

# THE APPLICABILITY OF ADR IN OUR CRIMINAL JUSTICE SYSTEM

By ADEBAYO, Faruq Adebayo

## **ABSTRACT:**

*The Nigerian criminal justice system has faced various challenges over the years. These challenges have hindered its efficiency, effectiveness, and the overall goal of delivering justice. There are numerous cases of prolonged trials in Nigeria, often lasting several years. This delay is due to factors such as frequent adjournments, slow legal processes, and an overburdened court system. The popular maxim "justice delayed is justice denied" is sadly and manifestly applicable in many cases. Not only but also Nigerian prisons have consistently been overpopulated, with many inmates awaiting trial for extended periods. This not only violates the rights of the inmates but also places a huge strain on the government resources. These and many other reasons have alerted and triggered the alarming tone of "The Bar" and "The Bench" to the application of ADR in our Criminal Justice System. However, many scholars have argued on the unrealistic application of ADR in Criminal Justice System except in some cases of simple offenses.*

*This piece particularly dwells into the extent to which ADR is applicable in Nigerian Justice System through the examination of Nigerian Criminal System, the Nigeria Legal Framework on ADR, the common forms of ADR, ADR mechanism suitable for criminal cases, cited problems that hinder the applicability of ADR in the said criminal justice system and finally provides some recommendations to improve the phenomenon.*

## **INTRODUCTION**

ADR is the hottest ticket in town of criminal justice system as an outcome for the search of viable alternative means of resolving disputes among litigants.<sup>1</sup> The four wall of the courtroom has become tiresome and boring due to the delays in litigation processes and high cost of litigation. Though, it has been an old plate in the realm of civil litigation. Alternative Dispute Resolution (ADR), which includes methods like mediation and arbitration, is indeed more commonly associated with civil cases for the fact that ADR

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<sup>1</sup>Chukwunweike A Ogbuabor, Edith O Nwosu, Edwin Obimma Ezike, "Mainstreaming ADR in Nigeria's Criminal Justice System" (2014)45(1) *European Journal of Social Sciences*, 32-43.

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methods are generally consensual, meaning all parties involved must agree to participate. In civil cases, where parties often have a continuing relationship (e.g., business partners, neighbors), they may be more willing to engage in voluntary discussions to find a resolution. Unlike in criminal case, where the right of the government is also infringed upon and the government ensures to restore justice and not only to inflict injury on an offender or to deter from reoccurrence of the reprehensible act. Some forms of punishment, like restorative justice programmes, seek to make the offender address the harm they've caused and "make it right" to the victim and the community. This might involve compensation, community service, or direct reconciliation efforts with the victim. Justice Oputa, a renowned Nigerian jurist, said in one of his famous remarks relates to the nature of justice, in which he metaphorically describes the dual face of justice:

"Justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even only a two-way traffic. It is really a three-way traffic - justice for the appellant accused of a heinous crime of murder; justice for the victim, the murdered man - the deceased, 'whose blood is crying to heaven for vengeance' and finally justice for society at large - the society whose social norms and values have been desecrated and broken by the criminal act of the appellant."<sup>2</sup>

Hence, it is deducible that the rationale behind litigation in criminal justice system is not only to inflict injury or deter the reoccurrence of the disgusting act but also to restore justice which ADR can practically solve.

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<sup>2</sup>*Godwin Josiah V. The State (1985) LLJR-SC*

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## WHAT IS ADR?

Alternative Dispute Resolution, commonly referred to as ADR, is a set of practices and techniques aimed at resolving disputes outside the traditional judicial process. It offers an alternative to the often time-consuming and costly court litigation process. *Black's Law Dictionary* defines ADR as "a procedure for settling a dispute by means other than litigation".<sup>3</sup> ADR is generally used to describe "the methods and procedures used to resolve disputes either as alternatives to the traditional disputes resolution mechanism of the court or in some cases as supplementary to such mechanism."<sup>4</sup>

The primary reason for adopting ADR methods is to provide a more efficient, quicker, and often less adversarial means of resolving disputes. ADR processes tend to be more flexible than the traditional court system, allowing the parties involved more control over the process and the outcome. In a nutshell, ADR is voluntary, timely, confidential, and it is consensual. Unlike traditional courts, it aims to produce resolutions tailored to the unique details of each case, focusing on problem-solving instead of delivering decisions through a formal judgment process.<sup>5</sup>

Alternative Dispute Resolution (ADR) in Nigeria is anchored on various legislative and regulatory frameworks, reflecting the country's commitment to encouraging the use of

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<sup>3</sup> BA Garner *Black's Law Dictionary* Ninth edition (United States: West Publishing Co) 91.

<sup>4</sup>Orojo J.O, Ajomo M.A, " Law and Practice of Arbitration and Conciliation in Nigeria" (*Mbeyi & Associate Nigeria Limited, 1999*) Page 4

<sup>5</sup>Felix Adewumi, "Alternative Dispute Resolution: An antidote to Court Congestion"<http://www.nigeriavillagesquare.com/articles/felix-adewumi/alternative-dispute-resolution-adr-anantidote-court-congestion>. Posted on 12-04-2007, Accessed on 22-09-2023.

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ADR as a means of reducing litigation and fostering quicker and less confrontational methods of dispute resolution.

## 1. **The Constitution of the Federal Republic of Nigeria 1999 (as amended):**

The Constitution emphasizes the powers of the court to promote reconciliation, arbitration, conciliation, or other methods of dispute resolution. Section 19(d) provides :

*The foreign policy objectives shall be*

*respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication;*

## 2. **The Arbitration and Conciliation Act (ACA) CAP A18, Laws of the Federation of Nigeria (LFN) 2004<sup>6</sup>:**

This is the primary legislation governing arbitration in Nigeria. It incorporates the UNCITRAL Model Law on International Commercial Arbitration. The Act covers domestic and international arbitration proceedings and outlines the procedures for arbitration, appointment of arbitrators, and enforcement of arbitral awards.

## 3. **The Lagos State Arbitration Law 2009:**

Lagos State, being a commercial hub, enacted this law to improve and modernize the existing federal arbitration framework, especially for disputes arising within the state.

## 4. **Administration of Criminal Justice Act 2015 and Economic and Financial Crimes**

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<sup>6</sup> Part I – Arbitration – Sections 1 to 36 , Part II – Conciliation – Sections 37 to 42 , Part III – International Commercial Arbitration and Conciliation – Sections 43 to 55, Part IV – Miscellaneous – 56 to 58, First Schedule – Arbitration Rules , Second Schedule – Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958 , Third Schedule – Conciliation Rules

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## **Commission Act 2004:**

This law incorporates provisions on plea bargaining, which is a form of ADR in the criminal justice system. Section 13 of EFCC, ACT, grants the Economic and Financial Crimes Commission (EFCC) the power to negotiate plea bargains with the accused. bargaining.

## **5. The Multi-Door Courthouse (MDC) Laws:**

- Several Nigerian states have established Multi-Door Courthouses attached to the High Courts. These MDCs offer a range of ADR services like mediation, arbitration, and conciliation. For example, the Lagos State Multi-Door Courthouse Law of 2007 establishes such an institution in Lagos State.

## **6. Judicial guidelines and court rules:**

Nigerian courts, at both the federal and state levels, have implemented rules and practice directions that encourage or mandate the use of ADR mechanisms in certain types of cases before or during litigation.

## **7. Traditional and Customary Mechanisms:**

Customary arbitration and mediation have been used in Nigeria for centuries, especially in resolving communal and land disputes.

## **ALTERNATIVE DISPUTE RESOLUTION MECHANISMS**

There are several forms of ADR, with the most common being:

1. **MEDIATION:** This is a voluntary process where a neutral third party, known as a mediator, assists the disputing parties in reaching a mutually acceptable agreement. The mediator does not make decisions for the parties but helps facilitate communication and suggests potential solutions. For this reason, mediation is often called "turbocharged

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negotiation” as the main objective of the mediator in this circumstance is to help facilitate negotiations among the parties.<sup>7</sup> Mediation is particularly useful in disputes where parties have an ongoing relationship, such as in family or business matters.

2. **ARBITRATION:** In arbitration, a neutral third party, known as an arbitrator, hears arguments and evidence from both sides and then makes a decision(Award). Depending on the agreement between the parties, the arbitrator's decision can be binding or non-binding. Arbitration is common in commercial disputes, especially those involving international transactions. If it is binding, the decision of the Arbitrator is final and the winning party may enforce it against the losing party. If the decision is nonbinding, the Arbitrator's decision is just advisory in aid of settlement.

3. **CONCILIATION:** This process is similar to mediation but is often more formal. A conciliator will meet with the disputing parties separately, understand their perspectives, and then try to bring them together to forge a resolution. According to Black’s Law Dictionary, it defines it as Conciliation is a settlement of dispute in an agreeable manner or a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved.<sup>8</sup>

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<sup>7</sup>Omobamidele O. and Adekunbi I."Alternative Dispute Resolution And The Criminal Judicial System: A Possible Synergy As Salve To Court Congestion In the Nigerian Legal System"(2013)(1)(10)*ArabianJournal of Business and Management Review (Nigerian Chapter)* pg 61

<sup>8</sup>BA Garner, (ed), Black’s Law Dictionary (9thedn, Minnesota: West Publishing Co, 2009) p 10

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4. **NEGOTIATION:** This is a direct discussion between the parties involved in the dispute, aiming to reach an agreement. While negotiation doesn't always involve a neutral third party, sometimes having a facilitator can help the process. Since the aim of negotiation is to reach a consensus that both parties find agreeable, they have the flexibility to mold that outcome to fit their individual requirements and preferences. Essentially, negotiation typically grants full autonomy to the parties, without any interference from external entities.

In recent years, the use of ADR has been on the rise globally, with many legal systems now encouraging or even mandating its use in certain types of disputes before resorting to full-blown litigation.

### THE NIGERIAN CRIMINAL JUSTICE SYSTEM

The criminal justice system refers to the structured set of processes, institutions, and entities that society uses to respond to alleged violations of criminal law, from the initial investigation of an offense, through the adjudication process, to the eventual punishment and rehabilitation of offenders. It encompasses various stages and involves multiple actors, including law enforcement agencies, prosecution, defense attorneys, courts, and correctional institutions. The primary goals of the criminal justice system are to maintain public order, prevent and control crime, and ensure justice for victims and the accused. Dambazau defines the criminal justice system as either an academic discipline or a legal process.<sup>9</sup>

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<sup>9</sup>Dambazau, A.B (2007). Criminology and Criminal Justice: Spectrum Books Limited Ibadan. pp174. ISBN 10:9780297324

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The Nigerian criminal justice system has roots in the English common law, influenced heavily by its colonial history. Its main sources include the Constitution of the Federal Republic of Nigeria (1999), the Criminal Code, applicable primarily in the southern states, and the Penal Code, which is predominant in the northern states. In addition to these, various enactments and acts from the National Assembly also play a role.

In some Northern states, Sharia Law, an Islamic legal system, has been adopted. While it addresses criminal matters, its application has been a point of contention in the country.

The primary law enforcement agency is the Nigeria Police Force (NPF), which manages most criminal investigations. It collaborates with specialized agencies like the Economic and Financial Crimes Commission (EFCC) for specific crime types, such as fraud.

## **The judicial hierarchy includes:**

- Magistrates' Courts, which deal with minor criminal matters.
- High Courts, found in every state and the Federal Capital Territory, that handle severe criminal offenses.
- Sharia Courts in states where Sharia Law is adopted. These courts apply Islamic law, and their decisions can be escalated to Sharia Courts of Appeal and, subsequently, to the Nigerian Supreme Court.
- The Court of Appeal is the intermediary appellate court, reviewing decisions from High Courts and Sharia Courts of Appeal. The Supreme Court stands at the top, offering the final say on all judicial matters.

It is deducible from the above that the criminal justice system consists of three main parts: Legislative (that create laws) and Legislations; adjudication (the courts); and



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corrections and law enforcement agencies (jails, prisons, and police).<sup>10</sup>The Attorney-General's office, at both State and Federal levels, oversees the prosecution of criminal cases, assisted by the Director of Public Prosecutions (DPP).

Criminal trials in Nigeria generally follow the adversarial system. The prosecution presents its case, and the defense counters. A judge then determines guilt. An accused individual is presumed innocent until proven guilty, and the prosecution must establish guilt "beyond a reasonable doubt."<sup>11</sup>The Nigerian Constitution ensures rights for the accused, including the right to remain silent<sup>12</sup>, the right to a fair trial<sup>13</sup>, the right to legal representation<sup>14</sup>, the right to be informed of charges<sup>15</sup>, and the right to a speedy trial.<sup>16</sup>

The Nigerian criminal justice system faces challenges like significant case backlogs, resulting in prolonged pre-trial detentions, allegations of police misconduct, perceived and real corruption, and infrastructural deficits, leading to outdated and crowded facilities. Reform efforts have been ongoing to address these challenges. A notable step forward was the introduction and application of ADR into the Criminal Justice System.

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<sup>10</sup>Walker, Samuel. "Origins of the Contemporary Criminal Justice Paradigm: The American Bar Foundation Survey", (1953-1969) 9 (1), Justice Quarterly.

<sup>11</sup>Constitution of the Federal Republic of Nigeria 1999. Specifically, Section 36(5) of the Constitution provides:"Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty."

<sup>12</sup>Section 35(2) of the Constitution states: "Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice."

<sup>13</sup> CFRN 1999, Section 36

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> ibid

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The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) stands as the first and primary legal framework guiding the delivery of justice in Nigeria. In any legal matter, be it civil or criminal, the Constitution holds paramount importance as it represents the highest law of the land in Nigeria.<sup>17</sup> Due to its overriding authority and supremacy nature of the Constitution, all criminal procedures must align with the constitutional Provisions. More importantly, every constitutional provision regarding fundamental human rights<sup>18</sup>, particularly the right to a fair hearing<sup>19</sup>, must be rigorously followed.<sup>20</sup>

The arguments of some scholars follow this trend that the principle of fair hearing cannot be manifestly displayed or even established with the application of ADR. It is important to be reminded that the general principles of fair hearing are lying in the maxims; **AUDI ALTEREM PARTEM AND NEMO JUDEX IN CAUSA SUA** which mean **HEAR BOTH PARTIES AND YOU CAN'T BE A JUDGE IN YOUR OWN CASE** respectively. There is no gainsaying that both principles can be achieved and exercised judiciously without any prejudice by using ADR in the Criminal Justice System. One of the fundamental principles of ADR is that parties participate voluntarily. This ensures that parties are willing, active contributors to the resolution process, rather than passive subjects. And this fulfilled the first principle of **Audi Alterem Partem**.

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<sup>17</sup> See ss 1–3 CFRN 1999 (as amended).

<sup>18</sup> Chapter 4, CFRN 1999 (as amended).

<sup>19</sup> Section 36, CFRN 1999 (as amended).

<sup>20</sup> Mariam A. A, "Strengthening the Criminal Justice System in Nigeria through Alternative Dispute Resolution"(2018)(5)(1)*Journal of Law Society and Development*, 15

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In methods like Arbitration, mediation, and conciliation, a neutral third party assists in the resolution without imposing a decision. Their role is to ensure that both parties have an equal opportunity to present their side, ensuring fairness throughout the process. This has equally promote the principle of *Nemo Judex In Causa Sua*.

Alternative Dispute Resolution (ADR) generally focuses on resolving disputes in a collaborative and amicable manner, rather than determining guilt or innocence as in the adversarial system of litigation. However, ADR can still implicitly support the principle of presumption of innocence in a way that it typically don't involve formal accusations akin to criminal charges. The focus is on resolving the issue rather than on labeling one party as guilty. A core tenet of ADR is the neutrality and impartiality of the mediator or arbitrator. They don't start with any presumptions about either party and approach the matter with an open mind. These have achieved the reason behind the Presumption of Innocence until proven otherwise.

Another adversary argument against the applicability of ADR in Our Criminal Justice System is that many mediators might not have specific expertise in dealing with matters of criminal cases. Given the private nature of the ADR system, it isn't closely monitored, raising concerns about ensuring due process. This lack of oversight also means outcomes might not always align with the best interests of the victim or meet standard legal expectations.<sup>21</sup> While it's true that not all mediators or Arbitrators have specialized training in criminal issues, many mediators and Arbitrators do possess such expertise, especially when dealing with sensitive issues. It's important to select mediators with the

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<sup>21</sup> Ver Steegh N, "Yes, no and maybe: Informal decision making about divorce mediation in the presence of domestic violence." (2003) 9, *William & Mary Journal of Women and the Law*, 145.

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appropriate background for the matter at hand.

Moreover, the argument that ADR is unregulated is not entirely accurate. In many jurisdictions, there are standards and guidelines for ADR processes, and mediators often follow established ethical guidelines. Moreover, the outcomes of mediation, if they are to be binding, can be incorporated into formal legal agreements that can be enforced by courts.

It was argued that the confidentiality of ADR leads to perpetuation of crime." Mediation perpetuates this realm of secrecy and isolation from public scrutiny."<sup>22</sup> While the discussions in mediation might be confidential, the resulting agreements or resolutions can be made part of the public record, especially if they're formalized through the court system. In cases where ADR is used in a criminal context, the emphasis is often on rehabilitation and restorative justice. Confidentiality can foster an environment where offenders genuinely engage in restitution, leading to reduced recidivism. Confidentiality in mediation encourages frank and open communication. Parties are more likely to be honest, transparent, and cooperative if they know their statements won't be used against them in public forums. By keeping matters confidential, disputes can often be resolved more quickly, reducing the burden on formal justice systems and allowing them to focus on more severe crimes.

### FORMS OF ADR USED WITHIN THE CRIMINAL JUSTICE SYSTEM

The use of Alternative Dispute Resolution (ADR) in the criminal justice system differs from its application in civil disputes. While ADR is predominantly associated with civil cases, certain forms have been adapted to the criminal context to address specific types

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<sup>22</sup> Krieger, S. , "The dangers of mediation in domestic violence cases." (2002) (8), *Cardozo Women's Law Journal*, 235.

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of offenses and emphasize rehabilitation, restitution, and community involvement.

1. **Restorative Justice:** This is a process where the offender, the victim, and sometimes other community members come together to discuss the offense, its impact, and ways to make amends. It is sometimes called "reparative justice"<sup>23</sup> It emphasizes repairing harm and healing relationships. It is based on the theory of justice that considers crime and wrongdoing to be an offence against an individual and community rather than the state.<sup>24</sup> Restorative justice that fosters dialogue between victim and offender shows the highest rates of victim satisfaction and offender accountability.

2. **Victim-Offender Mediation (VOM):** A trained mediator facilitates a meeting between the victim and the offender. This allows for dialogue, understanding, and often the creation of a restitution plan. This form of ADR is used in the Pfizer case. In 2005, criminal proceedings were brought against Pfizer following its illegal administration of Trovan, a broad spectrum anti-biotic, on children in Kano State during an epidemic. The drug had not undergone due clinical trials and resulted in deaths and severe health challenges. The matter was settled through an out-of-court settlement. Pfizer agreed to pay amounts ranging from \$10,000 to \$175,000 to the 'study participants' or their survivors. (This Day, August 24, 2011, 19).<sup>25</sup>

3. **Plea Bargaining:** While more of a legal negotiation than typical ADR, plea bargaining involves negotiation between the defense and prosecution to reach an agreement on

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<sup>23</sup>"A New Kind of Criminal Justice", Parade, 25 October 2009, p. 6

<sup>24</sup>P Marty, 'Personallizing crime', (2000) *Dispute Resolution Magazine*, pp 8-11.

<sup>25</sup>Thisday Editorial, (August 24, 2011), Kano Pfizer test and Compensation, p.19.

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sentencing or charges, avoiding a full trial. A plea bargain is an agreement between a prosecutor and a criminal defendant in which the defendant pleads guilty to a lesser charge or one of several charges. In return, the prosecutor offers concessions, typically in the form of a reduced sentence or dismissal of other charges.<sup>26</sup> The concept of plea bargaining was introduced into Nigerian law with the enactment of the EFCC Act in 2004. The act, especially section 13, grants the Economic and Financial Crimes Commission (EFCC) the power to negotiate plea bargains with the accused. This negotiation usually involves the accused agreeing to return the stolen money in exchange for a more lenient charge or sentence. The process can occur before the case is formally presented in court. Furthermore, the Administration of Criminal Justice Act of 2015 also incorporates provisions related to plea bargaining. Section 13(2) of the EFCC Act specifies that if the accused consents to return the ill-gotten money, the Commission can then compound the charges under the Act.<sup>27</sup> It has gained judicial recognition through different judicial pronouncement. The cases *Ohiaeri v Akabeze*<sup>28</sup>, *FRN v Emmanuel Nwude&anor*<sup>29</sup>, *FRN v Cecilia Ibru*<sup>30</sup>

**4. Diversion Programmes:** These are alternatives to traditional prosecution. Offenders, often first-time or low-risk individuals, are diverted to counseling, community service, or

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<sup>26</sup> Garner, op cit, p 1190.

<sup>27</sup> O Samuel, 'Development of Plea Bargain in the Administration of Criminal Justice in Nigeria a revolution, Vaccination against punishment or Mere Expediency' accessed 25 September 2023.

<sup>28</sup> (1992) 2NWLR (Pt 221) P 1 at 7 Paras 12.

<sup>29</sup> e (2006) 2 EFCSLR 145. 30

<sup>30</sup> (FHC/L/297C/2009)

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educational programs. Successful completion might lead to reduced or dismissed charges.

It's important to frankly note that while ADR methods can be beneficial in certain criminal contexts, they are not suitable for all types of crimes, especially serious ones. The use and appropriateness of ADR in the criminal justice system often depend on nature of the crime, and the needs and wishes of the victim. The application of ADR can indisputably apt for the marriage violence, corruption, fraud, cases even the cases involving both civil and criminal case like the

### **REASONS FOR NON APPLICABILITY OF ADR IN SOME CRIMINAL MATTERS.**

#### **LEGAL LIMITATIONS:**

The view that ADR is not applicable to criminal cases is based on the concepts of offense compoundment and concealment, as prohibited by sections 127, 128, and 130 of the Criminal Code.

Section 127 of the Criminal Code provides that "*any person who asks, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue, or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of an offence and if the felony is such that a person convicted of it is liable to be sentenced to death or imprisonment for life, the offender is guilty of a felony, and is liable to imprisonment for seven years. In any other case the offender is liable to imprisonment for three years.*" Section 128 of the Criminal Code provide on the other hand, *provides that any person who, having brought, or under pretence of bringing an action against another person upon a Penal Act, law or statute in*

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*order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a misdemeanour and is liable to imprisonment for one year.* Finally, section 130 of the Criminal Code stipulates that *any person who, having arrested another upon a charge of an offence, willfully delays to take him before a court to be dealt with according to law, is guilty of a misdemeanour and is liable to imprisonment for two years.* Flowing from the above, it is deducible that the hands of either of the law enforcement agencies and the quasi judicial bodies have been tied from the application of compounding which is also one of the forms of ADR applicable for criminal cases. Even though there are some crimea that are compounding like the cases of EFCC. It is quite unfortunate that those legislative frameworks that strictly provide for ADR restrict it to Civil cases and by such it's application in criminal cases is difficult if not impossible.

### **LACK OF ADEQUATE UNDERSTANDING OF ADR**

The litigants and non litigants have misconception and misapprehension on the meaning and application of ADR levelled on the first challenge that it is applicable to only civil cases. It important to reeducate and reorientate the people For this reason, there is a need to revisit the meaning and interpretation of the word Alternative Dispute Resolution(ADR). In a general sense, the orientation about ADR is limited to mediation, arbitration, conciliation and negotiation. However, looking beyond the myopic view and etymological analysis of each words in the term. One will conclude that ADR is beyond the four mechanisms.

According to **Merriam-Webster** It is *"A forum or means for resolving disputes (as*



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*arbitration or private judging) that exists outside the state or federal judicial system."*

**Black's Law Dictionary** defines it as "A procedure for settling a dispute by means other than litigation, such as arbitration or mediation." **Cambridge Dictionary** says it is "Methods of helping people to reach agreements with each other without going to court, usually involving discussion and compromise." **Collins Dictionary** articulates that ADR are "Methods of resolving disputes other than by legal proceedings." **American Heritage Dictionary** confirms that "Any of various procedures, as arbitration or mediation, for resolving disputes without resorting to litigation." is called ADR . **BusinessDictionary.com** reaffirms that ADR is a "Resolution of a dispute by a neutral third party outside the formal court system. It is a generic term that refers to a means of resolving disputes other than by litigation."

These definitions all emphasize the central idea of ADR as a means of resolving disputes outside the traditional courtroom setting, though the proceedings might take different forms. While ADR is often associated with the four primary mechanisms – mediation, arbitration, negotiation, and conciliation – it encompasses a broader range of processes and techniques that allow parties to resolve conflicts without litigation. These methods prioritize collaboration, confidentiality, and in many cases, preserving the relationship between the disputing parties. By the foregoing, people will understand that justice can be seen and manifestly done by using ADR in some criminal cases.

### FEAR OF INJUSTICE

Lying flat on the lack of adequate understanding, people are fearing the adoption of ADR in their criminal matters. They thinking feebly and narrowly on the meaning and limited application of ADR. Not considering and unwilling to know that there are other techniques

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and quasi judicial processes being adopted in order to arrive at justice.

**ENFORCEABILITY:** The problem of non enforceability of ADR outcomes, particularly in international settings where parties reside in different countries. The awards for or against the parties are not binding on them and then think of the arbitral proceedings to be waste of precious time.

**CONFIDENTIALITY CONCERNS:** It has been the vehement argument of some scholars that the confidentiality of the ADR processes promote the re occurrence and advancement of the reprehensible acts in the society. They argued that the victimization and stigmatization of a criminal can deter him from such crime. While confidentiality in ADR can be a benefit for many, it can also be seen as a drawback when transparency is essential, especially in cases with public interest implications.

**POWER IMBALANCES:** ADR processes, especially mediation, rely on voluntary cooperation between parties. If one party has significantly more power or resources than the other, it might influence the outcome unfairly. Power imbalance in the context of Alternative Dispute Resolution (ADR) within the criminal justice system is a significant concern for its critics. They argue that ADR may inadvertently favor more dominant parties, potentially undermining fairness and justice for the weaker party involved.<sup>31</sup>

### RECOMMENDATIONS

In the tapestry of Nigeria's criminal justice system, ADR does not replace the existing threads but adds new patterns, enhancing the overall design. It is the nation's hope that

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<sup>31</sup> SB Goldberg et al, Dispute Resolution: Negotiation, Mediation and Other Processes (2ndedn, Boston, Toronto, London: Little, Brown and Company 1992) p20.

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by weaving ADR into this tapestry, the justice system will be more reflective of Nigeria's diverse, dynamic, and resilient spirit. Thus, the following recommendations are made:

1. **Structured Integration:** While ADR holds promise, its integration should be systematic and not sporadic. A clear framework, delineating the types of crimes suitable for ADR, must be established.
2. **Training and Capacity Building:** Invest in specialized training programs for legal professionals and mediators focusing on the nuances of criminal disputes and the ethics of ADR.
3. **Public Awareness:** Embark on nationwide campaigns to educate the citizenry about the benefits and limitations of ADR in criminal justice, demystifying misconceptions.
4. **Legislative Revisions:** It's time to review and possibly amend the existing legal framework to accommodate and regulate the expanding role of ADR in the criminal justice system.
5. **Infrastructure and Resources:** Establish dedicated centers for ADR across states, ensuring accessibility for all, regardless of socio-economic backgrounds.
6. **Continuous Review:** Like all systems, the application of ADR should be under constant scrutiny, adapting and evolving based on feedback, outcomes, and global best practices.

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## **CONCLUSION:**

The majesty of justice is not solely in its stern face of retribution but also in its compassionate arms of reconciliation. The application of Alternative Dispute Resolution (ADR) in Nigeria's criminal justice system beautifully mirrors this duality. A system that once roared with the traditional gavels of litigation is now punctuated with the quiet dialogues of mediation, arbitration, conciliation and some other techniques. As Nigeria stands at this legal crossroads, where the past meets the potential, it becomes imperative to deliberate on the path forward, ensuring that the journey of justice is not just swift but also just.