⁵³ Article 25 of LCIA Arbitration Rules 2020.

⁵⁴ Article 17 (2) of UNCITRAL Model Law.

⁵⁵ Article 28(2) of ICC Rules of Arbitration 2021.

⁵⁶ Article 25.3 of LCIA Arbitration Rules 2020.

⁵⁷ Article V(1)(e) of New York Convention.

agreement. Tribunals can also assert stronger procedural control by setting clear timelines and discouraging repeated or unfounded applications through cost-shifting mechanisms⁵⁸.

Dilatory tactics and procedural obstruction are among the most disruptive guerrilla strategies employed during arbitration. These tactics involve deliberate efforts by one party to slow down the process through non-cooperation, repeated procedural objections, and excessive formality, all aimed at wearing down the opposing party and frustrating the tribunal's ability to manage the case efficiently. Common forms of delay include repeated requests for adjournments, last-minute substitutions of legal representatives, failure to meet document production deadlines, overly broad or irrelevant discovery requests, and late submission of voluminous or non-responsive documents⁵⁹. A party may also intentionally raise frivolous procedural arguments, such as contesting every evidentiary ruling or objecting to tribunal directions, to stall the arbitration and increase the cost and complexity of the process⁶⁰.

These tactics are particularly damaging because they exploit the very procedural safeguards meant to ensure fairness and due process. The goal is not to seek justice but to create delay, financial pressure, and psychological fatigue. In some instances, dilatory conduct is also used to coerce a settlement on unfair terms, especially when one party is financially stronger or aware of the other's time sensitivity.

Arbitral tribunals have broad discretion to control such tactics but must exercise it firmly and early⁶¹. Procedural timetables, strict cost consequences, and early case management conferences can be used to curtail delays⁶².

Even after proceedings have been completed, aggrieved parties may utilise tactics to frustrate the award, usually targeted towards ensuring the award is rendered nugatory or the enjoyment of its benefit is significantly delayed. Setting aside an arbitral award is a post-award remedy provided under most arbitration laws, allowing parties to challenge an award on limited procedural or jurisdictional grounds⁶³. However, this mechanism, which serves to preserve the fairness and legality of the arbitration process, is frequently exploited as a guerrilla tactic by dissatisfied parties seeking to undo an unfavourable outcome. While legitimate applications for setting aside are necessary, such as where there is proven misconduct, lack of jurisdiction, or denial of due process, bad-faith actors often weaponize this process to delay enforcement or increase the cost and complexity of resolution. Grounds for setting aside, such as the tribunal exceeding its mandate or a party not being given a fair hearing, are frequently misused in a generic and repetitive fashion, hoping to sway national courts or merely delay finality⁶⁴.

This tactic is especially problematic in jurisdictions where the judiciary lacks a strong pro-arbitration stance. Unscrupulous parties may exploit the local court system, filing setting-aside applications with minimal legal basis, hoping that the court will either overturn the award or take an extended period to resolve the matter. In cross-border disputes, this delay can cause severe enforcement difficulties under the New York Convention, as the award may not be recognized until the setting-aside challenge is resolved⁶⁵.

Moreover, parties may initiate setting-aside proceedings in parallel with other proceedings, such as applications to restrain enforcement in foreign jurisdictions, causing further confusion and compounding delay. These tactics frustrate the core objectives of arbitration: speed,

⁵⁸ Article 27.1 of SIAC Arbitration Rules 2016

⁵⁹ Article 14.4 of LCIA Arbitration Rules 2020.

⁶⁰ Article 27 of SIAC Arbitration Rules 2016.

⁶¹ Article 22(1) of ICC Rules of Arbitration 2021.

⁶² Article 9 of IBA Rules on the Taking of Evidence in International Arbitration (adopted 29 May 2010)

⁶³ Article 34 of UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006).

⁶⁴ Article 34(2) of UNCITRAL Model Law; Section 55(3) of Arbitration and Mediation Act 2023 (Nigeria)

⁶⁵ *Ibid* Article V(1)(e) of New York Convention.

finality, and party autonomy. To prevent abuse, modern arbitration laws have narrowed the grounds for setting aside and introduced timelines for filing such applications⁶⁶. Courts in arbitration-friendly jurisdictions now often apply a strict interpretation of these grounds and impose cost sanctions for frivolous challenges⁶⁷.

Resistance to the enforcement of arbitral awards is another prevalent guerrilla tactic that often emerges after the tribunal has issued its final decision. While the New York Convention and national arbitration statutes provide for limited grounds on which enforcement may be refused, bad-faith parties frequently use these provisions not to uphold justice, but to frustrate the successful party's efforts to obtain the fruits of the award⁶⁸.

This tactic involves filing objections to enforcement in domestic courts, often arguing that the award violates public policy, that the arbitrators lacked jurisdiction, or that procedural irregularities occurred⁶⁹. These objections may be raised even when such issues were fully addressed and resolved during arbitration or in earlier court proceedings. The primary aim is to delay compliance, increase enforcement costs, and create leverage for renegotiation or settlement under duress. In international arbitration, resistance to enforcement can be particularly destructive. It often involves parties initiating parallel litigation in multiple jurisdictions, creating legal uncertainty and substantial delays. A debtor may move assets to jurisdictions less inclined to enforce awards, or repeatedly contest recognition proceedings in various courts, burdening the creditor both financially and procedurally. In some cases, resistance takes a more subtle form, such as ignoring the award entirely, forcing the claimant to initiate costly enforcement proceedings. In others, parties may challenge enforcement on vague or technical grounds, hoping for judicial sympathy or exploiting weak institutional support for arbitration in the enforcing jurisdiction.

Ethical Implications for Arbitrators and Counsel

The growing prevalence of guerrilla tactics in arbitration has raised significant ethical concerns for both arbitrators and legal counsel⁷⁰. These tactics, while often cloaked in procedural legitimacy, are inherently designed to manipulate the process, undermine fairness, and frustrate the resolution of disputes⁷¹. Their use presents a direct threat to the integrity of arbitration, which is built on principles of party autonomy, good faith, procedural efficiency, and neutrality. For arbitrators, guerrilla tactics pose serious ethical challenges⁷². They are tasked with maintaining impartiality and ensuring a fair process, yet they must also confront deliberate attempts to provoke bias, delay proceedings, or pressure the tribunal into procedural missteps. When one party persistently engages in obstruction, such as raising frivolous jurisdictional objections, abusing procedural rights, or making vexatious challenges to arbitrators, it becomes increasingly difficult for arbitrators to remain neutral without appearing lenient or indecisive⁷³. An arbitrator who ignores these tactics risks compromising the fairness of the process, while one who reacts harshly may be accused of partiality. This delicate balancing act underscores

⁶⁶ Section 55(4) of Arbitration and Mediation Act 2023; Section 67 (1) of Arbitration Act 1996 (UK).

⁶⁷ See *Premium Nafta Products Ltd v Fili Shipping Co Ltd* (The Fiona Trust) [2007] UKHL 40, [2007] 1 AC 1 [45].

⁶⁸ Article V of New York Convention.

⁶⁹ Article V (1) (a)-(c) of New York Convention.

⁷⁰ Preamble (1) of IBA Guidelines on Party Representation in International Arbitration (adopted 25 May 2013).

⁷¹ Preamble (3) of IBA Guidelines on Party Representation in International Arbitration.

⁷² General Standard 1 of IBA Guidelines on Conflicts of Interest in International Arbitration (adopted 23 October 2014)

⁷³ General Standard 2(a) of IBA Guidelines on Conflicts of Interest in International Arbitration.

the ethical burden arbitrators bear in preserving procedural integrity while safeguarding their impartiality⁷⁴.

Additionally, arbitrators must be vigilant in disclosing potential conflicts of interest and avoiding any conduct that may give the impression of bias or impropriety⁷⁵. The IBA Guidelines on Conflicts of Interest in International Arbitration provide important ethical benchmarks, but guerrilla tactics often exploit the grey areas of disclosure obligations, seeking to disqualify arbitrators on tenuous grounds or to sow doubt among the parties.

For legal counsel, the ethical implications are equally pressing. Lawyers engaged in arbitration have a duty to represent their clients zealously, but within the bounds of professional integrity and fairness⁷⁶. When counsel intentionally deploys guerrilla tactics such as concealing key documents, misrepresenting facts, or filing strategic challenges without merit, they breach not only institutional rules but also ethical duties owed to the tribunal, opposing counsel, and the arbitral system⁷⁷. In international practice, the problem is magnified by the lack of harmonised ethical standards across jurisdictions, which allow lawyers to exploit inconsistencies in national regulations without fear of sanctions⁷⁸.

Institutions have begun addressing this gap. The IBA Guidelines on Party Representation aim to standardise ethical behaviour across jurisdictions, setting expectations for candour, cooperation, and good faith conduct. Some arbitral rules now empower tribunals to sanction unethical conduct directly, including through adverse cost awards or procedural exclusions⁷⁹.

Prospects for Reform: The Nigerian Experience

The increasing recognition of guerrilla tactics and their harmful impact has prompted arbitral institutions, courts, and practitioners to adopt proactive measures aimed at safeguarding the integrity and efficiency of the process. Nigeria's Arbitration and Mediation Act 2023 (AMA 2023) introduces several innovations that offer practical mechanisms to address these challenges. The introduction of the Award Review Tribunal (ART) under the AMA 2023 is one of the most progressive developments aimed at reinforcing arbitration practice and deterring guerrilla tactics⁸⁰. The ART is a special mechanism designed to provide a swift, party-driven, and non-judicial review of arbitral awards before resorting to the formal courts⁸¹. This innovation is a direct response to the widespread abuse of post-award judicial mechanisms by parties who seek to frustrate enforcement through frivolous applications to set aside or delay awards⁸². The ART presents a new layer of procedural integrity⁸³. It allows parties to opt-in for a limited review of the award based on clear grounds such as procedural irregularities or manifest errors, without having to engage in protracted litigation. This reduces the incentive for guerrilla actors to delay enforcement through court proceedings, since the ART offers a quicker, more predictable process overseen by experienced arbitrators.

Moreover, the ART embodies the principle of party autonomy. Since its application is subject to agreement by the parties, it promotes flexibility while maintaining procedural fairness. Parties concerned about the risks of bias or errors during arbitration can agree in advance to submit disputes to an ART before the finality of an award is confirmed. This builds confidence

⁷⁴ General Standard 3 of IBA Guidelines on Conflicts of Interest in International Arbitration.

⁷⁵ General Standard 2 of IBA Guidelines on Conflicts of Interest in International Arbitration.

⁷⁶ Article 1 of IBA Guidelines on Party Representation.

⁷⁷ Article 5 of IBA Guidelines on Party Representation.

⁷⁸ Preamble (4) of IBA Guidelines on Party Representation.

⁷⁹ Article 22(4) of ICC Rules of Arbitration 2021.

⁸⁰ Section 56 of Arbitration and Mediation Act 2023.

⁸¹ Section 56 (1) of Arbitration and Mediation Act 2023.

⁸² *Ibid.*

⁸³ Section 56 (2) of Arbitration and Mediation Act 2023.

in the arbitration process and mitigates the common perception that arbitral tribunals are immune from oversight. Additionally, by taking pressure off the court system, the ART helps preserve judicial resources and maintain the speed and confidentiality that arbitration promises. However, for the ART to be fully effective, public awareness and institutional support are essential. Arbitration institutions and practitioners must engage in education and capacity-building to promote its adoption and application. Judicial endorsement and cooperation are also key to ensuring that ART decisions are respected and do not conflict with court rulings.

A fundamental prospect in strengthening arbitration against guerrilla tactics lies in the growing recognition and formalization of arbitral immunity. The concept of arbitrator immunity ensures that arbitrators are shielded from personal liability for acts performed in good faith during the course of their adjudicative duties⁸⁴. The AMA 2023 has codified this protection, aligning local practice with international standards and reinforcing the independence of the arbitral process⁸⁵. Guerrilla tactics frequently target arbitrators with the aim of intimidating, disqualifying, or coercing them into bias or delay. Parties may employ malicious claims of misconduct or initiate unfounded lawsuits against arbitrators, thereby shaking their confidence and compromising their neutrality. Without immunity, arbitrators may become overly cautious, fearing legal repercussions, and this undermines the decisiveness and integrity that arbitration demands.

The provision of immunity serves as a counterbalance to this problem. It allows arbitrators to discharge their responsibilities without fear of reprisal, provided their conduct does not amount to bad faith, fraud, or manifest disregard for the law. Furthermore, arbitral immunity enhances the attractiveness of arbitration as a dispute resolution mechanism: competent professionals are more likely to accept appointments when assured that their decision-making will not expose them to personal legal risks. Nonetheless, immunity is not absolute. It must be balanced with accountability mechanisms. Arbitral institutions typically monitor the conduct of their panel members, and parties retain avenues to challenge awards based on egregious procedural misconduct⁸⁶. Therefore, immunity does not translate into impunity; rather, it establishes a necessary safeguard to ensure the smooth and fearless execution of arbitral functions. In the Nigerian context, where judicial delays and forum shopping have made arbitration an appealing alternative, securing the independence of arbitrators through immunity is indispensable.

The AMA 2023 marks a significant shift in Nigeria's arbitration landscape by restricting unwarranted court interference, a persistent vulnerability previously exploited by parties deploying guerrilla tactics⁸⁷. Historically, the excessive involvement of court particularly through applications for stay of proceedings, injunctions, and setting aside of awards, has delayed and undermined the effectiveness of arbitration. The AMA seeks to correct this by limiting the judiciary's role to supportive, rather than supervisory, functions.

Under the AMA, court intervention is now tightly regulated. For instance, the Act obliges courts to grant a stay of proceedings where a valid arbitration agreement exists, thereby reducing the window for frivolous litigation intended to stall arbitration⁸⁸. Similarly, the Act narrows the grounds upon which an arbitral award can be challenged or set aside, providing greater certainty and finality to awards⁸⁹. This discourages guerrilla actors from initiating tactical court actions aimed at sabotaging or reversing the outcome of arbitration.

Moreover, the AMA supports party autonomy (the bedrock of arbitration) by reinforcing that judicial intervention should occur only where expressly permitted by the parties or under the

⁸⁴ Section 13 of Arbitration and Mediation Act 2023.

⁸⁵ *Ibid.*

⁸⁶ Article 11 of ICC Rules of Arbitration 2021; Article 10 of LCIA Arbitration Rules 2020.

⁸⁷ Section 64(1) of Arbitration and Mediation Act 2023

⁸⁸ Section 5(1) of Arbitration and Mediation Act 2023.

⁸⁹ Section 55(3) of Arbitration and Mediation Act 2023.

Act. This principle has long been championed in international arbitration but was inconsistently applied in Nigeria under the previous legal regime⁹⁰. The clarity provided by the AMA ensures that courts respect the boundaries of arbitral proceedings, thus preventing abusive litigation strategies.

In practice, restricted court interference enhances procedural efficiency and preserves the confidentiality and speed that arbitration offers. It also boosts Nigeria's credibility as an arbitration-friendly jurisdiction, encouraging both domestic and international parties to choose Nigeria as a seat of arbitration. However, for the AMA's promise to be fully realized, judicial officers must be sensitized and trained on its provisions.

Effective procedural case management represents one of the most promising means of reducing the incidence of guerrilla tactics. The AMA 2023 has reinforced the authority of arbitral tribunals to regulate proceedings in a manner that promotes efficiency, fairness, and expedition⁹¹. Greater reliance on early case management conferences, strict procedural timetables, procedural orders, and active control over evidentiary processes can significantly limit opportunities for parties to engage in dilatory conduct, procedural ambushes, or other forms of tactical abuse.

A more robust sanctions regime would provide a stronger deterrent against parties and legal practitioners who deliberately employ guerrilla tactics. Although arbitral tribunals possess certain discretionary powers relating to costs and procedural management, the absence of express provisions addressing abusive conduct may weaken the effectiveness of existing remedies. Future reforms could incorporate clearer provisions authorizing tribunals to impose punitive cost orders, draw adverse evidential inferences, reject frivolous applications, and recommend disciplinary measures where professional misconduct is established.

The continued adoption of expedited procedures and technology-driven dispute resolution is likely to reduce opportunities for procedural obstruction and unnecessary delay. Innovations such as emergency arbitration, virtual hearings, electronic filing systems, digital document management, and remote witness examination enable proceedings to progress with greater efficiency while limiting opportunities for tactical disruption⁹². As Nigerian arbitral institutions increasingly embrace digital technologies and streamlined procedures, arbitration is expected to become more resilient against the procedural manipulation commonly associated with guerrilla tactics. Closer alignment between Nigerian arbitration practice and internationally accepted ethical standards would strengthen confidence in the arbitral process and reduce procedural misconduct. The adoption of internationally recognized guidelines governing party representation, arbitrator independence, conflicts of interest, and professional conduct would provide clearer standards for acceptable behaviour during arbitral proceedings. Equally important is the role of arbitral institutions, professional associations, and continuing professional development programmes in fostering a culture of ethical advocacy and procedural fairness. Such developments would contribute to a more credible arbitration system in which guerrilla tactics become increasingly difficult to employ successfully.

Conclusion

Guerrilla tactics represent a persistent and evolving threat to the efficacy of arbitration. By manifesting at every stage, from the drafting and interpretation of the arbitration agreement, through the conduct of proceedings, to the post-award enforcement phase, these tactics exploit the very procedural safeguards designed to ensure fairness. The ethical burden they place on arbitrators and counsel threatens to erode the foundational trust upon which arbitration

⁹⁰ Article 5 of UNCITRAL Model Law (

⁹¹ Section 14(6) of Arbitration and Mediation Act 2023.

⁹² Article 29 of ICC Rules of Arbitration 2021; Section 16 of Arbitration and Mediation Act 2023.

depends. Yet the prospects for reform are encouraging. Nigeria's Arbitration and Mediation Act 2023 offers a robust legislative framework for addressing many of these abuses, through innovations such as the Award Review Tribunal, codified arbitrator immunity, and restricted court interference. When complemented by strong institutional case management, a clear sanctions regime, technological advancement, and harmonised ethical standards, these measures can significantly fortify arbitration against strategic abuse. The challenge now lies in ensuring that practitioners, institutions, and courts give full effect to these reforms, preserving arbitration as a fair, reliable, and autonomous mechanism for dispute resolution.

Bibliography

- Alperen KY, 'Contractual Time Limits to Commence Arbitration' (2020) 37(2) *Journal of International Arbitration*.
- Arbitration Act 1996 (United Kingdom).
- Arbitration and Mediation Act 2023 (Nigeria).
- AT&T Corp v Saudi Cable Co* [2000] 2 Lloyd's Rep 127.
- Blackaby N and others, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015).
- Born GB, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).
- Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334.
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (opened for signature 10 June 1958, 330 UNTS 38) (New York Convention).
- Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, 575 UNTS 159) (ICSID Convention).
- Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of Pakistan* [2010] UKSC 46, [2011] 1 AC 763.
- Enyelike v Ogoloma* [2012] LPELR-7837 (CA).
- General Standard 1, *IBA Guidelines on Conflicts of Interest in International Arbitration* (adopted 23 October 2014).
- General Standard 2, *IBA Guidelines on Conflicts of Interest in International Arbitration* (adopted 23 October 2014).
- General Standard 2(a), *IBA Guidelines on Conflicts of Interest in International Arbitration* (adopted 23 October 2014).
- General Standard 2(d), *IBA Guidelines on Conflicts of Interest in International Arbitration* (adopted 23 October 2014).
- General Standard 3, *IBA Guidelines on Conflicts of Interest in International Arbitration* (adopted 23 October 2014).
- General Standard 7, *IBA Guidelines on Conflicts of Interest in International Arbitration* (adopted 23 October 2014).
- Horton D, 'Arbitration About Arbitration' (2018) 70 *Stanford Law Review* 363.
- International Bar Association, *IBA Guidelines on Conflicts of Interest in International Arbitration* (adopted 23 October 2014).
- International Bar Association, *IBA Guidelines on Party Representation in International Arbitration* (adopted 25 May 2013).
- International Bar Association, *IBA Rules on the Taking of Evidence in International Arbitration* (adopted 29 May 2010).
- International Chamber of Commerce, *ICC Arbitration Rules 2021*.
- Kumar Paul VK and Moza A, 'Review of the Effectiveness of Arbitration' (2017) 9(1) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 03716002.
- London Court of International Arbitration, *LCIA Arbitration Rules 2020*.
- Heyman v Darwins Ltd* [1942] AC 356.
- NNPC v Lutin Investment Ltd* [2006] 2 NWLR (Pt 965) 506.
- Premium Nafta Products Ltd v Fili Shipping Co Ltd (The Fiona Trust)* [2007] UKHL 40, [2007] 1 AC 1.
- Singapore International Arbitration Centre, *SIAC Arbitration Rules 2016*.
- Stalwood Ltd v Alubo* [2012] 5 NWLR (Pt 1293) 251.
- Tweeddale A, 'Delay in Commencing an Arbitration' (2002) 68(3) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*.

UNCITRAL, *UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006.*

