INTERNATIONAL JOURNAL FOR DISPUTE RESOLUTION

ISSN NO.: 2583-8989

RESOLUTION IS JUSTICE!

VOLUME 1 ISSUE 4

INTERROGATING THE PRACTICE AND THE PROCESS OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS VIZ-A-VIZ LITIGATION

Amos Ojo Adedeji[1] & Ruth Abiola Adimula[2]

ABSTRACT

The failure of formal Court system to deliver effective, timely and user-friendly justice has led to the re-awakening of Alternative Dispute Resolution (ADR) mechanism and its formal acceptance as an effective means of resolving conflicts/disputesacross the globe. The study interrogated the practice and the process of Alternative Dispute Resolution as method of conflict resolution. The study is descriptive in nature solely relying on secondary source of data. The study found that the practice of ADR is gaining momentum due to its prevalent advantages over litigation such as provision of multiple doors to conflict resolution, decongestion of courts case log, mutually beneficial outcome, aids justice sector reform, increases access to justice for poor litigants, and encourages parties' participation. Despite its overwhelming benefits, the work discovered several flaws in its procedure amongst which are non-binding nature, inadequate awareness, wrong and negative perceptions of lawyers, loss of identities, and training deficit of the practitioners. The study concluded that the resolution of dispute through ADR is win-win outcome rather than win-lose approach of litigation. To address the challenges, the study recommended binding process for parties, greater publicity of the process, orientation of lawyers against wrong and negative perception, and constant training of practitioners among others. Eradication of policy that hinders the growth of non-lawyer practitioners is also crucial to its growth, development and sustainability.

Keywords: Alternative Dispute Resolution, Conflict, Justice, Litigation, Peace

[1] The author is a PhD scholar at the Centre for Peace and Strategic Studies, University of Ilorin, Ilorin, Nigeria.
[2]The co-author is an associate professor at the Centre for Peace and Strategic Studies, University of Ilorin, Ilorin, Nigeria.

INTRODUCTION

Conflict is associated with life and the succession of human relations. The nature of mankind has made it imperative that conflict is inevitable, hence a crucial part of societal life. Conflict is as old as humanity with attributes to exist as far as humankind exists (Okorie, 2024). Since conflict is inevitable in human relation, managing it becomes a necessity. Conflict notwithstanding its negative attachment, can also lead to the development of society if constructively handled (Adedeji, 2021a).

The search for peace and the cessation of conflict has been the priority of humans since the creation of the world. Kutesa (2009) noted that "without peace, development is not possible", and "without development, peace is not durable". The pursuit of peace is a persistent and endless task, but unfortunately, it has been consistently and tragically marred at a critical junction by dispute. Willard (1995) cited in Ogaji (2013) opines as paraphrase "unlike wine, disputes do not get better with age".

Getting justice is one of the fundamental rights which is guaranteed in the constitution of almost all the countries of the world (Islam, 2011). This was also supported by the Universal Declaration of Human Rights of 1948. To this effect, litigation becomes the primary dispute resolution process, which is a mechanism of the state and its formal justice system. This was largely upheld by various national constitutions and it guaranteesa fair hearing within a reasonable time.

Despite this laudable provision of access to justice, the judicial system has suffered defeat. Court system across the globe is constantly fraught with challenges of inherenttechnicalities, prohibitive cost, delay in justice administration, rigid formalistic procedure, absence of case management techniques, congestion, mono-track nature, and adversarial nature of litigation (Onyema, 2013; Kisi, Lee, Kayastha and Kovel, 2020).

According to Lupica and Hudson (2023), litigation process in United States is characterised by unsatisfactory outcome, expensive, default, scared process, confusion, intimidation, uncertainty, humiliation, and threatened. Hence legal system complicates the dispute situation of society

instead of ameliorating it. Though United States is one of the developed states with high level of objectivity and accountability, yet, its litigation process is defective.

In adversarial system of justice in Europe, justice seeker hasto suffer from the challenges that is familiar with common legal systems around the world. The fundamental problems of litigation in England according to Vorrasi (2004) include but not limited to too expensive, too slow, too complex, advantage of certain people over others, inadequate access to justice, inefficient and ineffective legal system. The challenges of court system in Asia is not different from what was obtainable from other continents. Singapore justice system is assumed to be one of the most efficient in the world (Tan, 2014), but this was not the case before the transformation which introduced Alternative Dispute Resolution into the justice system in the early 1990's. Prior to the reformation, Singapore experienced backlogs, inefficiency, ineffective, injustice, unproductiveness, exorbitant cost, imposition of court hearing fees and restriction on the right of appeal among others (Whalen-Bridge, 2017).

Aina (2016) asserted that an average lifespan of a dispute in African trial courts range from four to ten years, three to six years at the Court of Appeal, coupled with additional two to four years in Supreme Court. The implication is that the lifespan of a dispute in Africa is an average of twenty years. Litigants in African Courts lacks confidence, while the purpose of establishing the courts has also been defeated. The process of litigation is inefficient and inaccessible to majority of citizens, characterised by common problems of delay, high costs, adversarial, corruptions, and obsolete methods, among others.

In Nigeria legal system, litigation has become a flaw in the justice system. Court system has ceased to be the last hope of the common man, it has become an instrument in the hands of the elites and influencer against the commoners as corruption pervades. As evidenced by Onyema (2013), there are two main hindrances to access to justice in Nigeria through litigation which are mono-track process and delay arising from court congestion. This was buttressed by former Chief Justice of Nigeria, Justice Mahmud Muhammed who said:

> *A major criticism of our system of justice delivery in Nigeria is the persistent delay in the administration of justice. Indeed, we must note the old judicial aphorism that states that*

> *Justice Delayed is Justice Denied, which I daresay is more so where life and liberty are at stake* (Aina, 2016).

ADR was incorporated into the rule of courts in the 1970s in many parts of the world (Adekoya, 2013). In Nigeria, Arbitration and Conciliation Act 2004 (as amended) regulates ADR process. Thus, Alternative Dispute Resolution emerges as an innovative force, offering a spectrum of cooperative approaches to conflict resolution, divergence from the rigid and complex procedures of traditional litigation (Sourdin, Li and McNamara, 2020). The objective of the study thereforewas to interrogate the development, the practice, and the process of Alternative Dispute Resolution viz-a-viz litigation and discuss ADR categorization.

STATEMENT OF THE PROBLEM

Conflict is part of humanexistence. The regular interpersonal relationship among humanities generates disputes, which are usually resolved through litigation. This method of conflict resolution mechanism has many challenges- such as unbearablehigh cost, high technicalprocedure, rigidity, corruption, and overcrowded and overstretched court cause lists. These challenges occasion delaysin quick dispensation of justice and hence limit citizens' access to justice. The quest for quick and peaceful resolution of dispute has led to a response to the challenges by various governments across the globe, through Alternative Dispute Resolution (ADR) mechanisms. The essence is to provide windows of opportunities for disputants through various ADR mechanisms.

Ayinla and Adejare (2017) espoused the philosophies and perpetual significance of Alternative Dispute Resolution in Nigeria. The work highlighted the philosophies that makeADR as a modern tool for dispute resolution, and examine the cooperative roles played by ADR as against adversarial method of formal court system. The authors gave a contemporary concept of ADR, examines the rise of the mechanisms, offers an understanding of the inherent ADR mechanisms in African traditional justice system prior to colonialism, arrival of ADR in Nigeria, relevance of ADR and the justification for wide acceptance.

Roy (2024) also did a comprehensive analysis of Alternative Dispute Resolution where he examined its introduction in India. The author examined the meaning, scope and various kinds of justice delivery systems of ADR. The functions of ADR, various advantages and disadvantages. The study upheld the mechanism as the process of dispute settlement that represents the idea of making the system of justice delivery more favourable which ensure quick settlement of cases.

This study seeks to interrogate the history of ADR mechanisms,establish its development, and classify its practiceand process into seven categories, viz: preventive, facilitative, advisory, determinative, collective, court-connected and judicial as addition to knowledge.

CONCEPTUAL CLARIFICATION

Alternative Dispute Resolution (ADR) can simply be defined as alternative methods or procedures of resolving disputes or conflicts confidentially through the intervention of third-party or intermediary other than the courts, which is seen as the conventional dispute resolution method. ADR is an "umbrella term for processes other than judicial determination, in which an impartial individual aids the disputants to resolve the matters between them," (National Alternative Dispute Resolution Advisory Council (NADRAC), 2006).

Alternative Dispute Resolution is described as "a wide range of approaches that are not consistent with traditional court procedures (litigation), but aim to identify resolutions to disputes that will be mutually accepted by the conflicting parties (Glossary of Terms and Concepts in Peace and Security Studies cited in Abdul- Rafiu, 2015). The concept can be used to describe any process, including negotiated and facilitated settlement.

ADR is also sometimes known as “Appropriate Dispute Resolution" in light of the recent evolution, in recognition of the fact that the procedures are frequently more appropriate for resolving disputes than simply serving as an alternative to litigation (Department of Justice, 2004). ADR can be referred to as techniques that allow parties to a dispute to settle amicably and without the use of an adversarial third-party (NADRAC, 2006).

Alternative Dispute Resolution can take both binding and non-binding forms, depending on how willing the parties come to an amicable solution (Adedeji, 2021b). Binding and non-binding arrangements are required and optional processes to ADR. The decision to submit a dispute to an ADR process in a voluntary process is entirely up to the parties, while court do required parties to submit their dispute to an ADRprocess for settlement. A previous contract between parties may also provide that ADR procedures be used.

THEORETICAL FRAMEWORK

The study adopted the theory of justice as its theoretical context to explain the basis of the study. The theory was propounded by John Rawls in 1971. Justice is defined as the quality of doing the right and receive the right measure. The theory argued that for the practice of alternative dispute resolution to have the capacity to serve as appropriate option to litigation, it needs to be based in normative conceptions, not merely of how ADR works, but of how it ought to work. According to Kruse (2004), there are three normative conceptions which are harmony, authentic participation and appropriate fit.

The indication of the three normative conceptions is a flexible system with the goal of active participation of parties in appropriate means of resolving their conflict. Rubinson (2004) views ADR as a process of motivating the parties to engage in a collaborative method of resolution. In line with the theory, the method must be able to produce harmony with genuine participation of parties involved and appropriately fit the type of disputes. Harmony is to resolve conflict and not to suppress justice.

The relevance of the theory to the study is that it exposes to us the concept of 'justice' in ADR as not only to right the wrong, but also to produce harmonious outcome. The theory also advocatesparties' participation in the resolution of their conflict. The appropriateness of the theory gives credence to ADR as multidimensional approaches to conflict resolution. Given the central role the law has in our society, change is imperative and must focus on the development of interventions that address barriers to justice at the individual, community, and systemic levels.

METHODOLOGY

Descriptive method was used in this study for analysis due to its historical nature, hence the work adopted a chronological and thematic presentation of the data. The sources of data relying mainly on secondary source. Existing literature on the topic such as textbooks, journals, magazines, government documents, conference papers, and the work of some distinguishedscholars among other related documents are the sources consulted for the study.The veracity of the theme of the study affects human relations in the current growing dissatisfaction of litigation, and this has been thoroughly studied. This is a reflection of the multifaceted nature of handling conflict. This study therefore drew intuitions from the approaches of various conflict resolutions.

RESULT AND DISCUSSION

The Birth of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) roots can be traced back to ancient civilizations where informal methods of resolving conflicts were prevalent. Evidence shows that archaeologists have discovered the use of ADR process in the Ancient Egypt, Mesopotamia, and Assyria (Nelson, 2001). In the age's past, societies have been engaging in the use of ADR to settle their disputes. One of the earliest recorded mediations processes took place more than 4,000 years ago when Sumerian ruler prevents a war and thereby developed an agreement in a dispute of land in the Ancient Mesopotamia. Public Arbitrator was also introduced around 400BC by city state because of overcrowded Athenian Courts in western world (Barrett, 2004). The duty of arbitrator was to settle a case amicably; failure to do so makes him call for witness and require the submission of evidence.

The concept of Alternative Dispute Resolution is not alien to African judicial system. In fact, ADR is sometimes interpreted to be "African Dispute Resolution" (Jerome and Joseph, 2004). It has been part of jurisprudence of African conflict resolution approach. The Bushman of Kalahari (a traditional people) of Namibia and Botswana has an informed system of resolving conflict that avoids physical conflict and the court. This process involves dialoguing until the conflict is resolved.

In the western Nigeria, the Yoruba tribe culturally restricted going to court as they regard it as inappropriate, this brought about the wise saying "A kin de latikotuwa sore" literarily there is no friendship after the court order (Olaoba, 2002). Their disputes are handled traditionally and hierarchically from family head to street head, to Baale, to the king under the supervision of the invisible ones (the spirit of the late ancestors).

Africa has a variety of techniques for reaching an agreement like subtle black-mail, precedence, proverbs, and even magic "the only real power behind their decisions is cultural and the power of the dead/ancestor who is now regarded as idol (Barrett, 2004). Bible and Quran also have various references to the resolution of disputes through ADR means most especially mediation and arbitration (Mathew 5:9, 1 Timothy 2:5-6, 1 Cor. 6:1-4 and Quran 49:9).

The acclaimed modern method of Alternative Dispute Resolution is not modern, but just a re-awaken of earlier ways of resolving conflict in traditional societies. It gained its significant traction driven by growing global recognition of limitations inherent in traditional Court system in the latter half of 20th century (Gurjar and Singh, 2024). The court system is modern and alien to the traditional system in the global conflict resolution method.

The Development of Modern Alternative Dispute Resolution

The first Arbitration Act in Ireland was the act for determining differences by arbitration and this was passed in 1698. It was established to take care of commercial transaction and insurance in the ancient Ireland (History of Arbitration, 2005). Further development in the field of arbitration is the 1998 Act adoptedby the United Nations Commission on International Trade Law (UNCITRAL) which is a model law on international commercial arbitration with a few amendments.

Chambers of commerce have been reported to have created arbitration tribunals in New York in 1768, in 1794 in New Haven, and in Philadelphia in 1801. These were used primarily to settle disputes in industries. Subsequently, arbitration got a full endorsement of Supreme Court in 1854 during the time Court gave binding power to arbitrator in United States of America. Commercial arbitration was promoted by Federal Government of USA in 1887.

Provision for mediation in United States has been made in a number of recent acts and statutes including; Judicial Separation and Family Law Reform Act 1989; Family Law (Divorce) Act 1996; Employment Equality Act 1998; Family Support Agency Act 2001; Civil Liability and Courts Act 2004; and Residential Tenancies Act 2004. Others are Rules of the Superior Courts (Commercial Proceedings) 2004; Equality Act 2004; Disability Act 2005; Rules of the Superior Courts (Competition Proceedings) 2005; and Medical Practitioners Act 2007 (Law Reform Commission, 2008).

The development of ADR in England and Wales was profoundly influenced by the introduction of CPR to the dispute resolution system. ADR use has been extensively supported by the judiciary.The United Kingdom government replaced the pledge for Alternative Dispute Resolution made in 2001 with a new commitment and guidelines for government departments and agencies (Ogaji, 2013). The Committee of Ministers of the Council in Europe accepted a recommendation for family mediation in the European Union in 1998.

The recommendation outlined principles and the status of mediated agreements and concentrated on using mediation to settle family issues. Due to increasing number of international disputes and in attempt to deal with such disputes in an efficient and economical means, the governments of European commission published a green paper on ADR in civil and commercial law which deals with the promotion of ADR as alternative to litigation.

In Africa, the re-awaken of ADR came into lime-light through Nigeria in 1999 due to inadequacies of the litigation process as a means of resolving disputes that are becoming increasingly evident (Onyema, 2013). The development paved way to ADR which later led to the establishment of Lagos Citizens' Mediation Centre (CMC) now Citizens' Mediation Board (CMB) and Lagos Multi-Door Courthouse (LMDC) in 1999 and 2002 respectively as pioneer ADR centres in the land of Africa. African nations need to do more in publicizing and funding of ADR Centre within the continent.

Spectra of Alternative Dispute Resolution

Alternative Dispute Resolution is a collective term, where several mechanisms can be explored in the quest for solution to a particular dispute without litigation. Thus, disputes have their own

resolution philosophy and accordingly recommended to parties involved. In view of this, the ADR mechanisms can be arranged along a type that correlates with increasing third-party involvement. The table below classifies the spectrum of Alternative Dispute Resolution into seven distinct categories.

Table 1: Classification of Alternative Dispute Resolution (ADR)

Classification						
Preventive	Negotiation	Partnering	Joint Problem Solving	Consensus Building	System Design	ADR Clauses
Facilitative	Mediation					
Advisory	Conciliation	Collaborative Lawyering	Settlement conference	Mini-Trial		
Determinative	Arbitration	Adjudication	Hybrid Models	Expert Determination		
Collective	Ombudsman					
Court-Connected	Multi-Door Courthouse					
Judicial	Small Scale Claim Procedures	Early Neutral Evaluation	Court Settlement Conferences	Private Judge		

Source: Author's Field Survey, 2024

Preventive Alternative Dispute Resolution Processes

Preventive ADR is a type designed to prevent conflict or dispute from happening through its efficient and consistent management. The primary objective of the procedure is to design a means to deal with content which could lead to disputes. The processes include Negotiation, Partnering, Joint Problem Solving, Consensus Building, System Design, and ADR Clauses.

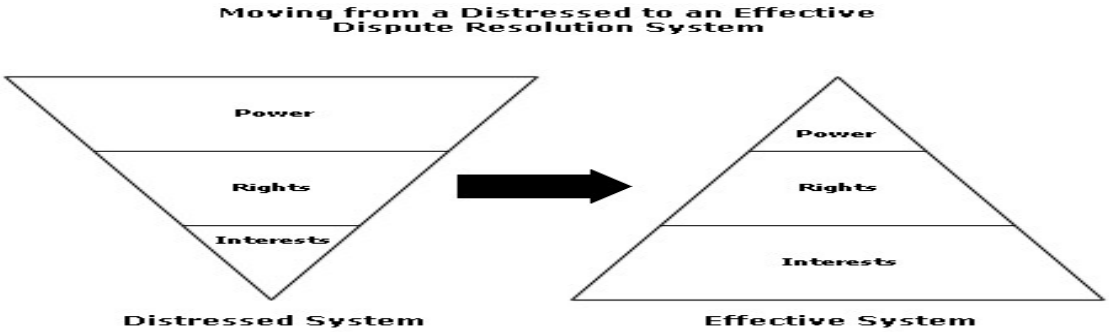
1. **Negotiation:** It is a consensual conversation between two or more parties with the goal of reaching a compromise. Negotiation, in the words of Goldberg, Sander, and Rogers (1992),

is a conversation with the aim of persuasion. The common theme in negotiation is trust, of which disputants believe would help in resolving disputes. Negotiation will not be possible in a situation of broken relationship between the parties. In negotiation, parties resolve to settle their variances without seeking the assistance of third-party. Parties are typically swayed by their perceived leverage during negotiations (power).

2. **Partnering:** This is a co-operative arrangement between disputants on the promotion and recognition of mutual strategies for resolving their dispute during the life time of a project. It was used by the US Army Corps of Engineers in the late 1980 and was first applied in the United Kingdom in the North Sea oil and gas industries in the early 1990s (Law Reform Commission, 2008). Successful partnering enhances communication and trust in business relationships. It helps to build widespread support for a project, facilitates and enhances teamwork across contractual boundaries. It is promoted within the employment sector.
3. **Joint Problem Solving**: It is a concept that is similar to partnering. Parties find solutions to their problems (conflict) in a cordial environment. It promotes cooperation between parties who jointly work out strategies to reconcile with each other. It is consideredas the best method of dealing with conflict. Despite being considered asthe best approach, it is always difficult for disputants to come together and find a joint solution to their disputes.
4. **Consensus Building:** It is a process of seeking a unanimous agreement by the parties over disputed subjects. It is an effort to arrive at joint decisions that meet the interests of all the disputants. It is a voluntary participation in which the parties are expected to be supportive and make it work. It is an agreement jointly arrived at by all involved parties of the subject matter. The desire to reach a resolution to the dispute is an important starting point.Also, bringing all stakeholders together to make such an effort is a major part of the process.It may be managed by a neutral facilitator who helps gather technical information, guide the dialogue and propose options that can serve as the basis for agreement for the participants.
5. **Dispute System Design**: It encompasses one or more internal processes that have been adopted to prevent, manage or resolve a stream of disputes connected to an organization or institution (Ury,Bret and Goldberg, 1988). It is a method for resolving intractable or frequent conflict in trouble organizations, business, or entire industries. It may involve multiple processes, but rarely, if ever, is just one process option available. Ury, Bret and Goldberg, (1988) divided dispute resolution processes into three ways by which disputes are

resolved: interest, rights and power.While a healthy conflict management system settles most disagreements at the interest level, fewer at the right level, and fewest through power options. An unhealthy conflict management system tends to settle most disagreements at the power level, right level, and interest level.

Figure 1: A Distressed Conflict Management System, and Effective Conflict Management System after Improvement



Source: Eric Brahm and Julian Ouellet (2003)

6. **Alternative Dispute Resolution Clauses**: It is a contractual clause put in place during contract agreement demanding the parties to settle any dispute arising out of the contract using an ADR process(es) (Law Reform Commission, 2008). It can be mono-tiered or multi-tiered in nature. The former is when the clause permits attempting one ADR mechanism while the latter is when the parties agree to move along ADR spectrum in distinct and escalating stages of conflict resolution by arbitration or litigation. In the failure of one, the other process is attempted in order to resolve the dispute. Care must be taken in drafting the clauses as the courts have shown a strong willingness to enforce them.

Facilitative Alternative Dispute Resolution Processes

This involves the use of neutral third party to assist the parties in reaching a mutually acceptable agreement. The third-party neutral has no determinative role but to facilitate the processes. The category involves the process of mediation.

1. **Mediation:** It is a process by which disputants confidentially meet neutral and independent third party to fashion out ways of resolving their disputes. It is an assisted and facilitated negotiation arrived at by a third party (Goldberg, Sanders and Rogers, 1992). Mediation is a

voluntary, non-binding and private process in which a trained person assists the parties to arrive at a negotiated settlement. In mediation, mediator controls the process while the outcome is decided by the parties. It aims to achieve win-win outcome for the parties. Mediation is most successful when parties are willing to cooperate and negotiate a compromise. Parties and their representatives are usually required to sign an agreement to that effect to become enforceable contract (Onyema and Odibo, 2017).

Advisory Alternative Dispute Resolution Processes

Advisory ADR process is the use of neutral third-party who evaluates, advices, and recommends options for the resolution of dispute. It is also called evaluative process. This category includes Conciliation, Collaborative Lawyering, Settlement Conference, and Mini-Trial.

1. **Conciliation:** The procedure is similar to mediation, but the conciliator intervenes more actively in bringing the parties together. The actions of the impartial third-party blur the lines between the parties' respective duties and promote better cooperation and communication. The procedure is typically referred to as a "cooling down" forum where the conciliator typically provides guidance, advice, and recommendations for the future in an effort to de-escalate the conflict. The conciliator may make a recommendation for resolving the disagreement at any point of the proceeding (United Nations General Assembly, 2002). The conciliation makes a binding recommendation to the parties in a situation the parties are unable to come to an agreement of which can only be revoked if one of the parties rejects the offer.
2. **Collaborative Lawyering:** Through a contractual agreement, the parties and their attorneys agree to use this technique of conflict resolution to solve problems rather than go to court. It is primarily used to settle family disputes. The primary aim is to find a fair and equitable agreement for the couple. Lawyers represent the parties for settlement purposes. The success and effectiveness of the system depend on the honesty, cooperation and integrity of the participants (Walls, 2007).
3. **Settlement Conference (Stakeholder Conference):** It is a gathering of all relevant parties to a dispute, including the primary parties who are directly affected and the secondary or shadow parties who could be impacted by the resolution. An authority figure who commands the respect of the parties serves as the convener. Typically, it is used to resolve political and

social conflicts (Ogaji, 2013). It is appropriate for multi-party, complex issues that a simple mediation process cannot resolve. As the case progresses, it could involve variable degrees of conversation, co-existential bargaining, caucusing, therapy, and mediation. The parties' side of the negotiation must be flexible and dynamic (Ogaji, 2013).

4. **Mini-Trial**: It is a flexible but structured voluntary process that involves the blend of early neutral evaluation, mediation, adjudication and negotiation procedures. There is an exchange of documents, without prejudice to litigation if the process is successful or not (Ipaye, 2016). The neutral third person is usually a retired judge or expert in the matter of dispute who serves as the evaluator. The lawyers on each side make a summary presentation. Witnesses, experts, or key documents may be used and once the agreement is reached it is enforceable as a contract between the parties. The judge points to the strengths and weaknesses of each party's case and meets with each party's respective legal representative in an attempt to resolve the dispute (Law Reform Commission, 2008). In case the settlement is not reached, he predicts the likely outcome if it gets to litigation.

Determinative Alternative Dispute Resolution Processes

Determinative ADR processes aretypes of ADR with an independent neutral third-partymakingdecisionof a case after rapt attention of the matter from the parties. The decision of the neutral is potentially enforceable, for its resolution. This category of ADR includes the processes of Arbitration, Adjudication, Hybrid Models and Expert Determination.

1. **Arbitration:** It is the submission of dispute to an unbiased third-party designated by parties to the conflict, who agree in advance to comply with the award (Abdul-Rafiu, 2015). It is a creation of contracts. The basis for proceeding to arbitration is the arbitration clause, which has been voluntarily executed by the parties. Arbitration itself is voluntary like other ADR but involuntary when parties have agreed through arbitration clause. Evidence presentations and arguments are allowed during the proceeding, and the end result is 'award'. The prevailing party has the ability or right to have the award issued as an enforceable court order. Hence, Court has a responsibility of ensuring the clause is adhered to. Sometimes, legal training is required; this is partly depending on the parties' specification. Arbitrator is privately chosen by the parties or selected from the list of available arbitrators due to his expertise in the area of dispute.

2. **Hybrid Models:** It combines mediation and arbitration method. These hybrid processes are known as med-arb and arb-med. The models allow the parties to select a single third-party to serve as both mediator and arbitrator.
   - **Med-Arb:** As the name suggests, the procedure combines mediation and arbitration to get a result that benefits both parties. It combines arbitration's assurance of a certain result and mediation's persuasive power. In essence, med-arb is a procedure that first attempts to resolve the disagreement through mediation, after which the mediator assumes the role of arbitrator to enforce a binding decision on the parties to the dispute in a situation where the process failed to produce expected result (Limbury, 2005). The element of bias in the resolution in this system is a potential problem, particularly if the impartial third-party is not diligent.
   - **Arb-Med:** In this circumstance, the parties first present their arguments to the arbitrator, who then writes a judgment without consulting any of the parties beforehand and seals it. The parties then mediate for a predetermined amount of time; if an agreement is reached before the end of the allotted time, the mediation's outcomes are binding; otherwise, the arbitrator's decision is final and binding on the parties. The problem of the processis that the parties can be discouraged from talking to the mediator because the mediator may later serve as an arbitrator. The amount of information available to the mediator could lead to bias on his part (Limbury, 2005).
3. **Adjudication:** It is a procedure comparable to expert determination that involves a neutral, impartial third-party. It is used to settle disputes between landlords and tenants. An adjudicator is chosen for a particular case, reviews the available information, and extensively investigates the conflict before rendering a binding judgment. The hearing is private. A determination of adjudication that is not appealed will become a legally binding (Law Reform Commission, 2008). The financial ombudsman also uses it to settle disputes that mediation has not been able to resolve.
4. **Expert Determination**: Expert determination is a procedure in which the parties to a dispute designate an impartial third-party expert who is also independent to settle the disagreement in his area of expertise, with the result being final and binding. The parties formally concur that the expert's judgment shall be binding upon them. In contrast to litigation, it is typically handled solely through written submissions, making the procedure

quick and affordable. In a technical issue, it can also be integrated with other dispute resolution processes like mediation (Carey, 2004). Since there are currently no statutory provisions that apply to expert determinations, their enforcement must be pursued separately through litigation or arbitration, which could be burdensome and cause the process to take longer than necessary (Carey, 2004).

Collective Alternative Dispute Resolution Processes

The process is a method of dealing with multi-party issues without resorting to litigation. It prevents the escalation of conflicts through government regulation. The impact of effective regulatory mechanisms will often prevent the wrong arising, right the wrong and thereby prevent any form of multi-party litigation. Collective ADR process is offered by ombudsman schemes.

1. **Ombudsman**: Ombudsman receives and deals with complaints from different quarters through its various offices around the country. Ombudsman is appointed by a state statute with power to investigate and make recommendation to that effect. They have extensive power. They can demand information, document, file from both public and private bodies as regards complaints before them (Adedeji, 2022). There are variations of ombudsman such as:
   - **Financial Service Ombudsman**: It deals with financial inadequacy.
   - **Pension Ombudsman**: It investigates dispute concerning pension scheme.
   - **Children Ombudsman**: It examines complaints made by children or on their behalf against public organization, school, hospital, or their parents;
   - **Ombudsman for Defense**: It investigates complaints made by either members or former members of the Defense forces that the internal military complaints process has failed to address.
   - **Press Ombudsman**: It handles complaints made against print media.
   - **Legal Service Ombudsman**: It handles legal related complaints; this could be because of dissatisfaction with the outcome of complaints to disciplinary bodies of society like Nigeria Bar Association (NBA) (Law Reform Commission, 2008).

Court-connected Alternative Dispute Resolution Process

Court-connected ADR is the application of ADR mechanisms for settlement of disputes outside traditional litigation in conjunction with court system. This classification consists of the Multi-Door Courthouse.

1. **Multi-Door Courthouse:** This is ADR process connected to the court for the resolution of conflicts through the use of mediation and other ADR procedures such as arbitration, early neutral evaluation, and other hybrid processes. Multi-Door courthouse is a multidimensional dispute resolution process within the administrative arrangement of the court employing broad range of dispute resolution methods, to proficiently resolve disputes through the mechanism suitable for the parties and the issues involved (Ogunyannwo, 2016).Multi-Door procedures can be used with no connection to a court proceeding and as well be used while litigation is pending, either on the parties' own initiative or as directed by the competent court. Theprimary objective was to increase the number of optionsavailable for resolution of conflicts by making access to justice unchallenging.

Judicial Alternative Dispute Resolution Process

These are conflict resolution processes that usually take place after litigation has been initiated or when the litigation is about to commence. The aim is reaching settlement on some or all issues. The process usually involves the assistance of a judge of the court in overseeing the process. The process includes Small Scale Claim Procedures, Early Neutral Evaluation, Court Settlement Conferences and Private Judge.

1. **Small Scale Claims Procedures**: This is used to deal with certain civil proceedings. The process allows parties to resolve their dispute by mediation through a court clerk, referred to as Small Claims Registrar. The procedure can as well operate online dispute resolution procedure where claims can be fixed online. The processes are simpler as well as economical in nature. It alleviates the burden of engaging a solicitor.
2. **Early Natural Evaluation**: It is a procedure where parties submit to an appointed neutral and independent evaluator, typically a judge or someone legally qualified, who assesses the merits and shortcomings of the parties' case and provides an unbiased assessment of the result, should the matter ultimately proceed to court (Ipaye, 2016). The assessment is

impartial and non-obligatory. The method is typically chosen when there is mistrust amongst disputants. It is hoped that the parties will reach a resolution amicably as a result of such an unbiased view. The flaw is that the party who benefits or is likely to win lengthily slows the procedure.

3. **Court Settlement Conference**: It is a process similar to judicial mini-trial. It is a voluntary, confidential and non-binding process in which a settlement judge assists the parties in reaching an amicable settlement. While a judge or magistrate is designated to preside over the settlement conference, the judge is still permitted to hold informal settlement discussions with the parties. Each party needs to cooperate with the settlement judge so as to conclude within the stipulated time. The decisions become binding once an agreement is reached and signed. The cases continue if no settlement is reached with different judges, as the formerjudge cannot act as a witness. A case evaluation may be requested by the parties. The judge lacks authority to impose a settlement terms. If no settlement is reached, the cases remain or move to litigation track (Law Reform Commission, 2008).
4. **Private Judge**: The method combines elements of natural facilitation and case evaluation. It is also called "Rent-a-Judge". It makes use of retired but not tired judge as the third-party neutral. It provides the parties with the opportunity to test the strength and the weaknesses of their cases. Success or otherwise not minding, the judges' decision, by statue, could be made to have the legal status of real court judgment as it is operated in California and United States. This species is yet to take root in Nigeria. With the high level of corruption in Nigeria, the process might be considered risky with far-reaching implications. Nevertheless, its potential outweighs its risk (Uzoechina, 2008 in Ogaji, 2013).

All enumerated alternative dispute resolution spectra are appropriate in one dispute or the other. ADR practitionersare encouraged to carefully select the type that will be appropriate to specific conflict after a critical analysis of the said conflict, for positive and purposeful outcome.

Strengths of Alternative Dispute Resolution

The practice of ADR is gaining momentum every day,which is due to the widespread advantages it has over litigation. The following are highlighted as possible advantages over litigation.

(1) Alternative Dispute Resolution as the name implies serves as alternative to the one-way dispute resolution (litigation) which is mono-track and alien to our culture. It has become an option to reckon with. It has started and will continue to play the role of viable alternative to litigation as practitioner and parties continue to be familiar with the process.

(2) The ADR as a multi-track in nature provides disputants with variety of choices, to either employ one of the choices or in some instances combine various mechanism of ADR in resolution of their disputes. There is hybrid model which is the combination of mediation and arbitration as a mechanism of conflict resolution. It has delivered litigants from the clutches of limitation of mono service offered by litigation.

(3) ADR is friendly in nature as it rebuilds already damaged relationship. It is said to improve and sustain relationship among parties and solution is jointly fashioned and not imposed. As a result of this, better understanding among parties is fostered and existing relationships continue to develop. There is no fear of 'wicked enemy' phenomenon from one party to the other as the atmosphere is friendly to both parties.

(4) ADR has obviously assisted in decongesting the civil cases in Courts by reducing the number of cases taken to court which the court would have spent months or years before conclusion is reached. It has created structures and robust institutions responsive to quick resolution of conflict.

(5) As a result of being collaboratively determined, it generates good results. Additionally, it is mutually beneficial; "no victor, no vanquish" In most cases, the parties reach an amicable agreement where everyone involved gains from the conflict.

(6) It supports attempts to modernize the judiciary. It gives the user access to alternative means of resolving their dispute and obtaining a settlement, allowing them to circumvent inefficient and/or overburdened legal systems. By avoiding the overworked or ineffective judicial system, it shortens the time it takes for conflicts to be resolved.

(7) It removes the burden associated with finding an advocate (lawyer) to represent the parties. In litigation, lawyer is an essential and compulsory ingredient for the disputants while ADR saves parties from such; advocacy is not necessary in ADR as it is in litigation. It increases access to justice for poor litigants. Disadvantaged users have access to equity and justice through ADR due to its cost effectiveness and its accessibility.

(8) It maintains parties' privacy as against litigation. There are litigants who want their cases to be settled in private without broadcast, this process will be of help to such.

(9) Parties Participation in the process is direct and great. It provides the parties the opportunity to decide their own affairs under the assistance of a neutral third person who will only supervise the process. Unlike litigation which is run by lawyers, judges and state. The parties develop the process and as well define the component of the agreements. The decision belongs to the parties and therefore will be committed to maintain it.

Challenges of Alternative Dispute Resolution

Despite the overwhelming benefits of ADR over litigation, critics nevertheless discovered several flaws in the procedure, few of the loopholes are listed below:

1) The non-binding nature of ADR sometimes renders the efforts of settling outside the court worthless. Due to non-binding position, there is no guarantee of resolution where and when any of the parties or both back out of the process. Hence, this has made the process unserious engagement.
2) There is inadequate awareness on the existence of ADR for patronage by Clients. Effective public relation is missing in terms of educating the public on the dynamic of ADR. Majority of the citizen did not even know the meaning of Alternative Dispute Resolution not to talk of its existence and practice.
3) It appears that litigation lawyers believe ADR poses a threat to their line of work. Lawyers generally believe that their revenue streams may be impacted if cases are frequently referred to ADR services. This will undoubtedly have an impact on the continuation, growth, and success of ADR activities in the modern day.
4) The newness of ADR as a distinct field of study coupled with shortage of qualified experts in the profession, leading the professionto be occupied by mainly legal practitioner, and as a sub system under legal discipline made it lose its identity and uniqueness. The recent emergence of Peace and Conflict Studies discipline across the globe which focuses on ADR is yet to overcome this impression.
5) Training deficit of thepractitioners poses a challenge. Adedeji (2021c) argued that training deficit is due to shortage of qualified experts in the area. Additionally, the bulk of

practitioners come from the legal profession and conduct their business as though it were a court case.

6) In addition, submission of disputes to ADR process can make litigants with clear legal rights lose his/her rights, while litigants without legal rights benefit immenselythrough ADR outcome. Hence, the process can be concluded to encourage unfairness.

In sum, the modern ADR is structured to ensure its dynamicity has ability to improve as researches are conducted to discover the shortcomings and improve on them. Its advantages are much wider over litigation to resolve the dynamic nature of twenty first century conflict.

CONCLUSION

The failure of formal court system (litigation) to deliver effective, timely and user-friendly justice has paved way for the emergence of Alternative Dispute Resolution mechanism across the world. The study maintained that the resolution of dispute through ADR is operated on the basis of compromise towards win-win as against win-lose mentality of litigation. The study also affirmed that the introduction of ADR has brought significant reduction of the cases in the docket of court and may still bring better results if international organisations coupled with various governments across the globe sustain and strengthen the process through global and national recognition.

The future of Alternative Dispute Resolution is here with clear mandate of promoting reconciliation, encourage and facilitate amicable settlement of disputes between or among parties.However, if ADR scheme is to fulfil its mandate of promoting early and cost-effective settlement of dispute, there must be a radical approach by international organisations coupled with its member states to institute policies that will promote Alternative Dispute Resolution mechanisms as a means of settlement of dispute globally and nationally.

RECOMMENDATIONS

The identified challenges provide a clear picture of some important issues to be addressed toward efficient practice of Alternative Dispute Resolution. A number of recommendations are therefore provided in line with identified challenges.

1) Based on the issues addressed in this study, it is recommendedthat all ADR mechanisms voluntary or involuntary entered into by the parties be compulsorily made binding on the said disputants for effective engagement. This will serve as a check and balances for the unserious parties who intend to make the process an unimportant undertaking.
2) Greater publicity of the existence and activities of Alternative Dispute Resolution mechanism is important for improved awareness of its accomplishments in resolving disputes. Effective public relation is needed in terms of educating the public on the dynamism of ADR. International community coupled with various governments and practitioners also need to design a communication strategy to educate and bring awareness to the public.
3) There is need to orientate a number of lawyers who perceive Alternative Dispute Resolution as a treat to their profession and their revenue streams. The benefit derived from practice of ADR should be made known to them and how they can practice ADR consecutively with their legal profession.
4) There is need to embrace the discipline of Peace and Conflict Studies where Alternative Dispute Resolution is adequately taught. The product of the discipline should be placed in the position of authority in both public and private establishment. Policy that hinders non-lawyers ADR practitioners should be abolished.
5) The need for constant training and seminar/conference to meet up with the global best ADR practices and the dynamic nature of twenty-first century disputes for the staff, parties and the general populace is fundamental to the growth of the process. Practitioners from legal background need to be exposed to the ethics and the principles of ADR. The need to move from culture of opposition to culture of consensus becomes a necessity for lawyer-mediator. Through this, ADR will redeem its lost identity, recognition and uniqueness in conflict resolution process.

REFERENCES

1. Abdul-Rafiu, A. (2015). The Institution and Challenges of Alternative Dispute Resolution (ADR) inWest Africa: The Case of Ghana. A Dissertation Submitted to the University of Ghana, Legion, in Partial Fulfillment of the Requirement for the Award of the Master of Arts Degree in International Affairs

2. Adedeji, A. O. (2021a). Relevance of Citizens' Mediation Centre in Resolution of Landlord-Tenant Dispute, in Lagos State, Nigeria. Asian Journal of Management Entrepreneurship and Social Science, ISSN: 2808-7399, Vol: 01 Issue 01.
3. Adedeji, A. O. (2021b). The Role and Impact of Third-Party Mediator in an Organisation in the21st Century Nigeria. World Bulletin of Social Sciences (WBSS) Vol. 4, November - 2021 ISSN: 2749-361X.
4. Adedeji, A. O. (2021c). Impact of Training on Workers' Effectiveness and Efficiency in Achieving Organisational Goal in Nigeria. In S. Mittal and N. K. Singh (Eds.), Recent Trends in Management & Social Sciences (Vol. 2), pg.40-50,Weser Books, Zittau, Germany.
5. Adedeji, A. O. (2022). Impact of Public Complaints Commission as a Viable Alternative DisputeResolution Mechanism in the Administration of Justice in Nigeria. Journal of Legal Subjects; ISSN: 2815-097X. Vol. 03, No. 01.
6. Adekoya, F. (2013). "ADR and the Future of Legal Practice" Being Address at Ilesha Branch LawWeek Awards Luncheon Held On 28th November, At Kings Event Centre
7. Aina, K. (2004). ADR and the Relationship with the Court Process: Paper Delivered at NigeriaBar Association (NBA) Annual General/Delegate Conference, Abuja
8. Ayinla, L.A. and Adejare, E. O. (2017). Espousing ADR: The Philosophies and Its Perpetual Significance in Nigeria. Current Law Journal, Malasia: 1 LNS (A) xiv, 1-31.
9. Barrett A (2004). History of Alternative Dispute Resolution (Jossey-Bass San Francisco)
10. Brahm, E and Ouellet, J. (2003)." Designing New Dispute Resolution Systems" in Guy Burgessand Heidi Burgess (Eds.) Beyond Intractability. Conflict Transformation Consortium, University of Colorado, Boulder.
11. Carey (2004). Expert Determination - Some Practical Issues. 2 Journal of Civil Practice andProcedureDepartment of Justice (2004). "Attorney- General's Justice Statement "New Directions for the Victorian Justice System 2004–2014, Department of Justice Victoria, 33.
12. Goldberg, S.B.; Sander, F. E. A.; and Rogers, N.H. (1992). Dispute Resolution; Negotiation, Mediation, and Other Process, Boston, MASS; Little Brown
13. Gurjar, M.S. and Singh, C. (2024). The Significance of Alternative Dispute Resolution inFacilitating Justice Administration, International Journal of Legal Studies (IJLS), 1(1), pp.1-12

14. History of Arbitration (2005). A History of Arbitration in Ireland. The Dublin International Arbitration Centre, www.dublinarbitration.
15. Ipaye, O.A. (2016). "Understanding and Application of Alternative Dispute Resolution (ADR) Systemin the Magistrates Courts" Paper Delivered at the Training Workshop for Newly Appointed Magistrates Organized by the National Judicial Institute (NJI) Abuja FCT Held 11th - 13th July at the Andrews OtutuObaseki Auditorium.
16. Islam, M. S. (2011). Efficiency and Effectiveness of Alternative Dispute Resolution Schemes towards the Promotion of Access to Justice in Bangladesh. International Islamic University Chittagong Studies, 8, 95-112. https://doi.org/10.3329/iiucs.v8i0.20405
17. Jerome T. B. and Joseph B. (2004). A History of Alternative Dispute Resolution: The Story of a Political, Social, and Cultural Movement. (San Francisco, Calif.: Jossey-Bass,). ADR "Alternative Dispute Resolution". Retrieved: www.sparcnigeria.com/SJGI.
18. Kisi, K. P., Lee, N., Kayastha, R., and Kovel, J. (2020). Alternative Dispute Resolution Practicesin International Road Construction Contracts. Journal of Legal Affairs and Dispute Resolution in Engineering and Construction, 12(2), 04520001.
19. Kruse, K. R. (2004). Learning From Practice: What ADR Needs From a Theory of JusticeNevada Law Journal, Vol. 5
20. Kutesa, S.K. (2009). "Peace and Conflict Resolution in Africa" A Paper presented By Hon. Ministerof Foreign Affairs; Republic of Uganda (June), JICA, Tokyo, Japan
21. Law Reform Commission (LRC) (2008). Alternative Dispute Resolution. Consultation Paper 1393 - 3140 LRC, First Published July
22. Limbury (2005). Med-Arb, Arb-Med, Neg-Arb and ODR. A Paper Presented to the New South WalesChapter of the Institute of Arbitrators and Mediators Australia (Sydney, 03/08).
23. Lupica, L. R. and Hudson, L. (2023). "Addressing the Failures of the U.S. Civil Legal System,"Roger Williams University Law Review: Vol. 28 (2), Article 3.
24. National Alternative Dispute Resolution Advisory Council (NADRAC) (2006). Legislating forAlternative Dispute Resolution- A Guide for Government Policy-Maker and Legal Drafters
25. Nelson (2001). Adapting Alternative Dispute Resolution to Different Cultures (Dec 1). Available athttp://www.gowlings.com/resources/publications.asp
26. Ogaji, O.J. (2013). The Viability of Applying Alternative Dispute Resolution Processes in theNiger Delta Conflict. A Thesis Submitted to the School of Law, University of Warwick,

Coventry, United Kingdom in Partial Fulfilment of the Requirements for the Award of Doctor ofPhilosophy Degree in Law

27. Okorie, C. K. (2024). Alternative Dispute Resolution in Nigeria: Issues and Challenges.Nigerian Journal of Legal Studies
28. Olaoba, O. B. (2002). Yoruba Legal Culture. Ibadan: FOP Press
29. Onyema, E. (2013). The Multi-Door Courthouse (MDC) Scheme in Nigeria: A Case Study of theLagos Multi-Door Courthouse (LMDC), Apogee Journal of Business, Property and Constitutional Law, 2(7).
30. Onyema, E. and Odibo, M. (2017). How Alternative Dispute Resolution Made a Comeback in Nigeria'sCourts. Africa Research Institute, June
31. Roy, C. (2024). Alternative dispute resolution and its mechanism: A critical analysis in the lightof access to justice in India. International Journal of Criminal, Common and Statutory Law; Vol. 4 (1): 25-30.
32. Rubinson, R. (2004). Client Counseling, Mediation and Alternative Narratives of DisputeResolution, 10 Clinical L. Rev. 833, 851.
33. Sourdin, T., Li, B., and McNamara, D. M. (2020). Court Innovations and Access to Justice in Times of Crisis. Health Policy and Technology, 9(4), 447-453.
34. Tan, K.Y.L. (2014). Singapore's Judicial System. In: J.R. Yeh and W.C. Chang (eds.), AsianCourts in Context. Cambridge University Press, 228-266.
35. United Nations General Assembly (UNGA (2002). UNCITRAL Model Law on InternationalCommercial Conciliation with Guide to Enactment and Use (UNGA). Available at www.uncitral.org.
36. Ury, W, Bret, J. and Goldberg, S. (1988). Getting Disputes Resolved: Designing Systems to Cut theCosts of Conflict, (London: Jossey-Bass Publishers).
37. Vorrasi, K. M. (2004). England's Reform to Alleviate the Problems of Civil Process: AComparison of Judicial Case Management in England and the United States. Journal of Legislation, Vol. 30 (2)
38. Walls (2007). Collaborative Law A New and Better Way, Sunday Business Post 25 March.
39. Whalen-Bridge, H. (2017). Court Backlogs: Balancing Efficiency and Justice in Singapore.OñatiSocio-legal Series, Vol.7 (4), 879-894.