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CHAPTER 15

AN ANALYSIS OF THE APPLICATION OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM

Abstract

The Nigerian criminal justice system is bedeviled with a lot of problems/ challenges which include delay in investigation of crimes, unduly long trials of criminal cases, congestion of cases, prison congestion, corruption, inadequate funding of the judiciary as well as the general lack of confidence in the criminal justice system by the populace. Governments at various levels and stakeholders have thus seen the need for reforms that combines the current largely retributive justice system with a restorative/reparative approach which is what exists in other jurisdictions. Thus, the aim of this article is to explore Alternative Dispute Resolution (ADR) mechanisms as a panacea to these challenges. We argue that the application and proper utilization of ADR mechanisms in the Nigerian criminal justice system will not only strengthen and fast-track dispensation of justice but will also ensure restorative justice and stability in the polity. This article also examines the relevance of ADR mechanisms to criminal justice system, advantages and disadvantages of the application of ADR, the legal and institutional frameworks for the application and implementation of ADR mechanisms in accordance with the recently enacted Administration of Criminal Justice Act (ACJA), 2015 in the Nigerian criminal justice system.

Keywords: Alternative Dispute Resolution, Criminal Justice System, Restorative Justice, Administration of Criminal Justice Act, Nigeria

1. INTRODUCTION

...We know that the courts are overcrowded and some officials are morally compromised. We know that our investigators and prosecutors are ill equipped and under trained to deal with the sheer scope of cases they are supposed to pursue to a just conclusion. We know these and many more are the problems. It is time to think through the solutions....¹

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¹Osinbajo Y. "The Vice President on the Administration of Justice in Nigeria" Nigerian Bar Association 56th Annual General Conference's Programme 2016 p. 15.

Criminal justice system is a collection of rules, practices and policies that guide the prescription, management, trial and punishment of crimes with a view to protecting members of a society from exploitative, injurious and offensive conduct of others in order to maintain peaceful co-existence, orderliness and stability in the society.² The Nigerian criminal justice system comprises of some security and law enforcement agencies and the judiciary.³ The security and law enforcement agencies carry out investigations, arrests and other administrative functions in respect of crimes, while the judiciary represented by the courts conduct trial of criminal cases.⁴

The Nigerian criminal justice system, like in most African countries, places more emphasis on retribution and rehabilitation of offenders through punishments in form of fines or imprisonment without any mechanism for compensating victims of crimes. There are other numerous challenges like dilapidated infrastructure, poor working condition of the judicial and non-judicial personnel involved in the Nigerian criminal justice system, delay in investigations of crimes, unduly long trials, congestion of cases in various courts, prison congestion, holding charges, corruption and lack of confidence in the administration of justice among others. This situation is inadequate, time consuming, rigid and inefficient compared to the more accessible Alternative Dispute Resolution (ADR) mechanisms which is a reparative approach to crimes in order to achieve restorative justice.⁵

ADR is not alien to the justice system in Nigeria. It has always been part of the native law and customs guaranteed by the constitution.⁶ The modern ADR mechanisms such as mediation, negotiation, and conciliation are similar to the traditional modes of resolving disputes in virtually all the pre-colonial

²Ifeolu J. K. *Appreciating Criminal Law in Nigeria* (2012 1st Edition, Iqra Books Nigeria Limited, Ilorin) pp. 3-4; Dambazau A. B. *Criminology and Criminal Justice* (2nd edition Spectrum Books Limited, Ibadan 2007) pp.173-174; Newman D. J. *Introduction to Criminal Justice* (Lippincott, New York 1978) p. 3; Nwosu K.N. "Criminal Justice Reforms in Nigeria: The Imperative of Fast Track Trials; Plea Bargains; Non Custodial Options and Restorative Justice" p. 7. available at <http://www.nigerianlawguru.com/!criminal%20law%20and%20procedure:CR> accessed on 10 January, 2017.

³Nigeria is a federation comprising of 36 states and Abuja, the Federal Capital Territory (FCT). See section 3 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also part II First Schedule thereof. The Nigeria Police Force (NPF), the Department of State Security Service (DSS) and Nigerian Security and Civil Defence Corps (NSCDC) are both security and law enforcement agencies while the Nigerian Prisons Service (NPS), Nigerian Drug Law Enforcement Agency (NDLEA), the Economic and Financial Crimes Commission (EFCC), and the Independent Corrupt Practices and other Related offence Commission (ICPC) to mention but a few are the major law enforcement agencies in Nigeria.

⁴Judicial powers are exercised by judges/justices, magistrates and other adjudicators in the administration of justice in Nigeria. They derived their powers from the constitution and not at the sufferance or generosity of any other arm of government. The judiciary is not only an organ of government vested with power to interpret, construe and apply the law but also to adjudicate disputes between or among parties with a view to doing justice and maintain societal equilibrium. The judicial powers are vested in the superior courts of record listed in section 6(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) although the National Assembly and State Houses of Assemblies are also entitled to establish such other courts. See generally, Daibu A. A. "The Judiciary, the Press and the Doctrine of Subjudice in Nigeria" Ahmadu Bello University Journal of Public and International Law (2014) vol.1 No.6 p. 75; Shehu A. T. "Modeling Separation of Power for Constitutionalism: The Nigerian Approach" University of Maiduguri Law Journal (2011) Vol. 9 p. 10; Falana F. "The Anti- Corruption War in Nigerian Judiciary: The Journey So Far" *Nigeria Judiciary: Contemporary Issues in Administration of Justice* (Nigerian Bar Association Ilorin 2013) p. 303; Ameachi v. INEC (2009) NWLR (Pt. 1080) 227 at p. 324.

⁵Ayinla L. A. et al. "Applicability of Alternative Dispute Resolution and Plea Bargaining in the Nigerian Criminal Justice System" *African Nazarene University Law Journal* (2014) vol.2 No. 2 p. 174; Wojkowska E. "Doing Justice: How Informal Justice Systems can Contribute" (Oslo 2006) 9 available at http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Ewa_wojkowska.pdf accessed 12 October, 2016.

⁶See Akanbi M. M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges* (Lambert Academic Publishing Germany, 2012) p.58; Chukwuemerie A. I. "The Internationalisation of African Customary Law" *African Journal of International and Comparative Law* (2006) vol. 14 p. 140-143; Igbokwe V.C. "Law and Practice of Customary Arbitration in Nigeria: Agu v. Ikewibe and Applicable Law issues Revisited" *Journal of African law* (1997) vol. 41 No. 2 p. 201; Elias T.O. *The Nature of African law* (Manchester University Press 1956) p. 212; Emiola A. *The Principles of African Customary law* 2nd edition (Emiola publishers Ltd Nigeria 2005) pp.1, 51-73; Idomigie P. O. "Overview of ADR in Nigeria" *Arbitration* (2007) vol. 73 No. 1 p. 75-76; Ezejiofor G. *The Law of Arbitration in Nigeria* (Longman Nigeria Plc. Lagos 1997) pp. 22-26, 27-29. See also Sections 21 and 315 Constitution of the Federal Republic of Nigeria 1999 (as amended).

communities that makeup of Nigeria although not called these specific names.⁷ In fact, it is argued that the modern conception of ADR is a recycle of the ancient African traditional methods of dispute resolution.⁸ ADR mechanisms have been used to resolve civil disputes outside the formal judicial system with the help of mediators, conciliators and arbitrators either as alternatives to the conventional court system or in some cases as supplementary to it.⁹ Discourse on the use of ADR in the criminal justice system in Nigeria was rare until recently probably because of the general belief that ADR is best suited for civil disputes only. However, there is also the view based on restorative justice that the commission of crime is both a specific violation of the victim's rights as well as an offence against the state that requires all the parties having a stake (i.e. the offender, the victim or his family and the state) in the matter.¹⁰

The idea of restorative justice using ADR mechanisms is not only to address the social foundation of crime in the overall interest of both the victim and the society but to provide access to justice by relaxing procedural and technical challenges associated with prosecution in the formal justice system.¹¹ The use of ADR mechanisms like plea bargaining, victim-offenders mediation, victim assistance programs, community crime prevention programs, ex-offender assistance, prosecutorial discretion etc for restorative justice as against retributive approach is now widely accepted in a variety of dispute resolution contexts and have been adapted and applied in criminal justice system in some jurisdictions like the United States, India, Australia and Kenya etc.¹² ADR mechanisms allow parties the opportunity to collectively discuss the aftermath of a crime and remedial solutions that will foster peace, reconciliation and future harmonious relationship among the parties as against rigid trials of cases with its antecedent technicality obtainable in litigation.

It is argued that ADR mechanisms cannot supersede the formal court system which is the conventional avenue for the resolution of disputes,¹³ it can however complement it. The formal justice system will always be available and continue to serve as default mechanism for disputes that cannot be resolved via ADR mechanisms while the application of ADR mechanisms will not only reduce the

⁷Chukwuemere A.I. "Arbitration and Human Rights in Africa" *African Human Rights Law Journal* (2007) vol. 7 p. 109

⁸Bello A. T. "Customary and Modern Arbitration in Nigeria: A Recycle of Old Frontiers" *Journal of Research and Development* (2014) vol. 2 No.1 pp. 50-58; Nwosu K. N. "Criminal Justice Reforms in Nigeria: The Imperative of Fast Track Trials; Plea Bargains; Non Custodial Options and Restorative Justice" pp. 5-6

⁹Hogan R. "ADR : Adding Extra Value to Law" *Arbitration* (2012) vol 78 No. 3 p. 247; Orojo J. O. and Ajomo M. A. *Law and Practice of Arbitration and Conciliation in Nigeria* (1999 Mbeyi & Associate Nigeria Limited, Lagos) p.4.

¹⁰Oseko A. "The Criminal Justice System in Kenya: The Role of Role of Alternative and Traditional Dispute Resolution Mechanisms" *Arbitration* (2015) vol. 81 No. 1 p. 39; Oji E. A. "Compensation for Victims of Crime in the Nigerian Criminal Justice System: The Need for the Need" *The Nigerian Law Journal* (2015) vol. 18 No. 1 pp. 127-128; Sarre R. and Earle K. "Restorative Justice" in Sarre R. and Tomaino J. (ed.) *Key issues in Criminal Justice* (Australian Humanity Press, 2004) pp. 144-145; Braithwaite J. "Restorative Justice: Assessing Optimistic and Pessimistic Accounts" in Tonry M. (ed.), *Crime and Justice: A Review of Research* (University of Chicago press Chicago 1999) p. 1- 127; Ayinla L. A. et al. "Applicability of Alternative Dispute Resolution and Plea Bargaining in the Nigerian Criminal Justice System" p. 174.

¹¹Grace M. T. "Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility and Renewing Public Norms" *Vermont Law Review* (2010) vol. 34 p. 563; McCorry T. "Alternatives to the Traditional Criminal Justice System: An Assessment of Victim Offender Mediation and Neighborhood Accountability Boards in the United States" *The New York Sociologist* (2010) vol. 4 p. 39- 40; Hogan R. "ADR : Adding Extra Value to Law" p. 247

¹²Ayinla L. A. et al. "Applicability of Alternative Dispute Resolution and Plea Bargaining in the Nigerian Criminal Justice System" p. 173; Oseko A. "The Criminal Justice System in Kenya: The Role of Role of Alternative and Traditional Dispute Resolution Mechanisms" p. 38- 39; Melissa L. and McCrimmon L. "The Role of ADR Processes in the Criminal Justice System: A view from Australia" available at <http://www.justice.gov.za/alraesa/conferences/2005uganda/ent-s3-mccrimmon.pdf> accessed 30 May, 2016.

¹³Simmons R. "Private Criminal Justice" *Wake Forest Law Review* (2007) vol. 42 p 912.

challenges of the Nigerian criminal justice system, but will also help to preserve the relationship of the disputing parties and maintain harmony among the people.¹⁴

This article examines the application of ADR mechanisms in the Nigerian criminal jurisprudence, the rational and effect on administration of justice. It finds that the application and proper implementation of ADR mechanisms will serve as a veritable panacea to the challenges facing the Nigerian criminal justice system. The article is divided into seven parts; the first part is the introduction and general overview of the entire work. The second part examines the problems and challenges of the Nigerian criminal justice. The third part of the article analyze the legal regime of alternative dispute resolution and restorative justice in the Nigerian criminal justice system while the fourth section considered the various applicable ADR mechanisms for utilization. The fifth section of this article appraises the prospects and challenges of ADR, the six section discusses the appropriate legal and institutional reforms for proper utilization of ADR mechanisms in the Nigerian administration of criminal justice. The seventh section is the concluding remarks.

2. THE PROBLEMS AND CHALLENGES OF THE NIGERIAN ADMINISTRATION OF CRIMINAL JUSTICE

As we have earlier noted, the Nigerian criminal justice system is faced with myriad of challenges which could be both substantive and procedural in nature. A brief discussion of these challenges is a good entry point or basis into our subsequent argument for the application of ADR mechanisms into the criminal justice sector. Perhaps, one of the key problems of the criminal justice system is the adjectival laws involved. Criminal proceedings in Nigeria until recently are governed by two principal legislations namely: The Criminal Procedure Act (CPA)¹⁵ and the Criminal Procedure Code (CPC)¹⁶ applicable in the Nigeria Southern and Northern States respectively. Each State in Nigeria has either adopted the CPA or CPC.¹⁷ These legislations have been applied for many years without significant improvement to respond to the needs, rising waves of crimes and bringing offenders to justice within reasonable time. Delay in the quick dispensation of criminal justice is arguably the basic challenge and most perturbing aspect of the Nigerian criminal justice system.¹⁸ Other challenges include: congestion of cases in courts, prison congestion and inadequate funding of the judiciary among others. The major delays in the Nigerian criminal justice system are broadly classified into 4 viz: delays in investigation and detection of crimes, delay caused by personnel involved in the administration of justice, delay caused by the system of admitting an accused to bail and delay caused by accused person's counsel. We will consider each of these in turn.

¹⁴Ayinla L. A. et al. "Applicability of Alternative Dispute Resolution and Plea Bargaining in the Nigerian Criminal Justice System" p. 174; Barfield T. et al. "The Clash of Two Goods: State and Non-state Dispute Resolution in Afghanistan" available at <http://www.usip.org/sites/.../clash-two-goods.pdf> accessed 12 March, 2015; Simmons R. 'Private Criminal Justice' p. 912-913.

¹⁵C ap. C. 41 Laws of the Federation of Nigeria, 2004.

¹⁶Criminal Procedure Code (Northern States) Act, Cap. C. 42 Laws of the Federation of Nigeria, 2004.

¹⁷Hambali Y.D.U., Practice and Procedure of Criminal Litigation in Nigeria (Feat Print and Publish Limited, Lagos 2012) pp. 4-6; Agaba J. A., *Practical Approach to Criminal Legislation (Pre-Trial and Trial Proceedings)* (Abuja: Panaf Press, 2011) pp. 10-11

¹⁸John A. and Musa A. "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint" *Journal of Law, Policy and Globalization* Vol.26, 2014 available Online at www.iiste.org accessed 22nd December, 2016

DELAYS IN INVESTIGATION AND DETECTION OF CRIMES

2.1 Substantial delays occur during investigation of crimes in Nigeria because most investigators are not well trained in detection and investigation of crimes or are ill equipped. Hence arrests of suspects precede investigation of crimes in Nigeria. The Nigeria police is the primary agency saddled with the responsibility of crime detection and investigation in Nigeria although there are other specialized agencies like the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices and other Related offence Commission (ICPC), Nigerian Drug Law Enforcement Agency (NDLEA), the Department of State Security Service (DSS) and Nigerian Security and Civil Defence Corps (NSCDC) etc..¹⁹ the police usually carry out its investigation through their detectives especially from the Criminal Investigation Department (CID). Where investigation has been properly conducted, it contributes in no small measure to effective administration of criminal justice as the judiciary can hardly function without the co-operation of efficient investigators, prosecutors and the prisons service. But often times, proper investigation of cases is hampered by a number of factors like frequent transfer of officers, unduly long process of investigation as a result of inefficient personnel and lack of modern gadgets that could enhance and hasten investigations among others.²⁰

The Nigerian Prison service also contributes to the problem of delay in the administration of criminal justice. This often arises in the area of pre-trial detention where accused persons are remanded in prison pending their trial. Many suspects remain in prison custody awaiting trial because of congestion of cases in the various courts. The general excuse for their remand is that investigation into their cases is yet to be completed. Some of the accused persons have been in prison custody for more than five years without trial.²¹ It is also common to find trials being held up for days, weeks and even months because of the unavailability of accused persons in court to stand their trial. The prison authorities sometimes fail to produce some inmates and or fail to bring them on time thereby stalling prosecutions. A number of reasons are responsible for this.²² First, is the lack of communication gap between the prison authorities and prosecutors. Such a situation may occur when prosecutors do not give proper

of a particular inmate(s). Secondly, is the unavailability of vehicles to convey the accused persons to court and where there is one, there may not be fund to buy fuel. Furthermore, the poor medical facilities in various prisons across the country as resulted in incessant ill health of their inmates. The result is that on the day of trial, such an inmate/accused person is reported ill and bearing in mind the adjectival nature of the Nigerian legal system, the trial court cannot proceed in the absence of an accused person.²³ Also the reluctance or failure on the part of prison and police personnel to provide accused persons in court to face trial is some cases constitute a major problem to prompt disposal of criminal cases as it protract trials. This leaves the Magistrate or Judge with no option than to issue the usual bench instructions like production warrant or orders which in most cases may be difficult to comply with. Hence the judicial process is slowed down and most of the time, to the detriment of the accused.

¹⁹Hambali Y.D.U., *Practice and Procedure of Criminal Litigation in Nigeria* p. 80

²⁰John A. and Musa A. "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint"

²¹Osinbajo Y. "The Vice President on the Administration of Justice in Nigeria" p. 15.

²²John A. and Musa A. "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint"

²³ibid

2.2 DELAY CAUSED BY PERSONEL INVOLVED IN THE ADMIMISTRATION OF JUSTICE

Another major cause of delay in the Nigerian criminal justice system is the procurement of legal advice from the appropriate authority upon conclusion of investigation.

Where a case before the court involves serious offences that require the advice of the Director of Public Prosecution (DPP) such as murder or rape, the relevant case file is usually duplicated. The investigating authority (e.g. the police) retains a copy and the other copy is sent to the DPP, so that the police would be in a position to give clarification on "certain ambiguous or insufficient aspects of investigations". Very often, prosecutors have complained that the police have not been able to seek the DPP's advice because of lack of funds to duplicate the case files.²⁴ The office of Attorney General, particularly the DPP is mostly preoccupied with a lot of other works and thus affects prompt delivery of advice on criminal cases that have been investigated. There are other delays caused by prosecutors, judicial officers and other personnel involved in the administration of justice. Delays are often caused in court because of poor or deficient prosecution of criminal cases in court, most police prosecutors have no requisite legal training and as well as the practice and procedure of courts in Nigeria.²⁵ Sometimes prosecutors call a number of irrelevant witnesses and leave out the important ones. In most cases, they are advised to consult the DPP for assistance or possible takeover.

Also a number of judicial officers are not committed to quick dispensation of justice. Some judges and magistrates at the trial courts don't sit regularly on few occasion that they sit, they usually sit late and rise early thereby affecting prompt disposal of cases before them.²⁶ Lack of industry and inadequate legal knowledge is also a major problem of some judicial officers at lower cadre. Hence when counsel raise elementary point of law that require a bench ruling, such judges or magistrates not well grounded in the relevant substantive and procedural rules, adjourns the matter for a ruling a development that further delay prompt hearing of cases.²⁷

2.3 DELAY CAUSED BY THE SYSTEM OF ADMITTING AN ACCUSED TO BAIL

The first stage of the criminal process that directly affects a suspect or an accused person is the act of taking him into custody after arrest. When a person is arrested or invited for interrogation by the police or other security personnel, they may be granted temporary bail to appear at a later date upon production of reasonable and reliable surety. The court may also grant an accused bail on such terms as it deem necessary as bail is at the discretion of the court.²⁸ In some rare circumstance a person granted bail may jump bail and escape justice. The reason for this may be the congestion in the court or the length of time the trial may take. In order to ensure the availability of the accused in court as and when due, it may be necessary to keep him in police custody. Bail should ordinarily make it possible for an accused person to be granted temporary release, from custody while his trial is pending or going on. This method requires an accused person to give an undertaking by recognizance that in return of being granted such a temporary release, he will appear in court at any specified time when his attendance or

²⁴ Ibid

²⁵ Ibid

²⁶ Some judicial personnel, particularly of the magisterial cadre only sit three times or less in a week

²⁷ In some cases, judges adjourn cases because a particular ruling or judgment is not ready. Some even adjourn cases arbitrarily to go and pick children from school. See John A. and Musa A. "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint"

²⁸ *Omodara v. The State* (2004) 1 NWLR (Pt. 853) 80 at 89; *Suleman v. C.O.P., Plateau State* (2008) 8 NWLR (Pt. 1089) 298 at 322-323.

appearance is required. This undertaking is usually guaranteed by a third party called the surety.²⁹ If the accused person jumped bail, the prosecution and the court is left with no option than issuing bench warrant against the accused person and summons to the surety where traceable and the case keeps protracting.

2.4 DELAY CAUSED BY ACCUSED PERSON'S COUNSEL

Most legal practitioners representing accused persons are instrumental to the undue delay in the prosecution of criminal cases. Some counsels don't take pre-trial preparations with their witnesses serious thereby resulting in unwholesome performance at trial to the detriment of the accused person. And often time they ask for adjournment in order safe the situation. Other counsel deliberately request for adjournments on spurious excuse even though their aim is to ensure the full payment of their professional fees before the conclusion of the trial.³⁰ Others paid on the basis of the number of court appearances also delay the prompt hearing of cases with a view to beefing up their fees. Also, the structural organization of legal practice in Nigeria further contributes to the delay of criminal trials in that most law firms are basically sole practice. Hence counsel with sole practices personally handles most of their cases and where they have more than one case in day, one has to suffer since they such counsel either refuse to employ junior counsel or where they employ, they fail to entrust these juniors with some 'purported sensitive criminal cases'.³¹

The above challenges among others necessitated the clamour for a reform of the Nigerian criminal justice system for a better alternative. Bayo Ojo SAN, a former Attorney General of the Federation and Minister of Justice once advocated for this when he stated that:

*Nigeria needs a system of justice that is simpler, more efficient, more effective and more responsive to the needs of victims, offenders and the community.*³²

He further said:

*There is a need for simplification of court proceedings and the law itself; and more use of alternative dispute resolution mechanism (such as the restorative justice paradigm).*³³

The application of ADR mechanisms for restorative justice becomes indispensable to enable the offender, the victim or his family and the state resolve the aftermath of crime through amicable means permissible within the state's formal justice system.³⁴ This will ensure peaceful coexistence by addressing the social foundation of crimes in the overall interest of both the victim and the society.³⁵ ADR and

²⁹John A. and Musa A. "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint"

³⁰ibid

³¹ibid

³²Ojo B. The Challenge of Justice Sector Reforms and National Development (2) The Vanguard Newspaper, 2nd December, 2005) p. 46.

³³Ibid.

³⁴Kift S. "Victim and Offenders: Beyond the Mediation Paradigm? Australian Dispute Resolution Journal (1996) p.71; Oji E. A. "Compensation for Victims of Crime in the Nigerian Criminal Justice System: The Need for the Need" pp. 127-128; Oseko A. "The Criminal Justice System in Kenya: The Role of Alternative and Traditional Dispute Resolution Mechanisms" p. 39.

³⁵Grace M. T. "Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility and Renewing Public Norms" Vermont Law Review(2010)vol.34 p. 563; McCorry T. " Alternatives to the Traditional Criminal Justice System: An Assessment of Victim Offender Mediation and Neighborhood Accountability Boards in the United States" The New York Sociologist (2010) vol.4 p. 75; Oseko A. "The Criminal Justice System in Kenya : The Role of Alternative and Traditional Dispute Resolution Mechanisms" p. 39- 40 ; Hogan R " ADR : Adding Extra Value to Law" Arbitration p. 247; Omole D. J. O., " Restorative Justice and Alternative

Dispute Resolution Model: Opinion of Victim of Crime and Criminal Justice Professionals in Nigeria pp. 18-19

Restorative justice will ensure reparation of victim(s) of crime as well as the reform and reintegration of and restoration.³⁵

While reconciliation is aimed at reconciling the victim(s) and the offender, restitution primarily ensures that the victim is compensated by the offender as nearly as can be achieved to the pre-crime status so that the damage caused is repaired physically and psychologically. Reintegration is aimed at fully reintegrating the offender back into the society in a practical and realistic manner so as to de-emphasize punishment and stigmatization of offenders.³⁷ Restoration as the name implies is aimed at restoring the value and normalcy back to the society to its pre-crime situation so as to ensure that the entire populace are secured and protected as citizens in the society.³⁸

The idea for the reform of administration of criminal justice was first nurtured and developed in 2005 by the National Working Group on the reform of criminal justice in Nigeria.³⁹ The group which was established by the then Attorney General of the Federation Akin Olujinmi, SAN was maintained by his successor in office, Bayo Ojo, SAN. The group consisted of individuals drawn from all segments of the criminal justice sector. The immediate past Attorney General of Federation, Mohammed Bello Adoke, SAN upon assumption of office established the Panel on Implementation of Justice Reform (PIJR) 2011 to implement the proposals for reform produced by the National Working Group under the past administrations. The Panel at its inception conducted a detailed review of the proposals, updated them and adopted an improved version. The said improved version was substantially the merger of the two principal laws with some fundamental innovations resulting in the Administration of Criminal Justice Bill and later passed into law as Administration of Criminal Justice Act⁴⁰ which is intended to apply uniformly in all the Federal Courts and the courts in the states of the federation upon adoption and domestication.⁴¹

3. LEGAL REGIME OF ALTERNATIVE DISPUTE RESOLUTION AND RESTORATIVE JUSTICE IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM

The rationale of any criminal justice system is not only to maintain law, order and peaceful co-existence in the society but also to create standard of acceptable behavior by criminalizing the unacceptable ones as crime/offence against the society.⁴² A crime is any act or omission which the law forbids.⁴³ It is a violation of penal law and considered an offence against the society with necessary sanction for its commission not only to serve as punishment to the offender but also to serve as deterrence to potential offenders in the overall interest of the society.⁴⁴ The commission of crime in Nigeria is an

³⁵Ogwezzy M. C. et al. "Restorative Justice and Non-Custodial Measures: Panacea to Recidivism and Prison Congestion in Nigeria" p. 70-71; www.restorativejustice.org/intro/tutorial/process.com accessed 25th May, 2016; Okwendi J. S. and Nwankwoala R. "The Role of Restorative Justice in Contemplating the Justice System and Restoring Community Values in Nigeria" *Asian Journal of Humanities and Social Sciences*(2014) Vol. 2 No. 3 pp. 127-128

³⁷Omole D. J. O., "Restorative Justice and Alternative Dispute Resolution Model: Opinion of Victim of Crime and Criminal Justice Professionals in Nigeria" pp. 18-19

³⁸Nwosu K. N. "Criminal Justice Reforms in Nigeria: The Imperative of Fast Track Trials; Plea Bargains; Non Custodial Options and Restorative Justice" pp. 16-18.

³⁹Olakanmi J. Administration of Criminal Justice Act, 2015: Synoptic Guide

⁴⁰Administration of Criminal Justice Act, 2015 in herein referred to as "ACJ Act"

⁴¹Olakanmi J. Administration of Criminal Justice Act, 2015: Synoptic Guide

⁴²Ifeolu J. K. Appreciating Criminal Law in Nigeria, pp. 3-4.

⁴³Black's Law Dictionary 6th Edition (West Group Publishing Co. 1990) p. 370

⁴⁴Chukkol K. S. The Law of Crimes in Nigeria, Revised Edition (Ahmadu Bello University Press, Zaria 2010) pp. 2-3, Ocheme P. A. The Nigerian Criminal Law, (Liberty Publications Ltd, Kaduna 2008) pp.1-2; Dambazau A. B. Criminology and Criminal Justice pp. 48-49; Okonkwo C. O Okonkwo & Naish: Criminal Law in Nigeria (2nd edition Sweet and Maxwell, London 1980) pp. 19- 21

offence which may result in some penalties/punishment in accordance with a written law after a trial by a court of competent jurisdiction.⁴⁵ It must be noted that only a court of competent jurisdiction can try and convict a person for a crime in Nigeria and before a person can be so convicted, the offence and the penalty thereto must be prescribed in a written law.⁴⁶

Section 2 of the Criminal Code Act,⁴⁷ the primary law on crime in Southern Nigeria defines an offence as an act or omission which renders the person doing the act or making the commission liable to punishment under the Act, or under any other law, while sections 28 and 29 of the Penal Code⁴⁸ applicable in the Northern States also defined offence and illegal conducts.

In view of the above, it is clear that Nigerian criminal law does not only use both crime and offence interchangeably but recognizes only crimes/offences defined in written laws in accordance with the constitution.⁴⁹ It is submitted that a person cannot be subjected to any trial for a crime under an unwritten law and custom because most native law and custom are unwritten and therefore cannot meet the constitutional requirement of section 36(12) of the Nigerian constitution. Hence, customary criminal laws are unconstitutional in Nigeria, except to the extent that any of such customs is specially stated or prescribed in written law.

Essentially, an act or omission is a crime, if it is prescribed by law. The consequence of any criminal conduct in Nigeria is whatever the law prescribed as it is possible for the law creating an offence to prescribe some non-custodial measures for crimes.⁵⁰

Several factors have led to the call for the application of ADR mechanisms into Nigerian criminal law/justice system, among which are: lack of provision for compensation for the victims of the crime, enormous caseload in the courts dockets, prison congestion, high cost of prosecution, delay in prosecution of criminal cases, retrospective laws etc. thus, the need for a harmonized and integrated blend of retributive and restorative justice system becomes indispensable. However, in ascertaining the legality or otherwise of the application of ADR mechanisms into the Nigerian criminal justice system, the following pertinent issues arises. They are:

- Whether the Nigerian criminal justice system forecloses ADR mechanisms?
- Whether ADR mechanisms are conflicting with criminal offence/punishment?
- What is the motive of ADR mechanisms to criminal law/criminal justice system?
- Whether the application of ADR mechanisms in the Nigerian criminal justice system forecloses the presumption of innocence of an accused person?

On the first issue, it is contended that presently, no law prohibits the application of Negotiation, Mediation, Plea bargain or any other ADR mechanisms in Nigerian criminal justice system. Instead, some rules of court permit and encourage the parties to explore out of court settlement and ADR processes

⁴⁵It should be noted that the penal laws in Nigeria adopted the word "offence" instead of "crime" and thus legal writers and judicial decisions has shown that crime and offence is use interchangeably in Nigeria.

⁴⁶A written law refers to an Act of the National Assembly, law of a state and any subsidiary legislation or instrument under the provision of a law. See Section 36(12) of the Constitution of Federal Republic of Nigeria 1999 (as amended).

⁴⁷Cap. C. 38 Laws of the Federation of Nigeria, 2004

⁴⁸Penal Code (Northern States) Federal Provisions Act, Cap. P. 3 Laws of the Federation of Nigeria, 2004

⁴⁹Section 36(12) of the Constitution of Federal Republic of Nigeria 1999 (as amended); *Aoko v. Fagbemi* (1961) 1 ALL N. L. R. 400

⁵⁰Fine, compensation, and forfeiture are other forms of punishments under Nigeria laws.

in resolving their disputes.⁵¹ For example the Federal High Court Act allows reconciliation in both civil and criminal matters before it.⁵² Also the Economic and Financial Crimes (EFCC) Act,⁵³ the Administration of Criminal Justice Law of Lagos State (ACJL)⁵⁴ and the recently enacted Administration of Criminal Justice (ACJ) Act⁵⁵ have provisions for plea bargaining which is a form of ADR mechanisms in criminal litigation. Thus no law in Nigeria forecloses and or forbids the application of suitable ADR mechanisms in the administration of criminal justice.

With regard to the second issue it is contended that ADR has not come to dispute crime/punishment; rather its application in criminal cases will not only serve as a panacea to crime/punishment but will also indemnify the victim by putting him back to his earlier position or nearly to that position before the crime was committed. Therefore, ADR has only come to alleviate the harshness and burdens of criminal prosecution that does not foster communal harmony and continuity in the formal criminal justice system in Nigeria.

Specifically, the motive of ADR in criminal justice in Nigeria is to integrate and harmonize the blend of retributive, restorative, Africa Customary Justice / Law and importantly the maintenance of social equilibrium.⁵⁶ So as to minimize the commission of crime/ crime prevention, crime management and crime perpetration in such a way that the problems of enormous caseloads in our various courts, prison congestion, delay in trials and technicality associated with the adversarial nature of litigation in criminal trials are significantly curtailed, curbed or reduced to the barest minimum.

Furthermore, an accused person is presumed innocent of any alleged offence(s) until the contrary is proved.⁵⁷ This is a constitutional right among other rights.⁵⁸ Hence, there is no indication that the application of ADR mechanisms will foreclose the constitutional right of presumption of innocence of an accused person, rather it will strengthen it via its distributive, reintegrating and restoration approach as against retributive approach which emphasize crime, guilt and punishment. Similarly, all the ADR mechanism available in criminal law fosters the concept of presumption of innocence and sees to its continuity, as there is no ADR law or concept that bars presumptions of innocence in criminal matters. Also, the application of ADR mechanism in criminal trials will not in any way foreclose the constitutional right of appeal of an accused person. This is because for instance the negotiations entered into or the mediation agreed to via Victim Offenders Mediation for its enforceability is usually filed and entered in a court of competent jurisdiction as a consent judgment which only require leave of court to appeal against it by virtue of the provision of Section 241(2) C of the constitution which that:

⁵¹See Order generally Order 18 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009, Order 25 Rule 1(2) (c), (l) and (m) of the High court of Lagos State (Civil Procedure) Rules 2012, Order 33 Rule 2(2) (c) of the Kwara State High Court (Civil Procedure Rules) 2005 and Order 32 Rule 2(2) (c) of the Kogi State High Court (Civil Procedure) Rules 2006 among other Rules of Courts.

⁵²Section 17, Federal High Court Act, Cap. F12, Laws of the Federation of Nigeria 2004

⁵³See section 14 (2) of Economic and Financial Crimes Commission (Establishment, etc.) Act Cap. E.1 Laws of the Federation of Nigeria, 2004 in herein referred to as "EFCC Act".

⁵⁴See section 76 and of the Administration of Criminal Justice Law of Lagos State 2007 now sections 75 and 76 of the Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State 2011 in herein referred to as "ACJL" which is the extant procedural law for criminal trials in Lagos State. The law came to force on 8th day of August 2011

⁵⁵See section 270 Administration of Criminal Justice Act, 2015 herein after referred to as "ACJ Act"

⁵⁶Nwosu K.N. 'Criminal Justice Reforms in Nigeria: The Imperative of Fact Track Trials; Plea Bargains; Non- Custodial Options and Restoration Justices' p.1.

⁵⁷Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁵⁸He is entitled to legal representation of his choice, he is also entitled to be notified of the alleged offences and adequate time and facilities to prepare his defence by an independent adjudicatory body to mention but a few. See generally section 36(1)- (12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

Nothing in this section shall confer any right of appeal without the leave of the Federal High Court or High Court or the Court of Appeal, from a decision of the Federal High Court or High Court made with the consent of the parties or as to cost only.⁵⁹

With the above provision, it is crystal clear that consent judgment does not foreclose right of appeal, the moment the parties involved seek the leave of either the Federal High Court or High Court or Court of Appeal as the case may be.

Restorative justice is an emerging global trend in the criminal justice system. It is an all-inclusive problem-solving approach that ensures that the interests of stakeholders in the commission of crime are well addressed and protected.⁶⁰ Restorative justice involves the reparation of victim(s) of crime as well as the reform and reintegration of offender(s) back to the society as against retributive motive.⁶¹ It operates via programmes that focus more on addressing the problems caused by a criminal conduct than trial and punishment of offenders.⁶² Restorative justice ensures that the victim, offender and the community participate in the crime disposal process.⁶³ Basically, the victim is compensated as much as can be reasonably realised; the offender is effectively reintegrated back into the community of responsible citizens and the community restored to normalcy via the "4R's" which are: Reconciliation, Restitution, Reintegration And Restoration.⁶⁴ It emphasizes creative problem-solving whereby the rehabilitation and reintegration of the offender into the community as well as remedy to the victim and the community who suffer the direct consequence of the crime are given prominence rather than the current approach of inflicting punishment and pain on the offender.⁶⁵ Reconciliation, restitution, reintegration, and restoration are the key values of restorative justice. Some provisions of the ACJ Act are driven by restorative justice. For instance, a court may within the proceedings or while passing judgment order the defendant or convict to pay a sum of money as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit.⁶⁶

The ACJ Act vests the court with power to order restitution to the extent of returning the property to the owner or to the owner's representative or to pay an amount equal to the value of the property.⁶⁷ The provision is similar to its provision on plea bargain which is also aimed at reconciling the victim and the offender, and compensating the victim for his losses arising from the offence as against retributive justice which requires that the offender be punished for the harm done, that the punishment fit the crime and that like cases are treated alike.⁶⁸ Central to retributive justice are the notions of merit and desert.

⁵⁹Section 241(2) of Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁶⁰Omole D. J. O., "Restorative Justice and Alternative Dispute Resolution Model: Opinion of Victim of Crime and Criminal Justice Professionals in Nigeria (2009 unpublished Ph.D Thesis submitted to DeMonfort University, Leicester, UK) pp. 18-19

⁶¹Ogwezzy M. C. et al, "Restorative Justice and Non-Custodial Measures: Panacea to Recidivism and Prison Congestion in Nigeria" p. 70

⁶²Ibid

⁶³Omole D. J. O., "Restorative Justice and Alternative Dispute Resolution Model: Opinion of Victim of Crime and Criminal Justice Professionals in Nigeria pp. 18-19; Ogwezzy M. C. et al, "Restorative Justice and Non-Custodial Measures: Panacea to Recidivism and Prison Congestion in Nigeria" p. 71

⁶⁴Okwendi J. S. and Nwankwoala R. "The Role of Restorative Justice in Contemplating the Justice System and Restoring Community Values in Nigeria" Asian Journal of Humanities and Social Sciences(2014)Vol.2 No. 3 pp. 127-128 ⁶⁵Hambali Y.D.U., Practice and Procedure of Criminal Litigation in Nigeria p. 681

⁶⁶Section 319(1)(a) ACJ Act

⁶⁷Section 321 ACJ Act

⁶⁸Agaba J. A., *Practical Approach to Criminal Legislation (Pre-Trial and Trial Proceedings)*p. 852

However, there are reservations to the assertion that restorative justice is the principle underlying the provisions of the ACJ Act. This is so, given the arguments that the provisions for sentencing in the cases of pregnant women and child offenders convicted of capital offences more so, Section 401(1)(f-g) of the ACJ Act lists retribution and restorative as one of the objectives the court shall have in mind in determining a sentence. Therefore, it is submitted that the ACJ Act is a hybrid of both restorative and retributive justice.

4. APPLICABLE ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM

In view of the current calls for the adoption of ADR mechanisms into the Nigeria Criminal Justice system, some ADR mechanisms have been adopted while some have not been adopted by law. This section of the article discusses some of the windows of ADR mechanisms suitable for adoption below:

4.1 Plea Bargaining

Plea Bargaining is an arrangement between the prosecution and the defence in exchange for a plea of guilty to certain charge(s) by the defence, the prosecutor offers some relief to the defendant⁶⁹ in the form of reduced charge in a multiple charge case or recommendation of trial of lesser charge and or more lenient sentence as the case may be.⁷⁰ It must be noted that plea bargain is not the same thing as plea of guilty, rather it is a negotiated agreement by the parties to a criminal case in an attempt to reach a mutually satisfactory middle ground and obviate the need for a full trial.⁷¹

Plea bargain occurs where a defendant in a criminal prosecution forgoes his constitutional right to presumption of innocent until the contrary is proved in a full trial⁷² by bargaining for some reliefs or benefits in order to plead guilty.⁷³ It allows a defendant in a criminal case to plead guilty to a lesser offence in exchange for a lesser punishment than he might have received if he had been convicted of the original charge(s) after a full trial.⁷⁴

Plea bargaining therefore means that the defendant's plea of guilty is a product of compromise by him and the prosecution. It has an established practice in some common law jurisdictions like the United States, Canada, Australia, India, South Africa and Kenya.⁷⁵ The United States Supreme Court affirmed the constitutional validity of plea bargaining in America on the ground that the disposition of criminal charges by agreement between the prosecutor and the accused is an essential component of the administration of Justice. The Proper application of which is to be encouraged in that if every criminal charge is to be subjected to a full-scale trial, the government would require many times multiple the number of judges and court facilities.⁷⁶

⁶⁹otherwise and popularly known as the accused or accused person in Nigeria.

⁷⁰Black's Law Dictionary 6th Edition (West Group Publishing Co. 1990) p. 1152; Ogwezy M. C. et al, "Restorative Justice and Non-Custodial Measures: Panacea to Recidivism and Prison Congestion in Nigeria". 74

⁷¹Alubo A. O. "Plea Bargaining Imperative in Nigeria" *Ife Juris Review*(2014) vol. 3, pp. 501-502; Oyende K. B. "Accelerating the Process of Criminal Justice: A Comparative Analysis of Plea Bargaining in the Criminal Justice Systems of Nigeria and South Africa" *Ife Juris Review*(2013) vol. 1, pp. 89-90

⁷²See section 36(5) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

⁷³Alubo A. O. "Plea Bargaining Imperative in Nigeria" p 501

⁷⁴Oyende K. B. "Accelerating the Process of Criminal Justice: A Comparative Analysis of Plea Bargaining in the Criminal Justice Systems of Nigeria and South Africa" pp. 89-90

⁷⁵Steyn E. "Plea-bargaining In South Africa: The Current Concerns and Future Prospects" SACJ (2007)2 p. 206; Alschuler A. W. "Plea Bargaining and its History" *Columbia Law Review* (1979)vol. 79(1) p.6

⁷⁶*Santobello v. New York* 404 U.S. 257 (1971). See also the cases of *Marby v. Johnson* 467 U.S. 504 (1984) available on line at <http://supreme.justia.com/us/467/504/case.html> at 507 accessed 7th June, 2016; *Brandy v. United States* 379 U. S. 742 (1970) and *Bordenkircher v. Hayes* 434 U. S. 357 (1978)

The introduction of plea bargain into Nigeria has been very controversial.⁷⁷ This is because there is no provision for it in both the two major adjectival laws applicable in Southern and Northern Nigeria before the enactment of the ACJ Act.

The foremost application of plea bargaining in the Nigerian criminal justice system was by the EFCC in some high profile corruption cases involving some prominent Nigerians like Mr. Tafa Balogun, former Inspector General of Police, Late Chief Diepreye Alamiesiegha, former Governor of Bayelsa state, chief Bode Gorge, a chieftain of the Peoples Democratic Party,⁷⁸ Mrs. Cecelia Ibru, former managing director of Oceanic Bank and chief Lucky Igbinedion, former Governor of Edo state among others in which all the accuse persons voluntarily pleaded guilty by an agreement for light sentences and restitution in billions of naira and assets were recovered.⁷⁹

Presently the basis of plea bargaining under the Nigerian law are found in the provisions of the EFCC Act,⁸⁰ the ACJL⁸¹ and the ACJA,⁸² which has repealed the obsolete CPA and CPC albeit in respect of offences established by the National Assembly and other offences punishable in the Federal Capital Territory (FCT) Abuja in accordance with contemporary realities.⁸³ Section 14(2) of the EFCC Act provides thus:

Subject to the provision of section 174 of Constitution of the Federal Republic of Nigeria 1999 which relates to the power of Attorney General of the federal to institute, continue or discontinue criminal proceeding against any Persons in any court of law, the commission may compound any offense punishable under this Act by accepting such sum of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would be liable, if he had been convicted of that offence.⁸⁴

Similarly, a more direct reference to the practice of plea bargaining contained in the ACJL provides that: *The prosecutor and a defendant or his legal practitioner may before the plea to the charge, enter into an agreement in respect of:*

- a. A plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted in the charge, and*
- b. An appropriate sentence to be imposed by the court, if the defendant is convicted of the offence to which he intends to plead guilty.⁸⁵*

Also the recently enacted ACJ Act provides in section 270 thus:

⁷⁷Plea-bargaining gained prominence through its use in trial of corrupt politicians and rich business executives by the Economic and Financial Crimes Commission (EFCC). See Thisday (Nigeria) Newspaper editorial titled Cecelia Ibru: one case, many lessons, published on 18 October, 2010. News story titled, bribe scandal: Siemens fined #7bn, published by the same newspaper on 23 November, 2010, p. 6.

⁷⁸Peoples Democratic Party (PDP) was the then ruling party in Nigeria. The party ruled the country for 16 years from 29th May, 1999 until 29th May, 2015 when All Progressive Congress (APC) took over in a keenly contested election.

⁷⁹Aymla L. A. et al. "Applicability of Alternative Dispute Resolution and Plea Bargaining in the Nigerian Criminal Justice System" p. 186, Alubo A. O. "Plea Bargaining Imperative in Nigeria" pp. 509-510, Oyende K. B. "Accelerating the Process of Criminal Justice: A Comparative Analysis of Plea Bargaining in the Criminal Justice Systems of Nigeria and South Africa" pp. 96-98

⁸⁰Section 14 (2) EFCC Act

⁸¹Section 76 ACJL.

⁸²See section 270 ACJ Act

⁸³Section 2 ACJ Act

⁸⁴Section 14(2) EFCC Act.

⁸⁵Section 76(1) ACJL

270 (1) notwithstanding anything in this Act or in any other law, the Prosecutor may:

(a) receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf;

(b) offer a plea bargain to a defendant charged with an offence.

(2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence....⁸⁶

The ACJ Act positively adds to the effort of the EFCC Act and ACJL in making elaborate provisions for a standard practice and procedure of plea bargain in Nigeria. This is because while Section 75 of the ACJL restricts the authority to accept a plea bargain to the Attorney-General of Lagos State, Section 270 of the ACJ Act extends same to every prosecutor. Also, by the provisions of ACJL, the prosecutor can only accept a plea bargain offer from the defendant, the provision of the ACJ Act empowers the prosecutor to offer and accept a plea bargain from a defendant.⁸⁷ Again, a plea bargain under the ACJL can only be entered into before the plea to the charge, but in the ACJ Act, a plea bargain can be entered into at any time before or after the plea to the charge, during or after the presentation of the evidence of the prosecution, but before the evidence of the defence.⁸⁸ Furthermore, under the ACJ Act, a plea bargain can only be entered into if the victim or his representative consents to the plea bargain, where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or where the defendant in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders and or if the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt.⁸⁹

It must be noted that the prosecutor offers or accepts a plea bargain when such is in the interest of justice, in public interest, with regard to public policy and the need to prevent abuse of the legal process.⁹⁰ A plea bargain agreement may be in respect of the sentence to be imposed within the appropriate range of punishment stipulated for the offence, a plea of guilty by the defendant to the offence or lesser offence; or appropriate sentence to be imposed by the court if the defendant is convicted of offence to which he intends to plead guilty.⁹¹

It is submitted that a prosecutor must consult the police officer in charge of the case and the victim or his representative before the plea bargain. He must also have due regard to the nature and circumstances relating to the offence, the defendant, and public interest.⁹² A plea bargain agreement must be in writing, signed by the prosecutor, the defendant, the legal practitioner, and the interpreter as the case may be, and a copy of it shall be forwarded to the Attorney-General of the Federation. The

⁸⁶Section 270 (1) and (2) ACJ Act

⁸⁷Section 270 (1) ACJ Act

⁸⁸Section 270 (2) ACJ Act

⁸⁹Section 270 (2) (a) and (c) ACJ Act

⁹⁰Section 270 (3) ACJ Act

⁹¹Section 270 (4) ACJ Act

⁹²Section 270 (5) of the ACJ Act listed 9 factors which the Prosecutor must weigh to determine whether it is in the public interest to enter into a plea bargain.

agreement must contain information on the defendant of his right to silence and consequences of waiving the right; Full statement of the terms of the agreement and any admission made; Information of the defendant that he is not obliged to make any confession or admission that could be used in evidence against him; and inclusion of a compensation or restitution order.⁹³

After the agreement has been reached in which the presiding judge or magistrate before whom the criminal proceedings did not participate, the prosecutor shall inform the court of the agreement. The court has the duty to confirm from the defendant whether there was indeed such an agreement between him/her and the prosecutor, whether the defendant actually admits the allegations in the charge to which he has pleaded guilty; and whether he entered into the agreement voluntarily and without undue influence.⁹⁴

If the court confirms the above and is satisfied that the defendant is guilty of the offence to which he has pleaded guilty, the court shall convict the defendant on his plea of guilty, and shall award the compensation to the victim in accordance with the term of the agreement.⁹⁵ It is in the aspect of restitution to the victim that the ACJ Act makes interesting and similar provisions to section 365 of the CPC. The presiding Judge or Magistrate is required to make an order that any money, asset or property subject to forfeiture under the plea bargain be transferred to and vest in the victim or his representative or any other appropriate person.⁹⁶ The law further places on the prosecutor the responsibility of ensuring that the above is complied with, and section 270(13) of the Act makes it an offence punishable with imprisonment of 7 years without an option of fine for any person to willfully and without just cause impede or obstruct such transfer to the victim of the crime to which the Defendant pleaded guilty. This provision is novel and a commendable inclusion of restorative justice in our criminal justice system.

Where a court convicts, the court shall consider the agreed sentence, and may impose that sentence if deem appropriate, or impose either a less or heavier sentence.⁹⁷ If the court chooses to impose a heavier sentence than that agreed, then the defendant has the right either to abide by the plea of guilty in the agreement and agree to the heavier sentence, or to withdraw from the plea agreement in which case the trial shall commence *de novo* before another Judge or Magistrate.⁹⁸ Where the trial commences *de novo*, the plea agreement or any admission made in it shall not be admissible in evidence.⁹⁹

If the court is of the opinion, however, that the defendant cannot be convicted of the offence, or that the agreement is in conflict with the rights of the defendant to make representations to the prosecutor, the court shall record a plea of not guilty in respect of such charge and order that the trial proceed.¹⁰⁰

From the above it clear that the provisions of section 270 of the ACJ Act is not only extensive but also an elaborate incorporation of the concept of Plea Bargaining and restorative justice in the Nigerian criminal justice system. Hence, one can safely say that presently the application of plea bargain in Nigeria has statutory backing and that requires maximum implementation in the overall interest of the country. The EFCC Act and ACJ Act are federal laws validly enacted by the National Assembly while the ACJL is a state law also enacted by the Lagos State House of Assembly in accordance with the

⁹³Section 270 (5) ACJ Act. The order of restitution was well pronounced under section 365(2) of CPC, section 11 of Advanced Free Fraud Act and applied in the case of *Martyns v COP*

⁹⁴Section 270 (8) ACJ Act

⁹⁵Section 270 (10) ACJ Act

⁹⁶Section 270 (12) ACJ Act

⁹⁷Section 270 (11) ACJ Act

⁹⁸Section 270 (15) ACJ Act

⁹⁹Section 270 (16) ACJ Act

¹⁰⁰Section 270 (10)(b) ACJ Act.

¹⁰¹See section 4 (2), (3) and section 4 (7) of Constitution of the Federal Republic of Nigeria 1999 (as amended) on the legislative powers of the National Assembly and the State Houses of Assemblies respectively

constitutional provisions.¹⁰¹ The ACJ Act is applicable to all criminal trials of offences established by an Act of the National Assembly and other offences punishable in the federal capital territory Abuja while the ACJL is only applicable in the Lagos state's courts.

Section 2(1) of the ACJ Act limits its application to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. Most Acts of the National Assembly establishing offences vest exclusive jurisdiction over such offences on the Federal High Court,¹⁰² although offences created by the Robbery and Firearms (Special Provisions) Act¹⁰³ are triable in the High Court of the State concerned¹⁰⁴, this Act of the National Assembly is only an exception, and not the general rule. It is thus submitted that Section 2(1) of the ACJ Act gives the Act a Federal application. More so, Section 494 of the ACJ Act defines "court" in the Act to include Federal Courts, the Magistrates' Court and Federal Capital Territory Area Courts presided over by legal practitioners. Although by the use of the word "include", the list is not exhaustive, it is certain that such would not necessarily include State High Courts or Magistrates' Courts in the various Southern States. This submission is right in the light of the provision in Section 490 of the Act which vests only in the Chief Judge of the Federal High Court or of the Federal Capital Territory or the President of the National Industrial Court the power to make rules of court generally for carrying into effect the purposes of the Act. The above authorities cannot make rules which State High Courts or Magistrates' Courts will be subject to. Thus, the Act applies only to courts subject to the supervision of the above authorities as the case may be, namely, the Federal High Court, the National Industrial Court, the High Court of the FCT, the Magistrates' Court of the FCT and the Area Courts of the FCT.

It is interesting to note that the CPA ceases in its application to criminal trials before the Federal Courts. It is noteworthy that by virtue of Section 32(1) of the Federal High Court Act,¹⁰⁵ the CPA applied in the Federal High Court wherever the Court may be sitting. However, this provision has lost its life to Section 2(1) of the ACJ Act which makes itself applicable to the Federal High Court. The Criminal Procedure Laws of the various Southern states are still extant notwithstanding the fact that they are albeit domesticated versions of the CPA. Some states like Anambra and Ekiti states have enacted similar laws in 2010 and 2014 respectively. Other states are enjoined to follow suit either by way of domestication of ACJ Act or to amend same to suit the various peculiarities for effective administration of criminal justice.

4.2 PROSECUTORIAL DISCRETION

The constitution of the federal Republic of Nigeria confers prosecutorial powers on the Attorney General (A G) of the federation or a state.¹⁰⁷ The respective Attorneys have power to institute, conduct, compound, take over and discontinue criminal proceedings in any court except a court Martial. These powers are exercisable by him in person or through officers in his department.¹⁰⁸ And in exercising these prosecutorial powers, the AG's shall have regard to public interest, the interest of justice and the need to prevent abuse of legal process.¹⁰⁹ Therefore, his powers empower him to settle or compound any

¹⁰¹ See section 2 ACJ Act.

¹⁰² For example, Section 20, Money Laundering (Prohibition) Act, 2011, and Section 26, National Drug Law Enforcement Agency Act CAP N30, LFN 2004, vest exclusive jurisdiction over offences in the respective Acts on the Federal High Court.

¹⁰³ CAP R1, LFN 2004

¹⁰⁴ *Ibid*, Section 9

¹⁰⁵ CAP F12, LFN 2004

¹⁰⁷ See section 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) for the powers of the AG Federation and AG of a State respectively.

¹⁰⁸ *Ibid*.

¹⁰⁹ *Ibid*.

case before or during trial. Nigerian laws recognize the general prosecutorial discretion and in fact give it a constitutional flavor. Apart from its exceptions and caution in the discharge of this function, it is argued that the AG of the federation or a state can use his discretion under the constitution to resolve any criminal matter by ADR. This may be by negotiation and settlement with the accused person/defendant or preferably by initiating victim offender mediation or plea bargain.¹¹⁰ The AG or any person acting on his behalf can therefore having regard to the facts and assessment of law decide to/ decide not to institute proceedings of one or more counts, in respect of one or more accused persons, against a co-conspirator in exchange for his/her evidence against the other conspirator, discontinue proceedings, or may not even institute proceedings at all.¹¹¹ This power must however be used with utmost diligence in the public interest and interest of justice devoid of any abuse of office. For a proper prosecutorial discretion to be maximally utilized as an ADR option, it becomes necessary for AG's to promulgate clear prosecutorial guidelines and policy and sentencing guidelines to guide law officers, accused and the courts.¹¹²

4.3 Victim-Offender Mediation Programs and Family Group Conferencing

Victim-Offender Mediation Programs (VOM) is mediation in criminal matters. It involves the assistance of a trained mediator to facilitate discussions between the victim and offender. Both parties are given the opportunity to express their feelings about the offence and an attempt is made to reach agreement as to what steps the offender can take to repair the harm. It is often used in minor criminal cases of simple misdemeanor/ offences. Victim-Offender Mediation Programs was first practiced in Ontario Canada in the early 1970s. It was developed and employed in the United States, United Kingdom and some other parts of Europe in later decades. In some cases, restorative justice was applied to such programs after they had been implemented.

Family Group Conferencing (FGC) has a wider circle of participants than VOM, adding people connected to the primary parties, so as to be encompassing and to produce an all encompassing result devoid of parental / guardian influence and advice or that of family, friend & professionals as a whole. Thereby, it incorporates the above mentioned people on the parties' part. FGC is most appropriately used for juvenile cases due to the important role of the family in a juvenile offenders' life. FGC is incorporated in the New South Wales (Australia) under the 1997 young offenders Act, and in New Zealand under the 1989 Children, Young persons and their Families Act. Both mechanism has enormous benefit and can be adopted in Nigeria to compliment and strengthen the administration of justice.

4.4 COMMUNITY RESTORATIVE BOARDS

Community Restorative Boards also referred to as community Justice Committees in Canada is a referral order panels in England and Wales. It comprises of a small group prepared by intensive training to conduct public face-to-face meetings with offenders, the victims and representative of the state. Judges may sentence offender to participate; police may refer them before charging them, or they may engage outside the legal system. Victims meet with the board and offender or submit a written statement which is shared with the offender and the board. Board members discuss the nature and impact of the offense with the offender. The discussion continues until they agree on a deadline and

¹¹⁰Dakas C.J.D., Plea Bargain : The Law and Economics of Criminal Prosecution in Nigeria, paper presented at NAILS Roundtable on Plea Bargain Options, 19th April, 2012 pp.1-3

¹¹¹Ibid; Alubo A. O. "Plea Bargaining Imperative in Nigeria" p. 511

¹¹²Presently, there are no clear prosecutorial policies and guidelines for public prosecutions in Nigeria both at federal and state levels.

specific actions for the offender to take. Subsequently, the offender documents progress in fulfilling the agreement. After the deadline passes, the board submits a compliance report to the court or police, ending the board's involvement and the court or police positive action on such report. Sections 460-466 of the ACJ Act provides for the arrangements for community service which its primary aim is to reintegrate

principle of the ACJ Act.

4.5 TRADITIONAL DISPUTE RESOLUTION MECHANISM

Traditional dispute resolution mechanisms are indigenous practice of dispute resolution in many Nigerian communities. They are basically in the form of mediation, reconciliation and some time arbitration although not called these names.¹¹³ Prior to colonialism, unwritten systems of customary criminal law operated in various parts of African communities in general and Nigeria in particular.¹¹⁴ Disagreements, conflicts and or disputes which arose as a result of domestic relations, commercial transactions and socio- political developments are usually resolved through some traditional dispute resolution processes available in the pre-colonial institutional justice system.¹¹⁵ Hence, disputes such as matrimonial/marital disputes, commercial disputes, land and boundary disputes, chieftaincy matters, misdemeanor, felony and even some criminal acts are resolved by the assistance of third party neutral, usually elders or chiefs of the various Nigerian communities who are vast in the native laws and traditions of the people with the active participation of the parties through an organized traditional dispute resolution mechanisms in existence before the creation of the formal courts.¹¹⁶ The traditional dispute resolutions system basically regulates certain standards of behaviour and prescribes punishments for their breach in order to maintain decency, public peace and tranquility in the community.¹¹⁷ It must be noted that the traditional justice system places more emphasis on restoration of peace, reconciliation and social harmony rather than strict application of penal laws obtainable in the formal courts system.¹¹⁸

The practice is that feuding members in a community take their disputes voluntarily to family or kindred heads, elders, prominent leaders in the communities and traditional rulers as independent arbiters for settlement. These arbiters are often selected ad hoc with the primary aim of restoring harmony by resolving the disputes. The parties usually accept the decisions of these respected elders and chiefs who sit as native tribunals because they derive their authority from the custom and tradition of the

¹¹³Chukwuemeire A.I. "Arbitration and Human Rights in Africa" p.109

¹¹⁴Daibu A. A. "Application of the Rules of Natural Justice in Arbitral Proceedings in Nigeria" *Ife Juris Review*(2013) vol. 1, p. 70-71; Oseko A. "The Criminal Justice System in Kenya: The Role of Alternative and Traditional Dispute Resolution Mechanisms" p. 38-39; Akanbi M. M., Abdulrauf L. A. and Daibu A. A. "Customary Arbitration in Nigeria: A Review of the Extant Judicial Parameters and the Need for Paradigm Shift" *Journal of Sustainable Development Law and Policy*, Afe Babalola University (2015) vol. 6 No.1 pp. 200-201; Ifeolu J. K. Appreciating Criminal Law in Nigeria, p. 6; Oba A. A. "Juju Oath in Customary Arbitration and their Legal Validity in Nigerian Courts" *Journal of African Law* (2008) vol. 52 No.1 pp. 140 -142

¹¹⁵The methods of resolving disputes include customary arbitration, Negotiation, Mediation, Conciliation, Oath taking, Divination, and Trial by ordeal among others. See *Emiola A., The Principles of African Customary Law*, pp. 51-73; Ezejiogor G. *The Law of Arbitration in Nigeria* pp. 27-29; Camara F. K. and Cisse A. "Arbitration and Mediation in Black African Cultures" *Arbitration Review* (2009) vol. 2 p. 285; Elias T.O. *The Nature of African law*, pp. 212; *Agu v. Ikewibe* (1991) 4 SCNJ 56 at p. 78 or (1991) 3 NWLR (pt. 180) 385 at 417; *Onyege v Ebere* (2004) 6 SCNJ 126 at 143.

¹¹⁶Daibu A. A. and Abdulrauf L. A. "Challenges of the Practice of Customary Arbitration in Nigeria" p. 106; Oba A. A. "Juju Oath in Customary Arbitration and Their Legal Validity in Nigerian Courts" pp. 139-158; Oluduro O. 'customary arbitration in Nigeria: Development and prospects' pp. 1- 40.

¹¹⁷Ifeolu J. K. *Appreciating Criminal Law in Nigeria*, pp.3, 6.

¹¹⁸Akanbi M.M. "Contending Without Being Contentious: Arbitration, Arbitrators And Arbitrability" Being the 152nd University of Ilorin Inaugural Lecture Delivered at the University of Ilorin Auditorium on 13th November, 2014. p.3; Dieng A. "Cultural Approach to Alternative Dispute Resolution" *African Journal of Business and Law* (2008) vol.2 No. 1 pp. 46 ; Camara F. K. and Cisse A. "Arbitration and Mediation in Black African Cultures" p. 285.

community which are accepted by members of the communities as binding.¹¹⁹ The modern ADR mechanisms such as Mediation, Negotiation, and Conciliation among others are similar to the traditional modes of resolving disputes in virtually all the pre-colonial communities that made up of Nigeria although not called these specific names. Traditional disputes resolution like customary arbitration can properly be used because of its simplicity and mutuality to solve the numerous challenges facing the Nigerian criminal justice system as it is cheaper and faster.

5. PROSPECTS AND CHALLENGES OF ADR IN THE NIGERIAN CRIMINAL JUSTICE SYSTEM

It is obvious that all innovations and concepts are characterized with their pros and cons, ADR is not an exception. Therefore, it becomes apparent for one to briefly highlight some of the possible prospect and challenges of the application of ADR in the Nigerian criminal justice system. The advantages or prospects of ADR over litigation/prosecution of criminal cases are inexhaustible and include the following:

1. **It saves time:** This is one of the most important advantages of ADR over litigation as the supreme court of Nigeria via its statistics for the year 1999 – 2004¹²⁰ provides this table

YEAR	LAND CASES	OTHER CIVIL MATTERS	CRIMINAL MATTERS
1999	13-16 years	13-18 years	8 years
2000	18 years	11 – 7 years	7 – 3 years
2001	19 – 4 years	12 – 6 years	9 – 9 years
2002	21 – 5 years	11 -3 years	12 -2 years
2003	15 years	14 – 2 years	9 – 5 years
2004	21 – 7 years	15 – 5 years	12 – 5 years

(Source: Supreme Court of Nigeria 1999-2004 Statistics)

By the above table it took an average of 18 years (from year of commencement) to finalize land cases and about 14 years (from year of commencement) to finalize criminal cases.¹²¹

Issues emanating from this analysis are:

1. What is the value of a judgment that comes after eighteen (18) years of robust advocacy especially when some of the parties or vital witnesses may have died or interest may have changed.

¹¹⁹ Alkanbi M. M., Abdulrauf L. A. and Daibu A. A. "Customary Arbitration in Nigeria: A Review of the Extant Judicial Parameters and the Need for Paradigm Shift" p.201.

¹²⁰ National open university of Nigeria: 'alternative dispute resolution 1' available at <http://www.nou.edu.ng/NOUNOCL/pdf/laws/LAW%20517%20dispute%20i-pdf> accessed on 25th march, 2015.

¹²¹ Ibid.

2. What also is the real value of such judgment after dissipating so much emotion, time, value resources and energy going to court for about two decades and judgment finally come several years after.¹²²

2. IT IS COST EFFECTIVE: ADR processes are usually less expensive than litigation. This is premised on the fact that parties to court proceedings usually retain counsels who normally charge high fees for their retainership. More importantly, because litigation span or last for a longer duration and therefore involves more cost to the parties than ADR while in ADR for example, an arbitrator appointed can conduct arbitration effectively and quickly without the involvement of technicalities and rigidity associated with litigation.¹²³

3. It is less formal
4. It operates a flexible procedure.
5. It preserves, promote and protect future relationship
6. It is party controlled and reveals the true causes of disputes.
7. It allows for the selection of experts decision process.

The challenges of the application of ADR in the Nigerian criminal justice system includes;

1. It may not be useful when the determination of constitutional questions is involved.
2. It cannot be used in most capital/ murder cases in Nigeria.
3. Nigerian laws have not specifically provided for the use of ADR in our criminal Justice system until the recent innovations.
4. It may not develop Nigeria judicial precedent / Decisions
5. Crime perpetration may be encouraged due to the general attitude of offenders.

6. REFORMING LEGAL AND INSTITUTIONAL FRAMEWORKS FOR EFFECTIVE APPLICATION OF ADR IN ADMINISTRATION CRIMINAL JUSTICE IN NIGERIA

The application of ADR to our criminal justice system will no doubt be of immense benefit to the parties and the society. ADR mechanisms promote restorative justice by ensuring that the victim(s) of crime, the offender and the state participate actively in resolving the aftermath of crime. The victim is reconciled with the offender and repatriated and or reasonably compensated while the offender is also rehabilitated/ reintegrated back into the society. This will save the state a lot of needless dissipation of state resources on full trial. ADR mechanisms will save time and cost of the parties and the court. Thus necessary reforms of some institutional and legal frame work are necessary for effective and efficient implementation of mechanism in the Nigerian criminal justice system. The appropriate institutions needed in crime prevention, management as well as effective application of ADR in the Nigerian criminal justice system are majorly the Nigeria police force, the judiciary, the Nigerian prison service, court annexed ADR/Multidoor Court house and organized community ADR Structure. They are hereunder considered along with some suggested reforms.

¹²² Ibid.

¹²³ Ezejirofor G. 'the law of arbitration in Nigeria' Longman Nigeria plc, lagos, 1997.

6.1. The Nigeria police force is an importance sector in the Nigerian criminal justice system. The police are saddled with the responsibility of the maintenance of law, order, and public safety in accordance with the provisions of the constitution and such other laws as may be prescribed by an Act of the National Assembly.¹²⁴ The Police Act¹²⁵ is one of such Act of the National Assembly which deals with the powers, function, organization, administration and responsibilities of the Police force. The primary function of the police is prevention of crime, investigation and apprehension of offender, preservation of law and order, protection of life and property and enforcement of laws.¹²⁶

The police also perform such military duties within or outside Nigeria as may be required by constituted authority.¹²⁷ The police also conduct prosecution of some criminal cases in courts¹²⁸ subject only to the constitutional power of the Attorney General of the Federation or states as the case may be.¹²⁹ Suffices to say that the law places a lot of important role on the police in the administration of criminal justice. However, The situation of the Nigerian police stations reveals that the various cells are small and over-crowded, where toilets and bathing facilities exist, there function are inhibited by lack of regular water supply; means of communications such as telephones, radio and transport are inadequate and in some cases, non-existent; basics such as stationary and office furniture and equipment are lacking.

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For the Nigerian police to perform their roles effectively, it must be properly funded with competent personnel with requisite knowledge of conflict resolution and ADR mechanisms and modern gadgets/ facilities etc. the police must shift from paramilitary operations, repression of the helpless civilian populace and the exercise of force but and act as community service in its functions as crime prevention, detection and investigation.¹³¹

6.2 The judiciary is made of the courts in Nigeria. The courts as an important institution of government are constitutionally vested with the responsibility of settling disputes and matters between individual interests which extends to the determination of any question as to the civil rights and obligations of such individual.¹³² In criminal trials only a court of competent jurisdiction can determine the guilt or otherwise of an accused. Thus the judiciary must also be well funded with not only competent but also committed and dedicated judicial and supporting personel, sufficient infrastructure facilities, office equipments and furniture and transport facilities in the aver all interest of the society. This reduce congestion of cases, prison congestion and delayed in the administration of justice which and restore public confidence in the judicial system.¹³³ Also the various provisions of rules of courts and some other statutes on ADR must be strengthened properly utilized. Judicial officers, prosecutors, legal practitioners and other stakeholders must also be encouraged to develop themselves on the use and benefits of ADR mechanisms in criminal trials by attending seminars, workshops and private research.

Furthermore, since the main aim of the promulgation of the ACJ Act ensure efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and

¹²⁴ See sections 214(1), (2) and 215 (3) of the constitution of the federal republic of Nigeria, 1999 (as amended)

¹²⁵ Police Act, Cap. P. 359 Laws of the Federation of Nigeria, 1990.

¹²⁶ Section 4 of the Police Act.

¹²⁷ *ibid*

¹²⁸ Section 23 Police Act, the police cannot however conduct prosecution in the court material. see the Armed Forces Act.

¹²⁹ Section 174 and 211 of the constitution of the federal republic of Nigeria 1999(as amended)

¹³⁰ Ajomo and Okagbue (eds) Human Rights and Administration of Nails Research Series no.11991 p.284.

¹³¹ *Ibid* p. 285.

¹³² Section 6(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also Oputa C., The Judiciary of the Military Regime the J.I.C. Taylor Memorial Lecture, Faculty of Law, University of Lagos, Lagos 1993 p. 2.

¹³³ Justice Arthur Vanderbilt 'The Challenge of Law Reform (Princeton University Press)pp.4-5 quoted in Popoola A. 'Politics of the Nigerian Institute of Advanced Legal Studies, University of Lagos Campus, Lagos between 10th and 13th of may,1994.

protection of the rights and interests of the suspect, the defendant, and the victim in the Nigeria,¹³⁴ there is need to appoint more Judges and prosecutors with substantial knowledge of ADR processes in criminal litigation otherwise the intent of the Act for speedy and accelerated trial may not see the light of the day.

6.3 The Nigeria prison service is the body charged with the administration of prisons in Nigeria. The prison service is take custody of persons apprehended in connections with criminal activities. Even when suspects are arrested and detained at a police station, the duration of such detention is regulated by the constitutional provisions on right to personal liberty.¹³⁵ The Nigerian prison is regulated by prison Acts.¹³⁶ It has the responsibility of ensuring the safe custody of offenders and persons remanded in their custody, identification of the causes of their anti-social behavior with a view to reforming them to become law-abiding citizens of a free society, training of offenders towards their eventual rehabilitation on discharge, and generation of funds for the government through prisons farms and industries.¹³⁷ Therefore, to achieve a proper application of ADR in criminal justice, there is need for a prison system devoid of insufficient funding, poor and dilapidated infrastructures, unmotivated staff, overcrowding and consequent gross human rights violation.

6.4 COURT ANNEXED ADR MULTI DOOR COURT HOUSE

The multi-door courthouse originated from the USA and which is now found in Nigeria but restricted to civil matters, thereby giving credence to the establishment of the Lagos multi-door Courthouse (LMDC).¹³⁸

The Lagos Multi-door courthouse (LMDC) is the first court connected ADR centre in Africa. It was established on 11th June, 2002 as an ADR window. The abundant benefits and progress the LMDC has recorded in amicable settlement of civil disputes has prompted call for its use in criminal matters in order to enlarge resources for justice by providing enhanced, timely, cost-effective and user friendly access to justice ranging from plea bargaining, prosecutorial discretion, restorative justice, victim-offender mediation, family group conferencing, community restoration boards windows and any other applicable ADR windows well structured and applied with adequate and sufficient prosecutorial and sentencing guidelines, policies and reforms into Nigeria Criminal Law.

7. CONCLUSION

Most Nigerian legislations regulating criminal justice are obsolete and could not meet the contemporary needs of our time; they therefore, require radical review and for Nigeria to evolve in the same manner as USA, UK, Australia and India etc. that have sufficiently adopted the use of ADR mechanism into their criminal justice system. Nigeria must shift from the conventional retributive justice system and transform itself in accordance with the principles of restorative justice via informal ADR mechanisms like mediation, victim offenders mediation, family group conferencing, sentencing circle, plea bargaining, arbitration and traditional or indigenous practices appropriate for the resolution of

¹³⁴Section 1(1-2) ACJ Act.

¹³⁵Section 35(1)(a) of the constitution of the federal republic of Nigeria, 1999(as amended).

¹³⁶CAP 366, laws of the federation of Nigeria, 1990.

¹³⁷Nigeria prison service, annual report 1984 at p.5. see facts about Nigeria prison system penal reform education series issue VI prisoners rehabilitation and welfare action (PRAWA) 1999 p.8 and Ifaturoti T.O. 'Nigerian prisoners and the Human Rights Campaign: Some Challenges' in Ajumo(ed); Nigerian Current Law Review Nigeria Institute of Advanced Legal Studies, 1994 p.73.

¹³⁸Aina K. 'Alternative Dispute Resolution: Principles and Practice' Conference Paper Presented at the 23rd Advanced Course in Practice and Procedure Organization by the Nigeria Institute of Advanced Legal Studies, University of Lagos Campus, Akoka-Lagos on 3rd-14th October 2003.

disputes to facilitate conciliation and redress for victims. The application of ADR as alternative or supplementary to the conventional court system in the Nigeria criminal justice system will not only reduce the technicality and rigidity of the current system but also ensure efficient and responsive avenue to ameliorate the hitherto suffering of the victims of crime, the offender and the community. This will serve as panacea for the challenges in the administration of justice and restore confidence since the prosecution; the defence and the victim are actively involved.

The enactment of the Administration of Criminal Justice Act, 2015 and the Administration of Criminal Justice Laws 2010, 2011 and 2014 for Anambra, Lagos and Ekiti states respectively with several innovations for speedy disposal of criminal cases are commendable. It is hope that the laudable provisions of the laws will achieve their purposes through proper implementation.

There is need to appoint more Judges/justices, magistrates, diligent prosecutors and equip investigators with provision of modern facilities for efficient, effective and accelerated trial of criminal cases. Further, the National Assembly should see the need to make necessary amendments to accomplish the desired intent of the Act, namely, to ensure that administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim. There is the urgent need to make regulations or guideline for the exercise of prosecutorial discretion and sentencing in respect of plea bargain at both the federal and state levels to avoid any form of abuse

Also, the States Houses of Assembly in Nigeria need to strengthens the ACJ Act by domesticating same or enacting their own laws with the Act as a model. This will unify the administration of criminal justice in Nigeria or in the alternative, the constitution should be amended to make rules of criminal procedure an item in exclusive legislative list in part I of the 2nd schedule to the constitution and gain general applicability like Evidence Act, 2011. This will save the country from multiplicity of the laws regulating criminal Justice System in Nigeria to achieve certainty and put the administration of criminal system in Nigeria beyond par adventure.