African Journal of Social and Behavioural Sciences (AJSBS)
Volume 14, Number 3 (2024) ISSN: 2141-209X

RESTORATIVE JUSTICE AND HUMAN RIGHTS ISSUES IN ADOPTING ALTERNATIVE DISPUTE RESOLUTION PLATFORMS TO SETTLE CRIMINAL MATTERS IN NIGERIA

Emmanuel T. Imenger[1]* & Musibau Olabamiji Oyebode[2]

[1,2]Department of Peace Studies and Conflict Resolution, Faculty of Social Sciences National Open University, Abuja, Nigeria

*imengerternenge@yahoo.com

ABSTRACT: The Criminal Justice System (CJS) is commonly known for its retributive and rehabilitative mindset of punishing offenders, according to the degree of harm they have inflicted on victims. However, addressing the direct damage done against the victim(s), restoring parties' relationships and reintegration into the community are often neglected. This paper examines alternative dispute resolution platforms and their application in the settlement of criminal matters, specifying the principle of restorative justice. This paper explored secondary methods of data collection. The libertarian theory of right guides the discussions in this paper. It is argued that ADR platforms are suitable and exhibit timely settlement of criminal matters. The parties' satisfaction, cost cuts and avoidance of human rights violations are achievable. This article concludes that from the perspective of restorative justice, ADRs guarantee the inherent values of penitence, forgiveness and reconciliation. It is recommended that alternative dispute resolution processes be involved and given legal support in the settlement of criminal matters. Awareness and training are needed for general adoption and seamless ADR processes within the judicial system of Nigeria.

Keywords: Alternative Dispute Resolution, Criminal Matters, Human Rights, Restorative Justice

INTRODUCTION

The criminal justice system is legally structured to utilize retributive justice as an instrument for punishment and reformation of offenders and to ensure social control. The system dedicates a great chunk of judicial time and resources to distil evidential facts presented by the prosecution to guide the court in convicting and sentencing the offender based on the degree of crime and, in accordance with the punishment section or in the wisdom of the court, discharge and acquit the defendant. The principal reason why states devote much time and effort to the administration of justice is to promote peace and tranquillity in society (William, 1908 cited in Feltes, 1989).

Litigation, be it civil or criminal justice system, was the most commonly used method of dispute resolution before the advent of alternative dispute resolution (ADR). The conventional system creates feelings of isolation, confrontation, and unnecessary alienation between stakeholders in disputes as a direct consequence of helplessness, animosity, hatred and fear between the victim and the offender (Okeke, 2021). Ab initio, the criminal justice system sustains a protective consideration towards the offender but accords insignificant recognition to the victim who suffers material, financial, mental and psychological harm. Every person

charged with a criminal offence is presumed to be innocent until proven guilty (Constitution of the Federal Republic of Nigeria, 1999; Idris & Oke, 2013). Even if the offender is caught in the act of committing the crime or with the stolen item(s), until proven guilty else, he or she remains innocent like a baby or saint. Victims of crime are used only as star prosecution witnesses during criminal trials without legal enactments that protect and address their interests and needs. Consequently, during the conclusion of criminal proceedings, once an offender is convicted and sentenced to a prescribed form of punishment, justice is said to occur, except for the state since retribution cannot bring justice to the victim (Peters, 2016).

Although fundamentally, the aim and function of the law is to produce justice (Adebayo & Adeniji, 2021; Oputa, 2014), the general understanding peculiar to the entire legal terrain points to the principle of justice as not a one-way traffic but a three-way traffic pathway that should necessarily benefit the victim, offender and society. This principle is captured in several scholarly studies and court decisions and is highly professed in society. However, in practice, compliance is usually far from reality. The criminal justice system keeps rendering decisions on disputes but cares less about parties' reconciliation and interests.

For quite an extensive period of time in history, criminal litigation has been plagued with chronic delays that unmercifully congest the court with enormous volumes of cases. The delay in the administration of criminal justice has caused general dissatisfaction and frustration with the traditional court system (Okeke, 2021). Rules of court are usually abused mostly by applying for incessant interlocutory decisions of court, adjournments and, among others, by lawyers. In fact, as a result, cases can take as long as three to five years at the court of first instance, and for a case that goes to the Supreme Court, it can last no less than ten to fifteen years (Akeredolu, 2013). In the case of Odo V. State 1998, 1 NWLR (pt. 532) on P. 24, as cited by Ogunye et al. (2005), is a criminal matter with respect to murder. After 14 years of litigation and subsequent conviction and death sentences pronounced against the convict, on appeal, the Court of Appeal ordered a retrial de novo for the failure of the trial court to investigate the appellant’s defence of insanity raised during the trial.

The inflation of the cost of justice, exceeding the number of awaiting trials and inmates serving jail terms beyond the capacity of correctional facilities, jungle justice and denial of access to justice, among others are some of the ugly features of criminal litigation resulting from its ineffectiveness. Access to justice is itself a human right, and any denial of this is a denial of the basic tenets of the human rights principle (Angwe, 2017). The establishment of new divisions of courts and the appointment of more judges are among many judicial policies meant to address challenges in the system. The facts on ground clearly show that judicial reforms introduced before now to institute positive and effective changes in the criminal justice system have always met the stiff resistance from the complicated procedural rules of court, technicalities and the activities of the officials, ministers in the temple of justice and prosecuting agencies contributing to various capacities of the judicial process.

However, restorative justice, on the other hand, seeks to promote communication between victims, offenders and the community to jointly address the harm (caused as a result of crime), restore relationships and reduce the prevalence of crime and stigmatization of offenders. This approach has been used to resolve disputes arising from the commission of crimes to prevent offenders from going to prison where they become more hardened criminals. Offenders at this point take responsibility for their actions by using the instrument of restitution to restore victims' losses in whatever way possible. An expert could be used to facilitate the negotiation

process, which is referred to as mediation or assisted negotiation in ADR parlance. As restorative justice supports out-of-court settlement, it is therefore compatible with ADRs. Its principles promote inclusivity, informed knowledge of the dispute and satisfactory resolution. The rapid ability of ADRs to decongest the court will be showcased by restorative justice to avert and address human rights issues in the criminal justice system. In restorative justice, an apology is potent enough to resolve disputes.

ADR may significantly reduce the time and cost of dispensing justice that addresses injustice in criminal justice, leading to positive social change (Okeke, 2021). Police and courts are seriously hampered in the performance of their duties by inadequate or non-existent facilities and equipment (Nigerian Institute of Advanced Legal Studies, 1991). The studies above were conducted in the criminal justice system, but all concentrated on Nigeria. The former emphasizes the use of ADR and restorative justice but does not consider human rights issues. The latter torch-lights issues of human rights in the criminal justice system but fails to incorporate ADR and restorative justice, which the current paper interrogates. This paper specifically aimed to examine the application of ADR platforms in the settlement of criminal matters considering the principle of restorative justice and its impact on human rights violations and to make recommendations that are effective in subduing the daunting challenges of the criminal justice system if adopted. This paper directs attention to only ADR platforms and their impact on the settlement of criminal matters to reduce overdependence on litigation and drastically bring to control the large number of criminal matters causing human rights violations in society. Therefore, the necessity of writing this paper has become crucial for saving society from imminent anarchy. This paper proposes a functional restorative criminal justice system that is capable of instituting social control, justice and peace in society.

Conceptual Clarification

Alternative dispute resolution (ADR) is a modified consensual mechanism of dispute settlement prevalent in traditional societies where compromise and reparation for the wrong done are critical elements in maintaining cordial relationships among parties after dispute settlement. The golden egg of the ADR concept hatched during a thorough examination of dissatisfaction and frustration with the judicial system of administration of justice during the commemoration of the Roscoe Pound Conference in 1976. It has been baptized with controversial names such as appropriate dispute resolution, amicable dispute resolution, and African dispute resolution, but its common purpose is to rescue litigation from self-injury.

ADR is all about the search for and application of non-adversarial peaceful methods of settling disputes and resolving conflicts using the least difficult and least expensive strategies, which are most rational and suitable for the needs of disputing parties (Adams, 2021). Disputes can be settled by means other than confrontations and relationship-destroying litigation (Yahaya, 2021). Agarwal and Khandelwal, who were cited in Imenger (2023), viewed ADRs as a variety of streamlined resolution techniques formulated to resolve disputes in controversy in a more organized manner when normal litigation fails. A third party may guide the parties through ADR processes to achieve an amicable resolution except where the consensus of the parties permits otherwise. The attributes of ADRs have attracted universal success. The growing popularity of ADRs worldwide attests to the wide acceptance that litigation is no longer the exclusive process of decision making in justice systems (Mahmud, 2005 cited in Yahaya, 2021). In fact, some courts now require parties to resort to ADR, usually mediation, before their matters can be heard (Tarfa, et al, 2011).

Criminal matters are those relating to illegal conduct that is considered to be harmful to society or its members (District of Columbia Courts, 2023). Generally, criminal matters are offenses against the state even if immediate harm is done to an individual and if the crimes are prosecuted by the state in the criminal court (Bui, 2023). According to Law Insider (2024), criminal matters are any court proceedings (case hearing, etc.) that involve a violation or alleged violation of a Federal Statute or a statue in this or any other state or any other alleged offence, the penalty for which involves the possibility of incarceration (i.e., jail time). Additionally, criminal matters are charges brought against defendants in a court of competent jurisdiction for an alleged offence committed, which if proven beyond a reasonable doubt, the defendants shall be convicted and sentenced according to the legally prescribed punishment for the offence.

Criminal matters create restrictions for offenders even when the defendant commits bailable or nonbailable offences. Until the matter is disposed of otherwise, the defendant is usually mandated to attend court on all subsequent adjournments. Although there are enough statutory provisions targeted at curbing criminality, legal norms appear to have failed to deter rather new species of crime manifest on a daily basis (Adebayo & Adeniyi, 2021).

Crimes that are committed and known to law are usually punished by death, jail, fines or community service depending on the gravity of the offence. In the Nigerian context, in the case of Amoshina v. the state (2011) MJSC Pg. 1 at 18 Paras D-E cited in Adekunle (2020), the apex court pronounced that "where a statute prescribed a mandatory sentence in clear terms, the courts are without jurisdiction to impose anything less than the mandatory sentence as no discretion exists to be exercised in the matter, it is a duty imposed by law.

The concept of human rights, as recognized by the United Nations and various constitutions of sovereign states, has survived onslaught of unfriendly regimes across the globe before the attainment of awareness in the history of human society. According to the United Nations International Children's Emergency Fund (2015). Human rights are standards that recognize and protect the dignity of all human beings and govern how individuals live in society and with each other as well as their relationships with the state and the obligations that the state has towards them. They are a group of inalienable and enforceable rights enshrined in constitutions that require a high degree of protection from government, individual or corporate encroachment (Faji, 2020). Human rights are those demands and claims for fairness, justice and freedom that individuals, as human beings, make on society to project the dignity of man and emphasize the inherent equality of all (Shikyil & Yilkange, 2021). These rights are inalienable and inviolable. The only qualification to benefit from these rights is to be a biological human being. According to the Nigerian Institute of Advanced Legal Studies (1991), human rights has given rise to much debate over the years with respect to its exact content, but it may be safely stated that the basic rights to life, liberty and human dignity are the substrata on which all other rights are based. Oputa (2014) corroborates that the right to life, liberty and other essential freedoms form the foundation of, and the reason for, human rights. In other words, these rights are indivisible, interdependent and interrelated.

During the 1993 Vienna World Conference on Human Rights, it was principally resolved that all states have the responsibility to observe the declarations of the Charter of the United Nations to advance and encourage respect for human rights and fundamental freedoms for all, without discrimination as to race, sex language or religion, among others (Independent Living Institute

2006. Eze 2015). By this, states have agreed to guarantee and protect the human rights of their citizens.

To enjoy the benefits of human rights, balancing competing interests in society is necessary, and criminal justice administration has become a critical forum for balancing these competing interests because the abuse of fundamental rights and liberties occurs most in the system (Nigerian Institute of Advanced Legal Studies, 1991). When ADR platforms are allowed to be used in relation to restorative justice in resolving criminal matters, the victim and the offender can always dialogue and quickly achieve an amicable compromise that reintegrates the offender in society other than the social discrimination that ex-convicts suffer. However, in recent times, the drive has been towards achieving pragmatic and abstract goals, which encompass the protection of individual human rights, fair human treatment of all persons and the effectiveness of institutions involved in the system, as well as the use of alternatives such as diversions, restorative justice and noncustodial methods of treating offenders while protecting society from crimes and recidivism (Tor, 2020). A more practical approach is now imperative if a society that cares for the human rights of its members is to be achieved instead of mere colourful words.

The United Nations Office on Drugs and Crime (2019) views restorative justice as a way of responding to crime or to other types of wrongdoing, injustice or conflict that focuses primarily on repairing the damage caused by the wrongful action and restoring, insofar as possible, the wellbeing of all those involved. Restorative justice involves a criminal restitution process that focuses on the needs of all stakeholders, including the victim, offender and community (Okeke, 2021). Restorative justice encourages and promotes the healing and restoration of individuals, communities and their relationships by engaging the victim, offender and community in interactive session(s) to help the offender understand the adverse effect of his/her action and collectively work toward addressing the harm caused. It sees an offence as an injury caused to individuals and their relationship that deserves to be addressed by the parties rather than view offense as a breach of legal principles deserving public disapproval and prescription of punishment for such crimes that shall be meted on offenders.

According to Idornigie (2020), restorative justice is a different way of viewing crime by focusing on the injury of the victims and the community rather than on the state and by aiming for restitution rather than punishment (retribution) as a primary goal. Restorative justice is seen as a process whereby all the parties with a stake in a particular offence come together to resolve it, taking cognizance of the aftermaths and implications for the future (EduBirdie, 2024). All the definitions above are pointer to repairing the harm by parties in the crime committed. In sharp contrast to the legal principle of criminal justice, which is based on "an eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise" (Fuller, 1979). However, some scholars view these definitions as narrow approaches based on face-to-face interactions and an emphasis on repairing harm but ignore the fact that this type of repair requires a coercive response (EduBirdie, 2024). This is indicative that without a standby enforcement plan of coercive response, undertakings entered by parties in a dispute as settlement agreements could be jettisoned at will.

The concept of restorative justice can be used before, during and after the judicial process (Resolution Systems Institute, 2024). Its intent is to protect the interests of the victim, offender and community. During the process, the impact of the offence is communicated to the offender to take responsibility and exhibit the genuine desire to make amends with a promise to

denounce the perpetuation of the same crime and criminality in its entirety. Voluntary participation and truth-telling build trust among participants with the assurance that the resolutions that have arrived will be given due compliance even when they are not adopted before a court and the judgement of the court and apology is not an option. Restorative justice has different models, such as victim-offender mediation, family group conferencing and sentencing circles (Idornigie, 2020; Welch, 2022). According to Peters (2016), victim-offender mediation (VOM) and the victim-offender reconciliation program (VORP) are the most familiar forms of restorative justice practices, in addition to community sentencing circles, neighbourhood accountability boards, reparative probation and restorative community service, which are mostly practiced in the United States of America. Particularizing victim-offender mediation. Idormigie (2020) contends that the process of conducting victim-offender mediation is usually the same as that of normal mediation in the ADR mechanism. However, Welch (2022) posits that unlike standard mediation, mediation in the context of restorative justice focuses less on settlement and more on the events that lead to the necessity of mediation.

Theoretical Framework

Libertarian theory of right is adopted for the arguments of this paper. Its roots are traced back to the 18th and 19th centuries and in the writings of great philosophers such as John Locke, John Stuart Mill, and other contemporary leaders of libertarian political thought, which include Robert Norzick, Murray Rothbard, Milton Friedman and F. A. Hayek (Grinsley, 2024). Libertarianism emphasizes individual liberties, responsibility/self-ownership, and free choice. Government control over the lives of citizens should be minimal, and individuals should be allowed to act responsibly within the ethics of a society. An individual person's freedom is fundamental to his or her cherished philosophy. The beauty of its stance is that the government is not totally excluded in the affairs of individuals, but its intervention according to theory is most needed when one's right is infringed upon. According to Vossen (2017), individuals are seen as sovereign, as people who have the right to control their bodies and work, who are free to decide how to interact willingly with others and who are not forced to do things against their wishes without very strong justification.

The accounts of Libertarianism can be subdivided into nonphysical theories and physical or naturalistic theories. Ensuing from this philosophical perspective is the free-will and responsibility debate. Libertarians seek to maximize autonomy and political freedom, emphasizing equality before the law and civil rights to freedom of association, freedom of speech, freedom of thought and freedom of choice without the involvement of the government. Accordingly, if individuals opt out of criminal litigation and opt for civil settlement, the state should allow it.

Arguments against the Libertarian theory of right have been proposed by some scholars. Abel quoted in Delgado et al. (1985) asserts that informalism inhibits social change by persuading disputants with legitimate grievances to sacrifice their grievances in the interests of peace and cooperation. Owen Fiss claimed that ADR procedures privatize disputes and fail to reinforce essential public norms (Grace, 2010). Thus, with the rise of European feudalism, agents of states displaced victims as recognized aggrieved parties in criminal disputes (Pepinsky, 2003). Victims became evidential tools in the hands of the criminal justice system to prove the case of prosecution before the court to secure conviction and sentence of offenders but without any compensation for harm suffered by victims.

In contrast, Norwegian Criminologist Nils Christie quoted in Pepinsky (2003) made a strong reminder that the handling of disputes belongs to the people involved (in the incompatible clash of interest), not to surrogates who know nothing about them and their circumstances. He further submits that instead of prejudging what victims and offenders want, we ought to be guided by how they themselves respond to the dispute at hand. They are the best qualified to decide how they respond to the dispute. The long-term neglect of this issue has caused the criminal justice system to be very reluctant to address unresolved criminal matters and several instances of avoidable human rights violations in the form of jungle justice, awaiting trials of offenders beyond the prescribed period of punishment, etc. These arguments have supported the use of ADR methods in conflict resolution even in criminal cases. ADR platforms that include restorative justice systems are desirable for ensuring speedy and satisfactory settlements at low cost, decongesting the prison, and drastically reducing human rights violations.

Alternative Dispute Resolution Platforms in Nigeria

The ADR has a successful track record and great prospects for decongesting the overcrowded civil justice system to uproot weeds that narrow access to justice and create inefficiency in the system. This has spurned its applicability in the criminal justice system to challenges that are founded on delay. Olatoregun (2019) posits that arbitration, negotiation, conciliation, mediation, med-arb, early neutral evaluation, expert appraisal, mini-trial, rent-a-judge, settlement conference, consensus building, plea bargaining, restorative justice, etc., are generally settlement processes under ADR. Ajetunmobi (2017) classified ADRs into binding (arbitration, fact-finding/special inquiry and ombudsperson), nonbinding (negotiation, mediation, conciliation and early neutral evaluation) and mixed binding ADR mechanisms (med-arb, arb-med and comed-arb). The processes explored by the paper will be restricted to nonbinding settlements.

Negotiation is an ADR process whereby the parties can resolve their differences without the intervention of a third party. It is the fastest, least expensive, simplest and most party-controlled dispute resolution method (Tarfa, et al., 2011). Negotiation is a consensual bargaining process in which parties attempt to reach an agreement on a dispute or potential dispute (Abifarin & Uzuala, 2021). In long-term relationships, individuals who enjoy sustainable and healthy communication will become threatened by the emergence of disputes. Such parties, if they are committed to their relationship, will avoid toiling with their cherished bond and engage in negotiation. However, in the criminal justice system where a crime is committed against the state, parties find it difficult to negotiate for themselves. Even where the nominal complainant (victim) decides to forgive the offender, the latter can still be prosecuted, convicted and sentenced based on his confessional statement. In Nigeria, Section 15 (5) of the Administration of Criminal Justice Act (ACJA), 2015 provides that notwithstanding the provision of subsection (4) of this section, an oral confession of arrested suspect shall be admissible in evidence (ACJA), 2015; Adekunle, 2020). In this situation, therefore, the court can convict solely on the confessional statement of a defendant without the aid of independent evidence corroborating the statement (Ezenwa, Obodo, 2021).

Mediation is a facilitative process in which disputing parties engage the assistance of a neutral third party who acts as a mediator and uses certain procedures, techniques and skills to help them negotiate a resolution of their dispute by agreement without adjudication and the authority to make decision(s) that are binding on them (Peters, 2005). It is an informal process in which disputing parties discuss their situation with the goal of reaching a mutually satisfactory

agreement or gaining new perceptions about a situation with the help of a neutral third party who serves as an intermediary to assist the parties in reaching an agreement on their own (Anyanwu, 2017). Resort to mediation is a pointer to a failed attempt at the negotiation process between parties in a dispute. The intervention of the mediator is to either express his/her opinion on the merits of the dispute, which shall not be binding, but to persuade the parties to adopt by focusing attention on their interests as opposed to their rights. The main objective of mediation is to achieve a "win/win" solution that gives parties optimal dispute satisfaction. It can find applicability in family disputes, divorce and custody cases, neighbourhood and community quarrels, victim-offender reconciliation in criminal cases, commercial conflicts, medical practice, automobile accident cases, environmental clashes and development discord (Ajetunmobi, 2017).

Considering the wide coverage of mediation due to the versatility of disputes, several ADR institutions exist in Nigeria to address the challenges posed by disputes. These institutions include but are not limited to the Chartered Institute of Arbitrators (UK) Nigeria Branch, the Maritime Arbitrators Association of Nigeria, the Lagos Multi-Door Court House (LMDC), and the Abuja Multi-Door Court House (AMDC). These institutions have recorded great achievements in justice administration in Nigeria. With respect to the LMDC, the Principal Registrar of the ADR institution established that the LMDC handled more than 250 cases every year, and approximately 90% of the cases were settled between 7-90 days without recourse to litigation (Yahaya, 2021). According to the Africa Research Institute (2017), a survey of LMDC users revealed that 69% of respondents described themselves as very satisfied or satisfied with the process, and 86% reported that they would recommend the scheme.

Conciliation is a process in which a neutral third party meets with parties to a dispute and explores how the dispute might be resolved (Yusuf, 2017). It is a mechanism that involves a situation where a third party, referred to as a "Conciliator", assists the parties in achieving an amicable settlement of their disputes (Leight & Anoba, 2017). Conciliation and mediation are common and have often been used interchangeably by some scholars (Stanley-Idem and Agaba, 2015). The opinions of the third parties acting in the dual procedures are nonbinding, unlike the decisions of a judge in a litigation process. On the other hand, the conciliator, as a third party, proposes adoptable solutions, while the mediator concerns him/herself in ensuring communication between the disputing parties.

Plea bargaining is one of the ADR strategies used in the settlement of criminal matters. The law and economics literature on plea bargaining views it as an efficient instrument of criminal procedure because it reduces enforcement costs (for both parties) and allows the prosecutor to concentrate on more meritorious cases (Garoupa & Stephen, 2008). Plea bargaining is a process whereby the defendant and the prosecutor, in a criminal case, work out a mutually satisfactory disposition of the case subject to the approval of the court (Idem, 2019). In a plea-bargaining process, it is agreed upon by the prosecutor and the defendant that the latter will enter guilty pleas on a charge or multiplicity of charges in exchange for a lesser or lighter sentence, which may include options of fine to avert punitive punishment geared to save money and time in prosecuting the charges or to use the convict as a witness in a court trial. In addition to matters concerning homicide, rape, armed robbery, human trafficking offences and offences relating to grievous bodily harm, the prosecution and defendant are encouraged to explore plea bargaining within the ambit of section 270 and any other relevant provision of the Administration of Criminal Justice Act (Uwais Dispute Resolution Centre, 2018). According to the Department of Justice's Bureau of Justice Assistance, 90-95% of all criminal cases result in plea bargaining

(Legal Information Institute, 2024). However, in underdeveloped nations such as Nigeria, plea bargaining still has an appreciable impact on decongesting the hugely overcrowded criminal justice system. It equally suffers great setbacks in terms of acceptability. For instance, in Nigeria, only the Economic and Financial Crimes Commission (EFCC) utilizes it lavishly. Plea bargaining has many hurdles to overcome; arguments in respect suggest that it allows defendants to avoid or lessen the consequences of their criminal behaviour (Legal Information Institute, 2024). Others posit that plea bargaining could be unfair to defendants in pressurizing them to settle for an agreement possibly violating their constitutional rights (Abifarin & Uzualu, 2021). Legal Information Institute, 2024). The unavailable opportunity to seek the intervention of a mediator in the plea-bargaining process is the mother to the existing pressure that could be utilized by the prosecution against the defendant. However, Abifarin and Uzualu (2021) posit that the judge is a mediator in a plea-bargaining process, without wearing the full-garb of a judge but rather takes on the posture of a mediator or adviser for merely suggesting and providing inputs that encourage the prosecutor and offender to find amicable resolution.

Restorative Justice, Criminal Matters and Human Rights in Using ADRs in a Criminal Justice System in Nigeria

Like Africa's reconciliatory approaches to all nature of dispute settlements, which are well known to academic scholars, the restorative justice perspective deviates equally from the ideological anointing of the prescription of punishment as a lone strategy next to none in rectifying the social dislocation caused by criminality. It is known to be both a new and old concept (Van Ness, 2005), that has link with ancient cultures. As far back as 1754 BCE, the code of Hammurabi in ancient Babylonian, made provision for compensation to be paid to victims of harm or their families (Restorative Justiice 101, 2024). During the rise of restitution in the 1970s coupled with the victim rights and support movements of the 1980s, the weaknesses of the criminal justice system, which focuses attention on the offender became exposed (Van Ness, 2005). All this while, restorative justice became useful in many jurisdictions for the settlement of criminal matters but not without antagonism. A common negative perception exists about restorative justice that it is incapable of resolving serious criminal matters such as murder cases, due to its lenient nature in addressing disputes resulting from crime. United Nations Office on Drugs and Crime (2019) posits that evidence suggests that offenders find it more challenging to meet with the victim face-to-face and realize the degree of their wrongdoing than going to court. An ex-burglar quoted in Restorative Justice Council, 2014 corroborates that "I think the main fear was looking into the eyes of the people that I'd stolen from. I even had nightmares over it. I was so worried".

In fact, well over 80 countries now use some form of restorative practice in addressing crime; the actual number could be 100 countries (Van Ness, 2005). This has accounted for the significant and rapid territorial spread of the concept. Also, the United Nations have endorsed the principles and practices of restorative justice, encouraging member countries to adopt and integrate restorative approaches into criminal justice (Restorative Justice 101, 2024). In the 1990s, the United States discovered that incarceration alone did not disrupt the cycle of drug use and crime; rather, a focus on achieving better results for victims, litigants, defendants and communities paved the country with a new way to dispense justice, including restorative justice (Okeke, 2021). According to Amour (2012), research has shown that incarceration instead of curbing crime makes nonviolent offenders into violent criminals and is a revolving door in and out of prison. Restorative justice, an ADR platform used in the settlement of criminal matters, responds to victims, offenders and the community in a participatory dialogue where victims'

experiences are expressed, and consequently, the interests and needs of parties are either negotiated or mediated for collective and harmonious redress. The process aims at balancing the sphere of power among participants, seeking victims' empowerment while providing sensitive support to offenders (Zehr, 2015 cited in Nasunmento, et al, 2022). It encourages parties in the criminal justice system to negotiate among themselves or admit facilitators where mediator(s) guide the process of repairing harm and preventing the recommission of crime. Accordingly, Van Ness (2005) demonstrates that research has shown that restorative justice programmes meet a number of important criteria, such as victim and offender satisfaction, fear reduction for victims, development of empathy in offenders, increased completion of agreement, and lowered recidivism. In this regard, the parties may be more satisfied, and the community may be more habitably secured. Unlike plea bargaining, which is narrowed down to a negotiation between the prosecution and the defendant at the exclusive participation of the victim, in what affects him/her personally, restorative justice parades practices such as circles, conferences, and victim–offender mediation, among others, which are incorporated in their operations, victims, offenders, community members, friends and family relations in seeking redress for the negative impact of crime. It becomes so undoubtable that the cure for the exclusion suffered in the hands of the criminal justice system has seen the light with restorative justice.

The outcome of the parties' settlement will always create a sense of collectiveness due to the parties' participation in the decision. A notable departure from adversarial criminal litigation is that it destroys relationships and unduly prolongs the time within which to dispense justice. The battle-like posturing in litigation could be dragged to the apex court of any nation's jurisdiction. With much flexibility and fast settlement procedures, if applied to criminal matters, restorative justice is inherently weaponized as an ADR platform that possesses the ability to decongest court cases pending in the criminal justice system, which will positively impact the direct causative agent of overcrowded correctional facilities and human rights violations.

ADR platforms are suitable and applicable in the settlement of criminal matters but are utilized only in advanced nations such as the USA and the United Kingdom. These platforms are underused mostly in developing countries, and the available literature is scarce. ADR uses mediation and negotiation to resolve issues (2021), and they are very cheap, fast, participatory without binding decision making, and more satisfactory to parties and other benefits. The practice has shown that ADR mechanisms cannot resolve all criminal matters, as in civil litigation, because the motive of ADR is not to conquer the criminal justice system but rather to supplement its operations for effective administration of justice.

Facts further show that ADR platforms will improve access to justice and speed in the settlement of criminal matters to take out the massive caseload pending in the criminal justice system. The victim, offender and community will work together to achieve mutually acceptable settlement without the exclusion of any party, as in the state-centric criminal justice system. Additionally, incarceration of awaiting trials and convicted and sentenced offenders will drastically decrease if ADR platforms are adopted. As a result, human rights violations will drop to a very low rate because if parties and society are aware that they can amicably discuss criminal matters, jungle justice will cease to occur, and the budget allocation for repairing damaged prisons due to jail breaks or the construction of more correctional facilities will be redirected to more viable sectors of the economy to generate employment opportunities to reduce recidivism. Furthermore, the experiences show that ADR platforms promote the peace,

harmony and reintegration of offenders rather than discrimination against them. Thus, ADR platforms and their restorative justice components possess the ability to dismantle the monstrous parochial one-sided criminal justice system, punish offenders to some extent through the payment of reparation and assuage victims. However, considering that this paper did not incorporate questionnaires or key informant interviews as instruments for data collection, further research on the perceptions, attitudes and outcomes of the usage of ADR platforms for criminal matters is still needed.

Conclusion

This paper examined ADR platforms used in the settlement of Criminal Matters in relation to restorative justice and human rights issues arising from the criminal justice system. The criminal justice system has sustained its position that crime is an offense against the state and not against the victim that suffers the effects therefrom. An offender who commits crimes must be punished by law to serve as a deterrence for social control when proven beyond reasonable doubt by prosecution in a competent court of law. It has been discovered that the victim who suffers from the crime committed by the offender is insignificantly considered by the criminal justice system; this victim gains nothing from the prosecution of the defendant but only serves as a witness during court trials. The victims suffer material and psychological harm and will have to live in a frosty relationship with the offender even after serving the sentence.

However, ADR platforms with very cheap, fast, participatory and among other beneficial features will grant parties more satisfying dispute settlement than criminal litigation. These platforms are not to supplant criminal litigation but will rather greatly improve access to justice, which if denied, it is a violation of human rights. At all times, the criminal justice system creates disproportionality that severs offenders from their children, who become the hidden or forgotten victims of crime today and are too often the newly incarcerated tomorrow (Amour, 2012), but ADR platforms possess the capability to drastically reduce incarceration and human rights violations.

These enumerated factors have brought ADR to prominence as a better option to settle any nature of disputes, whether they are criminal or civil. Accordingly, Kehinde Aina, quoted in Akinsanya (2002), posits that the solution to our congested court docket does not lie in the establishment of more courtrooms or the appointment of more judges; rather, it was emphasized that the solution lies with ADR. The exceeding success showcased by ADR in civil litigation has attracted its application in criminal justice administration in the form of plea bargaining and compensation, among others. Restorative justice involves decongesting the court to solve the problems of persistent delay and human rights violations to ensure the satisfaction of parties in criminal matters.

Recommendations

1. Alternative dispute resolution platforms should be legalized and given the budgetary support for the proper implementation of the concept in the settlement of criminal matters to address the myriads of challenges demonstrating the criminal justice system.
2. Great awareness should be created to bring about seamless embrace of restorative justice in the criminal justice system because this has recorded success in advanced nations and will equally be replicated in Nigeria.

3. The government should regulate existing ADR training institutes to ensure that they are capable of baking competent ADR practitioners that will drive the implementation and institute best practices in its practice.

REFERENCES

Abifarin, O. and Uzualu, J.E. (2021). An Appraisal of Alternative Dispute Resolution Mechanisms in Criminal Justice Administration in Nigeria, In Yerima, T.F. et al (Eds). *Emerging Issues and Thoughts in Contemporary Public Law a Compendium of Essays Written in Honour of Justice Paul Adamu Galumje, JSC. Livestock:* Constellation Publishers, P. 21, 31.

Adams, A. (2021). Alternative Methods for Managing Land Disputes in Ido Local Government Area of Ibadan, Oyo State, *NOUN International Journal of Peace Studies and Conflict Resolution, Vol. 1,* No. 1, P. 314.

Adebayo, W.A. & Adeniyi, O. (2021). Legal Realism and Criminal Justice Administration in Nigeria, in Yerima, T.F. et al (Eds) *Emerging Issues and Thoughts in Contemporary Public Law, A Compendium of Essays written in Honour of Justice Paul Adamu Galumje, JSC. Ibadan:* Constellation (Nig) Publishers, P. 10.

Adekunle, A. (2020). The Administration of Criminal Justice Act/Laws: The Journey So Far In Bozimo, R.P.I (Ed) *Proceedings of 2020 All Nigeria Judges. Conference of the Lower Courts, 16th to 18th November 2020*. Abuja: National Judicial Institute, P. 34, 37.

Africa Research Institute (2017). How Alternative Dispute Resolution Made a Comeback in Nigeria's Courts, https://www.africaresearchinstitute.

Ajetunmobi, A.O. (2017). *Alternative Dispute Resolution and Arbitration in Nigeria Law, Theory and Practice*. Lagos: Princeton and Associates Publishing Co. Ltd, P. 19, 21, 36.

Akeredolu, A. (2013). A Comparative Appraisal of the Practice and Procedure of Court-Connected Alternative Despite Resolution in Nigeria, United States of America and United Kingdom, A Published Thesis Submitted to the Department of Public and International Law in Partial Fulfilment of the Requirements for the Degree of Philosophy, University of Ibadan, P. 14.

Akinsanya, D.F. (2002). Promoting the Use of ADR Processes: The Role of Judges, *Induction Course for Newly Appointed Judges and Kadis in Nigeria*, by the *National Judicial Institute*. Ibadan: Spectrum Books Ltd, P. 48.

Angwe, B. (2017). Access to Justice and Protection of Rights of Citizens, in *Refresher Course for Magistrates on Modern Judicial Practice and Procedures held at the National Judicial Institute, Abuja, on 24th - 28th April 2017*. Abuja: National Judicial Institute

Anyanwu, C.N. (2017). *Peace Studies and Conflict Resolution*. Jos: Andex Press and Allied Services Ltd, P. 91.

Armour, M. (2012). Restorative Justice: Some Facts and History, https://muse.jhu.edu

Ayanleye, O.A (2017). Marital Dispute Resolution in Nigeria: Practice and Procedure, In Oluyide, O. (Ed) *Readings on Matrimonial Disputes Resolution in Nigeria in Honour of Professor Mojisola Oluyemisi Ogungbe*. Lagos: TOG Publishers, P. 327-328.

Bui, J. (2023). *Differences between a Criminal Case and a Civil Case*: https://www.find law.com.

Constitution of the Federal Republic of Nigeria, 1999, Federal Government Printer, Lagos.

Delgado, R. et al (1985) Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution, *Alabama Law Scholarly Common*, https: scholarship.law.au.edu/fac-articles/584

District of Columbia Courts (2023). *Criminal Matters*. http://www.decourts.gov

EduBirdie (2024). *Restorative Justice Alternative Dispute Resolution and Therapeutic Jurisprudence as Innovative Justice Approaches*, https://edubirdie.com

Eze, H.O. (2015) Embezzlement and Economic and Social Rights in Nigeria, *Human Rights Awareness Journal 5th Edition, Vol. 2.1,* P. 50.

Ezenwobodo, O. (2021). *Fundamentals of Confessional Statement in Criminal Trials.* Abuja: Lawcraft Publishers Ltd, P. 31.

Faji, A.O. (2020) Bail and Enforcement of Fundamental Rights in Lower Courts, Bozimo, R.P. I (Ed) *Proceedings of 2020 All Nigeria Judges' Conference of the Lower Courts*, Abuja: National Judicial Institute, P. 9.

Federal Government of Nigeria (2015). *Administration of Criminal Justice Act, 2015*. Abuja: Supreme Court of Nigeria.

Feltes, M. (1989). Causes for Delays in the Criminal Justice System, https://www.thomasfeltes.de>

Fuller, R.C. (1979). *Good News Bible with Deuterocanonical Books/Apocrypha Today's English Version*. Kolkata Swapna Printing Works PVT, Ltd, P. 82.

Garoupa, N. and Stephen, F.H. (2008). Why Plea Bargaining Fails to Achieve Results in so Many Criminal Justice Systems: A New Framework for Assessment, https://scholarship.law.tamu.edu.facscholar/482.

Grace, M. T. (2010). Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility and Reviewing Public Norms, https://digita-lcommons.law.umaryland.edu

Grinsley, S. (2024). Libertarianism Philosophy/History, Tenets and Types, https://study.com

Idem, U.J (2019). The Application of Plea Bargaining and Restorative Justice in Criminal Trials in Nigeria, *Global Journal of Social Sciences*, https;//socialscienceresearch.org.

Idris, M.B. & Oke, Y. (2013). *Law and Procedure for the Enforcement of Human Rights in Nigeria*. Abuja: Panaf Press, 97-98.

Idornigie, P.O. (2020) *Mediation in Criminal Matters: Scope, Challenges and Prospects under Nigeria's Criminal Law Jurisprudence,* https://paulidornigie.org

Imenger, E.T. (2023). Alternative Dispute Resolution: Its Integration in Nigeria and the Challenges of Litigation in Dispute Resolution, *NOUN International Journal of Peace Studies and Conflict Resolution, 3,*(2), 296s

Independent Living Institute (2006). Vienna Declaration and Programme of Action (1993). https://www.independentliving.org.

Law Insider (2024). Criminal Matters Definition, https://www.lawinsider.com.

Legal Information Institute (2024). Plea Bargain, https://www.law.Cornell.edu.

Leight, O.A. and Anoba, A.O. (2017) Alternative Dispute Resolution as a Model for Marital Disputes Settlement, In Oluyide, O. (Ed). *Readings on Matrimonial Disputes Resolution in Nigeria in Honour of Professor Mojisola Oluyemisi Ogungbe,* Lagos: TOG Publishers, P. 367.

Nigerian Institute of Advanced Legal Studies (1991). *Human Rights and the Administration of Criminal Justice in Nigeria,* Ajomo, M.A. & Okagbue, I.E. (Eds), N.I.A.L.S. Research Series, 1, P.5.

Ogbu, A. C. (2010) Judicialism in Nigeria: Issues, Challenges and Prospects, *National Judicial Institute Law Journal* V. 4, P.233.

Ogunye, J. et al. (2005). *Criminal Justice System in Nigeria the Imperative of Plea Bargaining*. Lagos: Lawyers' League for Human Rights, P. 124-127, 129-130.

Okeke, A.A (2021). Exploring Alternative Dispute Resolution for Settlement of Criminal Dispute in Nigeria, https://scholarworks.waldenu.edu.

Oputa, C.A. (2014). In the Eyes of the Law, *Justice Watch,* 124.

Pepinsky, H. (2003). Restorative Justice as a Human Right, https://Milas.x10host.com

Peters, D. (2005). *What is Alternative Dispute Resolution?* Lagos: Dee-Sage Nigeria Ltd, P.10.

Peters, J.D. (2016). Application of Alternative Dispute Resolution and Restorative Justice (RJ) in the High Court And Other Courts of Coordinate Jurisdiction, A Paper Presented At The Induction Course for Newly Appointed Judges and Kadis. Organized by National Judicial Institute, Abuja from 24rd May to 3rd June, 2016.

Resolution Systems Institute (2024). Restorative Justice, https://www.aboutrsi.org.

Restorative Justice 101 (2024).When Did Restorative Justice Begun, https://restorativejustice101.com

Restorative Justice Council (2014).Restorative Justice and the Judiciary, https://restorativejustice.org.uk

Shikyil, S.S. & Yilkang, W. (2021). Ensuring Human Rights Protection During Military Operations in Internal Security, Yerima T.F. et tal (Eds). *Emerging Issues and Thoughts in Contemporary Public Law: A Contemporary Public Law. A Compendium of Essays Written in Honour of Justice Paul Adamu Galumje,* JSC, Constellation Publishers, Ibadan.

Stanley-Idum, M.M.& Agaba, J.A (2015). *Civil Litigation in Nigeria*. Lagos: Nelag & Company Ltd, P. 71.

Tarfa, R.M., Fagbohun, O. & Gbadamosi, G. (2011). *Rethinking the Administration of Justice Essay in Honour of Hon. Justice Abdullahi Mustapha OFR, FCIArb (Rtd)*. Lagos: The Book Company Ltd, P. 31, 34.

Tor, G. (2020). *Three Arms Commentaries and Annotations on the Administration of Criminal Justice in Nigeria*. Abuja: NIALS Press, Supreme Court of Nigeria, P.31.

United Nations International Children's Emergency Fund (2015). What are Human Rights? https://www/unicef.org.

United Nations Office on Drugs and Crime (2019). Concept, Values and Origin of Restorative Justice, Concept of Justice, https://www/unode.org.

United Nations Office on Drugs and Crime (2019), Crime Prevention and Criminal Justice, https://muse.jhu.edu

Uwais Dispute Resolution Centre (2018). *Practice Direction and Rules*, P. 22.

Van Ness D.W.(2005). An Overview of Restorative Justice Around the World https://Bibliotheca.cejamericas.org

Vossen, B. V. D. (2017) Libertarianism, https://oxfordre.com

Welch, K. (2022). Restorative Justice: An Alternative Dispute Resolution Approach to Criminal Behaviour, *Journal of Dispute Resolution, Vol.2022 Issue 1*, https://scholarship. law.missouri.edu/jdr/vol2022/iss1//11

Yahaya, J.U. (2021). The Imperative of Alternative Dispute Resolution (ADR) in Resolving Conflicts in Nigeria, *NOUN International Journal of Peace Studies and Conflict Resolution, Vol. 1, No. 2 (B)*, P. 130-138.

Yusuf, F. A. O. (2021). Comparative Analysis of Marital Disputes Resolution Mechanisms, In Oluyide, O. (Ed) *Readings on Matrimonial Disputes Resolution in Nigeria in Honour of Professor Mojisola Oluyemisi Ogungbe*. Lagos: TOG Publishers, P. 99.