

**Application of Alternative Dispute Resolution (ADR) and  
Restorative Justice (RJ) Systems in the High Courts and  
Other Courts of Coordinate Jurisdiction●**

**By**

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**1. Introduction**

This institute, the National Judicial Institute, is the capacity building arm of the Judiciary of this country. It is in the exercise of its statutory mandate that this Induction Course for Newly Appointed Judges and Kadis is organised. By the letter of the Administrator inviting me to lead this discussion, "the main aim and objective of the course is to formally induct and welcome these new members of the Bench into the Judiciary family. It is also to prepare them for the work of adjudication". My lords, please accept my sincere congratulations on your lordships' appointment. Let me mention in the passing that I am also an alumni of this Course having participated at the 2013 session of the Course. I thank my lord Hon. Justice R.P.I Bozimo, *OFR*, the Administrator of this Institute for the honour to be a facilitator of this session. My presence here today, honouring the invitation of the Institute, is made possible by the permission of my Head of Court my lord Hon. Justice B. A. Adejumo, *OFR* the Hon the President of the *National Industrial Court of Nigeria*. I specially thank His lordship not just for the permission to be here but also for support in the discharge of my adjudicatory responsibilities.

Administration of justice is an essential integral part of governance. The responsibility for this is placed on the Judiciary-the third arm of government under the doctrine of *separation of power*. Specifically, the *Constitution of the Federal Republic of Nigeria, 1999*, as amended, conferred on it the responsibility for the administration and dispensation of justice in both civil and criminal cases. In delivering justice to the citizenry, the judiciary must ensure that justice as a service so delivered is delivered with minimum delay and cost. This is imperative in view of the fact that justice delayed is justice denied. Besides, when justice is unduly delayed, litigants in particular and the society in general may tend to lose interest in and respect for the work and activities of the courts. The society will then degenerate into a lawless one where people take the laws into their hands. No doubt, such a situation does not augur well for social, economic and political stability. However, there is no gainsaying the fact that administration of justice is confronted with various problems. Some of these problems are structural while others are institutional in nature. They include too many cases in the courts; increasing high cost of litigation; undue delay, poor remuneration of law enforcement personnel and congestion of the prisons across the country. These problems continue to make the search for justice sometimes a mirage. Hence the search for a viable alternative for resolving disputes both civil and criminal. This paper examines the application of ADR and Restorative Justice in our trial superior Courts of record. In doing this, we look at what is meant by ADR

## 2. What is ADR?

Alternative Dispute Resolution or **ADR** is a name for several dispute resolution techniques which, while believed by some to be outside the traditional mainstream of state jurisprudence, have gained acceptance among both the general public and the legal profession. In this terminology the processes were initially termed "alternative" by twentieth century legal typologists because they were seen as extra-legal supplements to state-sponsored dispute resolution<sup>1</sup>. With the continuing increase in caseload placing great strain on traditional courts, many judges have come to see alternative dispute resolution as an acceptable means of decreasing caseload in traditional courts, while settling disputes in a fair and equitable way. While some would not agree that all alternative methods are always fair and equitable, such methods are much less expensive than a traditional lawsuit.

The acronym ADR as a concept has different meanings depending on from which perspective one looks at it. To some people, ADR is a group of flexible approaches to resolving disputes more quickly and at a lower cost without formal trial. It is a term, which has become associated with a variety of specific dispute resolution options such as Negotiation, Mediation, Conciliation, Mini-trial, Case Evaluation, and a lot of other hybrid mechanisms.<sup>2</sup> It is a process by which legal conflicts and disputes are resolved privately and other than through litigation in the public courts. This involves a process much less formal than the traditional court processes and includes a third party to preside over a hearing between the parties. Alternative Dispute Resolution processes are usually conducted outside of courtroom (either voluntarily, as a condition of a contract or as ordered by a court of law) in which two or more parties utilize neutral professionals to reach an amicable solution, a binding agreement or other resolve to a dispute.

These definitions diverse as they are, they are nonetheless unanimous on the nature of ADR. For instance there is unanimity as to the fact that the process provides an alternative to the conventional courtroom trial of causes and matters. Secondly, there is unanimity on the point that indeed parties could resort to any of the ADR processes voluntarily such as where there was an agreement in a contract for a resort to it in the event of any dispute arising. It could also be an involuntary where the parties are ordered by the court to do so. Thirdly, the intervention of a neutral third party is an essential feature of all the ADR processes.

Suffice to point out however that the role of the neutral third party in the ADR paradigm differs substantially from the role of Judge in the adversarial proceedings or the role of Arbitrator in the conventional arbitration. For instance, a third party neutral cannot impose any decision on the parties in ADR proceedings. He is not a Judge. He cannot impose his opinion on the parties. While he can express opinions or views on the dispute between the parties, such opinions and views are merely advisory and the parties are at liberty to accept or reject such opinion. The main role of the neutral third party in any of the ADR processes is to assist and guide the parties towards finding, on their own and by themselves, an amicable and generally acceptable solution

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- Being the text of a paper presented at the *Induction Course For Newly Appointed Judges and Kadis* organised by the *National Judicial Institute* from 23rd May - 3rd June 2016.
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<sup>1</sup>. See [http://en.wikipedia.org/wiki/Alternative\\_dispute\\_resolution](http://en.wikipedia.org/wiki/Alternative_dispute_resolution).

<sup>2</sup>. See Goldberg, et al, *Dispute Resolution* 1997, 2nd ed., Little, Brown a Co. Boston U.S.A.

to the dispute between them. It is indeed recommended that neutral third parties must bring this point to bear on the parties once the neutral third is consulted. Experience has shown that such frankness and openness on the part of the neutral third party neutral often engenders virile and creative options by the parties to meet their needs and address their disputes.

There have been controversies, albeit lively, as to the correctness of interpreting *ADR* as *Alternative Dispute Resolution*. Some scholars of the alternative movement have posited that the 'A' in the acronym actually means, "Appropriate" rather than 'Alternative'. Another school of thought argued that the use of the word 'Alternative' in the acronym is in the sense of "one of many" options including litigation. It was thus suggested that instead of Alternative Dispute Resolution the better and perhaps acceptable acronym should be Alternative methods of Dispute Resolution.<sup>3</sup> We agree with the view expressed by **Ladan** that "ADR" is a useful shorthand expression as long as it is understood to refer to a system of multi-option justice in which a wide range of dispute resolution processes are available to parties in the public justice system."<sup>4</sup>

Beyond this however we submit also that ADR is perhaps better understood when viewed as "*African Dispute Resolution*." This would invariably refer to diverse friendly, cost - effective and non-adversarial methods of dispute settlement in the traditional African setting as opposed to litigation-centered approach of the West. These diverse African Dispute Resolution methods such as negotiation, conciliation, mediation etc, help to maintain peace and create an enabling environment for good relationship and neighbourliness and maintain on going relationships.

The historical evolution of the modern alternatives movement is very instructive. Beginning in the sixties, a number of developed countries such as the United States and Australia witnessed an extra-ordinary growth of interest in alternative form of dispute resolution. Interest increased substantially in the seventies; and at the **1979 Pound Conference** in Minnesota, leading Jurists and Lawyers came together to address popular dissatisfaction with the crowded justice system. It was at this Conference that Professor Frank E.A. Sander; an astute crusader of alternative dispute resolutions proffered a radically different vision of the American Justice System in the name and style of the "Multi-door Court House."<sup>5</sup>

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<sup>3</sup>. See generally Ladan, M.T.; "*Alternative Dispute Resolution in Nigeria: Benefits, Processes and Enforcement*", *Current Themes in Nigerian Law* at p. 248.

<sup>4</sup>. *Ibid* at p. 249.

<sup>5</sup>. The brief history as recited here must be and should indeed be understood as valid only as regards the so-called modern ADR movement. For, it is our opinion that the practice of alternative dispute resolution mechanisms in Africa predated the present Western ADR movement. It is correct to posit that what is being "imported" to Africa under the acronym *ADR* has been indigenous to Africa, though now fine-tuned and relabelled. Indeed other examples abound of "importing" to Africa what originally belonged to Africa. In the past, for instance, breast feeding was the norm and the general rule for African mothers. Then feeding children with baby milk was an exception often frowned at. However, because the Western world preached adherence to prepared baby milk, breast feeding was suddenly abandoned. Yet, the same Western countries are currently preaching a reversal to breast feeding without a simple acknowledgment of the fact that it indeed the way of life of Africans. Again, tribal marks and tattoos used to be very popular in Africa especially among the women folks. In fact, tattoo was one major thing that the African women often use for adornment. Now under the influence of western culture, tattooing and tribal marks almost completely faded off. And yet tattoo has suddenly become an "in-thing" in America and Europe and gradually returning to Africa – its root and place of origin.

Professor Sander's *Multi-Door Court House concept* is a court connected ADR programme which provides a comprehensive approach to dispute resolution. The concept posits that the ideal courthouse is a multifaceted dispute resolution centre, which offers disputants a number of options or "door" in resolving disputes. Hence instead of just one "door" leading to the courtroom, such a comprehensive justice center would have many "doors" through which disputants might pass to get to the appropriate dispute resolution process.

### 3. Goals of ADR<sup>6</sup>

The goals of ADR in the administration justice are numerous. Among the major ones however is the fact that ADR sets out *to relieve the courts of their mounting workload, decongest the court dockets as well as prevent undue cost and delay*. This point is trite in cognizance of the various problems which litigation poses in different jurisdictions as already pointed out here. However, ADR experts in the United States (where the practice of ADR is well advanced) have expressed some doubt as to whether the practice of ADR can ever relieve court congestion. Undoubtedly, however, there are methods of resolving disputes, which are less expensive and more expeditious than formal litigation.

A second goal of ADR, namely *to enhance community involvement in the dispute resolution process*, is of particular importance in most developing countries, Nigeria inclusive. In Nigeria empirical research has shown that a significant section of the population is alienated from the formal court system. The development of appropriate forms of dispute resolution which encourages and enhances community involvement and bear the stamp of legitimacy is therefore of cardinal importance to those who would see disputes and conflict effectively resolved.

The third goal of ADR is that it *facilitates access to justice*. For example, parties, who with the assistance of a mediator are able to resolve their dispute may not regard themselves as having received justice but may simply consider that they have attained the more modest goal of settling their dispute. Undoubtedly, alternative dispute resolution in its broadest sense does, and will continue, to facilitate the increased resolution of dispute.

The most important goal of ADR is arguably the fourth goal, namely *to provide more effective dispute resolution*. As already stated, it is of the essence of the study and practice of alternative dispute resolution to provide mechanisms and processes, which will resolve disputes more effectively than an automatic recourse to litigation. Indeed, one of the most significant effects that dispute resolution practice has had in South Africa over the last decade is to challenge the view that litigation is the only means, apart from agreement, of resolving disputes.

### 4. ADR Processes<sup>7</sup>

#### *Negotiation*

Negotiation is the commonest and perhaps the oldest of diverse methods of dispute resolution. Negotiation is a voluntary unstructured and usually private process through which parties to dispute can reach a mutual gentlemanly agreement for the resolution of their disagreement. It is

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<sup>6</sup>. See generally, South African Law Commission Issue Paper 8. Available at <http://server.law.wits.ac.za/salc/issue/ips.html>.

<sup>7</sup>. For an in-depth discussion of these ADR processes, see Dele Peters, *Alternative Dispute Resolution (ADR) in Nigeria: Principles & Practice*, Dee-Sage Nigeria Limited, 2004 especially Chapters 5 – 10.

usually an informal dispute resolution process in which disputants have total control of the entire arrangement outcome. A common feature of Negotiation is the absence of a third party facilitator. Disputants themselves present their case, marshal arguments and lead evidence. They may or may not appoint individuals or professionals such as lawyers etc to represent their interests.<sup>8</sup> Negotiation is said to be the fastest, least expensive, most private, least complicated and most party-control oriented process.

### ***Mediation***

Mediation is often described as a failure on the part of the parties. That is failure of the parties to succeed at negotiation. This invariably leads to the intervention of a third party mediator to facilitate further negotiation by the parties. Mediation is negotiation carried out with the assistance of a neutral third party. It is a voluntary process that offers disputants meaningful and creative solution at a fraction of the cost of the litigation system.<sup>9</sup> It is a facilitative process. The neutral third party has no authority to make any decisions that are binding on them, but uses certain procedures, techniques and skills to help them to negotiate a resolution of their dispute by agreement without adjudication.<sup>10</sup> The neutral third party in mediation does not have any authority to make any decision or award for the parties.<sup>11</sup> Where the Mediator expresses a view about the merits of the dispute, that opinion is not binding opinion on the disputants and in no circumstances would a Mediator have the power to impose his view on the disputants. The mediation alternative is an interest-based approach of resolving dispute. The process encourages disputants to focus on their interests in the subject matter of the dispute rather than a focus on their rights. Mediation process can be facilitative in which case the mediator as a facilitator helps and urges the disputants to find solution to their dispute. To achieve the set goal, the mediator focuses on the underlying interests or needs of the parties as opposed to their rights. On the other hand, mediation process may also be evaluative. Here the Mediator examines the whole gamut of the dispute and the rights which are accruable to each disputant should they resort to litigation. With these facts and information as his yardstick he helps the disputants to resolve their dispute.

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<sup>8</sup>. See Generally Goldberg, Sander & Rogers; Dispute Resolution *op. cit.*

<sup>9</sup>. Macforlane J.; An Alternative to What? in *Rethinking Disputes: The Mediation Alternative* Macforlane (ed) at p. 1

47. Brown and Marriott, *op. cit.* at p. 108.

<sup>11</sup>. Macfarlaue J, *op.cit* at page 7

### ***Conciliation***

Conciliation is the bringing together of disputants in an endeavour to settle their differences, The main object of conciliation is to achieve an amicable settlement of the dispute with the assistance of a neutral conciliator who is respected by both parties. Unlike in arbitration, a Conciliator does not make decision for the parties. Rather the Conciliator assists the disputants in reaching an agreed settlement. Conciliator merely proposes solutions for the parties to weigh and consider. One important attraction of Conciliation as a dispute resolution mechanism is that since the decision is actually reached by the parties' enforcement is likely to be a lot easier. The whole of Part II of the *Arbitration and Conciliation Act* deals with Conciliation. The Act makes adequate provisions relating to right of parties to settled dispute by conciliation, request to conciliate, appointment of conciliators as well as terms of settlement. The Act also provides for Conciliation Rules in its Third Schedule.

### ***Mini-Trial***

Here counsel for each disputant makes a presentation on the legal, factual as well as evidentiary stance in support of his case. This proceeding is usually before an official with authority to effect settlement of disputes, and a third party neutral that serves as an adviser. This presentation affords all disputants in a case an opportunity to assess the strength and weakness of their position and thereby decide whether or not to settle out of court or resort to adversarial procedure. At the end of their presentation the advisor gives an opinion, which is strictly speaking not binding on the disputants. This opinion which is usually a reflection of the probable outcome should the disputants go to a full trial often engenders the disputants to go into further confidential settlement negotiations in an attempt to reach a mutually acceptable agreement.

### ***Ombudsman***

An Ombudsman is a third party who receives and investigates complaints or grievances aimed at an institution by its constituents, clients or employees. The Ombudsman may bring an apparent injustice to the attention of high-level officials; advise the complainants of the available options and resources; propose a settlement of a dispute or propose systemic changes in the institution. The Ombudsman is often employed in a staff position in the institution or by a branch or agency of government with responsibility for the institution's performance. There is a Nigerian statute on Ombudsman – Public Complaint Commission Act.

### ***Rent-a-Judge***

Rent-a-Judge is a process through which the court, on stipulation of the parties, can refer a pending lawsuit to a private neutral party for trial with the same effect as though the case were tried in the courtroom before a Judge. The verdict of the process can be appealed through the regular court appellate system.

### ***Facilitation***

Facilitation is collaborative process used to help a group of individuals or parties with divergent views reach a goal or complete a task to the mutual satisfaction of the participants. The Facilitator functions as a neutral process expert and avoids making substantive contributions. The task of the Facilitator is to help bring the parties to consensus on a number of complex issues.

### ***Fact Finding***

*Fact Finding* as a dispute resolution process is often used mostly in the public sector collective bargaining. The Fact Finder does not have the power of either a Judge or an Arbitrator. The Fact Finder only makes recommendation to the parties for the resolution of the dispute between them. An attraction of this mechanism is that it has capacity to pave the way for further negotiations and mediations.

### ***Med-Arb.***

Med-Arb. is an innovation in dispute resolution processes. Here the Med-Arbiter is authorized by the parties to serve first as a mediator and, secondly as an arbitrator. When so authorized, the Med-Arbiter is given other powers to resolve any issues not resolved through mediation. Med-Arb is often resorted to so as to resolve all outstanding issues not resolved during mediation process.

### ***The Multi-Door Court House***

The *Multi-Door Court House* concept is the idea of an American Professor E.A Sander. This mechanism is a proposal to offer a variety of dispute resolution services in one place with a single intake desk, which would screen clients. The idea is one, which seeks to radically change the traditional conception of the court as the only “door” to getting justice. Instead, by this mechanism, other “doors” are created to which a disputant could access the court and hence justice. These other “doors” include arbitration, fact-finding and mediation. Already there are two multi-door courthouses in Nigeria; *the Lagos Multi-Door Courthouse* and the *Abuja Multi-Door Courthouse*.

The foregoing discussion is not exhaustive. Indeed there are other notable hybrids of ADR<sup>12</sup>. For instance there are other hybrids such as Summary Jury Trial, Moderated Settlement Conference, Neutral Fact finding, and Early Neutral Evaluation. The general purport of most of these hybrids is to offer the disputants, or their counsel an opportunity outside the forum of adversarial system to evaluate the strength and weakness of their case and even their position. Besides, a number of these processes are informational with the general intention of assisting the disputants to reach mutual settlement otherwise they are free to proceed to trial.

## **5. The Concept of Restorative Justice**

The prevailing traditional criminal justice system is a system of retributive justice. It is a system of institutionalized vengeance. The system as presently organised and administered is based on the belief, erroneous though, that justice is accomplished by assigning blame and administering pain,<sup>13</sup> hence the saying: "If you do the crime you do the time. If you do the time, then you've paid your debt to society and justice has been done."<sup>14</sup> In most jurisdictions, crime is seen as an act against the State rather than an act against individuals and their community. The business of prosecution for crime is thus carried out by the State,<sup>15</sup> through its designated official who may be the Attorney-General, the Director of Public Prosecution or a Prosecuting Counsel in the Chambers of any of these officials. The State is thus the complainant, duly represented by a

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<sup>12</sup>. See generally *Presenting Dispute Resolution to Judges*, developed by the American Bar Association - section of Dispute Resolution, Washington D.C. 1996.

<sup>13</sup>. See Manty Price: "Personalizing Crime: Mediating Produces Restorative Justice for Victims and Offenders" in *Dispute Resolution Magazine* published by the American Bar Association Fall 2001 Available at [Http://www.vorp.com](http://www.vorp.com)

<sup>14</sup>. *Ibid.*

<sup>15</sup>. For instance criminal trials at the level of High Court in Nigeria are usually titled *State v. ABC*.

State Counsel, and not the individual who suffered financial, psychological, mental, emotional or physical injury from the criminal act and who for all intents and purposes is the real complainant - the victim of crime.<sup>16</sup>

Unfortunately, and as Marty Price has rightly noted, the traditional criminal justice system has little or no consideration to victims of crime who may be viewed, at worst, as impediments to the prosecutorial process, and at best, as valuable witnesses for the prosecution of the State's case.<sup>17</sup> The rationale for this position is perhaps better appreciated taking cognisance of the fact that essentially the criminal justice system is offender-centred rather than victim-centred. The system lays greater emphasis on guilt, punishment and the rights of the accused. Towards this end, three questions are often asked in a typical criminal trial: What law has been broken? Who broke the law? What is the prescribed punishment for breaking the law? An equally important question, and perhaps more important than any of the three – “What are the needs of the Victim?”<sup>18</sup> is not asked. Therefore, at the conclusion of a criminal trial once an accused is convicted s/he is sentenced to a form of punishment; and justice is said to have been done. Except for the State and/or the accused, punishment or retribution cannot be said to bring justice to the Victim. Rather and more often than not, often leaves the Victims with a feeling of emptiness and dissatisfaction. For, punishment to the accused does not and cannot restore their losses, answer their questions, relieve their fears, help them make a sense of their tragedy or even heal their wounds. Besides, punishment does not and cannot mend the torn fabric of the society whose laws and social norms and values have been violated. Rather recidivism becomes more likely as those serving terms of imprisonment return to the same society after serving their terms, sometimes more hardened than before.

The concept of *Restorative Justice* (RJ) or *Transformative Justice* (TJ) as it is called in some other jurisdictions is the practical application of some of the components of ADR to criminal matters and causes. The concept emerged as a social movement for justice reform. Restorative justice is explained simply "as a process whereby parties with a stake in the particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future."<sup>19</sup> It is a process for renewal of damaged personal and communal relationships. Unlike the traditional criminal justice system, which focuses on the offender, in restorative justice the Victim is the focal point while the goal is to heal and renew the victim's physical, emotional, mental and spiritual well-being. Besides, the process also involves deliberate acts by the offender to regain dignity and trust, and to return to a healthy, physical,

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<sup>16</sup>. The United Nations has defined Victims of crime to mean - "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts of omissions that are in violation of criminal laws operative within member States, including those laws proscribing criminal abuse of power." See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. 40/34, annex, 40 U.N. GAOR Supp.(No.53) at 214, U.N. Doc. A/40/53 (1985).

<sup>17</sup>. Marty Price, *op.cit.*

<sup>18</sup>. It should be borne in mind that the term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, *ibid.*

<sup>19</sup>. See Marshall, T (1997 March 20) "Seeking the Whole Justice, Repairing the Damage: Restorative Justice in action." Paper presented at the ISTD Conference quoted by Cavanagh, T, (1998) "Adopting New Values for the Courts: What is Restorative Justice?" *The Court Manager*, 13(2/3) pp.24-27 Williamsburg, V.A. and See also Tony F. Marshall: *Restorative Justice: An Overview* London: Home Office Research Development and Statistics Directorate, 1999 at p.5.

emotional, mental and spiritual state. The concept of restorative justice proceeds from the belief that:

- the concept of punishment is the foundation for transformative justice that applies victim-offender mediation;
- the victim needs recognition for the hurt, pain and suffering that he has been put to, opportunity to speak about his feelings and the need to have restored to him power broken by the offence;
- as primary stakeholders, both the accused and the complainant should have equal access and participation in the system for solving their problems through mediation;
- sanctions for offences should be compensatory intended not only to restore the victim, as much as possible, to his previous position but goes beyond restitution and embodies an apology and atonement by the offender;
- crime is first and foremost a violation of individual's rights, next, as an infraction of social relationship and social values, before, lastly, becoming an offence against the law and the State;
- punishment should seek to change forms of behaviour that society cannot accept because morality is a corporate affair that affects the whole community;
- certain crimes cannot be the subject matter of transformative justice but must be resolved in open court in the adversarial system.

## 6. Restorative Components of *ADR*

The most familiar form of restorative justice practices is the intervention of mediation processes in criminal matters.<sup>20</sup> This is reflected in *Victim-Offender Mediation (VOM)* and *Victim - Offender Reconciliation Program (VORP)*. Other restorative justice practices especially in the United States of America include Community Sentencing Circles, Neighbourhood Accountability Boards, Reparative Probation and Restorative Community Service.<sup>21</sup> VOM/VORP programmes bring offenders face to face with the victims of their crimes. This is made possible with the assistance of a trained mediator who is usually a community volunteer. Participation is usually voluntary. One importance of the programmes is that they afford the offenders the opportunity to learn the human consequences of their actions. They equally afford the victims the opportunity to speak their minds and their feelings to the one who most ought to hear them, thereby contributing to the victim's healing. Offenders then take meaningful responsibility for their actions by mediating a restitution agreement with the victim to restore the victim's losses in whatever ways possible. Restitution in this context may be monetary or symbolic. It may, therefore, consist of work for the victim, community service or other actions that contribute to a sense of justice between the victim and the offender.<sup>22</sup>

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<sup>20</sup>. See *Development and Implementation of Mediation and Restorative Justice Measures in Criminal Justice* (1999/26 adopted by ECOSOC Res.1999/26 adopted 20 July 1999) noting in part that mediation and restorative justice measures, when appropriate, can lead to satisfaction for victims as well as to the prevention of future illicit behaviour and can represent a viable alternative to short terms of imprisonment and to fines.

<sup>21</sup>. See Marty Price *op.cit.*

<sup>22</sup>. Marty Price *ibid.* The author noted further that "more than 90% of those restitution agreements are completed within one year. In contrast, the rate of payment of court ordered restitution is typically only from 20 to 30 per cent. When the restitution obligation is reached voluntarily, offenders feel ownership of the agreement and experience it as just."

It must be noted that mediation or any of the hybrids of restorative justice is not appropriate for every crime, every victim or every offender. For instance in New Zealand, juveniles are referred to Family Group Conferencing only after they admit their guilt to the court.<sup>23</sup>

The problem confronting the administration of criminal justice worldwide coupled with the near total failure of retributive justice system to restore peace in the community and address the needs of victims of crime have made the intervention of ADR a global phenomenon. Thus a number of countries in Africa,<sup>24</sup> Europe,<sup>25</sup> America,<sup>26</sup> Australia<sup>27</sup> and Asia<sup>28</sup> have adopted one form of restorative justice programme or the other with a measure of success.

The imperative of introducing restorative measures and practices into the administration of criminal justice has been well recognised by the continent of Europe and generally accepted by majority of the countries within the continent. This has indeed caused the Council of Europe Committee of Ministers to adopt a series of recommendation as standards to follow in the intervention of Mediation in penal matters.<sup>29</sup> At the global level, there have been series of

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<sup>23</sup>. See T. Cavanagh; (1998) "Adopting New Values for the Courts: What is Restorative Justice?" *op.cit* at page 2; and see generally F. McElrea; "The New Zealand Youth Court: A Model for use with Adults" in Galaway, B & Hudson, J (eds) *Restorative Justice: International Perspectives* 1996, Monsey, NY: Criminal Justice Press pp.69-83.

<sup>24</sup>. See, for example: South Africa Law Commission, *Sentencing Restorative Justice (Compensation for Victims of Crime and Victim Empowerment)*," Pretoria, South Africa: South African Law Commission 1997.

<sup>25</sup>. Marty Price, *op.cit* at p.4 noted that England, Germany and many countries in Eastern Europe have adopted restorative justice programmes. See also Restorative Justice Consortium: "Standards for Restorative Justice" (London: Restorative Justice Consortium (undated). And see particularly Council of Europe Committee of Ministers, "Mediation in Penal Matters," Recommendation No. R(99)19 adopted on 15 September 1999.

<sup>26</sup>. See Galaway, Burt and Gord Richardson: "Evaluation of the Restorative Resolutions Project of the John Howard Society of Manitoba, Final Report," Winnipeg, Canada: University of Manitoba, June 1995; Bazemore, Gordon and Mark Umbreit, *Balanced and Restorative Justice Program Summary*, Washington D.C U.S Department of Justice, Office of Juvenile Justice and Delinquency Prevention, October 1994; and see also Victim - Offender Mediation Association, "Victim - Offender Mediation Association Recommended. Ethical Guidelines" in Victim - Offender Mediation Association, Minneapolis, Minnesota. Available from <http://www.voma.org/docs/ethics.doc>

<sup>27</sup>. Community Law Reform Committee; "Victims of Crime" Camberia, ACT: Australian Capital Territory Government, 1993. Available at <http://www.dpa.act.gov.au/ag/Reports/CLRC/r6/Reportbind.html>

<sup>28</sup>. See Dennis S.W. Wong: "Developing Restorative Justice for Juvenile Delinquents in Hong Kong" paper presented at the Third International Conference on Conferencing, Circles and Other Restorative Practices, August 8-10, 2002, Minneapolis, Minnesota - noting the development of restorative justice in Hong Kong and the different kinds of restorative practices which social workers in that country have been adopting such as family mediation, neighborhood disputes settlement and post-court victim-offender mediation. The author argued for a developed restorative justice processes, which would not only take care of victims' needs but also help offenders to be integrated into the community.

<sup>29</sup>. See Council of Europe Committee of Ministers "Mediation in Penal Matters" Recommendation No.R(99)19, adopted on 15 September 1999. Mediation is defined in this document as "any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator)." The principles are divided among five sections:

United Nations documents<sup>30</sup> encouraging the use of alternative methods in the resolution of criminal matters the latest being the "UN Declaration of Basic Principles on the Use of Restorative Justice Programmes in criminal matters."<sup>31</sup> The latest document represents a giant stride in the movement for restorative justice at the global level and therefore calls for a fairly detailed comments and analysis.

## 7. Delay in the Administration of Justice.

The generally accepted mode of dispute resolution in Nigeria is the adversarial procedure – Litigation. This method is system rancorous in nature and its rancorous tendencies often engender delay most times by deliberate act of counsel. Apart from these, there existed both structural and institutional weaknesses in the judicial system. These have led to situations where in majority of cases, disputes tend to take an embarrassingly long period of time to litigate. We must point out that while delay in the administration of justice is applicable to both civil and criminal causes and matters, it is much more pronounced with regards to civil causes and matters.

For instance, it takes a fairly long time to obtain trial dates not just in the High Court and the appellate court but also in the Magistrates courts. Not too long ago, a reliable study<sup>32</sup> of the situation in Lagos State found the situation rather daunting. The data collected at the study showed that the average period within which a case was disposed of varied in respect of the subject matter heads in issue. For instance, Land matters topped the list of cases with the longest average period of 7.8 years to dispose of from filing to judgment. Personal injuries/tort cases take 3 years, commercial cases – 3.3 years, and family disputes and divorce have the least average of 2.5 years.

These average figures are of course not the true reflection of numerous actual delays with regards to cases which often range from 7 to 20 years. A typical example here was the case of

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1. *general principles*: addressing consent, confidentiality, the general availability of mediation geographically and within all phases of the criminal justice system, and the autonomy of mediation within the criminal justice system.
  2. *legal basis*: the need for legislation, guidelines and protection of fundamental procedural safeguards.
  3. *the operation of criminal justice in relation to mediation*: referring cases to mediation, informing parties about mediation, avoiding unfair inducement, protecting minors and persons not capable of understanding the process, requiring acknowledgement of the facts of the case, dealing with disparities between the parties, setting reasonable time-frames, and responding to both successful and unsuccessful outcomes.
  4. *the operation of services*: standards, qualification and training of mediators, handling cases, and outcomes, and
  5. *continuing development of mediation*: ongoing consultation and research.

<sup>30</sup>. See for instance, "UN Development and implementation of Mediation and Restorative Justice Measures in Criminal Justice," ECOSOC Res.1999/26, adopted 28 July 1999; General Assembly *Discussion Guide* Publication No. V.98-56168(E), New York: United Nations, 1998; and General Assembly. "Report of the Asian and Pacific Regional Preparatory Meeting for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Bangkok from 2 to 4 November 1998." New York: United Nations, 1998

<sup>31</sup>. ECOSOC. Res. 2000/14 Adopted 27 July 2000.

<sup>32</sup>. See I.A. Ayua & D.A. Guobadia (ed.) *Technical Report on the Nigerian Court Procedures Project* including Proposals for the Reform of the High Court of Lagos State Civil Procedure Rules, Nigerian Institute of Advanced Legal Studies, 2001 (herein "the Report").

*Wilson Bolaji Olaleye v. NNPC*<sup>33</sup> which took the Ikeja High Court 13 years to arrive at a judgment of ₦500,000.00 compensation to a dead kerosene explosion victim and his dependants. Also in *Eperokun v. University of Lagos*<sup>34</sup>, it took the High Court 7 years to dispose of a case of wrongful termination of employment. It was thus not surprising that the Professors/Plaintiffs in the case voluntarily retired from the service of the University even after winning the case having been frustrated by the process of arriving at justice.

We must bear in mind that the cases mentioned here were those just at the High Court. Thus, the period could definitely be much more with regard to appellate cases. Researches have shown that actual delays with regard to such cases often range from 9 to 23 years especially for cases which proceed to the highest court of the land – the Supreme Court. For instance, *Maja v. Samouris*<sup>35</sup> took 9 years from 1993-2002 to final judgment at the Supreme Court, *Obasohan v. Omorodion*<sup>36</sup> 16 years, *Ekpe v. Oke*<sup>37</sup> 17 years, *Onagoruwa v. Akinremi*<sup>38</sup> 21 years and *Nwadiogbu v. Nnadozie*<sup>39</sup> 23 years.

The fact remains that ADR processes have the capacity to drastically reduce the undue delays, which are often encountered by litigants in course of seeking justice. The reason for this is attributable to the very nature of ADR which is consensual and voluntary. Indeed when we look at the various hybrids of ADR it is noted that they virtually the normal types of mechanisms often adopted almost on a daily basis.

It is pertinent to note that the components of ADR are not entirely new or novel. Various High Court Rules have provisions giving the Judge some leeway toward encouraging litigants to amicably settle any matter pending before the court. It is no doubt in this wise that we see parties coming to the court after **discussions** with an agreed term of settlement. Such discussions are usually products of negotiation. Within the context of criminal law, a major source of delay is usually counsel inordinate request for adjournment. Added to this is the unwillingness on the part of critical prosecution witnesses and victims of crime to attend court so as to give their testimonies. The non-challant disposition of such witnesses is usually because the criminal justice system does not take cognisance of their interest an expectation. A major consequence of this is that those accused persons who could not meet the bail conditions given to them continue to languish in jail for a period sometimes longer than the period they would have spent if they had been convicted and sentence. Yet the victim of the crime for which such accused were charged gained nothing in practical terms from the incarceration of the accused. Empirical studies have shown that for some victims a simple apology would have sufficed to heal the wound inflicted by the act of the accused person. If properly utilised, the concept of Restorative Justice has capability to speed up administration of criminal justice in the country.

## **8. The Role of Judges in ADR Paradigm**

I should start by bringing to the fore the fact that Your Lordships have no choice than to get involved in and imbibe the spirit of ADR. The rationale is rather obvious and understandable in view of the work of the Bench. Essentially, Judges are charged statutorily with

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<sup>33</sup> See page 23 of the *Technical Report, op. cit.*

<sup>34</sup> (1986)4 NWLR 152.

<sup>35</sup> (2002) 7 NWLR (Pt. 765) 78.

<sup>36</sup> (2001) 13 NWLR (Pt. 728) 298.

<sup>37</sup> (2001) 19 NWLR (Pt. 721) 341.

<sup>38</sup> (2001) 13 NWLR (Pt. 729) 38.

<sup>39</sup> (2002) 12 NWLR (Pt. 727) 315.

adjudication and resolution of disputes between individuals inter se, between individuals and governments/agencies of government as well as between different levels of government e.g Local government, state governments and the federal government. Thus ADR viewed within the context of other means or methods of dispute resolution must necessarily appeal to Judges in order for Judges to effectively discharge their statutory responsibilities. In this context, it must be borne in mind that the Rules of various High Courts across the country have provisions touching on promotion of amicable settlement of disputes by parties. Besides, in almost all jurisdictions in this country today there exists one form of non adjudicatory institution for the resolution of disputes. Some of these institutions are indeed court connected. Such as the Abuja Multi Door Court House, Lagos Multi-Door Court House, Settlement Corridor in Borno State and so on. At the *National Industrial Court of Nigeria*, the *National Industrial Court Act, 2006* by section 20, " In any proceedings in the Court, the Court may promote reconciliation among the parties thereto and facilitate the amicable settlement thereof". This is in addition to a well organised and functional *NIC Alternative Dispute Resolution Centre* at the Court. Thus, I encourage Your Lordships to be familiar with the applicable instruments relating to ADR in your jurisdictions.

Secondly, the number of caseloads of Judicial Officers are rather on the increase. Gone are the days when the dockets of a trial Judge was within a manageable limit. At the moment, using the National Industrial Court of Nigeria as example, there is hardly any Judge of that Court with less than 400 case files to manage. Yet, more and more cases are filed on a daily basis such that on a weekly basis between 8 and 12 new case files are assigned to a Judge of that Court. Unfortunately not all cases pending before Honourable Judges across the country are amenable to litigation. Thus, while some are resolved through litigation, the Judge must endeavour to encourage parties appearing before him to utilise any of the ADR hybrids to amicably resolve their differences.

Thirdly, the idea and the spirit of ADR has been formally recognised by the leadership of the Judiciary in this country. The rationale for that is the imperative of providing more access to justice to those who patronise the Courts. The need becomes more imperative in cognisance of the fact that the Courts must continue at all times to have the confidence of the public for it to continue to be relevant. It was in recognition of this that *The National Judicial Policy*<sup>40</sup> was put in place by the leadership of the Judiciary to provide guidance to Honourable Judges towards better discharge of their justice delivery duties. Specifically, the Policy directed that "Alternative Dispute Resolution (ADR) should be adopted by all courts"<sup>41</sup>. Perhaps more importantly,

"A Judicial Officer shall always encourage parties before the Court to explore Alternative Dispute Resolution (ADR) procedures where appropriate"<sup>42</sup>.

I feel somehow constrained to bring to the fore that the word used in the above provision is *shall*. Thus where procedures for alternative dispute resolution exists, the Judge is under compulsion to urge parties to explore same. I should add, by no means of least importance, empirical studies have shown that when parties amicably resolve their disputes and differences enforcement of terms of agreement is usually easy and without rancour.

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<sup>40</sup>. See *The National Judicial Policy, Federal Republic of Nigeria Official Gazette No. 75 Vol. 100 Government Notice No. 193 of 2nd October 2013*.

<sup>41</sup>. See paragraph 6 (g), *National Judicial Policy, Ibid*.

<sup>42</sup>. See paragraph 11 (b), *ibid*.

The High Court Rules in different jurisdictions across the country contain provisions urging the court to promote and encourage amicable and out of court settlement of dispute between litigants. If and when parties arrive at settlements, they simply submit their terms of settlement to the court which terms are subsequently reduced to judgment of the court. This process saves time, reduces tension and reduces cost. This is in addition to the fact that it helps reduce the dockets of the courts. The process of arriving at consent judgment or out of court settlement of matters is the ADR negotiation process.

Besides, the Supreme Court of Nigeria has overtime accorded recognition to the right of disputants to take steps to narrow down issues between them. Thus in one case, the court stated that: -

“Parties to an action can settle issues so as to save the court time, by agreeing on those facts not in contest and leaving the court to decide, from received evidence based on those facts in pleading contested, the justice of the case<sup>43</sup>

An examination of the historical antecedent to the establishment of Sharia Courts would reveal the wisdom behind the establishment of these courts. Among other things, the idea for setting Sharia courts was among other reasons to address the religious yearnings, needs and idiosyncrasies of the people. Bearing the foregoing in mind, it is correct to postulate that these courts cannot effectively perform their functions in oblivion of ADR.

Secondly, Kadis should seek a much deeper understanding of the various methods of dispute resolution in Islam and be positively disposed towards utilising these methods. It is interesting to note that what is now referred to as Islamic law for resolving diverse forms of dispute has long recognized what is now tagged ADR mechanisms. For instance, the al-Quran has several provisions directing the use of some alternative methods for resolving disputes. For example in Chapter IV (Suratul Nisa'i) verse 35, the Holy Quran says -

"If you fear that there may be a crack between the spouses, then appoint two arbitrators one from amongst the members of the family of the husband and the other from the wife's family. If they embark on the assignment of the reconciliation for peaceful settlement of the couple's dispute Allah will in His infinite mercy grant them a peaceful solution of resettlement. Indeed Allahu-Ta'ala is full of knowledge and is quite aware of their disposition"<sup>44</sup>

According to His Lordship Mustapha Muhammed Yola the Grand Kadi of Adamawa State,<sup>45</sup> "many commentators of the Holy Qur'an have described the above provision as a most excellent plan for settling family disputes without resort to too much publicity or mud-throwing or resort to legal technicalities normally associated with the judicial proceedings".

The Holy Qur'an also makes reference to other dispute resolution methods apart from Arbitration. For the Holy Book in Chapter 49 Suratul Hajurat verse 9 states that -

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<sup>43</sup> . See *Ogunleye v. Oni* (1990) 2 N.W.L.R (Pt135) 745.

<sup>44</sup> . Holy Quran Chapter IV (Suratul Nisai) Verse 35.

<sup>45</sup> . Grand Kadi Mustapha Muhammed Yola; "Alternative Dispute Resolution (ADR) and Arbitration: The Islamic Law Perspective". Being a paper presented at the National Workshop for Judges organised by the National Judicial Institute Abuja 2003.

"If two parties, among the Believers fall into quarrel, negotiate between the quarrelling parties for a peaceful settlement. But should one side transgress upon the other side, then you should fight the transgressor until he complies with the command of Allah and Truth. Then if the quarrelling parties are settled, reconcile between them, with justice and fairplay. Indeed the Almighty Allah loves those who are fair and just".

The above verse recognizes negotiation and reconciliation as acceptable methods of dispute resolution. The Hon Grand Kadi of Adamawa State, Alhaji Mustafa Muhammed Yola submitted that these means of settling dispute or stopping a litigation is allowed by the consensus of jurists, but not for all matters. According to His Lordship, the rationale behind the option to dispute resolution by arbitration or reconciliation is to preserve dignity and respect amongst people and community.

Islamic Law permits recourse to alternative methods to resolve matters of business concerns and cases of wilful wounding. However, in cases where the law has fixed definite punishments such as in the case of Murder, Adultery and in all cases where the rights of third parties have to be decided there could be no intervention of any of the alterative methods.

An examination of the historical antecedent to the establishment of Customary Courts would reveal the wisdom behind the establishment of these courts. Among other things, the idea for setting up Customary Courts was to bring access to justice closer to the people - the ordinary people especially. Justice is thus expected to be dispensed in this court with the barest delay and cost. In addition, they were established to address the yearnings and aspirations of the people as relates to their customs, traditions and indigenous practices that are a mirror of their accepted usage.

Bearing the foregoing in mind, it is correct to postulate and must stress further that Customary Courts are designed to speedily hear and determine causes and matters that may be brought by the parties, who may generally speaking, be illiterates, and who may not be represented by legal practitioners. In order therefore to meet the aspirations of litigants who appear before them, the rules of practice and procedure of these courts are aimed at attaining substantial justice without inhibitions and constraints posed by technicalities. In order therefore to do substantial justice to parties who appear before them, both the Judges of Customary Courts and the Justices of the Customary Court of Appeal must not be oblivious of ADR and its paradigms..

In the business of delivering justice to their patrons, the Judges of these courts have immense role to play in the ADR movement. Perhaps the starting point is for these judges to acquire as much knowledge and information as possible on ADR. Knowledge, it is said, is power. With the requisite information on the principles and practice as well as goals of ADR, it will be realized that the work of the courts would become easier and their caseloads drastically reduced. Litigants will be happier for it and the society at large will be better off.

Secondly, Judges of the Customary Court of Appeal should seek an understanding of the traditional methods for settling disputes within their nucleus communities in Nigeria before the advent of the colonial masters. If this is done, it will be noted that these traditional methods did work with near-perfection at the time. It will also be realized that these traditional methods are what have been fine-tuned under the acronym *Alternative Dispute Resolution*.

It is now generally accepted that the suggestion that administration of justice and/or the court system in Nigeria started with the arrival of the British in the present day Nigeria was made in error. Indeed, ever before the arrival of the colonialists, justice was being administered. There were disputes between parties and solutions were always found to those disputes. The system of justice then met the needs of those who sought them. The court system at the time was not as rancorous as we presently have. The court system then was also free of technical rules of evidence, which at the moment has constituted a clog in the wheel of progress for justice.

It is on record that diverse means and methods were often adopted to do justice in different cases. Thus it was not unusual for parties to “talk their disputes out” (negotiate). Besides, more often than not, the intervention of the Head of a Family (either as an arbitrator or a mediator) was all that was required to settle disputants. Commenting on customary arbitration the Court of Appeal<sup>46</sup> once pointed out as follows –

“It is true that this form of adjudication is not part of our judicial system in the sense that a traditional arbitration panel is not part of court or tribunal recognised by the Constitution. It is equally true that before the British brought their system of administration of justice, we had our traditional system that worked and still works, better for the indigenes because it is faster and cheaper and they understand it, not being bugged down by the unnecessary and avoidable technicalities that beset the English system ...”<sup>47</sup>

In some cases, which might be very few indeed, the Village Head presided as a Judge over a dispute. Usually in all the scenarios painted, compliance was a mere matter of course. Again in most cases, not only were the parties satisfied, they were still able to keep on with their relationships.

The application of these alternative methods, that are not rancorous, not right-based, and rather interest-based and party-focused were found acceptable in all cases especially simple civil matters, matrimonial causes, custody cases and even in criminal matters<sup>48</sup>. It is our opinion that the fact that a matter is on appeal to the Customary Court of Appeal should not be a bar to parties to resolve to settle their disputes and in this respect Justices of the court should not feel reluctant to so encourage parties.

Perhaps more importantly, the Justices of the Customary Court of Appeal must at all times be out to do substantial justice i.e. justice devoid of any form of technicalities. Thus where a strict adherence to technical rule of evidence will constitute inhibitions to the cause of justice,

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<sup>46</sup> . See *Ebere vs. Onyenge* (2000) 2 NWLR (pt.643) 62.

<sup>47</sup> . Ibid, at 67.

<sup>48</sup> . There is indeed an abundance of evidence on the use of alternative methods in criminal cases in the pre-colonial era. For instance, it is on record that at the turn of the twentieth century, Lord Luggard, in total disapproval of the perpetration by the Native Courts of the widely accepted traditional attitude to the settlement of criminal disputes, complained that “the restitution of stolen property or of an abducted person is not of itself a sufficient penalty”. See *Political Memoranda* 1913 -1918, Memo VII, Para. 54, see also Report of the Commission on the Review of Administration of Criminal Justice in Ogun State, June 1981 (Otherwise known as Oyemade Commission). See generally an in-depth discussions on and the proposals for the intervention of ADR in criminals matters in Nigeria including both institutional and legal framework, Dele Peters; *Alternative Dispute Resolution (ADR) in Nigeria : Principles & Practice, op. cit* particularly Chapter 11 pp 176 – 227.

the Judges should be free to pursue a cause that will advance the delivery of substantial justice.

## 9. Conclusion

The *status quo* does not serve the interest of justice. The Nigerian society is paying high price under the present mode of dispensation of justice. There is agreement that the high price is delay and therefore denial of justice<sup>49</sup>. This situation if not checked urgently may lead to public loss of confidence in the judicial process and hence anarchy. Indeed, it is worthy of note that there have been notable pronouncements from appellate courts urging speedy, undiluted and un-mutilated justice. In *Ariori V Elemo*<sup>50</sup>, for instance, Idigbe (JSC) of blessed memory posited that –

“A state exists to do justice – justice to the state and justice to the citizen. The doing of justice is an obligation which the State owes to its citizenry and which it exercises principally through its third arm, namely, the Judiciary. Any functionary of the judiciary to whom the discharge of this sacred obligation is entrusted on behalf of the State owes it as a duty to the corporeal of the citizenry, of which the State is a representation and a crystallization, to do undiluted and un-mutilated justice to which society is entitled and from which no member of the society is permitted to derogate. Speedy trial and fair hearing therefore become an aspect of public justice which sets a standard fixed by law and society, which a Judge must attain in the determination of cases before him, and in respect of which no person is allowed to compromise”..

Yet another jurist<sup>51</sup>, quoting Hon. Justice M.O. Onalaja *JCA*, (as he then was), said:-

“The ancient philosophers stated that ‘justice delayed is justice denied’ which was incorporated in the Great Magna Carta of 19<sup>th</sup> June, 1215 Chapter 40 that “To No One will we Deny or Delay Right or Justice” whilst Shakespeare put in, laconically in *Hamlet* Act 111 Scene 1 – “All through the years men have protested at the law’s delay, counted as a grievous wrong, hard to bear among the whips and scorns of time” Also, *Charles Dickens* made a parody of the inordinate delay of trials in court of equity over a century ago in his book “Bleak House” Chapter 1 that – Delay of trial exhausts finances, patience and hope<sup>52</sup>.

These pronouncements from the Bench are by no means valid. The Judiciary as a public institution is being financed by public funds and dispensation of justice as a public duty must be performed without delay otherwise, the public confidence in the work of the Judiciary is eroded. It is with the foregoing background that it becomes imperative for Judges at all levels of the judicial system should explore the various mechanisms of ADR and, depending on the circumstances of particular cases before them, utilise any of these mechanisms to the justice needs, yearning and aspirations of the parties before the court. After all, the apex

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<sup>49</sup> . Hon. Justice A. Ade Alabi, “Case Flow Management in the Lower Courts: Problems and Solutions” *Conference of All Nigeria Judges of the Lower Courts 2002* National Judicial Institute, MJI Professional Publishers, 200 at p. 45.

<sup>50</sup> . (1983)1 SCNLR 1

<sup>51</sup> . Hon. Justice A. Ade Alabi, op.cit.

<sup>52</sup> . Ibid, at p. 46.

Court of the land has urged on several occasions that courts should seek as much as possible to pursue substantial justice. In the words of His Lordship, Nnaemeka Agu JSC<sup>53</sup> : -

“...our courts have deliberately shifted away from the narrow technical approach to justice which characterised some earlier decisions of courts on the matter. Instead, it now pursues the course of substantial justice”<sup>54</sup>

It is important that Judges and Kadis inclusive deeply appreciate the purport and dept of the above injunction, which is simply that individuals who approach the court expect to receive substantial justice. Substantial justice no doubt takes cognisance of both the time and money expended in pursuit of justice. A justice dispensed at a high cost and lengthy adjudication cannot be said to be substantial justice. Therefore, it is only if and when these realities dawn on and are attained by those charged with the dispensation of justice that justice in its substantial ramifications can be said to be dispensed. The ADR paradigm with its restorative justice components have potentials to make justice more accessible to litigants and other patrons of Courts.

I thank my lord the Administrator of this great Institute for the invitation to be part of this program and to be asked to facilitate this conversation. I thank and commend the effort of the Director of Studies, my sister Hajia Titi Kawu and the entire staff for keeping the flag flying of the Institute flying. My lords, distinguished participants, I cannot sufficiently express my appreciation for your presence here. I only hope that I have met your expectations or at least some of them in the subject of this discussion. If however I have not done that, perhaps I have then been able to sufficiently arouse your interest in the subject to warrant further conversation on same.

I thank you my lords for your attention.

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<sup>53</sup> . *Consortium M.C 3632 Lot 4 Nigeria v. National Electric Power Authority* (1992)6 NWLR (Pt.246) 46.

<sup>54</sup> . *Ibid* at p. 42. See also *Nwosu v. Imo State Environmental Sanitation Authorities* (1990)2 N.W.L.R (Pt.135) 688 at p.702.