

Applicability of Alternative Dispute Resolution Mechanisms as Panacea for Electoral Instability in Nigeria

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ABSTRACT

Varying degrees of political disorder have characterised the several electioneering engagements since the first election in Nigeria, thereby dampening the legitimacy of the electoral process, though known standards are emplaced for ordering functional governance in Nigeria. Given its recurrent incidence of conflicts with the propensity for self-help for which most elections were until recent time, known, a more dynamic intervention than the adversarial litigation has become so desirous. It is for the purpose of reducing these unwholesome phenomena with the complexities of adversarial litigation, the Alternative Dispute Resolution [ADR] mechanisms present a possibility as well as a formidable panacea for electoral instability in Nigeria. This paper, therefore, examined the various electoral laws, the political conventions and parties' traditions juxtaposed against socio-political culture in Nigeria. This was with a view to identifying the practicability of the ADR processes for ensuring electoral peace in Nigeria. The study adopted doctrinal methodology and relied on primary and secondary sources of information. The primary source comprised the Constitution of the Federal Republic of Nigeria, 1999 (as amended), successive electoral laws in Nigeria, including the current Electoral Act, 2022, Arbitration and Conciliation Act, Cap A18, LFN 2004 with unstructured interviews and case laws. The secondary source included books, journal articles, newspapers, magazine and materials from the internet. The study found that, although there was no express provision in the successive electoral law, prescribing the application of ADR mechanism in Nigeria, parties' convention and socio-political norms have made its use a panacea for electoral instability. Considering the enormous benefits of the ADR mechanism in every life endeavour including election matters, the paper suggested that future electoral reform should not only formalise the use of ADR processes for sustenance of electoral peace, but should also incorporate the ADR processes for electoral dispute resolution in Nigeria.

Keywords: Election Dispute; Electoral Peace; Alternative Dispute Resolution; Election Matters

DOI: 10.7176/DCS/15-2-02

Publication date: May 30th 2025

1.0 INTRODUCTION

Formal elections were introduced in Nigeria as early as colonial government recognised the need for self-determination by Nigerians in domestic affairs. Associative disputes are noticeable as consequential issues arising from socio-political imbalance in the Nigerian electoral process; hence, the resort to judicial adjudication in the courts of law. Judicial intervention by way of adversarial litigation is bedevilled by numerous defects. This, therefore, propels the demand for alternative dispute resolution processes as a tool to salvage the unwholesome shortcomings.

The burden of this study is to ascertain the practicability of the application of ADR's mechanisms as panacea to resolution of electoral dispute in election matters in Nigeria.

To this end, the paper consists of five notable segments, in addition to its introduction, which is the first segment while in the second, the paper examines the conceptual meaning and the priority of ADR for electoral peace in Nigeria. The third segment considers the typology of ADR mechanisms just as it evaluates, in its fourth segment, the applicability of ADR mechanisms for electoral peace in Nigeria. In its fifth segment, the prospects of the application of ADR to electoral matters in Nigeria is interrogated while in the concluding part, the sixth segment, the paper proffers some suggestions towards the effective reform of extant electoral laws to enable it accommodate the effective engagement of ADR in election matters for intra-party disputes in Nigeria.

2.0 Conceptual Meaning and the Demand for ADR

Understanding this paper requires a good appreciation of the conceptual meanings of adopted terms in addition to a thorough assessment of the priority of ADR process for electoral peace in Nigeria. This is further to the demand for or the priority of application of ADR to electoral matters in Nigeria with the result that the benefits

of ADR would be harnessed so that political conflicts and social disorder may be permanently resolved. In this part of the paper, both aspects would be discussed in turn.

2.1 Conceptual Meaning and Definitions of Terms

The necessity for a thorough understanding of this discourse demands that the various terms adopted in the context of this paper be considered. To this end, the terms in need of definitive explanation include alternative dispute resolution, election dispute, political peace, and election matter.

2.1.1 Alternative Dispute Resolution

The *Black's Law Dictionary* defines alternative dispute resolution as any procedure for settling a dispute by means other than litigation, as by arbitration or mediation.¹ In their treatises, Orojo and Ajomo, posited that the term "Alternative Dispute Resolution" is generally used to describe the methods and procedures used to resolve disputes either as an alternative to the court's adversarial or traditional dispute resolution mechanism or as an addition to such a mechanism in some cases.² The term refers to both non-adversarial processes and institutional structures for the settlement of conflicts. This invokes, in its forum context, the panoply of dispute resolution mechanisms which do not include the courts, but incorporate intra-industrial arbitration arrangements, administrative agency ombudsman services, mutual dispute arbitration agreements and others. In its procedural context, it invokes methods of dispute resolution that differ from norm associated with adversarial litigation norms. It includes mediation, arbitration, summary jury trials, and mini-trials, among others, whether used by the courts or bodies for extra-judicial dispute resolutions. ADR alludes to a variety of techniques, each involving different stages of privatisation.³

Accordingly, Dayton identifies many connotations for the term 'alternative dispute resolution', often described as any extra-judicial mechanism by which private parties may decide to adopt in settlement of legal disputes.⁴ Some of the best-known methods of ADR are arbitration, conciliation, and mediation, Mini-Trial (known in Britain as the Executive Tribunal) and Med-Arb.⁵ Put differently, ADR refers to mechanisms involving the use of non-adversarial litigation system of dispute resolution. It is a kind of facilitated confidential means used for settling disputes without prejudice.⁶

2.1.2 Election Dispute

The word, 'dispute' is defined in *Black's Law Dictionary* as a conflict or controversy, especially one that has given rise to a particular lawsuit.⁷ *Webster's Universal Dictionary and Thesaurus*⁸ also defines the same word to mean 'to make the subject of an argument or debate; to query the validity of'. Judicial construction of the word was articulated in *AG Bendel State v AG Federation & Ors*⁹ where, placing reliance on the lexical definition, the Supreme Court construed it, as 'the act of arguing against, controversy, debate, contention as to rights, claims and the like or on a matter of opinion'.¹⁰ Election is commonly construed as the process of selecting a person to an office. Election dispute can, therefore, be described as a conflict in controversy arising from the process of selection of person(s) to office(s)

2.1.3 Electoral Peace

According to *Webster's Dictionary online*, electoral means relating to election while election is defined as the right, power, or privilege of making a choice.¹¹ *Meriam-Webster Online Dictionary and Thesaurus* defines the

¹ BA Garner *Black's Law Dictionary* (10th Edn, West Publishing Co 2014) pp. 95.

² OO Orojo, and MA Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria*, (1999). See also A Tweeddale and K Tweeddale, *Arbitration of Commercial Disputes: International and English Law and Practice*, (2005), Oxford University Press, p. 3.

³ JB Weinstein, "Some Benefits and Risks of Privatisation of Justice Through ADR" in *The Ohio State Journal on Dispute Resolution*, (1996) Vol. 11, No 2. p. 241 at 247.

⁴ K Dayton, "The Myth of Alternative Dispute Resolution in Federal Courts" in *76 Iowa Law Review* (1991) 889 at 897.

⁵ JO Orojo and MA Ajomo, (n 2).

⁶ JK Gadzama, "Development and Practice of ADR and Arbitration in Nigeria" available online at <<https://www.nigerian-awguru.com/articles/arbitration/DEVELOPMENT%20AND%20PRACTICE%20OF%20A.D.R%20IN%20NIGERIAN.html>> accessed on May 21, 2025.

⁷ BA Garner, *Black's Law Dictionary* (n 1) at p. 572.

⁸ *Webster's Universal Dictionary and Thesaurus* (Geddes and Grosset 2010) at p. 156.

⁹ *AG Bendel State v. AG Federation & Ors* (1981) LPELR-605 (SC) (p. 48 para A).

¹⁰ Ibid at para A, per Bello, JSC.

¹¹ Webster's Dictionary Online.

word peace as ‘a state of tranquility or quiet: such as a freedom from civil disturbance.’¹ Electoral peace, invariably, connotes a state of tranquility relating to the exercise of right of choice in an election.

2.1.4 Election Matter

In the Nigerian Electoral Act,² an election is also defined as any election held under the Act which includes a referendum.³ In this context, therefore, electoral is used in respect of elections held under the Electoral Act that was in force during the period of election under reference. It is a political process for selecting a candidate to an office. Derivatively, an election matter includes any issue arising from political process for selection of candidate into an office in an election. Put differently, election matter means any matter intended or calculated to influence or affect the result of an election. It is a matter relating to selection of persons to an office through an electoral process.

2.2 The Priority of ADR over Adversarial Court System for Electoral Peace in Nigeria

At the risk of repetition, ADR refers to any method that might be used by parties to a dispute to reach an agreement, short of formal litigation in court.⁴ In many parts of the world, using ADR to settle election disputes is still a novelty. The reason for it is that ADR mechanisms are usually viewed as a process for potential litigation to reach a mutually-agreeable settlement.⁵ Conversely, however, there must be definite winners or losers in elections. Indeed, critics of the application of ADR mechanisms to pre-election, election and post-election disputes, in our opinion, point to the problem that elections are a zero-sum game;⁶ that is to say, the entire purpose of an election is to choose a winner. Whatever it may be, this paper insists that this position would insult the sensibility of political scientists and other electoral process practitioners who daily witness the use of ADR processes in redressing and resolving a great deal of insurmountable crisis in the Nigerian political field, considering its preference, in several ways to litigable adversarial process. It may be appropriate, at this juncture, to consider the demand necessitating the preference of ADR mechanisms to adversarial litigation process in Nigeria.

In the case of *Okechukwu v INEC*,⁷ the Supreme Court of Nigeria stated that ‘elections are hardly ever conducted without some irregularities, and no matter how well the regulatory authority conducts an election, there are complaints.’⁸ According to section 130(1) of the Electoral Act, 2022, the manner of complaining about elections in Nigeria is through a petition presented to the competent court or tribunal. The following are some noted disadvantages of litigation, thus requiring recourse to ADR as a saving grace.

2.2.1 Inundation of Court and Tribunals with Petitions

Candidates and political parties have regularly turned to the courts and election tribunals to settle disputes over elections.⁹ For example, 560 petitions were filed at the end of the 2003 elections, 1,290 petitions in 2007, 732 petitions were filed in 2011, 611 petitions were filed in 2015,¹⁰ and at least, there were 644 pre-election cases and 766 post-election petitions in 2019.¹¹ These put undue pressure on the judiciary and the courts, including tribunals, are overwhelmed. Additionally, cases not related to the election suffer as a result of the priority given

¹ <<https://www.merriam-webster.com/dictionary/peace>> accessed on May 21, 2025.

² Electoral Act, 2022.

³ Ibid at s 152.

⁴ D Kovic, and JH Young, ‘Alternative Dispute Resolution Mechanisms’ in C Vickery (ed.) *Guidelines for Understanding, Adjudicating and Resolving Disputes in Election* (International Foundation for Electoral System 2921) p. 299.

⁵ Ibid. It is doubtful if same can still validly be the position in recent times considering that even in Africa, some countries have embraced it; yet in Nigeria, the statement will still hold water.

⁶ Green, R. ‘Mediation and Post-Election Litigation: A Way Forward’ in *Ohio State Journal on Dispute* 331.

⁷ *Okechukwu v INEC* (2014) 17 NELR (pt. 1436) 259.

⁸ Ibid at p. 309.

⁹ Section 137(1) (a) and (b) of the Electoral Act, 2010 (as amended) listed persons who may presented an election petition as; a candidate in an election, and a political party which participated in the election.

¹⁰ INEC 2015 General Election Report, p. 079 referred to in *The Nigeria 2015 General Elections in Nigeria*:

Compendium of Petitions, (2017) Nigeria Civil Society Situation Room, p. 17.

¹¹ European Union Observation Mission, *Nigeria General Elections 2019: Final Report* p. 6. <https://eeas.europa.eu/sites/eeas/files/nigeria_2019_eu_eam_final_report_web.pdf> (accessed August 24, 2024).

to election petitions.¹ Moreover, the membership of election tribunals, which must be constituted not later than 30 days before the election, is drawn from judicial members.²

2.2.2 Tardiness of Proceedings

The issue of delay has been identified as a major challenge facing the legal and institutional mechanisms for the adjudication of electoral disputes. It cannot help but feature in this section which attempts to propose ADR as a means of adjudicating electoral disputes more quickly compared to litigation.

Disputes over elections, in prior times, dragged on for years in Nigeria.³ The judiciary made proactive efforts to obviate delays in the consideration of election matters by issuing the Practice Directions,⁴ which set out time schedules for dealing with matters concerning elections. Arguably, these proactive steps taken by the judiciary played a significant role in bringing about the alteration of the constitution.⁵ For example, in section 285(6) of the constitution, there is a timeframe of 180 days for the determination of the petition and 60 days for an appeal, whether from an election tribunal or the Court of Appeal to the Supreme Court.⁶

Therefore, one can safely assume that the delay in proceedings for election petitions has now become a thing of the past. However, there is no such time limit for determining electoral disputes over which the Federal High Court has jurisdiction.⁷

2.2.3 Loss of Confidence in the Judicial System

Legitimacy is earned on basis of soundness of the reasoning of courts. When courts face the heavy burden of deciding a case that essentially determines the outcome of an election, it usually results in a loss of voters' confidence, where no sound reasoning is found in the judgment.⁸ It has been argued, with which we also agree, that if election litigation forces the court to make such adjudication, the result can lead to the assumption of judicial partiality. This can also lead to a loss of confidence in the judicial system by the public.⁹ This is without prejudice to establishing corruption allegations against judicial officers.

2.2.4 Huge Cost of Litigations

Election-related litigation typically costs a lot of money. In the words of Olisa Agbakoba, 'the cost of litigating an election petition is usually heinous, starting from the procurement of relevant documents to use as documentary evidence to the hiring of competent legal representation'.¹⁰ He went on to state that the filing an election petition at the Anambra State Election Petitions Tribunal cost ₦400,000:00. Furthermore, that petitioners had to pay application fees in the range of ₦1,000,000:00 to ₦1,500,000:00 to access such documents.¹¹ We are of the firm view that a petitioner may be put at a significant disadvantage due to an imbalance of financial capacity, especially when the respondent is the incumbent occupier of elective post. Such a respondent will have access to government funds to employ a retinue of competent and capable Senior Advocates of Nigeria (SANs) whose profound legal clout and sagacity will surely overcome the election tribunal.

2.2.5 Uncertainty of Winning

In adversarial adjudication of disputes, it is uncertain who the winner of the suit will be. Political disputants do not have a say on who will preside over their petition. They do not have the opportunity to choose a sound incorruptible umpire to determine their petition based on merit. An example of uncertainty is shown when the election petition tribunal, sitting as a first instance court, upholds the outcome of an election in favour of the petitioner, only for the Court of Appeal to overturn the decision and the Supreme Court to affirm the court's

¹ Section 141 of the Electoral Act, 2010 (as amended) provides for accelerated hearing of election petitions.

² See sixth schedule to Constitution of the Federal Republic of Nigeria, 1999 (as altered).

³ For example, the case of *Dr. Chris Ngige v. Peter Obi* (2006) 14 NWLR (Pt. 999)1 took 35 months, a very considerable proportion of a 4-year term of office.

⁴ No. 2 of 2007.

⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁶ See section 285(7) of the Constitution, *op. cit.*

⁷ For such election disputes, see Section 251(4) and 272(3) of the Constitution of the Federal Republic of Nigeria 1999, as altered.

⁸ DP Tokoyi, 'Early Returns on Election Reform: Discretion, Disenfranchisement, and the Help America Vote Act' *George Washington Law Review*, Vol 74, 2005, 1206 at 1249-50.

⁹ *Ibid.*

¹⁰ A Onanuga, A 'Agbakoba Decries High Cost of Cost of Election Petitions' (*The Nation* Vintage Press Limited, Lagos, September 25, 2018) <<https://thenationonlineng.net/agbakoba-decries-high-cost-of-election-petitions/>> accessed on August 24, 2024.

¹¹ *Ibid.*

decision.¹ Having examined some drawbacks of litigation, we shall look at the benefits of ADR to show why we believe in its efficacy when used to complement litigation in election dispute adjudication.

3.0 TYPOLOGY OF ADR MECHANISMS

ADR procedures, as established, include Negotiation, Mediation, Arbitration, Conciliation, Neutral Evaluation, Mini-trials, Summary Jury trials, etc. A sequential discussion of some of these mechanisms is undertaken hereunder:

3.1 Negotiation

Negotiation is the interactional mechanism used to exercise control by leveraging the influence of another person over some things based on its extent or by what process it can be obtained. If we could have anything we wanted – financially, economically, materially and emotionally – without the concurrence of anyone else, there would be no need for negotiation. However, the need to negotiate is predicated on our interconnectedness.² *The Black's Law Dictionary* defines negotiation as a consensual process in which parties attempt to reach an agreement on a disputed or potentially-controversial matter.³ This generally requires full control by the parties involved, without a third-party's interference.⁴ It involves discussion, communication or exchange of ideas undertaken to reach an agreement between parties with whom a dispute has ensued.⁵ Although parties are free to engage experts, agents or representatives such as lawyers and other professionals to negotiate on their behalf, this does not change the status of the process as such negotiation process is still between parties. Usually, negotiation is the prelude to other processes of ADR, and it is when same fails that parties may proceed to seek other forms.

3.2 Mediation

Accomplishment of the negotiation process between parties may not always be successful, thereby resorting to additional intervention. If the parties fail at negotiation, they may then seek the assistance of a neutral third party to facilitate their negotiation by way of mediation,⁶ which simply, is an extension of the negotiation process in that it involves extending the negotiation process into a new format in which a mediator is contrived to contribute new variables and dynamics to the interaction of the disputants.⁷ Brown and Marriot describe mediation as a voluntary, non-binding, and private dispute resolution mechanism where a neutral person helps the parties to reach a negotiated settlement.⁸ It can also be defined as a process whose goal is to assist or facilitate negotiation. In this process, the mediator controls the process and the parties control the outcome.⁹ It is a confidential mechanism in which a neutral third party, called a mediator, helps the disputants negotiate and shores up possible amiable ways to settle the dispute.¹⁰

3.3 Arbitration

Arbitration, according to Orojo and Ajomo, is a dispute settlement procedure under which the parties agree to be bound by an arbitrator's decision which is, in general, final and legally binding on both parties.¹¹ Arbitration has

¹ A Adesomoju, 'Supreme Court Dismisses Adeleke, PDP's Appeal, Affirm Oyetoki's Election' *Punch* <punchng.com> accessed on July 5, 2024.

² J Folberg, and et al; *Resolving Disputes: Theory, Practice and Law* (2nd edn., Aspen Publishers 2010) p. 25.

³ BA Garner, *Black's Law Dictionary* (2004) West Publishing Co. Minnesota, p. 1232.

⁴ Ibid at p. 45

⁵ AC Nwaneri, 'An Appraisal of the ADR Processes in Nigeria' in Aliyu, I.A. (ed). *Alternative Dispute Resolution and Some Contemporary Issues. Legal Essays in Honour of Hon. Justice Ibrahim Tanko Mohammed CON*, (Faculty of Law, Ahmadu Bello University, Zaria 2010), p. 346 at 351.

⁶ A Akeredolu, 'A Commentary on the Application of Alternative Dispute Resolution Mechanisms to Pre-Election and Intra-Party Disputes in Nigeria' in A Akeredolu, (ed) *Election Petition Practice and Procedure in Nigeria: A Practitioner's Guide* (St Paul's Publishing House, 2012) p. 351.

⁷ C Moore, *The Mediation Process*, (2nd edn., Jossey Bas, San Francisco 1996) p. 16.

⁸ Brown and Marriot, *ADR Principle and Practice*, Sweet and Maxwell, p.127 at 131.

⁹ MO Ogungbe, (2003) 'Arbitration and Mediation – When is Either Better Suited for Dispute Resolution' in MO Ogungbe (ed.), *Nigerian Law: Contemporary Issue*, (2003) College of Law, Igbinedion University, Benin City. p. 312 at 315.

¹⁰ SA Coker, MO Adeleke, and OA Olaseeni., 'An Appraisal of Alternative Dispute Resolution as an Antidote to Delay of Judicial Proceedings in Nigerian Courts in Yusuf, F.A.O (ed.) *Issues in Justice Administration in Nigeria, Essays in Honour of Hon. Justice S.M.A. Belgore, GCON*, (VDG Intl Ltd. 2008) p. 101 at 104.

¹¹ A Tweeddale, and K Tweeddale, *Arbitration of Commercial Disputes: International and English Law and Practice*, (2005), Oxford University Press, p.3.

also been defined as a reference to the decision of one or more persons, either with or without an umpire, in the difference between the parties on some matter or matters.¹ It is a straight-forward consensual process chosen by parties to a dispute that is decided by an impartial judge of their collective selection, whose decision, based on the merits of the case, is recognised as definitive and binding in advance.²

Thus, placing reliance referring on the Halsbury's Laws of England, the court, in case of *MISR (NIG) Ltd v Oyedele*,³ defined arbitration as the referral of a dispute between no fewer than two parties after a person(s) other than a court of competent jurisdiction had judicially heard both sides.⁴ The *Black's Law Dictionary* defines arbitration as a form of dispute settlement involving one or more third parties that the disputing parties usually consent to and whose decision is binding.⁵ Arbitration can, therefore, be defined as a private voluntary process used by two or more parties to settle their dispute, wherein the arbiter is impartial, and the decision is based on the merits aside from being definitive and binding on the parties.⁶ The rule and practice of arbitration in Nigeria stem from three main sources, namely (a) The 1958 International Arbitral Awards Recognition and Compliance Convention better known as the New York Convention, (b) the UNCITRAL Rules of Arbitration, and (c) The UNCITRAL Model Law.

3.4 Conciliation

In some countries, the word "conciliation" is used interchangeably with "mediation". Where a distinctive use is made of the terms, the meanings ascribed to each are sometimes used vice versa. Accordingly, in some jurisdictions, the process described as conciliation is that in which the neutral third party has the power to recommend terms of settlement for the approval of the parties, while a mediator has no such power. Others, when describing conciliation as aided or facilitative negotiations, may refer to the formal process as mediation.⁷

While conciliators and mediators both facilitate dispute resolution, the key difference lies in their approach, as conciliators actively offer solutions and advice, while mediators primarily facilitate communication and understanding between parties.⁸ Both processes are confidential, voluntary, and flexible, aiming to reach mutually-satisfactory resolutions. The conciliation process is similar to mediation. It functions, however, by putting the two parties together, and the neutral third party plays a more interventionist role.⁹ Where the parties cannot find a mutually-acceptable solution, a proposal will be put forward by the conciliator which is binding on the parties except where one of them refuses it.¹⁰ It is hereby emphasised that the conciliator plays an advisory, but not a determinative, role. He does not have the power to impose a settlement.¹¹

4.0 DEMONSTRATION OF APPLICABILITY OF ADR MECHANISMS TO ELECTORAL MATTERS IN NIGERIA

Application of ADR mechanisms to election matters in Nigeria, although in a less formal form, in Nigeria occurs in varying stages of electioneering activities. Notably, these stages involve the pre-election phase, the election phase and post-election phase. For our purpose, pre-election phase refers to all the happenings in a political field before and after the announcement for commencement of political activities towards an election until the day preceding date due for the election. The election phase is a period between the midnight of the day preceding the date of the election until the release of the election result after the election while the post-election phase begins

¹ See St. John, D., Gill, J. and Gearing, M. Russell on Arbitration, (2007) 23rd ed. London, Sweet and Maxwell, p. 5.

² F Elkouri, and E Eyouri, *How Arbitration Works*, (Arlington, VA: Bloomberg BNA 2016), p. 18.

³ *MISR (NIG) Ltd v Oyedele* (1966) 2 ALR (Comm.) 157.

⁴ Ibid at p. 158.

⁵ JO Orojo, and MA Ajomo, (n 2).

⁶ G Ezejiofor, *The Law of Arbitration in Nigeria* (Longman Nigeria Plc 1997) p. 3.

⁷ See A. Akeredolu, "A Commentary on the Application of Alternative Dispute Resolution Mechanisms to Pre-Election and Intra-Party Disputes in Nigeria" (n 39) p. 352.

⁸ Amrisha Jain, 'Difference between Mediation and Conciliation' <<https://viamediationcentre.org/>> accessed on May 11, 2025

⁹ Nelson "Adapting ADR to Different Cultures" (Dec. 15, 2001) Online article <<http://www.gowlings.com/resources/publications.asp?pubid=776>> cited by Law Reform Commission, *Consultation Paper: Alternative Dispute Resolution* (2008), Law Reform Commission/Coimisiun um Athchoiriú an dli <<https://www.lawreform.ie/-fileupload/consultationpapers/CPADR.pdf>> accessed on 12-07-23), p. 49.

¹⁰ Ibid.

¹¹ See A Akeredolu, "A Commentary on the Application of Alternative Dispute Resolution Mechanisms to Pre-Election and Intra-Party Disputes in Nigeria" (n 39) p. 353.

from the period immediately after the release of the election results. The use of ADR processes in Nigeria in each of the above phases of election matter is the concern of this section.

4.1 Application of the ADR Mechanisms in the Pre-Election Phase

Long before the announcement for fixing a date for the commencement of electoral activities in the wards, towns, constituencies or states, intending candidates negotiate with potential candidates on collaboration of efforts. The negotiation mechanism adopted at this stage is with a view to forming a formidable pact or compromise that would whittle down the number of contending candidates at the election. Negotiating with potential contenders' interest to an office is a regular phenomenon involving the use of negotiation mechanism, and other ADR processes, in electoral matters. The party negotiating discusses terms as to personal beneficial interest accruable from concession, if so granted, when the party soliciting gets to office to warrant withdrawal from the race by other potential contenders to the same office. Where so approved, by those potential contenders, winning becomes easier for the negotiating party; of course, he/she may win unopposed in the election. Hence, the negotiating party may indicate his/her interest to an office for which he/she needs the support of the potential candidates. Both parties negotiate on terms engaging negotiation mechanism which may result in an agreement with each other party obeying his/her own part of the obligations agreed upon. Such negotiated agreement is indeed enforceable in law, notwithstanding that it was obtained by ADR mechanisms. Should the above negotiation part fail, any of the parties may employ the service of a mediator for purposes of negotiating the terms or parts thereof that results in the rift arising from conflicting interests at the negotiation.

Mediation for the above purpose is a known ADR mechanism employed in Nigeria from time to time with a view to reaching a consensual agreement. The mediator stands to project the rift objectively to parties with a view to finding an amicable way of progressing in their political endeavour, since support and number are compelling factors in a democracy. The mediator may, where parties so concede, advise that the agreement be reduced into writing and such agreements are enforceable in law. This is without prejudice to claiming equity in an unwritten agreement. Having completed this negotiation or mediation process, parties feel obliged to garner support for each other from their political followers forming a formidable alignment. An instance where this mechanism could be exploited is a situation where 'A', desiring the office of a chairman of a local government, meets with 'B', who to 'A', is a potential contender to the same chairmanship office of same local government. Both parties may resolve to allow 'A' go for the chairmanship office of the local government, which was his desire, not without eliciting from 'A', the vow to support 'B' who may decide to vary his ambition for the House of Assembly's office for the constituency because of 'A's' ambition. Parties, therefore, would direct their political followers to see each of the negotiating parties, at both elections, as their own candidate. Both negotiating parties work for each other at the election to their individual offices with equal tempo of commitment as if the pursuit of the office is his personal interest.

To enjoy a wide spectrum of victory at the election, parties to the negotiation may combine forces to seek reconciliation with factional members of individual followers of each of the parties. Effecting this may demand constantly the use of conciliation mechanism. It is worthy to emphasise that conciliation mechanism can also be explored in cases where negotiation or mediation fail. This would demand the involvement of a neutral third party to reconcile conflicting divergent interests in the negotiation. The conciliator performs functions similar to that of mediator here.¹ The conciliator comes in as a neutral independent facilitator who brings the two parties together as a neutral third party that plays a more interventionist role.² Where the negotiating parties cannot find a mutually-acceptable solution, a proposal is then put forward by the conciliator in its advisory role which may have a binding effect on the parties unless either of them declines to accept the suggested outcome. The conciliator only plays, in the circumstances of this case, a determinative role where the negotiating parties both accept the suggestion, thereby making the outcome enforceable. Negotiating parties' conducts at conciliation, in the instant case is voluntary, and the conciliator does not have the power to impose a settlement.³ Its outcome is enforceable too.

Apart from the above instances, where the individuals employ the use of ADR mechanisms in electoral matters, group interest at the pre-election phase may also be augmented by the same process.⁴ To this end, various

¹ LLC McLaughlin Law, 'Differences between Mediation and Conciliation' <<https://mclaughlinboston.com/differences-between-mediation-and-conciliation/>> accessed on May 9, 2025

² G Ezejiofor, *The Law of Arbitration in Nigeria* (n 50) p. 8.

³ See A Akeredolu, "A Commentary on the Application of Alternative Dispute Resolution Mechanisms to Pre-Election and Intra-Party Disputes in Nigeria" (n 39) p. 353.

⁴ Aminu Adamu Bello, 'Situating Alternative Dispute Resolution (ADR) in the Political Sphere: Thoughts on Mechanisms for Pre-Election Political Dispute Resolution in Nigeria' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1369702> accessed on April 30, 2025.

political parties at the pre-election phase often obtain their goal by ADR mechanism.¹ Given that the common goal at election is electoral triumph of political parties, the parties – great and small – negotiate their winnings with other political parties with a view to obtaining support from other political parties and followers through negotiation mechanism.² At such negotiation process, parties interest would be negotiated as regards the distribution of posts and offices, should political loyalty be aligned at the election, for the negotiating party.³ The negotiated terms, agreed upon, are then taken down in writing and may be a consulting compendium in the post-election victory by the winning parties for power sharing. Distribution of posts and offices at election's victory cuts across various organs of government, agencies and board of parastatals. These practices inform why the weaker political parties often submit their political solidarity and support to the stronger one.⁴ This becomes rampant where the stronger political parties are not domineering and confident enough to win an election, hence the resort to merger at elections.⁵

In the final analysis, an important aspect of pre-election ADR negotiation is peace accord. Peace accord is the process officially deployed for prevention of electoral violence and the guaranteeing of peaceful election. The main objective of negotiation for a peace accord is the reconciling of varying interest of different parties whereby parties and followers are brought to submit to the common purpose of prevention of violence at an election. Processes employed for a peace accord in addition to negotiation include mediation, reconciliation, conciliation and arbitration.

4.2 Application of the ADR Mechanisms at the Election Phrase

The election phase which commences from the midnight of the preceding day to the date fixed for the election, up to the time the elections are concluded, is the period of intrigued political games which involve the exploration of ADR mechanisms. The complexity of electoral process and the uncertainty of winnings require the 'eleventh hour' rush for negotiation through the 'backdoor', either with other political parties or with 'black-legged' followers from political parties that are patently known to be incapable of winning the elections.⁶ Negotiation process may be initiated either by the weak political parties or the strong ones. It all depends on the exigency or desperation of either of the parties.⁷ This becomes rampant when considered against the backdrop of most politicians being full-time professionals in their approach, with no visible means of survival or gainful employment to sustain them at a period when the political parties to which they enlist their support are no longer in power. This class of politicians are itinerant in nature, often prepared to defect to any party with foreseeable prospects of winning the election. Terms of negotiation are often too liberal due to their desperate concession to attain victory at all cost. Placing reliance on Harold Lasswell's construction of politics, defined as who gets what, when and how,⁸ negotiating parties with mean prospects capitalise on the desperation of stronger political

¹ The prelude of most elections in Nigeria engages the mediation process through the Peace Accord. See further PL Oyigebe, AA Modu and IO Hamza, 'Peace Accord and Electioneering in Nigeria' <<https://najops.org/index.php/najops/article/download/253/219/377>> accessed on April 30, 2025.

² Jared D Miller, 'What the Nigerian Elections Teach Us about Political Competition in Transactional Political Systems' (World Peace Foundation June 26, 2024) <<https://worldpeacefoundation.org/blog/nigerian-elections-in-transactional-political-systems/>> accessed on May 3, 2025. In Nigerian politics, achieving "winnings" through negotiation often involves power-sharing arrangements, strategic alliances, and behind-the-scenes deals among political elites. This can manifest in various ways, including vote-buying, the use of "godfatherism" to influence elections, and the exploitation of social protection programs to gain voter support

³ See PL Oyigebe, AA Modu and IO Hamza, 'Peace Accord and Electioneering in Nigeria' (n 59).

⁴ Nwangwu, C. Political Financing and Vulnerability: Social Protection and Election Campaign Financing in Nigeria. *Soc* (2025). <<https://doi.org/10.1007/s12115-025-01074-z>> accessed on February 4, 2025.

⁵ Toye Manuwa, 'The Dynamics and Implications of Electoral Systems and Party Systems in Nigeria' 2023 *International Journal of Management, Social Sciences, Peace and Conflict Studies* (IJMSSPCS), 6(4): pp. 297 - 312

⁶ VAO Adetula, 'Godfathers, Money Politics, and Electoral Violence in Nigeria: Focus on 2015 Elections' < <https://www.inecnigeria.org/wp-content/uploads/2019/02/Conference-Paper-by-Victor-Adetula.pdf>> accesses on May 4, 2025.

⁷ Sambo, U., Sule, B., Adamu, U., & Septiadi, M. A. (2024). Democracy for Sale: Examining the Phenomenon of the Cost of Expression of Interest and Nomination Forms for Major Parties in Nigeria's 2023 General Election. *SAGE Open*, 14(2). <https://doi.org/10.1177/21582440241251768> (Original work published 2024).

⁸ Britannica, The Information Architects of Encyclopedia. 'Harold Lasswell. Encyclopaedia Britannica, February 4, 2025, <<https://www.britannica.com/facts/Harold-Lasswell>> accessed on February 4, 2025.

parties to manipulate themselves into good fortunes considering the limit of time and the probable loss of election manifestly foreseeable on the eve of the election.

Mediation mechanism, though incessantly explored at the election phase, is a regular ADR process often undertaken in situations where negotiation fails. Its frequent use is at the instance of political power brokers in the political domain, who in a bid to sustain their control dynamics often break the truce of reconciling conflicting divergent interest towards controlling the emergent office holder.¹ This conciliation process may lead to preparation of a memorandum of understanding and other conventions as to immediate and future rotation of power.²

4.3 Application of the ADR Mechanisms at the Post Election Phrase

The last phase of application of ADR mechanism, as it were, is the post-election stage. Arising from the bottled anxiety and excitements over the probable outcome of the election is the polarisation of the polity shortly before the date fixed for the release of the election's results. The period preceding the release is prone to the worrisome propensity for a breakdown of law and order usually precipitated. The leaders of thought, therefore, present negotiation platform to flay the nerves of opposing thugs, thereby drawing them from the enclave of a foreseeable defeat.³ In most wards or towns, the kings and chiefs play the role of conciliator or mediator to ensure that no political followers foment trouble as a result of any apprehensible defeat.⁴ The ills of uncertainty in politics eke the belief in every contestant that the election is won by his/her candidate or party but for the collaborative gang up of the electoral agency with the opposing party to spring a defeat against his/her party which is popularly believed by him/her to possess what it takes to win the election.⁵ For instance, shortly before the official release of the 2023 presidential election result, there were contentious agitations in the political camps of the opposition parties threatening to make the country ungovernable, should the result of the election be released.⁶ Some politicians were extending overture to the military to take over the government instead of allowing the electoral agencies to announce the results and declare their opponents as winners of the election.⁷ It took the leaders of thought in the country a great deal of time to negotiate and mediate with the various divergent interests to make them sheathe their swords and assuage the polity at that time.⁸

Aside from this, the mechanism of mediation and negotiation are not only useful at this period alone, they are explored at the election tribunal and, consequently, appeasing the losing party to withdraw suits at the court of law in preference for formation of an all-embracing government.⁹ Also negotiated, at this instance, is the formula for distribution of various political offices and boards of government parastatals. ADR mechanisms are known

¹ Adrian Karatnycky and *et al*, *Freedom in the World –The Annual Survey of Political Rights & Civil Liberties* (Transaction Publishers 1998) p. 21).

² Usually, in a peace accord, memoranda of peace and bond-over are the consequences of negotiation and conciliatory process.

³ A Olajubu, 'Opposition Political Party and Electoral Performance: Nigeria and South Africa in Comparative Perspective' (2025) *Politeia*, April, 21 pages . <<https://doi.org/10.25159/2663-6689/16054>> accessed on February 2025. See also Heidi Brooks, 'The Dominant-Party System: Challenges for South Africa's Second Decade of Democracy' (2004) *Journal of African Election* 3(2) p. 121 – 153; and GA Adenuga, and Agoro, F. A. 2021. "Intra-party Succession Crisis and Insecurity in Nigeria: A Study of the 2020 Edo Gubernatorial Election." *Journal of International Politics and Development* 19(1 and 2): 61-75

⁴ This also happen in some other climes. For instance, see Lovelyne Mboh, 'An Investigation into the Role of Traditional Leaders in Conflict Resolution: The Case of Communities in the Mahikeng Local Municipality, North West Province, South Africa' (2021) *African Journal Online* pp. 33-37.

⁵ Donatus Ciekezi, 'INEC Sold Nigeria, Not Just Votes to Bola Tinubu' – Dele Farotimi Drops a Bombshell on the 2023 Election' <<https://www.facebook.com/groups/www.apgang.org/posts/23995550400082735/>> accessed on May 30, 2025.

⁶ I Chijioke I Ojiako; Laura O Umeasiegbu; Onyeulo F Lawrence and Emmanuel C Okoye 'Democratic Issues and Electoral Violence in Nigeria: A Critical Analysis of the 2023 General Elections' (2023) *Journal of the Management Sciences* 60(3).

⁷ See the *YouTube Channel* video clip captioned 'The Moment Protesters Begs Military to Take Over Nigeria Because of 2023 General Election' <<https://www.youtube.com/watch?v=QXsNa3L90k4>> accessed on May 12, 2025.

⁸ See the *French24* newsreel issued on May 3, 2023 – 09.25, captioned 'Nigeria opposition renews calls to annul election result' <<https://www.france24.com/en/africa/20230303-nigeria-opposition-renews-calls-to-annul-election-result>> accessed on April 29, 2025.

⁹ Filing of notices of discontinuation of cases electoral at the electoral tribunal is often predicated on settlement arrived on through ADR processes.

means of weaponisation within political arenas among various organs of government, allowing negotiation of interest and mediation on political disputes as well as reconciling defecting followers within the ranks of every political parties. This informs why, in the various political parties and organisations in Nigeria, reconciliation committees are emplaced to undertake settlement of disputes between members.¹

The question that comes to mind at this juncture is: how enforceable are agreements reached at ADR processes? While beneficiaries of such agreement at election disputes can claim in equity, the possibility of being estopped by the provisions of such agreement is also potentially high for parties to the negotiation, since its denigration would impugn on the integrity of a party who neglects the fundamental provisions of terms of settlements in political negotiation.² Unless a person is about to die politically, no reasonable person ever reneges on a negotiated agreement since he/she would often return for similar entreaties in the future. A person with integrity issue is not worthy of occupying a political office.³ For this and many moral grounds, agreements reached from ADR mechanism in election matters are honoured considerably by parties.⁴ Apart from election disputes related matters, ADR is a constant instrument in the running of parties to avert parties' disintegration on grounds of intra-party disputes.⁵

5.0 PROSPECTS OF THE APPLICATION OF ADR TO ELECTORAL MATTERS IN NIGERIA

Alternative dispute resolution has several advantages when compared with formal litigation. These advantages include the following:

(i) Opportunity for Disputants to Choose Dispute Resolvers

Under the Arbitration and Conciliators Act⁶ applicable to commercial arbitration in Nigeria, disputants are free to appoint arbitrators or conciliators of their choice, their number and mode of appointment.⁷ In effect, the parties have the choice of the quality of the dispute resolvers to adjudicate their disputes. It has been argued, and we also agree, that the parties are in a position to select persons with the necessary knowledge, not only of the relevant area of law but also of the dynamics of the area of endeavours that give rise to the disputes.⁸

(ii) Speedy Dispute Resolution

The ADR can be faster than litigation. Formal litigation requires compliance with the existing procedure and does not allow the parties to circumvent. None of the ADR processes is subject to a procedure like this. One of the issues facing adversarial conflict adjudication in Nigeria is the problem of delay. This has been taken care of by the introduction of a time deadline in respect of post-election disputes, in the constitution.⁹ As we have pointed out earlier in this study, there is no such deadline in pre-election cases filed in the Federal High Court.

Any of the ADR processes, being much faster, can manage these disputes very quickly and effectively.

(iii) Cost-friendliness of Resolution

ADR mechanisms can be less expensive than litigation. We have earlier argued that litigation is very expensive, particularly litigation of electoral disputes. Parties to court proceedings usually retain counsel to appear for them, and these counsel charge exorbitant fees. If a dispute is technical in nature and, a technically-qualified arbitrator or mediator is appointed, the settlement can be effective and swift without the involvement of a counsel.¹⁰

¹ For instance, see the *Punch* newspaper's publication of January 25, 2025, captioned 'PDP crisis: Reconciliation panel to meet N'East stakeholders' < https://punchng.com/pdp-crisis-reconciliation-panel-to-meet-neast-stakeholders/#google_vignette > accessed on March 13, 2025.

² James K. Irvin, 'The Role of Law in the Negotiated Settlement of International Disputes' (2021) 3 *Vanderbilt Law Review* 58 <<https://scholarship.law.vanderbilt.edu/vjtl/vol3/iss1/8>> accessed on May 12, 2025.

³ Dakuku Peterside, 'The Dearth of Integrity in Public Life' (*The Cable* November 13, 2023).

⁴ Adejumo Kabri, '#OsunDecides2018: Omosore Speaks on Who His Supporters Should Vote for' (*Premium Times* September 26, 2018).

⁵ see the *Punch* newspaper's publication of January 25, 2025, captioned 'PDP crisis: Reconciliation panel to meet N'East stakeholders' (n 76).

⁶ Arbitration and Conciliators Act, Cap A18 Laws of the Federation of Nigeria, 2004.

⁷ Ibid at ss 6 and 7.

⁸ AI Chukwuemerie, 'Necessity as the mother of Trail Blazing: Applying Alternative Dispute Resolution Mechanisms to Political Party Disputes in Africa' (2009) *Journal of Politics and Law*, Vol. 2, No. 4 p. 125.

⁹ Section 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹⁰ G Ezejiogor, (n 50) at p. 13. See also Meschievitz, C. S. *Mediation and Medical Malpractice*:

(iv) Informality of Proceedings

The ADR processes normally take place in a relaxed atmosphere. It provides a forum where parties can dispel their anger, frustration, and emotions that affect them. However, for hate-free interaction between the parties, a genial and conducive atmosphere is created.

Many people are overwhelmed by court proceedings and detest the accompanying formality, solemnity and publicity. On the other hand, ADR may be confidential and very informal. It, undoubtedly, makes the parties more comfortable.

(v) Restoration of Cohesive Relationship

Unlike litigation, ADR is conciliatory. The relationship between the parties may never again be cordial after litigation. What a court traditionally does about a dispute that comes before it is to deliver a judgment based on the legal rights and obligations of the parties. The court is ill-equipped to concern itself with whether or not the judgment achieves peace amongst the parties and, indeed, it does not. Hence, the saying “*A kii ti kootu de sore*” (You don’t come back from court and remain friends) among the Yoruba. Therefore, virtually every decision is an arbitral term for stopping war. In every other war, the way it happens, if parties want to achieve peace, they will have to go beyond decision. They must negotiate amongst themselves expressly or otherwise settle by some other means.

Therefore, when a conflict evolves between party members on election into a party office, the nomination of a candidate for an election, contributing or managing election funds, etc. and it is brought to court, the court can only deliver a judgment which, at best, can only force an end to open struggle but does not secure peace. It sometimes leads to the dispute getting deeper. It is the same when all that the political party does is issue an instruction “from above” to the parties or sides in dispute without even hearing them out. Thus, in each case, a graveyard “settlement” is achieved. The parties may “accept” the judgment or the decision of the party. In the latter case, they may even embrace themselves physically or shake hands vigorously as if they had reconciled but the real dispute remains. The parties react to perceived injustice at the slightest opportunity.¹

(vi) Confidentiality

The ADRs are purely private proceedings that are not admissible to members of the public except with the parties’ consent. The dispute resolvers, such as arbitrators, are also prohibited from disclosing information gathered during the proceedings to others. Even a court of law is disentitled to have them testify on such matters. Therefore, in the proceedings, political parties and politicians can testify to their secrets and the same will remain secrets. Whatever happens in the court, on the other hand, becomes a matter of public knowledge. A party or politician with sensitive personal or legitimate secret information will often not want the secrets to be divulged in any proceedings. Very often, political disputes are as complicated and based on ego as they are on noble facts and consideration, wheeling for power, cold self-interest calculations and donations, and even deliberate mischief. When the listed vices are brought to the fore, no settlement can be achieved. Such considerations may never be given in evidence in any court or other proceedings. However, they can be disclosed very securely in a private proceeding that can lead to proper resolution. Consequently, the ADRs are the most suitable for resolving political disputes.²

6.0 CONCLUSION AND RECOMMENDATIONS

Electioneering engagements have been fraught with varying degrees of political disorder right from the pre-independence elections, with the resultant effect of calling into question the legitimacy of electoral process in Nigeria. This constantly remains so despite known standards, to ensure functional governance. Consequently, the recurrent conflict with which most elections are characterised, and the imperative of reducing the unwholesome incidents and complexities of adversarial method of conflict resolution, there is the need to explore ADR as a way out. An attempt has been made to spotlight the imperativeness of application of ADR mechanisms to electoral conflict resolution for advancing electoral peace in Nigeria. Sufficient practical illustrations have been

Problems with Definition and Implementation, 54 LAW & CONTEMP. PROBS. 195 (1991), Kellett, A. J.

Comment, R. N. *Healing Angry Wounds: The Roles of Apology and Mediation in Dispute Between Physicians and Patients*, 1987 J. Disp. RESOL. 111, 124; Andrew McMullen, A. *Mediation and Medical Malpractice Disputes Potential Obstacles in the Traditional Lawyer's Perspective*, 2 J. Disp. RESOL. 371, 373-74 (1990), Metzloff, T. B. *Alternative Dispute Resolution Strategies in Medical Malpractice*, 9 ALASKA L. REV. 429, 435

¹ AI Chukwuemerie, (n 84) p. 125.

² Ibid at p. 126.

projected above, demonstrating instances of interventions and the modes of accomplishment, at various phases of electoral process.

To ensure electoral and conflict resolution at election, the following recommendations are hereby proposed to enable the realisation of renewed peace agenda and national stability at elections:

- a. introduction of legal reforms in the electoral process of the country, which would include the incorporation of ADR mechanisms for resolving issues at election;
- b. organising of periodic retreats, trainings and workshops for political parties in Nigeria by the Independent National Electoral Commission (INEC) with a view to suggesting the use of ADR for solving varying issues connected with intra- and inter-party and electoral disputes; and
- c. an urgent review of INEC guidelines by way of policy reform to enable the employment of ADR as prerequisite for maintaining internal order in the party.

The consideration of the above recommendation, it is hoped, would promote an enduring electoral peace in Nigeria.