Creative Approaches to Crime: The Case for Alternative Dispute Resolution(ADR) in the Magistracy in Nigeria

Odoh Ben. Uruchi, LL.M; BL; CDRS; ACIArb(UK); pnm
Coordinator, Legal Clinic / Lecturer, Department of Public ,Law, Faculty of Law, Nigeria Police Academy, Wudil, Kano State
E-mail corresponding author: benodoh@yahoo.ca

1.1 Abstract

Current trends in criminal justice administration indicates a paradigm shifts from retributive penal justice system towards creative problem-solving approaches as embodied in the concept of restorative justice (victim-offender mediation), victim compensation and other non-custodial options for crime disposal. Alternative Dispute Resolution Mechanisms are also becoming key tools for improving the poor state of criminal justice delivery. Despite the importance and widespread global acceptance of the efficacy of these emerging principles and practices in promoting effective criminal justice administration, attempts in Nigeria to integrate these concepts into the criminal justice system, especially in the magistracy has yielded limited results. One fundamental reason for the current state of affairs is the fact that these emerging concepts and principles were (and is) not essentially parts of the typical training curriculum for most Magistrates, Judges, Law Officers and Stakeholders in criminal justice administration in Nigeria. This paper seeks to explore the extent to which Alternative Dispute Resolution mechanisms and Restorative / Reparative Justice Principles can contribute to the current efforts at speedy and quick dispensation of justice in the Magistrates' Courts in Nigeria, and other jurisdictions with similar legal history. In doing this, the paper shall highlight and consider suitable appropriate legal and institutional framework for mainstreaming ADR in civil and criminal justice in Nigeria.

Keywords: Alternative Dispute Resolution, Magistracy, Creative Approaches and Crimes

1.2 MAGISTRATES' COURTS IN PERSPECTIVE

The Magistrate's Courts are courts of summary jurisdiction. The Black's Law Dictionary explains the word "summary" to mean short, concise, immediate, peremptory, off hand, without jury, provisional, statutory.[1] When used in connection with legal proceedings, it means a short, concise and immediate proceeding, and in relation to jurisdiction, it connotes the jurisdiction of a court to give judgment or make an order itself forthwith.

The rationale for the establishment of Magistrates' Courts is thus, in part, to ensure both speedy and quick dispensation of justice - substantial justice devoid of any form of technicalities. However, as is common with all common law courts, Magistrates' Courts have Rules of Court and are guided by these Rules. Unfortunately, by the nature and usage of these Rules by counsel, the necessary intendment of designating Magistrates' Courts as courts of summary jurisdiction has been defeated. This is because the Rules have constituted a clog in the wheel of progress in the dispensation of justice. For they delay, prolong proceedings and produce a judgments that are not forthwith. In the words of a Chief Magistrate,[2]

These bottleneck Rules have not allowed the Magistrates' Courts to actually be courts of summary jurisdiction. It is even more distasteful when any judge who understands the nature of the court wants to adopt a concise trial. He is often labeled as corrupt or biased judge

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. This situation, if not checked urgently, may lead to public loss of confidence in the judicial process and hence anarchy. Indeed, it is very germane to note that there have been notable pronouncements from appellate courts urging speedy, undiluted and un-mutilated justice. In *Ariori v. Elemo*[3] for instance, Idigbe (JSC) as he then was, posited:

> *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 sets a standards fixed by law and society, which a Judge must attain in the*

---

[1] The Black's Law Dictionary, (6th Ed. Centennial Ed. 1981)

[2] U Onyemenam., '*The Role of Judges of the Lower Courts in the ADR Processes*' (Conference of All Nigeria Judges of Lower Courts, Abuja, Nigeria, May 5-9, 2002).

[3] (1983) 1 SCNLR 1.

[3a] (1990) 2 NWLR (pt135) p.745

determination of cases before him, and in respect of which no person is allowed to compromise…

The Magistrates' Courts Rules in different jurisdictions across the country contain provisions urging the court to promote 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. The process of arriving at consent judgment or out of court settlement of matters is ADR negotiation process.

Additionally, 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 the case of *Ogunleye v. Oni*[3a], 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".*

1.3 MISCONCEPTION ABOUT USE OF ADR IN CRIME DISPOSAL.

ADR is simply the acronym for Alternative Dispute Resolution, which generally refers to processes of resolving dispute outside court-room litigation. Major ADR processes include Negotiation, Mediation, Conciliation, Arbitration, Early Neutral Evaluation and other Hybrids. While there is no doubt about the general categorization of ADR processes, much controversy still exists as to the proper place of these processes in criminal justice administration.[1]

The notion is very common especially amongst lawyers in Nigeria that litigation is the principal process for dispute resolution and that ADR is secondary or inferior to litigation.

There is no doubt that until recently, the training of lawyers in most jurisdictions focused substantially on the skills for use of litigation for dispute resolution. It is therefore this limited training and skills that creates the wrong perception by lawyers about the nature and value for ADR in justice delivery.

Proper review of the nature and dynamics of conflicts will reveal that ADR processes are useful before, during and sometimes even after litigation. Litigation results essentially from breakdown of negotiation and sometimes mediation by the parties. Even where a case is pending in court, the parties can resolve their differences amicably by out of court settlement at any time before judgment.

It is pertinent to remember that parties to a suit can use ADR to terminate the court proceedings at any stage of the case before judgment. Furthermore, even after judgment, the parties can reach some form of settlement outside the terms of the judgment, although the negotiating powers of the parties may not be the same as before the judgment.

Logically, if by current practice ADR mechanism can be used to settle a civil case before, during and even after litigation, one wonders the real basis for the notion that ADR is secondary to litigation.

Another fundamental misconception about ADR is the notion, especially by lawyers in Nigeria, that ADR is another set of judicial or quasi judicial processes. The tendency by legal minds to try to reason our ADR principles from the litigation and adversarial mindset is a major challenge to unlocking the potentials of ADR in justice sector. Most ADR processes in their true nature are not sets of rigid legalistic options for dispute resolution. ADR processes are essentially multi-disciplinary tools for creative problem-solving than a set of legal processes and principles. Although ADR processes and practices are recognized and conducted within the framework of the law, their full potentials cannot be maximized if stakeholders continue to apply them with the same litigation mindset and skills.

Accordingly, where non-lawyer neutrals resolve disputes by ADR, their proceedings, practices and outcomes should not be accessed according to strict standards of technical legal principles and procedures.[2]

ADR processes are characterized by flexibility, voluntariness and privacy. Their success essentially rely more on the trust and confidence of the parties in the processes and outcome than the adherence to rigid codes of procedure, by resorting to ADR processes the parties to a dispute look beyond the immediate issues on the table to their future relationship. They are more concerned about the future than passing judgment on past errors.[3]

In the effort to locate the place of ADR in the criminal justice system it is important to always appreciate the fact that much of what lawyers regard as ADR is largely the formal packaging of processes that the people use informally without placing any formal tag or name on them. Essentially, ADR is the same as what we do in our family(s) and communities in Nigeria where some family member or elder intervenes to help parties in their relationships.[4]

[1] KN Nwosu, 'Role of Traditional Rulers and Community Leaders in Criminal Justice Administration'. In: KN Nwosu, (ed), *Dispute Resolution in the Palace*, (Gold Press Limited, Ibadan , Nigeria 2010).181

[2] *Adeyeri v. Atanda (1995) 5 SCNJ 157*

[3] Nwosu, (n4) 182

[4] TO Elias, 'Traditional Forms of Public Participation in Social Defence' No. 22 (1969) International Review of Criminal

1.4 THE CASE FOR ADR IN CRIMINAL TRIALS

To fully draw attention to the fundamental roles of ADR in criminal justice administration, it is germane to briefly consider the nature of crimes and criminal prosecution under Nigerian Laws. Thus, *section 36(12) of the Constitution of Federal Republic of Nigeria, 1999(as amended)* provides:

> *Subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written laws; and in this subsection, a written law refers to an Act of the National Assembly or a law of a state, any subsidiary legislation or instrument under the provision of a law. Section 2 of the Criminal Code* which is the primary law on crimes in Southern Nigeria defines an offence as follows:*"An act or omission which renders the person doing the act or making the omission liable to punishable under the code, or under this code, or under this code, or under any statute is called an offence"*

The Penal Code which applies in the Northern states also defines offence and illegal conducts as: *"Except where otherwise appears from the context, the word 'offence' includes an offence under any law for the time being in force", while 'illegal' as everything which is prohibited by law and which is an offence or which is an offence or which furnishes ground for a civil action is said to be 'illegal'.(ss.28 & 29)*

Consequent upon the aforestated provisions, an act or omission is only a crime if a law made or deemed to be made by the appropriate legislative authority so prescribes. The consequence of any criminal conduct in Nigeria is whatever the law prescribes in any given case.

Although imprisonment and other forms of punishment are generally prescribed under our retributive justice system, it is possible for the law creating an offence to prescribe some non-custodial measures for crimes.

More so, in Nigeria it is only offences defined in written laws that are recognized by the constitution. Written law refers to an Act of the National Assembly; or any other regulation made under powers given directly by a law. The legal effect is that customary criminal laws are now unconstitutional in Nigeria, except to the extent that any of such customs is now specifically repeated in a written law. A person in Nigeria cannot therefore be tried and punished for crimes under native laws and customs.

For the purpose of our current discourse, the criminal justice trials cover issues before, during and after trials. It concerns issues relating to crime prevention, investigation, trial and post-trial management of victims and offenders. There are major ways of effective adoption and mainstreaming of ADR processes into the criminal justice sector reforms in Nigeria. These are:- Crime Prevention and Management, Prosecutorial Discretion/ NolleProsequi, Defence Options, Judicial Discretion, Prerogative of Mercy, Plea Bargaining And Restorative Justice.

1.4.1 CRIME PREVENTION AND MANAGEMENT

ADR processes can help to avert the criminal conduct before some acts or omission constituting crimes are consummated. A good number of criminal cases are midwived from failed interpersonal relationship between the disputants – victim and offender. Crimes are sometimes, to a large extent committed in the process of getting even with an opponent in a civil relationship. With the state of courts congestion; the slow and frustrating pace of civil justice and the resultant loss of faith in the justice system by some members of the society people easily try to sort out issues in their relationship by recourse to self help. In some of such situations, crimes are committed. Some family, neighborhood, social, political and business disputes can metamorphose into criminal conduct by the parties.

It is pertinent to note that effective deployment of ADR processes in the justice system will go a long way in substantially reducing the recourse to criminal conducts in managing civil relationships. This can be unequivocally achieved by the establishment of **Community Justice Centres**. Other ADR programmes can also be effectively deployed to resolve cases to the satisfaction of the parties thus preventing the recourse to violent self-help and criminal conduct in managing civil relationships. This will contribute substantially to courts and prison decongestion in addition to reducing crimes and criminality in Nigeria.

1.4.2 PROSECUTORIAL DISCRETION / NOLLE PROSEQUI

The office of the Attorney General of the Federation is provided for in *section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)* and the office of the Attorney General of a State is equally provided for in *section 211* of the same Constitution. The Attorney General of the Federation is the Chief Law Officer of the Federation, while the Attorney General of a State is the Chief Law Officer of the State.

The respective Attorneys General have power to institute, conduct, continue, take over and discontinue criminal proceedings in any court except a court martial. The powers conferred on the Attorney General can be exercised by him in person or through officer of his department.[1] In exercise of his prosecutorial powers the Attorney General shall have regard to public interest, the interest of justice and the need to prevent abuse of legal

Policy, 18-24.

[1]*Constitution of the Federal Republic of Nigeria 1999(as amended) , sections 174 (2) and 211 (2).*

process.[1] Nigerian laws recognize the general prosecutorial discretion and in fact gave it a constitutional flavor. The Attorney General, and by constitutional delegation, his Law Officers, enjoy Supreme prosecutorial powers in all courts in Nigeria, except a court martial. *Therefore, the Attorney General in exercise of his constitutional powers may settle or compound any case before or during trials*.

Apart from the constitutional caution of upholding public interest, interest of justice and the need to prevent abuse of legal process, we firmly submit that the Attorney General can resolve any criminal case through ADR processes or mechanisms. This may be by negotiation and settlement with the criminal defendant or preferably by initiating Victim- Offender Mediation.

We are not ignorant of the fact that section 127 of Criminal Code creates the offence of compounding felony, but we further argue and submit that this provision is subject to the constitutional powers of the Attorney General to exercise prosecutorial discretion.[2] Presently, there are no clear prosecutorial policies and guidelines for public prosecutions in Nigeria both at Federal and State levels. We are also of the view that to maximizes the potentials of the use of prosecutorial discretion and ADR in criminal cases, it is necessary for the Attorney General to promulgate clear prosecutorial policy and guidelines to guide his law officers. Thus this will go a long way in helping to prevent abuse of the powers; ensure protection of public interest, the interest of justice; and the abuse of legal process.

1.4.3 DEFENCE OPTIONS

A criminal defendant has options or alternatives open to him in his defence right from the time an allegation of crime is made to the end of the trials.[3] This criminal defendant can admit at the point of investigation or prior to arraignment in court. If such criminal defendant is penitent, he may decide to fully cooperate and assist the authorities in the investigation of the crime.

We make bold to say that there is no known legal inhibition whatsoever where the criminal defendant decides to admit the crime prior to arraignment, even where such admission was done in exception of some relief from the prosecution. An open and unequivocal admission of the crime to the investigating/prosecuting authority prior to arraignment can lead to some legal arrangement between the prosecution and criminal defendant regarding the modalities for disposal of the case. ADR processes can be effectively deployed in structuring such arrangement.

In a reversive case where a case is not settled at the preliminary stage, ADR processes may still be deployed during trial. Nigerian procedural laws provide that on arraignment in court, the criminal defendant may plead guilty to the charge(s) and upon such a plea the court shall enter a conviction if satisfied that the defendant intends by the plea to admit the offence.[4] There is nothing legally or morally wrong with a plea of guilty by a criminal defendant; and such a plea on arraignment may provide a prima facie evidence of some remorse on the part of the offender without in any way encouraging or promoting any attempt to cajole people to admit guilt when they are innocent, it must always be noted that a plea of guilty by an offender is a legitimate legal, moral and ethical option open to an accused in a criminal case in Nigeria. Both the CPC and CPA provide that an accused can plea guilty to the charge and if satisfied the court can proceed to enter conviction without full trial.

Such defence option is not only legally available, it is also morally and ethically obligatory for people to admit and repent of their wrongdoing. Interestingly, both the Christian religion[5] and Islam respectively enjoin their followers to admit and confess their sins and ask for forgiveness. Regrettably, the general practice and the current attitude of legal practitioners seem to provide some psychological escape and justification to most offenders who easily cling to the constitutional presumption of innocence. The onus and burden of proof which the law places so heavily on the prosecutor sometimes provide an academic shield for the offender to escape justice, in the process the moral and ethical essence of crime is lost on the altar of legal technicalities.[6]

We therefore make bold to submit that with the proper skills and guidelines, ADR processes can be deployed in structuring an arrangement for a plea of guilty by the defence upon arraignment in exchange for some favourable exercise of prosecutorial or judicial discretion. If this is done, it will help in reducing substantially the criminal case overload in the courts.

1.4.4 JUDICIAL DISCERTION

We observed that the major challenge in the Nigerian Criminal Justice System is the stigmatization of offenders and the lack of any effective scheme for reintegration of convicted persons after they may have finished serving

---

[1] Ibid, *sections 174(3) and 211(3)*; *Adekanye v. FRN (2005) ALL FWLR (pt 252) 514; C.O.P v. Tobin (2009) ALL FWLR (pt 483) 1302 @ 1327-1328*

[2] *Section 1(3) of the CFRN, 1999 (as amended)* provides *"If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void"*.

[3] *Criminal Procedure Act, s.287; Criminal Procedure Code, s.185(b)*

[4] *Criminal Procedure Act, s.218; s. 161 (2) (3) and Criminal Procedure Code, s.187 (2).*

[5] Matthew 5:25; Surah 5:39 "But whoever repents after committing a crime and makes amends, Allah will accept his repentance: Allah is Forgiving and Most Merciful".

[6] Nwosu, (n4) 182

their terms. ADR can be very useful in the post-conviction management of offenders.

In the Nigerian Criminal Trial Process, after a person is convicted of an offence the court may need some guidance in the exercise of its discretion to impose punishment.[1] Except upon a conviction for capital offence, where Nigerian Law prescribes death as mandatory sentence[2] or where the law provides for a mandatory minimum sentence or order, the court usually has judicial discretion on the punishment to impose. Punishments prescribed for offences are the maximum and the court has discretion to impose any lesser term if in its opinion the circumstance is such that the offender shall be reformed by the lesser punishment. To guide it in the exercise of this judicial discretion the court usually invites the accused to make some statements after conviction. This plea for mercy by the offender after conviction is called ***allocutus.*** For a better guide, it is possible for the court to allow some form of post-conviction on the offender. Such post-conviction ADR can provide an arrangement that could enable the court come to an informed decision as to the appropriate punishment to impose in a particular case.

1.4.5 PREROGATIVE OF MERCY

The President of the Federal Republic of Nigeria and the Governor of a state respectively have constitutional powers to grant pardon to any person charged or concerned with an offence.[3] This power to grant pardon can be well utilized to create measures for the effective use of non-custodial options in criminal justice in Nigeria.

1.4.6 PLEA BARGAINING

Plea bargaining is the process whereby an accused person and the prosecutor enter into negotiation towards an agreement under which the accused will enter a plea of guilty in exchange for a reduced charge or a favourable sentence recommended to the Judge by the prosecutor.[4] The United States Supreme Court affirmed the constitutional validity of plea bargaining in America in the following words:

> *The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargaining' is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of Judges and court facilities.*[5]

Despite some of the criticisms, plea bargaining is generally acknowledged to offer mutual benefits to all stakeholders in the Criminal Justice System – the Prosecutors, Criminal Defendants, Magistrates, Judges, Victims and the Public.

The introduction of plea bargaining in Nigeria has been very controversial.[6] Presently, the practice of plea bargaining is expressly provided for by *section 14, Economic and Financial Crimes Commission Act, 2004 and sections 74-76, The Administration of Criminal Justice Law of Lagos State, 2011.* This *section 14, EFCC Act, 2004* was first invoked in the case of *Federal Republic of Nigeria v. Emmanuel Nwude & Anor*[20a], where the defendants who were charged with defrauding a Brazilian Bank received reduced sentences in exchange for their plea of guilty.

Essentially, plea arrangements can be achieved in Nigeria by combination of prosecutorial discretion, defence options and judicial discretion discussed above. It is important to note that plea bargaining is not an end in itself, it just a means to an end. Plea bargain is a means of securing a guilty plea by the criminal defendant upon arraignment. In a sentence bargain, the court before which the defendant is arraigned essentially records a plea of guilty if satisfied that the accused admits the offence. The plea agreement in such situation is considered for the purpose of punishment.

1.4.7 RESTORATIVE JUSTICE

Restorative Justice is a process whereby victims, offenders, and communities are collectively involved in resolving how to deal with the aftermath of an offence and its implication for the future.[7]

Restorative Justice Programmes focus more on addressing the problems caused by a criminal conduct than trial and punishment of the offender. It is an all inclusive problem-solving approach that ensures that the interests of major stakeholders in the crime are well addressed and protected. With restorative justice, the victim, the offender and the community all participate in the crime disposal process. Basically, the victim is

---

[1] This practice is generally referred to as Allocutus
[2] *Nafiu Rabiu v. The State (1980) 2 NCR 117*
[3] *CFRN, 1999 (as amended) , ss .175 (1) (a) – (d) and 212 (1) (a) – (d) .*
[4] A Ibidapo – Obe, 'Restorative Justice and Plea Bargaining Practices: A Tilt toward Customary Criminal Justice'. In: KN Nwosu, (ed), *Dispute Resolution in the Palace*, (Gold Press Limited, Ibadan, 2010) 226
[19] *Santobello v. New York, 404 US 257 (1971*)
[6] Perhaps as a result of the fact that it gained prominence through its use in trial of corrupt politicians and rich business executives by the EFCC.
[20a] (2006) 2 EFCSLR145.
[7] DO Omale, *Understanding Restorative Justice: A Handbook for Criminal Justice Stakeholders*, (Trinity – Biz Publication, Enugu, Nigeria 2005) 10

compensated as much as can be reasonably achieved; the offender is effectively reintegrated back into the community of responsible citizens; and the community is restored to normalcy.

The healing value of restorative justice programmes is complete with the restoration of the community to the pre-crime situation. The full circle of the programme is complete with community being assured against future occurrence of the offending conduct. The societal equilibrium distorted by the crime is redressed and repaired so that society can be rest assured that the people are secured and protected as citizens in community of humans.

In Nigeria the current practice is retributive justice. Our present system places much premium on inflicting punishment and pain on the offender than any real attempt to reform and reintegrate the offender back into the society. From the time an offence is committed to the trial and judgment all our legal rules is concerned with is proving guilt according to letters of the law. Little or nothing is done about repairing the damage done by the crime. Victims of crime and even the community who suffer the direct impact of the offence are relegated to the background.

Hardly does the offender even realize the enormity of the damage done by his conduct to the victim and the community. In fact, the law and the current trial process seem to provide some psychological escape and justification to the offender who easily clings to the constitutional presumption of innocence.

The onus and burden of proof which the law places so heavily on the prosecutor sometimes provide an academic shield for the offender to escape justice. In the process, the moral and ethical essence of crime is lost on the altar of legal technicalities. Even where the offender in his conscience knows that he is guilty of the allegations, it is usual for him to resort to the legal rule that “he who alleges must prove” and seek to escape justice by technicalities. Unfortunately, it does now appear that a sincere and honest plea of guilty by an offender is a mark of weakness on the part of his legal counsel. The general approach and attitude of defence lawyers seem to suggest that every case must go to trial. Plea of guilt upon arraignment is now largely seen as an indictment on the capacity of the lawyer to free their client at all cost.

It is disheartening to note also that the current case overload in the criminal justice system and the consequent over congestion of the prisons can be attributed largely to this attitude that every case must go through the whole hug of the criminal trial process. Persons, who should have had their charges speedily and expeditiously disposed on a plea of guilty, especially when they truly and legally committed the offence charged, now suffers more physical, emotional and psychological damage in the course of a protracted and almost endless trial on a plea of not guilty.

This paper is not in any way encouraging or promoting any attempt to cajole people to admit guilt when they are innocent, it must always be noted that plea of guilty by an offender is a legitimate legal option open to an accused in a criminal case. Both the Criminal Procedure Code and Criminal Procedure Act provide that an accused can plead guilty to the charge and if satisfied the court can proceed to enter conviction without full trial.

With the aforementioned myriad of problems bedeviling the retributive justice system in Nigeria, it has become imperative for stakeholders in criminal justice administration to seek other alternative approaches. One of such alternatives is restorative justice. Restorative justice systems focus more on addressing the problems caused by a criminal conduct than just trial and punishment of the offender. It is an all inclusive problem-solving approach that ensures that the interests of major stakeholders in the crime are well addressed and protected. With restorative justice, the victim, the offender and the community all participate in crime disposal process.

In Nigeria, restorative justice has now been properly provided for in the Criminal Justice Administration Law of Lagos State.

The United Nations Declaration of Basic Principles on the use of Restorative Justice Programmes in criminal matters, 1999 expounds the concept of restorative justice by highlighting programmatic expression of it such as restitution, reconciliation, reintegration and restoration.

Restitution:- A major value of restorative justice is its emphasis on victim compensation. As much as possible, restorative justice programmes facilitate restitution to the victim as nearly as can be achieved to the pre-crime status. Damage caused the victim by the offender is repaired as much as can be achieved. Although it may be impossible to fully restore the victim to pre-crime situation restorative justice programs usually give victims of crime better focus and outcomes than they can ever have under retributive justice.

Reconciliation:- Restorative justice programmes attempt to set up a possible meeting or encounter between the victim and the offender. The underlying essence is to address some fears or concerns of the victim and to also bring the offender in close experience with the extent of the harm caused by his conduct on a fellow citizen[10]. It is not unlikely that some offenders never get to fully appreciate the extent of damage they may have caused on fellow humans until they are actually confronted with the reality of meeting with the victim. On his part, the victim may suffer from post psychological trauma bordering on fears about the faith that befell him. Some victims of crime may live in perpetual fears and sense of insecurity if certain issues regarding the crime are not clarified to their satisfaction. While full reconciliation between the victim and the offender may not be

achieved in all case, a well managed encounter between them can no doubt offer some relief to the victim and remorse for the offender. The value of reconciliation in restorative justice is more apparent in cases of crimes between people with relationships or some acquaintance. There are situations where the victim offender may have to continue in some form of relationship after the criminal case has been disposed. Integrating reconciliation as restorative justice is more apparent in cases of crimes between people with relationships or some acquaintance. There are situations where the victim offender may have to continue in some form of relationship after the criminal case has been disposed. Integrating reconciliation as restorative justice does help such future relationship.

Reintegration: Restorative justice seeks to fully reintegrate the offender back into the society in a practical and realistic manner. Restorative justice de-emphasizes punishment and stigmatization of offenders. Instead, they are given opportunity to continue to see themselves as useful members of the society who can still make positive contributions towards the common good. Using disposal options such as community service, vocation/training, compulsory education and other forms of constructive engagement, the programmes offer offenders real and genuine opportunity of rebuilding themselves materially, emotionally, and psychologically. With a well thought out and professionally implemented restorative justice scheme, a good number of citizens languishing in detention today with no real prospect of reforms can be engaged in some form of productive activity without compromising the integrity of the criminal justice system and the security of the state. The irony is that restorative justice scheme will cost less than what is presently being spent on bogus programmes of prison decongestion.

Restoration: The healing value of restorative justice programmes is complete with the restoration of the community to the pre-crime situation. The full circle of the programme is complete with the community being assured against future occurrence of the offending conduct. The societal equilibrium distorted by the crime is redressed and repaired so that society can be rest assured that the people are secured and protected as citizens in community of humans.

Obviously, for purpose of practical application, each of the components in the concept of restorative justice may take place at different stages of the criminal justice chain (pre-trial, trial or sentencing stages). Also, restorative justice processes may involve different existing criminal justice agencies such as the police, the prosecutor, the courts, and in some jurisdictions, a corps of specialists mediators in criminal matter.

In the Northern States of Nigeria where the Penal Code[12] and Criminal Procedure Codes are applicable, *Section 78 of the Penal Code* provides that a convict may be ordered to pay compensation either "in addition to, or substitution for any other punishment to the person injured'. The vagueness of the provision has raised pertinent questions: why should compensation be paid in addition to any other punishment? Ideally, compensation ought to be substituted entirely for other punishment.

As for the Southern States of Nigeria, compensation is virtually unavailable: *Section 435(2) of the Criminal Procedure Act (CPA)* limits compensation payment to cases concerning juvenile offenders, their parents being required to pay such compensation on their behalf. Even in such limited circumstances, the value of compensation payable is pegged at twenty naira.

1.5 LEGAL FRAMEWORK FOR MAINSTREAMING ADR INTO THE CIVIL AND CRIMINAL JUSTICE SECTORS IN NIGERIA

Ample legal frameworks exist for use of ADR in the justice sector
in Nigeria. Some of these provisions are hereunder:-

i. Rule 15(3) (d) of the Rules of Professional Conduct for Legal Practitioners 2007, makes it mandatory for lawyers to inform their clients about the options of ADR before or during litigation.
ii. Section 38 of the Constitution of the Federal Republic of Nigeria guarantee Freedom of Thought, Conscience and Religion, and the major religions in Nigeria – Christianity and Islam recognize the use of ADR in dispute settlement. The effect of this provision when read in conjunction with Right to Property is that parties to any case may at anytime settle by way of compromise. Nigerian courts from the lowest to the highest (Supreme Court) have always recognized and promoted the right of parties to a case to settle by other means out of court.
iii. Customary Court and Sharia Court laws of the various states empower the courts to promote reconciliation and settlement in both civil and criminal cases within the jurisdiction of the court.
iv. The High Court Laws confer jurisdiction on the court to promote amicable settlement of cases pending before the court.[1]

[1] *Federal High Court Act Cap. 12, LFN 2004, s.17; High Court of the Federal Capital Territory, Abuja Act, Cap 510 LFN 2004, s.18.*

v. Laws creating certain agencies, institutions and organization specifically enjoin them to promote the use of ADR in resolving dispute arising from their areas of statutory mandate.[1]

vi. *S.26 of District Courts Law, Cap 39, Vol. 1, Laws of Katsina State, 1991*, provides:

A District Court shall, so far as there is proper opportunity, promote reconciliation among persons over whom such a court has jurisdiction, and encourage and facilitate the settlement in an amicable way without recourse to litigation of matters in difference between them.

vii. Order 18, Rule 1 – Rule 14, Katsina State High Court (Civil Procedure) Rules; and other States High Court (Civil Procedure) Rules

1.6 CONCLUSION AND RECOMMENDATIONS

The poor states of civil and criminal justice sectors in Nigeria calls for the adoption of mechanisms and practices that will help reduce the case load. Alternative Dispute Resolution (ADR) processes, if fully mainstreamed can provide the necessary relief. There is no doubt that adequate legal frameworks already exist for use of ADR in civil and criminal cases in Nigeria beyond the level that it is currently being applied.

This paper finds that one of the greatest challenges to economic development and democratic stability in the country presently is the deteriorating state of the civil and criminal justice sector leading to high state of insecurity and poor investor confidence.

It is the finding of this paper that under the criminal justice system in Nigeria, most criminal defendants whether on bail or pre-trial detention are poor citizens who are hardly able to afford the resources necessary for mobilizing effective defence to the criminal charge. The socio-economic conditions in Nigeria not only creates a situation where the poor is more likely to breach the penal laws, but also limits their capacity to escape the law either legitimately by marshalling effective defence or illegitimately through bribe.

It further finds that some Magistrates still have misconceptions about the use of ADR in crime disposal[2] . Although they believe that ADR is only amenable to civil matters, they hardly encourage lawyers to explore the processes.[3]

It is recommended that in order for the present and future potentials of ADR in civil and criminal justice sectors to be fully maximized, there is the need for a comprehensive, systematic and structured programme of training and capacity building on the emerging trends and practices for all Magistrates and stakeholders.

It is also recommended that the combined use of prosecutorial discretion, defence options and judicial discretion within the framework of clearly established prosecutorial policies and sentencing guidelines is perhaps all that is presently required to maximize the potentials of ADR in criminal justice sector. With right altitude and capacity, ADR can be used at different phases of the criminal justice spectrum.

This discussion recommends sponsoring of the Prison Act (Amendment) Bill by the National Assembly, to provide a more appropriate legal framework for prisons administration and the treatment of offenders, consistent with constitutional and international standard, as well as to make the prisons more corrective institution. More so, there should be the Victims of Crime Remedies Bill; to improve respect for the rights of victim of crime in the criminal justice sector; and Community Service Bill, to encourage the award of non-custodial sentences under the criminal justice system, particularly in minor offences and offences involving young persons.

[1] *National Health Insurance Scheme Act Cap N42, LFN 2004,s.26; Nigerian Investment Promotion Commission Act, Cap N117 LFN 2004, ss. 92-94.*

[2] KN Nwosu, ' Nigerian Criminal Law and Procedure in Prospective' (National Strategic Training/Workshop on Fast Track Trials, Case Diversion Measures; Non –Custodial Options; Plea Bargaining; Use of ADR for Crimes and Restorative Justice, Abuja, Nigeria, December 5-9, 2011)

[3] Ibid.

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:
http://www.iiste.org

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: http://www.iiste.org/journals/ All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: http://www.iiste.org/book/

Academic conference: http://www.iiste.org/conference/upcoming-conferences-call-for-paper/

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digtial Library , NewJour, Google Scholar