

ALTERNATIVE DISPUTE RESOLUTION AND THE CRIMINAL JUDICIAL SYSTEM: A POSSIBLE SYNERGY AS SALVE TO COURT CONGESTION IN THE NIGERIAN LEGAL SYSTEM*

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Introduction

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.

The Majority 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 realise that to continue seamlessly would birth a judgement 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, (from the judge, to the janitor) has also contributed to the present state of decay in the system. The Participants cum victims of the criminal justice system (CJS) appear to be the obvious or noticeable casualties largely affected by the congestion experienced in our courts today, with the flaws there indirectly impinging, impacting and determining, with far reaching effects, the lives, loves and destinies of those concerned; directly or indirectly. Suggestions made by a plethora of experts, observers and 'friends of the courts' abound on ways to salvage this present and lingering state of affairs.

The considered embrace and implementation of Alternative Dispute Resolution Processes with its characteristic feature of celerity, its operation and acceptance; a success in predominantly commercial aspects and issues in Law now popular in civil/commercial cases/disputes, has thus triggered a contemplation and proposal in this essay, on the application of ADR processes as a possible panacea to the overwhelming situation of bottlenecks and overcrowding in our court rooms.

It is indeed submitted that the introduction and application though novel, of these processes would not be at a total variance with the law and issues of justice (prosecution, guilt or innocence, sentencing etc.), all integral to criminal justice but will pursue the quality of promptness currently deficient in our courts

and impeding justice thus giving strength unfortunately, to the maxim though trite; “justice delayed is justice denied.”

Alternative Dispute Resolution (ADR)

Alternative dispute resolution (ADR) is a non-adversarial way of resolving disputes that is being progressively more employed in the public and private sectors, especially in developed countries. ADR helps parties resolve their differences without resorting to a more confrontational adjudicative process. It looks at needs, interests, and solutions, and can promote healing. It is voluntary, timely, confidential, and based on mutual agreement. Unlike the conventional courts, it is designed to yield solutions that are adapted to the particular circumstances of individual cases, as it is about solving problems rather than imposing solutions through an adjudicative process.¹ Thus, ADR and its role in the socio economic or political life of nations must be acquired by every maturing or seasoned/ veteran lawyer or practitioner in varied fields of proficiency.² This solely for the reality that disputes are a fact of life of which cannot be ignored in any sphere. Therefore acquiring this requisite expertise is desirable, resulting in positive and strategic rewards for the legal practitioner.

Alternative Dispute Resolution. (ADR): Some Definitions.

Alternative Dispute Resolution may be defined as a range of dispute resolution processes or mechanisms designed and available outside of, but supplementary to litigation.³ The Black’s Law Dictionary⁴ defines alternative dispute resolution thus: “a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.” Another definition has said of ADR, to be “...range of procedures that serve as alternative to litigation through the courts for the resolution of disputes, generally involving the intercession and assistance of a neutral impartial third party. In some definitions and more commonly, it excludes not only litigation, but all forms of adjudication.”⁵ Stephen J. Ware⁶ has defined ADR to be everything but litigation, because litigation as a matter of law is the default process of dispute resolution. A final addition to the above definitions would be incomplete without the input of Professors Olakunle Orojo and Ayodele Ajomo, two ‘leading lights’ on Arbitration in Nigeria: “...ADR is generally used to describe the methods and procedures used to resolve disputes either as alternatives to the traditional disputes resolution mechanism of the court or in some cases as supplementary to such mechanism.”⁷

THE Alternative Dispute Resolution Processes.

The varieties or array of these processes include Negotiation, Mediation, Arbitration, Neutral Evaluation, as well as various hybrids such as Med-Arb and Lit-med.⁸ Mediation however, has been agreed upon to be the most traditionally or commonly used, being adjudged as easier and cheaper or the

¹ Article by Felix Adewumi, <http://www.nigeriavillagesquare.com/articles/felix-adewumi/alternative-dispute-resolution-adr-an-antidote-to-court-congestion>. Posted on 12-04-2007, 19:00:32 PM. Retrieved 19-02-2012.

² ADR and Multi Door Court. Paper delivered by Hon Justice Opeyemi Oke; Chairman Governing Council, The Lagos Multi Door Court House. 3rd March 2011.

³ DISPUTE RESOLUTION GROUP Article by Kehinde Aina Managing Partner; AINA, BLANKSON & CO. Lagos Nigeria.

⁴ Ninth Edition, Page 91

⁵ ADR and Multi Door Court. Paper delivered by Hon Justice Opeyemi Oke; Chairman Governing Council, The Lagos Multi Door Court House. 3rd March 2011.

⁶ Alternative Dispute Resolution [ss 1.5@5-6](#) (2001)

⁷ Orojo J.O, Ajomo M.A: Law and Practice of Arbitration and Conciliation in Nigeria (Mbeyi & Associate Nigeria Limited, 1999) Page 4

⁸ Ibid....3

most manifest of these mechanisms, than arbitration, which is although, most popular and universally known. Below are brief definitions or descriptions on the concepts aforementioned:

Arbitration

Arbitration may be defined as a simplified version of a trial involving no discovery and simplified rules of evidence. The choice of neutral/arbitrator is that of the parties and the decision (award) of the neutral may be binding or non-binding depending on the prior election of the parties. In arbitration, the parties relinquish their decision-making right to the neutral who makes a decision for them. By pre-agreement, the neutral's decision is either binding or nonbinding. If binding, the neutral's decision is final and the winning party may enforce it against the losing party. If nonbinding, the neutral's decision is advisory in aid of settlement.⁹

Mediation

Mediation, the most commonly utilized of all ADR processes, may be defined as 'a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference with the parties in ultimate control of the decision to settle and the terms of resolution' Simply put, mediation is negotiation assisted by a third party. If the disputants are unable to resolve their disputes by negotiation, a third party that is usually referred to as Mediator, Conciliator or Facilitator, may be called upon to help them. The mediator's sole function is not to decide the issues or determine right or wrong, but to help the disputants resolve their conflict consensually. This is why mediation is often called "turbocharged negotiation" as the primary function of the mediator is to help facilitate negotiations among the parties.

*HYBRID PROCESSES*¹⁰

Alternative Dispute Resolution is no longer seen as being valuable except where it can prove to also be Effective Dispute Resolution. The dynamics of a dispute might be such that in order to be effectual, a commingling of ADR processes may be utilised. Examples of hybrid processes include: Lit med and Med-arb.

Lit-Med

Lit-Med is the combination of litigation and mediation as a single process. Parties may agree that in the eventuality that a matter might be part resolved through mediation and issues not resolved would be referred to litigation. Matters of constitutional law and interpretation may also be referred to litigation.

Med-Arb

Med-Arb as the name suggests, is a process in which Mediation is followed by Arbitration where Mediation fails to resolve a dispute or parts of it. This makes possible achieving the best of both worlds. This process gives the parties the opportunity to use mediation to reach a settlement, and then to rely on a decision by the arbitrator on issues on which no agreement has been reached. This process encourages parties to create their own best settlement under the threat of having one imposed by an arbitrator.

*THE DISPUTE RESOLUTION SPECTRUM*¹¹

The Dispute Resolution Spectrum can be viewed graphically as extending from the least formal process on the top of the chart; pure negotiation, to the most formal process on the bottom; litigation. Pure negotiation, a process that ought to be familiar to all advocates, is the only process in the spectrum in

⁹ Ibid

¹⁰ Ibid

¹¹ ibid

which the parties and counsel engage without the assistance of a neutral. Many times, however, it serves as an ancillary dispute resolution mechanism to other processes in the spectrum. In the next process, conciliation, the neutral's goal is to assist in reducing tensions, clarifying issues, and getting the parties to communicate. In essence, it is the process of "getting the parties to the table" and inducing their active involvement in solving their problem. Moving down the chart, facilitation is the process in which a neutral functions as a process expert to facilitate communication and to help design the process structure for resolving the dispute. Ordinarily, a facilitator deals only with procedures and does not become involved in the substance of the dispute.

ADR under Nigerian Law

No law prohibits mediation in Nigeria. Instead some Rules of Court permit judges to encourage the parties to resort to ADR processes. Currently, mediated agreements are just contracts. However in some states where the facility exists, court-connected mediated agreements are registered and enforced through the courts (*res judicata*).

Statutory provisions, rules and judgements that stipulate and encourage the use of ADR processes in dispute resolution in Nigeria Classification by:

- Constitution
- Acts
- Laws
- Rules of Court
- Rules of Professional Conduct

Constitution of the Federal Republic of Nigeria, 1999 Section 19(d): Foreign policy objectives:

- The foreign policy objectives shall be –
- (d) respect for international law and treaty objectives as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication.

Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria (LFN) 2004:

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

Federal High Court Act, Cap. F12, LFN 2004

FEDERAL HIGH COURT ACT, CAP. F12, LFN 2004

Section 17: Reconciliation in civil and criminal cases

In any proceedings in the Court, the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

MATRIMONIAL CAUSES ACT, CAP. M7, LFN 2004

Section 11: Reconciliation

(1) It shall be the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage

(unless the proceedings are of such a nature that it would not be appropriate to do so), and if at any time it appears to the judge constituting the court, either from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel, that there is a reasonable possibility of such a reconciliation, the judge may do all or any of the following, that is to say, he may –

- a) Adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with either of the next two succeeding paragraphs;
- b) With the consent of those parties, interview them in chambers, with or without counsel, as the judge thinks proper, with a view to effecting reconciliation;
- c) Nominate a person with experience or training in marriage conciliation, or in special circumstances, some other suitable person, to endeavour with the consent of the parties, to effect reconciliation.

Section 30: Petition within two years of marriage

(1) Subject to this section, proceedings for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by leave of the court.

(3) The court shall not grant leave under this section to institute proceedings except on the ground that to refuse to grant the leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage.

(4) In determining an application for leave to institute proceedings under this section, the court shall have regard to the interest of any children of the marriage, and to the question whether there is any reasonable probability of reconciliation between the parties before the expiration of the period of two years after the date of the marriage.

Justice delayed, and the necessity for alternative dispute resolution, as a solution

There is much truth in the popular and rather over flogged/used aphorism that justice delayed is justice denied, for Justice should neither be denied nor postponed. As the Honourable Justice Chukwudifu. A Oputa J.S.C. (Rtd) opined, delay is a serious indictment on the efficacy of our judicial system. It seriously erodes public confidence in the adjudicatory process and in the administration of justice itself.¹² Significant sums of people find themselves to be victims or casualties of the crawling and most times crippling expense of the machinery of justice: the law courts, and are therefore forced into resignation, or being content with the lack of justice thereof.

There exist a plethora of reasons, excuses for the delays experienced in the judicial procedure, some of which are endemic in the system. Some delays are occasioned by the personnel/officials of the judicial system itself, (the court clerks, bailiffs, lawyers and even judges) while some are due to the existence of a multitude of procedural rules which are often technical and complicated, and the bureaucracy oftentimes attending its application. The lengthy deferrals and adjournments in regular courts, resulting in heavy backlogs of unheard and part heard cases have heightened the need and concern for the expeditious, and with minimal delay and cost; resolution of cases and disputes. Thus, the need for speedy trials has arisen to be an issue of high priority, the only caveat being that justice rushed may lead to outright injustice.¹³

The necessary and needed ingredient therefore to reduce delay in our judicial process, is the adoption of new attitudes and approaches by all those involved especially directly, for justice and its prompt administration are but two sides of the same coin, of which its efficient, effective and prompt application

¹² Hon. Justice C.A. Oputa J.S.C. (Rtd), (1999), ‘‘The Philosophy of Justice with emphasis on Arbitration’’. Nigerian Law and Practice Journal, March 1999, Vol: 3, No.1 Pg. 73-84.

¹³ Ibid....pg 80

and management should co-exist as complements, and all the benefits derived from prompt justice delivery will be effective and compelling, done swiftly.¹⁴

The various Alternative dispute resolution (ADR) techniques have arisen out of the need for the prompt and quick resolution of disputes/cases. However, for its effective utilisation as an alternative properly so called, Legal Practitioners and Judges involved in these ADR practices and procedures must of a necessity undergo some essential metamorphosis, and adopt a different approach to the judicial process therein required and not follow slavishly, the age old and familiar procedures of litigation. With the 'ministers' involved in the judicial process ministering assiduously, with precision and alacrity each in doing his task giving his best, the constitutional guarantee for prompt adjudication would be realised and the truism; that all the benefits which flow from justice being done will only be potent, if indeed done quickly¹⁵ would be to a greater extent, a reality for our judicial system.

THE CRIMINAL JUSTICE/JUDICIAL SYSTEM AND RESTORATIVE JUSTICE.

Criminal Justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts.¹⁶

The primary and basic ingredient of the criminal justice system is the law setting up the courts without the law there will be no definitive system of criminal justice, in any query about the criminal justice system we must start with the enabling law.¹⁷

The criminal justice system consists of three main parts: Legislative (that create laws); adjudication (the courts); and corrections (jails, prisons, probation and parole).¹⁸ In a criminal justice system, these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society.¹⁹

The criminal justice system definition is that of a set of laws, agencies, entities, and individuals that work together to ensure that order in the country is maintained through law enforcement and the deterrent and prevention of crime. Dambazau defines the criminal justice system as either an academic discipline or a legal process.²⁰ As an academic discipline it provides a proper understanding of the CJS in relation to the society. Exposing interested students to a variety of related and relevant subjects, and highlighting the importance of viewing the CJS as a legal entity.²¹

¹⁴ Ibid....pgs.79.80

¹⁵ Ibid...pgs.82,83,84

¹⁶ Criminal justice From Wikipedia, the free encyclopaedia. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization. This page was last modified on 5 March 2012 at 18:21. Retrieved 10th March 2012.

¹⁷ Introduction to Political Science: National Open University of Nigeria Resource document, 2006.

¹⁸ Walker, Samuel (1992). "Origins of the Contemporary Criminal Justice Paradigm: The American Bar Foundation Survey, 1953-1969". *Justice Quarterly* 9 (1).

¹⁹ Ibid

²⁰ Dambazau, A.B (2007). *Criminology and Criminal Justice*: Spectrum Books Limited Ibadan. pp174. ISBN 10:9780297324

²¹ Ibid.

The CJS is the machinery through which the criminal or an alleged accused is processed and subsequently disposed. The CJS is responsible for the regulation and control of criminal behaviour. To fully understand the how the system works it is imperative to grasp the working relationships of all its agencies; the use, functions and decision making process of the police, the structures of the courts system and how judges reach decisions; and the intricacies of penal institutions. These agencies are the main actors in the fight against crime: The Police, responsible for detecting and apprehending those who violate criminal law, the courts deciding the guilt or innocence and the eventual sentencing of the accused and the prisons carrying out the sentence and also the rehabilitation of those convicted.²²

The first contact an offender has with the criminal justice system is usually with the police (or law enforcement) who investigates a suspected wrong-doing and make an arrest. Police are primarily concerned with keeping the peace and enforcing criminal law based on their particular mission and jurisdiction.²³ When warranted, law enforcement agencies or police officers are empowered to use force and other forms of legal coercion and means to effect public and social order. Policing has included an array of activities in different contexts, but the predominant ones are concerned with order maintenance and the provision of services.²⁴

The courts serve as the venue where disputes are then settled and justice is administered. With regard to criminal justice, there are a number of critical people in any court setting. These critical people are referred to as the courtroom work group and include both professional and non-professional individuals. These include the judge, prosecuting, and the defence lawyer. The judge, or magistrate, is a person, elected or appointed, who is knowledgeable in the law, and whose function is to objectively administer the legal proceedings and offer a final decision to dispose of a case.

RESTORATIVE JUSTICE

What is restorative justice?

Restorative Justice (also sometimes called "reparative justice"²⁵ is an approach to justice that focuses on the needs of victims, offenders, as well as the involved community, instead of satisfying abstract legal principles or punishing the offender. Victims take an active role in the process, while offenders are encouraged to take responsibility for their actions, "to repair the harm they've done—by apologizing, returning stolen money, or community service".²⁶ Restorative justice involves both victim and offender and focuses on their personal needs. In addition, it provides help for the offender in order to avoid future offences. It is based on a theory of justice that considers crime and wrongdoing to be an offence against an individual or community, rather than the state.²⁷ Restorative justice that fosters dialogue between victim and offender shows the highest rates of victim satisfaction and offender accountability.²⁸ Quoting Greif, Liebmann (2002) has noted that a way of looking at restorative justice is to think of it as a balance among a number of different tensions:

- A balance between the therapeutic and the retributive models of justice
- A balance between the rights of offenders and the needs of victims
- A balance between the need to rehabilitate offenders and the duty to protect the public.²⁹

²² Ibid....16

²³ Walker, Samuel (1977). *A Critical History of Police Reform: The Emergence of Professionalism*. Lexington, MA: Lexington Books. pp. 143. ISBN 0669012920. ISBN.

²⁴ Neocleous, Mark (2004). *Fabricating Social Order: A Critical History of Police Power*. London: Pluto Press. pp. 93–94. ISBN.

²⁵ "A New Kind of Criminal Justice", *Parade*, 25 October 2009, p. 6

²⁶ Marty Price, J.D. "Personalizing Crime," *Dispute Resolution Magazine*, Fall 2001

²⁷ Lawrence W Sherman and Heather Strange, *Restorative Justice: The Evidence*, University of Pennsylvania, 2007

²⁸ Suffolk University, College of Arts & Sciences, Centre for Restorative Justice, "What is Restorative Justice?"

²⁹ Zehr, H. *The Little Book of Restorative Justice*, Intercourse, PA: Good Books, 2002

Zehr and Mika (1998) have suggested three key ideas that support restorative justice: First is the understanding that the victim and the surrounding community have both been affected by the action of the offender and, in addition, restoration is necessary. Second, the offender's obligation is to make amends with both the victim and the involved community. Third, and the most important process of restorative justice, is the concept of 'healing.' This step has two parts: healing for the victim, as well as meeting the offender's personal needs. Both parties are equally important in this healing process to avoid recidivism (re-offending) and to restore a sense of safety for the victim. Various methods of restorative justice are practiced; examples include victim offender mediation, conferencing, healing circles, victim assistance, ex-offender assistance, restitution, and community service. Each method focuses on the needs of both the offender and the victim, and heals in different ways.

Restorative justice principles are characterized by four key values: first, the encounter of both parties. This step involves the offender, the victim, the community and any other party who was involved in the initial crime. Second, the amending process takes place. In this step, the offender(s) will take the steps necessary to help repair the harm caused. Third, reintegration begins. In this phase, restoration of both the victim and the offender takes place. In addition, this step also involves the community and others who were involved in the initial crime. Finally, the inclusion stage provides the open opportunity for both parties to participate in finding a resolution. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all.³⁰ Traditional criminal justice seeks answers to three questions: what laws have been broken? Who did it? and what do the offender(s) deserve? Restorative justice goes further to ask: who has been harmed? What are their needs? Whose responsibilities are these?³¹

Restorative approaches to crime date back thousands of years. In social justice cases, restorative justice is used for problem solving.³² Restorative justice can proceed in a courtroom or within a community or non-profit organization. A courtroom process might employ pre-trial diversion, dismissing charges after restitution. In more serious cases, a prison sentence may precede other restitution.³³

SOME PROCESSES/METHODS.

Victim-offender mediation³⁴

Victim-offender mediation, (VOM, also called victim-offender dialogue, victim-offender conferencing, victim-offender reconciliation, or restorative justice dialogue), is usually a meeting, in the presence of a trained mediator, between victim and offender. This system generally involves few participants, and often is the only option available to incarcerated offenders. VOM originated in Canada as part of an alternative court sanction in a 1974 Kitchener, Ontario case involving two accused vandals who met face-to-face with their many victims.

Family group conferencing³⁵

Family group conferencing (FGC) has a wider circle of participants than VOM, adding people connected to the primary parties, such as family, friends and professionals. FGC is often the most appropriate system for juvenile cases, due to the important role of the family in a juvenile offender's

³⁰ Braithwaite, J. *Restorative Justice & Responsive Regulation* 2002, Oxford University Press, at 249. ISBN 0-19-515839-3

³¹ <http://mailer.fsu.edu/~bbenson/ELibCrime.pdf> B. Benson, "Crime: Restitution and Retribution", Florida State University

³² Pono Kaulike: A Hawaii Criminal Court Provides Restorative Justice Practices for Healing Relationships Doolan 1999

³³ Ibid.

³⁴ Restorative justice From Wikipedia, the free encyclopaedia. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization. This page was last modified on 5 March 2012 at 18:21. Retrieved 10th March 2012

³⁵ Ibid

life. Examples can be found in New South Wales (Australia) under the 1997 Young Offenders Act, and in New Zealand under the 1989 Children, Young Persons, and their Families Act.

Restorative conferencing³⁶

Restorative conferencing (RC) also involves a wider circle of participants than VOM. Restorative conferences, which have also been called restorative justice conferences, family group conferences and community accountability conferences, originated as a response to juvenile crime.

An RC is a voluntary, structured meeting between offenders, victims and both parties' family and friends, in which they address consequences and restitution. RC is explicitly victim-sensitive.

The conference facilitator arranges the meeting. In some cases, a written statement or a surrogate replaces an unwilling victim. The conference facilitator sticks to a simple script and keeps the conference focused, but intentionally does not testify. The intent is to allow subsequent conferences to succeed without a facilitator. RC was successfully introduced in several schools in England.

Community restorative boards³⁷

A community restorative board, also referred to as Community Justice Committees in Canada and Referral Order Panels in England & Wales, is typically composed of a small group, prepared by intensive training, who conduct public, face-to-face meetings. Judges may sentence offenders 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 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.

Restorative Circles & Restorative Systems³⁸

In Brazil the juvenile justice system, neighbourhoods and schools have begun to use Restorative Circles developed by Dominic Barter inspired by Nonviolent Communication. The approach involves a much wider circle of participants than conventional victim/offender conferencing, and begins with establishing a restorative system in the neighbourhood or school where circles will be held. As such, Barter's approach offers scope for radical social transformation. This process is being adopted in Germany, the USA, the UK, Canada and Uganda, and outside of the justice and education systems.

ADR, AFRICAN CULTURE(S)/TRADITION(S) AND RESTORATIVE JUSTICE

An interesting aspect of the ADR is its similarity to the African ways of settling dispute. Justice Lawal Gummi, Chief Judge of the Federal Capital Territory had noted this in his lecture entitled 'Restorative Justice and the Criminal Justice System in Africa: Nigeria as a case study'³⁹ He had observed that all forms of conflict resolution designed to restore, strengthen, and build relationship, existed in African traditional societies before colonisation. He further noted that dispute resolution have its basis in

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid...1

traditional African practice and customs, while opining that the ancestors in Africa never built prisons, nor court, since punishments were designed to achieve restitution, reconciliation and harmony.⁴⁰

With the dawn of imperialism/colonisation, and the introduction and subsequent acceptance of 'foreign' laws, norms and standards, the discard of our traditional values and system that was well understood, familiar and which most importantly, worked us: Africa, unfortunately triumphed, and brought in the western; the so called 'civilised' way of doing things.

According to Justice Gummi 'in both civil and criminal aspects, we are gradually retreating to our previous systems, hitherto viewed as obnoxious, for indeed, western civilisation is failing us; congesting our court, turning our children and other minor offenders into hardened criminals and traumatizing and dehumanising unfortunate victims'⁴¹ The chief judge rightly noted, on his submission, that 'the time has come for us to take a look at our criminal justice system with a view to orientating it towards true justice by acknowledging the pain of real victim of an offence'⁴²

Justice Gummi's view was best epitomised in the saying of Dr John Brand, director and trainer, conflict dynamics in South Africa. Brand observed that the dispute resolution which was supposed to emanate from Africa became adopted in Europe, while African clings on to the European systems. According to him "Colonialism imposed European dispute resolution on Africa, but while Africa suffers, Europe awoke and adopted Africa methodology".⁴³

Before the introduction of the British system of government and its courts in Nigeria, each tribe had developed their separate Customary Law that binds the people. In the northern States, the Emir as the Supreme Ruler with his advisers constitutes the Supreme Court of the land. They resolve land, family and inheritance disputes. In most cases, these cases are referred to the Alkalis, who are teachers on Islamic law. In the west, the Oba in council adjudicates on all issues brought before them, and they applied strict Customary Law in resolving the disputes. While in the East, the Elders in Council and the age grades help very much in settling disputes and in the application of Customary Law. All the tribes in Nigeria also have a set of Customary laws regulating criminal conducts in the society, known as customary criminal law which covers all known crimes in the society, like theft, rape, murder, manslaughter etc. and they all have powers within their communities to impose fines, imprisonment, banishment from the community, death etc.; they also impose punishments like, public caning, public apology, offering of sacrifices or appeasing the gods. The Customary System of both civil and criminal adjudication are very well known to the whole community and observed.⁴⁴

The objective behind the creation, introduction and adoption of the ADR processes and restorative justice as explained earlier and as applied to the legal system the criminal justice system in particular, appears similar to the aim of the African traditions employed even the introduction adoption and domination of the western styled way of adjudication, now holding sway an defining and dictating the process and form of justice application in our societies/legal systems in Africa.

ADR, AFRICAN CULTURE/TRADITIONS, RESTORATIVE JUSTICE AND THE CRIMINAL JUSTICE SYSTEM: A POSSIBLE SYNERGY?

There is a place for deterrence, for retribution, for rehabilitation, and for incarceration all blended into one system. If such a criminal justice policy were based upon justice and fairness (as revealed in the Bible) it would not be a problem to balance these various aspects (or tools) of administering justice. Although ADR processes are used popularly and most commonly for commercial purposes, in most

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid...17

legal systems of the world, its promptness in adjudication is its characteristic hallmark. It is therefore suggested that with the focus on this characteristic (i.e. swiftness, promptness) of ADR processes, it should/could be adopted or employed, coupled with the African philosophy of justice accentuating; introduced into our criminal justice system and styled to fit our particular development /expansion.

The modern African society has developed from a plethora of influences emanating from differing civilisations over time, so it would not be out of context to evolve a different and distinct system, which even though could run the risk of being regarded atypical, would function maximally and effectively producing definite results, nonetheless. The theory or philosophy of restorative justice should guide or influence ADR processes in achieving this possible synergy: is the philosophy of justice as we now know it, from western influences the same or in tune with that of restorative justice rampant and guiding African cultures on justice? Can ADR processes now popular in western legal systems, even though believed to have been birthed and pioneered in African Cultures and traditions effectively provide for, or of its self, be the ligament, and /or buffer for, and with its experimental and consequential continued application in our criminal justice system? Thus the aim and desire to decongest the courts prevalent in the CJS of today could be commendably and efficiently achieved without the quality of justice preyed upon, watered down or compromised, for speed and alacrity.

In Australia "Cyber Courts" use of technology in the legal arena extensively at all stages and have demonstrated a considerable reduction in delays as a result. In Singapore, the courts manage their time and resources optimally to achieve an active, efficient and effective case management process. The use of technology in Singapore courts goes beyond the use of computers. Occasions for transporting of accused and witnesses in criminal cases within the country and from outside are greatly reduced by the use of video cameras in jails and court premises. The Lawnet Service Bureau is networking wi... In the Supreme Court of India and all High Courts, fresh cases are filed only before the computerized Filing Counters.