Frontline Bar Journal (FLB), Volume 1 Number 3, 2023
A Publication of the Nigerian Bar Association, Aguata Branch, Anambra State, Nigeria

# ALTERNATIVE DISPUTE RESOLUTION AND ADMINISTRATION OF CRIMINAL JUSTICE: ISSUES AND CHALLENGES*

**Abstract**

*The common belief is that alternative dispute resolution cannot resolve criminal cases, especially serious criminal cases. Owing to the fact that crime is seen as an offence against the state and the laws of the state are against concealment and compoundment of crimes, the belief is that alternative dispute resolution is inappropriate for the resolution of such matters because criminals must be prosecuted in the state courts. This paper analysed the concept of alternative dispute resolution and administration of criminal justice in Nigeria; its issues and challenges. Nigerian courts are crowded with criminal cases which resulted in delaying of delivering of justice. This constitutes a great challenge in the administration of criminal justice. The quest to provide solution to this problem necessitated this paper. The paper also determined whether alternative dispute resolution is appropriate and relevant to the administration of criminal Justice: whether current jurisprudence that alternative dispute resolution does not apply to criminal disputes does not need a rethink?; whether alternative dispute resolution can co-exist with mainstream criminal justice system? This paper also presupposed the use of alternative dispute resolution and in the administration of criminal justice and took the position that alternative dispute resolution cannot take the place of the normal criminal trial but only a supplement that can go a long way in reducing the problems of the criminal justice system in the administration of justice. The thesis further articulated alternative dispute resolution mechanisms generally in contradistinction to litigation as a means of resolving disputes. Criminal justice system in Nigeria lies in the proper integration of alternative dispute resolution into the justice delivery system. The paper resolved that alternative dispute resolution could be applied in the criminal justice system for the benefit of all Nigerians and concluded that in justice system, there is need for the use and application of alternative dispute resolution as the future of the Nigerian administration of justice. It recommended majorly a systemic and holistic integration of alternative dispute resolution into the mainstream of criminal justice system. Alternative dispute resolution is one sure way of strengthening Nigeria's criminal justice system.*

## Introduction

Administration of criminal justice is a living subject. Nigeria today is being confronted with crime problem on daily bases. The media is awash with denigrate and deplorable situation of criminal justice system in Nigeria.[1] The case load of the courts is simply overwhelming. The inordinate delay in the criminal trial process is to put it mildly, frustrating. The prisons are in no better condition. Prison facilities built in days of the colonial masters are still serving as correction centres with little or no improvements on those facilities.[2] Most prisons in Nigeria today are holding inmates twice or thrice their built capacity, with the greater number

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[1]Grayson .R., '*Victims in the American Criminal Justice*', *www.unafei.or.jp/english/pdf/rs/No56_19VE_Cartwright.pdf*, Assessed on 2/2/18.
[2]*Ibid.*

consisting of awaiting trial detainees spend more time in incarceration than they would have spent if they were properly sentenced in a competent court. This is not counting the costs of maintaining these centres to government because the costs bite deep into government treasury. The police authorities may even be in a worse situation. The sign, *police is your friend* are placed at most police stations across the country, yet, the police is anything but a friend to the ordinary citizen of this country. Bribery, corruption and inefficiency remain the hallmarks of the Nigeria police today, leading to a total travesty of justice in a vast majority of cases.[3]

The Nigerian administration of justice are complex and need drastic and pragmatic approach if Nigeria is to achieve a meaningful and sustainable administration of criminal justice.[4]Where alternative dispute resolution used in criminal trials is achieved in the society, the victim will get to recognize that there is a distinctive need which needs one to express feelings and ask questions of why the offender committed the offence. Such feelings, concerns and suffering acknowledged and how the harm done by the incident might be repaired. The offender gets to know that crime hurts victims, communities and offenders, this creates an obligation to make amends. Through alternative dispute resolution, the offender may take responsibility for action done, participate in repairing the harm and ask for assistance from the society, and to the community, alternative dispute resolution will enlighten the community to know that crime affects everyone, and there is need to work together to repair the harm and create safer communities.

The relevance of the justice system in improving the lives of the down-trodden and the vulnerable groups in ensuring that they receive justice within the system cannot be over-emphasized. Any state that fails to provide its citizens with the protection they need from crime and access to justice hinders sustainable development and economic growth.[5]There is thus a frantic search for appropriate alternatives or supplements to the current administration of criminal justice system that would be able to ensure easy, speedy, fair and less access to justice in the country.[6]

This is the context of this paper. It is not only a paradox but it also bothers on the absurd and hypocrisy that while it is inherent in peoples way of life to resolve disputes amicably, even when human life is involved, legislation and institutionalized agencies of government, in this wise, the police, courts and prisons point to the contrary. There is thus need for synergy between the law and practice. It is in this context that Alternative Dispute Resolution and Administration of Criminal Justice is presented, not strictly as an alternative but rather as a supplement to criminal Justice System in Nigeria.

The philosophy of the community which expects prosecution and trial outside the area of minor offences appears to be the pervading influence over the Nigerian criminal justice system.[7] Most researchers believe that alternative dispute resolution is an impossibility in criminal matters.[8]

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[3]*Ibid.*
[4] This was re-echoed at the Nigerian Bar Association first criminal justice reform conference held at the Nicon Luxury Hotel, Abuja between 17 – 20 July, 2011.
[5] Ayorinde, B., *A.,'Reformatory Approach to the Criminal Justice System in Nigeria',available at www.mondaq.com/x/293894/Public+Order/A+Reformatory+Approach+To+The.,Assessed on 4th April, 2018.*
[6]Ogbuabor .A. C.*, et al., 'Using Alternative Dispute Resolution (ADR) in the Criminal Justice System: Comparative Perspectives',* available at *http://academicexcellencesociety.com/using-alternative-dispute-resolution-adr-in-the-criminal-justic.pdf*, Assessed on 16/4/18.
[7]*Ibid*
[8]*Ibid.*

There is a believe that alternative dispute resolution does not work in criminal matters, the State has an interest in ensuring that crime is appropriately dealt with.[9]

This paper takes a survey of the practice of alternative dispute resolution in various legal systems with a view to establishing the relevance or otherwise of Alternative Dispute Resolution and administration of criminal justice. It is anchored on positivist theory powered by realist theory of law. A challenge or compulsion to look at various legal cultures or traditions served as a guide in making the choice of the countries for the purposes of this comparative analysis. Thus, examples were taken not only from the common law world, but also, from the civil law inquisitorial based legal systems.

It is opined that Alternative Dispute Resolution is indeed an entrenched part of the Nigerian criminal justice system, primarily because it is indigenous to the various peoples of the Nigerian State. The different peoples, that is, ethnicities that formed Nigeria had forms of the modern Alternative Dispute Resolution long before the Nigerian State came into existence.[10] It appears that in Nigeria, Alternative Dispute Resolution is working in the criminal justice system but behind a camouflage of discouraging legislative language.

**Administration of Justice**

The courts as the last hope of the ordinary man remain the centre of attraction whenever administration of justice is called to question.[11] Indeed much of the respect an individual has for law is tied to the expectation of justice whenever there is conflict

Administration of justice as the process of administering laws with the ultimate objective of doing justice to all manner of persons; without fear or favour, affection or ill will. It is also seen as the aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with law.[12]

**Criminal Justice System**

Criminal justice system is the machinery through which the criminal, or someone suspected to have committed a crime, is processed, and subsequently disposed. The criminal justice system is responsible for the regulation and control of criminal behaviour.[13]

It is said that the criminal justice system is responsible for the regulation and control of criminal behaviour, it is valuable in two ways: firstly, that the system is an instrument of practical purposes, accountable for the efficient and effective reduction of crime largely through distinct mechanisms – deterrence, incapacitation and rehabilitation. Secondly, the system is also an instrument of justice, as a means of holding criminals accountable for their crimes, and simultaneously protecting their constitutional rights, which means that it is designed to produce justice.[14]

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[9] *Ibid.*
[10] *Ibid.,* 6.

[11] Nnabue U.S.F., *op. cit.,* 287.
[12] *Ibid* , 288 - 290.
[13] Dambazau A.B., *Criminology and Criminal Justice*., 2nd ed, Kaduna, Nigerian Defence Academy Press, 2007, 176.
[14] *Ibid,* 176-177.

The criminal justice system envisages at least three components, *viz*: the law enforcement, judicial process and reformatory institutions. It is defined as the collective institutions through which the accused offender passes until the accusations have been disposed of or the assessed punishment concluded.[15] It is also seen as loose federation of agencies separate wells and each a professional unto itself.[16]

**Plea Bargaining**

Plea bargain is also seen as a procedure within a criminal justice system whereby prosecutors and defendants negotiate a plea and dispose of a case before trial. It is understood to serve the interest of judicial economy, although it is pursued to secure the corporation of defendants to serve as witnesses in other critical cases in exchange for a bargain as to criminal charges.[17] There are basically different types of plea bargain – Charge bargain occurs in a situation where an accused person is allowed to plead guilty to a lesser charge or to only some of the charges that have been filed against him. In other words, charge bargain involves offering reduction of the charges, the dismissal of one or more of the charges in exchange for the guilty plea.[18] It may be agreed that the accused pleads guilty to two in exchange for withdrawal of the remaining three in a five-count charge.[19] A sentence bargain occurs when an accused is told in advance what his sentence will be if he pleads guilty. This can help a prosecutor obtain a conviction if for example an accused is facing serious charges and the accused is afraid of being hit with the maximum sentence. Ideally, sentence bargains can only be granted if they are approved by the trial judge.[20] Fact bargain though not popular, occurs where the prosecutor and the accused have an understanding or agree on facts to be presented to the court.[21]

It follows from the above definitions that plea bargain is a sort of negotiated settlement that comes in the form of concessional compromise. Such compromise is indeed, an outcome of a *quid pro quo* agreement between a prosecutor and an accused person whereby the accused person pleads guilty to a lesser offence than he or she would ordinarily have been charged with by the prosecutor.[22] The result of this guilty plea is that the accused person faces a much lesser punishment or conviction than would ordinarily have been imposed had conviction been secured by the prosecutor after going through the whole hog of prosecution; while on the other hand, the prosecutor and the court are saved the time and resources that would have been expanded in proving the guilt of the accused beyond reasonable doubt as required by the law of evidence.[23]

**Alternative Dispute Resolution**

The term alternative dispute resolution is used to describe the methods, procedures and techniques used to resolve disputes either as alternative to courts' mechanism of resolving

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[15]New D.J, *Introduction to Criminal Justice,* New York, Leppircott,1978, 3. Available at www.thenigerialawyer.com/restorative-justice-a-panacea-to-crime-prevention-in-nigeria. Assessed on 12/06/2018.
[16]*Ibid.*
[17]Okorie C.K, Plea Bargain - A Clog in the Fight Against Corruption in Nigeria., 2018, vol. I, No. 1, *Abia State University Law Review*, 68.
[18]*Ibid,* 68-69.
[19]*Ibid.*
[20]*Ibid.*
[21]*Ibid.*
[22]Ilegbune, T.O. Plea Bargain and the Prosecution of Corruption Cases in Nigeria, Chukwumaeze, U.U, *et al.*, *op. cit.,* 498.
[23]*Ibid.*

disputes or as supplementary mechanisms.[24] Alternative dispute resolution is an umbrella term referring to other methods which parties to a dispute may adopt as opposed to litigation, to reach an amicable settlement of their differences. Alternative dispute resolution connotes any means of settling disputes outside of the court room. It typically involves the process and techniques of resolving disputes outside of judicial process.[25]

Alternative dispute resolution and the judicial process are not mutually exclusive even if they are alternatives. Once viewed from the perspective that alternative dispute resolution refers to processes outside the normal or traditional litigation process or procedure and that these processes or procedure can be adopted by the court itself, it becomes self evident that alternative dispute resolution and the court are not mutually exclusive. It also becomes evident that alternative dispute resolution includes and connotes arbitration notwithstanding claims to the contrary.[26] Prof. Amadi agrees with this view.[27] Garner's Black's Law Dictionary also subscribes to this view. It defines alternative dispute resolution in the following terms ADR. Alternative dispute resolution is defined as a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.[28]

Alternative dispute resolution is a product of the legal institution to offer the best possible service to its clients. In fact, lawyers are sometimes urged to use alternative dispute resolution. Even though alternative dispute resolution is a private way of resolving dispute, it must work within the broad legal framework in which it operates. This means, the use of alternative dispute resolution to settle disputes must be done within the confines of law. For instance, mediation as alternative dispute resolution process cannot be used to settle serious criminal cases, which would be a subversion of the law and public good.[29]

While arbitration developed as a result of the apparent inability of the courts to satisfy some of the expectations of the people in the resolution of disputes, Alternative dispute resolution arose largely because the process in litigation was becoming unduly expensive and long because the gradual creeping in of judicial technicalities of dispute resolution.[30] Thus, there began a gradual shift of emphasis from the use of arbitration in commercial dispute resolution to a culture of systemic use of mediation and conciliation which are a formalized form of the age-long use of negotiation in the settlement of disputes.[31] The settlement is consensual. The conciliator or mediator only helps the parties to come to a consensus. He does not do adjudication.

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[24]Nwebo O.E., *The Political Economy of Justice in a Developing Society*, Owerri, Versatile Publishers, 2004, 351.

[25]Akanbi M.M, The Use of Alternative Dispute Resolution (ADR) in Settlement of Workplace Disputes in Nigeria, Chukwumaeze, U.U, *et al, Law, Social Justice and Development; A Festschrift for Professor Uba Nnabue*, Owerri, IMSU Press, 2013, 943.

[26]Peters .D., *Alternative Dispute Resolution (ADR) in Nigeria: Principles and Practice, op.cit*., 4.

[27]Amadi G.O.S, *Using Arbitration and ADR in resolving Criminal Cases in Africa: Breaking New Ground, Paper for the poor in Africa,* Kenya, Nairobi publishers, 2007, 24.

[28]Bryan A. Garner, *Black's Law Dictionary*, 8th ed, *op. cit.* 86.

[29]Lechman B.A., *Conflict and Resolution.* Available atwww.google.com/search?q=definitions+of +alternative+dispute+resolution&client. Assessed on 15/04/19.

[30]Orojo, J.O., and Ajomo, M.A., *Arbitration and Conciliation in Nigeria*, Lagos, Mbeyi and Associates Limited, 1999, 6.

[31]*Ibid.*

The common denominators or threads which emerge from the various definitions is that, first, alternative dispute resolution processes provide an alternative to the conventional or traditional courtroom trial of causes and matters. Second parties could resort to any of the alternative dispute resolution processes voluntarily on their own volition or be compelled by a court order or a statute to do so. Third, the intervention of a neutral third party (the neutral or ADR Practitioner) is an essential though not always feature of all the alternative dispute resolution processes.[32]

With these clarifications in mind, alternative dispute resolution in this paper refers to all those processes, means, ways, efforts, techniques, methods and attitudes of resolving disputes aside from normal court litigation process or procedure which enable parties to resolve their disputes in a more meaningful and appropriate, faster, cheaper, more efficient and effective manner either by themselves alone or with the assistance of a neutral third party or sometimes with the assistance of the court, either entirely outside the court system or within the court system. In this wise, alternative dispute resolution would include parties induced alternative dispute resolution, third party interventions and court directed or annexed alternative dispute resolution. It would also include purely consensual processes as well as collaborative – adjudicatory processes in this regard, it would be important to distinguish between alternative dispute resolution and case management techniques.[33]

**Forms of Alternative Dispute Resolution**
**Negotiation**

For Brown and Marriot, negotiation is the way in which individuals communicate with one another in order to arrange their affairs in commerce and everyday life, establishing areas of agreement and reconciling areas of disagreement.[34] Brown and Marriot describes it as the "first among equals"[35] of the dispute resolution processes. Not surprisingly, it has been defined as "the process we use to satisfy our needs when someone else controls what we want".[36] It has been asserted, and we agree, that most disagreements are dealt with in one way or another by negotiation between the principals themselves and relatively few involve legal intercession.[37]

Negotiation according to Morris is a process in which two or more participants attempt to reach a joint decision on matters of common concern in situations where they are in actual or potential disagreement or conflict.[38] According to Miller,[39]negotiation involves communication usually governed by pre-established procedures, between representatives of parties involved in a conflict or dispute. Negotiators according to Morris may use a variety of approaches. One is power negotiation which involves a negotiator's understanding and strategic use of various sources of power to realize a negotiator's bargaining goal. The other is interest based negotiation. In this dimension, attempts are made to attain solutions that meet or satisfy the interest of all the parties. The supposition of interest based negotiation in the view

[32]*Ibid*.
[33]*Ibid.*
[34]Brown and Marriot, *ADR Principles and practice,* London, sweet & Maxwell, 1993, 18.
[35]*Ibid.*
[36]*Ibid.*
[37]*Ibid.*
[38]Onu G., *The Methods of Conflict Resolution and Transformation,* ikejiani-clark, M.ed, Peace Studies and Conflict Resolution in Nigeria, a reader, Spectrum Books Ltd, 2009, 91.
[39]Miller C.A, *A Glossary of Terms and Concepts in Peace and Conflict Studies*, Gera University of Peace, 2003, 25.

of Morris is that a variety of interests or motivations may inspire parties' positions. The purpose of the interest based approach is to meet or satisfy those interests rather than bargain over bargaining positions. This method of negotiation was also called problem solving negotiation, all gain negotiation or value creating negotiation.[40] Negotiation is a direct process of dialogue and discussion taking place between at least two parties who are faced with conflict situation or a dispute. Both parties come up to understand that they have a problem, and both conscious or responsive that by conversation to each other, they can attain a solution to the problem.[41] The objectives of both must be recognized meaningfully and each party's welfare and satisfaction must be accomplished mutually for dispute to be resolved. Negotiation is reputed to be the best, cheap, most economical and most satisfactory way of resolving disputes.[42] Though negotiation is an everyday activity for human beings, parties to it barely identify the fact that they are negotiating but the outcome is generally effective and satisfactory.

**Arbitration**

It typically involves the processes and techniques of resolving disputes outside judicial process.[43] It has also been defined as a procedure for the settlement of disputes, under which the parties agree to be bound by the decision of an arbitrator whose decision is in general, final and legally binding on both parties.[44] It has been further defined as the use of a private tribunal or person to adjudicate a dispute between parties instead of recourse to litigation.

Arbitration was developed for merchants to create a system to resolve the dispute that would inevitably arise from the business and in accordance with industry standards to facilitate relationships among the parties.[45]

Arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both slides in a judicial manner by a person or persons other than a court of competent jurisdiction.[46] The person(s) to whom the dispute or difference is referred to is referred to as the arbitrator or arbitrators, or the arbitral tribunal, and the decision of the arbitrator or arbitral tribunal is referred to as an award.

Arbitration is one of the alternative dispute resolution mechanisms. As a distinct or identifiable system or method of dispute resolution, it has peculiar features or characteristics which serve to distinguish it from other systems of dispute resolution. According of Lew,[47] arbitration has

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[40]Onu G., *op cit.*, 1.
[41]*Ibid.*
[42]Akper P.T, *Promoting the Use of ADR Processes in Court*, National Judicial Institute, All Judges of the Lower Courts 2002, conference, Lagos, MIJ Professionals Publisher, 2004, 148.
[43]*Ibid.,* 943.
[44]Orojo, J.O. and Ajomo M.A. *Law and Practice Of Arbitration and Conciliation in Nigeria*, Mbeyi

Associates, Lagos, 1999, 3.

[45]Ajetunmobi, A.O., *Alternative Dispute Resolution & Arbitration in Nigeria; Law, Theory and Practice*, Lagos, Princeton & Associates Publishing Co. Ltd, 2017, 110. AjetunmobI A.O., *op.cit.*, 110.
[46]Halsbur's Laws of England, 3rd ed; Vol.2, .2, see also *MISR (Nig) Ltd V Oyedele* (1966) 2 A.L.R. Comm 157; Anthony Walton, *Russell on the law of Arbitration,* 1st ed, London, Steven & Sons, 1970, l; Ezejiofor G., *The Law of Arbitration in Nigeria,* Ikeja, Longman, 1997, 3.
[47]Lew J.D., *Applicable Law in International Commercial Arbitration,* New York, Oceana Pub Inc, 1978, 12.

many characteristics. He identified eight of them. First, arbitration is a method by which any dispute can be settled.[48] Second, the dispute is resolved by a third and neutral persons like the arbitration(s) specifically appointed. Third, the arbitrator(s) is empowered to act by virtue of the authority vested in them by the parties' submission to arbitration. In this regard, note must be taken of compulsory arbitration under statutes like statutory arbitration, which constitutes an exception to the rule that arbitration is rooted in the agreement of the parties. Fourth, the dispute is expected to be settled in a judicial manner, by giving each party equal opportunity to put forward its case. Fifth, arbitration is a private institution, that is. a private system of adjudication. Sixth, the solution or decision of the arbitrator (s) is final and conclusive and puts an end to the party's dispute. Seventh, the award of the arbitrator(s) binds the parties by virtue of their implied undertaking when agreeing to arbitration that they will accept and voluntarily give effect to the arbitrator(s) decision. Eight, the arbitrator proceedings and award are totally independent of the state; the court will only interfere and even then, strictly within the confines of its *lexfori* to give efficacy to the arbitration agreement, to regulate the arbitration proceedings or give effect to the award where it has not voluntarily been carried out by the parties.[49]

Generally speaking, there are two types of arbitration and they are binding arbitration and non-binding arbitration. In binding arbitration, the disputants select a third party neutral that has requisite expertise in the area of dispute and voluntarily submit to him to resolve their dispute and agree to be bound by the decision. Any arbitral award in binding arbitration is final and only in very rare cases will an appeal lie. Conversely, the non-binding arbitration has the same features as the binding arbitration except that the decision of the neutral third party is not binding on the disputants. Therefore, if any of the disputants is dissatisfied either with the proceedings or its outcome, an appeal can be lodged to the court. It is clearly evident from the above that arbitration has been introduced to overcome some of the difficulties encountered in litigation. Arbitration still empowers a third party to decide the outcome of a dispute, although it is more likely that the arbitrator will have subject area expertise, which for some , makes decision more palatable. The decision made according to the relevant law is binding and not subject to any appeal. Arbitration was developed for the merchants to create a system to resolve the dispute that would inevitably arise from business and in accordance with industry standards to facilitate relationships among the parties.[50]

## Conciliation

Conciliation as a method of settlement of dispute is less than arbitration. It has been defined in various ways by different writers. According to J.G. Merrills it is "a method for the settlement of international dispute of any nature according to which a commission set up by the parties either on a permanent bases to deal with a dispute proceeds to the impartial examination of the dispute and attempts to define the terms of settlement susceptible of being accepted by them or of affording the parties, with a view to its settlement, such aid as they may have requested.[51]

Conciliation is an informed processes in which the third party strives to bring the parties on an agreement by reducing tensions, interpreting issues, improving communications, exploring possible or probable solutions, facilitating a negotiated settlement and making available

[48]*Ibid.*
[49]*Ibid.*
[50]Ajetunmobi, A.O., *Alternative Dispute Resolution and Arbitration in Nigeria*: *Law Theory and Practice,* Lagos, Princeton & Associates Publishing Co. Ltd, 2017, 110.
[51]Merrils, J.G., *International Dispute Settlement*, London, Cambridge University Press, 1993 .59

practical assistance either informally or in a larger step, through formal mediations.[52] This method of dispute resolution is frequently utilized in volatile conflicts and in disputes where the disputants to agreement are incapable, reluctant and averred to come to the negotiation g table to resolve their differences. This process is an ancient method of dispute resolution and familiar particularly in traditional societies.

**Mediation**

Mediation is seen as an informal process in which a trained mediator assists the parties to reach a negotiated resolution of an issue. It has been defined by the Black's Law Dictionary as a private informal dispute resolution process in which a neutral third person, the mediator helps disputing parties to reach an agreement[53] . It has been also described as a structured process in which the mediator assists the disputants to reach, a negotiated settlement of their differences[54] .

Mediation is a process in which an impartial third party assists disputants resolve a dispute or plan a transaction, but does not have the power to impose a binding solution. Fisher, Ury and Patton[55] identified variety of processes mediators can utilize to achieve results. These include interest-based approaches and rights-based approaches. Some mediators are facilitative, providing only process assistance for negotiation and using interest-based approaches. According to Miller,[56] mediation is a voluntary, informal, non-binding process undertaken by an external party that fosters or encourages the settlement of differences or demands between directly interested parties. Mediation as an essential component of alternative dispute resolution, attempts to cover the gap between resoling one's own dispute and surrendering the power to do so to others.[57] The summary goal of mediation is to produce a settlement solution, which is optimally satisfactory to both parties. Apart from being a structured process, mediation is also a facilitative process that endevours to surmount all obstacles to successful negotiation. Therefore, when disputants are unsuccessful in the process of using negotiation as a method to resolve the dispute and are not disposed to any of the adversarial procedure, the proper step to adopt is to call the intervention of a neutral third party to guide them to a mediated settlement.[58]

Mediation is an advanced form of negotiation. It is negotiating with the assistance of a neutral third party, whether invited by a party or the parties or by himself.[59] Mediation is negotiation carried out with the assistance of third party.[60] Like negotiation, mediation is a voluntary process that offers disputants meaningful and creative solution of their dispute. Mediation often

[52]Kanowitz L., *Cases and Materials on Alternative Dispute Resolution*, American case series, St, Paul Minnesota, West Publishing Co. Ltd 1985, 28.
[53]Garner Bryann .A., *The Blacks Law Dictionary*, Seventh Edition. West Group

Publishers, U.S.A , 1999, 981.

[54]Susskind *et al*, *Breaking the impasse – consensual Approach to Resolving Public Disputes*, New York,

Basic Book Publication, 1998, 58.

[55]Akper P.T., *Op. Cit.*, 148.
[56]Onu, G., *op.cit.,* 92.
[57]AjetunmobI A.O., *op.cit.*, 86.
[58]Dele P., *What is ADR ? op. cit,* 10.
[59]Dele P., *ADR in Vinria Principles and Practice op. cit.,* 97.
[60]Goldberg .S. & Regers. *op. cit.,* 103.

occurs when negotiation has failed or there is an impasse. In that case, the assistance of a neutral third party may just be what is required to take the parties out of the impasse and persuade them to themselves. The mediator does not render a decision. According to Goldberg, Roger & Sander, the mediator, in contrast to the arbitrator or judge, has no power to impose an outcome on disputing parties.[61] This is probably why mediation has been defined as a structured process in which the mediator assists the disputants to reach negotiated settlement of their difference.[62] Mediation is usually a voluntary process that results in a signed agreement which defines the future behavior of the parties. The mediator uses a variety of skills and techniques to help the parties reach a settlement but is not empowered to render a decision.[63]

**Customary Arbitration**

Customary arbitration is an arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either chiefs or elders of the community. It is uniquely distinct from arbitration under the statute.[64]

At the center of customary arbitration is the settlement of disputes by one or more arbiters in a community in accordance to the customs of the society with the aim of retaining the relationship between the parties and peace in the community.[65]

Customary arbitration is an exception to *section 1 (1)* of the Arbitration and Conciliation Act which states that every arbitration agreement shall be in writing because under the customary arbitration, the agreement to arbitrate is usually oral and can also be implied by conduct, and the proceedings too are usually oral but may be reduced to writing depending on the arbitrator(s).[66]

The supreme court in *Ohiare v Akabueze*[67] while adopting the definition of customary arbitration proffered by the same court in the case of *Agu v Ikewibe,*[68]stated its own definition of customary arbitration when it stated that customary arbitration is an arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either chiefs or elders of their communities and the agreement to be bound by such decision and freedom to resile when unfavourable.

The constitutional legitimacy of customary arbitration is based on several provisions of the constitution that recognize customary law as an existing law. These include the creation of a customary court of Appeal in the states and Federal capital territory. The provision of *section 35* of arbitration and conciliation Act implies that customary arbitration is not prohibited by the operation of the act.[69]

One of the major objective of customary arbitration is that peace and harmony should be restored between the parties through compromise and reparation for the wrong committed.[70] It

[61]*Ibid.*

[62]Kanowitz L, *op. cit.,* 29.

[63]*Ibid.*

[64]Akoni A., *Arbitration.* Available at www.thearbitrationhub.org/customary-arbitration-adr. Assessed on 15/12/2018.

[65]*Ibid.*

[66]*Ibid.*

[67](1992) 2 NWLR( Pt. 221) 7.

[68](1991) 3 NWLR (Pt. 180) 385 at p. 407.

[69]Akoni A., *op. cit.*

[70]Sokefun .J.A.. and lawal .S. *Customary Arbitration, International Arbitration and the need for Lex*

is apt to note also that beyond the restoration of peace and harmony; customary arbitration looks to maintain a good relationship even after the award of the arbitration panel has been made in practice, customary dispute settlement mechanism looks beyond the legal right of the parties but considers as essential the relationship likely to prevail between the disputants.

**Multi Door Courthouse**

These are established to enlarge reasons for justice by providing enhanced, timely cost effective and user-friendly access to justice.[71] The procedure for dispute resolution in multi-door court houses are as follows:

The advantages of this approach to dispute resolution include:

1. It narrows down the issues.
2. It reduces the area of uncertainty
3. It is non confrontational.
4. it guarantee speed.
5. It has potential of saving cost.[72]

**Issues of Alternative Dispute Resolution and Administration of Criminal Justice**

Generally, the criminal justice system is comprised of three organs; first is the law enforcement agencies which is primarily the Nigerian Police Force, second is the judiciary on one side and defence counsels on the other side, the last is the prisons.[73] The overall objective of the criminal justice system in Nigeria is not only to punish crimes but also to prevent and control them. The criminal justice system has grown in leaps and bounds over the years although not without some attendant issues. Indeed, the administration of criminal justice in Nigeria is faced with various problems ranging from the congestion of prisons, high cost of litigation, discretionary powers of Courts, unnecessary adjournment and delays. As such, these issues continue to affect the search for criminal justice in Nigeria. Hence, the search for a viable alternative for resolving criminal disputes. However, the major issues are as itemized as follows:

**A. The Nigeria Police Force**

Police agencies are usually saddled with the difficult constitutional task of enforcing laws and the police obligations have not been easy to realize in Nigeria because of the following issues:[74]

1. Lack of Public Co-operation: Public cooperation is the most valuable asset of police organizations in every modern society. This is because criminals live with people in the society and unless informants come up with the useful information concerning the identity of criminals, the police will not be able to perform the expected magic of identifying and arresting criminals.[75]

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*Arbitri*. Available at www.nigerianlawguru.com/customary% 20 Arbitrant. Assessed on 15/12/2018.

[71]Ajogwu F., *Commercial Arbitration in Nigerian law and practice,* 2nd ed, Lagos, Centre for Commercial Law Publications, 2013, 154.

[72]*Ibid.*

[73]Nwafor N. E. and Aduma O. C., Administration of Criminal Justice System in Nigeria and the Applicability of Alternative Dispute Resolution, <*https://journals.unizik.edu.ng/index.php/jcpl/article/view/476/448*>, Assessed on 6 July 2023.

[74]*Ibid*.

[75]*Ibid*.

2. Double Standard: The police is often accused of conniving with criminals. This particular issue is partly responsible for the distrust between the police and members of the public.[76]
3. Corruption: Corruption in the form of exploitation is observed in a wide spectrum of interactions between the police and members of the public. The extortion of money by the police from bus drivers, taxi drivers, okada riders and motorists has become a regular and shameful sight on our roads and streets. There is also official exploitation of victims of crime in police stations. Usually, crime victims are made to provide money with which to buy the writing materials for making their statements and also made to provide money for fuelling police vehicles which would be used for investigating the scenes of the crime. The policemen also complained that promotion in their organization is not based on merit but on favouritism and loyalty to the Inspector General of Police and other high-ranking officers.[77]
4. Planting of Criminal Evidence: This is another problem, almost a tradition of the Nigeria police force. It involves the planting of criminal or incriminating substance within the property of and on the person of suspects in order to arrest or connect the suspect.[78]
5. Police Impersonation/Degree of Force: There are many issues associated with the staff strength of the police force, and the abuse of duty roll call. In recent times, there have been serious cases of impersonation of duty police men or retired officers, who adorn their discarded uniforms and pose as officers.[79]

**B. Issues relating to the Courts**

i. Qualification, experience and integrity of judicial officers: obviously the proper functioning and development of any judicial system depends on the calibre of the personnel appointed to man the courts. Quite apart from requisite academic qualification and experience, it is vital that only persons of high moral standard and integrity are appointed judges and magistrates.

ii. Training of Court Personnel: In the legal profession, as it is with any other profession the desirability of constant learning and on-the-job training cannot be over-emphasized. Judicial officers need constant training by way of courses, seminars, workshops etc. Such training is also important for court registrars, bailiffs, clerks and all others who work in the judiciary.

iii. Discretionary Power of the Court: Another dysfunction of the court as a component of the justice system is the misuse of discretion. Some judges are fond of abuses of the judicial process in the name of using discretion in a case. The wrong use of discretion by a judge could occasion a miscarriage of justice against or in favour of the offender.

iv. Delay in the dispensation of Justice: The problem of delays has rendered the speedy dispensation of criminal justice more of a myth than a reality. The delay in the

[76]*Ibid*.

[77]Onwuchekwe E., 'The Police and the Administration of Criminal Justice System in Nigeria' (2015) <*www.academia.edu*>. Accessed on 6 July 23.

[78]*Ibid*.

[79]Nwafor N. E. and Aduma O. C., Administration of Criminal Justice System in Nigeria and the Applicability of Alternative Dispute Resolution *op. cit.*

administration of criminal justice runs through pre-trial, trial and post-trial of the criminal justice.[80]

### 3. Issues associated with Prisons

One of the major issues associated with prisons especially Nigerian prisons are overcrowding/congestion[81] others include:

i. Onerous and stringent bail conditions: Defendants most often in capital offences upon arraignment get remanded in prisons on the order of the court and in cases where bail is granted, some of the defendants find it extremely difficult to fulfil the conditions of the bail terms so they remain in prison custody pending the perfection of the their bail conditions.[82]

ii. Logistics issue: The Nigerian Prisons are faced with a lot of issues. One of the salient issues which affect access to justice and cause prison congestion is the unavailability of operational vehicles to convey awaiting trial prison inmates to court for their trials. Often experienced is a situation whereby you find criminal cases being mentioned and the prison officials as well as the defendant will be absent in court and when the Prison Authorities are contacted, they claim to have been absent from court as a result of unavailability of operational vehicle to convey inmates to courts for their trial.[83]

iii. Holding charge: Holding charge is a frame up charge, it is improper, unconstitutional and generally used by the police in holding a defendant in custody while they conduct investigation and gather evidence to bring the defendant before the appropriate courts for trial. It has constituted a major source of congestion in Nigerian Prison and a major clog in the administration of criminal justice.[84]

### Challenges of Alternative Dispute Resolution and Administration of Criminal Justice

The challenges that may confront the implementation of alternative dispute resolution in the criminal justice system are:

### Balancing of Rights of Offenders and Victims

The adoption of Alternative Dispute Resolution in the administration of criminal justice is of many benefits but there are challenges encountered in this process. One of the major challenges faced in the contemplation of the use of alternative dispute resolution in a criminal context is the balancing of rights of both offenders and victims. While an attempt to balance rights has been a driving force behind the implementation of such schemes, concern has arisen as to

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[80]*Ibid.*

[81]Akinseye-GeorgeYemi, *Nigerian Prisons: Justice Sector Reform and Human Rights in Nigeria –Centre for Socio-Legal Studies CSLS*, Abuja, CSLS Publishing, 2009, 308 cited in Yekini A O and Salisu M ‘Probation As A Non-Custodial Measure In Nigeria: Making A Case For Adult Probation Service’, *African Journal of Criminology and Justice Studies*, (2013),7 (1) & (2), 101-113.

[82]*Tochukwu v FRN,* (2005), All FWLR, (Pt. 278), 1048 , 1072 –1073, Para C –A. Where it was heldinter alia.... “to ask that a surety must not be lower in rank than that of a Director in the Federal CivilService is to givea condition which is unattainable and therefore negates the court’s decision to grant bail”.

[83]Ndukwe C and Nwuzor C I, ‘Nigerian Prison Service (NPS) and the Challenges of Social Welfare Administration: A Case Study of Abakaliki Prison’ *Journal of Policy and Development Studies*, (2014) 9 (2), 25 cited in Obioha E E, ‘Challenges and Reform in the Nigerian Prison System’*Journal of Social Science*,(2011), 27(2), 102.

[84]*Ibid.*

whether the interests of both parties can be reconciled.[85] In this regard one party always benefits from the process more than the other party.

Power imbalance refers to a situation where one person is in the position of control while the other is in the position of subservience so that there is no likelihood of negotiations on the basis of equality. Thus, it is argued, because the offender committed the offence on his own terms. These critics argued that when mediation is used instead of the formal court interventions, the result can be detrimental for victims, particularly for women in the domestic violence situation. Alternative Dispute Resolution methods do not ensure any balance of power between disputants in the settlement process unlike the public courts where the judge holds the balance in the public interest. The problem of power imbalance is one of the greatest concerns of the opponents of Alternative Dispute Resolution in the criminal justice system.[86] The provision of *section 270* of the Administration of Criminal Justice Act 2015 notwithstanding, these fears are not lessened because plea bargaining is at the mercy of the accused. Where the evidence is sufficient to secure conviction, the plea bargaining cannot take place, because the law does not permit it in such circumstance and where evidence is insufficient, the accused will be less eager to accept plea bargain. Therefore plea bargaining is at the mercy of the accused. It is important to recognise that the alternative dispute resolution processes do not operate in a vacuum, and that power imbalances can easily be seen despite all attempts to minimize them. It is true that alternative dispute resolution is described as a win-win scenario, but this is not often the case because one party always loses something through compromise.

**The Lapse in Statutory Framework**

Meaningful intervention of Alternative Dispute Resolution in the criminal justice system must involve serious amendments to existing laws and the enactment of new ones. The challenge of a statutory scheme in the field of alternative dispute resolution in Nigeria has been well noted in the civil justice sector.[87] The problem appears to be more accentuated in the criminal justice system. However, with the enacting extensive provisions for plea bargaining in the Imo State Administration of Criminal Justice Law 2020 has shown that devising an appropriate legislation is not an insurmountable problem. Save for a few instances where the law provides that the court may allow reconciliation on settlement, or that a prosecution may offer or receive a plea bargain upon fulfillment of certain conditions including that such must be made before the presentation of the evidence of the defense and in any case, the evidence of the prosecution must be insufficient to prove the offence charged beyond reasonable doubt, among other requirements.[88] The implication of the above is that apart from minor offences in the few states where such provisions are made, there is no latitude for Alternative Dispute Resolution, in criminal justice system.

Even with the enactment of the Administration of Criminal Justice Act 2015 and Administration of Criminal Justice Laws of various States in Nigeria, there are still statutory lapses in alternative dispute resolution in administration of criminal justice. The plea

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[85]Melissa Lewis and Les McCrimmon, *'The Role of ADR Processes in the Criminal Justice System: A view from Australia'* (ALRAESA Conference 4-8 September 2005, Imperial Resort Beach Hotel, Entebbe, Uganda).

[86] Goldberg S B *et al*, *Dispute Resolution: Negotiation, Mediation and Other Processes* 2[nd]edn*,* London: Little, Brown and Company 1992, 20.

[87] Ogbuabor C. A. and others, *op.cit.,* 40.

[88]Nwafor N. E. and Aduma O.C., 'Problems of the Administration Of Criminal Justice System in Nigeria and the Applicability of Alternative Dispute Resolution' *Nnamdi Azikiwe University Journal of Commercial and Property Law,* Vol. 7 (2) 2020, 140.

bargaining introduced by ACJA has a unique and striking feature to the effect that plea bargain can only take place where there is insufficient evidence to prove the case beyond reasonable doubt. In other words, where there is sufficient evidence to prove the case beyond reasonable doubt, plea bargaining will not take place.[89] The statute did not provide for other forms of alternative dispute resolution such as victim-offender mediation, family conference groups, healing circles *et cetera*. These forms of alternative dispute resolution mechanisms which are crucial to the mending of relationship between victims and accused persons, should be entrenched in our administration of criminal justice laws.

**Lack of Public Orientation**

One of the major challenges facing the implementation of Alternative Dispute Resolution in the criminal justice system is the problem of orientation and lack of proper knowledge of the process. It has been observed that criminal justice theories can suffer due to lack of acceptance.[90] A good number of Nigerians are used to the retributive justice system and would appear to be impervious or hostile to receiving new ideas. It is deeply embedded in our minds that the only concern of the criminal justice system is punishment of the offender. Thus, for criminal justice to respond more appropriately to criminal behaviour, it must incorporate not only criminal law but principles of restorative justice and alternative dispute resolution based on indigenous jurisprudence and practices of the Nigerian people. There will be need for orientation of the populace on the need for restoration justice in the criminal justice system.[91]

**Privatization of Dispute**

One of the major characteristics of alternative dispute resolution is that it privatizes disputes in contexts in which public policy requires the clear intervention of the state with strict public scrutiny.[92] The confidential nature of Alternative Dispute Resolution leads to perpetuation of violence, for instance, in domestic violence, the criminal justice system has played an important role in publicizing the seriousness of domestic violence and in penetrating the silence that allows the perpetrator to commit the offence. This is one challenge which is encountered in the application of alternative dispute resolution in criminal justice in Nigeria.[93]

**Suspicion of Manipulation in the Alternative Dispute Resolution Process**

There are fears that the private process is too open and porous to manipulation and that the procedural safeguards for an independent and impartial adjudication of criminal matters which are usually found in a normal court trial are largely absent in alternative dispute resolution, continues to pose challenges to the application of Alternative Dispute Resolution in the criminal justice process while this fear may be well founded, it appears to be over-blown because as already stated Alternative Dispute Resolution need not be outside the mainstream of the criminal justice system.[94]

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[89] Okorie C.K, *op.cit.,* 81.

[90] Okafor C., 'African Jurisprudence and Restorative Justice: The Need to Rethink the Philosophical Foundation of Nigerian Criminal Law and Criminal Justice Administration' cited in Nnona CG (ed), *Law, Security and Development: Commemorative Essays of the University of Nigeria Law Faculty* Enugu: Faculty of Law, University of Nigeria, 2013, 247-286.

[91]*Ibid.*

[92]*Ibid.*

[93]*Ibid.*

[94]Nwafor N. E. and Aduma O.C., *op.cit.,* 141.

**Manpower, Infrastructure, Training and Funding**

Notwithstanding the appeal of Alternative Dispute Resolution generally as inexpensive and speedier, its application in the criminal justice system may require huge capital outlay at least at the initial stages. Such funding requirements would go to manpower development and building of infrastructure. There will be need to train and re-train personnel in Alternative Dispute Resolution processes and management techniques.[95]

**Case for introduction of Alternative Dispute Resolution in Administration of Criminal Justice System**

Although alternative dispute resolution processes are most commonly used for commercial purposes in most legal systems of the world, parties could resolve their differences through court litigation or amicably through the mechanism of alternative dispute resolution, that included arbitration, mediation, conciliation, negotiation, and early-neutral evaluation, among others. Its promptness in adjudication is its characteristic hallmark. It is therefore suggested that with the focus on this characteristic (i.e. swiftness, promptness) of alternative dispute resolution processes, it should be adopted or employed into our criminal justice system.[96] This is because Nigerian courts are congested, and litigation involve a lengthy, expensive, formal trial that give litigants little control over their disputes, the venue of the proceedings, the hearing schedule or procedures. The litigation process being adversarial, end in a win-lose situation which destroyed relationships. alternative dispute resolution affords parties opportunity to appoint the arbitrator or mediator, choose the venue, and the procedure.

The application of alternative dispute resolution in criminal justice is the adoption of restorative justice process. Restorative justice heals and restores people, communities, and relationships. Restorative justice holds the power to reform the Nigeria legal system to better community interventions that reduce recidivism, criminality, prison congestion, and an overload of the criminal justice system.[97]

There are arguments both for and against the adoption of Alternative Dispute Resolution in Criminal Justice system. Some justification assume that plea bargaining process will bring about an appropriate, perhaps even an optimal, result as measured by the traditional purpose of criminal prosecution and punishment. Some proponents of plea bargaining argue that the system reflects the likely result of trial system, but at lower cost.[98] Some commentators suggest that a plea-bargaining system empowers defendants by giving them choices regarding the outcome over which they have no control in the trial process.

The second category of justifications rests on notions of efficiency or resource preservation. A few proponents of the system simply accept plea bargaining as inevitable, in the sense that prosecutors and defendants would find a way to bargain even in the absence of an accepted plea bargaining process.[99] Most efficiency-oriented proponents, however, focus on the comparative costs of convictions obtained through pleas and convictions obtained after trial.

[95] *Ibid.*

[96] 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' *Arabian Journal of Business and Management Review (Nigerian Chapter)* 2013, Vol. 1(10), 68.

[97] *Ibid.*

[98] Alamin M.D., Introducing Alternative Dispute Resolution in Criminal Litigation: An Overview, *Journal of Research in Humanities and Social Science,* vol 3, (11 ), (2015), 76.

[99] *Ibid.*

At the most basic level, some justify plea bargaining simply because it saves prosecutorial and judicial resources.[100]
In *FRN v Igbinedion&Ors,[101]* it was held that the advantages of plea bargain include:

> (1) Accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment, and the publicity the trial will involve. (2) The prosecution saves time and expense of a lengthy trial. (3) Both sides are spared the uncertainty of going to trial. (4) The court system is saved the burden of conducting a trial on every crime charged. Per Ogunwumiju, J.C.A.

Lack of prompt and efficient running justice delivery machinery in the Nigerian courts system is often due to frivolous, pointless and frequent postponements and/or adjournments, of cases or disputes, causing delays in judicial/legal proceedings. This has resulted in crippling effects on the prompt and effective administration and delivery of justice in Nigeria. Legal practitioners in Nigeria are not without fault in the contribution to the apparent mess our judicial system has fallen prey to, as a result of varying contributory factors all working against the systems healthy existence. Majority of legal practitioners have one time or the other in practice, employed different legal manoeuvres or strategies with the aim of frustrating or causing delays one way or the other, especially in situations where they find they are ill prepared for the particular case, they realize that to continue seamlessly would birth a judgment not favourable to their party/cause. The delays occasioned by the behaviour and practices of lawyers in the country, happens to be one of the varying causes of congestions and delays experienced in our courts today.

The dearth of competent and efficient hands in our legal system at the different levels has also contributed to the present state of decay in the system. The victims of the criminal justice system are the obvious or noticeable casualties largely affected by the congestion experienced in our courts today, thereby indirectly impinging, impacting and determining, with far reaching effects, the lives, loves and destinies of those concerned.

In arguing a case for alternative dispute resolution in criminal justice, it is posited the process begins before some acts or omissions constituting crimes are consummated, this is called crime prevention and management.[102]Alternative dispute resolution processes can aid the prevention of the criminal conduct. A good number of criminal cases result from failed interpersonal relationship between the parties (victim and offender). Sometimes, people threaten, endanger or harm others or commit crimes out of anger, frustration or perceived injustice in issues relating to their civil relationship. Some family, neighbourhood, social, political and business disputes metamorphose into criminal conduct by the parties.[103]

Sometimes, crimes are committed in the process of getting even with an opponent in a civil relationship or getting a revenge for some wrong done.[104] With the state of Courts congestion; the slow and frustrating pace of civil justice, and the resultant loss of faith in the justice system by some members of the society, people easily try to resolve issues in their relationship by recourse to self-help. In some of such situations, crimes are committed. Effective deployment of alternative dispute resolution in the justice system will substantially reduce the recourse to

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[100]*Ibid.*
[101](2014), LPELR – 22760 (CA), 66, paras. E-F
[102]Uruchi O. B., *op.cit.,* 94.
[103]*Ibid.*
[104]*Ibid.*

criminal conducts in managing civil relationships. Community justice centres and other alternative dispute resolutionprogrammes can be effectively deployed to resolve cases to the satisfaction of the parties, thus preventing the recourse to violent self-help and criminal conduct in managing civil relationships. In addition to reducing crimes and criminality in the society, this will also contribute substantially to courts and prison decongestion.

The provision of *section 127* of Criminal Code creates the offence of compounding felony and is one that cannot be overlooked. However a further argument and submission is that this provision is subject to the constitutional powers of the Attorney General to exercise prosecutorial discretion and enter *nolleprosequi*.[105] The Office of the Attorney General of the Federation and the Office of the Attorney General of a State are respectively provided for in *section 174* and *section 211* of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Attorney General of the Federation is the Chief Law Officer of the Federation, while the Attorney General of a State is the Chief Law Officer of the State. The respective Attorneys General have power to institute, conduct, continue, take over and discontinue criminal proceedings in any court except a court martial. The powers conferred on the Attorney General can be exercised by him in person or through officer of his department.[106] In exercise of his prosecutorial powers, the Attorney General shall have regard to public interest, the interest of justice and the need to prevent abuse of legal process.[107] Nigerian laws recognize the general prosecutorial discretion and in fact gave it a constitutional flavour.

The Attorney General, and by constitutional delegation, his Law Officers, enjoy Supreme prosecutorial powers in all courts in Nigeria, except a court martial. Therefore, the Attorney General in exercise of his constitutional powers may settle or compound any case before or during trials. Apart from the constitutional caution of upholding public interest, interest of justice and the need to prevent abuse of legal process, it is submitted that the Attorney General can resolve any criminal case through alternative dispute resolution processes or mechanisms. This may be by negotiation and settlement with the criminal defendant or preferably by initiating Victim- Offender Mediation.
Presently, there are no clear prosecutorial policies and guidelines for public prosecutions in Nigeria both at Federal and State levels. To maximize alternative dispute resolution in criminal cases through the use of prosecutorial discretion, it is necessary for the Attorney General to promulgate clear prosecutorial policy and guidelines to guide his law officers. This will go a long way to prevent abuse of the powers; ensure protection of public interest, the interest of justice; and the abuse of legal process.

In the process of alternative dispute resolution in criminal litigation, a defendant has options or alternatives open to him in his defense right from the time an allegation of crime is made to the end of the trials. This defendant may admit at the point of investigation or prior to arraignment in court. In a case the criminal defendant is penitent, he may decide to fully cooperate and assist the authorities in the investigation of the crime. This is one of the benefits of alternative dispute

[105] *Section 1(3)* of the CFRN, 1999 (as amended) provides "If any other law is inconsistent with the provisions of this

Constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void."
[106] *Sections 174(3) and 211(3)*; *Adekanye v. FRN*, (2005), All FWLR, (Pt 252), 514.
[107] *Ibid*.

resolution in criminal litigation. A lot of criminal cases will be solved through this process which will lead to the apprehension of a lot of criminals.[108]

There is no known legal inhibition whatsoever where the criminal defendant decides to admit the crime prior to arraignment, even where such admission was done in exception of some relief from the prosecution. An open and unequivocal admission of the crime to the investigating/prosecuting authority prior to arraignment can lead to some legal arrangement between the prosecution and criminal defendant regarding the modalities for disposal of the case. Alternative dispute resolution processes can be effectively deployed in structuring such arrangement.[109]

However, where a case is not settled at the preliminary stage, alternative dispute resolution processes may still be deployed during trial. Nigerian procedural laws provide that on arraignment in court, the criminal defendant may plead guilty to the charge(s) and upon such a plea the court shall enter a conviction if satisfied that the defendant intends by the plea to admit the offence.[110] There is nothing legally or morally wrong with a plea of guilty by a criminal defendant; and such a plea on arraignment may provide a prima facie evidence that the offender has some remorse for the crime committed. This is however without in any way encouraging or promoting any attempt to cajole people to admit guilt when they are innocent, it must always be noted that a plea of guilty by an offender is a legitimate legal, moral and ethical option open to an accused in a criminal case in Nigeria. Both the Administration of Criminal Justice Act and the Imo State Administration of Criminal Justice Law provide that an accused can plead guilty to the charge and if satisfied the court can proceed to enter conviction without full trial.[111] The onus and burden of proof which the law places so heavily on the prosecutor to prove a crime beyond reasonable doubt, sometimes provide shield for the offender to escape justice in a case where there is insufficient evidence to convict the defendant of the crime charged. In this process, the moral and ethical essence of crime is lost on the altar of legal technicalities. Such defence option is not only legally available, it is also morally and ethically obligatory for people to admit and repent of their wrongdoing. Regrettably, the general practice and the current attitude of legal practitioners seem to provide some psychological escape and justification to most offenders who easily cling to the constitutional presumption of innocence.[112]

Therefore it is submitted that with the proper skills and guidelines, ADR processes can be deployed in structuring an arrangement for a plea of guilty by the defence upon arraignment in exchange for some favourable exercise of prosecutorial or judicial discretion. This will subsequently aid in the substantial reduction in the number of criminal cases in our courts.

**Prospect of Alternative Dispute Resolution in the Administration of Criminal Justice in Nigeria**

There are good prospects for the application of alternative dispute resolution in the administration criminal justice system. This is most evident with the enactment of the

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[108]Uruchi O.B., *op.cit.,* 95.

[109]*Ibid.*

[110]*Section 274* of the Administration of Criminal Justice Act 2015. *Section 357* of the Imo State Administration of Criminal Justice Law 2020.

[111]*Ibid.*

[112]NwosuK. N., 'Role of Traditional Rulers and Community Leaders in Criminal Justice Administration' in NwosuK. N. (ed),*Dispute Resolution in the Palace*, Ibadan, Gold Press Limited, 2010, 181.

Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Law of various States in Nigeria. The Administration of Criminal Justice System on the development of criminal arbitration and plea bargaining in Nigeria, cannot be over emphasized. The Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Law of various States in Nigeria have serious impact, this is because it regulates more than just criminal procedure; majorly, the entire criminal justice system process from arrest, investigation, trial, custodial matters and sentencing guidelines.[113] The impact of these statutes, is to ensure and promote efficient management of all criminal justice institutions in Nigeria, enforcement of speedy dispensation of justice, the protection of the rights and interests of the suspects and the victims of crime.

The prospects for alternative dispute resolution under the current legal framework especially under the extant Administration of Criminal Justice Act 2015 can be identified in five possible stages namely: (i) Pre- Charge stage; (ii) Post-Charge/Pre-Conviction stage; (iii) Post-Conviction/Pre-Sentencing stage (iv) Post-Sentence stage; and (v) Prevention Stage. For purposes of clarity, the paper shall deal with these in four stages, namely: i. Before the crime is committed, that is, Crime Prevention ii Prosecutorial Discretion; iii Judicial Discretion; and iv Correctional Discretion.

**Crime Prevention:** A majority of crimes committed could be prevented with a good culture of alternative dispute resolution. *Section 50(1)*[114] provides that a police officer may intervene for the purpose of preventing, and shall, to the best of his ability, prevent the commission of an offence.[115] This is also the law in *section 64* of the Imo State Administration of Criminal Justice Law. This could involve the use of alternative dispute resolution by addressing the motive and causes that could warrant the commission of the crime.[116]*Section 52* of Administration of Criminal Justice Act 2015[117] provides that the Police can carry out an arrest to prevent a crime. In this case, there is a duty on the Police to examine the person arrested so as to determine his state of mind and possible tendencies to repeat the crime. It can be argued that if alternative dispute resolution is seen as a problem-solving tool or tools, then, it will be invariably concluded that alternative dispute resolution applies to crime; and as a problem-solving tool, it could solve the problem by preventing the crime from occurring in the first instance,[118] or managing it properly if it occurs. This goes to the saying that 'prevention is better than cure'. Research show that about 40-50% of crimes do not occur between total strangers. Most homicide cases (61%) occur between relatives and friends.[119] Where alternative dispute resolution is applied effectively and there exist a good culture of dispute resolution, most relationship based crimes could be easily prevented and better managed.[120]

**Prosecutorial Discretion:** Prosecutorial discretion refers to the discretion which is vested on the Police, the Attorneys General and other authorities with powers of prosecution to decide which matters go to court for decision and those that do not.[121] With the application of

[113]*Ibid.*
[114]Administration of Criminal Justice Act 2015.
[115]*Section 50(1)* of the Administration of Criminal Justice Act 2015.
[116]Ogbuabor C, Ezike E O, Nwosu E O, 'Mainstreaming ADR in Nigeria's Criminal Justice System', *European Journal of Social Sciences* 2014, Vol. 45(1), 37.
[117] This is also provided for in *section 66* of the Imo State Administration of Criminal Justice Law 2020.
[118]Ogbuabor et al *op.cit.*
[119]Adler F., Mueller G. & Laufer W., *Criminal Justice,* New York: McGraw Hill Inc 1994, 110.
[120]Ogbuabor C, Ezike E. O, Nwosu E. O., *op.cit,* 37.
[121]*Ibid.*

alternative dispute resolution in criminal justice, there will be a reduction in the number of cases that find their way into the courts through the exercise of prosecutorial discretion. By the provisions of the law, a crime is a case between the offender and the State. The State is legally and technically personified by the Attorney General. The Constitution by *sections 174* and *211* confer on the Federal and State Attorneys General respectively powers of prosecution.[122] These powers are the power to institute, takeover and continue any such criminal proceeding that may have been instituted by any other authority; and power to discontinue any criminal proceeding at any stage before judgment.[123] The power to continue, take-over, and discontinue is that of the Attorney General; and in doing this, he is not subject to anybody's control except his conscience and the constitutional injunction of public interest, interest of justice and the need to prevent the abuse of legal process.[124] This position at common law remains the law as far as the exercise of the powers of the Attorney General in Nigeria is concerned. He is not subject to direction or control by any other authority.[125] It is submitted that *section 36 (4)* of the Constitution[126] which enables a criminal charge to be withdrawn strengthens the prospects of alternative dispute resolution to criminal matters. The section provides that: Whenever any person is charged with a criminal offence, he shall, *unless the charge is withdrawn,* be entitled to a fair hearing in public within a reasonable time by a court or tribunal. We are of the view that a charge may be withdrawn if the matter is settled amicably.[127]

**Judicial Discretion:** Alternative dispute resolution can apply in the criminal justice system during the process of trial through the exercise of judicial discretion. Here, the process of conviction may be contrasted with the process of sentencing.[128] Conviction is an objective standard in that once all the elements or ingredients of an offence are proved, there is no inherent discretion possessed by the judge to decide whether to convict or not to convict.[129] According to the court, the role of the judge in an adversary system of justice is to determine from the facts before him whether the charge against the accused has been proved.[130] Sentencing, on the other hand, appears to be subjective. This is because, except the law provides to the contrary as in the case of mandatory punishment, the punishment provided is the maximum. The courts have the discretion to impose anything less, even a fine where the law does not mention an option of fine.[131] There are no existing sentencing guidelines in Nigeria. Therefore alternative dispute resolution is evidently applicable at the stage of sentencing. The ACJA 2015 has made ample provisions for the court to exercise discretion in giving non-custodial sentencing as a way reducing prison congestion such as fines, community service and suspended sentencing as provided for in *Sections 460* ACJA.[132] This will reduce prison intake. Also, the cost of both financial and personnel, need not be borne by the government but by the people themselves. The cost of feeding and other welfare needs of inmates are clearly taken off the State Treasury. So, the cost-benefit analysis is in favour of the

[122]*Sections 174* and *211* of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[123]*Ibid*.
[124]Ogbuabor C., Ezike E. O., Nwosu E. O. *op.cit.,* 37.
[125]*Fawehinmi v 1GP* (2002) 7 NWLR (Pt. 767) 606 SC.
[126]*Section 36(4)* of the Constitution of the Federal Republic of Nigeria 1999(as amended).
[127]Ogbuabor C., Ezike E. O., Nwosu E. O., *op.cit.,* 37.
[128]*Ibid.*
[129]*Ibid*.
[130]*Ugheneyove v State* (2004) 12 NWLR (Pt.888) 626; *Onagoruwa v State* (1993) 7 NWLR (Pt.303) 49, 107.
[131]Ogbuabor C., Ezike E. O., Nwosu E. O. *op.cit.,* 37.
[132]*Section 460* of the Administration of Criminal Justice Act 2015; This is also provided for in *sections 413-431* and *section 447-468* of the Imo State Administration of Criminal Justice Law 2020.

State. Those that eventually go to prison will be properly monitored and they can come out better.[133]

**Correctional Discretion:** This is the discretion exercised post-conviction by prison authorities, and other approved correction centers. The law allows the release of prisoners before the expiration of their sentence if they are of good conduct. *Part 45* ACJA, *Section 468*[134] provides for Parole which allows a prisoner to be released prior to the completion of sentence where the Comptroller-General of Prisons makes a report to the court recommending that a prisoner: sentenced and serving his sentence in prison is of good behavior.[135] However, the laws insist that the prisoner would have served almost all the sentence.[136]*Regulations 54* and *55* of the Prisons Regulations made under the Prisons Act[137] provide for a maximum remission of sentence to the tune of one third of the sentence.[138] There is no reason why this system could not be improved upon by reducing the minimum time to be spent in custody before release upon a recommendation for good behavior.[139] There is also no reason why the parties involved cannot be invited intermittently to review the case of an inmate with a view to releasing him/her whether he/she has spent the minimum time or not.[140] However, from the foregoing it very pertinent to note that the provision of the ACJA in this regard is a welcoming and laudable development.

## Conclusion

The Administration of Criminal Justice Act 2015 and the Imo State Administration of Criminal Justice Law 2020 have made a commendable revolution in the application of alternative dispute resolution in the administration of criminal justice in Nigeria and Imo State respectively, especially by the inclusion of the alternative dispute resolution mechanism of plea bargain. However, given the conditions presented in *sections 270(2) (a) (b) (c)* of the Administration of Criminal Justice Act 2015 and *sections 360(12)(a) (b) (c)* of the Imo State Administration of Criminal Justice Law that must be met before the prosecution may enter into plea bargain, it becomes difficult to accept the provisions of *section 270 and section 360*[141] as frameworks on the part of plea bargain, this is so because if the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt, the meaning is that the prosecution has no case against the accused person, then, what will be the need for entering into plea bargain? This defeats the essence. This goes to show that there is still more to be done to enable the optimal use of alternative dispute resolution in the administration of criminal justice.

## Recommendations

Nigeria should move above the present situation of the applicability of alternative dispute resolution in criminal justice and build a criminal justice system where alternative dispute resolution will play a dominant role. Based on the above, the following are recommended:

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[133]Ogbuabor C., Ezike E. O, Nwosu E. O., *op.cit.,* 38.
[134]Administration of Criminal Justice Act 2015
[135]*Section 468* of the Administration of Criminal Justice Act 2015; this is also provided for in *section 469* of the Imo State Administration of Criminal Justice Law 2020.
[136]Ogbuabor C., Ezike E. O., Nwosu E. O., *op.cit.,* 39.
[137] The Prisons Act Cap. P29, Laws of the Federation of Nigeria, 2004
[138]*Regulations 54* and *55* of the Prisons Regulations.
[139]Ogbuabor C., Ezike E. O., Nwosu E. O., *op.cit.,* 39.
[140]*Ibid*.
[141]Administration of Criminal Justice Act 2015 and Imo State Administration of Criminal Justice Law respectively.

**Amendment of the Legal Framework**

The provision for plea bargain in the Administration of Criminal Justice Act 2015 and the Imo State Administration of Criminal Justice Law 2020 requires that in the absence of other conditions, plea bargain can take place where the evidence of the prosecution is insufficient to secure a conviction. Thus where evidence available is credible to secure conviction, plea bargain is not permissible. It is suggested that these statutes be amended removing the requirement of insufficient evidence to prove the case beyond reasonable doubt and replace with the option of plea bargain even where evidence is sufficient to prosecute and where evidence is insufficient. More so, the restriction on the compoundment and concealment of offences should be relaxed to permit the compounding of more less serious felonies, this will lessen the case load in the courts and decongest the prisons.

**Activist Judiciary**

The courts have a critical role in the effectiveness of ADR in the administration of criminal justice. Though our courts have over the years admitted the use of plea bargain and compounding of offences, however there is need for our court in Nigeria to be more active to achieve this. It behooves on our courts to interpret the law in such a way that more offences can pass through alternative dispute resolution. This will reduce the work load on the judiciary.

**Training on Alternative Dispute Resolution Mechanism in Administration of Criminal Justice**

There will be need to train and re-train personnel in Alternative Dispute Resolution processes and management techniques. These include but not limited to Legal Practitioners, Judicial officers, Police Officers, security personnel. Most lawyers who are prosecution lawyers are hell bent on prosecuting by all means, without considering the possibility of the matter being resolved by another means instead on litigation. A lot of lawyers are ill equipped to carry out alternative dispute resolution mechanism, when it is required of them. It is therefore necessary that trainings through continuous legal education are organized to train lawyers.

Most security officers do not understand the concept of alternative dispute resolution and its mechanism and this act as a clog in the successful growth of alternative dispute resolution. More so, is the issue of the use of police personnel in the prosecution of certain crimes at the magistrate court level, these officers lacking the requisite training, legal knowledge and skill, consequentially cause undue delay in prosecution, protracted and insufficient carrying out of prosecution and non adoption of alternative dispute resolution where necessary.[142] Being a novel system in the criminal justice system, there is need to train officers on the intricacies of alternative dispute resolution through workshops, seminars and conferences.

**Orientation of the Public on Alternative Dispute Resolution Mechanism in Administration of Criminal Justice**

Nationwide education and enlightenment is recommended in order to orient the public on alternative dispute resolution and application in administration of criminal justice. The benefits of Alternative Dispute Resolution and restorative justice should be preached. This is to remedy the retributive justice mentality which forms the fulcrum of our justice system. There is need for the society to understand the gains of alternative dispute resolution, mechanisms and how it can be utilized. Advertorials need to be placed on television and radio to inform the public on alternative dispute mechanism. More so, legal practitioners are encouraged to utilize hold talk shows, seminars and interviews on the media to ensure that the gospel of alternative dispute

[142] *Ibid* 163.

resolution in administration of justice is adequately preached and the public better enlightened. This will widen the use of plea bargain, thereby enabling the quick disposal of cases.

**Plea Bargaining should not be applicable in respect of habitual offenders**

It is recommended that plea bargain should not be applicable to habitual offenders this is to prevent the abuse of the process. Habitual offenders might see the avenue provided by plea bargain as a room to commit more crimes with the mindset that they will be offered a plea deal upon arrest and arraignment. Therefore this restriction is pertinent.