



University of Brighton

**Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC) as a Case Study in
Nigeria**

By

Chinweifenu Egbunike-Umegbolu

Student ID: 18816914

Supervisors: Dr Adaeze Okoye

Dr Claire- Michelle Smith

External Examiner: Dr Gbenga Oduntan

Internal Examiner: Dr Antonios Platsas

A Thesis in the Department of Business and Law Submitted in partial fulfilment of the
requirement of the University of Brighton for the degree of Doctor of Philosophy

June 2021

ABSTRACT

The Alternative Dispute Resolution (ADR) process has been going through phases of advancement worldwide from the late '60s to date. This is particularly characteristic of advanced world countries. Within Africa, the concept of ADR is gaining immense popularity and significance. Nigeria is the given context; reference will be made to the introduction of the Lagos Multi-Door Courthouse (LMDC) in 2002. The LMDC scheme was conceived to offer alternative dispute resolution methods for resolving commercial disputes within the society. The scheme is currently incorporated as part of the justice system. Since it was enacted into law, its relevance has developed due to its unique way of linking cases to appropriate forums for appropriate settlements - the Multi-Door Courthouse. Hence, a considerable literature has grown up around its establishment; one of such literature was on the scheme's effectiveness, which relied highly on the stakeholder's perception and experience, which was carried out in 2012.

However, this last decade has seen a growing trend towards ADR in Nigeria. The need to further explore on a detailed analysis of the effectiveness of the Lagos Multi-Door Courthouse (LMDC) and for the first time its impact on Enugu State Multi-Door Courthouse (ESMDC) practice- hearing from both the stakeholders and for the first time since its inception the user's perception and experiences is evident. What is the story so far? Has the courthouse been able to contribute or reduce the pitfalls associated with litigation in both states?

The thesis provides a detailed analysis on the above subject matter by interviewing the stakeholders of the Multi-Door Courthouse (MDC) and facilitating for the first time a focus group discussion with disputants who have used the Courthouse. Further, the thesis, in line with socio-legal research, will utilise a range of methods. This will include a mixed-methods approach for data gathering and analysis. This thesis presents in-depth findings and recommendations from the research. The findings show that there are occasions where ADR-MDC is best suited for settlement of a dispute, especially considering the cost implications. It

concludes with recommendations on features that can expedite, smoother and effective dispute resolution or management with the MDC scheme.

TABLE OF CONTENTS

Item.....	Page
Abstract.....	3
Table of Contents.....	4
List of Abbreviations.....	9
Dedication.....	11
Acknowledgements.....	12
Author’s Declarations.....	16
 CHAPTER ONE: INTRODUCTION TO THE RESEARCH AND CONCEPTUAL FRAMEWORK	
1.0 INTRODUCTION.....	17
1.1 Statement of the Problem.....	18
1.2 Meaning of Access to Justice.....	20
1.3 The Relevance or Justification of Lagos-Nigeria as a Case Study.....	30
1.1.1 Structure of the thesis.....	33
1.1.2 Research Questions.....	19
1.1.3 The Aims and Purpose of the Research.....	20
1.1.4 Research Approach.....	21
1.1.5 Original Contribution to Research.....	23
1.1.6 Methods/Methodology.....	24

1.1.7 Ethics.....	35
1.3 Conceptual Framework.....	40
1.2.1 Meaning of Access to Justice.....	41
1.4 CONCLUSION.....	54

CHAPTER TWO: ADR: HISTORY, CONTEXTUAL BACKGROUND AND PURPOSE

2.0 INTRODUCTION.....	55
2.1 History of Alternative Dispute Resolution.....	57
2.2 Alternative Dispute Resolution or a Return to Pre-colonial Initiatives/System?....	63
2.3 The Pre-colonial era.....	66
2.3.1 Onicha-Ado n’ Idu.....	67
2.3.2 Amaofuo.....	69
2.4 The Colonial Era and Post –Colonia era.....	76
2.5 TAM Infused Court-Connected ADR.....	80
2.6 What is ADR.....	83
2.7 Types of ADR.....	84
2.7.1 Mediation.....	84
2.7.2 Conciliation.....	89
2.7.3 Negotiation.....	90
2.7.4 Arbitration	91
2.8 The Advantages and Disadvantages of ADR.....	92

2.9 CONCLUSION94

CHAPTER THREE: THE DEVELOPMENT OF THE LMDC INTO THE NIGERIAN JUDICIAL LANDSCAPE

3. 0 INTRODUCTION.....99

3.1 Snapshot of how the Nigeria Court existed before the Rise of ADR.....95

3. 2 An Overview of the Nigeria Courts.....97

3.3 The Birth and development of the LMDC.....103

3.4 Challenges Instrumental to the Creation of the LMDC.....106

3.5 The High Courts ‘Nudging’ Parties to ADR.....110

3.6 Is the LMDC, the Right Antidote towards Access to Justice?.....113

3.7 Limitations that might hinder the growth of the LMDC.....117

3.8 The Features and Procedural framework of the LMDC.....121

3.9 The Underlying Elements of the LMDC.....131

3.8 CONCLUSION133

CHAPTER FOUR: FINDINGS AND DISCUSSIONS

4.0 INTRODUCTION.....136

4.1 An Overview of the findings on LMDC.....136

Case Manager..... 138

4.2 Mediators.....147

4.3 Judges.....156

4.4 Magistrates.....160

4.5 Lawyers.....163

4.6 Directors.....169

4.7 Focus Group – 1.....175

4.8 Focus Group – 2.....	183
4.9 Focus Group – 3.....	186
4.10 Summary of Findings and Conclusions.....	197

CHAPTER FIVE: ANALYSIS ON THE EFFECTIVENESS OF THE LMDC PRACTICE

5.0 INTRODUCTION.....	216
5.1 The Advantage of Using the LMDC.....	216
5.1.1 Access Method.....	216
5.1.1.1 Simple Process/Method of Initiating Action at the LMDC.....	216
5.1.2 The Pre-arbitral Colonial Method of Settling Dispute.....	220
5.1.2.1 Legal Transplant.....	222
5.1.2.2 Implications.....	223
5.1.2.3 Revaluating the Grande’s Assertion.....	225
5.1.3 Scopes of Dispute Covered at the LMDC.....	228
5.1.4 Scopes of Disputes Not Covered at the LMDC.....	228
5.1.5 Criminal Proceedings.....	231
5.1.5.1 Restorative Justice.....	231
5.1.6 Judges Enforcement.....	236
5.1.7 Ego/Apology.....	237
5.1.7.1 Through the lens view of Sigmund Freud.....	237
5.1.7.2 The group and its Effect on the Individual.....	238
5.1.7.3 Relationship between Id, Ego & Mediation.....	239
5.1.7.4 Maslow’s Law of belonging.....	240
5.1.7.5 African Culture – ADR is Free.....	242
5.1.7.6 Reviewed Literature.....	243
5.1.7.7 Mediation as a Peaceful Tool.....	244
5.1.8 Critical Look at Costs at LMDC.....	247
5.1.8.1 Cost Savings.....	247
5.1.8.2 Impact of Lagos Settlement Week & District Settlement Week on Cost.....	251
5.1.9 Confidentiality and Impartiality Clause in Mediation.....	252
5.1.10 Speed and Time.....	254
5.1.10.1 Rating the performance of LMDC in Dispute Resolution.....	257
5.1.11 Lack of Confidence in the Judiciary.....	258

5.2 The Challenges Facing the LMDC.....	259
5.2.1 Lawyers not Embracing ADR – A Drop in their Revenue.....	259
5.2.2 Nigerian Culture in Relations to Sanctioning Parties.....	261
5.2.2.1 Mandatory ADR.....	261
5.2.2.2 Funding, Awareness and Infrastructure.....	262
5.3 CONCLUSION.....	263
5.2.2.3 Quantitative Analysis: LMDC.....	264

CHAPTER SIX: FINDINGS AND ANALYSIS OF THE ENUGU STATE MULTI-DOOR COURTHOUSE (ESMDC) AS AN EXAMPLE OF THE LMDC IMPACT

6.0 INTRODUCTION.....	265
6.1 The Advantages of using the ESMDC.....	266
6.1.1 Access Method.....	266
6.1.1.1 LMDC Scheme v. ESMDC Scheme-how they function.....	267
6.1.1.2 Simple Process.....	269
6.1.2 Scope of Matters Covered at the ESMDC.....	273
6.1.3 Scope of Matters Not Covered at the ESMDC.....	274
6.1.4 Criminal Proceedings.....	275
6.1.4.1 Restorative Justice.....	275
6.1.5 Critical look at the Issue of Cost at the ESMDC.....	280
6.1.5.1 Cost Savings.....	280
6.1.6 The Impact of Enugu State Settlement Week (ESSW) on Cost.....	284
6.1.7 Confidentiality and Impartiality Clause in Mediation.....	287
6.1.8 Speed and Time.....	289
6.1.8.1 Rating the Performance of ESMDC in Dispute Resolution.....	293
6.1.9 The Pre-Arbitral Colonial Method of Settling Disputes.....	294
6.1.10 Ego and Apology.....	287

6.1.10.1 Mediation as a Peaceful Tool.....	301
6.1.11 Judges Enforcement	303
6.2 The Challenges Facing the ESMDC.....	304
6.2.1 Nigeria Culture in Terms of Sanctioning Parties.....	304
6.2.1.1 Mandatory ADR.....	305
6.2.2 Awareness, Funding, Short-Staffed, Training & Infrastructure.....	306
6.2.3 Lawyers not Embracing ADR: A Drop in Revenue.....	308
6.2.3.4 Summary and Findings of Conclusions.....	309
6.2.3.5 Quantitative Analysis: ESMDC.....	309
6.2.3.5 Enugu State Settlement Week (ESSW) Programme 2019 – Statistical Details.....	311
 CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS	
7.1 General Summary of Research Argument & Findings.....	312
7.2 Significance of the Findings.....	313
7.3 Areas for future Research.....	314
7.4 Recommendations.....	316
7.5 CONCLUSIONS.....	318
8.0 BIBLIOGRAPHY.....	329
9.0 Annex ESMDC Interview.....	343
9.1 Findings and Discussions.....	343
10.0 Annex – LMDC Forms.....	414
11.0 LMDC Guide.....	438

ABBREVIATIONS

All NLR	All Nigeria Law Reports
CJ	Chief Justice
DRP	Dispute Resolution Process
TAMSD	Traditional African Method of Settling Dispute
TAM	Traditional African Method
TAS	Traditional African Society
ESMDC	Enugu State Multi-Door Courthouse
FHC/L	Federal High Court, Lagos
FSC	Federal Supreme Court
HC	High Court
H.C.R	High Court Rules
H.L	House of Lords
J.C.A	Justice of the Court of Appeal
J.S.C	Justice of the Supreme Court
LMDC	Lagos Multi-Door Courthouse
NLR	Nigeria law Report
NWLR	Nigerian Weekly Law Reports
SC	Supreme Court
SCNLR	Supreme Court of Nigeria Law Reports
ADR	Alternative Dispute Resolution
CMC	Case Management Conference
CPR	Civil Procedure Rule
CCADR	Court Connected Alternative Dispute Resolution
MDC	Multi-Door Courthouse
NBA	Nigeria Bar Association
LMDC	Lagos Multi-Door Courthouse
NCMG	Negotiation and Conflict Management Group

UK	United Kingdom
USA	United States of America
UOB	University of Brighton

DEDICATION

To God Almighty, the giver of life.

To my Late father, Ezenwa Nkachukwu Anthony Egbunike and my Late mother, Mrs Mildred Obiageli Egbunike (nee Bosah), for their unending love and ensuring I received a decent education.

ACKNOWLEDGEMENT

Let us prepare our minds as if we'd come to the very end of life. Let us postpone nothing, let us balance life's book each day. The one who puts finishing touches on their life each day is never short of time.

Marcus Aurelius-Meditations

I learnt about Marcus Aurelius during my PhD journey through Ryan Holiday a modern day stoic philosopher. I read their books, which inspired me because of its timeless wisdom about stoicism, knowledge, time, procrastination, persistence, virtue and human behaviour. Their teachings and life styles propelled me in my PhD journey and this thesis was made possible however as a mortal being their teaching alone were not the only help, I got as I had remarkable support from incredible people- their life styles and advice has taught me both consciously and unconsciously how to become a better person after all Marcus Aurelius pointed out 'Waste no more time arguing what a good man should be. Be one.'

In this context, the following people's hardworking ethics, knowledge, enthusiasm for research, kindness, humility and professionalism has impacted my life and has changed it forever for this I remain eternally grateful. To my extraordinaire lead supervisor Dr Adaeze Okoye, it has been a privilege to be her PhD Student. She took me on as her student without hesitation and since then has made me to be in a state of flow with socio-legal research, she has also taught me to be diligent, how to manage my time well, encouraged me to be confident-speak up with my ideas on my work, and to keep writing everyday. Without her support and the skills acquired on my PhD voyage with her, this thesis would not have been possible.

To my second supervisor Dr Claire-Michelle Smyth, it has been an honour to be her PhD Student. Her extreme knowledge, thoroughness, critical mindedness, and willingness to impact knowledge knows no bound, I am a living proof. Thank you, Claire, for taking out time to read every chapter of my work, give feedbacks (she has an eye for details too! she does not miss a thing), listen to my ideas - even when I feel I am not making sense, she makes sense of the sense in the nonsense. Thank you for always nudging me on to be a better writer, researcher and speaker.

Thank you to my APR Panel, Dr Jack Clayton Thompson, Dr Richard Lang and Dr Antonios Platsas, for reviewing my work and encouraging me to write more. I am forever grateful.

To Steve Reeve, Director for Postgraduate Studies (DPS), for his kindness and incredible support and other BBS PGR Students. To the research administrator Christopher Matthews, who is always eager to listen and lend his assistance; gratitude.

To Dr Sue Greener, with her vast amount of knowledge selflessly volunteered to teach my colleagues and I the intricacies of research, how to navigate and put up our work on social media; how to share our research amongst our peers and to constantly discuss our research on social media in a bid to improve our writing skills. Her guidance, encouragement and friendly disposition have contributed to the completion of this research.

To Gilliane Williams, who gave me my first teaching job in the UK. Her guidance, encouragement and kindness made the work easy and I am forever indebted to her.

To Dr Peter Orji, Carolyn Lewis, Maggie Symes, Dr Jo Hall, Dr Anne Daguerre, Julie Fowlie, Charlotte Cooke, Lorraine Slater, Fiona Sutton and other staff who have in one way or the other assisted me during my studies at UoB. I remain eternally grateful. To my landlady at Brighton, Dr Imogen Bellwood-Howard whose love for research and hardworking ethics has changed me academically, and have contributed immensely to the completion of this work.

My profound gratitude to Professor Emilia Onyema, I read her work on LMDC during my LLM and that changed my life. I became passionate about the LMDC and her numerous work in Arbitration.

I wrote to Professor Onyema via LinkedIn and she responded, agreeing to meet at SOAS. She was so humble, kind and eager to hear about my research and to share her thoughts and unpublished work with me. I can vividly remember how she took me to the SOAS library and I got my library card. How she encouraged me to email, call and come see her if I need further guidance. Her kindness towards me during the COVID-19 Pandemic and willingness to share her knowledge on ADR any day is simply phenomenal. I have learnt so much from her and I hope to reciprocate what I have learnt thus far to the next ADR researcher. Gratitude!

To my former LLM supervisor at Kingston University London, Dr Dorothy Kwagala-Igaga for having faith in my abilities, her continuous encouragement for me to go into research after my LLM and to believe in myself; for these I am grateful. To the LMDC Director, Mrs Adeyinka Aroyewun, her Deputy Mrs Achere Cole, Assistant Deputy Mrs Nneka Chukwuma, and other staff, I remain grateful for your assistance. To the ESMDC Director / African Mediation Network (AMN)-Nigeria Co-ordinator, Mrs Carolyn Etuk, Chioma Onochie, Benjamin Aneke and other staffs, I say a big thank you.

To Kehinde Aina, Mrs Funmi Roberts (Fciarb), Professor Mark Feldman, Dr Bukola Faturoti, Professor Donna Shestowsky, Professor Peter Ebigbo, Mrs Hildegard Maria Ebigbo, Professor Hiro Aragaki (AMN-Coordinator), Professor Offornze Amaucheazi (SAN), Justice Harriman, Justice Lawal, Ikechukwu Onuoma (Esq) and Nnezi Ivenso (Esq) for their support. I cannot thank them enough.

My friends, Esther Ebigbo, Gigi Okafor, Uche Okorie (Esq), Kenneth Chiso (Esq), Michael Ogie (Esq), Angela Ogie (Esq), Joesph Omorere (Esq), John Aga (Esq), Chika Mmadu (Esq), Jay-Jay Obutte (Esq), Emmanuel Chukwu (Esq), Oby Iloh-Nweke (Esq), Dr Mehabet S. Ali, Justina Dillion (Esq), Stephen Adakaibe (Esq), and Dr Onyechi Megafu who have been very supportive and deserve special commendation.

To my pastors- Dr Shola Fola -Alade and Mrs Bimbo Fola- Alade for impacting my life for the better. I would not fail to thank my colleagues at Brighton Business School (BBS) for being incredible team players. I thank the African Arbitration Association (AfAA), Resolution Institute, Mediate.com, African Mediation Network (AMN), Liberty and Co Solicitors and Guild Adjudicators in Nigeria (GAIN) for their support and numerous opportunities.

Finally, my gratitude goes to my family: my husband, Obiora and our awesome son Sean Umegbolu. To my siblings, Nwachukwu, Nneka and Obiesie – for their help and support. I owe a lot to my uncle, Mr Fidel Ogosi and aunty, Mrs Ngozi Ogosi, who have been very supportive and a source of inspiration throughout my time in school. Thank you, and thank you!

AUTHOR’S DECLARATION

I declare that the research contained in this thesis, unless otherwise formally indicated within the text, is the original work of the author. The thesis has not been previously submitted to this or any other university for a degree, and does not incorporate any material already submitted for a degree.

Signed.....

Dated.....

CHAPTER ONE: INTRODUCTION TO RESEARCH AND CONCEPTUAL FRAMEWORK

1.1 Statement of Problem

In Nigeria, the court system has indeed evolved, the issue of cost,¹ congestion,² delay³ and other rigorous processes led to the countless quests to reform litigation.⁴ Both the stakeholders and litigants were in dire need of a solution to tackle these prevalent issues.⁵ Evidently, the litigants complained of their cases languishing in courts for years,⁶ due to the high cost of litigation resulting from both lawyer's billing and the filing of court documents,⁷ as well as the prevalent issue of corruption, which has reinforced the lack of trust in the judiciary.⁸

On the other hand, the stakeholders looked for avenues of getting litigants resort to or embrace Alternative Dispute Resolution (ADR) as a first or alternate option to litigation, rather than as a last resort in the hope of resolving these issues;⁹ resulting in the birth of the LMDC in 2002.¹⁰ As matter of fact, these prevalent issues associated with litigation are not limited or restricted to Nigeria alone but also other jurisdictions.¹¹

Flowing from the above and against the backdrops of litigation, ADR has garnered and earned enormous reputation as a dependable, swift, less expensive mode of resolving

¹ Kevin Nwosu, (ed) *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibronke, SAN* (DCONconsulting 2004) 9.

² Emilia Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' (2013)

² Apogee Journal of Business, Property and Constitutional Law 4

³ Ibid

⁴ Leo Levin, Wheeler, Russell, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* (West Publishing Co. St. Paul Minnesota 1979) 51

⁵ Onyema (n2) 6

⁶ Stella Dawson, 'Alternative Courthouse in Lagos speeds delivery of justice ' (*Thomas Reuters Foundation* 2013) <<http://cms.trust.org/item/20130522080353-sa1vp>> accessed 23rd January 2019

⁷ Ibid

⁸ Gbenga Oduntan, 'Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria' (2017) 20 *Journal of Money Laundering Control* 36

⁹ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)*, vol 1 (2013)11

¹⁰ Alero Akeredolu, 'A Comparative Appraisal of the Practice and Procedure of Court Connected Alternative Dispute Resolution in Nigeria, United States of America, and United Kingdom.' (2013) University of Ibadan Institutional Repository 7

¹¹ Masood Ahmed, 'Bridging the gap between alternative dispute resolution and robust adverse costs orders' (2015) 66 *Northern Ireland Legal Quarterly* 72

commercial disputes.¹² This is especially the case in many countries worldwide like the United States of America (USA), Australia, United Kingdom (UK) and even in places like Singapore, Canada, and many other countries that are increasingly using ADR as a means of dispute resolution.¹³

Given the above, it is a fact that in the last two decades, ADR has grown to the extent of challenging litigation as the principal means of dispute resolution in the west.¹⁴ The word 'ADR' and all it encompasses shall be extensively dealt with in the latter part of this research; nevertheless, a brief insight into what the term ADR refers is necessary - it simply refers to Mediation, Arbitration, Conciliation and Negotiation, which are out of court mechanisms for settling disputes.¹⁵ This part of the thesis does not seek to engage with all aspects of ADR but will deal mainly with Arbitration and Mediation, as these are the mechanisms primarily used at the LMDC.

In the light of the changes that are sweeping across the globe in terms of dispute resolution; it is disheartening to note that the progress of ADR as a method of dispute resolution in the developing countries are hardly keeping up the pace with the more developed countries like the UK and USA.¹⁶

Regrettably, many disputants (or litigants as the case may be) live below the poverty line in the developing economies and consequently lack the financial incentive to pursue their claim in the courts of law.¹⁷ Without gainsaying, therefore, ADR offers an escape from the entrapment of congestions, undue and excessive delays, prevalent corruption, high cost, lack of trust and other issues associated with litigation.¹⁸ The duplicity of experiences of the masses in the underdeveloped economies like Nigeria as against their more affluent middle class can find some resonance in George Orwell's novel 'Animal Farm.'¹⁹ Where the author uses the animals and their activities to demonstrate to his

¹² Ibid.

¹³ Nokukhanya Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective' (2018) *Conflict Studies Quarterly* 38.

¹⁴ Albert Fiadjoe, *Alternative Dispute Resolution: A Developing World Perspective* (Cavendish Publishing Limited 2004) 19.

¹⁵ Damfebo Kieriseiye Derri, *Alternative Dispute Resolution in Nigeria A functional approach* (Malthouse Press Limited 2016) 2

¹⁶ Fiadjoe (n14) 37

¹⁷ Ntuli (n13) 38

¹⁸ Ahmed (n11) 74.

¹⁹ George Orwell, *Animal Farm: A Fairy Story* (Penguin Group 2003) 2.

readers about the gap between the majority of Russian people that suffered from high inequality, whereas the ruling class had money and food.²⁰ The insight of the author only helps to expose the injustice and inequality in the process of access to justice, which tends to favor a particular class to the detriment of the larger citizenry of the country. Instances such as these are the springboard for this discourse. The works of Cappelletti and Garth in the 1970s and 1980s, which popularised the awareness, or idea of ‘access to justice’ is crucial.²¹

1.2 Meaning of Access to Justice

Theoretically, the term ‘access to justice’ connotes two basic principles. Firstly, that the system must be accessible to all and secondly, it must lead to results that are individually and socially just.²² The underlying objective is that it centres on the rules and methods utilised by applicants to approach the courts for the guarantee of their just proceedings and outcomes.²³

Professor Onyema elucidated that ‘access to justice simply means the common man having the unequivocal right to access the court without obstructions.’²⁴ In other words, the fundamental nature of the process of access to justice is undoubtedly hinged on the availability of its access to all.²⁵ Hence, the denial of access to justice by any means whatsoever whether by failure of the system to make alternative provisions in relation to high cost of litigation to support the indigent in the society, or by any form of discrimination or exclusion of certain categories of persons from getting access to justice, then the system is a monumental failure if the access to justice is not available to all its citizens whenever the situation arises.²⁶

²⁰ Ibid 4

²¹ Nathy Rass-Masson, Rouas, Virginie, 'Effective access to Justice - European Parliament' (*Europa EU*, 2017) <[https://www.europarl.europa.eu/RegData/etudes/STUD/.../IPOL_STU\(2017\)596818_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/.../IPOL_STU(2017)596818_EN.pdf)> accessed 21st May 2019

²² Krishna Agrawal, 'Justice Dispensation through the Alternative Dispute Resolution System in India' (2014) 2 *Russian Law Journal* 65

²³ Onyema (n2) 3 *cited in* Chinwe Stella Umegbolu, 'Access to Justice for People with Disability in Nigeria: Therapeutic Day Care Centre (TDCC) as a Case Study' (2021) 7 *Athens Journal of Law* 4.

²⁴ Onyema (n2) 3

²⁵ Derri (n15) 4

²⁶ Umegbolu (n23) 2

The above viewpoint is backed by Section 36 (1) of the 1999 Constitution which specifically guarantees the fundamental right of every citizen of Nigeria to fair hearing, to the import 'that the common man is entitled to be treated justly and get fitting remedy from the court, which is within the ambit of the law and within his constitutional right as a citizen of Nigeria.'²⁷ In Nigeria, several factors contribute to the impediment or hindrances to access to justice. Nlerum Okagbue revealed that some are deep-rooted in the political and economic scheme in the country; while, others are procedurally and substantive.²⁸

Conversely, according to a report published by Afro barometer, the report revealed that one out of eight African deliberately avoided taking cases to courts in the past eight years.²⁹ The simple reasons being that these citizens experienced several issues such as; spiralling high cost of litigation,³⁰ unfair treatment,³¹ alleged corruption³² in the judiciary and lack of confidence and trust in the justice system.

Without a doubt, these are part of the prevalent hindrances or impediments facing the common man and the struggle to get justice.³³ These perceived hindrances highlighted above are certain precursors' to access to justice that paved the way for the introduction of ADR in all parts of the countries.³⁴ As such this thesis will analyse these perceived hindrances and reforms made by some countries to facilitate access to justice in their various countries.

Consequently, this thesis would first consider the diverse views of some scholars and judges on this topic. These will be divided into two main sections. The first section would address cost in various jurisdictions, while the second part deals with congestion and delay.

²⁷ Constitution of the Federal Republic of Nigeria 1999

²⁸ Nlerum Okagbue, 'Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects ' (2005) 2 International Journal on Human Rights 5.

²⁹ Flourish Chukwurah, 'Why Africans get a raw deal in the justice system ' 2017)

<<<https://edition.cnn.com/2017/05/05/africa/access-justice-africa-view/index.html>> > accessed 24th April 2019 1

³⁰ Okagbue (n28) 101

³¹ Oduntan (n8) 37

³² Oduntan, 'Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria' 38

³³ ibid

³⁴ Ahmed (n11) 73.

A The Broader Perspective of Cost in ADR and Litigation in Various Jurisdictions

To solve these problems, scholars, legislators, stakeholders and various disputants or users have acknowledged that ADR is an efficient and effective procedural solution to the nagging problems associated with litigation, which has impeded access to justice.³⁵ The curious question is that certain writers have questioned the often-accepted view that ADR is more cost-effective than litigation.³⁶ The issues raised over the cost-effectiveness of ADR over litigation is again brought into question where it is stated that litigation is state-owned and as such, receives necessary subsidy.³⁷ Simon Rifkind pointed out that there are inadequate materials showcasing the determinants of the various cost of dispute resolution processes except for the expenses of ad hoc arbitration.³⁸ This thesis questions whether this contention made in the 1970s is valid?

Arguably, at the time this statement was made; there was not enough statistical analysis available for the cost effectiveness of Alternative Dispute Resolution (ADR) to be analysed, as it remained less popular than traditional litigation.³⁹ It is for this reason that there is a wide divergence between litigation and arbitration, in the sense that litigation is wholly government-sponsored and subsidised, unlike ADR though endorsed by law is in the private realm.⁴⁰ The result of this is that the disputant must fund it. In other words, bearing the total cost of settling disputes.⁴¹ Bentham also called for subsidies for those too poor to be able to participate.⁴² He wanted not only to subsidise the costs of legal fees, he also proposed that an 'Equal Justice Fund' be established, supported by using the 'fines imposed on wrongdoers, government funds, and charitable donations.'⁴³ He

³⁵ Kim Dayton, 'The Myth of Alternative Dispute Resolution in the Federal Courts ' (1999) 76 Iowa Law review 892.

³⁶ Levin (n4) 2

³⁷ Christopher R. Drahozal, 'Arbitration Costs and Forum Accessibility: Empirical Evidence ' (2008) 41 U Mich J L Reform 813.

³⁸ *ibid.* 72.

³⁹ Carrie Menkel-Meadow, 'Empirical Studies of ADR: The Baseline Problem of What ADR is and What it is Compared to ' (2009) Draft- For Oxford Handbook of Empirical Legal Studies (Peter Cane and Herbert Kritzer, editors, forthcoming) 4.

⁴⁰ Drahozal (n37) 816

⁴¹ *Ibid.*

⁴² Judith Resnik, 'Bring back Bentham: Open Courts, "Terror trials," and Public Sphere(s)' (2011) Yale Faculty Scholarship 4.

⁴³ *Ibid.*

perceived far more the costs of transporting witnesses' and the production of other evidence.⁴⁴ He wanted a legal reform, which will dispense justice swiftly.

On the other hand, Thomas Stipanowich observed that there was an eighty-four (84) per cent decrease in the federal courts; this drastic decrease may be attributed to the high costs and delays associated with litigation, its risks, uncertainties and its impact on business and personal relationships.⁴⁵

The evaluation from court observers is that more people are turning or leaning towards arbitration; this has reduced the number of people using the court system.⁴⁶ This may be seen as the leeway offered by ADR with its attendant advantages such as confidentiality, privacy, finality, binding, cost savings and maintaining of cordial relationship between parties; has made arbitration stand out and made it an attractive alternative to a civil trial.⁴⁷ However, when comparing the cost of mediation to arbitration, Thomas Stipanowich stated that 'Mediation also holds out a realistic promise of a reduction in dispute cycle time and related costs, coupled with more creative, durable solutions and relatively minor risk.'⁴⁸ He emphasised that mediation is the most popular and successful form of 'thin-slicing' in conflict resolution.⁴⁹

On the contrary, Joan Claybrook argued:

For people who are victims of consumer rip-offs and workplace injustices, arbitration costs much more than Litigation-so much more that it becomes impossible to vindicate your rights.⁵⁰

Drahozal went further to ask, which is it? Is arbitration more cost-effective and efficient than litigation? He fluently expresses this dilemma in his work when he stated that 'Definitive conclusions on the comparative cost of arbitration and litigation, as well as the accessibility of arbitration to consumers and employees, are difficult to reach.'⁵¹

⁴⁴ Judith Resnik, 'The Democracy in Courts: Jeremy Bentham, Publicity,' and the Privatization of Process in the Twenty-First Century' <<https://www.helsinki.fi/nofa/NoFo10RESNIK.pdf>> accessed 26th May 2019, 82.

⁴⁵ Thomas Stipanowich, 'ADR and the Vanishing Trial: The Growth and Impact of Alternative Dispute Resolution.' (2004) 1 *Empirical Legal Studies* 817

⁴⁶ *Ibid* 887

⁴⁷ Thomas Stipanowich, 'Arbitration: The New Litigation' (2010) 1 *University of Illinois Law Review* 31.

⁴⁸ *Ibid* 28

⁴⁹ *Ibid*.

⁵⁰ Drahozal (n 37) 813

⁵¹ *Ibid* 827

Moreover, he went ahead to provide in his work an inadequate statistical data to show that arbitration is not necessarily cheaper than litigation.⁵² He relies heavily on statistical data showing that litigation is state-sponsored, subsidised and in his view, less expensive than arbitration in three material respects.⁵³

Given this, Drahozal stated that ‘arbitration is not cheaper because disputants are expected to pay administrative fees charged by the arbitrary provider, if any, fees charged by the arbitrators, attorney fees and other litigation costs.’⁵⁴ To him, therefore, these are disincentive to disputants to go the way of litigation. In other words, the initial fees would act as a barrier in terms of cost and access to justice. Taking into account, this analysis would appear to weigh in favour of litigation, at least on the issue of cost.

However, the statistical data provided is not quite comprehensive, it only used the American Arbitration Association (AAA) as an example. As such the claimant bringing the initial filing fees for disputes for \$500,001 claim in arbitration will have to pay a \$6000 filing fee and a \$2500 case service fee, while the fee for filing suit in federal court is \$350 notwithstanding the amount in dispute.⁵⁵ The point that flows from the above is that the Drahozal came to this conclusion through the empirical evidence that arbitration offers an expensive deal to disputants, unlike litigation, which is state-sponsored and subsidised, but provides a more cost-effective avenue to dispute resolution.⁵⁶

However, there seems to be a consensus amongst all works consulted that arbitration and mediation provides more efficient and cost-effective approach than litigation, also as a more effective form of dispute resolution, which, through its process, meets the expectation of disputants.⁵⁷ In most of these works, they made use of comparative analysis and socio-legal research (qualitative methods), i.e. they carried out more surveys;⁵⁸ which have made the work more credible and easier to arrive at the facts and figures thus stated above. In the preceding paragraph, it suffices to say, that the volume of literature written on this subject is an indicator of the fact that the spiralling cost of litigation birthed ADR and acts as a hindrance to access to justice.

⁵² Drahozal, 'Arbitration Costs and Forum Accessibility: Empirical Evidence '.

⁵³ Ibid.

⁵⁴ Ibid 817

⁵⁵ Ibid.

⁵⁶ Ahmed (n11) 45.

⁵⁷ Ibid 45

⁵⁸ Drahozal (n37) 817

Eunce Oddiri opines that litigation, which was formerly the main method of resolving commercial disputes, is now being complemented by other methods of dispute resolution.⁵⁹ Thus, owing to the demands or exigencies of commercial transactions, many countries in the world now apply methods of dispute resolution.⁶⁰

Against this backdrop, Professor Frank Sander, a former Professor of Law at Harvard University, established the Multi-Door Courthouses (MDC) concept where parties can quickly avail themselves of their cases or where their claims can be effectively dispensed.⁶¹ Likewise, in Lagos State, this concept was consciously adopted to advance some of the following objectives:⁶²

- a) To enhance access to justice by providing alternative mechanisms to supplement litigation in the resolution of disputes;⁶³
- b) Minimize citizen frustration and delays in justice delivery by providing a standard legal framework for the fair and efficient settlements of disputes through Alternative Dispute Resolution (ADR).⁶⁴

In analysing the Lagos Multi-Door Courthouse (LMDC) law it would be apt to conclude that its central objective is to allay all the fears of the citizenry of the frustration of delay and cost often associated with litigation. This will be extensively considered and discussed in the next chapter. The above demonstrates that the reform adopts fully, the principle of case management now utilised in many common law jurisdictions as the essential measure of the change or reform, which begin to yield benefits to its users.⁶⁵ Section 19 (d)⁶⁶ clearly provides for the settlement of disputes with ADR mechanisms.⁶⁷

The above act has demonstrated as a pointer to the fact that not only in the UK and US that ADR is emerging to be a more effective method in the area of dispute resolution; but

⁵⁹ Oddiri Eunice, 'Alternative Dispute Resolution ' 2004)
<<<http://www.nigerianlawguru.com/articles/arbitration/ALTERNATIVE%20DISPUTE%20RESOLUTION.htm>> >
accessed 5th June 2019

⁶⁰ *ibid.*

⁶¹ Levin (n4) 65

⁶² Section 2 Lagos State Multi-door Court Law 2015.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)*, 20

⁶⁶ Constitution of the Federal Republic of Nigeria 1999

⁶⁷ *Ibid.*

also in Nigeria. Following through, the former president of the United States (US) Abraham Lincoln, a proponent of ADR, stated:

Discourage litigation. Persuade your neighbours to compromise whenever they can. Point out to them how the nominal winner is often a real loser- in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man; there will still be business enough.⁶⁸

The above quotation emphasises the fact that the issues of cost and delay are still the present struggle associated with litigation unlike the cases or matters under the ADR mechanisms.⁶⁹ In Nigeria, there are several reasons associated with cost. First, it is too expensive to pay a lawyer and secondly filing fees are too costly. For example, the lowest fee is from 5,000 Naira, which is equivalent to 10.96 pounds to 100,000 Naira equivalent to 218.25 pounds.⁷⁰ The litigant is discouraged from filing their case directly on their own behalf, the regular court in the strict sense, strongly persuades clients to get a lawyer.⁷¹ If it is a criminal case, and if the party insists he or she cannot afford a lawyer, the state can provide a state lawyer to represent the litigant; particularly in capital offences or first-degree offences in general -for minor misdemeanour that may not apply.⁷² The point is that litigation is not meant for poor citizens in Nigeria; however, in civil offences, where the client does not have money to engage the process, the Office of the Public Defender (OPD), is a model that was adopted from the United States that makes available free service for qualified vulnerable members of the committee or state to have a feeling of justice at no cost.⁷³ Lagos State also has social workers who are lawyers and whose responsibilities are to afford free legal services to the public.⁷⁴ Also, the Citizens

⁶⁸ Abraham Lincoln's Notes for a Law Lecture, 'Abraham Lincoln Online Speeches & Writings' <<https://www.abrahamlincolnonline.org/lincoln/speeches/lawlect.htm>> accessed 26th May 2019.

⁶⁹ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles Alternative Dispute Resolution (ADR)*, vol 1 (The Association of Multi-Door Courthouses of Nigeria 2013) 18

⁷⁰ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* 18

⁷¹ Bob Osamor, *Fundamentals of Criminal Procedure in Nigeria* (Dee-Sage Nigeria Limited 2004)133

⁷² Ibid 133

⁷³ Dabiri S. Banji Fajonyom, A, 'Bringing Justice Closer to the People: An Assessment of the Lagos State (Nigeria) Office of the Public Defender (OPD)' (2007) 15 *Social Sciences* 20.

⁷⁴ Osiwa Digest, 'Building a Pro Bono Culture in Nigeria' <<<https://www.osiwa.org/access-to-justice/building-a-pro-bono-culture-in-nigeria/>>> accessed 10th December 2020.

Mediation Centre (CMC), which is strictly ADR, was established to provide timely management of disputes to the public.⁷⁵

On the other hand, another innovation by the court's system to reduce cost is the small claim court.⁷⁶ It is fashioned to commence and conclude a litigation matter within one month, or two months, sometimes it could be as fast as two weeks and litigation is concluded from start to finish.⁷⁷ However, they have a threshold of Five Million Naira; (equivalent to £9, 649. 47) thus, cannot handle a principal sum of more than Five Million Naira.⁷⁸ These are so many efforts made by Lagos state to facilitate access to justice by curbing cost for its litigants to be able to have access to an efficient system for settling disputes.

The research fills the existing gap in the literature on whether the cost of using the ADR processes at the LMDC impacts the accessibility of the scheme to all citizens of Lagos state;⁷⁹ by requesting any available data on cost from the MDC. These results supported the hypothesis that in some cases (ADR, particularly mediation) would cost less and thus provide reliable and more efficient means of settling dispute than litigation.⁸⁰ Assuming without conceding that matters from the commercial courts are being referred to ADR by the judges- due to the issue of cost. Can the parties refuse this referral? The hypothesis or question is, does it not remove the underlying principles of party autonomy in ADR?

B Congestion and Delay

Given the issue of congestion and delay, it would appear that Kim Dayton has elaborated on the problems of court congestion.⁸¹ Looking at statistical data available in her work, it would appear that there was a significant increase in the cases filed in the federal courts

⁷⁵ Kasumu Taiwo, Onyeonoru, Ifeanyi 'Archival Review of The Role of the Citizens Mediation Centre in Landlord-Tenant Dispute Resolution in Lagos State, Nigeria' (2016) 3rd International Conference on African Development Issues 203

⁷⁶ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* (n69) 19.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Onyema (n2) 24.

⁸⁰ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 20.

⁸¹ Dayton (n35) 892.

between 1938 and 1990 more than doubled.⁸² She also asserts that the number of cases allocated per judgeship from 1955 to 1990 increased from 207 per judge to 448 the most damaging in terms of litigation is the length of time from issue to trial amplified from 9.1 months in 1955 to 14 months in 1990.⁸³ Over ten per cent of all pending cases were over three years old.⁸⁴ Therefore, this is one area where arbitration seems to have the edge over the delay that has undeniable afflicted litigation over the years.

It appears in recent years that arbitration can be said to be fast because the procedures have been explicitly tailored to meet the needs of the parties.⁸⁵ Thus, changes made to the International Criminal Courts (ICC) Rules⁸⁶ and Swiss Rules where the providers have been empowered to appoint emergency arbitrators⁸⁷ and also the time limit within which the arbitral tribunal must render its final award is six (6) months.⁸⁸ This is another avenue through which disputants have accelerated expedited hearing. Both the ICC and the Swiss Rules now provide for the appointment of an emergency arbitrator. This is meant to reduce the participation of state courts where the parties wish to apply for urgent interim measures before the constitution of the arbitral tribunal.⁸⁹ Another part of timeliness would come from the fact that in arbitration, with the limited exception the awards are final and binding, this was evident in *Boxer Capital Corp v Jel Investments Ltd.*⁹⁰ The position in *Boxer Capital* has been further supported by the Arbitration Act 1996, Section 1 (b) which gives arbitration an edge over litigation because of the party autonomy in arbitration.⁹¹

Subsequently, it then introduced a qualified sense of contract freedom in arbitration, providing that the contracting parties were free to structure their transactions; however,

⁸² Ibid 892

⁸³ Dayton, 'The Myth of Alternative Dispute Resolution in the Federal Courts ' 889

⁸⁴ Ibid 900

⁸⁵ Norton Rose Fulbright, 'International Arbitration Report' 2013)

<<https://www.nortonrosefulbright.com/en/knowledge/publications/17457c8d/international-arbitration-report>> accessed 6th December 2018, 12.

⁸⁶ International Chamber of Commerce (ICC) 35

⁸⁷ Swiss Chambers Arbitration Institute, 'Emergency Relief under the Swiss Rules (Art. 43) An overview after 8 years of practice' 2020)

<<https://www.swissarbitration.org/files/620/untitled%20folder/Emergency%20Proceedings%20under%20the%20Swiss%20Rules%20>> accessed 11th November 2019.

⁸⁸ International Chamber of Commerce (ICC) 35

⁸⁹ Institute, 'Emergency Relief under the Swiss Rules (Art. 43) An overview after 8 years of practice'

⁹⁰ 366 B.C.A.C. 127 CA

⁹¹ Arbitration Act 1996

they wished as long as they opted for arbitration.⁹² This shows another leeway provided by the law to allow parties to opt for arbitration rather than languish in the courts waiting for trial dates. However, these changes were not only pertinent to Institutional Arbitral Centres in the western countries alone, as earlier stated in this work in Africa - Lagos State has made countless efforts to minimise the frustration of its litigants by providing some innovations but little or no difference was made to decongest the court.⁹³

Conversely, in England, during the last few centuries, the issue of court congestion and delay has not gone unnoticed, Bentham was particularly attentive to and appalled by, judicial procedures in English courts.⁹⁴ Bentham charged judges and lawyers with creating ‘artificial rules’ producing a ‘fictitious’ system full of procedural confusion at the expense of their clients and the public⁹⁵ civil courts were thus ‘shops’ at which ‘delay was sold by the year as broadcloth was sold by the piece.’⁹⁶ He sought instead to make the procedure as ‘ordinary’ as possible, and he devoted the 1803 to 1812 to drafting revised rules.⁹⁷ Instead of fragmented rules of evidence made by common law judges, Bentham turned to his favoured technique of codification.⁹⁸ Instead of piecemeal adjudication, Bentham wanted judges to preside over a whole case (through what today is called the ‘individual’ calendar system, as contrasted with the ‘master’ calendar system) to dispense justice swiftly.⁹⁹ And, instead of judgments on the papers, he wanted oral procedures; he proposed that all evidence would be attained through oral interrogation before the judge in public.¹⁰⁰ He proposed that judges be available every hour on every day of the year, and he recommended that courts be on a budget for evidence to produce one-day trials and immediate decisions. Bentham’s advocacy of simplifying the procedure in part through legislative control aimed to enable a public opinion to function as a direct check rather than be deflected through the technically complex system replete with jargonisation.¹⁰¹ Conversely, in recent years in England, litigation has made

⁹² Thomas E. Carbonneau, 'Arguments in Favour of the Triumph of Arbitration ' (2009) 10 10 *Cardozo J Conflict Resol* 395

⁹³ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* (n69) 9

⁹⁴ Resnik (n44) 82

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Resnik, 'The Democracy in Courts: Jeremy Bentham, Publicity,' and the Privatization of Process in the Twenty-First Century'.

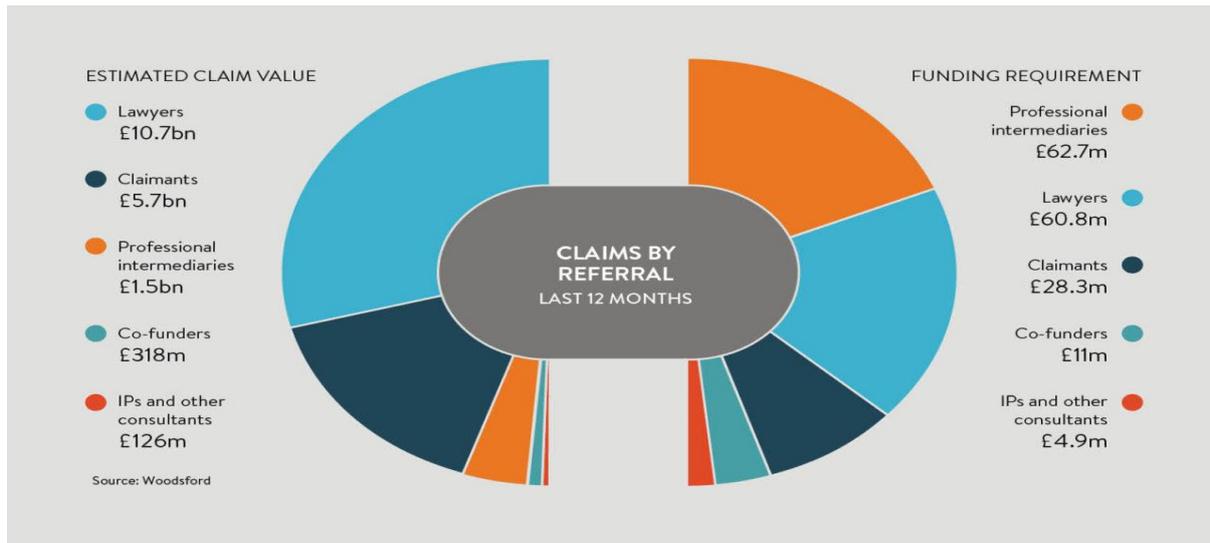
⁹⁸ *Ibid.*

⁹⁹ Resnik (n42) 11

¹⁰⁰ *Ibid.*

¹⁰¹ Resnik, 'Bring back Bentham: Open Courts, “Terror trials,” and Public Sphere(s)' 12.

provision for the funding of access to justice by the third party



Investors who will then fund the case on behalf of the potential claimant, either in whole or in part for a claimant who might wish to institute an action in court but might not have resources to do so and thus deprived of justice.¹⁰² If the claim is successful, then the proceeds will be shared between the funder and the party.¹⁰³ However, if the case is lost, then the funders will lose their investments too and will be made or liable to pay a share of the defendant's costs. This scheme or innovation is a scheme designed to decongest the court's system in England. The table above has showcased that this scheme was a success for both the claimant and investors. This has provided a speedy route to justice for claimants too poorly funded. It has provided a solution for hindrances to access to justice.¹⁰⁴

Nevertheless, Professor Alero Akeredolu contends that delay is not only associated with the developing countries like Nigeria, but rather developed countries like the United Kingdom and the United States are not left out from this ordeal.¹⁰⁵ Professor Emilia Onyema affirms the above viewpoint by stating that 'delay affects both the fairness and

¹⁰² Sarah Allidina, 'Funding Access to Justice' (*Raconteur Media*, 2016) <<<https://www.raconteur.net/risk-management/funding-access-to-justice>>> accessed 5th June 2019.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Ahmed (n11) 74.

the efficiency of the judicial system; they impede the public's access to the courts, which, in effect, weakens democracy, the rule of law and the ability to enforce human rights.¹⁰⁶

Undoubtedly in Nigeria, litigation was the main mode of resolving disputes and often led to the congestion of the courts.¹⁰⁷ As at April 2012, Lagos State has fifty-four (54) High Court Judges and one hundred and eight (108) Magistrates to serve an estimated population of 20.5 million people.¹⁰⁸ Though in recent years, Lagos State has about fifty-six (56) High Court Judges¹⁰⁹ and about twenty-four (24) magistrate courts.¹¹⁰

These facts demonstrates how overburdened the judges and magistrates are, and this situation is not peculiar to Lagos State but the same throughout the country.¹¹¹ Gummi postulated that 'effective access to justice is one of the fundamental conditions for the establishment of the rule of law as well as a just and egalitarian society.'¹¹² Any judicial system that is unable to provide it has failed in its responsibility as a bastion of hope. Certainly, a broader view of what is going on behind such claims, which characterises ADR (as epitomised in the Multi-Door Concept), opens new pathways to resolving disputes, relieving the overcrowding that makes court unnecessarily slow.¹¹³

In contrast, Oddiri pointed out that 'over time, litigation takes more time, its expensive and cumbersome, which has undeniably increased the number of cases in courts.'¹¹⁴ A clear case of how litigation has prolonged justice in Nigeria is the Arbitration case of *IPCO v. NNPC*¹¹⁵ which is also an outstanding example of the effectiveness in ADR process in commercial disputes, the arbitration itself took eighteen (18) months from its commencement to the publication of the award 28th October 2004 and to the production of the final award.¹¹⁶ Perhaps, if the award was voluntarily enforced, this case could have

¹⁰⁶ Onyema (n2) 4

¹⁰⁷ Ibid 4

¹⁰⁸ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.'

¹⁰⁹ Lagos State Judiciary, 'Judiciary Information System (JIS) ' <<<https://lagosjudiciary.gov.ng/ViewDirectories.aspx>>> accessed 21st May 2021

¹¹⁰ ThisDay Newspaper, 'Lagos Designates 24 Magistrate Courts to Try ' 2021) <<<https://www.thisdaylive.com/index.php/2021/08/10/lagos-designates-24-magistrate-courts-to-try/>>> accessed 20th May 12th October 2021

¹¹¹ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 4

¹¹² L.H Gummi, 'Sink or Swim: Evolving a Broader Definition of Courts Through the Multi-Door Approach to Dispute Resolution and the Implications it has for Traditional Court Systems ' (2010) International Journal For Court Administration 4-5.

¹¹³ Ibid 4-5

¹¹⁴ Eunice (n59) 1.

¹¹⁵ Emilia Onyema, 'The Continued 'Trial' of the Nigeria Legal System in IPCO V NNPC

'(<<https://www.pressreader.com/nigeria/thisday/20170404/282458528806825>> accessed 3rd June 2019

¹¹⁶ Ibid.

ended in 2004.¹¹⁷ However, this was not the case; the parties decided to pursue this case and reject the enforcement through the courts, thirteen (13) years on, the case is still in court.¹¹⁸ Therefore, this is one area where commercial disputes are better off resolving through ADR than litigating. Indeed, to the researcher, ADR is an antidote for the delay that has clogged the court system over the years.

Looking at these opposite views expressed by these scholars, it dawns on the researcher that there has been so many debates and opinions on the problems of both ADR (MDC) and litigation concerning the issues of cost and delay, the effectiveness of the present-day court systems. This is one area where MDC seems to have the edge over the inordinate delay that has undeniably plagued litigation over the years. Hence, the innovation of the MDC by Kehinde Aina in 2002 has made all the difference.¹¹⁹ How? The answer is that it has one on one close interface with the High court system. The Lagos High Court (H.C) will direct clients to the MDC because it seems to be the apex of all other forms created for access to justice, so decision from MDC has direct enforcement by the Lagos State High Court.¹²⁰ In furtherance, MDC is within the administrative structure of the court; with its door wide open to different variants of dispute resolution processes.¹²¹

Accordingly, disputes can be efficiently and expeditiously addressed through ADR mechanism, bearing in mind the need of the parties and issues involved, which may provide an insight for a more effective dispute resolution. From all indication, Lagos has made all attempts or efforts to increase access to justice that includes regular reviews of courts rules.¹²² For instance, they now have a 2019 edition of the Lagos State Civil Procedure Rules; before this, they had the 2012 edition. Undoubtedly Professor Onyema's statement has portrayed that litigation is fraught with numerous challenges that the LMDC is fully equipped to address.¹²³ One of the cardinal ordinances of the LMDC from the literature reviewed so far is that it addresses and dealt extensively with the issues of court congestion, corruption in the judiciary, delay and cost, which have overwhelmed the Nigerian Legal System since its inception. This has the potential to

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* (n69) iv

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid 3

throw overboard any semblance of justice being denied by inordinate delay. The thesis shall extensively consider all questions and issues that have been raised herein.

1.2 Lagos-Nigeria as a Case Study

Almost all new ideas of law or legal development of the legal system in Nigeria originated from Lagos State, which was the federal capital territory of Nigeria from 1914-1991 and it is one of the biggest commercial cities in Africa.¹²⁴ For instance, Lagos was the first to introduce the new rules of civil procedure in 2004 based on Lord Woolf's reform.¹²⁵ Lagos is widely known in Nigeria as the 'Centre for Excellence.' Population wise, as of 2019, Lagos has over 25million inhabitants with over 250 ethnic groups represented in Lagos as residents with a reasonable number of international or foreign citizens resident for various economic purposes.¹²⁶ Lagos boasts with both huge water and land resources, thus makes it inevitably the economic capital of Nigeria and Africa due to the location of its seaport. Hence, the attraction of various international companies like the six (6) major foreign oil companies, which dominate the Nigerian oil industry today (Shell, Exxon Mobil, Chevron, Elf, Agip and Texaco), were already present in Lagos- Nigeria to set up their businesses in Lagos by the early 1960s.¹²⁷

In the same vein, Lagos is the first state to create a Multi-Door Courthouse (MDC) for speedy dispensation of justice for their citizenry. This means that they provided an efficient justice system that will allow trust and confidence in the running of its state that will permit or enable business and growth to thrive, this has sustained the tempo since its creation in 2002. Therefore, it is essential to explore how relevant the process of MDC is to various entities involved in a commercial dispute. The thesis also seeks to explore the intricacies or details of the ADR system because it is impossible to look at MDC without mentioning ADR, observing its processes, features, elements, advantages and challenges as it pertains to the Nigeria legal system. By scrutinising these intricacies it is probable to determine if there are any substantial or significant roles the LMDC must play in

¹²⁴ Alan Burns, *History of Nigeria* (8th edn, George Allen & Unwin Ltd 1978) 18.

¹²⁵ A Compendium of Articles on ADR (n69) 7.

¹²⁶ Kehinde Aina, 'ADR 2000 - Resolving Corporate Disputes In the 21st Century ' (Institute of Directors (IOD) Members Evening) 18

¹²⁷ Jędrzej George Frynas, 'Litigation in the Nigeria Oil Industry: A Socio-Legal Analysis of the Legal Disputes Between Oil Companies and Communities ', University of St Andrews 1999)19.

complementing litigation. If one is to understand the affordability and amenable nature of the LMDC, one must know how it works. This research goes on to scrutinise the importance of LMDC in dispute resolution or management in Nigeria. The research approach portrays the advantages and disadvantages of the ADR process in comparison to litigation. It then draws a considerable juxtaposition between the contemporary, past events (where ADR process was neither significant nor formalised) and provides predictions for the future relevance of the LMDC or rather the ADR in the legal system of Nigeria. It investigates the present-day perception or understanding of this dispute resolution process and its diversities.

Significantly, this research analyses how the LMDC introduced this scheme and its story so far, has it been able to attain its overriding objectives effectively? Hence it became necessary to conduct field research to understand the present-day understanding of this dispute resolution mechanism. It's effectiveness and impacts on other states in particular, Enugu State Multi-Door Courthouse (ESMDC). In simple terms, this thesis explores the effectiveness of the Lagos Multi-Door Courthouse (LMDC) since its inception till date. What is the story so far? Has the Multi-Door Courthouse (MDC) contributed or reduced the pitfalls associated with litigation? The thesis will demonstrate its findings by providing a detailed analysis of how effective the courthouse practice has been to these states by interviewing the stakeholders of this MDC while at the same facilitating a focus group discussion with the disputants that have used this courthouse.

1.3 Structure of the Thesis

The thesis is organised as follows: Chapter one sets out the foundation for the research with an overview of the research's motivation; the abstract, research questions, aims, methods and methodology. The later section sets out how ethical issues in the study are considered and an overview of the concept of access to justice. In furtherance, divergent opinions and argument from different scholars in different jurisdiction on hindrances to access to justice were analysed.

Finally, a critical analysis of the field findings was dealt with and the conclusion of the chapter. Chapter two lays a detailed introduction of the history of the ADR processes and its contribution in terms of speed and informality to the overall court processes.

Subsequently, this chapter expands on the ADR History and Pre-Colonial Initiatives. This chapter goes further to examine the different types of ADR and the similarities and differences between the Traditional African Method of Settling Disputes (TAMSD) and the modern day ADR. Lastly, the Advantages and Disadvantages of the ADR process are scrutinised and the conclusion of the chapter.

Chapter three predominantly analyses the introduction and development of the MDC into the Nigeria Judicial landscape, its procedures and the uniqueness of its operation. Afterwards, this chapter scrutinises the effectiveness of the LMDC practice, whether it is serving its stated purpose. This chapter also looks at the principles and procedural framework of Arbitration and Mediation. Following through, Chapter four presents detailed findings and discussions on the LMDC, a summary of the findings were stated and the relevance of the results to the dispensation of Justice in Nigeria so far and followed by its conclusion. Chapter five also weighs in on the advantages and challenges of the process and reveals the first-ever focus group discussion on the current satisfaction with the system while at the same time analysing the problems faced. It also analysed the Quantitative data of the LMDC and concludes. Chapter six discusses and analysis the impact of the LMDC in other states of the country particularly in the Eastern part of Nigeria -Enugu to be precise. It also evaluates for the first time the Quantitative data of the ESMDC. Chapter seven is the conclusion and recommendation part of the thesis, in which all the points raised in the different chapters that make up this research were discussed.

1.4 Research Questions

The research work will attempt to answer the following questions that have arisen from the Lagos Multi-Door Court House (LMDC) scheme in Nigeria:

- 1 Critically evaluating the effectiveness of the LMDC and its impact on other states in particular Enugu state and whether it is serving its set purposes.

- 2 Critically analyses whether the LMDC practice has replicated the pre-colonial arbitral system of settling disputes?
- 3 Evaluates the achievement of the MDC scheme in Lagos State from 2002 to date and explores whether litigants who approach the LMDC directly rather than going straight to litigation would save cost and time. It will focus majorly on the drawbacks that led to the advent of the LMDC, as well as the establishment of the ESMDC in Nigeria with particular reference to the scope of matters it can adjudicate upon and how it has impacted in reducing the burden on the judiciary and the cost of litigation to the benefit of litigants /disputants -advanced access to justice.
- 4 Analyses whether the Nigeria's legal and institutional framework in any way inhibits the growth of ADR in the country. Finally, it will discuss and analyse the findings relating to the perceptions and experience of participants within the LMDC and ESMDC regarding the delivery and quality of justice they offer.

1.5 Aims and Purpose of the Research

The research aims to study and analyse the long-term consequences and challenges of MDC to attain its overriding objectives effectively. The LMDC was a model scheme and the first court-connected Dispute Resolution Centre of its kind in Africa.¹²⁸ The research seeks to look at the scheme's impact in ESMDC. It is also intended that the LMDC Practice Directions on Mediation, which is for the administration of Mediation and the LMDC Law 2015 will be examined. The questions of why and how they gain enforceability and what the bases are for the formulation and implementation of such policies are sought to be researched upon. The research will not only look at how the LMDC practice has been effective but also it will explore the reasons some states in the country are yet to embrace this scheme. These research findings will suggest and help inform other remaining states and Sub-Saharan African Countries on how the MDC practice can be rolled out and how to integrate the scheme into their legal systems.

¹²⁸ Onyema (n2) 3

1.6 Research Approach

The research is aimed at contributing to knowledge in the Multi-Door Courthouse (MDC) spectra both in theory and practice thus socio-legal analysis has been employed. This investigates real-life judgements relating to the benefits and challenges of both the users and stakeholders of the LMDC on the effectiveness of the practice. Effectiveness is the capability to succeed and produce the envisioned results¹²⁹ and as such time and cost will be mainly used for measuring the scheme's effectiveness. For example, is the cost of accessing the LMDC cheaper than that of accessing litigation?

On the other hand, time in this context consist of how long it takes them (users or parties) to access justice, so when they are delayed for a period, how does it affect them? Does it discourage them in the sense that it brings lack of trust and lack of confidence to the judicial system? In retrospect, when the cases are screened at the courts and sent to the LMDC where and when the parties have reached Terms of Settlement (TOS) their terms and the ADR judge has duly adopted TOS as a consent judgement as the LMDC is connected to the courts. Are the parties compelled to the judgements that have being passed? Does the regular court mandate go after the parties when they default to compel them to its judgement or not showing up for their cases? The combination of the aforementioned questions and elements makes up effectiveness. Thus the researcher will focus on these core independent variables and will also derive insights from the data - discovering more elements in a bid to ascertain the effectiveness of the LMDC in comparison to litigation thus far.¹³⁰

1.7 Research Contribution to knowledge / Originality

The research contributes to knowledge by carrying out a more detailed analysis of cost and bringing in new data,¹³¹ by comparing and contrasting the cost of Walk-In and Court-Referral. Similarly, a detailed investigation of the cost with parties with a legal representative and vice versa; how the settlement week impacts cost.

¹²⁹ Cambridge University, 'Dictionary' <<<https://dictionary.cambridge.org/dictionary/english/effectiveness>>> accessed 17th January 2021.

¹³⁰ Ranjit Kumar, *Research Methodology a step-by-step guide for beginners* (3rd edn, Sage Publications 2011) 62.

¹³¹ Onyema (n2) 18

Secondly, it contributes to research by analysing whether the cost of ADR processes at the LMDC make any impact on the accessibility of the scheme to all citizens of Lagos State¹³² this extends to the new ESMDC. Both users and stakeholders affirmed that it does.¹³³ Secondly, the research contributes to knowledge by providing a detailed analysis on the effectiveness of the LMDC and its impact on ESMDC.

Additionally, this is the first research to scrutinise the philosophy behind the introduction of the ESMDC in the eastern part of Nigeria from its date of inception 2018-2020. For the first time, its impact on other states, particularly Enugu State Multi-Door Courthouse (ESMDC) in Nigeria, in the light of the rise of inadequacies related to litigation. The research raises and extensively analyses the ‘criterion or motivational factor’¹³⁴ that would nudge lawyers and magistrates to embrace the scheme and not see Alternative Dispute Resolution as ‘A Drop in their Revenue’ (ADR).¹³⁵

This thesis further reveals the interplay between the ego and apology, which are two sides of a coin when it comes to dispute resolution. It can be argued that extensive research has been done on the psychological dynamics in disputes resolution.¹³⁶ However, none has been carried out on the psychoanalytic theory (id, ego and the superego); it’s interplay with apology and subject matter bias, and how they can be used to deescalate dispute or escalate dispute.

Additionally, the research contributes to knowledge by revealing that both the LMDC and ESMDC have started settling criminal matters through the restorative justice door. It has also provided insight on whether the MDC has replicated the pre-arbitral method of resolving disputes. For the first time, this thesis has revealed the perceptions of both the users and stakeholders of the scheme –they affirmed that the pre-arbitral method of settling disputes or the traditional African method (TAM) was their main method of settling disputes before it’s second return as modernised ADR. More so, it was able to reveal for the first time that legal transplant can move from the less complex society to a more complex society as opposed to the general rule proposed by Grande that legal

¹³² Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 16

¹³³ See chapter 5 and 6 of this thesis.

¹³⁴ Solutions proffered by some stakeholders- see chapter 5 and 6.

¹³⁵ See chapter 5 and 6 of this thesis.

¹³⁶ Susan Blake, Browne, Julie, Sime,Stuart, *A Practical Approach to Alternative Dispute Resolution* (2nd edn, Oxford University Press 2012) 17

transplant usually moves from the more complex society to a less complex society.¹³⁷ Finally, the LMDC 2015 reviewed law and ESMDC new law of 2018; for the first time will be reviewed to determine whether these laws are stringent or lenient.

1.8 Methods and Methodology

The research work will be approached from the socio-legal standpoints and shall incorporate comparative and mixed-methods. The approach embraced in this research was mainly socio-legal methodology, which would be able to answer how, and why questions¹³⁸ as it relate to the Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC) as a Case Study in Nigeria. Thus, the researcher will justify the methodologies and the rational or reasons for choosing these methods implemented in this thesis. Bearing the tools in mind, data analysis is purely thematic or exploratory and was conducted in Lagos and Enugu State, respectively. This thesis would also present detailed information about the data collected (statistical data, interviews and the focus group discussion) on the current satisfaction with both MDC while at the same time analysing the problems faced. Conversely, Naomi Creutzfeldt, a socio-legal scholar defined socio-legal research as an

Evolving field of empirical studies of law, legal institutions, actors, and legal processes, or as the gap between law on the books and law in action.¹³⁹

Essentially, a socio-legal research is the ‘analysis of law, which is directly related or linked to the analysis of the social situation to which the law applies.’¹⁴⁰

The Basis for using Comparative legal analysis

The rise of momentous new developments over the years, like the invention of podcasts and pinterest, has made humanity, in effect, a global village.¹⁴¹ However, there are

¹³⁷ Elisabetta Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context' (1999) 43 African Law 63.

¹³⁸ Laura Cahillane, Schweppe, Jennifer (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016) 22.

¹³⁹ Naomi Creutzfeldt, Nelson, Marc, McConnachie, Kirsten (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge Taylor & Francis Group 2020) 25

¹⁴⁰ David Schiff, *The Modern Law Review*, vol 39 (Wiley 1976) 287

peculiar differences and similarities between different jurisdictions; the two in question are Nigeria and the US. Therefore, assessing the methodological framework of two different countries through comparative law can be a vital portal to a foreign culture.¹⁴²

More so, comparative legal analysis entails systematically comparing two or more legal systems.¹⁴³ The above-mentioned definition aligns with John Reitz's view that the comparative method involves explicitly comparing elements of two or more legal systems.¹⁴⁴

On the other hand, it is argued that 'Comparative study enhances a better understanding of different legal system, particularly creates an awareness of the place of one's own legal system in an international legal order in development.'¹⁴⁵ Hence the nitty-gritty of the thesis is a juxtaposition of one or two foreign jurisdictions. The researcher shall adopt this pattern to achieve a more in-depth understanding of critical insight into what new knowledge is likely to emerge from comparing the Lagos Multi-Door Courthouse (LMDC) in Nigeria with that of the MDC in the United States. Particularly in analysing whether there was or the occurrence of a legal transplant whilst examining the juxtaposition between the MDC in Enugu to answer one of the research questions –what is the impact of the LMDC on other states.

Reasons for using Comparative Method

As enumerated above there are many reasons why the researcher would want to commence or incorporate the comparative method into this thesis. One is the case that this work is not strictly on 'western' ADR; thus would look at the African ADR (foreign jurisdiction), which seems to be new in this formalised way, thus would include or need a comparative law narrative.

¹⁴¹ Edward Eberle, 'The Method and Role of Comparative Law' (2009) 8 Washington University Global Studies Law Review 451-452

¹⁴² The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* 452

¹⁴³ Linda Hantrais, 'Comparative Methods' (1995) Social Research University of Surrey 3

¹⁴⁴ John . C Reitz, 'How to Do Comparative Law' (1998) 46 The American Journal Comparative Law 619

¹⁴⁵ Antonios Platsas, 'A Cosmopolitan Ethos for our Future Lawyers (in English) (2015) ' (2015) 150 Law: J Higher Sch Econ 10

Aside from that, the thesis will critically analyse the impact of the LMDC on other states in Nigeria, particularly the Enugu State Multi-Door Courthouse (ESMDC). Has there been a replication or adoption, or are there any similarities or differences between the schemes? Henceforth it is a valid reason to look at this thesis with the lens view of comparative analysis because the discipline of law is becoming more multicultural. Thus it provides an avenue for introducing originality in this research. Hence cultural difference is key as it plays a fundamental role in both countries.¹⁴⁶ For example, the issue of transplant or legal infusion of law from Nigeria to the US / UK and this same law was reinvented and given a different name, which is what is known as ADR.

Conversely, the issue of transplantation of the MDC from America ¹⁴⁷ to Nigeria; therefore, the researcher will briefly analyse these concepts from these jurisdictions as mentioned above. Therefore, it is the case that this is one of the major driving forces behind its deployment in this research. The difference between the premise of this thesis and previous analysis¹⁴⁸ is founded on the comparison between the similarities and benefits of the TAMSD and ADR.

Additionally there is no work that exists where effectiveness or otherwise of the LMDC had pitched against litigation. Hence, a comparative analysis between the “improved forms of ADR methods” or what Professor Onyema referred to as “modern forms of ADR processes” ¹⁴⁹ for African communities and the alternative “Litigation” because litigation is foreign to the earlier mentioned jurisdiction because of colonisation and the idea of statehood. The above enumeration will give an edge to this thesis. The starting point in this method is to explore the underlying reasons why issues are dealt with the way they are in Nigeria and foreign jurisdictions like the US and UK respectively.

¹⁴⁶ Dawn Watkins, Burton, Mandy (ed) *Research Methods in Law* (2nd edn, Routledge 2018) 126-127.

¹⁴⁷ Which first originated in America cited in Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice* 6

¹⁴⁸ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 4

¹⁴⁹ Maria Federica Moscati, Palmer, Michael, Roberts, Marian (eds), *Comparative Dispute Resolution* (Edward Elgar Publishing 2020) 3

Benefits and ills of using Comparative analysis

One of the many benefits of using comparative study is that the comparatists cannot be limited to practical objectives only.¹⁵⁰ That is an open-ended objective, that is the confrontation of legal rules and institutions of one's legal system with external statutory regulations and institutions will undoubtedly increase intellectual interaction and borrowings¹⁵¹, therefore the benefits of comparative analysis is to enhance the capacity of developing a critical knowledge of law and understanding of law in context.¹⁵² However, one of the ills of this study is that sometimes the researcher might engage in making a case for a better law.

The researcher fully appreciates the view of Antonias Platsas on 'Cosmopolitan law'¹⁵³- as it offers an unparalleled opportunity for interaction across borders.'¹⁵⁴ In a sense, the need to benefit from other legal systems and expand political thinking in terms of what the comparative analysis might bring, thus the need to take heed where required and the opportunity for re-evaluation.¹⁵⁵ However, emphasises should be on the primary focus of the need to use comparative method for critical analysis in this context to look at the issue of comity and the rationale behind the thinking of the common law country alongside the civil law countries.

Reason for using deductive and inductive Reasoning

Against this backdrop, the thesis would incorporate both deductive and inductive reasoning. Deductive reasoning demands the use of the literature to assist in identifying the viewpoints and ideas that will be tested using data collected.¹⁵⁶ Evan Heit posits that 'the first reason is that inductive reasoning harmonises with probabilistic, uncertain, approximate reasoning, and it corresponds to everyday reasoning.'¹⁵⁷

¹⁵⁰ Cahillane, *Legal Research Methods: Principles and Practicalities* 46.

¹⁵¹ Ibid

¹⁵² The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* 47

¹⁵³ Platsas, 'A Cosmopolitan Ethos for our Future Lawyers (in English) (2015) '10

¹⁵⁴ Ibid

¹⁵⁵ Ibid

¹⁵⁶ Cahillane, *Legal Research Methods: Principles and Practicalities* 46.

¹⁵⁷ Aidan Feeney, Heit, Evan (eds), *Inductive Reasoning Experimental, Developmental and Computational Approaches* (Cambridge University Press 2007) 1

Following through, the thesis will also incorporate inductive reasoning by attempting to create a link used by the qualitative research method. This is so because understanding the meaning humans attach to events or experience and observations quite suitably fits the inductive technique.¹⁵⁸ This indicates that inductive reasoning used in this thesis will comprehend the perceptions and experiences of the users and stakeholders on the effectiveness of the LMDC practice while at the same time its challenges thus far in reference to future research. In other words, though the research will be based substantially on a deductive approach, which is testing theories or decisions- ‘mostly deduced directly from legislation, cases and secondary authorities,’¹⁵⁹ it will nevertheless use inductive reasoning drawn out of this thesis, especially in the justification of findings and conclusions.

A The Basis for or of the Mixed Methods Research (MMR)

Flowing from the above, Tashakkori and Teddlie stated that ‘the explicit emergence of mixed methods research was in the 1960s with this approach becoming prevalent by the 1980s with the waning of the paradigm wars.’¹⁶⁰ They pointed out that there is a viable third choice.¹⁶¹ This method combines the quantitative and qualitative approaches, which is still in its adolescence, thus relatively unknown, hence confusing to many researchers.¹⁶² Creswell opines that mixed methods are the approach of combining or the integration of qualitative and quantitative research data in a research study.¹⁶³ He stated that qualitative data tend to be open-ended without predetermined responses while quantitative data usually includes closed-ended answers such as the ones found on questionnaires or psychological instruments.¹⁶⁴ He went on to explain the mixed methods approach in a pragmatic worldview; this is the collection of both quantitative and

¹⁵⁸ Okonache Ogar, 'International Commercial Arbitration: The Principal Issues and Conflicts of Laws Challenges in Dispute Resolution', University of Bradford 2013) 150

¹⁵⁹ Kent Sinclair, 'Legal Reasoning: In Search of an Adequate Theory of Argument ' (1971) 59 Calif L Rev 821 831

¹⁶⁰ Abbas Tashakkori, Teddlie, Charles, *Handbook of Mixed Methods in Social and Behavioural Research* (Sage Publications 2003) 243

¹⁶¹ Tashakkori (n139) 244

¹⁶² Ibid (n139)

¹⁶³ John Creswell, David, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (5th edn, Sage 2018) 33.

¹⁶⁴ Ibid.

qualitative data chronologically in the design.¹⁶⁵

Professor Laura's Nader's¹⁶⁶ ideology, validates the above view she pointed out that 'one cannot take a serious hard look at the administration of justice and how it is working - solely on the bases of cases. However, she pointed out that 'cases are important but one can only take a soft look due to the absence of data.'¹⁶⁷ This statement resonates with the researcher as this research seeks to first analyse the introduction or what prompted the birth of the LMDC into the Nigerian legal system and also take a look at the statistical data of the LMDC and that of the ESMDC.

Thus, the researcher bases the inquiry on the assumption that collecting diverse types of data best provides a complete understanding of the research problem than either quantitative or qualitative data alone can give.¹⁶⁸ The research would rely on the two data collection methods mentioned above.¹⁶⁹ Thus, the research would employ the qualitative method which entails semi-structured interviews and focus group discussion on collecting detailed views from the stakeholders and the disputants to help answer the research questions.¹⁷⁰ While the quantitative approach employed involves¹⁷¹ collecting data quantitatively on instruments.

In view of this, the researcher would also employ the use of statistical data to yield¹⁷² additional insight beyond the information provided by either the quantitative or qualitative data alone.¹⁷³ This means that the analysis will not be without its reference to the legal rules and cases under the legal system via its connections to ADR through the Lagos Multi-Door Courthouse (LMDC).

¹⁶⁵ Ibid.

¹⁶⁶ A professor of cultural anthropology, invited to speak on the dissatisfaction of the administration of justice at the 1976 Conference on the same podium where Roscoe Pound delivered his 1906 Speech on the above-mentioned subject matter. Cited in Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 115.

¹⁶⁷ Ibid 116

¹⁶⁸ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (n143)

¹⁶⁹ The 'Mixed Methods approach' is used for the data collection, analysis, interpretation, and report writing.

¹⁷⁰ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (n143)

¹⁷¹ Ibid

¹⁷² Ibid 41

¹⁷³ Ibid 41

B Reasons or Rational for choosing Mixed Methods

Based on the preceding, the thesis or research will be anchored on the theoretical analysis of the ADR processes in Nigeria to observe procedures, structure(s) and applications of these mechanisms within the legal framework.

Since the era of LMDC, there were two types of research conducted in this field. The first was empirical research on the effectiveness of the LMDC, which essentially was carried out in 2012;¹⁷⁴ and the second was a comparative study carried out in 2013.¹⁷⁵ Emilia Onyema's data shed some light on one of the reasons or problems for court congestion and delay in Lagos state which resulted to the introduction of the LMDC.¹⁷⁶

However, one of the weaknesses of the research carried out in 2012 by Professor Onyema was not getting access to the disputants themselves,¹⁷⁷ because very few people responded to the questionnaires.¹⁷⁸ The focal point here is that this research will further undertake a more detailed study on the effectiveness of the LMDC and its impact on other States in particular Enugu State.

In this context, it was quite challenging for Onyema to get disputants to respond.¹⁷⁹ As such instead of replicating on what has been done, the researcher added originality to the research by conducting more interviews, a focus group discussion and statistical data utilising the mixed methods which consists of qualitative and quantitative methods.¹⁸⁰ The qualitative method is a factfinding research tool frequently used to acquire valuable data in social areas of research in relatively short periods.¹⁸¹ It is pertinent to point out that this is the first time a focus group discussion will be used to explore more recent evidence on the effectiveness of the LMDC practice and its impact on other states. Dr Anthony J. Onwuegbuzie, et al, clearly pointed out that focus group discussion is

¹⁷⁴ Onyema (n2) 7

¹⁷⁵ Akeredolu (n10) vi

¹⁷⁶ Onyema (n2) 7

¹⁷⁷ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 7.

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

¹⁸⁰ Creswell (n143) 41

¹⁸¹ David Newlyn, 'Focus groups: The who, what, when, where and why of their value in legal research' (2012) 5 The Australasian Law Teachers Association 1.

A way of collecting qualitative data, which entail engaging a small number of people in an informal group discussion focused' around a particular topic or set of issues.

On the other hand, Charles L Briggs stated that 'focus groups are well known to be a credible instrument for the collection of data, which allows the researcher to explore rich and intricate processes of persons' lived experiences.'¹⁸² The quotations stated above signifies that focus group discussion is one of the best ways to get the most credible information from the people who have used the scheme and it equips the researcher to ask the right questions, like - is it helping them (disputants) resolve their disputes faster, more cheaply and is it getting them to preserve their relationship? Did they accept the resolution? How do they feel? Denizen and Lincoln contends that qualitative research involves an interpretive, naturalistic approach to the world and the qualitative researchers study things in natural settings attempting to make sense of or interpret phenomena in terms of the meanings people associate with such things.¹⁸³

Hence, qualitative methods in socio-legal include ethnographic techniques like semi-structured face-to-face interviews, interpretive biographies, focus groups, participant observation, action research validity, presentation, case studies and new developments.¹⁸⁴ As a result two types of research tools were employed, focus group discussions and face-to-face interviews which operates that understanding occurs most times from an inductive analysis of open-ended, detailed and descriptive data gathered through direct contact participants.¹⁸⁵

To buttress the above view point, David Newlyn went on to state that focus groups provides a more in-depth understanding of which participant's opinions can be heard.¹⁸⁶ However, he revealed that 'it would be extremely wise for a researcher in the law discipline to plan to use multiple methods of research activities otherwise they should expect that they will face the scrutiny of their findings if they choose to exclusively use

¹⁸² Charles Briggs, *Learning how to ask: A sociolinguistic appraisal of the role of the interview in social science research* (Cambridge University Press, 1986) 1.

¹⁸³ Ofinjite Ogaji, 'The Viability of Applying Alternative Dispute Resolution Processes in the Niger Delta Conflict ', University of Warwick, Coventry, United Kingdom 2013) 129

¹⁸⁴ Christina Hughes, 'Quantitative and qualitative approaches [online]' 2006)

<http://www2.warwick.ac.uk/fac/soc/sociology/staff/academicstaff/chughes/hughesc_index/teachingresearchprocess/quantitativequalitative/quantitativequalitative/> accessed 1st January 2018, 4.

¹⁸⁵ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (n143) 54.

¹⁸⁶ Newlyn (n162) 2

the focus group as their sole method of data gathering.¹⁸⁷

On the contrary, he pointed out that a focus group would not be used in isolation as the sole method for gathering data / information in any given legal research. He lay emphasises on the importance of triangulation to the concept of ensuring that the data / information obtained is credible when undertaking legal research questions.¹⁸⁸

Conversely, quantitative method comprises of ‘the collection and analysis of data in numeric form.’¹⁸⁹ It is commonly associated with the social research as it has the ability to produce objective and valid data from a statistical standpoint using numerical measures.¹⁹⁰ More so, the sole purpose of quantitative method is to enable researchers to scrutinize extensive units of analysis.¹⁹¹ In furtherance, the main benefit of the quantitative data is that they are logged into the computer where they can be counted, stored, and manipulated; however, numbers are often a poor substitute for a researcher’s intense narratives.¹⁹² The researcher “who mixes both the (quantitative and qualitative) methods in the same research would benefit from both and minimize the deficiencies in using only one.”¹⁹³

Lending credence to the above is the era where Jeremy Bentham wanted to develop a science of human behaviour based on first principles, which he referred to as Utilitarianism.¹⁹⁴ Bentham sought to develop a quantitative approach to the application of the utilitarian rule, which he believed formed the basis of political and moral science.¹⁹⁵

However, John Stuart Mill disagreed, over this quantitative perspective choosing a more qualitative interpretation of the utilitarian rule instead.¹⁹⁶ The import of these tests, which apply conjunctively, is that proper research obligates the researcher to use multiple sources of data and methods, to bolster or support the research findings.¹⁹⁷ Thus, this method of thinking has been deployed in this research by employing the strengths of both

¹⁸⁷ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 2

¹⁸⁸ Newlyn, 'Focus groups: The who, what, when, where and why of their value in legal research' 11.

¹⁸⁹ Hughes (n165).

¹⁹⁰ Matt Henn, Weinstein, Mark, Foard, Nick, *A Critical Introduction to Social Research* (2nd edn, Sage 2009) 134

¹⁹¹ Paul Gray, Williamson, John, Kamp, David, Dalphin, John, *The Research Imagination: An Introduction to Qualitative and Quantitative Methods* (Cambridge University Press 2007) 42.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Lawrence Martin, 'Jeremy Bentham: utilitarianism, public policy and the administrative state ' (2007) 3 Management History (Archive) 272.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid 272

¹⁹⁷ Ibid.

qualitative and quantitative methods. To answer the following question, the effectiveness of the LMDC practice? That cannot be answered in any other way.¹⁹⁸ In doing so, it would be used to ascertain the veracity of enquiry findings of the research question: the effectiveness of the LMDC practice from the first time users of the MDC scheme. They will air their views on the workings of the LMDC and its impact thus far given whether the MDC serves its set purposes since inception.

In the grand scheme of things, this study's outcome will contribute to the existing gap in the LMDC literature and contribute to knowledge on whether the LMDC has replicated the pre-arbitral method of settling disputes. In other words, both the qualitative and quantitative method integrates the strengths of a much in-depth and more extended interview with the component of participant observation in a group context.¹⁹⁹ Merton et al. provided a more holistic view of the value of the focus group by stating that the primary aim of the focus group discussion is to draw out or obtain a comprehensive report as possible.²⁰⁰ Focus group discussions are distinguished from the wider category of group interviews by the explicit use of the group interaction as research data.²⁰¹ The focus group discussion atmosphere is supposedly an informal space that is intended to encourage the participants to speak freely and completely about behaviours, attitudes and opinions they deem fit.²⁰² The researcher who uses the focus group discussion will have the leeway to use open-ended questions, which permit participants to describe what is important to them and will have the recourse to explore quantitative data collected through other research gathering methods such as survey.²⁰³

Additionally, the research will involve face-to-face or phone interviews with the Directors of the MDC, ADR Judges, ADR Magistrates, Mediators, Arbitrators and Disputants. These will be recorded. Consent forms and interview questions will be attached as documents and sent to the MDC. Correspondingly, there will be five (5) or Ten (10) more focus groups using the same consent and interview questions. The audio recordings will be transcribed by the researcher. Harpreet et al, stated that in using the

¹⁹⁸ Watkins, *Research Methods in Law* 67

¹⁹⁹ Ibid 2

²⁰⁰ Robert K Merton, Fiske, Marjorie, Kendall, Patricia L *The Focused Interview: A Manual of Problems and Procedures* (2nd edn, Free Press 1990) 21

²⁰¹ Newlyn, 'Focus groups: The who, what, when, where and why of their value in legal research' 136

²⁰² Ibid 3

²⁰³ Ibid

methods above, it would encourage the collection of more extensive evidence for this research, which quantitative or qualitative methods alone cannot answer.²⁰⁴

Abbas Tashakkori, Charles Teddlie validated the above view, by stating that the use of these two methods will enhance the quality of the research results.²⁰⁵ Therefore this methods, when combined, lends a better understanding of social experiences and intricate issues. Hence, the mixed-method researcher often uses both methods to collect data with the intent to provide an answer on a well-detailed analysis of ‘what and how ’ type of questions.²⁰⁶ This method well resonates with the researcher because the purpose of this thesis is to first and foremost understand what is the story so far? The nature of disputes, how the dispute resolution processes were chosen or participated in, the outcome of dispute; the length of time, cost of using the MDC scheme; and influence of using the scheme to solve the problem of litigation in Nigeria. Those tiny details one would not get from using secondary materials alone, but hearing from the horse’s mouth (those that work in the MDC and those that use it) will prove even more useful for research analysis.

Hence, the answers from the face-to-face interview from the centre and focus group discussion (disputants or users) from the LMDC will be analysed. It demands careful analytical exploration, which the mixed method provides. It is essential to state that the proponents of mixed methods encouraged researchers to design or create their designs that will adequately address their research objectives, purposes and questions.

Consequently, using the mixed methods is socio-legal itself²⁰⁷ and this is based on the nature of the question or problem that this research is seeking to answer and the need for contextualisation and study of the impact of cost, time and speedy dispensation of Justice on the society. Therefore, the connection between the term’s socio-legal research and the mixed methods is that socio-legal method uses the mixed method, which comprises of the qualitative and quantitative methods.²⁰⁸ Exploring the socio-legal approach in the context of this work allows the researcher to add another dimension to information gathering to

²⁰⁴ Harpreet Kaur, Chandigarh, Uils ‘Mixed Methods Research ’ (2015) Academike 1

²⁰⁵ Abbas Tashakkori, Teddlie, Charles *Sage Handbook of Mixed Methods in Social and Behavioural Research* (2nd edn, Sage 2010)18.

²⁰⁶ Ibid.

²⁰⁷ Michael Thelwall, *World Association Thematic Analysis : A Social Media Text Exploration Strategy* (Morgan & Claypool 2021) 8.

²⁰⁸ Cahillane (n138) 123

explore how the MDC has been useful or beneficial to whom? Is it to the state or the disputants?

In simple terms, the socio-legal research was developed in frustration with the doctrinal approach as it focuses more on how the law affects society.²⁰⁹ This approach has as many definitions as they are followers, and it is nigh impossible to give a single accepted definition.²¹⁰ But essentially it can be viewed as encompassing the diversity of interdisciplinary and multidisciplinary contextual approaches within current research.²¹¹ This thesis employs the services of social science and integrates it within the context of law in the process of information gathering. It is, therefore, the case that when inquiries are made into this thesis to investigations conducted using focus group discussion by both the users of LMDC and ESMDC will arrive at certain conclusions.

D Field Findings

To reiterate, the methods adopted was the Mixed-Methods – comparative, quantitative and qualitative. This section involves a review by the researcher on the data gathering of the LMDC and at the ESMDC respectively. Both of the MDC's presented their statistics after the researcher had facilitated or conducted the interviews and focus group discussions on how they have fared so far. These were then transcribed and analysed using Nvivo 12.²¹² The participants were initially grouped into nine (9) categories as follows: Directors, Judges, Magistrates, Arbitrators, Administrators, Mediators, Case managers, Lawyers and Focus Groups (Parties) before it was narrowed down to seven (7) categories- Directors, Judges, Magistrates, Mediators, Case Managers, Lawyers and Focus Groups (Parties). Then the deductions from their interviews were grouped into different themes and in subthemes using Nvivo 12. These formed the discussions, findings and summary in Chapter Four (4) for the Qualitative analysis. The Quantitative analysis for LMDC and an analysis on the effectiveness of the LMDC embedded with

²⁰⁹ Tashakkori, *Sage Handbook of Mixed Methods in Social and Behavioural Research* 18

²¹⁰ Cahillane, *Legal Research Methods: Principles and Practicalities* 47

²¹¹ *Ibid.*

²¹² Nvivo is a Computer software program used for qualitative and mixed-methods research. It is used to analyse large volumes of data and used to drive insights in qualitative data like interviews, focus groups discussion, amongst others.

critical scrutiny as to whether the LMDC replicated the pre-arbitral method of settling disputes were presented in Chapter Five (5) of the research work and the ESMDC Quantitative analysis forms part of Chapter Six (6) of this research. As stated earlier a semi-structured face-to-face interview question for both the participants of the LMDC and ESMDC scheme was prepared. These questions were aimed to elucidate the workings of the LMDC and how the service users, stakeholders and service givers feel about the scheme.

Thus, no specific selection was made as to what disputes the users came to settle. However, the users and service givers / stakeholders were purely selected randomly as to their availability and willingness to participate in the interview and focus group discussions, which aligns with the research ethics of the University of Brighton (UoB). It is essential to point out that the users were both the respondent and claimant, not necessarily from the same matter or case but different matters as the case may be. Nevertheless, the services provided to the service users interviewed during the focus group discussion in this research by both schemes were mostly:

- Tenancy matters
- Commercial Banks
- Land Matters
- Minor Offences
- Business / Commercial transactions and
- Matrimonial causes

A total of sixteen (16) questions was initially prepared, however, the researcher administered in most cases Ten (10) questions out of the Sixteen (16) semi-structured questions were posed to the users, service givers and stakeholders of the LMDC and ESMDC. The semi-structured questions administered were open-ended questions, which gave the researcher the leeway to explore and expand on the answers highlighted by the participants. The rationale behind the use of a semi-structured interview is to get more ideas and happenings by asking follow-up questions from the answers given to clarify answers that the researcher was not sure about or were not revealed in the reviewed literature. In so doing, new happenings at the centres were disclosed.

This enabled the participants the freedom to express their own views through their lens view or in their understanding. The interview sessions were held at the LMDC, and ESMDC between the middle of October 2019 to December 2019. Some of the sessions lasted approximately one and half hours, some lasted for about two (2) hours while others lasted for about fifteen (15) minutes respectively. The researcher also employed the use of questionnaires for the judges at ESMDC, which was not in the original research outline – two questionnaires were sent via email, and two telephone interviews (which still falls under the mixed methods) were held. The reason behind this was that the judges were absent on the researchers arrival - they went for judge's conference in Abuja the capital territory of Nigeria to be precise, and were not expected to be back during the duration of the researcher's stay.

Consequently, a total number of Ninety-Seven interviews (97) were conducted and the researcher transcribed Sixty-two (62) interviews. The reason for not transcribing the earlier mentioned numbers was that when it was played back while transcribing, the researcher realized that some of the recordings were not so clear during transcription. There were issues with some of the recordings, such as gaps due to the sound quality caused by the background sound (from the events happening at the centre). It interfered with or affected the quality of the recording. Every effort was made to retrieve as much as practicably possible.

The questions aimed to receive information on how users got to know about the LMDC and ESMDC scheme; how the MDC works - its legal framework, the nature of disputes, any preference to the dispute resolution process chosen? What is the effectiveness of the LMDC / ESMDC compared to Litigation? What is the cost-effectiveness of going straight to the LMDC or ESMDC scheme instead of Litigation, what are the challenges faced by both schemes, and if both schemes replicated the pre-arbitral methods of settling a dispute? What should both schemes do to improve their standard? On a scale of 1-5, one being least and five, the highest, what would they rate the performance of the schemes in Dispute Resolution in comparison to Litigation? Finally, how long does a dispute resolution process last?

Due to the scant amount of literature on both schemes thematic analysis was employed which is also exploratory as the researcher was looking for the unexpected, like new idea or perspective in the qualitative data, this allowed the data speak to the researcher and pull-out ideas that the researcher thought would be relevant to the research questions and then test them against existing literature, which the researcher then developed into a theoretical proposal, which becomes the original contribution to knowledge. The thematic analysis enables an organisational categorisation of data.²¹³ Thus with the help of Nvivo 12, data was reread to code related materials into a container called Node - these then formed the themes. It began by picking up what came up and coding it- could be a phrase, a word, a sentence, a paragraph it does not matter about its length so far it is relevant to the research. The theme nodes could be apology, battlefield, mediation etc. This saved time and left the researcher with a lot of themes and subthemes to choose from or work with. The researcher coded all the categories separately- so found a lot of node themes and subthemes to work with.

C Ethics

The need for ethical considerations cannot be ruled out from any research thesis. Reva Brown postulated that ethical behaviour is not complicated.²¹⁴ The researcher should avoid actions or questions that can be viewed as threats to their participant's health, values or dignity.²¹⁵

Consequently, the prerequisite requirement of the researcher is to fill out an ethical form from the university, which consists of a consent form (that serves as an avenue for the participants to give their consent). Approaching this from this positive view will protect the researcher and the business school from being sued for alleged misconduct by the participants.²¹⁶ For the researcher to get informed consent from human participants during the interview,²¹⁷ the following study's ethics considerations will be guided by the

²¹³ Thelwall (n188) 8

²¹⁴ Reva Berman Brown, *Doing your Dissertation in Business and Management the Reality of Researching and Writing* (Sage Publications 2006) 16.

²¹⁵ *ibid* 16

²¹⁶ University of Brighton Bream, *University's Research Ethics Policy 2019* (2019) 4

²¹⁷ Brown, *Doing your Dissertation in Business and Management the Reality of Researching and Writing* 4

University of Brighton (UoB) Bream guidelines.²¹⁸ In summary, this thesis has received the ethical approval from the university.

1.9 CONCLUSION

The chapter has highlighted the research questions, the aim of the research, the research methods and methodology. It went further to explain the different techniques or methods deployed in writing this research while at the same time highlighting a historical background to the introduction of the MDC in Nigeria and the issues with access to justice in different jurisdiction particularly in Nigeria.

In furtherance, the rational and basis for choosing the research method was stated, as the above section has depicted, that every research method has got its inherent advantages and disadvantages, just as no one way or method has superiority over another. However, contemporary research gives room for the blend of the two methods. The ethical research practices and field findings were briefly discussed, to ensure that the University of Brighton's (UoB) research value processes and ethics were fully understood in line with how the research would observe or uphold these pertinent ethical values.

²¹⁸ Research and Enterprise Team, *Bream Policy* (University of Brighton 2019)

CHAPTER TWO: ADR – HISTORY, CONTEXTUAL BACKGROUND AND PURPOSE

The course of justice is like the alternation of the seasons. There is the hope and inspiration of spring and the achievement and reward of summer, and there is the descent and sacrifice of autumn and the moral and intellectual destitution of winter, and the changes in our jurisprudence will come accordingly in spite of us, however much we may be the appointed instruments in their consummation.²¹⁹

2.1 INTRODUCTION

Henceforth, this chapter focuses on the overview of the ADR processes and the Nigerian legal system as it relates to ADR. There is a general belief that in different jurisdictions, a court system is seen as a better or avant-garde way of settling civil disputes.²²⁰ Mainly where that system is seen as autonomous, encourages the difference of society and has rules for the process and substantiation; established over a long period to be sure that justice prevails.²²¹ The power of the court system is such that other forms of dispute resolution are commonly called ‘Alternative Dispute Resolution’ or as some scholars would call ‘Appropriate Dispute Resolution’ (ADR).²²² Resonating the implication or the long-held beliefs by partisans that litigation is the standard first choice.²²³

Nevertheless, increasing doubts have been expressed as to whether a lawsuit is always the most effective and efficient way of dealing with a dispute?²²⁴ This is because of the problem of delay, congestion, undue formalism, over-reliance on technicalities over justice, exorbitant costs and unnecessary political interference among other negative factors that made other countries like the USA, Australia, Canada, UK and many EU countries decide to focus on different methods of dispute resolution.²²⁵

²¹⁹ Douglas. M Gane, 'The Birth of a New Equity' (1923) 67 SOLIC J & WKLY REP cited in Thomas Main, 'ADR the New Equity' (2005) *Scholarly Works Paper* 739 329.

²²⁰ Blake, *A Practical Approach to Alternative Dispute Resolution* 3

²²¹ Ibid.

²²² Ibid.

²²³ Adrian Zuckerman, 'Lord Woolf's Access to Justice! Plus ca change...' (1996) 59 *The Modern Law Review* 774.

²²⁴ Hazel Genn, *Paths to Justice: What People Do and Think About Going to law* (Oxford: Hart Publishing 2011)

1.

²²⁵ Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective' 38.

According to some academic opinions to a large extent, ADR has assisted in developing and improving access to justice.²²⁶

The fictional case of *Jarndyce v Jarndyce* in the novel *Bleak House* by Charles Dickens; best explains the America situation with the problems plaguing litigation in America.²²⁷ Dickens presented the case in the first chapter of the book, to first attack the chancery court system of England as being deficient and also this case illustrates the problem associated with the legal cost of litigation in the past and still very much so in the present day England -Jackson's reform in 2013.²²⁸ These fictitious cases have been presumed to be one or two real cases; the first of such cases is the real-life case of Richard Smith that lasted up to thirty –six (36) years in England.²²⁹

However, the second of such cases which is acknowledged as the dispute over the will of William Jennens aka 'Acton Miser.'²³⁰ The case of *Jennens v Jennens* began in 1798 and this case dragged on for almost a full decade and its sluggish progress worked to the plaintiffs' disadvantage.²³¹ The defendants clearly adopted the delaying tactics, which is still prevalent in courts of today.²³² However this case was last heard in 1900 almost 117 years later, at this stage the legal fees had 'eaten up' the Jennens estate of their resources.²³³

Professor Adrian Zukerman validated the above position on the effects or negative impact of cost by positing:

At the outset of his Interim Report, Lord Woolf identified the cause of high costs as being not so much the complexity of procedure as the 'uncontrolled nature of the litigation process.'²³⁴

Similar discontentment with the court system was depicted by Dick's phrase in the 19th century play in the second part of King Henry VI. 'The first thing we do let's kill

²²⁶ Ahmed (n11) 74.

²²⁷ Charles Dickens, *Bleak House* (Oxford University Press 2008) p.11-13 cited in Blake, *A Practical Approach to Alternative Dispute Resolution* 3.

²²⁸ Patrick Polden, "Stranger than Fiction? The Jennens Inheritance in Fact and Fiction Part 1: The Jennens Fortune in the Courts' ' (2003) Sage 212

²²⁹ Ibid 212

²³⁰ Ibid

²³¹ Ibid.

²³² Ahmed (n11) 74.

²³³ Polden, "Stranger than Fiction? The Jennens Inheritance in Fact and Fiction Part 1: The Jennens Fortune in the Courts' '(n210) 212

²³⁴ Zukerman (n204) 774.

all the lawyers.²³⁵ This goes to show the anguish or pain that the citizens are going through in litigation due to the different tactics used by lawyers to delay matters in court. Moreover, some of these matters are ill-suited to a full resolution through the adversarial process, the process in most cases strain and magnify disputes than resolving them, as seen in the above stated cases where the legal costs devoured the whole estate.²³⁶

Similarly, in Nigeria, access to justice is a fundamental issue in the administration of justice just as it is the case in other parts of the world.²³⁷ This is explainable given the continuous upsurge in the pace of industrialisation, growth and developments in developed and developing countries alike.²³⁸ Indeed, in recent times, the growing complexity of modernised age has practically multiplied the disputes that arise daily, within the societies.²³⁹ The effect as stated earlier, is an increased workload in the ordinary courts and the introduction of alternative methods of dispute resolution becomes of vital importance and is unavoidable.²⁴⁰

The reason being that parties to a dispute require a cost effective and speedy process as in some cases vast sums of money are involved.²⁴¹ Evidently, this is why in recent years, there has been rapid growth in the use of various forms of ADR because parties would instead settle their cases out of court than engage in potential lengthy trials.²⁴²

2.2 The History of Alternative Dispute Resolution (ADR)

As long as human beings exist, disputes are practically unavoidable as it is a fundamental aspect of human existence and nature. Given this pragmatic truth, human society for a long time has facilitated or developed a reliable means of dispute management.²⁴³ Susan et al points out that ADR is taken to cover alternatives to

²³⁵ Michael (ed) Hattaway, *The Second Part of King Henry VI* (Cambridge University Press 1991), 175 cited in Saul Boyarsky, "Let's kill all the lawyers": What did Shakespeare mean?" (1991) 12 *Journal of Legal Medicine* 571

²³⁶ Polden (n210) 212

²³⁷ Akeredolu (n10) 15

²³⁸ Jerome Barrett, Barrett, Joseph, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* (First edn, Jossey-Bass 2004) 121.

²³⁹ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* 19

²⁴⁰ Derri (n15) 16

²⁴¹ Genn, *Paths to Justice: What People Do and Think About Going to law* 390.

²⁴² *ibid*

²⁴³ *Ibid.*

litigation).²⁴⁴ However, the approach of dispute resolution resorted to by disputants will depend on the nature of the disputes or circumstance of each case.²⁴⁵

On the contrary, Nokukhanya Ntuli highlighted that in some jurisdictions, parties prefer the use of adjudication through the court than litigation.²⁴⁶ Not until the chaos of costs and caseload management plagued litigation that countries like the USA, England and Nigeria decided to decipher into other forms of dispute resolution to enhance access to justice.²⁴⁷

In hindsight, ADR in the common law practice has its origins in the English legal system, this was evidenced as early as the 'Norman Conquest, legal charters and official papers indicate that English citizenry instituted actions concerning private wrongs, presided by highly valued male members of a community, in informal, quasi-judicatory settings.'²⁴⁸ In some cases, the king uses these local forums as an extension of his legal authority.²⁴⁹ In some sense, then, common law ADR has been around for centuries.²⁵⁰

The above issues, especially on cost, have been one of the Achilles heels of the history of ADR.²⁵¹ However, some scholars have argued that ADR originated from Africa,²⁵² while others said that it originated from ancient Greek.²⁵³ To the ancient Greeks, arbitration was not merely mythology.²⁵⁴ As Athenian courts became crowded, the city-state instituted the position of public arbitrator sometime around 400 B.C.²⁵⁵

²⁴⁴ Blake, *A Practical Approach to Alternative Dispute Resolution* 5

²⁴⁵ Lisa Parkinson, *Family Mediation: Appropriate Dispute Resolution in a New Family Justice System* (2nd edn, Family Law 2011) 9.

²⁴⁶ Ntuli (n13) 38

²⁴⁷ Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective' 38.

²⁴⁸ Micheal Mcmanus, Brianna, Silverstein 'Brief History of Alternative Dispute Resolution in the United States ' (2011) I Cadmus 100

²⁴⁹ Ibid.

²⁵⁰ Ibid 101

²⁵¹ Pablo Cortés, *Voluntariness as the Achilles' Heel of ADR: The Case for Incentives and Mandatory Redress Schemes. In The Law of Consumer Redress in an Evolving Digital Market: Upgrading from Alternative to Online Dispute Resolution* (Cambridge University Press, 2017) 209.

²⁵² Moscati, *Comparative Dispute Resolution* 519

²⁵³ Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* 6.

²⁵⁴ Ibid.

²⁵⁵ Ibid

According to Aristotle, ‘all men served this function during their sixteenth (16) year, hearing all manner of civil cases in which disputants did not feel the need to go before the more formal, and slow, court system.’²⁵⁶ The decision to take a case before an arbitrator was voluntary, but the choice of being an arbitrator was not.²⁵⁷ The procedures set up by the Greeks were surprisingly formal.²⁵⁸ The arbitrator for a given case was selected by lottery.²⁵⁹ His primary duty was to attempt to resolve the matter amicably.²⁶⁰ If he failed to resolve the matter, he would call witnesses and require the submission of evidence in writing.²⁶¹ Parties often engaged in elaborate schemes to postpone rulings or challenge the arbitrator’s decision.²⁶² An appeal would be taken before the College of Arbitrators, which could refer the matter to the traditional courts.²⁶³ In furtherance to this claim, Cicero and Aristotle both mentioned arbitration in words that may well point to the modern-day arbitration.²⁶⁴ They made it clear that arbitration was an alternative to the courts. Illustrating with the words of Cicero,

A trial is exact, clear-cut, and explicit, whereas arbitration is mild and moderate.²⁶⁵

Hence, implying that a party going to court expects a win-lose, whereas a party that goes to arbitration might not win everything but will not lose everything.²⁶⁶ On the contrary, in the African experience on the history of ADR, Professor Onyema argued that Dispute Resolution Processes (DRPs) of the Western African States was shifted initially from Africa to the Western states.²⁶⁷ She revealed ‘that the primary cause of these shift was foreign influences which brought - colonialism, brought with it foreign laws, litigation, state courts, foreign languages and legal systems; and the

²⁵⁶ Ibid.

²⁵⁷ Grace Umezurike, *An Appraisal of Igbo Traditional Method of Conflict Resolution* (Queens College, City University of New York 2019) 3.

²⁵⁸ Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* 8.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Moscati, *Comparative Dispute Resolution* 519

foreign religions of Islam and Christianity.’²⁶⁸ The DRPs of the West African States²⁶⁹ were then modified into the modern-day ADR processes.²⁷⁰

Hence, the similarity between the two is evidenced by how African tradition deals with disputes /conflicts. However, it is essential to point out that traditional religion and culture are intertwined²⁷¹ and was the life of an Africa in particular Nigeria in the 19th Century.²⁷²

Consequently, the concept of law and justice under the traditional method of settling a dispute is rooted in the spirit of oneness and in the concept of togetherness-Ubuntu, which connotes ‘I am because you are.’²⁷³ What this means is that they depend on each other and that is the essential ‘beingness’ of the other.²⁷⁴

Conversely, as Professor Diane Moore has pointed out, in recent years, as religion evolves and changes,²⁷⁵ so too have the traditional African religion in Nigeria where some of those supernatural beliefs have been expunged due to these two major foreign religions- Christianity and Islam.²⁷⁶ It is essential to point out that, that these traditional religions or beliefs includes juju (fetish) practices as a way of praying to their deities, which represents the images of their gods or spirits.²⁷⁷ The chief priest can do this through incantations or libation, and acts as a medium between the spirits and the people. He gets the information required by the people or answers -from the spirits or gods especially when they are facing challenges or during celebrations or just for general consultations to seek the face of their gods.

However, some cases that depict the functionality of the traditional methods of settling disputes (TAMSD) and the traditional beliefs or religion can be seen in the

²⁶⁸ Ibid.

²⁶⁹ According to Onyema, these western African States consists of “*Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Sao Tome & Principe, Senegal, Sierra Leone and Togo. Some sources, such as the United Nations, list 18 states in West Africa, with the inclusion of the island state of Saint Helena, which is a British Overseas Territory. Saint Helena. Mauritania may also be listed as part of North Africa.*” Cited *ibid* 519.

²⁷⁰ Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context' 63.

²⁷¹ *ibid*.

²⁷² *Ibid*.

²⁷³ Center for Khemitology, *Short Course on Ubuntu Philosophy* (2020) cited in Chinwe Umegbolu, *Episode 7: The Similarities between the Customary arbitration and the Modern day Arbitration* (Edublogs 2020).

²⁷⁴ Chinua Achebe, *Arrow of God* (Anchor Books, Doubleday 1969) 8.

²⁷⁵ Diane Moore, *Methodological Assumptions and Analytical Frameworks Regarding Religion Part Two* (Harvard Divinity School (Harvard MOOC edx online course 2020) 2015).

²⁷⁶ *Ibid*.

²⁷⁷ Diane Moore, 'Methodological Assumptions and Analytical Frameworks Regarding Religion Part Three ' (2015) Harvard Divinity School

following cases like *Nezianya v Okagbue* [1963],²⁷⁸ *Nzekwu v Nzekwu* [1989]²⁷⁹ and *Mojekwu v Mojekwu* [1997]²⁸⁰ which showcases the legal and customary positions and predicaments of a widow in the South-East of Nigeria which forces the widowed wife of the deceased to drink the water used in bathing the body of the deceased.²⁸¹ She is expected to die within a given time frame, but if she survives throughout the given time frame, then she has proved her innocence.²⁸² The above cases depict the belief and culture of the people, which they value and dare not reject the verdict given. It is pertinent to point out that religion still plays a major role in TAMSD. This is so because religion is still part and parcel of the life of a Nigerian.²⁸³

Equally, Akeredolu, substantiate the above mentioned view by pointing out that ‘the communal structure of traditional Yoruba societies²⁸⁴ did not foreclose the emergence of communities.’²⁸⁵ Disputes and conflicts are usually managed such that they do not degenerate into violence and armed conflicts.²⁸⁶ The timely intercession of the agba elders in resolving the disputing parties often saves conflict or dispute situations from escalating into violent situations.²⁸⁷ Thus, in the Yoruba Society or in the African communities whenever disputes arise between individuals and different parties, primacy are given to restoring the relationships.²⁸⁸ Why has this system worked and is

²⁷⁸ All N.L.R. 358 where the Court held that under the native law and custom of Onitsha, a widow’s possession of her deceased husband’s property does not wholly belong to her husband’s family but this does not make her the owner. So, she cannot deal with his property without the consent of his family. Additionally, if the husband dies without a male child, all his property (land and houses) goes to his family. His female child does not inherit it. Cited in Chinwe Umegbolu, ‘Violence against women in Nigeria ’ (2020) Wisconsin Institute for Peace and Conflict Studies 1.

²⁷⁹ N.W.L.R Supreme Court of Nigeria.

²⁸⁰ 7 N.W.L.R. 283 Court of Appeal Enugu the Court of Appeal in Enugu held that the custom of a community in Nnewi, which is in Anambra State, under which male children only inherit their father’s property, is unconstitutional. Cited in Umegbolu (n259) 1.

²⁸¹ Ibid

²⁸² Ibid.

²⁸³ For example, at the LMDC during my training as a co-mediator, I observed that during the private session with the parties. The mediators uses the party’s religion to draw a parties conscience to the inappropriateness of his / her behaviour.

²⁸⁴ People from the South-western region of Nigeria, which comprises of States like Lagos, Oyo, Ogun, Ekiti, Ondo and Osun State.

²⁸⁵ Alero Akeredolu, ‘Duel to Death or Speak to Life: Alternative Dispute Resolution for Today and Tomorrow’ (2018) 7th Inaugural lecture 8.

²⁸⁶ Ibid 8

²⁸⁷ Ibid.

²⁸⁸ Ibid.

still working till date? It is argued in this thesis that the answer is the culture and religious values of the African communities.²⁸⁹

Ikechukwu Onuoma opines that ‘in the African continent ADR already forms a part of our culture thus a constant reminder of these would help remind the lawyers and the potential users to opt for ADR.’²⁹⁰ For example, he revealed that ‘in the Nigerian culture they have the Obi’s, Baale’s, and the Emir’s who otherwise act as arbitrators over the disputes between the parties.’²⁹¹ Also, he exemplified the above submission by citing the famous book written by Chinua Achebe.

He states

We will find iconic scenes in his book ‘Things fall apart,’ references have been made to families who have been brought to the Igwe and he settled their matters.²⁹²

He emphasised that ‘as a consequence it shows firstly that the elements of the Traditional African Method of Settling Disputes (TAMSD) –the parties submit voluntarily, which is the same element overlapping with ADR, the second is that the parties would accept the terms which overlaps the ADR,’ - acceptance of the terms.²⁹³

Finally, the parties be it the kinsmen or the communities will also agree that they will be bound by the terms of that customary arbitration or settlements and sometimes in order to be bound involves some sort of oath taking in their customary rudimental arbitration and exactly this bounding nature of TAMSD flows into the same ADR now institutionalised, hence culture is key.²⁹⁴ Culture is defined as the ‘environment (i.e. countries, communities, villages and workplace) in which behaviours are either encouraged or tolerated.’²⁹⁵ On the other hand, Gabriel Idang opines that ‘culture is a sum of characters that are peculiar or associated to a people which marks them out

²⁸⁹ Center for Khemitology, *Short Course on Ubuntu Philosophy* 2021, 7

²⁹⁰ Chinwe Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?* (2020) Accessed 29th March 2021.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ Vanessa O’Shea, *Shaping your workplace Culture a Practical Guide* (Culture Shapers Publications, 2018) 16.

from other people or societies.²⁹⁶ Values are the 'beliefs that people think are important in life, whether it is right or wrong.'²⁹⁷

Additionally, the significance of values in African culture is seen as an inheritance that is passed on from one generation to another.²⁹⁸ Therefore as illustrated from the cases mentioned above it shows that African culture and values can be assessed from many scopes. Thus, the traditional methods of settling disputes have worked because of those values and cultural heritage that has been imbibed from their childhood by witnessing the traditional system of operation. The underlying factor of this formal or traditional system of settling dispute is that the consent of both parties is what legitimised the entire decision, which is similar to the modern day ADR.

2.3 Alternative Dispute Resolution or a Return to Pre-colonial Initiative?

For there to be an alternative method of dispute resolution, there must necessarily be an original form.²⁹⁹ This original form was the cultural method of settling disputes before the formalised ADR came into play.³⁰⁰ Greco posited that the modern ADR revolution is not the first time that ADR has been used or practised in Africa.³⁰¹

Grande corroborated Greco statement, by stating that the alternative dispute resolution (ADR) movement has been branded as a return to a simple model of dispute settlement used in the past and in the modern non-western societies.³⁰² However, she argued that sometimes transplants are only nominal, which seems to be the case of the ADR movement.³⁰³ Firstly, the underlying assumptions of the harmonious model transplanted never existed.³⁰⁴

²⁹⁶ Gabriel Idang, 'African Culture and Values ' (2015) 16 University of South Africa Phronimon 98

²⁹⁷ Ibid 98

²⁹⁸ Ibid.

²⁹⁹ Anthony Greco, 'ADR and a Smile: Neocolonialism and the West's Newest Export in Africa ' (2010) 10 Pepperdine Dispute Resolution Law Journal 2.

³⁰⁰ Moscati, *Comparative Dispute Resolution* 519

³⁰¹ Greco, 'ADR and a Smile: Neocolonialism and the West's Newest Export in Africa ' 2.

³⁰² Idang, 'African Culture and Values ' (n251) 63

³⁰³ Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context'. 63

³⁰⁴ Ibid.

Secondly, dispute resolution in traditional societies is controlled by the ‘group-mindedness’³⁰⁵ or the group-centred structure of the legal system.³⁰⁶ Since this is lacking in the west, and if perchance this notion is accepted, it will completely change the general belief or ideology in the west because of the individual- based legal system it operates on.³⁰⁷

However, different proponents of ADR have lent their voices to the on-going debate of transplant or transfer of the African method of settling disputes and its philosophy as it relates to Nigeria.³⁰⁸ One such is Professor Emilia Onyema, who stated that before the colonial era, there were different methods of settling disputes in various communities in Nigeria.³⁰⁹ Though there were no unified or centralised States in its modern construct in these communities.³¹⁰ Thus, the idea of state-sponsored and managed dispute resolution such as litigation was unknown in these communities.³¹¹ Therefore litigation was an alternative to these African communities by their European Colonizers. Equally, Professor Nonso Okereafoezeke, observed that the ‘British colonists’ forcibly changed the face of social control and in Igbo and other parts of Nigeria by imposing English law and Justice on Nigerians.’³¹²

Consequently, litigation thrived than the private and traditional processes of dispute resolution.³¹³ Onyema opined that ‘one of the reasons for this shift was the availability of the state-backed sanctions in support of the decisions made by the state courts.’³¹⁴

From the above reasons, one can say that ADR was imported or transplanted in its modern form.

³⁰⁵ Peter Ebigbo, 'Harmony Restoration Therapy: Theory And Practice' (2017) 2 International Journal for Psychotherapy in Africa 21.

³⁰⁶ Idang, 'African Culture and Values ' (n251) 63

³⁰⁷ Greco (n280) 2.

³⁰⁸ William Idowu, 'African Jurisprudence and the Reconciliation Theory of Law ' (2006) 37 Cambrian L Rev 5.

³⁰⁹ Moscati, *Comparative Dispute Resolution* 520

³¹⁰ Emilia Onyema, *A discussion we had -from her unpublished book* (SOAS 2018) November 2018.

³¹¹ Emilia Onyema, *Rethinking the Role of African National Courts in Arbitration* (Wolters Kluwer 2018) 13.

³¹² Nonso Okereafoezeke, *Law and Justice in Post -British Nigeria Conflicts and Interactions between Native and Foreign Systems of Social Control in Igbo* (Library of Congress Cataloging -in-Publication Data 2002) 13.

³¹³ They still believe in the Igbo saying that “nwa bu nkeora” which means “it takes a village to raise a child” which is still prevalent in most communities in Nigeria. However, there are some bad aspects or disadvantages of the aforementioned like forcing a party that has been accused of a crime to prove his/her innocence. They will be forced to go to deity or shrine to swear. Additionally, a person can be ostracised for the mere fact that he/ she committed this crime and lied thereby if a man or a woman marries someone from that family then that kindred will be branded an ‘Osu’ (outcast) and they will not have anything to do with the rest of the community. The modernisation of African law eradicated some of this bad aspect inherent in the African method of settling dispute. The improved method of settling disputes could be said to be more appropriate in this aspect.

³¹⁴ Onyema, *A discussion we had -from her unpublished book* at SOAS University on 1st November 2018.

From the foregoing, the researcher argues that basic ADR had its advantages as it encourages peaceful settlement amongst parties, which is what (TAMSD)³¹⁵ is known for even to date. However, this existing account demonstrates the existence of the TAMSD and its modus operandi but has failed to dissect the various categories of the Traditional Nigeria Society in a bid to look at it more holistically to understand – whether the truism that TAMSD evolved to ADR? And how far this model of dispute resolution has thrived in the aftermath of colonisation in Nigeria.

According to Wisdom Anyim, ‘hence to understand Nigeria’s legal system, it is imperative to view through pre-colonial, colonial and post-colonial legal transition.’³¹⁶

This viewpoint is embraced in this thesis by the researcher, who asserts that there are three (3) historical categories of society in Nigeria; which are the pre-colonial era, the colonial era and the post- colonial era.³¹⁷

However, for the purpose of clarity and comparison the research has merged the colonial and post-colonial era together because they share the same features, which is litigation and ADR. First, the main element of the modern ADR and TAMSD is consent. In the same vein, ADR, whether it is court-connected or private, remains the same. What this means is that decisions of an ADR arrangement are only binding on parties who have consented to it,³¹⁸ not even the court will adopt a decision that is not voluntary from both parties. In other words, what ADR does is to organize a forum where consenting parties to a contractual agreement come together to reach an agreement.³¹⁹ That mutual agreement reached is binding on both parties.

2.4 The Pre-Colonial Era:

As stated previously in the course of this research, disputes between members of the same villages and other villages were settled or resolved with the use of traditional

³¹⁵ TAM like the traditional religion or beliefs and practices are embedded in all dimensions of culture as opposed to the assumption that religions function in discrete, isolated, private contexts cited in Umegbolu, 'Violence against women in Nigeria '1.

³¹⁶ Wisdom Anyim, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries' (2019) *Library Philosophy and Practice* (e-journal) 3.

³¹⁷ Okereafoezeke, *Law and Justice in Post -British Nigeria Conflicts and Interactions between Native and Foreign Systems of Social Control in Igbo* 12.

³¹⁸ Blake, *A Practical Approach to Alternative Dispute Resolution* 39

³¹⁹ Ibid

African method of administration of justice by the Older person, Headmen of the Neighbourhood, Ozo titled men (Chief)³²⁰ or Olubadan (traditional head or³²¹ Emir Traditional leader of the Hausa land)³²² and Umuada (Daughters of the land). In the native courts that were set up, the disputants plead their own case and can be done in default. For example, because of age, status or disability, their parents, guardians, husbands or relatives were allowed to plead on their behalf.³²³ Thus in TAMSD, lawyers and Judges were not required; it was an informal process where the powers of the administrators of justice on pronouncing the villager or a party guilty were in the hands of a traditional ruler (Eze, Igwe, Obi) who is seen as a mini god or a representative of the god as depicted in the Arrow of God³²⁴ and his ruling or judgement influenced by their traditional religion and its norms.³²⁵

Consequently, the TAMSD, though informal, still had a well-organised, influential and popular structured system that enhanced dispute or conflict resolution. However, William Idowu stated that ‘the rules governing social behaviour in traditional African societies are the very negation of law.’³²⁶ The above assertion seems not to be the case considering the fact that TAMSD was the only system of administering justice or settling of dispute during the pre-colonial era, which follows the lay down laws of the community or the village at that era.³²⁷ Moreover, this system has been passed on from the past generations or ancestors to the present generation through values, cultural orientation and beliefs.³²⁸ Therefore both regions have a well-organised and effective traditional institution to date.³²⁹

By the same token, Dr Umezurike theorizes that these traditional institutions could be likened to the present ADR.³³⁰ Besides settling disputes; they also maintain the laws

³²⁰ Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?* Accessed 29th March 2021, 1.

³²¹ Olubadan (traditional head of the Yoruba who acts as an arbitrator in many disputes) *cited in* Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* 5.

³²² Kehinde Aina, 'Alternative Dispute Resolution' *The Guardian Newspaper* (Nigeria 2008) 13

³²³ Kevin Nwosu, *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibronke*, SAN 91.

³²⁴ Achebe, *Arrow of God* 5

³²⁵ Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?* Accessed 29th March 2021, 1.

³²⁶ Idowu (n289) 6

³²⁷ Idang, 'African Culture and Values '99

³²⁸ Ibid.

³²⁹ Aina, 'Alternative Dispute Resolution' (n316) 13

³³⁰ Grace Umezurike, *An Appraisal of Igbo Traditional Method of Conflict Resolution* (Queens College, City University of New York 2019) 1.

and norms of the society.³³¹ For these reasons, it could follow through that the pre-colonial method or mode of settling disputes or conflicts is still prevalent in this present day.

To test this theory, the thesis examines two villages respectively as a case study, located in the south-eastern part of Nigeria namely: Onicha-Ado n' Idu in Anambra state and Amaofuo in Imo state. The research was conducted in Amaofuo and Onitsha respectively to get a detailed description from the monarchs on how they settle disputes. The research demonstrated why the TAMSD is still potent and effective. It highlights some of the similarities with the modern ADR.

2.4.1 Onicha-Ado n' Idu:

This is an institutional monarchy governed by the 'Obi (Traditional ruler or Igwe or King) of Onitsha' HRH Nnaemeka Achebe aka Agbogidi, who was the human resources of Shell Petroleum before he ascended to the throne.³³² He presides over the town both material and spiritual function as the sovereign king, supreme lawgiver and arbitrator. Additionally, judge as the case maybe and also execution of judgement.³³³ He is usually helped in this function by the 'Ndi ichie' who are the (red-capped chiefs). And they are about three categories of them or hierarchies because is a very hierarchical structure in terms of law given and administration in Onicha-Ado n' Idu.³³⁴

In each village there is the Diokpa (first son) who also has both a spiritual function as well as arbitration in terms of disputes. He usually does that as well with his council of the 'Umunna' (Kinsmen); let us say for instance, in the 'Egbunike clan or family', which is where the researcher hails from. They have the 'Diokpa' of the entire Egbunike Family; they also have the 'Diokpa' of the 'Umu Eju Egbunike' and each of this 'Diokpa' (first son) presides over the council of 'Umunna.'

It is argued that the 'Diokpa's are the mediators and they are impartial or neutral party

³³¹ Umezurike, *An Appraisal of Igbo Traditional Method of Conflict Resolution*

³³² Channels TV, *View From The Top Interviews Obi Of Onitsha; Nnaemeka Achebe* (2015) 1.

³³³ Ibid

³³⁴ Helen Henderson, 'Women's Roles in Traditional Onitsha Society- 'An ethnographic research conducted in Onitsha around 1960's' (1960) *A Mighty Tree Onitsha History, Kingship, and Changing Cultures* 2.

in the matter. Thus, they will preside over a meeting and then the entire male born children will come for the meeting and there the issues are discussed, each man has his voice and his votes, which is similar with the modern mediation.³³⁵ The rationale behind this is that afterwards; whatever decision taken by the 'Umunna' is now final and binding to all, however, if for whatever reason one feels that he did not get a fair hearing from the 'Umunna.' The person is free either as an individual or even as a village to take up that with the Obi (King) of Onitsha and his Ndi Ichie,³³⁶ who can be ascribed as arbitrators.³³⁷ That is why sometimes 'ana Igba akwukwo n'ime Obi' (people can take the case to the obi's court and issue to Ime Obi).

Consequently, the Obi of Onitsha depending on the type of issue might be the one to preside or 'Ndi Ichie eme', or the 'Ogene Onira' or the 'Onowo' depending on the issue.³³⁸ Once a decision is made, their decisions are binding and final which is the case with the present day arbitration³³⁹ and court-connected ADR.³⁴⁰ Apart from the finality of the judgement in arbitration, another thing they have in common with the present day parties is the power to decide who listens to their cases.³⁴¹

For example, in recent years if a young person dies in Onitsha there are not elaborate preparations for his burial. In this particular case, a family of the deceased flouted this rule and the villagers took it to their kindred. They were fined but the parties were not satisfied with the verdict and took the case to Ime obi (King's compound).³⁴² The Igwe and his 'Ndi ichie' lifted the sanction and issued a warning.

Evidently, the obi of Onitsha has the final say in disputes or conflicts and his decisions are final because he is the arbitrator 'Eme abu nso' (there is nothing he does that is an abomination so he is above approach).³⁴³ They also have the 'Umuada' (first daughters of a family) who are equally called upon to settle disputes.³⁴⁴ They

³³⁵ Aina, 'Alternative Dispute Resolution' 82

³³⁶ Channels TV (n313) 1.

³³⁷ Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?*

³³⁸ Ibid.

³³⁹ Margaret Moses, *The Principles and Practice of International Commercial Arbitration* (2nd edn, Cambridge University Press 2012) 20.

³⁴⁰ Kehinde Aina, 'The "Multi-Door Concept" in Nigeria: The Journey so Far' (*ainablankson Attorneys*, 2007) <file:///Users/chichi/Downloads/pdf_ABC.DRG_-THE-MULTI-DOOR-CONCEPT-THE-JOURNEY-SO-FAR.pdf> accessed 7th June, 11.

³⁴¹ Moses (n320) 20.

³⁴² Henderson (n315) 2.

³⁴³ Henderson, 'Women's Roles in Traditional Onitsha Society- 'An ethnographic research conducted in Onitsha around 1960's'

³⁴⁴ Ibid.

are also seen as arbitrators or mediators as the case maybe.

2.4.2 Amaofuo:

On the other hand, Amaofuo, which is an autonomous village, has their traditional setting and mode of settling disputes, to an extent similar to that of the aforementioned village. It is essential to point out that the 'Eze' (King or traditional ruler) of Amaofuo village is Professor Peter Onyekwere Ebigbo; the natural and traditional ruler of Amaofuo, (also a Professor Emeritus of Psychology, University of Nigeria) he gave an insight on the several ways of settling disputes in his community depending on the level one chooses.

Ebigbo elucidated that 'the highest level of solving disputes is the Traditional Ruler's Palace cabinet. The cabinet has nineteen (19) wards, each ward headed by an 'Ichie' and at the same time they have villages in the community.'³⁴⁵

Accordingly, a village head heads each village,³⁴⁶ in each village there is 'an oldest man' and in the house of that 'oldest man' people usually assemble to solve disputes such as land disputes, inheritance and to have a talk about the welfare of the village.³⁴⁷ At each of the levels of either the 'oldest man's obi,' the house of the 'Ichie' (red capped chief) who is the village head or at the highest level that is the palace of the traditional ruler, disputes are resolved. For example, starting from the village level, if Mrs AF or Mr AF has a land dispute or had an altercation with a member of her or his family, like her husband or vice versa, he or she has to go to their oldest man and request that he convenes a meeting of all the villagers because it is in his 'obi' (compound) that all the villagers will converge including the traditional ruler. When such a meeting is summoned, the traditional ruler honours this invitation as a 'private person.'³⁴⁸

Though respected as a traditional ruler, at such a meeting, he will not call the shots, rather it will be the oldest man who calls the shots. Depending on what the problem is,

³⁴⁵ Ibid 8

³⁴⁶ Four villages make up the community, the traditional ruler rules the community *Cited in* Onyekwere Peter Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* (2021) 28.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

if a woman quarrels with the husband as illustrated above, she will make sure that she brings her own people and all those who sympathise with her and those who can give evidence in her favour.³⁴⁹ After putting down drinks for members and ‘Oji’ (Kola nuts), which will be eaten at the venue of the dispute because, the meetings always start with the breaking of the Kola nuts. The person who convened the meeting will now lay down the person’s problems.³⁵⁰ Now the other person will ask questions and afterwards, the first party will answer.³⁵¹ The general house will also ask questions and suggest some concessions for both parties.³⁵² The second party will respond and state if he accepts the concession.³⁵³ After the person has responded, the two are sent out and the house deliberates on the problem. Under the leadership of the ‘oldest man,’ the decision will be taken.

Consequently, the deliberation carries on and verdict pronouncement will be shifted to another meeting where the final decision is taken.³⁵⁴ The important thing is that there is a lot of disinhibition, everybody presents his or her problem fully in a highly psycho-cathartic manner.³⁵⁵ In this method of presentation, people know one another and see through who is telling the truth and who is not telling the truth.³⁵⁶ At the end of the day, the person who has lost a case will be fined –either he brings a good or some wine and then he will be warned to desist from doing so or beg the other person.³⁵⁷ It is a very big honour to win a case but dishonourable not to win a case, just as the Igbo saying ‘disgrace of an old woman is worse than killing the old woman.’ Therefore nobody wants to lose a case whether a person is fined one naira (equals 0.0021pence) or a big amount of money.³⁵⁸ However, it does not matter when one has lost the case, because they have gotten to the root of the problem and even the party that has won must have made or agreed to make some concessions during the mediation process thus both parties are considered to be at the same level.³⁵⁹ It is argued herein that this is the present day hybrid process, med- negotiation.

³⁴⁹ Ibid.

³⁵⁰ Ibid 10

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Ibid 20

³⁵⁶ Ibid.

³⁵⁷ Ibid 19

³⁵⁸ Ibid.

³⁵⁹ Ibid.

Following this principle marshalled out, disputes are also solved at various other levels including the traditional ruler whose own is a little bit more serious and more widely attended. People are invited from various places, especially when a traditional ruler has a good reputation, people come from various communities to see how he solves the dispute and assent is placed on truth and justice.³⁶⁰ Thus, people rely on the tradition, there is a code of conduct or laid down tradition, and on how people behave, and how land disputes are settled.³⁶¹ Their forefathers and the ancestors have laid down ways of inheritance, land allocation, how people deal with one another.³⁶² The elderly ones are relied upon to bring forward the 'Omenala' (that is the custom of the land) and it is in this custom that people who have transgressed and people who have not transgressed -bring out the roles of witnesses.³⁶³ The role of witnesses can be seen in the modern ADR and even in litigation.

However, the role of witnesses are not important in TAMSD as the community members see through the case, and sometimes the oldest man in the community will decide that he does not want to hear from anyone again and gives the judgement.³⁶⁴ The important thing is that whoever is aggrieved embraces those who make him or her feel at home in that meeting. Usually very often, there is a consensus based on the custom. They lay down the code of doing things so when that is ascertained, they judge from compliance or for the deviation from that good conduct.³⁶⁵ People are generally happy and willing to submit to having lost a case, usually in pronouncing judgement everybody is told what he or she has done wrong and in return- will be told also what he or she has done right.³⁶⁶ Some are praised, particularly the person who is going to lose a case (that is the sandwich approach of giving feedback to someone³⁶⁷ bread-marmite-bread) and then thereafter judgement is pronounced.

Professor Ebigbo asserted, that women go for the truth, 'I won't say merciless but they are very just i.e. justice minded.'³⁶⁸ There are issues that will emerge in the community and then the men will find it difficult to settle then the women are called

³⁶⁰ Ibid.

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ Ibid.

³⁶⁴ Ibid 8

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Anne Dohrenwend, 'Serving Up the Feedback Sandwich' (2002) 9 Fam Pract Manag 8.

back, those women are called 'Umu okpu, (Daughters of the land who are married out).³⁶⁹

On the other hand, it is also important to mention the role of 'Umuada' (Daughters of the land); they also perform the same duties as the 'Umu okpu.'³⁷⁰ For example, If someone is a titled person, that is if the person has taken the 'Ozo title' (the men of honour- a role lower than the 'Ndi Ichie') such a person is expected to live honourably and is meant to keep to the rules in line with the codes as a titled man.³⁷¹

However, if such person is found to be deviating from the code of conduct lay down by them. Then the organisation of the 'Ozo titled men' will also be willing to hear the case, and can impose severe sanctions on an erring 'Ozo titled holder' who has deviated from their lofty place of honour. Notwithstanding, it is important to reiterate that the highest level of disputes solving is at the palace of the king or the traditional ruler.³⁷² To reiterate, these roles are similar, and its classification by the researcher remains the same as that of 'Onicha Ado.'

In furtherance, there is an 'Omu' (a soft part of the palm tree frond) used to settle disputes in the above-mentioned community.³⁷³ For example, if Mr Ani infringes on Mr Ede's land, then what Mr Ede needs to do is to report to the palace. The traditional ruler will approve that an 'Omu' be placed on the land in question.³⁷⁴ This act on its own signifies danger and a warning to everyone to avoid the land. Now, there is a substantial amount of fee that Mr Ede will pay, a minimum of 500 naira equivalent to 1.09-Pound sterling) to the messenger, and also pay 1,000 naira to (which is equivalent to 2.05 Pound sterling) the arbitrator that is the traditional ruler, and then the 'Omu' is placed.³⁷⁵ Mr Ani against whom the 'Omu' is placed can remove the 'Omu' by coming to the palace, paying 500 naira to the messenger and 1,000 naira for

³⁶⁹ This organisation usually meet when someone dies or when there is a wedding, they line up some cases that they will take, some disputes that they will solve, and also their role in the community is also very important.

³⁷⁰ Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 327) 2.

³⁷¹ Ibid 3

³⁷² Before moving forward to Adjudication at the palace, let me put a few facts forward. The palace is an ancient one in the sense that the traditional ruler's father the 'Ogbuenyi' (elephant killer) the 4th was buried there, his elder brother 'Ogbuenyi' the fifth was also buried there, his grandmother was buried there and several others of his ancestors, that was there, that was where they adjudicate cases both in the olden days and this present day. So the palace itself is like an oracle so anybody coming there, knows that if he or she do not telling the truth, their belief system binds them that something bad will happen to them because they are bind to tell the truth cited in Ebigbo (n327) 17.

³⁷³ Ebigbo, *Conflicts and Disputes in 'Amaofuo village'*.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

the traditional ruler so that the 'Omu' is set aside.³⁷⁶ When the 'Omu' is set aside, a day is fixed for judgment on that. People will come to the palace, both the accused and accusers and with those who support each side. They will bring five (5) cartoons of beer, five (5) cartoons of small stout, five (5) cartoons of malt and 5,000 naira equals to 10.26-Pound sterling.³⁷⁷ Mr Ani that was accused will bring all the cabinet members consisting of 'Ndi Ichies'- (chiefs) cabinet assistants and some messengers to be present at the palace.³⁷⁸ Ordinarily, in most communities, the capacity of the palace can take up to 500 people. For the above reasons, it is fair to say that this validates that the traditional religion has an influence over the TAMSD, which was earlier mentioned in this research.³⁷⁹

Finally, the traditional ruler alone will write the judgement, taken into consideration what the members of the cabinet have said and every other thing that was listed. Then he fixes a date for the judgement.³⁸⁰ The judgement is read, typed out and given to both parties.³⁸¹ Usually the word of the traditional ruler is law, if any of the parties are not willing to accept the judgement he can still go to the formal Courts, that is the Magistrates Courts or High Courts.³⁸² Also, the traditional ruler is the chief security officer of the community and also chief justice of the community but he does not replace the police, he does not replace the courts and he does not replace the government.³⁸³

During the pre-colonial era, which is an informal structure where the police, had no branches, nor were they unionized, but served mainly as messengers and guards for traditional rulers, such as Obas, Ezes, Igwes, and Emirs in their homes, families and council of chiefs' courts unlike in the present day where they are formalised and state structured. As a private police system, they performed a variety of duties ranging from guard duty, to combat, espionage and surveillance for the traditional rulers (chiefs), who paid them weekly wages.³⁸⁴ However, in some communities in Nigeria to be precise Enugu State, they still have the customary courts and even have the

³⁷⁶ Ibid.

³⁷⁷ Ibid.

³⁷⁸ Ibid.

³⁷⁹ Moore (n258) 4.

³⁸⁰ Ebigbo (n327) 25

³⁸¹ Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 26.

³⁸² *ibid* 27

³⁸³ Ibid.

³⁸⁴ Ibid.

customary courts of appeal where the appeal from the customary courts goes to, even after the institutionalisation of arbitration in Nigeria.³⁸⁵ They still practice that traditional or customary method of settling disputes, so this practice was re-introduced as the modern-day ADR to help settle matters due to the problems associated with the court system.³⁸⁶

Indeed, looking at these two villages or traditional institutions, both traditional institutions are similar to the present ADR in terms of their elements and benefits are akin to ADR processes.³⁸⁷ More so, their rulers who are well educated and are still in tune with the culture of their people and this validates the views of some scholars mentioned above, that the traditional African method of settling dispute has always had a drastic impact on all generations and will still continue to the next generation to come. In spite of religious interference and civilisation.³⁸⁸ Although some schools of thought have argued that, 'these traditional institutions in the present millennium, have relatively gone into extinction.'³⁸⁹

A. Are these Traditional Institutions still active?

On the contrary M. G. Smith contended that 'African people only know of customs instead of law.'³⁹⁰

For the following reasons, in which ever way, one chooses to interpret it or approach it, the focal point here is that in this millennium people are conversant with both customs and laws although in this context more people are more aware of litigation because there is no hoodoo surrounding it. The simple reason being that it is taught in schools while the TAMSD is fading away from the Nigeria clime because it is not taught in the schools. Though that cannot be said to be in extinction³⁹¹ because, the

³⁸⁵ Umegbolu (n254) 1

³⁸⁶ Moscati, *Comparative Dispute Resolution* 521

³⁸⁷ Ibid

³⁸⁸ Ibid

³⁸⁹ Chidera Rex Obiwuru, 'Justice and its administration in Igboland before the dawn of the present millennium' (2020) *Journal of Historical Studies* (JHS) 37

³⁹⁰ Idowu (n287) 7

³⁹¹ Obiwuru (n370) 37

customary court³⁹² still exists which uses the customs of the land to settle disputes and people still respect and abide by it.³⁹³

However, if a party decides to appeal to the higher court, which has the power to override the decision of the customary court, they are free to do so.³⁹⁴ However, most times because the people still have huge respect for the customs of the land in the same vein they still acknowledge the decisions of the customary court, and usually accept the decision made, without taking it further to the higher or conventional court.³⁹⁵

To reiterate, the Africans are accustomed to the customs of their land because of the cultural values imbibed in them from their childhood.³⁹⁶ Hence, the mind-set or belief that the custom of the land is even stronger than the 'formalised law' because of the belief that their 'chi' (gods of the land) will punish them-by bringing death or misfortune that will befall them or on their family members.

Furthermore, especially where a blood oath may have been taken before the dispute.³⁹⁷ This signifies that they have made a pact with their 'chi' (god) of the land, which is deemed as binding. Apart from the above, in most cases, the custodians of the land will impose fines or sanctions on them –though this is a lighter punishment.³⁹⁸

Additionally, those that have embraced Christianity are not left out of such practices.³⁹⁹ They still obey their customs because the custodians are deemed as the (representative of the gods and will ostracised or brand them as an 'Osu' (outcast) in the community or villages.⁴⁰⁰

Flowing from the above, the repercussion or the implication is that nobody from that village can marry from that family so there are repercussions.⁴⁰¹ Equally it is important to point out that some villages have abolished this practise in recent years.

³⁹² Customary court is an infusion of both the customary and modern legal systems, which are those practices, and beliefs that are deemed to be of good faith and essential part of social and economic system that they are treated as laws.

³⁹³ Umegbolu (n254) 1

³⁹⁴ Umegbolu, *Episode 7: The Similarities between the Customary arbitration and the Modern day Arbitration*.

³⁹⁵ Ibid.

³⁹⁶ Idang (n277) 13

³⁹⁷ Idowu (n289) 7

³⁹⁸ Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?*.

³⁹⁹ Paul Okey (Rev Canon) Enwonwu, 'Christainity and Socio-Cultural Practices in Onitsha Contemporary Society', University of Nigeria, Nsukka 2007) 142

⁴⁰⁰ Ibid 142

⁴⁰¹ Ibid.

Thus, 'Omenala' customs of the land still exists and is very much utilised but some of this practices- ('osu') are repugnant to natural justice, equity and good conscience.

Many of the practices referred to as being repugnant to natural justice, equity and good conscience were taken off or expunged from some cultures in Nigeria like the two villages stated above, these practices have been expunged.⁴⁰² For instance, in these two villages used as a case study herein. This means that these 'traditional institutions' are still potent and very relevant to date- still in use by the people wherever they find themselves. They still adhere to the 'Omenala' of their respective community.⁴⁰³

In summation, it is submitted that it is more appropriate to say that 'due to the introduction of the legal system in Nigeria' -it made the traditional system of settling dispute a bit unpopular but still effective.'⁴⁰⁴ The researcher argues 'unpopular' is a better word than 'extinction.'⁴⁰⁵ It is so much so still quite effective in settling of disputes or conflicts in Africa as exemplified above, though not so popular due to introduction of a more formalised system-litigation however, some of those features of TAMSD can be seen in the present or modernised ADR.

2.5 The Colonial and the Post –Colonial Era

Having looked at the pre-colonial era, it was decided to merge both societies because there are not many differences during the advent of colonisation and post-colonisation period. In other words, the British that colonised Nigeria tried eradicating the Traditional African Method of Settling Dispute (TAMSD) in a bid to transform Nigeria; ⁴⁰⁶ Litigation was introduced.

Thoroughly taking into consideration these eras, it would be almost accurate to state that there existed little or no difference between the colonial era and post - colonial era in form and ideology with the common goal to eradicate the TAMSD mentality and enthrone litigation, being an European ideology as the popular and accepted mode

⁴⁰² Umegbolu (n259) 1

⁴⁰³ Chinwe Umegbolu, 'In response to Obiwuru Chidera Rex article- Justice and its administration in Igboland before the dawn of the present millennium (at his request)' (2020) ResearchGate

⁴⁰⁴ Ibid.

⁴⁰⁵ Obiwuru (n370) 37

⁴⁰⁶ Okereafoezeike (n298) 12

of dispute resolution. Thus, the introduction of Litigation, formalised courts system, and a more formalised Police Unit. Thus the pre-colonial era had the traditional ruler functioning as a security officer or police.’⁴⁰⁷ Though they had the palace’s messengers who doubled up as guards or what it is known as the ‘police force’ to take away an erring villager outside to wait for his judgement, this very much clearly represent the informal police unit in this era unlike⁴⁰⁸ the colonial era where the police unit was more structured and more formalised.

Conversely, a major significant difference in these societies was that the post-colonial era witnessed the reintroduction of the formalised ADR. Certainly when the British colonized Nigeria in 1861,⁴⁰⁹ this era was a game changer in the sense that there were no more kings of Nigeria or single figure authorities.⁴¹⁰ Rather a governor general that unified the different ethnic regions and called it ‘One’ Nigeria.⁴¹¹ Thus, the traditional rulers were seen as the symbols of authority, since the colonisation of Nigeria now came under the jurisdiction of one authority, the Governor General that was accountable to the monarch in England.⁴¹² This was called the indirect rule,⁴¹³ which was a way of providing a link between the indigenous people and colonial regimes, but in reality the indirect rule separated or divided the traditional authorities from their people through their association with the colonial regime.⁴¹⁴ The imposition of the indirect rule failed woefully⁴¹⁵ in the South-eastern part of Nigeria,⁴¹⁶ due to the fact that the British government failed to understand the impact of government upon the traditional tribe settings.⁴¹⁷

On the other hand, Elias, words highlighted the new shift, which the researcher considers to be the prime pointer and essence of this chapter. He stated that:

⁴⁰⁷ Ebigbo (n327) 16

⁴⁰⁸ Ebigbo, *Conflicts and Disputes in ‘Amaofuo village’*.

⁴⁰⁹ Peter Nwankwo, *Criminal Justice in the Pre-Colonial, Colonial, and Post-Colonial Eras An Application of the Colonial Model to Changes in the Severity of Punishment in the Nigerian Law* (University Press of America 2010) 136.

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

⁴¹² ibid 136

⁴¹³ Ibid.

⁴¹⁴ ibid.

⁴¹⁵ Channels TV (n313).

⁴¹⁶ South Eastern part of Nigeria comprises of the Igbo’s from Imo state, Enugu state, Anambra State, Ebonyi State and Abia State.

⁴¹⁷ Nwankwo (n390) 18

When the British merchants could not enforce the payment of debts by their local customers in Nigeria, the British government instituted a judicial system with an appointed resident agent (British consulate) to regulate lawful trade between British merchants and their local customers in the ports of Benin, Bimbia, Bonny, Brass, New and Old Calabar, the Cameroons, and the land areas of Dahomey.” ...Consul Campbell presided over a dispute arising over the throne of Lagos between King Decemo and King Kosoko.⁴¹⁸

Following from the above, this landmarked case opened the doors of a court system in the colony of Lagos.⁴¹⁹ Going from this statement, it is evident that Nigeria embraced litigation by force due to the fact that the British instead of developing the TAMSD which emphasizes peace and harmony, they wanted something they were used to, that had punitive measures.

Hence, the westerners benefited more by settling cases through litigation.⁴²⁰ As the economy of the country began to take on a more formal structure, due to the complexities surrounding commercial transactions arising from goods and services.⁴²¹ It became imperative for a more formal system to be created so as to deal with these issues. It is believed that the authorities at the time that introduced the foundation for the emergence of court systems, adopted the principles used in their home countries. They adopted it and applied the same principles leading to the foundation of the Nigerian Judicial system and further laid the foundation for the common law.⁴²²

Against this backdrop, in this present day- the post-colonial era, the legal system is serving the citizens by administering justice and settling disputes. It is pertinent to point out the TAMSD, was a mono-option in the pre-colonial era, the same goes for the legal system during the colonial era however during the post colonial era it is not serving Nigerians due to the many problems associated with it. Though this is not only peculiar to Nigeria alone, the Chief judge of Ontario, Canada stated that,

⁴¹⁸ Nwankwo, *Criminal Justice in the Pre-Colonial, Colonial, and Post-Colonial Eras An Application of the Colonial Model to Changes in the Severity of Punishment in the Nigerian Law* 136.

⁴¹⁹ Ebigbo (n327) 136

⁴²⁰ Ebigbo, *Conflicts and Disputes in 'Amaofuo village'*.

⁴²¹ Ibid.

⁴²² Ibid 28

People attend lawyers with problems they want resolved, not problems they want litigated.” A trial is only way to resolve a case, yet a trial is the only option offered by the court-administered system. Lawyers and their clients deserve friends.⁴²³

Evidently, the above expression by the Chief Judge clearly underlined the very problem associated with litigation, which is the non-option of resolving disputes other than the mono-door litigation, which could not serve the growth in Nigeria.

The rationale behind these flows from the backdrop that theoretically, litigation is not an inefficient system of dispute resolution in itself.⁴²⁴ However, the researcher argues that the crowded dockets could be attributed to the increase in population⁴²⁵ without the increase of courtrooms or number of judicial workers, which eventually escalated delays of trials and other uncharitable vices like corruption that characterised the litigation process.⁴²⁶

In addition to the above, almost all the courtrooms in the High Court in Lagos State were built before 1983.⁴²⁷ Regrettably, only few buildings and structures have been added to the existing ones; in other words, the buildings and structures are not increasing commensurate with the increase in population. This is surely one of the major reasons that have resulted in crowded dockets and the slow pace of litigation in the regular courts.⁴²⁸ Also, the need to have more judicial bodies and revised procedures of law that can enhance access to justice is no doubt a major challenge.

As earlier pointed out, Onyema observed that Nigerians were litigious,⁴²⁹ however this assertion is disagreed with, as during the colonial era, the populous were persuaded to make use of the one-door system which leads to litigation. Given that,

⁴²³ Aina, 'Alternative Dispute Resolution'15

⁴²⁴ Nwosu (n304) 43

⁴²⁵ Alastair Leithead, 'The city that won't stop growing: How can Lagos cope with its spiralling population?' (*BBC News*, 2017) <<<https://www.bbc.co.uk/news/resources/idt-sh/lagos>>> accessed 2nd April 2020.

⁴²⁶ Discussion I had with a chief Judge at Igboere high court Lagos State after her sitting on 21st November 2021.

⁴²⁷ *Ibid*.

⁴²⁸ The researcher observed that there are twelve (12) courtrooms in the building of the Igboere courtroom. At Lagos State, which was demarcated by thin-walls, the researchers observation during court proceedings in Nigeria while waiting for a judge to interview. In summary, in this court there were about ten (10) judges in the high court and this is not enough to serve the population in Lagos State. The researcher was drenched in sweats and so were the other members of the public in there and when the judge finally appeared she had about twenty (20) cases scheduled for appearance and could only hear three cases.

⁴²⁹ Onyema (n2) 2

half of the population who were uneducated and could not read or write, had no resources except for few people from the affluent homes, like the Awolowo's and the Azikwe's, reinforcing the view that some villagers in the communities in the east still had the TAMSD to fall back on as their only option.⁴³⁰ It is pertinent to point out that during the time Onyema conducted her research in 2012, it is argued that ADR in Nigeria was just starting off; though the customary arbitration, which was codified, was still used by the people. Thus, litigation was still the only known / popular route for most Nigerians.

However, in recent times, certain remarkable reviews have been made by Lagos State to further advance access to justice, as evident in the amended High Court Civil Procedure Rules of 2019, Order 11 Rule (5).⁴³¹ Under this new law, Lagos State in a bid to considerably reduce the dockets of the courts have inserted the provision for compulsory fine or sanction in the rules.⁴³² For example, if a lawyer comes to court unprepared and for that reason the case could not go on, the lawyer will be made to pay a fine of at least 1000.00 naira equivalent to 2.10 Pound Sterling. This new practice is necessary for a speedy dispensation of justice, as it will greatly dissuade lawyers in the habit of giving flimsy excuses to frustrate or further delay a matter in court from further engaging in such despicable acts. This is in line with the review conducted by Lord Woolf to settle matters outside courts, which is through ADR route to avoid unwarranted delay.⁴³³

Going by the UN statistics on the population of Nigeria in Lagos state, it shows that population is about 14 million in Nigeria.⁴³⁴ Contrary to the UN statistics indicated above, the Lagos State Government had recently declared that its population is up to 21 million.⁴³⁵ Lagos State still has the same number of courtrooms, that was being used when the Nigerian population was just 100,000,000 with just few buildings recently added in Igbosere High court, which the researcher took time to count. Although more rooms were added but that has not been sufficient to accommodate the volume of the population, otherwise the population is moving at a geometrical rate

⁴³⁰ Ebigbo (n 327) 12

⁴³¹ High Court of Lagos State Rules Civil Procedure Rules 2019

⁴³² Ibid.

⁴³³ Chinwe Umegbolu, 'To What Extent is Arbitration a Cheaper and more Efficient Process of Dispute Resolution – in Comparison to Litigation?', Kingston University London 2014) 35

⁴³⁴ Leithead (n406)

⁴³⁵ Leithead, 'The city that won't stop growing: How can Lagos cope with its spiralling population?' 406

while the structural advancement of facilities and judicial workers are increasing in an arithmetic progression.

2.6 TAMSD Infused Court-Connected ADR

Furthermore, in the post –colonial era, the realisation that ‘one’ system (litigation) of settling dispute was not as effective and efficient as it used to be. Alas, the introduction of the ‘repackaged’ ADR, which was / is inherent amongst Traditional African Society (TAS).⁴³⁶ Africa’s came into the formal systems with the notion that their own (TAMSD) was not working for them.⁴³⁷ Thus, a return to the ‘repackaged ADR’ is actually a second coming or a second return to Resolutions Systems that are closer to their culture.

The figure below encapsulates or captures the thinking behind this, which is the TAMSD, which is inherent amongst the TAS whereas their ‘alternative’ is litigation or the adversarial system. The researcher is of the opinion that the ‘repackaged ADR’ or the ‘westernised ADR’ is an infusion with / of TAMSD.⁴³⁸ For the African Society- Nigeria to be precise, due to the fact that they never went out of their way to seek and bring ‘litigation’ to their nation, it could be said that it was coerced upon them. They were conditioned that Traditional Africa Method (TAMSD) was not good enough and this has been the mind set until the early post –colonial era, the cultural orientation begin to change in Africa,⁴³⁹ to be precise the Nigeria people are becoming more enlightened and beginning to embrace and appreciate their culture. However, since after Nigeria’s independence in 1960, they have modified the adversarial system to suit them by incorporating the ‘court-connected ADR.’⁴⁴⁰ For this reason alone, the ‘court-connected ADR’ could be regarded as a ‘legal transplant.’⁴⁴¹

Against this backdrop, this two (TAMSD and Litigation) has encountered a ‘legal infusion,’ which is now ‘part of the modes’ of dispute / conflict management or

⁴³⁶ Chinwe Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today ' (2020) 39 Resolution Institute | the arbitrator & mediator iii.

⁴³⁷ Onyema (n2)

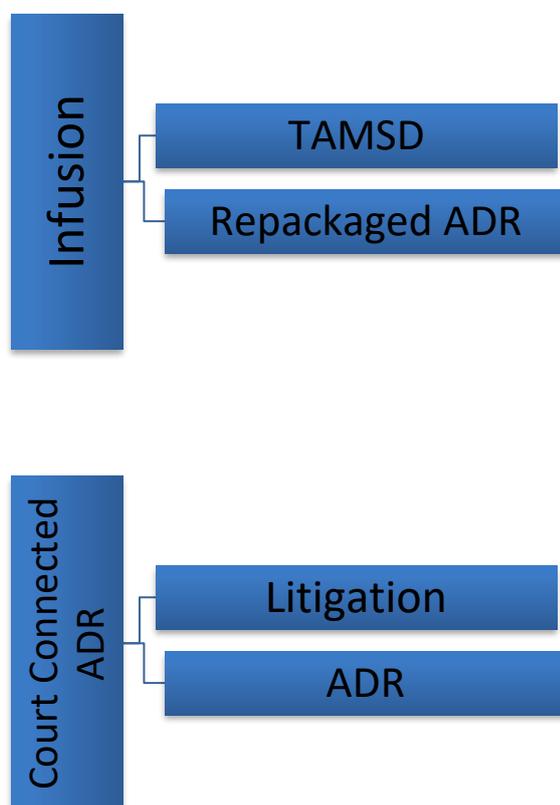
⁴³⁸ Umegbolu (n417) iii

⁴³⁹ Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today '.

⁴⁴⁰ Onyema (n2) 1

⁴⁴¹ Legal transplant connotes borrowing or outright take over of laws from one legal system to another legal system/ country but on getting there it is modified to suit their laws. The meaning of legal transplant is analysed further in chapter 5 and 6.

resolution in Nigeria.



In summary, essentially, the westerners who colonized these African countries had the opportunity to witness the benefits of the TAMSD – ‘peaceful settlement’ as opposed to the ‘power tussle’ depicted in the courtrooms or through litigation. They decided to key into this system by ‘repackaging’ it which they adopted and coined a new name - Alternative Dispute Resolution (ADR).⁴⁴²

Thus, ADR was later shifted back to Africa as a new method of settling disputes.⁴⁴³ The inference here that this ‘new’ method of dispute resolution was in any way a ‘second’ or ‘alternative’ choice is merely fictitious,⁴⁴⁴ overlooking the African value and culture of settling disputes amicably which enables living in peace as ‘one.’ Thus, from the African perspective, litigation may rightly be seen as an ‘alternative’ form and ADR or TAMSD is

⁴⁴² Umegbolu (n417) 142

⁴⁴³ Aina (n303) 82

⁴⁴⁴ Kehinde Aina, 'Alternative Dispute Resolution' (2008) The Guardian Newspaper 18

their main method.⁴⁴⁵ On its return, ADR has been formalized as one-stop-shop, classified in different units known as Arbitration, Mediation, Negotiation, Conciliation, and Early Neutral Evaluation.⁴⁴⁶ This ‘repackaged or modernized ADR’ process involves a lot of confidential documentation, trained professionals, called ‘body of neutrals’⁴⁴⁷ that are educated and have the prerequisite skills as opposed to the traditional rulers who were illiterates.⁴⁴⁸

Indeed, drawing inferences from the various schools of thoughts on ADR process from the African perspective lens of situatedness⁴⁴⁹ on how ADR returned to the West Africa⁴⁵⁰ clime. Evidently, drawing from the Africa perspective, ADR ‘evolved’ from the TAMSD to what they have as ADR in this era. Therefore, it is argued that ADR should be approached depending on one’s understanding;⁴⁵¹ hence, through the African lens ADR is their alternative thus connotes ‘African Dispute Resolution’ (ADR).⁴⁵²

2.7 What is ADR?

Alternative Dispute Resolution (ADR) refers to an entire range of processes designed to aid parties in resolving their dispute outside of formal judicial proceedings.⁴⁵³

On the other hand, Susan Blake et al defined ADR as alternatives to litigation where there is a dispute between two or more parties.⁴⁵⁴ In other words, Alternative Dispute Resolution (ADR) can be defined as a process deployed by an institution or a private individual within or outside a structured court system to resolve disputes in an acceptable informal manner facilitated by a neutral party.

It can be seen from the above analysis, that ADR is a method of settling disputes out of court between two or more parties with the assistance of a neutral.⁴⁵⁵ The

⁴⁴⁵ Ibid

⁴⁴⁶ Caroline Etuk, Obiaya, Ike, Onuma, Ikechukwu, Ivenso, Nnezi (eds), *Mediation Matters* (Obra Legal 2018) 10

⁴⁴⁷ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals’ Handbook* (2016) 16

⁴⁴⁸ Umegbolu (n417) 143

⁴⁴⁹ Moore (n256).

⁴⁵⁰ Moscati (n 248) 51

⁴⁵¹ Practice Direction on Mediation Procedure 2008, 16.

⁴⁵² On the other hand, viewing through the western ‘lens’ ADR can be referred to ‘Alternative Dispute Resolution.’

⁴⁵³ Lagos State Multi-Door Courthouse (LMDC) 2007

⁴⁵⁴ Blake, *A Practical Approach to Alternative Dispute Resolution* 5

⁴⁵⁵ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals’ Handbook* 14.

distinguishing feature that is mutual to all definitions is that it refers to processes that are outside the court system.⁴⁵⁶

Carrie Menkel- Meadow is of the view that at some early point in human history when two parties had a dispute with each other, they sought assistance from a third party.⁴⁵⁷ Thus, was born the almost universal notion of the dispute 'triad,' where some 'third party' intervention is made, either to decide who was in the wrong or to conciliate and seek a more consensual and joint resolution.⁴⁵⁸ The focal point depicted above goes to show that although ADR is also promoted for reasons of effectiveness;⁴⁵⁹ it also emphasizes on the interests of the parties rather than strict legal rights.⁴⁶⁰ As can be seen in this research, this process has more pros than litigation, because it offers a cheaper alternative and more reliable method to its users than the rigid and expensive procedures involved in the adversarial system.⁴⁶¹ So, the growth or rise in the use of the African / alternative dispute resolution mechanism in the olden days and till date has resulted in the resolution of disputes or managing disputes, maintaining peace and order in the village or in the community. However, these modern-day ADR processes include Mediation, Arbitration, Conciliation and Negotiation.⁴⁶²

2.8 Types of ADR Processes

2.8.1 Mediation

Mediation falls under the umbrella of ADR, which embraces a different range of dispute resolution processes, though non-binding and voluntary.⁴⁶³ However, there is an exception to the latter; it can be enforced and regarded as a legally binding contract if a settlement is established during the mediation process. The practice of mediation is often viewed as a new process, but it has a long history in many civilisations and

⁴⁵⁶ Blake, *A Practical Approach to Alternative Dispute Resolution* 5

⁴⁵⁷ Carrie Menkel-Meadow, 'Remembrance of things Past? The Relationship of Past to Future in Pursuing Justice in Mediation' (2004) 5 *Cardozo J Conflict Resol* 97

⁴⁵⁸ *ibid* 98

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.*

⁴⁶¹ Ahmed (n11) 73.

⁴⁶² Blake, *A Practical Approach to Alternative Dispute Resolution* 5

⁴⁶³ Penny Brooker, *Mediation Law: Journey through Institutionalism to Juridification* (Routledge, 2013) 8.

cultures. In the fifth century B.C., the Confucian view about the settlement of disputes was that optimum resolution of a dispute was achieved by moral persuasion and agreement rather than sovereign coercion.⁴⁶⁴

Theoretically, this view encouraged disputants to use mediation to reach agreements through reasonable and productive discussions with a third party instead of resorting to the adversarial process.⁴⁶⁵ The parties would have to appoint the mediator but he/she cannot make binding decisions for them but will rather facilitate their decision-making process in finding solutions to their conflict.⁴⁶⁶ Mediators are more concerned about fairness than legal rights.⁴⁶⁷ The advantage of mediation apart from voluntariness is that it provides a lot of privacy and shields the party's issues from the public.⁴⁶⁸ Also, the informal process (where the parties control their decision) is often quicker, less costly and less adversarial than litigation. In light of the above-listed merits of mediation; it comes as no surprise why the judiciary encourages mediation first before litigating in so many cases.⁴⁶⁹ The merits of this process when compared to litigation sometimes depict mediation as good and the former as bad.

However, mediation is not always appropriate and does not always produce an agreement. For example, Mr Ene that came for a mediation session at the LMDC with Mrs Ene, on realising that he might not keep his words may decide to end the session before it reaches the final stage or both parties might decide to opt-out because they feel that the decision reached was unreasonable especially cases on financial arrangements.

Correspondingly, mediation has its limitations, and may not be suitable for mediators to meditate on cases where there is an unequal bargaining power and domestic violence.⁴⁷⁰ Hyman supported the above proposition by stating that it is not their role

⁴⁶⁴ Jay Folberg, Alison, Taylor 'Reviewed Work Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation ' (1986) 84 Michigan Law Review 17.

⁴⁶⁵ Aina (n303)11

⁴⁶⁶ Ibid.

⁴⁶⁷ Parkinson (n226) 10.

⁴⁶⁸ *EWCA Civ 576*

⁴⁶⁹ Ibid.

⁴⁷⁰ Mary Hayes, Williams, Catherine *Family Law Principles, Policy and Practice* (2nd edn, Butterworths 1999) 554.

to decide who was right or who was wrong, that these decisions are for the juries, judges and arbitrators to make.⁴⁷¹ By meditating on these limitations, they cannot be seen as neutral and unbiased because they will be imposing their views or ideas on the disputants. Though mediation is aimed at securing a more constructive approach to marital breakdown and divorce.⁴⁷² Additionally, it also offers a means of managing conflict and disputes, which entail two typical styles used by the mediator. These styles are outlined and discussed below.

A. Facilitative Mediation

In the 1960s and 1970s, there was only facilitative mediation type being taught and practised.⁴⁷³ It involves the mediator structuring a process to assist the parties in reaching a mutually agreeable resolution.⁴⁷⁴ The facilitative mediator does not make recommendations to the parties.⁴⁷⁵ Instead, he /she gives his advice or opinion as to the outcome of the case. The mediator is in charge of the process, while the parties are in charge of the result or outcome. The facilitative mediator asks open-ended questions; searches for interests beneath the positions taken by parties;⁴⁷⁶ assists the parties in finding and analysing suitable routes for resolution.

Consequently, facilitative mediators want to ensure that parties come to agreements based on their accord and understanding. They hold open joint sessions with all parties present so that the parties can hear each other's point of view.⁴⁷⁷ It is pertinent to point out that the mediators in MDC in Nigeria are encouraged to use the facilitative mediation.⁴⁷⁸ However it boils down to the disputes' nature in some cases, the Mediator might prefer to employ both of them or employ one of them.⁴⁷⁹

⁴⁷¹ Jonathan Hyman, 'Swimming in the Deep End: Dealing with Justice in Mediation ' (2005) 6 *Cardozo Journal of Conflict Resolution* 19.

⁴⁷² Hayes, *Family Law Principles, Policy and Practice* 554

⁴⁷³ Zena Zumeta, 'Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation' *Mediatecom* , 1.

⁴⁷⁴ *Ibid.*

⁴⁷⁵ Mieke Brandon, Field, Rachael,, 'An Analysis of the Complexity of Power in Facilitative Mediation and Practical Strategies for Ensuring a Fair Process' (2020) 39 *Resolution Institute | the arbitrator & mediator* 33.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ Blake, *A Practical Approach to Alternative Dispute Resolution* 257

⁴⁷⁸ Umegbolu (n301) 1

⁴⁷⁹ Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?*.

B. The Evaluative Mediation:

This is also known as directive mediation; it requires that the mediator would make a formal or informal recommendation to the parties as to the possible outcome of their issues.⁴⁸⁰ Directive as the name implies means merely that the mediator structures the process and directly influences the outcome of the mediation. Thus, evaluative mediation is a process created on settlement conferences held by judges. An evaluative mediator assists the parties in resolving disputes by pointing out the weaknesses of their cases and envisaging what a judge or jury would be likely to do.⁴⁸¹

Flowing from the above, evaluative mediation in simple terms is a process, which may include an appraisal or opinion by the mediator of the pros and cons of the cases and a foreshadowing of the likely outcome.⁴⁸² Evaluative mediators are mostly concerned with the legal rights of the parties, unlike the facilitative mediation that places the need on the interests of the parties first. Consequently, evaluative mediation was carved out from the legal notions of impartiality. Evaluative mediators often meet in separate meetings with the parties and their lawyers, practising 'shuttle diplomacy.'⁴⁸³ They assist the parties and attorneys evaluate their legal position and the costs as against the benefits of rushing into a legal resolution rather than settling in mediation.⁴⁸⁴ This method of evaluative mediation emerged in court-referred mediation, lawyer's liaison with the court to choose the mediator. There is a hypothesis in this method that presupposes that the mediator has legal expertise in the practice area of the dispute. Hence, due to the relationship of the courts and evaluative mediation, and because of their comfort level with settlement conferences, most evaluative mediators are lawyers.

Taking Nigeria into context, mediation has been a standard method of settling disputes. A typical case study is among the Igbo's; they are around 370 ethnic

⁴⁸⁰ Zumeta (n454) 1

⁴⁸¹ Zumeta, 'Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation'

⁴⁸² Ibid

⁴⁸³ Diane Cohen, 'Evaluative Mediation' (*Mediate.com*, 2011) <<https://www.mediate.com/author/Diane-Cohen/1019>> accessed 20th September 2019.

⁴⁸⁴ Ibid.

nationalities living in Nigeria's thirty-six states and capital territory, Abuja.⁴⁸⁵ The Igbos are found in Abia, Anambra, Ebonyi, Enugu, and Imo states, and the eastern fringes in Delta State, parts of Akwa Ibom, Bayelsa, Benue, Cross River, Kogi and Rivers states.⁴⁸⁶ In 1967, the above ethnic group in the southeast were marginalised or sidelined by the other parts of Nigeria and they decided to form their own country itself called Biafra.⁴⁸⁷ The war was fought to prevent the secession and force this ethnic group back to the country Nigeria.⁴⁸⁸ All efforts made by various states to mediate between the adversaries proved ineffective.

Consequently the introduction of the unofficial mediators that played an essential role during the bitter encounter between Nigeria and Biafra in 1966-1970.⁴⁸⁹ Unofficial mediators or go-between did provide a channel of communication although the Quaker mediators were not successful.⁴⁹⁰ However, they reduced the tension that was caused by a lack of trust from both sides, and this paved the way for what is called the almost 'miraculous mood of reconciliation.'⁴⁹¹ As indicated on here the role of the unofficial mediator cannot be overlooked because of their lack of reliance on government or the non-interference of the government has provided more room for parties to trust and confide in them, which is the attractiveness of mediation. This traditional mediation is still taking place, and with the help of technology, parties can even be summoned wherever they reside to respond to their cases.

A typical example is a recent case reported at Okwuolisa Traditional Supreme Council Obosi (Ancient Traditional Supreme Council) by *Chief Emenike Mgbenena (Oboli Obosi) v Nze Okey Ogbazi* (Ezeakaibe Ugeji).⁴⁹² The complainant Chief Emenike Mgbenena made a complaint that Nze O. Ogbazi insulted him at a meeting of Obosi forum held in Nze Ezeakaibe's house (his house in London).⁴⁹³ Nze Ogbazi attempted breaking Chief E. Mgbemena's head with an empty bottle of brandy. He also repeatedly called him by his name Emenike Mgbemena instead of calling him by

⁴⁸⁵ Okereafoezeke, *Law and Justice in Post -British Nigeria Conflicts and Interactions between Native and Foreign Systems of Social Control in Igbo* 12.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ Okolie Ofobuike, *Nigerian Government and Politics the Changing Scene* (3rd edn, John Jacob's Classic 2007) 37-38.

⁴⁸⁹ Ibid.

⁴⁹⁰ Donald Rothchild, 'Unofficial Mediation and the Nigeria-Biafra War' (1997) 3 *Nationalism & Ethnic Politics* 37

⁴⁹¹ Adam Curle, 'Mediation During the Nigerian Civil War' 1967-70) accessed 4th June 2019.

⁴⁹² *Chief Emenike Mgbenena v Nze Okey Ogbazi* Traditional Supreme Council Obosi

⁴⁹³ Ibid.

his chieftaincy titled name (Oboli Obosi).⁴⁹⁴ They both exchanged words and were calmed down by the remaining members present. However, the defendant was asked to bring a bottle of brandy, which he presented to the oboli obosi, and he prayed over it, and they hugged and shook hands.

The defendant believed that the matter was over however the Traditional Supreme Council Obosi summoned him, and he responded via phone to put up a defence from his home in London and judgement was passed by the council heads known as the 'Isi Muo' in Igbo (Spirit head).⁴⁹⁵ They ruled that the case lacks merit and ruled to the defendants' favour. However, due to the oral appeal of Nze Okey Ogbazi that he will not like to stage a case with Chief Mgbemena. The 'Isi Muo' of Obosi, advised Nze Okey Ogbazi to bear and take any person of his choice with a bottle of brandy to pay a visit to the complainant so that final peaceful reconciliation will stand for both and peaceful representation of Obosi Kingdom will therefore continue.⁴⁹⁶

The main point of this case like earlier pointed out in this research, is that the traditional mediation or customary arbitration is still very much alive in Nigeria and very similar to ADR ⁴⁹⁷ and people still recognise the council heads. Thus, any decision given by them is binding. That is why the defendant responded and obeyed the rulings given because he would not want his family and himself to be ostracised from the meeting and the community.

2.8.2 Conciliation

Conciliation is another ADR process, which has diverse understandings in varied settings. Defined as a procedure where the conciliator (an impartial third-party) provides a non-binding recommendation or occasionally, a binding decision or finding that often concerns the factual or the legal issues in dispute⁴⁹⁸ and what the conciliator considers to be the appropriate resolution of the dispute⁴⁹⁹ to help parties resolve their disagreements. The conciliator makes the finding or recommendation

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid.

⁴⁹⁶ Ibid.

⁴⁹⁷ Aina (n321) 14

⁴⁹⁸ Michael Shane, 'The Difference between Mediation and Conciliation' (1995) 50 *Dispute Resolution Journal* 31

⁴⁹⁹ Henry Brown, Arthur, Marriot *ADR: Principles and Practice* (3rd edn, Sweet & Maxwell 2011) 156.

jointly in the presence of the parties.⁵⁰⁰ However, it is essential to point out that conciliation and mediation are used interchangeably.

Lending credence to the above viewpoint is Professor Lon Fuller, repeatedly used mediation or conciliation as one or the other.⁵⁰¹ Professor Sander towed the same line, however, he argued that there is a slight difference between the two-conciliation pertains to the ad hoc method of enabling communication between parties in discord.⁵⁰² Whereas mediation is more of a formalised process in the sense that parties will meet first which is called the joint meeting and subsequently meet separately.⁵⁰³

Susan Blake et al., view corroborated or aligns with the above statement she stated that conciliation is virtually identical to mediation; there is no international or national consistency over the terminology so the terms 'conciliation' and 'mediation' can be used to describe the same process.⁵⁰⁴ In England, mediation is the term frequently used to describe ADR by third-party facilitation in civil and commercial disputes.⁵⁰⁵

In some types of conciliation, the conciliator may express an opinion on the merits of disputes and may usually proffer a solution if the parties cannot put forward proposals themselves to resolve the matter. In other words, conciliatory sometimes adopt a purely facilitative role.⁵⁰⁶ Against the backdrop, the researcher reflects that conciliation is closely related to evaluative mediation and in other circumstances depending on the conflict or dispute at hand relates to the facilitative mediation.

It is essential to point out that the statutes, which prescribe and regulate conciliation in Nigeria, i.e. the Arbitration and Conciliation Act and the Trade Disputes Act do not define this process.⁵⁰⁷ The National Industrial Court ADR Centre, which makes provision for the use of conciliation in resolving trade disputes, does not also describe this process.⁵⁰⁸ Conciliation, which takes place under the court's direction, in contrast

⁵⁰⁰ Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 31

⁵⁰¹ Lon Fuller, 'Mediation, Its Forms and Functions' (1971) 44 *Southern California Law Review* 125

⁵⁰² Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 69.

⁵⁰³ *Ibid* 69

⁵⁰⁴ Blake, *A Practical Approach to Alternative Dispute Resolution* 321

⁵⁰⁵ *Ibid*.

⁵⁰⁶ *Ibid*.

⁵⁰⁷ Olakunle Orojo, Ajomo, Ayodele 'Law and Practice of Arbitration and Conciliation in Nigeria ' (1999) Mbeyi & Associates (Nigeria) Limited 5.

⁵⁰⁸ Umegbolu, 'To What Extent is Arbitration a Cheaper and more Efficient Process of Dispute Resolution – in Comparison to Litigation? 25.

to mediation, is an independent, settlement-seeking process that provides a resource for the courts in suitable cases.⁵⁰⁹ For example, the parties will have in writing before the conciliation process that any solution put forward by the conciliator will be binding on them. Conciliation is attractive because in some cases, like place disputes, it saves cost, time and the privacy of the parties is also well looked after; thus, it becomes appealing to parties because of its effectiveness.

Conversely, if the agreement is not signed, the parties are not bound by the agreement reached in the process, so this stands as a pitfall for conciliation and mediation because their outcome is not predictable unlike in litigation and negotiation where their result can be anticipated in most cases. However, in recent years, this position has changed due to the introduction of the Court-Connected ADR (Multi-Door Court House) parties can get their Terms of Agreement (TOA) enforced as a consent judgement and as such becomes binding and final.⁵¹⁰

2.8.3 Negotiation

Negotiation is a relatively informal process involving the discussion of some or all the issues in a case to resolve them on agreed terms.⁵¹¹ On the other hand, Professor Frank Sander simply captured Negotiation as “Communication for the purpose of persuasion.”⁵¹²

The sentiments stated above symbolises that the process may be quite simple or may involve substantial use of strategy and tactics. Negotiation may be carried out in writing by email or letter depending on the kind of issues (few or simple).⁵¹³ If the negotiation is carried out face to face; this often happens at the lawyer’s office or at a location that is neutral and appropriate, both parties had agreed.⁵¹⁴

⁵⁰⁹ Parkinson (n226) 3.

⁵¹⁰ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals’ Handbook* 31

⁵¹¹ *ibid* I25.

⁵¹² Aina (n125) 3

⁵¹³ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals’ Handbook* 9

⁵¹⁴ *Ibid*.

Theoretical, lawyers are involved when negotiation is used to settle a legal claim. One of the primary advantages of negotiation is that it always seeks to reach an agreement without arguing over positions, which produces unwise outcomes, but rather, the lawyer focuses on the interest, which leads to a win-win situation.⁵¹⁵ Thus a negotiator who is usually a lawyer can act on behalf of his client, with whose consent, he can then precede to negotiate or bargain on their behalf and can reach an agreement in view of where the client's interest lays.⁵¹⁶ This process is private, confidential, flexible, user friendly and in alignment with the court.⁵¹⁷

Consequently, negotiation has been proven to be cost-effective because it can end or prevent conflict by making sure that both clients or parties get a minimum amount of what they want.⁵¹⁸

2.7.4 Arbitration

Onyema pointed out that 'quite a lot of Arbitration lawyers like herself will not consider Arbitration as falling within ADR because it is a process wherein a third party decides or makes a decision for the parties, unlike Mediation or Conciliation where the third (3rd) party supports the parties to decide for themselves.'⁵¹⁹ Thus a pertinent question that emanates from Onyema's view 'is arbitration within the remit of ADR'⁵²⁰? The researcher decided to discuss this question at the resolution institute member connect open forum⁵²¹ and received answers for and against the aforementioned debate.⁵²²

Conversely Donna Ross pointed out that

⁵¹⁵ Aina (n125) 3

⁵¹⁶ Ury Roger Fisher, William, *Getting to Yes: Negotiating an agreement without giving in* (Random House Business Books 2012) 9.

⁵¹⁷ Orojo (n486) 7

⁵¹⁸ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* (n428) 18

⁵¹⁹ Chinwe Umegbolu, *Episode 15: Careers in ADR with Professor Emilia Onyema* (Resolution Institute | member connect 2021) accessed 13th March 2021.

⁵²⁰ Resolution Institute, 'Welcome to Member Connect' 2021)

<<<https://memberconnect.resolution.institute/communities/communityhome/digestviewer/viewthread?>>> accessed 25th November 2021 Cited in Chinwe Umegbolu, *Is Arbitration within the remit of ADR?* (Edublogs 2021)

⁵²¹ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 19

⁵²² *ibid.*

Whether ADR is additional, appropriate or alternative - or amicable, hence the reference by Onyema to the fact that ADR does not include arbitration, which is why some call the whole spectrum Arbitration and ADR - it should include all methods outside of litigation, including negotiation.

As to agreements for expert determination, I have always seen included the expert is not an arbitrator. Whether the issue to be determined is a contractual or legal one does not change the legal status of the neutral. ED, as it is inaptly abbreviated, is not governed by the CAAs. This goes beyond the mere binding nature of the ultimate determination.⁵²³

On the other hand, John Woodward elucidated⁵²⁴

This is an interesting question, which has certainly occupied the minds of dispute resolution theorists over time. It would appear from the evidence that the official court view is that arbitration is encompassed as a form of ADR. Paragraph 8 of the Local Court of New South Wales (NSW) Practice Note Civ. 1 speaks of referral to compulsory arbitration under the heading of “Alternative Dispute Resolution.” Other NSW Court practice notes speak of “referral to arbitration or some other form of ADR.” Outside the court system arbitrations, although comprising a determinative rules based process, nevertheless involve an element of disputant choice. For example, in many cases the parties either agree to arbitrate their dispute or they have agreed pursuant to some earlier contract that they will arbitrate any dispute. They agree on the selection and appointment of an arbitrator and they usually agree on the time and place of the arbitration. Few of these options are available in a strictly litigated environment. Notwithstanding all of this, my own view is that arbitration is not alternative dispute resolution. It is litigating in another room. This is because, ultimately, it is a rule-based

⁵²³ Discussion board at the Resolution institute member connect open forum in response to the Podcast interview conducted by the researcher with Professor Onyema *cited in Umegbolu, Episode 15: Careers in ADR with Professor Emilia Onyema*

⁵²⁴ *Ibid*

determination of a dispute by a third party who considers the dispute on the basis of evidence and makes a binding determination. The parties themselves play no part in the decision making process except by way of evidence in which they attempt to persuade the decision maker of their case. The decision maker merely makes a determination on the evidence and provides reason for the determination. In my view that is not ADR. My own arbitration practice comprises receiving cases from the court in respect of which I am expected to make procedural directions, hear the case, provide reasons for the award and return the file to the court. There is no voluntary component of the process at all (except perhaps to have the matter re-heard before the court if they are dissatisfied with my decision).

On the contrary, Gary Born revealed that there is a 'general agreement on what the term arbitration means with some variations.'⁵²⁵ But virtually all accept that arbitration is a process where parties consensually submit a dispute to a non-governmental decision-maker, selected by the parties to render a binding decision resolving a dispute by neutral, adjudicatory procedures allowing each party to present its case.⁵²⁶ Though different scholars, judges and institution have approached it in different ways, it does not alter the core element of the mechanism's nature. In *General Motors. v Pamela Equities Corporation 1998*,⁵²⁷ Justice Dennis stated that

Arbitration is the reference of a particular dispute to an impartial third person chosen by the parties to a dispute who agree, in advance, to abide by the arbitrator's award issued after a hearing at which both parties have an opportunity to be heard.⁵²⁸

Additionally, Section 6 of the Arbitration Act of 1996 defined arbitration as:

An agreement to submit to arbitration present or future disputes-whether they are contractual or not.

⁵²⁵ Gray Born, *International Arbitration: Law and Practice* (Wolters Kluwer Law & Business 2012) 4.

⁵²⁶ Ibid.

⁵²⁷ *146F.3D242*

⁵²⁸ Ibid.

It is essential to point out that in the case of *Scott v Avery* [1843–1860]; the court gave their interpretation of arbitration as a contract between two parties that have resolved to submit any dispute between them to arbitration before taking any court action that is if the wording has been phrased reflecting the earlier but if not then the courts is not exempted.⁵²⁹ Orojo, gave a comprehensive definition of Arbitration as:

An adjudicative private dispute resolution mechanism adopted by disputants, with private individuals making binding decisions that may be recognised, enforced and executed through the machinery of a sovereign state.⁵³⁰

Flowing from the above, arbitration is a mechanism for resolving disputes between legal entities in business transactions or two or more individuals in business. The availability of this process to persons or entities that have a subsisting dispute that requires resolution by a neutral third party, the arbitrator.⁵³¹

Therefore, transactions between different countries and corporations have created some advantages and challenges in arbitration.⁵³² It is vital to point out that these challenges relate to disputes and conflict, which occurs when two or more parties to an international commercial agreement fail to adhere to the resolution reached. To curb these disputes, parties to international business transactions or contract, rather than resort to litigation, which is the traditional means of settling disputes, would now mostly resort to arbitration because of the party autonomy, which is the main advantage of arbitrating.⁵³³ In making their arbitration agreement valid, the parties would insist on the insertion of an arbitral clause.⁵³⁴ This would provide a reference point in the event of a contractual dispute, which would direct the parties to the arbitral process.⁵³⁵

This is grounded in the perception that an arbitral proceeding is a more efficient way of resolving international commercial disputes.⁵³⁶ Although the English Arbitration

⁵²⁹ *All E.R. Rep. 1 HL*

⁵³⁰ Onyema, *Rethinking the Role of African National Courts in Arbitration* (n292) 5.

⁵³¹ *Ibid.*

⁵³² Orojo (n486) 12

⁵³³ Umegbolu (n414) 34

⁵³⁴ Article II (1) New York Convention

⁵³⁵ Dayton, 'The Myth of Alternative Dispute Resolution in the Federal Courts '892

⁵³⁶ Julian Lew, Loukas, Mistelis, Stefan, Kroll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 3.

Act did not expressly define arbitration, however, it sets out clear statements of the principle of what arbitration means in Section 1 of the Arbitration Act 1996 provides that

The object of arbitration is to attain the fairest solution of disputes by an impartial tribunal without unnecessary delay or expenses.⁵³⁷

It is imperative to point out that from the above section that the Arbitration act has indicated that parties can easily access arbitration or enter into an arbitration agreement, due to the way it was designed, to help avoid acrimony. However, Onyema elucidated ‘that quite a lot of Arbitration lawyers like herself will not consider Arbitration as falling within ADR because it is a process wherein a third party decides or makes a decision for the parties, unlike Mediation or Conciliation where the third (3rd) party supports the parties or the disputants to decide for themselves.’⁵³⁸

For instance, once a party enters an agreement to arbitrate, he or she cannot decide to opt-out individually, because once a decision is taken by the tribunal the parties have agreed that by going into arbitration they will be bound by the expert’s decision.⁵³⁹ Additionally, the States regulate litigation and Arbitration and their outcomes are also referred through coercive mechanisms of the state.

According to Onyema, these tensions and competition between the national courts and arbitral tribunals can be resolved, by interrogating their harmonious co-existence within the same judicial space.⁵⁴⁰

Similarly, Francis Botchway is of the same view; that this can be fixed ‘if there were clear and authoritative rules that indicate the structure of the relations between both systems.’⁵⁴¹ However, no structure exists at the moment; it is imperative to explore other means to achieve the desired co-existence of both mechanisms.⁵⁴² Theoretically, arbitration is one of the most used alternative methods of settling

⁵³⁷ Section 1 Arbitration Act 1996.

⁵³⁸ Umegbolu, *Episode 15: Careers in ADR with Professor Emilia Onyema 1*.

⁵³⁹ Scottish Civil Justice, 'Access to Justice Literature Review: Alternative Dispute Resolution in Scotland and other jurisdictions' 2014) <<https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-publications/literature-review-on-adr-methods.pdf?sfvrsn=2>> accessed 26th March 2021.

⁵⁴⁰ Onyema (n292) 5

⁵⁴¹ Onyema, *Rethinking the Role of African National Courts in Arbitration 6*

⁵⁴² Ibid.

disputes due to its flexibility, cost efficiency, and its private nature.⁵⁴³ From the above definitions, parties to an international agreement must agree before any disputes arise to arbitrate by inserting an arbitral clause in their contractual agreement before a third party (the arbitrator) can be summoned to decide. However, if they do not have an arbitration clause in their contract, they can make a submission agreement after a dispute has arisen.⁵⁴⁴

Furthermore, it is clear that arbitration is a process where parties agree to give up their rights to have their disputes resolved without the interference of the national court.⁵⁴⁵ Hence, parties have created their private system of justice.⁵⁴⁶ Subsequently, this private system of resolving disputes entails some elements that make it more attractive than litigation. And these elements are as follows, it is consensual and neutral, it is private and confidential, the procedure is binding and res judicata (i.e. once a case has been adjudicated by a court of competent jurisdiction then the matter cannot be decided on again). It maintains cordial relationship between parties; it reduces cost and saves time. This has contributed to more and more government parastatels and NGO's from different jurisdiction like America and Nigeria injecting ADR into their judicial system to help decongest the court dockets.

However, underneath the pros of arbitration, it has its cons and these boarder's on enforceability, issues of efficacy and cost-effectiveness especially in arbitration and mediation when compared to the old adversarial system of settling disputes-litigation. Furthermore, in recent years, arbitration has become as expensive as litigation, thus mediation is fast proving to be increasingly and widely used than arbitration.⁵⁴⁷

2.8.5 The Advantages and Disadvantages of ADR

Mediation in recent years has become increasingly ubiquitous as an attractive primary means of dispute resolution in major commercial contracts (domestic and cross-

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid.

⁵⁴⁶ Ibid.

⁵⁴⁷ Kingsley Napley, 'A global trend towards mediation: views from lawyers in 13 countries' (*Dispute Resolution Law*, 2014) <<https://www.kingsleynapley.co.uk/insights/blogs/dispute-resolution-law-blog/a-global-trend-towards-mediation-views-from-lawyers-in-13-countries>> accessed 9th March 2020

jurisdictional), because it is deemed as more flexible, less legalistic and more forward-looking approach to that offered by litigation or arbitration.⁵⁴⁸

Recently corporations and private persons who are fast joining the bandwagon of inserting mediation into their contractual agreements as the primary dispute resolution due to its recognised pros in terms of speed, cost, efficiency and promotion of win-win, are highly inclined to hire a trained mediator who is an expert in that area of dispute and who can communicate effectively.⁵⁴⁹ It is apt to point out that mediation is voluntary and non-binding and very much a private dispute resolution, hence in most cases mediation can not take place unless the parties agree to take part in the process, though in some jurisdiction (particularly Nigeria) as depicted in this chapter, parties are encouraged to take part in mediation.

Similarly, party autonomy is also a cardinal principle in Mediation and the rest of ADR processes.⁵⁵⁰ It comes just before or at the very early stages of the mediation process during the general sessions where the parties and their counsels are in attendance. The mediators always make it clear to the parties that mediation is party driven that the parties have full autonomy during the opening session. Also, mediation is more cost-effective than other dispute resolution; the timeliness in disposing of the dispute resolution through ADR is a tremendous advantage over litigation.⁵⁵¹ However, the full autonomy in mediation is that parties are not influenced by the mediator to settle in a particular way and then he or she has the autonomy to make concessions or compromise.⁵⁵²

Additionally, he or she alone can sign the terms of settlement (TOS) or can appoint another person like a lawyer to write the TOS for him / her but then the party autonomy reveals itself in the sense that the party at the very long run takes full responsibility for the Terms of Settlement.⁵⁵³ However, some critics of mediation have doubted if mediation is all that rosy, as propounders of ADR has depicted it to

⁵⁴⁸ Alero Akeredolu, 'A Comparative Appraisal of The Practice and Procedure of Court-Connected Alternative Dispute Resolution in Nigeria, United States of America and United Kingdom', University of Ibadan 2013) 79

⁵⁴⁹ Mike Whitehouse, 'Regulating civil mediation in England and Wales: towards a 'win-win' outcome' (2017) University of Hull 2.

⁵⁵⁰ Gary Born, 'Keynote Address: Arbitration and the Freedom to Associate' (2009-2010) 38 Ga J Int'l & Comp L 16.

⁵⁵¹ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 31

⁵⁵² Ibid.

⁵⁵³ Ibid.

be; as they claim that mediation places compromise or concession ahead of justice.⁵⁵⁴

One of such critics is Owen Fiss, who argued as follows:

Settlement is for me the civil analogue of plea-bargaining: Consent is often coerced; someone without authority may strike the bargain; the absence of a trial and judgment renders subsequent judicial involvement troublesome; and although dockets are trimmed, justice may not be done. Like plea-bargaining, settlement is a capitulation to the conditions of mass society and should be neither encouraged nor praised.⁵⁵⁵

The above statement have engendered considerable debates, for both and against and to some extent mirrored in the views of Genn and Meadow, first, Prof Genn posited that:

Mediation is not about just settlement, it is just about settlement⁵⁵⁶ on the contrary, Meadow suggested that the 'demise of the adversary system of trial' is a continuing evolutionary development of our Anglo-American legal system... that the phenomenon of the 'vanishing trial'⁵⁵⁷, is not necessarily bad. If litigants and their lawyers are choosing other processes, we must examine why and observe.⁵⁵⁸

Looking at the aforementioned statements, beginning with the last statement of Meadow, though she might not have stated settlement but the undertone in this statement aligns with the statement by Genn, who is not in support with the statement made by Prof Fiss, as his statement implies that when parties come to settle through ADR, they come with the 'settlement mind set,' that is why they discard any ideas of legal entitlements and bargaining over positions during their settlement but rather they focus on problem-solving which most times result in win-win outcome.⁵⁵⁹ For example, where a conflict between husband and wife is brought before ADR system with one of the spouse wrong and the one that is right; will take maximum benefits of

⁵⁵⁴ Owen Fiss, 'Against Settlement' (1984) Yale Law School 1075

⁵⁵⁵ Ibid.

⁵⁵⁶ Joshua Rozenberg, 'Dame Hazel Genn warns of 'downgrading' of civil justice' 2008)accessed 25th January 2020.

⁵⁵⁷ Carrie Menkel-Meadow, "Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve, Current Legal Problems" (2005) ResearchGate 86

⁵⁵⁸ Fiss, 'Against Settlement' 1075

⁵⁵⁹ Chinwe Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today ' (2020) 39 (1) Resolution Institute | the arbitrator & mediator Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today ' 144-145.

the outcome of the judgement as it is the usual procedure under the adversarial system; however most times, the spouse will proceed to negotiate that their marriage or relationship be restored while still interested in living peacefully with the other spouse under the same roof, and would not want to bargain over positions rather will exhibit the 'let us settle mind-set', that is 'let by gone, be bygone.'

In other words, settlement emphasizes the concept of 'waiver of right,'⁵⁶⁰ what this means is that most parties just want to achieve peace or find closure. However, so far this is done within the ambit of the law that is parties were not coerced or were not under duress to settle or sign the Terms of Settlement (TOS).⁵⁶¹ It is imperative to point out that parties are allowed to bring a lawyer, if they so wish and moreover in this decade, it is crystal clear that disputants on the matrimonial subject⁵⁶² or any kind of dispute do not bargain in a vacuum. They either consult a lawyer or read about the position of the law before coming for the private settlement.⁵⁶³ Hence, the bargaining abilities of the parties are somewhat guided or based on their consciousness of the position of the law.⁵⁶⁴ So, it suffices to say that when divorcing parents reach an accord over the division of family wealth and custodial prerogatives on their own, they do so by bargaining in the shadow of the law.

The reverse is the case, in trial courts, as they are more interested in position, where a party who is on the right is given what they think they deserve under the law and the wrong party is left in agony. That is what is called win-lose approach.⁵⁶⁵

In other words, though there are some cases, which are well suited to litigation, and not well suited for ADR, however the researcher embraces both Genn and Meadow aforementioned philosophy or statement without dampening their enthusiasm for ADR as the leading means of resolving disputes in the near future. However, there are occasions where mediation and other ADR mechanism are not likely effective cases

⁵⁶⁰ Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today ' (n 532) 152.

⁵⁶¹ So this can be done either by mandatory mediation or by voluntary mediation.

⁵⁶² Ibid.

⁵⁶³ Dalrock, 'Bargaining in the Shadow of the Law' 2012) <<aw<http://dalrock.wordpress.com/2012.>> accessed cited in Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today '145.

⁵⁶⁴ Robert. H Mnookin, Lewis, Kornhauser, 'Bargaining in the Shadow of the Law,' The Case of Divorce' (1979) 88 The Yale Law Journal, Dispute Resolution 963 cited in Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today '145.

⁵⁶⁵ Susan Marks, *Watching the Wind Conflict Resolution During South Africa's Transition to Democracy* (United States Institute of Peace 2000) 17.

of divorce, and when it is important to set legal precedent.⁵⁶⁶ In spite of these concerns, it seems the simple procedure of ADR is an inherent advantage when compared to litigation.

2.8.6 CONCLUSION

This chapter has scrutinized the history of ADR, what ADR means in different jurisdictions, its processes, advantages, disadvantages and contribution in terms of speed and informality to the overall court processes. This chapter has also provided a detailed evaluation of ADR in various jurisdictions and in particular Lagos-Nigeria. The input of this chapter has gone some way towards enhancing our understanding on benefits and the similarities between the Traditional African Method of Settling Disputes (TAMSD) and the modern day ADR. These similarities and benefits identified therefore, assists in our understanding of the role and development of ADR in the Nigerian judicial landscape and would further highlight the fact that these alternative processes are complementing to the mainstream litigation.

⁵⁶⁶ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 32

CHAPTER THREE: THE DEVELOPMENT OF THE LMDC INTO THE NIGERIAN JUDICIAL LANDSCAPE?

'As a litigant, I should dread a lawsuit beyond almost anything else short of sickness and death.'⁵⁶⁷

3.1 INTRODUCTION

This chapter will further evaluate on the philosophy behind the birth of the Lagos Multi-Door Courthouse (LMDC) in Nigeria and the underlying elements of the LMDC Law. It will examine inter alia, the problems that existed that the LMDC legislation sought to fix. The reason for these questions is that every law or legislation is enacted with a purpose, to solve a particular problem. Whether this philosophy was well thought through or if the reverse was the case?

Accordingly, the distinction between the constitution and the powers ascribed to the state law is worthy to note. Since this research borders on the effectiveness of the LMDC from its inception to date, the difference or contribution they have brought in terms of effectiveness. Hence the essence of effectiveness is that an organisation gets the results they want today in such a way that they can get even better results in the future.⁵⁶⁸ In view of this, it is necessary to put forward the question - has the LMDC been able to get the results set on the path of effectiveness? It is important to note that some of the fundamental requirements for successful out-of-court dispute settlement which is essential to any effective ADR provider,⁵⁶⁹ includes fairness, independence, low cost, transparency, reliability, accessibility, trustworthiness, speediness, representation and legality.⁵⁷⁰

It is imperative to point out that Emilia Onyema's work focused particularly on some of the aforementioned principles that would contribute to effectiveness of the LMDC practice, however, her work still lacks in detail. Thus, this thesis in a bid to provide details of the progress recorded so far by the LMDC, has taken it further to explore the work so far and its impact on other States in Nigeria with particular reference to Enugu State. In order to provide the desired insight and more accurate findings, the thesis would engage with more Stakeholders (judges, magistrates, lawyers, directors,

⁵⁶⁷ Eric Green, Marks, Jonathan, Olson, Ronald 'Settling large case litigation: an alternative approach' (1977) 11 Loy LA L Rev 493 1.

⁵⁶⁸ Franklin Covey, *The 7 Habits of Highly Effective People* (Signature Edition 4.0) 8.

⁵⁶⁹ Haitham Haloush, 'Online alternative dispute resolution as a solution to cross-border electronic commercial disputes', University of Leeds 2003), 119

⁵⁷⁰ Ibid.

mediators and arbitrators) through extensive interviews and the first sets of focus groups discussion with the parties.

It is from these discussions conducted that the analysis of the data obtained will be presented, in relation to the insight derived on the effectiveness and impact of LMDC which will be explored in chapter four (4).

However, this chapter focuses on answering the pertinent question raised: What were the problems that the LMDC law sought to fix? By first, looking at the details of the LMDC and its interplay with the Nigerian Legal System to decongest the courts and concludes by addressing the issues raised in the question relating to the effectiveness of LMDC. This is one of the essentials of the research. It would allow the researcher to examine in detail what the LMDC is honestly all about and whether the hype associated with its novelty lives up to the desired expectations. Is the LMDC all it is made up to be or another appendage in the wheel of the extensive judicial hierarchy?

In sum, this chapter of the thesis will focus predominantly on the development of MDC into their judicial landscape, its procedures, features and the uniqueness of its operation. Subsequently, scrutinise the effectiveness of the LMDC practice, whether it is serving its set purpose and its impact on other States in Nigeria to be precise Enugu State. However, this chapter will focus on the LMDC and will be discussing the ESMDC Laws and Regulation in more details under chapter Six (6).

3.2 Snapshot of How the Nigerian Courts Existed before the Rise of ADR in Nigeria

Consequences or aftermath of colonisation by the English left an ineradicable mark upon the Nigerian Judicial System.⁵⁷¹ Bob Osamor opines that it was the enormous impact or influence of the English law, which characterises the Nigeria Legal System.⁵⁷²

⁵⁷¹ Kevin (n 304) 91.

⁵⁷² Osamor, *Fundamentals of Criminal Procedure in Nigeria* xiv

Merely looking at the Nigeria Law or Legal System would reveal that it is patterned after the English Common Laws.⁵⁷³ Wisdom Anyim reinforces this viewpoint, where he stated

That the Nigerian legal system is carved out of the English common law legal tradition by the reason of colonisation and the attendant incidence of reception of English law through the process of legal transplant.⁵⁷⁴

Before proceeding to how the English common law is applicable in Nigeria legal system or law as evidenced above. It is pertinent to point out that Section 32 (1) of the Interpretation Act chapter 192 (1990) reads as thus: -

Subject to the provisions of this section and except in so far as other provision is made by any Federal law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January, 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria.⁵⁷⁵

The 1999 constitution under its provision section 7, which is under the second schedule to this Constitution (Part II-Powers of the Federal Republic of Nigeria) states:

That the House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters. ⁵⁷⁶

Against this backdrop, they grew a natural urge amid the commercial sector, for what may be called an antidote- a remedy other than litigation that can hasten or resolve commercial disputes rapidly while preserving business relationships. Given this, the Nigerian government in the bid to curb the problem associated with the justice system

⁵⁷³ Anyim, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries'3.

⁵⁷⁴ Ibid.

⁵⁷⁵ Laws of the Federation of Nigeria the Interpretation Act chapter 192

⁵⁷⁶ Constitution of the Federal Republic of Nigeria 1999 *cited in* Anyim, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries' p.6 -"Received English law" comprises of the common law, the doctrines of equity, statutes of general application in force in England on January 1, 1900, Statutes and subsidiary legislation on specified matters and English law (statutes) made before October 1, 1960 and extending to Nigeria, which are not yet repealed. Laws made by the local colonial legislature are treated as part of Nigerian legislation. The failure to review most of these laws especially in the field of criminal law has occasioned the existence of what may be described as impracticable laws, which are, honoured more in breach than in observance.

amended the constitution of the Federal Republic of Nigeria and Section 36 was believed to be the antidote.⁵⁷⁷

Conversely, Section 36 of the Constitution of the Federal Republic of Nigeria 1999⁵⁷⁸ guarantees a fair hearing within a reasonable time by a court or other tribunal established law and constituted in such manner as to secure its independence and impartiality.⁵⁷⁹ Furthermore, in recent years, the Supreme Court of Nigeria has overtime accorded recognition to the right of disputants to take steps to narrow down issues between them. This was well illustrated in the case of *Ogunleye v Oni*, where the court stated that:

Parties to an action can settle their matters to save the time of the court, by agreeing on those facts, not in the contest and leaving the court to decide, from received evidence based on those facts in pleading contested, the justice of the case.⁵⁸⁰

It is submitted that this leads to a cultural shift where a delay is equated with adequate justice, and speed is viewed with suspicion. Undoubtedly parties want to be fully listened to. The points made above, emphasise the clogs experienced with litigation which has brought to light more awareness of the advantages of ADR mechanisms amongst users (i.e. business associates, stakeholders and legal practitioners).

Consequently, most contracts drafted by parties started inserting provisions to resolve disputes by way of ADR mechanism e.g. mediation, arbitration or hybrid process (med-arb) this is because ADR is cost-effective as the time frame for meetings and hearings is scheduled by the parties and tribunal.⁵⁸¹

ADR is not plagued by needless adjournments and delays as seen in the courts.⁵⁸² Subsequently it follows that the shorter proceedings and flexible procedure prevents escalating costs and saves time.⁵⁸³ The courts now refer parties from magistrate court, high court and court of appeal through the Multi-Door Courthouse (MDC), which is

⁵⁷⁷ Constitution of the Federal Republic of Nigeria 1999

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid.

⁵⁸⁰ S.C. 193 cited in Anyim, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries' 93.

⁵⁸¹ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* 15

⁵⁸² Onyema (n2) 5

⁵⁸³ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* 17

attached to the High Court to explore settlement of their dispute through one of the ADR mechanisms.⁵⁸⁴ The Arbitration and Conciliation Act (of the Laws of the Federation of Nigeria 1990)⁵⁸⁵ is being adopted and modified by many states of the Federation of Nigeria, and there has been a tremendous growth in institutional and ad-hoc arbitration, and all phases of arbitration as well as an increase in the activities of institutional arbitration centres in Nigeria and other parts of Africa.⁵⁸⁶ It is without a doubt that Nigeria is equipping itself to grapple with the escalating commercial disputes resulting from the growth in business activities and an increase in international trade and investment.

3.3 An Overview of the Nigerian Courts System as it relates to ADR

It is imperative to discuss the court structure in Nigeria, as this will provide more clarity to the research and will make it easier to understand the position and impact of the Lagos Multi-door Court House (LMDC) to the Nigerian legal system, as discussed in chapter one. The court system in Nigeria is as follows:

First, is the Supreme Court (S.C) of Nigeria, Section 230 (1) of the 1999 Constitution establishes the Supreme Court (S.C) of Nigeria.⁵⁸⁷ This is the apex court and its decisions are usually final and binding.⁵⁸⁸ It is essential to point out that the Chief Justice of Nigeria heads the S.C. The Chief Justice of the Federation or his nominee would seat as the head of each matter brought before it.⁵⁸⁹

Next, in the order of precedence is the Court of Appeal.⁵⁹⁰ Thirdly, is the High Court (H.C), however they are two categories of the High Court (H.C)- the Federal High Court and⁵⁹¹ the State High Court.⁵⁹² It is pertinent to point out that the lowest of all is

⁵⁸⁴ Ibid

⁵⁸⁵ The Arbitration and Conciliation Act 1990.

⁵⁸⁶ Ibid.

⁵⁸⁷ Justus Sokefun, Nduka, Njoku 'The Court System in Nigeria: Jurisdiction and Appeals ' (2016) 2 International Journal of Business and Applied Social Science 5.

⁵⁸⁸ Francis Oniekoro, *Practice Notes and Guides on Litigation (Civil Claims and Criminal Trials)* (Chenglo Limited 2011) 12.

⁵⁸⁹ Constitution of the Federal Republic of Nigeria 1999

⁵⁹⁰ Ibid (n561) 12

⁵⁹¹ Other federal courts at the level of the federal high courts, apart from the Federal High Court, there are other special courts constitutionally established by Federal Government strictly for special topics. There are two courts called tribunals, which comprises of Election Petition Tribunal and the Code of Conduct Tribunal. Just as the names appear, the election petition tribunal handles election petitions while the code of conduct tribunal handles cases of breach of the code of conduct for government workers. There is also the National Industrial Court, courts,

the courts magistrate.⁵⁹³ Apart from the regular courts structure each state has enabling legislation that allows them to set up subordinate or complimentary courts in the administration of justice within their states.⁵⁹⁴ Each state has its own internal para-legal adjudication institutions or its own internal Para-legal adjudication institutions or offices, in Lagos the government has taken the bold step to initiate the Lagos Multi-Door Courthouse (LMDC), Office of the Public Defender (OPD)⁵⁹⁵ and Citizens Mediation Centre (CMC).⁵⁹⁶ The LMDC is connected to the Judiciary.⁵⁹⁷ These institutions as earlier stated, constitute a soft interface⁵⁹⁸ between the first and second levels of courts in Lagos. They support both the high court, the magistrate courts in Lagos State and in recent years court of appeal.⁵⁹⁹

The focal point here is that; Nigeria has two levels of courts.⁶⁰⁰ The highest is the H.C and the National Industrial Court a court with coordinate jurisdiction with the High court. Below that is the Magistrate Court and it deals exclusively with criminal matters.⁶⁰¹ However, appeals from the magistrate Court goes to the H.C.⁶⁰² Hence, the high courts are at the first (1st) level Court in the hierarchy of courts in Nigeria.

otherwise called Sharia Courts. Sharia Courts handles breach of Islamic codes in states that practice sharia. *Cited in* Justus Sokefun, Nduka, Njoku 'The Court System in Nigeria: Jurisdiction and Appeals ' (2016) 2 International Journal of Business and Applied Social Science, 22.

⁵⁹² Oniekoro (n561) 12

⁵⁹³ The State High Courts exist in each state in Nigeria, such (as Sharia Court, Customary Court and Area Courts etc.) including Abuja, the federal capital territory. Each state has its own state high court. It usually has divisions or branches, in some other parts of the states for geographical convenience. Just like the Federal High Court, the same rules of court control the various divisions. The number of divisions it may have depends on how big the state is and volume of cases the state has. In Lagos, the Lagos high Court has five branches or divisions, but same court. *Cited in* Sokefun, 'The Court System in Nigeria: Jurisdiction and Appeals '

⁵⁹⁴ The Association of Multi-Door Courthouse of Nigeria (n69) 21.

⁵⁹⁵ On the other hand, in 1999 when the new democracy began and it was discovered that there was a gap between the rich and the poor particularly in access to justice. The then administration of Senator Bola Ahmed Adegunle Tinubu through the present VP-Prof Osinbajo thought they could be an agency which could take care of the less privileged so that was what brought about the Office of the Public Defender (OPD) in Lagos State. Though it was established initially as a unit within the dept. of ministry of Justice called directorate for citizens rights but through the pro activeness of the office of the public defender and the yearnings of people it was carved out and it now stood as an agency on its own supported by law. Thus, the OPD was created in 2000 and it initially had the first law in 2003 and this was further amended in 2015. -Director 2- an Interview carried out by the researcher.

⁵⁹⁶ Finally, the CMC was established by the Lagos State government in 1999 due to lack of fairness, cost and lack of privacy of the judicial system *cited in* Taiwo, 'Archival Review of The Role of the Citizens Mediation Centre in Landlord-Tenant Dispute Resolution in Lagos State, Nigeria' 202.

⁵⁹⁸ The Association of Multi-Door Courthouse of Nigeria (n69) 60.

⁵⁹⁹ Sokefun (n220).

⁶⁰⁰ Oniekoro (n563) 12

⁶⁰¹ Oniekoro, *Practice Notes and Guides on Litigation (Civil Claims and Criminal Trials)*.

⁶⁰² The Magistrate court is one in each state, including Lagos, but has many branches or divisions across the state. These various branches are grouped into what is called magisterial districts. In Lagos there are seven (7) magisterial districts. Each headed by a chief magistrate. Each district comprises many magistrate courts. *Cited in* *ibid*.

Appeals from Magistrate Court goes to the state high court of the relevant state in Nigeria.⁶⁰³ On level 2 is the high court, apart from the federal high courts; other federal courts merely entertain restricted topics and other matters such as (sharia, tribunal and national industrial court known as labour court).⁶⁰⁴ The Court at level three (3) is the Court of Appeal (C.A)⁶⁰⁵ and the Court at level four (4) is the Supreme Court⁶⁰⁶ (S.C). It is essential to point out that Courts at level three (3) and four (4) traditionally do not entertain originating summons, as they are appellate courts by nature.⁶⁰⁷

Even the Federal high court itself has a narrow scope of jurisdiction as it is substantively for matters that are Federal in nature.⁶⁰⁸ This therefore means that only the H.C and other courts below it are available to handle the day-to-day needs of the common masses in a state. As a result of this there was pressure on the H.C and in the magistrate court to meet up with the volume of cases oozing out or coming out on a daily basis within the Lagos State.

Odoh Uruchi agrees, stating:

These tailback Rules have not allowed the Magistrates' Courts to act as a court of summary jurisdiction.⁶⁰⁹

On the other hand, an analysis of the cause list of the state judiciary in June 2010 revealed that 2,000 cases are being handled weekly by the Lagos state high courts.⁶¹⁰ Conversely, in Lagos State, the massive volume of cases that the Magistrate court, High court, and Court of appeal takes into its list on daily basis causes a lot of congestion in the courtrooms and have precipitated the emergence or the creation of the aforementioned Para-legal institutions. However, amongst the three named Para-legal institutions the LMDC stands out of them all because of its distinctive features.

⁶⁰³ Oniekoro (n563) 23

⁶⁰⁴ Sokefun (n220) 22

⁶⁰⁵ Oniekoro (n563) 12

⁶⁰⁶ Osamor, *Fundamentals of Criminal Procedure in Nigeria* 23.

⁶⁰⁷ Oniekoro, *Practice Notes and Guides on Litigation (Civil Claims and Criminal Trials)*.

⁶⁰⁸ Uche Merife, Obinna, Igwe, *Easy Guide to Civil Procedure in Nigeria (Young Lawyers' Companion)* (Taracota Nigeria Limited 2016) 17.

⁶⁰⁹ Odoh Uruchi, 'Creative Approaches to Crime: The Case for Alternative Dispute Resolution (ADR) in the Magistracy in Nigeria' (2015) 36 *Journal of Law, Policy and Globalization* 98.

⁶¹⁰ Adam Adedimeji, 'Case Glut and The ADR Option' *Daily Independent* (Nigeria 2010) 13.

3.4 The Birth and Development of the MDC in Nigeria

‘Having spent most of my early practice years in courtrooms, it became crystal clear to me that the justice system was in desperate need of an overhaul.’⁶¹¹-Kehinde Aina.

In his quest for an effective legal system to keep up with the surge of disputes, that at the time overwhelmed the courts, Kehinde Aina founded the Negotiation and Conflict Management Group (NCMG) in 1995, a non-profit private organisation.⁶¹² The NCMG embarked on a campaign to establish collaboration with Lagos State government in 2002, then adapted the Alternative Dispute Resolution (ADR), notably the Multi-Door Courthouse (MDC) as an institutional repository of ADR mechanisms⁶¹³ to encourage the resolution of dispute in an atmosphere free of acrimony and contestations.

The LMDC Act was enacted in 2007 with the Lagos Multi-Door Courthouse (LMDC) situated within Igbosere High Court in the mainland of Lagos State.⁶¹⁴ The LMDC was created in a bid to help settle conflicts or disputes amongst business partners or people in business, tenant and landlord, land disputes, and matrimonial cases; in an effort to bring about speedy and efficient administration of justice.⁶¹⁵ Several states in Nigeria have emulated the LMDC by replicating their model because of its effectiveness of delivering speedy dispensation of justice to the citizenry.⁶¹⁶

Consequently, the acceptance of ADR in the Lagos landscape indicates one thing ‘the wind of change-’which is opposed to the adversarial relationship -the win-lose.⁶¹⁷ Hitherto with the acceptance of ADR means turning an adversarial pursuit to a problem-solving partnership, which connotes a win-win⁶¹⁸ for all the parties involved. Evidence supporting this position can be found in Kehinde Aina’s statement, where

⁶¹¹ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals’ Handbook* 12

⁶¹² Atinuke Ipaye, ‘Understanding and Application of Alternative Dispute Resolution (ADR) System in the Magistrates Courts’ (Training Workshop for Newly Appointed Magistrates Organised by the National Judicial Institute (NJI)) 4

⁶¹³ Chinwe Umegbolu, ‘Episode 9: The LMDC Journey under the leadership of Mrs Adeyinka Aroyewun.’ (*University of Brighton*, 2020) <<<https://research.brighton.ac.uk/en/publications/episode-9-the-lmdc-journey-under-the-leadership-of-mrs-adeyinka-a>>> accessed 13th January 2021.

⁶¹⁴ Stone plaque at the LMDC

⁶¹⁵ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals’ Handbook* 14

⁶¹⁶ Chinwe Umegbolu, ‘The Enugu State Multi-Door Courthouse (ESMDC)’ (2019) *Mediatecom* 1

⁶¹⁷ Marks, *Watching the Wind Conflict Resolution During South Africa’s Transition to Democracy* 17

⁶¹⁸ *ibid* 17

he pointed out that ‘the new face of justice is also assuming a human countenance.’⁶¹⁹ What this means is that both the disputants or litigants and the providers will have the autonomy to be the co-creators of an expeditiously and effective process of settling dispute in a private dispute setting in the premises of the courts.⁶²⁰ Judges and the Magistrates get to refer their cases. Even with the Walk-in cases that are not referred by the Judge when the parties sign the Terms of Settlement (TOS), it is sent to the ADR Judges,⁶²¹ and they will enter it and endorse it as a Consent Judgement in court.⁶²² The above-stated submission is the reason why the LMDC is referred to as a Court-Connected ADR⁶²³ or ‘one-stop dispute resolution services’ otherwise known as ‘one-stop shop’ as Professor Feldman termed it.⁶²⁴

This simply means assimilation of ADR with the court system, where parties have the power to select other ADR methods that would be appropriate to their case,⁶²⁵ this method gives room for screening and referral⁶²⁶ and places cases and disputants to the right track that suits their disputes.⁶²⁷

According to Moore,

All knowledge claims are socially constructed and represent particular situated perspectives.⁶²⁸

This statement aligns or is in alignment with what Aina described as the frustration⁶²⁹ he faced with the Nigerian courts at five (5) years old in legal practice and a partner in the law firm of Aina Blankson & Co. as head of litigation.⁶³⁰ Aina stated:

Those short glorious years were for the most part spent in courtrooms, a place of passion and great delight but very little satisfaction. It was my view then (and still is) that access to Justice means much more than access to the courtroom; access to justice means providing opportunity

⁶¹⁹ Aina (n303) 82

⁶²⁰ Aina, 'Alternative Dispute Resolution'

⁶²¹ Is a High Court Judge that the Chief Judge of a state has appointed to oversee all matters sent to the MDC

⁶²² Umegbolu, 'Episode 9: The LMDC Journey under the leadership of Mrs Adeyinka Aroyewun. '

⁶²³ Ibid.

⁶²⁴ Mark Feldman, “One-Stop” Commercial Dispute Resolution Services: Implications for International Investment Law. In: Chaisse J., Choukroune L., Jusoh S. (eds) *Handbook of International Investment Law and Policy*. (Springer, Singapore 2020) 2

⁶²⁵ Edwin Obimma Ezike, 'Developing a Statutory Framework for ADR in Nigeria' (2011-2012) 10 Nig J R 248

⁶²⁶ Practice Direction on Mediation Procedure 2008, 3.

⁶²⁷ Gérardine Meishan Goh, 'Dispute Settlement in International Space Law: A Multi-Door Courthouse for Outer Space ', Leiden University 2007) 8.

⁶²⁸ Moore (n258) 82.

⁶²⁹ Aina (n321) 4

⁶³⁰ Aina, 'The “Multi-Door Concept” in Nigeria: The Journey so Far ' 4.

for a ‘just and timely result.’ Not only did I not experience that just and timely result in those five years, none of those I represented did.⁶³¹

The above statement signifies that Aina was motivated by his ‘situatedness’ at that point, which was with the ineffectiveness of the court system in Lagos. He decided to seek for a solution and hence was stimulated by Professor Frank Sander’s speech that is the founder Multi-Door Courthouse in America.⁶³² Sander first introduced this concept in a speech at the National Conference on the causes of popular dissatisfaction with the administration of justice at St Paul Minnesota - the very place where Roscoe Pound brought to fore the causes of popular dissatisfaction of the administration of justice.⁶³³ The MDC has been tested in domestic jurisdiction in the United Kingdom, and has been implemented in parts of United States, Australia, Canada, New Zealand, Singapore and other parts of the Common Wealth Countries.⁶³⁴

Professor Sander emphasised on the five criteria⁶³⁵ for determining how best disputes can be resolved and this criteria contributes to the effectiveness of the MDC process, which are as follows:

- The Nature of Disputes
- The Relationship between Disputants
- The Amount in Dispute
- Cost and Time
- Speed

It has been observed that these five (5) criteria are emulated by the LMDC,⁶³⁶ which will be discussed extensively in the next chapter. However, for this chapter it will be relevant to focus on the first criterion- Nature of Disputes to form some relevant issues for determination:

⁶³¹ Levin (n4) 9

⁶³² Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* .

⁶³³ Ibid.

⁶³⁴ Goh (n599) 7

⁶³⁵ Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 13.

⁶³⁶ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals’ Handbook* 12

- 1) Whether the parties have a likelihood of maintaining long relationships? E.g. family disputes and business disputes.⁶³⁷
 - a) Whether the process is fair and /or justifies the type of dispute or conflict in question?
 - b) Whether the dispute is amenable to Mediation or ADR? For instance in a matrimonial cause, it is only the courts that have power to make a decree nisi or absolute. A party cannot submit divorce to Mediation. However, a party can submit matters on maintenance-alimony and custody of children to Mediation.⁶³⁸
 - c) Whether the LMDC will need to determine if the proper parties listed are before the court. When they are, the dispute will be readily sent to the MDC.⁶³⁹
 - d) Finally, whether the parties voluntarily or willing want to settle in ADR?⁶⁴⁰

However, Haitham stated that the applicability and importance of the aforementioned criteria would differ depending on the type of ADR in question.⁶⁴¹ For example, fair process requirements would be more stringent in arbitration, which is entirely a creature of the arbitration agreement as opposed to the not so evident of fair process in mediation- the neutral third party work in a more informal environment with the parties to facilitate an acceptable settlement.

Lending credence to the above statement is Carrie Menkel-Meadow stating clearly that:

Third, process pluralism is good idea: different kinds of parties and particular kinds of disputes might best be handled in different ways. In other words, “one size will not fit all.” ADR has always been about “tailoring”—both tailoring the process to fit the dispute.

On the contrary, Justice Oke stated:

That some people have bicycle-sized problems and choose to go

⁶³⁷ Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 13.

⁶³⁸ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 13

⁶³⁹ Section 3 (6) Lagos State Multi-door Court Law 2015.

⁶⁴⁰ Carrie Menkel-Meadow, 'Maintaining ADR Integrity' (2009) 27 Wiley InterScience 7

⁶⁴¹ Haitham (n542) 119

through Cadillac-sized procedures to resolve them.⁶⁴²

Flowing from the above statement reinforces the simple procedure in ADR.⁶⁴³ Nevertheless, before one can decide on whether or not the LMDC is an effective option or not, the nature of the dispute and its examples are prerequisite factors that determine or should be taken into cognise on whether the LMDC practice will / can be effective or whether the LMDC practice is set on the path of effectiveness.

3.5 The Challenges Instrumental to the Creation of the LMDC

As earlier stated, due to the concerns over the challenges posed by overcrowded dockets, exorbitant cost, lack of judicial bodies, lack of infrastructure and delay, public policy demands that laws should be for support of virtues and condemnation of vices and not vice versa.⁶⁴⁴ Therefore, every law has a jurisprudential philosophy or mischief for which it is targeted to correct or address in the society.

Against this backdrop, the developing economies of the world are now exploring this medium of dispute resolution and seeking to advance it further.⁶⁴⁵ This development underpins the fact that dispute has through the years become an endemic part of human existence. The thrust is not how to eradicate dispute, but how to manage it.

Consequently, Lagos State Judiciary and the Ministry of Justice, imbued with the experiences and sentiments of both stakeholders and the common man in the hands of justice -through the Lagos House of Assembly enacted the LMDC Act in a bid to reduce the aforementioned challenges that are associated to the court system and therefore, promote a faster case flow management system in Lagos State.⁶⁴⁶ Thus, the LMDC was established in 2002 and its law was enacted in 2007 and reviewed in 2015,⁶⁴⁷ with the theoretical lens view of achieving its overriding objective as

⁶⁴² Theodora Kio-Lawson, 'Lagos State Judges take a stand on ADR' *BusinessDay* (<<www.businessdayonline.com>> accessed 20th February 2020).

⁶⁴³ ADR provides its users with autonomous control over the way their dispute is determined, unlike the conventional courts where they do not have such autonomy.

⁶⁴⁴ Umegbolu (n615) 146

⁶⁴⁵ Albert, Fiadjoe, *Alternative Dispute Resolution: A Developing World Perspective* Cavendish Publishing Limited (2004) 4.

⁶⁴⁶ Aina (n303) 82

⁶⁴⁷ Lagos State Multi-door Court Law 2015

originally stipulated in Section 2 of the LMDC Act 2015. Accordingly, the LMDC was created to:

- a) Enhance access to justice by providing alternative mechanisms to supplement litigation in the resolution of disputes;
- b) Minimize citizen frustration and delays in justice delivery by providing a standard legal framework for the fair and efficient settlement of disputes through Alternative Dispute Resolution (ADR)
- c) Serve as the focal point for the promotion of Alternative Dispute Resolution in Lagos rule;
- d) Promote the growth and effective functioning of the justice system through Alternative Dispute Resolution methods.

The broader landscape on the justice system in Nigeria was identified as an area for further research, which prompted the aforementioned section⁶⁴⁸ of this law. It is important to point out that on a good day people tend to think that the opposite of poverty is wealth but it has been stated otherwise, giving new insight on the fact that the opposite of poverty is injustice. Then there is no other place where that rings through other than a place like Nigeria where the access to Justice or the justice administration is before gone by or limited, invariably placing a lot of challenges on the actual delay and the length of time it takes for cases to be resolved.⁶⁴⁹

The challenges of cost, infrastructure, and other numerous challenges make it difficult for the average litigants to be excited about being in the courtroom, so it begs the question as to whether justice is what the litigants get out from the courts? Is there a challenge in that regard? To the extent that there is a challenge on the length of time it takes? To the extent that there is a challenge to the cost of it? The very essences of why litigants are in the courts are not being met.

What then is the answer? This thesis argues that the answer does not lie in increasing the number of judges; nor does it lie in increasing the number of the courtrooms in Nigeria alone; the answer lies in some level of de-structuring, a strategic overhaul of the Justice Administration System in a manner that inculcates and accommodates the alternative mechanisms, as new avenues that can supplement the court system. In

⁶⁴⁸ Section 2 *ibid.*

⁶⁴⁹ Discussion with Director 2 on the 20th November 2020

other words- avenues that can supplement the ‘mono- door of litigation,’⁶⁵⁰ which is what the average courthouse, is all about in Nigeria to a large extent.

Thus it is for this reason that the Multi-Door Courthouse (MDC) was founded in 2002, sixteen (16) years now with, another four (4) years that will make it twenty (20) years. Indeed, it is more than that; it was also established for the reason that the essence of litigation in itself is entirely ‘foreign’ to the African culture.⁶⁵¹ Elisabetta Grande corroborated with the above view by stating that ‘what is in ‘tune’ with the African culture is a very ‘harmonious’ (harmonically) dispute resolution process⁶⁵² that can make things a lot better. Thus businesses will also thrive better in the grand scheme of things, and that is what it was meant to do, and that was what it was meant to achieve.

On the other hand, Aina admitted that the MDC as a response to the aforesaid justice challenge has to a large extent contributed to the reduction of civil cases in Lagos State Judiciary.⁶⁵³ On the contrary, Onyema underlined that the LMDC are not getting any substantial amount of these disputes.⁶⁵⁴ She evidenced this statement with statistics provided by the Lagos State Judiciary, which revealed that for the period between 2008 and 2010, 16,072 civil cases were filed before the Magistrate courts while 25,807 civil cases were assigned in the High court.⁶⁵⁵ On the other hand, Citizens Mediation Centre (CMC) settled 77,954 civil cases while the LMDC dispensed with 888 civil cases.⁶⁵⁶ One question that needs to be asked, however, is that the study demonstrates that civil matters referred or filed at the the LMDC. How about the criminal matters?

The issue of delay is not only associated or restricted to Nigeria alone or the developing economies. A study carried out by the World Bank in 2006 has revealed ‘that the average duration of cases in certain developed countries manifested unusual delay like 421 days in Canada and 320 in the check collection compared to 40 days in Swaziland and 60 days in Belize.’⁶⁵⁷ Since these are developed countries, it can be

⁶⁵⁰ Aina (n321) 5

⁶⁵¹ Moscati (n248) 519

⁶⁵² Grande (n251) 65

⁶⁵³ Aina (n321) 4

⁶⁵⁴ Onyema (n2) 9

⁶⁵⁵ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.'

⁶⁵⁶ Ibid.

⁶⁵⁷ Kenneth Dam, 'The Judiciary and Economic Development ' (2006) U Chicago Law & Economic Development, Olin Working Paper No 287 10.

said that delay is not only associated with developing nations but rather to every country at large.

Consequently, these challenges required for a global solution because the use of only litigation to settle dispute has manifestly hindered access to justice and the above-stated statistics have illustrated the enormous volume of conflicts or disputes that come before the Lagos State Courts. Therefore, the LMDC was birthed to rectify these challenges that had contributed to the hinderance of access to justice in Nigeria.⁶⁵⁸

3.6 The High Court Rules In ‘Nudging’ Parties To Alternative Dispute Resolution

Just like the saying goes that ‘the only constant thing in life is change,’ in the words of Professor Yakubu:

The dynamic nature of law necessitates its constant change... It must reflect the ethos and values of the people. Law does not emphasise the ethos and values of bygone days but considers the utility, relevant and acceptability of a rule of conduct at a point in time.⁶⁵⁹

These above stated sentiments resonate with the researcher and this philosophy is,⁶⁶⁰ embraced by reemphasising the change that occurred from the pre colonial era (when the traditional system was dominant and was the only door) up to the colonial era (the introduction of litigation into the Nigerian clime) and finally the post-colonial era (where the traditional system was repackaged as the new ADR and then Litigation was infused with ADR). This link to the eras is crucial because Yakubu mentioned that ‘law changes with time,’⁶⁶¹ a proof that the law as we know it, is never static. Thus, if a law, is no longer serving its purpose or if it does not met the purpose it was

⁶⁵⁸ Onyema (n2) 3

⁶⁵⁹ Nwosu (n304) 341

⁶⁶⁰ Nwosu, *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibrinke, SAN.*

⁶⁶¹ *ibid* 341

created for then its either overhauled or amended to conform with the required standards to sufficiently tackle the challenges in the law.⁶⁶²

Perhaps the most dramatic evidence, is that because litigation could not solve the problem of congestion of the system⁶⁶³ it became necessary that an independent, party reliant, and speedy process that can generate effective results was sought for; hence the birth of the LMDC. The focal point here is that, as earlier mentioned when the westerners left Nigeria, the Nigerian law was changed, various rules of law and enactments was put in place to reflect the needs of the ‘commercial village’ in this context, present day Nigeria⁶⁶⁴ and the Lagos state took appropriate steps to ‘nudge’ the stakeholders –judges, (to enforce adherence to ADR clause in a commercial agreements), Senior Advocates of Nigeria (SAN), Magistrates, Lawyers and the citizens to embrace ADR and LMDC.⁶⁶⁵

Lending credence to the above is the High Court of Lagos State (Civil Procedure) rules, Order 3 Rule 11 2019, which states thus:

all originating processes filed in the Registry⁶⁶⁶ shall be screened to determine the suitability for Alternative Dispute Resolution (ADR) mechanisms and may be referred to the Lagos Multi-Door Court House or any appropriate ADR institution.⁶⁶⁷

Subsequently, the 2012 rules were amended in 2019 and the above-mentioned provisions were inserted accordingly. Apart from encouraging the screening for suitability of ADR which is continuity from the old rules,⁶⁶⁸ a new provision of its own came in, which is -the Expeditious Disposal of Civil Cases Practice Direction No. 1 of 2019,⁶⁶⁹ whose main focus is the timely disposal of backlog cases before litigation commences in the Lagos State Judiciary.⁶⁷⁰

⁶⁶² Ibid.

⁶⁶³ Ibid 37

⁶⁶⁴ Bukola Faturoti, 'Institutionalised ADR and Access to Justice: The Changing Faces of the Nigerian Judicial System ' (2014) Research Gate 16.

⁶⁶⁵ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 12

⁶⁶⁶ This was well explained in the latter page of this chapter and in the analysis chapter of the LMDC

⁶⁶⁷ High Court of Lagos State Rules Civil Procedure Rules 2019

⁶⁶⁸ Ibid.

⁶⁶⁹ Expeditious Disposal of Civil Cases Practice Direction: Pre-Action Protocol Lagos State Judiciary 2019.

⁶⁷⁰ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* 15

The 2019 rule amended the 2012 rules and introduced some of the above stated provision, however both Acts placed a colossal control on the court to decide on matters as it deems fit pertaining to expeditious justice delivery in the State and though still in the early stages of the process.⁶⁷¹ It has also restored a sense of timely justice and equal footing to the common man, so the people can have closures to long-standing disputes. It is pertinent to point out that the English Court can only 'encourage' and do not mandate or compel parties to engage in ADR, including mediation however, they do not hold back when sanctioning parties that has wasted the time of the Court, especially when the parties refuses to settle in ADR⁶⁷² but rather want to continue with the tactics that will result in undue delays of the matter in the course of litigation. Lending credence to the above claim is the recent case of *DSN v Blackpool Football Club Ltd.*⁶⁷³

However, in Master McCloud directions in the case highlighted that:

At all stages the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging ... must serve a witness statement giving reasons.⁶⁷⁴

After extensive examination of the above-directions by Justice Griffiths he admitted that BFC's reasons for failing and refusing to engage in any settlement discussions were inadequate.⁶⁷⁵ Though losing the claim does not validate an award for indemnity costs, but in this case Mr Justice Griffiths was of the opinion that 'based' on their conduct that they deserved it.⁶⁷⁶ This judgement was inescapable as it is clear the English courts can wholly sanction parties that refuse to settle under ADR and in some cases award indemnity costs.⁶⁷⁷ The reason behind this is to provide an effective justice system so future claim can follow this rule and parties will desist from wasting the time of the court which in turn affects the dockets of the court. Hence, the ruling in this case brings out a peculiar feature which other jurisdiction

⁶⁷¹ The Association of Multi-Door Courthouse of Nigeria (n220) 16.

⁶⁷² Tim Constable, Sonia, Ferreira, 'If you refuse to engage in alternative dispute resolution, you do so at your own peril' (2020) Dentons 1.

⁶⁷³ (2020) EWHC 670QB cited in *ibid.*

⁶⁷⁴ *Ibid*1

⁶⁷⁵ *Ibid*

⁶⁷⁶ *Ibid.*

⁶⁷⁷ *Ibid.*

like Nigeria with particular reference to Lagos State, can use as case precedent. Just like Sir Anthony Clarke MR, pointed out that without an:

Effective civil justice system, substantive civil laws are no more than words and that the rule of law becomes an ‘aspiration’ rather than a reality.⁶⁷⁸

This is in line with the recent case of *Nweke v. FRN*, where the victim of this case is still waiting for justice hitherto his case has been at the trial Court for eight years (8) now and is yet to commence. However, it has gone from one court to another.⁶⁷⁹ This new rule has provided an effective justice mechanism that can tackle such cases which is a step in the right direction for such cases exemplified above, the judge in his discretion can unburden the courts and achieve swift justice either through litigation or through Alternative Dispute Resolution through the LMDC or any other ADR Centre, in this new rule. However, the issue of ‘referring parties’⁶⁸⁰ it is argued that it comes across as ambiguous or vague. As it could also connote a different meaning ‘forcing or controlling parties’ to use ADR.

3.7 Is the LMDC, the Right antidote towards Access to Justice?

One of the reasons that this new method of settling dispute became an instant hit in Nigerian⁶⁸¹ or as Nigerians would say a ‘hot akara’⁶⁸² was validated by this recent case between two popular Nigerian musicians, the case borders on copyright infringement. The case started as far back as 2004 when Innocent Ujah Idibia aka 2face or 2baba a member of the Plantashun Boiz left the band to pursue a solo career as an artist. He later released a hit track known as ‘African Queen’ and his former band mate Blackface began to make ceaseless accusation against 2face, claiming he wrote the song and that 2face stole his songs and sang as his own.⁶⁸³

⁶⁷⁸ Hazel Genn, *The Hamlyn Lectures 2008: Judging Civil Justice* (Cambridge University Press, 2010) 18.

⁶⁷⁹ *NWEKE v. FRN* (2019) LPELR-SC

⁶⁸⁰ *Order 2 (I) of the 2019 Constitution of the Federal Republic of Nigeria 1999.*

⁶⁸¹ Akeredolu (n10) 25

⁶⁸² Akara means fried hot bean cake but it is used as a slang that something is working well or a hit.

⁶⁸³ The researcher witnessed the settlement of the case at the LMDC cited in *Chinwe Umegbolu, Why I am excited about my Research* (University of Brighton 2019).

Additionally, he accused 2baba of taking the credit for writing the song, thus no royalties was paid to him. This case has been on going approximately for fifteen (15) years and was later settled via out of Court at the LMDC within two (2) days, precisely on the 27th Nov 2019.⁶⁸⁴

However, these two friends turned foes were not on speaking terms when they stepped in for their mediation session, but after the Terms of Settlement (TOS) was reached (the parties turned from foes to friends once again, laughing and cracking jokes). They appended their signatures on the TOS, and they both went outside and took pictures and uploaded them on their various social media platforms. Additionally, one of the mediators stated:

Litigation destroys people, you need to see them when they walked into this room, both parties refused to speak to each other, including their managers but when the mediation session was mid way they were both, laughing and speaking pigeon (broken) English.⁶⁸⁵ They both apologised to each other at the same time reminiscing about the good old days. Honestly speaking, you can see the relief on their faces when the mediation session ended and they hugged. They both cancelled their engagement for the following day and scheduled for a time (on the second day) just to come in and conclude the Terms of Agreement (TOA) and sign it off.⁶⁸⁶

Against this backdrop, the above statement indicates another significant impact of the LMDC towards preserving the relationship of the parties from the onset, unlike litigation where the battle line is drawn, the parties and their respective businesses, social and other various relationships are ruptured.⁶⁸⁷ However, there is credible, intense competition for business retention and securing of more clients in this age of globalisation rather than lose out in this respect. The LMDC has done well in resolving disputes, but also in reconciling parties.⁶⁸⁸ Thus they desire great fulfilment from seeing either two or more estranged parties now coming to an agreement, shake

⁶⁸⁴ Ibid.

⁶⁸⁵ Broken English – When used-Mostly signifies ‘closeness’ or ‘familiarity.’

⁶⁸⁶ Due to ethics of mediation, this part of speaking with their mediator would be classified as mediator 4.

⁶⁸⁷ Umegbolu (n 658)

⁶⁸⁸ The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)* 19

hands and continue with their business relationship, and that is what litigation cannot give. Even more so, when the parties resolve their respective disputes via litigation, oftentimes, the relationship might not be as cordial as it was before.⁶⁸⁹

Additionally, a landmark case involving the first elected vice president of Nigeria Dr Alex Ekwueme is another example of its effectiveness. This case was in contention for seventeen (17) years as a result of a sale of land. And the former vice president would fly into Lagos from Enugu to attend Court proceedings.⁶⁹⁰ The matter was referred to the LMDC for mediation after so much money had been spent in litigation. As soon as the parties signed the 'Terms of the Settlement' (TOS) the matter was resolved within 10:00 am - 8:30 pm same day.⁶⁹¹ Indicating that timeliness is one of the main benefits of using the LMDC.

Furthermore, cost effectiveness can be gleaned as another benefit with the LMDC. For example, the 2017 Lagos Settlement Week, a banking case in Court for about twenty-six (26) years was settled at two (2) mediation sittings. Then a banking case with a claim of over 1.6 Billion Naira equivalent to 3,067.66 Pounds Sterling was settled in two (2) mediation sittings.⁶⁹²

Conversely, a case for dissolution of marriage was taken, and both parties withdrew their Petitions and Reliefs. In the same 2017 settlement week, about 4.5 Billion-Naira equivalent to 8,637.82 Pounds Sterling monetary claims were recovered, representing about 14% of resolved matters.

However, in 2018 Settlement Week Programme about 24.3 Billion-Naira equivalent to 46,698,354.90 Pounds Sterling in monetary claims were recovered.⁶⁹³ Also, a case on the Administration of Estate has been in Court for nearly twenty-nine (29) years. It was settled in two (2) mediation sittings. Additionally, a banking case with a claim of over 1.8 Billion Naira equivalent to 3, 457,910.70 Pound Sterling was settled.⁶⁹⁴

⁶⁸⁹ Constable, 'If you refuse to engage in alternative dispute resolution, you do so at your own peril' 19

⁶⁹⁰ Stella, Dawson, Alternative Courthouse in Lagos Speeds delivery (Thomas Reuters Foundation) accessed 23rd January 2019, 23

⁶⁹¹ The Association of Multi-Door Courthouse of Nigeria, A compendium of Articles on Alternative Dispute Resolution (ADR) 21.

⁶⁹² Umegbolu (n586)

⁶⁹³ Constable, 'If you refuse to engage in alternative dispute resolution, you do so at your own peril'

⁶⁹⁴ Ibid

Following through, in 2016 and 2017 Settlement Week, 31.3 billion naira equivalent to 60,060,577.79 pounds sterling was recovered in claims and also the LMDC effectiveness and impact can be gleaned from saving some legal fees. Management time for corporate litigants, court time, counsel time, the resources of the court, things like contingent reliability risk, reputational risk, other sheer inconveniences associated with serving litigation in financial terms, which have been computed with the colossal amount of savings made for the litigants in counsel and judicial system.⁶⁹⁵

It is pertinent to point out that Lagos Settlement Week (LSW) is free and it's scheduled three times a year,⁶⁹⁶ it was set aside by the Chief Judge of Lagos State for specific courts to settle as many cases as possible in a bid to decongest the court.⁶⁹⁷ The cases stated above demonstrates the eagerness of the Lagos State Judiciary or legal system to refer these cases to the LMDC in a bid to reduce the dockets of the courts and also provide a particular example of the impact and the effectiveness of using ADR through the LMDC.

The founder of the LMDC⁶⁹⁸ Kehinde Aina, agrees with the above-mentioned assertion and during the opening ceremony of the LMDC stated:

I envisioned a comprehensive justice centre where both the consumers and provider will be collaborators and co-creators of a streamlined and agile process. I dreamt of a faster case flow management system where parties are not left impoverished and embittered. I fantasised about a legal regime where an apology would be seen as a useful tool rather than an admission of guilt, a system where disputants could problem-solve and search for common ground within the backdrop of integrity, understanding and human decency. My dream was to create a nexus for peace, fair and an effective administration of justice in our dear country Nigeria.⁶⁹⁹

As demonstrated from the statement by the founder of the Lagos Multi-Door Courthouse, who had a first-hand experience on how frustrating the court system can be in Nigeria, albeit he had a vision but he did not stop at that, he went on to actualise

⁶⁹⁵ Ibid

⁶⁹⁶ Annexed -The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse: Lagos Settlement Week - Frequently Asked Questions (FAQS)* (2020)

⁶⁹⁷ Umegbolu (n586)

⁶⁹⁸ Aina Blankson Attorneys, 'Kehinde Aina ' 2021) <<<https://www.ainablankson.com/kehinde-aina/>>> accessed 7th July Accessed 7th July 2021

⁶⁹⁹ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* (n428) 11

that dream by bringing it into reality the Lagos Multi-Door Courthouse. He believed that justice system could be rescued by integrating ADR into the mainstream of the civil justice system with a managerial approach to dispute resolution.

Consequently, disputes would be resolved in ‘multiple doors’ within the established courts in Lagos, which the researcher calls the ‘revolving door mechanism.’ Therefore, the disputants or litigants do not need the rigorous process associated with litigation when they can amicably settle differences and have closure in one or two day.⁷⁰⁰ Despite this, its effectiveness and impact has so far motivated some states like Enugu State. They opened its doors in 2018 to start up the Enugu State Multi-Door Courthouse (ESMDC) this indicates that the LMDC has made some profound changes by including minor criminal offences to its list. So far the LMDC has raised the bar a notch higher by providing an all inclusive justice system for settlement of disputes not only in civil but now in criminal law, thus section 2(a)-(d) LMDC 2015 explored and proffered the idea of an inclusive justice system however, and in recent years, that dream has been actualised into a reality and now an effective alternative through the LMDC is pretty much attainable- the researcher is of the opinion that this has moved from ‘law on paper’ to ‘law in action.’

For these reasons, LMDC has enabled the economy in Lagos State to thrive by providing an effective alternative to litigants who have been clamouring for an improved system- access to justice for many years.⁷⁰¹

3.8 Limitations that Might Hinder the Growth of LMDC

The above-mentioned rule has provided an effective justice mechanism that can tackle such cases which is a step in the right direction- providing more leeway for the judges. Thus the judge in his discretion can unburden the courts and achieve swift

⁷⁰⁰ Constable, 'If you refuse to engage in alternative dispute resolution, you do so at your own peril' (n428)

⁷⁰¹ Chinyere Ani, 'Alternative Dispute Resolution ' Academia Chinyere Ani, 'Alternative Dispute Resolution in Nigeria A Study of the Lagos Multi-Door Courthouse (LMDC) ' (*Resolution Department, Nigerian Institute of Legal Studies Lagos*, <https://www.academia.edu/31440831/ALTERNATIVE_DISPUTE_RESOLUTION_IN_NIGERIA_A_STUDY_OF_THE_LMDC> accessed 8th August, 5.

justice either through litigation or through Alternative Dispute Resolution through the LMDC or any other ADR center.⁷⁰² However, the issue of ‘referring parties’ to use ADR has been deemed as mandating parties to mediate hence perceived as unjust.⁷⁰³

Furthermore divergent debate has been raised on ‘people not having access to the law courts.’⁷⁰⁴ On the contrary, some ADR critics see the mandatory requirement,⁷⁰⁵ as an attempt to limit the people’s unfettered right to access to court⁷⁰⁶ and which will also strip off party autonomy in ADR.⁷⁰⁷ The above -viewpoints resonates with the researcher.

Against this backdrop, laws are modified to suit the culture of the people. For instance; a study conducted in 2013 indicated that Turkey is not yet ready for a flexible and voluntary alternative dispute resolution due to its culture and public awareness.⁷⁰⁸

In the same manner, in the Nigerian -home, which is classified as the ‘informal setting,’ most parents tell their children what to do using ‘force,’ for example a parent would or an elderly person will tell the young ones, do not ask questions, do as I say.⁷⁰⁹ This is what the researcher refers to as ‘the do as I say mentality’ and woe betides one,’ who dares question them, he will be flogged mercilessly, unlike in the ‘western culture’ to be more specific United Kingdom, where children ask, ‘why’ and their parents explain why they should adhere to this rule or the other etc. As such, this pattern of encouraging parties to ADR as depicted in *Dunnett v Rail track*⁷¹⁰ and *Halsey v Milton Keynes*⁷¹¹ may be counterproductive in Nigeria as ‘directing or mandating people or forcing people’ is in line with the African culture.⁷¹² In essence, African culture is such that they are forced to do things, so once there is no force; most of them flaunt the rules.⁷¹³

⁷⁰² Constable (n643) 1

⁷⁰³ Aina (n303) 1

⁷⁰⁴ Order 3 Rule 11 High Courts(Civil Procedure Rules) 2004.

⁷⁰⁵ The Nation, ‘Catching the ADR bug in Lagos’(<<<https://thenationonline.net/catching-the-adr-bug-in-lagos/>>>
> 30.

⁷⁰⁶ Constable, ‘If you refuse to engage in alternative dispute resolution, you do so at your own peril’ (n303) 1

⁷⁰⁷ Aina, ‘Alternative Dispute Resolution’

⁷⁰⁸ Napley (n520) 3

⁷⁰⁹ Nwachukwu Egbunike, *Dyed Thoughts: A Conversation in and from My Country* (Feathers and Ink 2012) 71.

⁷¹⁰ *EWCA CIV 302*

⁷¹¹ *EWCA Civ 576*.

⁷¹² Most of the stakeholders and users affirmed the above assertion. See the LMDC on chapter 5 and ESMDC analysis in chapter 6

⁷¹³ Egbunike (n679) 71. Also, most of the stakeholders hold the same view as Egbunike.

Likewise, the same goes in the ‘formal setting’, which is the office or organization.⁷¹⁴ However, Franz Boas asserts that no culture is good or bad or better put that people basically view the cosmos through the perception of their own culture and judge it according to their own acquired cultural orientation.⁷¹⁵

3.9 The Features and Procedural Framework of the LMDC

In Nigeria, the Arbitration and Conciliation Decree provides for the right to settle disputes by Conciliation. Part II of the Decree, sections 37-42 and 55 made adequate provisions for conciliation.⁷¹⁶

However, in recent years mediation in Nigeria has developed into a more well thought out process and within a legislative framework.⁷¹⁷ Hence, the LMDC panel of neutrals is made up of accredited mediators, arbitrators and neutral evaluators from every field; the Lagos Multi-Door Courthouse, the Chief Judge of Lagos State is in charge of approving the panel stated above on the direct recommendation by the Neutrals’ Screening Committee.⁷¹⁸ Thus the operation of the LMDC is to supplement litigation as the available resource for justice by the provision of enhanced, timely, cost-effective and user-friendly access to justice.

Aina stated that the ‘doors’ available to the MDC are mediation, arbitration, and neutral evaluation.⁷¹⁹ However, in recent years the LMDC included a hybrid process.⁷²⁰ It has been observed that due to the COVID-19 Pandemic, which held the world at standstill, the LMDC used this as an opportunity to include another ‘door,’ which is the Online Dispute Resolution (ODR).⁷²¹ It is essential to point out that the

⁷¹⁴ Egbunike, *Dyed Thoughts: A Conversation in and from My Country* 72.

⁷¹⁵ Silverman Sydel, (ed) *Totems and Teachers: Key Figures in the History of Anthropology* (Walnet Creek, CA 2004) 18.

⁷¹⁶ J. Olakunle Orojo, Ajomo, Ayodele, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates (Nigeria) Limited 1999) 10.

⁷¹⁷ A.O Rhodes-Vivour, 'Mediation (A "Face Saving Device") - The Nigerian Perspective' (2008) 4 Journal of the International Bar Association Legal Practice Division Mediation Committee Newsletter 1

⁷¹⁸ Aina (n303) 10

⁷¹⁹ Aina, 'The "Multi-Door Concept" in Nigeria: The Journey so Far ' 9.

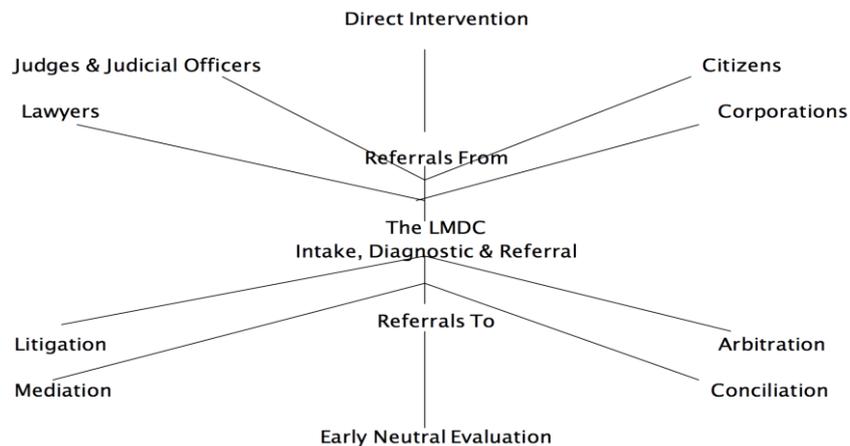
⁷²⁰ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 5

⁷²¹ LMDC Twitter page cited in Chinwe Umegbolu, *The Lagos Multi-Door Courthouse (LMDC) in Nigeria* (University of Brighton 2019).

LMDC panel of neutrals is made up of the Chief Judge of Lagos State, ADR Judges, Accredited Mediators, Arbitrators and Neutral Evaluators from every field.

The figure below illustrates the features or workings of the LMDC⁷²²:

The Lagos Multi-Door Courthouse (LMDC): Referral Procedure



An essential feature of the Lagos Multi-Door Courthouse (LMDC) is that it is an independent and a non-profit making body. Thus, they are more efficient and not biased.⁷²³ Hence, that is part of the reason the LMDC is cheap or free as they are not there to make profit and to a large extent has contributed to the effectiveness of its service delivery model which is primarily focused on enhancing and advancing access to Justice.⁷²⁴

Consequently, Article 2 of the LMDC Practice Direction stipulates:

That at LMDC, a matter may be initiated at the LMDC in any of the three ways:⁷²⁵

A) Walk-Ins

- Any party can decide to Walk-In to the LMDC or write to its director to initiate a dispute either through mediation, Arbitration, Early Neutral Evaluation and Conciliation. It is essential to point out that other ADR Para-legal institutions like the Citizens Mediation Centre (CMC) and Office of the Public Defender (OPD) may file matters at the LMDC for settlement.

⁷²² The LMDC made the Diagram above- available to me.

⁷²³ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 19

⁷²⁴ Onyema, (n2) 10

⁷²⁵ The Lagos Multi-Door Courthouse Centre, 'The LMDC ADR Awareness Program: Workings of the Lagos Multi-Door Courthouse ' (2019) 3

- The party from now on known as the claimant or his counsel walks into the Multi-Door Courthouse to lodge his or her complaint with the Registrar.
- The claimant pays an administrative fee of 14,000 naira equivalent to 29.12566 GBP
- A set of forms is given to be filled or completed by the claimant.
- The opponent from now on is known as the respondents⁷²⁶ and is notified about the complaint.
- A set of forms is despatched to those above along with the notification of the “referral”- a referral is used in the MDC instead of a suit.
- The respondent returns his or her filled forms and response; then, the hearing date is fixed for the first meeting.

B) By Court Referral:

The presiding judges in the on-going matter; might decide to refer a case to Mediation; if he believes it is an appropriate way of resolving the dispute.

- Referrals from the Courts can either be made by the judge independently or at the demand of the party if his lawyer requests a stay of proceedings in the court which will enable him (the party) try settling amicably in the MDC.
- Finally, if the parties reach a settlement, the court pronounces it as a consent judgement of the court making it final and binding on the parties. Both parties appointed mediator and the LMDC would jointly sign the LMDC decision, with all parties strictly adhering to the confidentiality rules of LMDC process.⁷²⁷

C) Direct Intervention

The LMDC in circumstances of public interest or by demand by the parties through the director may approach the parties by extending an invitation to them.⁷²⁸

A Preparatory Session -Mediation:

⁷²⁶ Aina, 'Alternative Dispute Resolution' 20

⁷²⁷ Centre, 'The LMDC ADR Awareness Program: Workings of the Lagos Multi-Door Courthouse ' 3

⁷²⁸ *ibid*

Aina pointed out that it is essential for parties to attend the sessions to utilise the effectiveness of the process they must have 'full authority,'⁷²⁹ which must be in writing to settle (if it is a court-referral) the dispute for the ADR session to proceed. The researcher believes that this will be applicable depending if it is a court-referral, or if it is a direct Intervention by the LMDC and not applicable through the walk-In route. Thus, to ensure that the aforementioned are achieved once a mediator is appointed, he makes contact with the parties or their lawyers to discuss some process arrangements and to clarify some key aspects. Some parties and mediators may request a pre-mediation meeting.⁷³⁰ In most cases, it is not ideal to hire lawyers, just because they are grounded with knowledge of the law does not make them an excellent candidate to settle disputes or conflict as the case maybe. It is irrefutable that they can resolve a conflict or dispute, but the chances are unusually low.⁷³¹ Hence, the purpose of the preparatory stage is to ensure that the parties understand the process and that parties are well prepared for the mediation. Matters to be discussed at this stage will include asking some pertinent questions necessary to ascertain the direction of the process.⁷³²

At this stage during the mediation session, communication is key because the most important gift a mediator should or can possess is how to effectively communicate. Disputes can be quite complex at times and the need to hire a mediator who can actively listen- get vital information and insight on the nature of the disputes, i.e. the intention of the parties which might lead to the settlement, is essential.⁷³³ Also, the mediator must be able to communicate, inform the parties as to how they may formalise the agreement and the likelihoods for enforcing the agreement.⁷³⁴ To achieve the aforementioned a mediator should be calm and ask open-ended questions that will enable the parties to reach an agreement.⁷³⁵ Thus resolving disputes in

⁷²⁹ Kehinde Aina, 'Alternative Dispute Resolution' (2008) The Guardian Newspaper 4

⁷³⁰ Centre, 'The LMDC ADR Awareness Program: Workings of the Lagos Multi-Door Courthouse ' 3

⁷³¹ Blake, *A Practical Approach to Alternative Dispute Resolution* 299) 257

⁷³² Some of the likely questions may include the following: Whether the parties have agreed to mediation?⁷³² Whether their lawyers or advisers will accompany the parties? Whether legal proceedings are already underway or would be stayed during mediation? Or whether there are other time constraints.

⁷³³ Jennifer Beer, Eileen, Stief *The Mediators Handbook* (3rd edn, Conflict Resolution Programs 1997) 22-23.

⁷³⁴ Ibid 22

⁷³⁵ Jonathan Hyman, 'Swimming in the Deep End: Dealing with Justice in Mediation ' (2005) 6 *Cardozo Journal of Conflict Resolution* 19.

mediation will not be possible without active listening and communication from the mediator.

An integral part of mediation is the relationship between the mediator and the party building rapport. For example, during the opening speech introductions are made, he / she becomes familiar with how parties wish to be addressed. This is important because in the private meeting the party will have to be comfortable enough to open up to the mediator. Prior to that, the mediator will open up the private session by reminding the parties the ground rules to help guide the conduct of the parties.⁷³⁶ Also, the parties are reminded that everything discussed in the private session is confidential and will not be revealed except with their permission or compelled by law.⁷³⁷ Also, the mediator clarifies each party's positions, underlying interests, explores alternatives solutions and seeks possible concessions.⁷³⁸ A mediator who does not connect with the party lacks empathy; this would make the party feel uncomfortable. And the issue of trusting the mediator becomes a problem, which might affect, the relationship with the party and will not yield to the fruition or end of the process.⁷³⁹ As soon as there is semblance of common ground, a joint session is convened. The mediator or neutral narrows the difference, highlights the progress made and formalises offers to gain an agreement,⁷⁴⁰ then the terms of settlement (TOS) reached are reduced in writing and signatures are appended by the parties.

3.10.1 The Arbitration Session

Each ADR mechanism has its benefits and limitations, but in spite of these limitations, the introduction of ADR in the resolution of commercial disputes have opened doors to more investments for business stakeholders and indeed restored confidence in negotiation of commercial agreements in various jurisdictions, with particular reference to Nigeria. However, not all of the ADR mechanism are widely

⁷³⁶ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 36

⁷³⁷ European Code of Conduct for Mediators para 4.

⁷³⁸ Ibid.

⁷³⁸ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 36

⁷³⁹ Beer, *The Mediators Handbook* 22-23

⁷⁴⁰ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 37

used in Nigeria, the two most used ADR mechanisms are arbitration⁷⁴¹ and mediation, one of the limitations being the ready acceptance and practice of arbitration as opposed to mediation.

Generally, under the International Commercial Arbitration (ICA) Process, parties have the procedural freedom to organise their proceedings as they like and may choose an adversarial or inquisitorial procedure or mixture of both.⁷⁴² First, the claimant must submit a notice of arbitration, to which the respondents answers.

Subsequently, the tribunal itself can be appointed by the parties or by an appointing authority, and then a meeting will follow to discuss how the arbitration will proceed.⁷⁴³ At the hearing there may be short opening statements, followed by oral testimony, submission of documentary evidence, if requested by the parties.⁷⁴⁴ Then, at the end of the hearing there may be short closing statements, and the arbitrators may require post-hearing submissions. After the arbitrators review the post-hearing submissions, they deliberate and render a decision in the form of a final judgement.⁷⁴⁵ It is evident that the proceedings in arbitration are quite simple unlike the Court system that is rigid and far more expensive. For example, the arbitrators are selected at the discretion of the parties, however, in litigation; they make use of extensive attorneys, amongst others.⁷⁴⁶

⁷⁴¹ Arbitration was first promulgated as the Arbitration Ordinance in 1914, which applied to all parts of the country. As early stated in this chapter that Nigerian Law was modeled after the English law, it follows through for the Arbitration Ordinance, which was modeled after the English Arbitration Act of 1889 *cited in Orojo, Law and Practice of Arbitration and Conciliation in Nigeria* p13. However in recent years, the legislation that governs arbitration is the Arbitration and Conciliation Act 1988 (Laws of the Federation of Nigeria 2004 Cap A18) (ACA), which is the federal statute. It is imperative to point out that some jurisdictions in Nigeria have enacted their own arbitration laws; example of such jurisdiction is Lagos. The ACA was modelled on the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law) and came into force on 14th March 1988. Up till now Nigeria has not made any modifications to the ACA at the federal level, although a bill is currently before parliament to replace the 1988 legislation with the UNCITRAL Model Law incorporating the 2006 amendments. The Lagos State Arbitration Law 2009 (LSAL) applies to all arbitrations that arise in Lagos State, except where parties have stipulated another law. This law is an enactment of the UNCITRAL Model Law, and incorporates the 2006 amendments. *Cited in Funke Adekoya, Prince-Alex, Iwu, 'Arbitration Procedures and Practice in Nigeria: Overview'* (2017) Thomson Reuters Practical Law

⁷⁴² Umegbolu (n414) 23

⁷⁴³ Umegbolu, 'To What Extent is Arbitration a Cheaper and more Efficient Process of Dispute Resolution – in Comparison to Litigation?' 25

⁷⁴⁴ Constable, 'If you refuse to engage in alternative dispute resolution, you do so at your own peril' 72

⁷⁴⁵ Ibid

⁷⁴⁶ Moses, *The Principles and Practice of International Commercial Arbitration* 157

Today, most arbitration is usually conducted under specified rules or procedures, which is similar to court rules.⁷⁴⁷ For example, under the LMDC parties can commence an arbitration in two ways through walk-ins and court-referred, although the court-referred under arbitration will not be classified as court-referred because it still boils down to the written agreement of the parties because parties must have an arbitration clause in the contractual agreement before the court can even refer it.⁷⁴⁸

On the other hand, the Procedure for Initiating and Administering Arbitration Proceedings at the Lagos Multi-Door Courthouse (LMDC) is as follows:

- First, the Notice of Arbitration is forwarded to the Respondent by the Claimant indicating an intention to refer the matter to the Lagos Multi-Door Courthouse (LMDC)
- Appropriately completed LMDC Form 1 and 2, a copy of the Notice of Arbitration duly acknowledged by the Respondent and the Claimant for screening submits four (4) copies of the Claimant's Statement of Claim is submitted to the LMDC Registry.
- Upon being screened and found suitable, the Claimant would be required to present a deposit slip evidencing payment of the sum of One Hundred Thousand Naira (100, 000.00), which is equivalent to £207.12. Non-Refundable Administrative Deposit into the Lagos Multi-Door Courthouse (LMDC) account.⁷⁴⁹
- Upon receipt of the Claimant's process, a letter inviting both parties to attend a Pre Session Meeting (PSM) at the LMDC is sent. At the PSM, parties would be: Intimated of the Administrative/Arbitration Fee deposit. This is calculated based on Parties' Claims and Counterclaim contained in the LMDC Fee Schedule. Furnished with the profiles of three Arbitrators from which parties would list their preferred Arbitrators in Order of Preference.
- This is calculated based on 'Parties Claims and Counterclaim contained in the LMDC Fee Schedule. Upon submission of parties' separate list of Arbitrators in Order of Preference, the Arbitrator whose name is common to both parties is appointed as a Sole Arbitrator.

⁷⁴⁷ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 24

⁷⁴⁸ Centre, 'The LMDC ADR Awareness Program: Workings of the Lagos Multi-Door Courthouse' 17.

⁷⁴⁹ Ibid.

- Where it is impracticable to choose an Arbitrator that is most common to parties from the Parties' list of Arbitrators, the LMDC shall appoint a Sole Arbitrator. In the alternative, parties would be intimated of the appointment of a Sole Arbitrator where required.
- Where the appointment involves a three (3) man panel of arbitrators, the parties shall each appoint an arbitrator from the LMDC list of arbitrators while the LMDC appoints the Chairman of the Arbitral Panel from the same list required to suggest three tentative dates for a Preliminary Meeting with the appointed Arbitrator. Upon payment of the Administrative and Arbitration Session fees by parties, the Arbitral Tribunal would be contacted. The Tribunal would hold a preliminary meeting with the parties and subsequent sessions thereafter until the final award.⁷⁵⁰

3.10.2 The Neutral Evaluation Session (NE)

A retired judge, lawyer, or an expert in a particular field usually conducts the NE process, which is mainly initiated to guide the parties towards resolution. The process is mostly adopted to or in the course of a mediation session with an outlook to assisting the parties in their negotiation.⁷⁵¹ However, this process or proceeding is hardly used at the LMDC.

3.10.3 Hybrid Sessions

The hybrid processes consists of (Med-Arb) or (Arb-Med), if parties fail to reach a settlement of any or all of the matters in a mediation proceeding, they may decide to submit such issues, to advisory arbitration, binding arbitration or any other ADR process considered suitable.⁷⁵²

3.10.4 Online Dispute Resolution (ODR) Session:

ODR was introduced during the Covid-19 Pandemic at the LMDC in 2019. It entails parties that has entered a valid contract or purchased a product that was fraudulently misrepresented or did not get the goods delivered within the agreed date. Then parties can indicate interest in using the ODR service to commence their sessions. As the

⁷⁵⁰ Ibid.

⁷⁵¹ *ibid.*

⁷⁵² The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 37

name implies, parties can subscribe to the online sessions that allows for the use of technology to have virtual meetings in a bid to settle dispute between disputants, as it has become practically impossible to have face-to-face resolution of disputes because of the Covid-19 Pandemic.⁷⁵³

A Conclusion Phase for ADR Processes:

- 1) When case managers conclude matters, the Registrar receives the closed case files.
- 2) Check files for completing Terms of settlement, Mediator's Closure Report, Case Manager's Report, Full payment of Fees, Feedback forms, Etc.
- 3) The Registry receives TOS and forwards it to the courts for adoption as Consent Judgment of the Court or other reports.⁷⁵⁴

3.10.5 The Underlying Elements of the LMDC Law

A Whether the LMDC Law is Stringent or Lenient?

As indicated above, the LMDC legislation or Act came to solve a problem, there was a mischief it was enacted to address, that is prior to the enactment of LMDC -there used to be a lot of congestion in the courts and some of this cases are frivolous cases that at the end of the day there is no substance in them so the act came to clear the air, to remove the chaffs and settle disputes is the whole idea of the LMDC. It did not come to blow away litigation entirely rather it came to supplement it⁷⁵⁵ by paving way for the speedy dispensation of justice so that litigation can now focus on core issues that are not resolvable amicably by parties while this focuses on all other issues that can be resolved before the LMDC. Therefore what the mischief rule came to address is actually to decongest the courtroom or the court system and actually it has succeeded in that. Thus going into the act of interpreting the laws of LMDC is a tricky one in the sense that the procedure is not where lawyers or mediators come and cite sections or cases, rather the LMDC rules are meant to provide useful guidance.

⁷⁵³ Twitter Page LMDC cited in Chinwe Umegbolu, *The Lagos Multi-Door Courthouse: Online Dispute Resolution in COVID-19 Era* (Edublogs 2020) accessed 20th October 2020

⁷⁵⁴ Centre, 'The LMDC ADR Awareness Program: Workings of the Lagos Multi-Door Courthouse '8.

⁷⁵⁵ Aina, 'Alternative Dispute Resolution'13

In regards, to the above-mentioned question, as to whether if the LMDC law is stringent or lenient. This is the first time a researcher will undertake the task of demystifying the LMDC law to ascertain whether the LMDC law is strict or lenient?

First, it is prominent to have a look at the Lagos State High Court Rules, because the court screens and refers to the LMDC in most cases. Thus, it was drafted for one to go into mediation voluntarily which is evidenced in the civil procedure rules of Lagos 2004,⁷⁵⁶ but subsequently this law was amended in 2019 thereby mandating mediation unlike in some other jurisdiction. For example, in Italy, the statute by which it implemented the directive in 2008/52/EC of the European Parliament made out of court conciliation scheme compulsory, it stipulated that parties must mediate before they file action in court, in less than four (4) years precisely in 2012,⁷⁵⁷ an undisclosed ruling overturned the 2008 rule of mandating parties to mediate but⁷⁵⁸ subsequently reintroduced in 2013.⁷⁵⁹ Accordingly under the court-referred mediation, which is instituted by the High Court, it is strict.

On the other hand, the LMDC law is not strict, because under the functions and powers of the LMDC section 3(2) (6) of the both rules (old and new, same section)⁷⁶⁰ and under Article 2 the practice direction on mediation procedure encourages parties to mediate through walk-in-that is parties voluntarily coming to mediate their matters without the court referring them.⁷⁶¹ Furthermore they also encourage parties whose matters were screened for ADR and referred by the court, to appear before the LMDC for the resolution of their dispute.⁷⁶² Consequently, looking at it from this angle, it is very liberal; moreover was drafted for one to go into mediation unlike in some other jurisdiction like Italy⁷⁶³ where it is compulsory that parties must mediate before they file action though their state foot mediation bills.⁷⁶⁴ On the other hand, the LMDC Law 2007/ 2015 is designed to encourage parties to resort to mediation as much as

⁷⁵⁶ High Court of Lagos State (Civil Procedures) Rules 2004

⁷⁵⁷ C.H Van Rhee, Yulin, Fu, (ed), *Civil Litigation in China and Europe: Essays on the Role of the Judge and the Parties* (2014) 249

⁷⁵⁸ C.H Van Rhee, Fu, Yulin (ed), *Civil Litigation in China and Europe: Essays on the Role of the Judge and the Parties* (2014) 249.

⁷⁵⁹ Giovanni Matteucci, 'Mandatory Mediation, The Italian Experience ' (2015) 16 *Revista Eletrônica de Direito Processual – REDP Rhee, Civil Litigation in China and Europe: Essays on the Role of the Judge and the Parties* 19

⁷⁶⁰ Lagos State Multi-door Court Law 2015

⁷⁶¹ Practice Direction on Mediation Procedure 2008.

⁷⁶² Laws of Lagos State, Lagos Multi-Door Courthouse Law 2015

⁷⁶³ Matteucci (n728) 191

⁷⁶⁴ Van Rhee (n729) 250.

possible that is why they hardly have any cohesive professions there and any offences created- it is a liberal law designed to encourage mediation.⁷⁶⁵

It is argued that the essence of the LMDC is basically the resolution of dispute and requiring the attendance of parties and then their consent and their valuation. Now in regards to interpreting the law vis-à-vis court referred matters. The court-referred matters are still viewed strictly because some recalcitrant parties consider that they are sent to LMDC to mediate against their will. Thus, in drafting the TOS the parties will put that they do not want penalties written in the terms because they have in mind that they will end up defaulting.

In other words, they do not view it as compulsory because they have plans to take the case back to the court. It is essential to point out that parties are part of the court's jurisdiction; in respite to court-connected matters, the Laws are interpreted strictly neither to bow down to the old legal rules on a technicality. Although some stakeholders have argued that ADR through the LMDC can only be an effective method if parties voluntarily submit to the process, (through the walk-in) while some think other wise.

For the reasons stated above, the court-refereed is stringent; however, when it comes to walk-in the rules are relaxed, thus, making it a more lenient approach. Basically, in considering whether the LMDC Law is strict or lenient, it will depend on the mode of approach to the LMDC; that is if the matter is a court-connected matter or a walk-in. Since the aim is the resolution of justice, of which there are evidence that the application of the law embodies as much as possible an approach that gives the law a lenient face.

In the final analysis, the issue of enforcement of the Terms of Settlements (TOS)-once terms of settlements is reached, it takes the law of contract between the parties and when one breaches it the other one can sue for breach of contract. Additionally, there are also the elements of making the (TOS) as much as possible to conform to the rudiments of judgements of courts so that enforcement can be easily done. However, while the rules themselves are couched in lenient terms, they are still hunted by the shadows of legalism just like the English quote:

⁷⁶⁵ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 23

Although the old forms of action are there, nevertheless they are spirits and they are ghosts, which still haunt the modern day of doing things.⁷⁶⁶

Consequently when it comes to enforcement and Court Referral, the ghost of legalism still hunts the LMDC Law, although it does not create substantive rights rather it is procedural.

3. 11 CONCLUSION

This paper has explored the details of the LMDC and in furtherance to the above, it has shown that although in most cases litigation can be said to be an ineffective means of dispute resolution in comparison to the ADR.

This paper has also explored some of the preliminary background issues relating to Lagos state's court structure and why it was necessary to introduce LMDC and other ancillary bodies or Para-legal institutions to help decongest the courts and speed up the administration of justice within Lagos State the country's economic capital. Also, this chapter has also depicted that to a large extent that the Lagos state government in conjunction with NCMG kept up with the tempo of the growth of systems and laws; and has enacted rules and revised a lot of this old rules and processes that are well streamlined in context within the modern day dispute resolution; to offer a framework for fast track procedures through ADR. This paper critically analyses the indispensable elements of the LMDC process towards making an effective method of dispute resolution.

It is vital not to shy away from the most fundamental advantages of the LMDC; hence the TOS are final and further the decisions can be enforced. Thus, it is apparent that all this contributes to the effectiveness of the ADR processes and also distinguishes ADR through LMDC from litigation. However, in some ways a recalcitrant party may decide to hinder the process by using the aforementioned elements stated to his advantage against the other party and in some cases the benefits or pros of the LMDC becomes its challenge. Though it cannot out weigh the challenges posed by litigation

⁷⁶⁶ Harvard Law, 'History of the Distinctions between Trespass, Detinue, and Trover' (1905) 18 Harvard Law Review, 'History of the Distinctions between Trespass, Detinue, and Trover' (1905) 18, No. 5 Harvard Law Review, 402

in terms of parties not being at liberty to select judges or procedures of their choice. Thus, its advantages bring more value to the table of justice than litigation.

On the contrary, the drawback can be avoided if the LMDC law could be reviewed alongside High Court Civil-Procedure Rules (H.C.P.R) as LMDC will not be having its rules that it is contradictory with the H.C civil procedure rules because after mediation, parties will apply to the court for adoption and they will have to follow the H.C civil procedure rules.

Thus the need for these two (LMDC and Court Process) to work together is vital because the rule of the LMDC encourages party autonomy, and parties are at liberty to draft their contracts themselves. However, when it goes to court for enforcement, the court adopts the TOA wholly. Hitherto it becomes a problem if parties default or cannot follow through with their TOA. The case now falls back to the court; thereby, in the long run, ADR might not achieve its overriding objective, one of them being the Settling matters quickly and efficiently.

Although litigation gives teeth to the enforcement of the agreement of the ADR processes through the LMDC, the writer argues that some cases through the LMDC might be a preferable alternative. Due to its less complicated nature, its simple proceedings will continue to have more relevance, development, and input in modern-day Dispute Resolution.

CHAPTER FOUR: FINDINGS AND DISCUSSIONS ON LMDC

4.1 INTRODUCTION

This chapter presents detailed findings and discussions of the data collection. It scrutinises the qualitative data from each of the seven categories studied and subsequently, the quantitative data while highlighting or weighing in on the advantages and challenges of the LMDC process, and their effort in providing enhanced Justice dispensation in Nigeria.

Chapter five (5) will analyse the implications and effectiveness of the LMDC conducted on seven different categories of stakeholders: Case Managers, Mediators, Judges, Magistrates, Lawyers, Directors and Focus groups 1, 2, and 3. These are coordinated in line with the research aims and purpose. The analytical tools employed are thematic content or exploratory analysis.

4.1.1 An Overview of the Findings on LMDC

The basis for these findings is to draw themes from the discussions with the stakeholders, service givers and the users then categorise them using the identified Seven (7) groups. The researcher asked the different groups the following questions:

1. How does the Multi-Door Courthouse (MDC) work?
2. Has the LMDC replicated the Pre-colonial arbitral method of settling disputes?
3. How long does a dispute last?
4. Has the existence or creation of LMDC, impacted on the volume of civil disputes before the state courts?
5. How many court referrals have been made and have court referrals increased from 2002 to date?
6. How many walk-ins have been made and have the walk-ins increased from 2002 to date?

7. What dispute resolution process is preferred?
8. How many cases were resolved through mediation and arbitration-how many were unresolved and how many were discontinued?
9. How many commercial disputes were settled from 2002 to date?
10. How has the LMDC been useful or beneficial to the disputants?
11. What is the cost-effectiveness of going straight to LMDC instead of litigation?
12. In your opinion, would you say that LMDC is a success?
13. What are the challenges facing the LMDC?
14. What can be done to improve the standard of the LMDC?
15. On a scale of 1-5, 1 being the least and 5 the highest what would you rate the performance of the LMDC in dispute resolution?
16. What can be done to improve the standard of the LMDC?

The above questions were responded to by most of the categories and from their response their answers were expanded upon by being asked open-ended questions, which then formed the themes and sub-themes. However, the recurring / common themes includes:

- Speed and Time
- Access method / Simple process
- Cost –savings
- Ego/Apology
- Criminal proceedings / Restorative Justice
- Pre-colonial arbitral methods of settling disputes
- Why mediation is preferred
- Confidentiality
- Enforcement
- Lawyers not accepting ADR
- Lack of confidence in the judiciary
- Mandatory ADR
- Nigerian Culture-Sanctioning
- Funding / Lack of Awareness /Space constraints

Below are all themes and sub-themes generated from the questions posed.

4.2 Case Managers -4 Participants

4.2.1 The Advantages of using the LMDC

A Speed and Time

The above theme lays emphasis on whether the existence of the LMDC has impacted the volume of the Lagos State courts, which is one of the main advantages of using the MDC. Consequent upon that **Case manager 2** went on to explain how speedy resolution of disputes has impacted or contributed to the efficiency of the LMDC practice-

Yes, it has impacted the resolution of dispute a great deal. We have matters that have been in court for fourteen (14) years or more, and they get resolved here within a short time especially compared to how long they have been in court and then parties begin to wonder why were they even wasting so much time in coming here in the first place. So that has even made parties instead of going to court they walk-in on their own to LMDC and say 'let us try this' only when it does not work out that they tend to go to court so is like an eye-opener for so many people. It could be something so trivial that they realized that they didn't even need to engage a lawyer to assist them they can speak for themselves with the other side and come to an understanding and resolve their matter.⁷⁶⁷

This line of thinking or observation is similar to that of the **Case Manager 3**; however, she gave a more comprehensive explanation or reason behind the above-mentioned. She stated the reason behind it was that:

Parties first filing- he has 180 days that for it to stay at the LMDC, that means within that 180 days. " The party should be able to settle his/her matter within that time frame they can achieve so much that they can not achieve in litigation.

Similarly **Case manager 4** elucidated that:

⁷⁶⁷ "So it started gaining acceptance more than 2 or 3 years ago. So one person learnt about it and tells another party and tells another because it is an experience they feel that was much better for them."

If you check the statistics we had from the beginning to where we are. The LMDC has grown, I think we started with less than 100 cases, and we have gotten to thousands of cases referred to the LMDC every year. Furthermore, at least more than half of these cases get resolved at the LMDC and parties go home happy.

On the other hand, **Case Manager 1** highlighted that the present Chief Judge (CJ) of Lagos State has:

An effect or has impacted tremendously on the number of cases sent for settlement at the LMDC, and most of the parties showed up, and they got settlements at the LMDC instantly.’ The significant aspect of CJ’s impact is a twenty (20) year old case that has been in or has lingered in court but was resolved in the LMDC within a day (1 day). I think it is the Akwebo’s their matter was resolved. Now some of the parties are willing to come to the LMDC because they know that they will get faster result. Case manager made mention that adjournments are not allowed, in Mediation (2) weeks; however, in exceptional cases, mediation has adjourned for three (3) weeks or thereabout at the LMDC.

The **Case Manager 1** also pointed out that at the LMDC ‘once a party files the matter as a walk-in matter,

It is almost automatic within one week a mediator is assigned; however, in court, a party can file a matter. It takes another forty-two (42) days for the other party to respond. Even when the court case takes off, and the judge is not sitting for some official assignment or there is a strike action nationwide, all sorts of things come up. However, LMDC sits on a daily basis.

B. Cost Saving

Whether having a lawyer saves cost for disputants?

The cost-effectiveness of going straight to LMDC instead of Litigation is that “It is parties participatory” as, stated by **Case manager 2**. He went on to explain what this means.⁷⁶⁸

⁷⁶⁸ ‘So the parties are saving time, they are saving themselves so much time, so much unnecessarily back and forth in litigation- money they would have spent on being at litigation, filing processes, filing several processes which can cost about 250,000 Naira (which is equivalent to 515.22-pound sterling) and then you are still at it for some

Also **Case manager 4** states that

Well, in terms of when one is assessing cost apart from the monetary value, which is less than what parties will get. First of all, the parties do not need legal representation in the mediation session. So they can cut off the amount of money that they are going to need to pay a lawyer in the first place, and they will bring the matter to the LMDC. Then they can pay the administrative fees, apart from that, they will look beyond the dispute. For instance, they can continue their business relationship with each other-and the parties know that they can never get that from the court. When they take their matter to court, apart from the fact that they have to pay to get the legal representation, everything filed in the court the parties have to pay for it. However, their relationship with the other party will not remain the same. Nevertheless at the LMDC- is a one-off fee, once they make that first admin payment. So is better coming to the LMDC directly.

However, **Case manager 4**, while responding to how much legal fee cost, explained that-

It depends on the quality of the client, or the law firm. It can vary, some charge from one million Naira (firms in Lekki etc.) (2,061.24-pound sterling) and some law firm might charge from 500, 000 naira (1,030.49 pound sterling). “The cost of litigation is prohibitive, to be honest.”

Cost of Mediation -Walk-in Matters

Case manager 1 stated that

Yes, I will say coming to the LMDC as a walk-in matter it's cheaper. For monetary claims for an indigent party, he /she pays the non-refundable sum of 10,000 Naira. Furthermore, for mediation session pays Nil. It is cheaper than filing a matter in court.

Also, acknowledging how the cost is saved at the LMDC, **Case manager 2** revealed that the:

time. Nevertheless, at LMDC, the parties file once, and they pay once. Moreover, no one will ask you for additional fees from the beginning of the matter you know what they are expected to pay because there is a fee schedule at the LMDC.’

‘The administrative fees are a flat rate of 10,000.00, (equivalent to 20.56-pound sterling) there are mediation fees - is subject to your claims) so based on fee schedules, they see their claim. Furthermore, parties know how much they are likely to be charged, and it is relatively affordable...’

LMDC is so good that there is even a process for a review where a party that cannot afford the fee; his fees will be reviewed. LMDC will assign him / her to a mediator that will take his / her matter on pro bono.

On the contrary, **Case manager 4** pointed to an exception that the fees could differ depending on the “party’s financial circumstances.” For example,

For the walk-in matters, a party who is an average income earner will have to pay the sum of 30,000.00 (equivalent to 61.41-pound sterling) and a high net worth party, will pay 60,000.00 (equivalent to 122.81 pounds sterling). Nevertheless, LMDC –walk-in is cheaper when compared to the price of the litigation, which is on the range of 1 million or 2million Naira in most law firms in Lagos.

C The Impact of the Lagos Settlement Week (LSW)

The work of the LSW creates awareness, engages lawyers in a bid to reduce the dockets of the courts. The **case manager 4** also indicated that the Lagos settlement week (LSW) is

A free service unlike bringing their matter from the High Court (H.C), it goes to the other unit, other units you have to pay.

On the other hand, **Case manager 3** noted that:

For instance in our settlement week program we have cases that has been settled. Those cases that have been settled we send the report to court. And the matter is concluded at the next adjourned dates and we ask parties are these your agreement and if they accept that this is the agreement that they entered without any cohesion from any body. It will be entered into the judgment of court as a consent judgment thereby reducing the docket of the courts.

4.2.2 Scope of the matter covered and not covered at the LMDC

A Criminal matters

The focus on scope of issues covered in the LMDC has recently included criminal cases but simple offences like “misdemeanour, breach of peace, assault and battery.”

The Case Manager's highlighted this 'new development.' They also stated the majority of the cases that they handle are-

Civil cases, commercial disputes, which include banking/financial institutions, business, commercial, maritime, telecommunication, civil rights, education, probate, oil and gas, land disputes, real property, family disputes, matrimonial causes and transportation amongst others.

However they "do not handle capital offences and divorce."

B Ego

Also noting that why cases languish in courts is as a result of Ego, **Case manager 1** detailed her observations with the following example-

We've had blood brothers who have been at each other's throat for over 20 years and all it needed was an apology, they live in Lagos of the same parents, they don't talk to each other for over 20 years, the other one was 80 years and the other one was 72 years and all the 72 year old man needed to say was I am sorry and that was the solution, they have been in court. Ask me why they were in court for that long? I will say Ego. But 'I'm sorry was what resolved the issue.'

To buttress the point made above **Case manager 3** emphasises

The court edifice play with egotism and deceit, and by so doing wholly overplay the importance of winning at all cost and besides everyone is juicing out of it- the lawyers, the clerks and sometimes the judges.

C Flexibility of the LMDC Practice

Flexibility has been indicated as one of the robust core of effectiveness in the ADR process by **Case manager 2** she went on to give a unique account of-

Virtual participation or session where parties can be represented via Skype and it goes to show the flexibility henceforward the effectiveness of LMDC.

Case manager 3 statement also sustain this point:

We had to speak with one party abroad, sometimes we have to set up Skype, WhatsApp video or Facebook.

4.2.3 Pre-Arbitral Method of Settling Disputes

When asked if the LMDC has replicated the Pre-arbitral method of settling disputes. The case managers stated as follows:

Case Manager 2 highlighted an equally significant aspect of the LMDC she states

Yes, is just that we tend to be a bit more professional about it, Mediation is the pre-colonial thing is something everyone does everywhere, so it is not like a big deal is something everyone does but because we are an institution we tend to be more ethical, more professional about it. So that we do not have the parties getting the feeling that they are getting arm twisted or being compelled to do things that they do not want to which might not be the best option in delivering justice.

By the same token, **Case Manager 3** buttressed the statement as mentioned earlier:

For me what I see ADR as is to foster the relationship between parties because litigation at the end of it may leave a bitter relationship that may not encourage business relationship and family relationship, but at Mediation once parties have reached an agreement you will even see there are instances at Mediation that you will see a family coming back together. Yes, LMDC has replicated the pre-arbitral method of settling disputes.

The above- point is sustained by **Case Manager 4's** statement:

Yes, LMDC has replicated the pre-arbitral method of settling disputes because ADR is not alien to us, is something that was dated back to our ancestors; we run to them if they are disputes, but I think that because of the remodelling and refining of the whole process it looks as if ADR is new.

4.2.4 Rating the Performance of LMDC

Since the inception of LMDC no literature has ever provided feed back on the performance of the LMDC in dispute resolution whereas comparing it to other forms of dispute resolution or other providers of dispute resolution, however this finding has

filled in that gap in the literature. Hence, **Case Manager 3** rated the performance of the LMDC in conflict resolution as:

Last year we also had a matter, a banking case that was resolved –about 1.6 billion Naira (equivalent to 3,285,346.88 pound sterling) was recovered at one sitting that was done. Where we are right now, I would say four (4) in dispute resolution. We have done great but not there yet.

Case Manager 2:

I will rate it a 5 while comparing it to litigation. I would say so because I have been in it and I have seen results-when they (parties) first come in here they look miserable but later you see them leaving the mediation session, laughing together, shaking hands etc. I have seen a lot of that here.

Case Manager 3: I will rate them 4,⁷⁶⁹and finally **Case Manager 4** rated them a 4.⁷⁷⁰

A) The Mediation session

Case Manager 1 on observing the mediation session as a peaceful tool for settlement states that:

Most of the parties arrive embittered, and then at the end of the mediation session, most of them leave happy because what the mediation session at the LMDC does is that mediators have deep knowledge about the parties. You may want to know why? This is because the case managers pass on their files when we find mediators that are knowledgeable in that area of dispute let us say is banking law, maritime law, land dispute, oil and gas and a host of other matters. So when mediator listens and asks open-ended questions that will help the parties to open up and deal with their emotions. Hence, the likelihood of settlement is always there.

⁷⁶⁹ Because a lot is being done. In terms of cases that came from the court last month and this month. I can tell you that half of these cases have been resolved-it is simply incredible.

⁷⁷⁰ ‘We have other Lagos State institutions like the Office of the Public Defender (OPD) and the Citizens Mediation Centre (CMC) they come here to register their ‘terms’ at the MDC because LMDC is court-connected so is easier for them to come and start their court proceedings at the MDC. Even some matters that go to CMC and the parties will say it has to come back here and tidy up loose ends. I will rate it a **4 and half**. It could have been 5 if not for the challenges I mentioned earlier.’

Case manager 4 validated the point mentioned above:

So the mediators try as much as possible to try to restore the relationship of the parties during the opening statement, and that is why they come back.

On the contrary, **Case manager 3** stated that:

Even though the mediation session provides an avenue for parties to reconcile that is, for those that want to, parties that want to frustrate the time, effort of the mediator will turn it into a hostile environment in order to go back to court especially if they have their lawyers there.

4.2.5 The Challenges facing the LMDC

A The Lack of Privacy and Space

Case manager 1 presents and illustrates her take on space at the LMDC by saying:

Initially, when we first started we had issues with space though that has been sorted out the High Court (H.C) building has been extended a bit. Though that is still not enough, there is -a ground floor, which has been reinvented for mediation sessions because initially, we had one hall, which was partitioned, which is collapsible.⁷⁷¹

B Funding and Shortage of Staff

⁷⁷¹ **Case manager 2** affirmed the above position by stating, “ there are occasions that parties will complain to me and other staffs as well. That they could hear the other parties in the next cubicle, in some cases some of them have complained that it affected them as they could not concentrate during their sessions.”

Case manager 3 simply stated, “the importance of more rooms to be added for the ADR session to be private as it is, it is no longer. So as to ensure the privacy of the process, if not there is no confidentiality in the process anymore.”

Apart from the above-mentioned challenges, the case managers also indicated that ‘funding and shortage of staff is a challenge at the LMDC as they are now under the Lagos state Judiciary.’⁷⁷²

4.2.6 The Nigerian Culture-Sanctioning of Parties

Case manager 1 highlighted that to improve the standard of the LMDC; ‘the LMDC should be more strict about party attendance.’

Right now, because mediation is voluntary, a party may decide to come for mediation or not and LMDC will do nothing about it. The mediator comes sits down, the case manager will tell the mediator that ‘I am trying to call the defendant, he said is on his way’ one hour away, three (3) hours will pass he is still on the way, his not yet here (LMDC) and at the end of the day he does not show up.’⁷⁷³

The sentiment expressed in the statement embodies the view of **Case manager 3**:

The judge should make an order that if parties fail to report on two occasions, they may be sanctioned with a fine or a cost of X amount of money or something. If you do not apply force, nobody obeys you that is the Nigerian culture and also the need to sanction those that deliberately waste the time of the court.

⁷⁷² According to **case manager 1**: “The mediators are complaining that they could be paid more than what they are being paid now, because it is now under Lagos State Judiciary they dictate the tune.”

Case manager 3: “Like any establishment, we have our fair share of challenges like the workload is much and we are paid peanuts. And there is need for more staff, like shortage of staff. Though they are trying their best to meet up with the needs.”

Case manager 1: She affirmed that “I think the aggregate of matters coming in now has increased at such we are short staffed as in the matters has increased so people that were on ground before now are struggling, so we probably need more hands and salary increase as well, our cases dockets are increasing and every other thing is increasing.”

⁷⁷³ For example, ‘we had mediators come here, sit down from 10 am when they had a matter and by 1 pm. Parties are just walking in as nothing happens, the mediator is not compensated for those hours, the parties go scot free nobody harasses them by asking them ‘why are you late’? The mediator will just have to go on with the session. Like we always talk about this issue. We do not know what can be done? I think you should look into that aspect. I think they should start sanctioning them because that is the only language our people understand.” if not then LMDC will start encountering delay just like litigation. This is based on the statistics that matters are increasing in number even the walk in matters are increasing.” Although some lawyers who have not accepted the MDC have argued that the court referral should not be mandatory (though this generates traffic for LMDC) but it should not be so, attendance or appearance at the ADR should be voluntary but not in Nigeria it will not work.’

Case manager 4 pointed to an exception. She states that:

However, if they start sanctioning these parties, then mediation is no longer voluntary. So is a tricky one I must say.

However **Case manager 4** added that:

Although I feel the H.C felt the need to use cohesion and force - mandate parties by referring matters to LMDC then users will not fear the consequences, I liken it with the cane, remove the cane from Nigeria home then it's free for all. That's the same yardstick they must have taken when they decided to make it mandatory. If not for this decision taken by the H.C (Mandating parties to ADR) then the court's dockets will still be overcrowded.

However, **Case manager 2** expressed a similar opinion with **Case managers 1** and **3**.

Sometimes we have complications, and parties do not show up, though that is the way most people behave in this country if there is no punishment. They tend to misbehave; it can be quite frustrating for the mediator who left home as earlier as 6-6:30 am to get here at about 8 am.

4.2.7 The Courts as a Battleground

Case manager 1 stated, that the court could be perceived as a battleground.⁷⁷⁴

Similarly, **Case manager 2** agreed with the above position

Those lawyers encourage their clients to lie and to be hostile. So to me, the court is now an avenue for clients to battle out with one another.

4.2.8 Whether Lawyers and Judges have accepted ADR?

⁷⁷⁴ That "parties have the opportunity to sit across the table with their opponents in a peaceful environment and speak to each other. However, they will not have that opportunity in court- their lawyers speak for them. Their lawyer makes some additional statements that might aggravate the other party."

Lawyers are struggling to accept ADR. The reason behind this ‘is due to the orientation – having had litigation for so long as the only door.’ However this finding revealed the real problems behind those struggles.⁷⁷⁵ However, **Case manager 1** pointed out what the present attitude is:

The judges are opening up to say, look mediation is all over the world now. We cannot lag behind; lawyers should try and accept this process; some have accepted while others do not encourage their parties to use ADR.

Case manager 2 indicated that

Now is mandatory for parties to explore every means of amicable settlement before filing their matter in court. At least this has made some lawyers to embrace the ADR process, but they still complain that ADR has taken away their primary source of income.

On the contrary, **Case manager 4** stated that:

The elevation of Lawyers to Magistrate, Senior Advocate of Nigeria (SAN) and Judges depends on contentious cases and ADR is not classified as contentious cases so that’s another issue that needs to be looked into by the Nigerian Bar Association (NBA) so they need incentives to encourage them accept MDC. Thus the dispute resolution mechanism the LMDC deploys is what it’s still new to lawyers, they have not yet got into that dispute resolution mechanism; they believe everything should go to court. But is not necessary they are some cases that are for litigation and they are some that can be mediated and resolved.

4.3 Mediators -Six (6) Participants

⁷⁷⁵ **Case manger 3** made a crucial observation on the said subject stating that “lawyers don’t understand how to bill their clients for mediation and we have tried to train them on that -we told them to put that upfront like telling the client if it eventually goes to mediation this is how much you will pay me. So if they do that at the beginning I believe they won’t have a problem of getting their fees from the client.”

Additionally, “some of the lawyers feel that ADR has cut short their meals of income not knowing the benefit of ADR and that the amount they are getting at litigation they can still get at ADR. However, because of that limited knowledge they tend to serve as a hindrance to settlement so they insist that they won’t submit and you can’t force them and even when they submit they sometimes advice their client not to wholeheartedly commit to the process. So the mentality of the Nigerian Bar Association (NBA) needs to be changed they need to see ADR as a support system.”

4.3.1 The Advantages of using LMDC

A Speed and Time

However, when it comes to how long a matter last at the LMDC. It really depends on what the parties says **Mediator 1**. He illustrated his viewpoint with the example below:

I have done disputes, I was posted to Yaba I think it was last year and was given three cases. I resolved all three cases in a day I was shocked as well as the litigants.⁷⁷⁶

Also ‘acknowledging that some disputes cannot settle within a day or 2 days’, **Mediator 2** stated:

That ordinarily, they expect to settle by the 2nd or 3rd week because normally commercial matters, you can’t settle commercial matters in a day. No you can’t, so let’s take banking for an example they have to go to the management to agree to the terms and normally it takes like three (3) sittings.

On further questioning if the three (3) sittings is between a space of a week or two weeks? **Mediator 2** responded:

Within one or two weeks and that’s what they also tell you at the LMDC that within one or two weeks that matters needs to be settled because it has to do with speediness equals effectiveness. So LMDC expect that it cannot be like litigation where it takes a longer time. An aggrieved party wants his matter to be settled immediately so if their matter is settled in one or two weeks I bet you they will tell other people. So it doesn’t take long.

However, **Mediator 3** gave a holistic view on why it takes more than a day or two days to settle disputes at the LMDC. He stated:

It depends on the parties and it depends on the nature of the dispute, they are many disputes that are resolved in just one

⁷⁷⁶ I also did one (1) I think last month again it was resolved literally on the same day. Then they had some disputes that can go on for three (3) months and you look at it and you look at the demeanour of the disputants and you realize that really there is nothing you can do they might resolve some issues but they will be some issues that just have to go back to court.”

sitting at times in an hour or two is resolved, at times two hours, at times you have to adjourn three or five times so it depends on the parties, it depends on the complexity of the facts/ parties and so it depends on the subject matter.⁷⁷⁷

Mediator 5 simply stated:

I have resolved matters on the average of maximum three (3) sessions (days) unlike litigation, which can take five (5) years or even more than that to settle the same kind of case.

On the contrary **Mediator 6** stated,

That there is a two (2) months- sixty days timeline for walk-in matters, from the day they walk-in and submits the entire required document.

B Cost Savings

Whether not having a Lawyer saves disputants some Cost?

According to **Mediator 4**

Not having a lawyer at the mediation saves cost. He went on to explain what this means: the lawyer charges a client in this part of the clime depending on his clients net worth. If he feels his rich, he increases the fees from 500, 000 Naira (1,015.55 pound sterling) to 1 million naira (2,030.74 pound sterling) this does not include the adjourning fees that will definitely happen. So compare that court referral here that a token of 10,000 Naira per party (£20.31) will be charged for administrative fee.

Mediator 6 reinforced the submission of **Mediation 4**. She however added that:

With the court referral that the client must have paid for filing fees and lawyers fees and once the case is referred to the LMDC it is hard to get rid of the lawyer. However, some parties who were able to do that were really happy because there is nothing like adjournment fee. They only have to pay a

⁷⁷⁷ For example, 'I have had a family dispute that I resolved in one day, I have had tenancy matters that have to be adjourned so you cannot really say this is how long during the settlement week we were encouraged to settle the same day. By one day I mean an hour or two.'

sum of 10,000 Naira (£20.31) for filing fee.

Cost-effectiveness of going to LMDC than straight to litigation

According to Mediator 4

I will tell you that its cost-effective going to the LMDC, I wouldn't tell you the figures but if you walk into the LMDC what you will pay is a small peasant compared to litigation cost of filing. Yes, you are going to pay for the cost of mediation because there is an administrative cost and all that, but it remains minimal.

While **Mediator 2** observed,

Again, we all know ADR is cheaper then at the LMDC is much cheaper.⁷⁷⁸

C The Impact of the Lagos Settlement Week (LSW)

Mediator 1 pointed out ' that disputants are not expected to pay any fee; it is free during the LSW.'

4.3.2 Access Method

D Simple Process / Party Autonomy

Both **Mediator 3** and **2** pointed out that-

'The full autonomy is that he is not to be influenced by the mediator, to settle in a particular way and then he has this autonomy that he can sign the terms of settlement or appoint

⁷⁷⁸ Aside from the administrative fee which is quite reasonable 10,000 Naira (£20.71). I feel that anybody can afford that; with that fee it is easier to say I want to mediate. And you know when it even comes to payment I think even LMDC gives concessions to parties that cannot pay or for them to ask for reduced amount so again the cost-effectiveness is positive for LMDC.

Finally **Mediator 3** stated that the 'cost-effectiveness of going straight to LMDC than to Litigation is more cost effectiveness when you compare it to the time you spent in court, the length of time you spend in mediation, you know that somehow you saved a lot of money because if you go to court for every appearance you pay your lawyer fee. Engaging him or her and for some lawyers can cost 200,000 naira (equivalent to 414.22 pound sterling) like I said every appearance there is an appearance fee which is about 40,000 naira (equivalent to 82.84 pound sterling), if you want to appeal you pay separately for that like 30,000 naira (equivalent to 62.15 pound sterling) depending on where the court is located. But in LMDC we can make concessions like giving parties reduction if you don't have enough money to pay and if it is court referred it is free. For this I think LMDC is more cost-effective than litigation.'

another person but then the party autonomy reveals itself in the sense that the party at the very long run takes full responsibility for the terms of settlement and there is no favoritism at the LMDC.’

E Why Mediation is Preferred

Mediator 1 and **3** argued that ‘the parties prefer mediation for its simplicity. They also pointed out that due to the lack of trust in the judiciary, parties are moving towards mediation. In the other hand, parties have also compared arbitration as the new litigation due to cost.’

F Ego

Mediation session

Mediator 4 affirmed

That most times their lawyers speak for them and in so doing statements that might irritate the other party who will say, “I will deal with you. By the time I finish with you, you will regret crossing me.”

Mediator 3 identified that ‘one of the major reasons parties go to court is as a result of ego but once they start talking and understanding each other, they end up rendering apology to each other, and each party will have some form of closure.’⁷⁷⁹

G Mediation as a Peace Tool

⁷⁷⁹ Elaborating more on that **Mediator 3** says “So, they come here, and pour out their heart, we listen to them, because most times their Ego is too big and that’s why they go to court but once they come here, once they talk to the mediator they start to apologize to one another.”

On the other hand, **Mediator 4** indicates that: “And mostly here I find out that when you take away ego and you take off bitterness there is nothing left -someone who was defamed and was asking for millions, apology dissolves the whole thing. That won’t happen in courts, you go through a process and by the end of the day, you would have hated yourself the more. But when a party realizes and says how can this person say this of me, and the person / defendant says I am so sorry. You see the respondent saying ‘you mean you can say this’ and so that usually ends the matter.”

Communication

Mediator 2 ascribed mediation as a peace tool whereas comparing it to litigation. She went on to state

I realized that these parties they just needed to talk, mediator talking to them, just to make them see reasons. I tell people that Mediation is a peace tool as opposed to the commotion in litigation. I can say that because I have practiced for over 15years now. But it can work that way with the right mediator. So that again shows that LMDC are picking the right mediators.

Mediator 1 presented another significant aspect of mediation as a peace tool. She stated

‘More people are able to resolve their disputes faster with mediation; they even manage to maintain their business relationships. It might not always be the same with Arbitration or litigation. However with mediation what happens is that we are able to bring parties together because we look at the issue from both angles and instead of encouraging the hostility between the parties. Mind you that’s what lawyers thrive on as a result to encourage a winner and a loser approach, rather we encourage two winners in mediation.’

On the other hand, **Mediator 3** stated a mediator is

‘Empathetic towards the parties’ matter. The mediator can ask open-ended questions to promote empathy. For example I have heard all you said, and I can see what you are passing through, however for the purposes of settlement, what do you really want? The party might say I want him to go to hell or just an apology.’⁷⁸⁰

4.3.3 Scopes of matter covered and not covered in the LMDC

A Criminal matters

The mediators revealed that the LMDC ‘have started settling criminal matters.’⁷⁸¹

⁷⁸⁰ “What is the purpose of him going to hell achieved? How would that make you feel? But then again when the person sees this is a bit unrealistic. And he starts to rethink, the mediator then would ask him ‘Now tell me a bit about your relationship with this person? You see I have made him open up and he starts to communicate back and most times the matter will be resolved.”

4.3.4 Rating the performance of the LMDC

Mediator 4 rated the LMDC ‘four (4) in their performance on conflict resolution while comparing to the delay faced in litigation.’⁷⁸²

⁷⁸¹ “They also settle family cases, adoption, land cases, landlord- tenant cases also the financial cases, the commercial cases, cases in the manufacturing industry, banking, auxiliary relief of marriage or dissolution that is custody of children and insurance a lot of those cases tend to be in Lagos so the courts are under a lot of pressure until LMDC was birthed.”

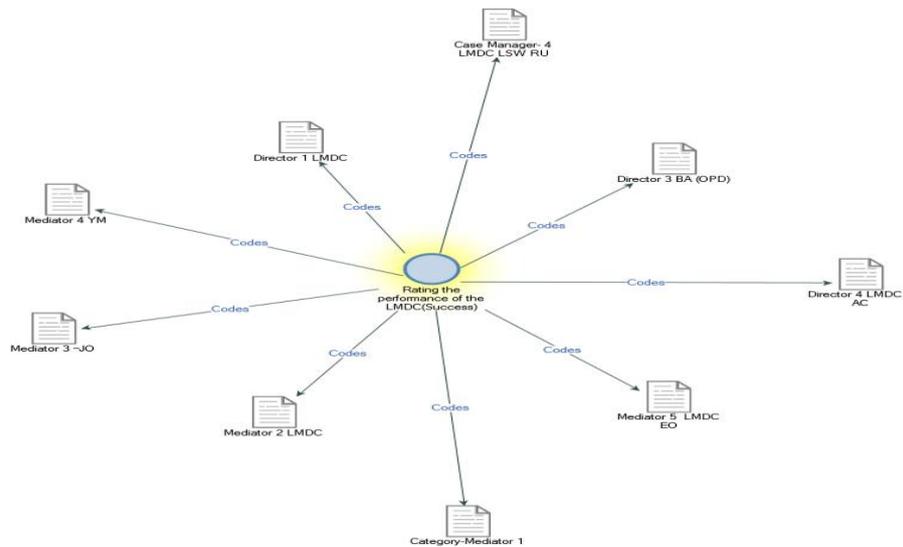
On the other hand, “they revealed that scopes of issues not covered are divorce and murder.” However, **mediator 1** pointed out that LMDC has started settling criminal matters. On the other hand, **mediator 2** pointed out, “It is called restorative justice. We have an advanced system of criminality in Nigeria but the process is changing where suddenly you realized that not all offences are crimes.”

⁷⁸² However, **Mediator 6** rated the performance of LMDC in conflict resolution with the hurdles they have faced so far.’

Mediator 6 stated, I can see that and we have been able to grow a lot of mediators in various fields of practice. We have done great but not there yet.” On the other hand, **Mediator 1** rated the ‘LMDC a 4.9 while comparing it to the fact that the other ADR center in Lagos come to enforce their TOS at their center and that no body is perfect.’

Mediator 2 rated the LMDC ‘a ten (10), although in the scale of preference 10 wasn’t given.’ She explained, “I have had course to do mediation outside Nigeria especially in the UK and after my session, I sat with somebody and I made some statements and she asked ‘where do you mediate’? And she said whoa, we have heard so much about them (LMDC). And again LMDC invites foreigners to come and give lectures for us, yes they do.”

Also, **Mediator 5** rated the LMDC a ‘4.5 because of what I said earlier on though there is room for more improvement but so far so good.” Further more, **Mediator 3** explained why he rated LMDC a 5 over 5, stating ‘I would say several reasons you see because of the level of the training that we get for mediation and because of the willingness of the mediators to excel in what they are doing. The standard here is very high and even in the very seemingly impossible cases. We have had mediators that were able to break through and achieve a settlement as we say the success rate of mediators may be different from B, C, D, E and all that but on average we have very good mediators who have been doing a lot.’



The figure above shows all the project items connected to the code or case working in and step through connections to explore related items.

Finally, **mediator 4** stated, you see LMDC, as a body has tried maybe the success level, is not really 70% yet and in terms of acceptance is a gradual thing it hasn't been totally accepted like litigation. But in terms of performance the litigants or disputants come and go home with their cases resolved on time and at a cheaper rate then I will give it a pass mark. I am very moderate I will give it a 4.

A How has the LMDC been useful or beneficial to the disputants?

The LMDC is a unique model; it gives parties a place to come than using litigation, which reduces cost significantly, states **Mediator 1**.⁷⁸³

⁷⁸³ Similarly **Mediator 2** validated the statement made by **mediator 1**. She states that 'yes, quite a lot. I will tell you something I guess this might be out of record; most people that I have settled their matter have realized that I won't have stayed this long if not for the court. They are matters that have been thirteen (13) years in court and once they come to mediation and you meet a good mediator they settle it within a day and that is it.'

However, **Mediator 3** explained, "I would say LMDC has given them hope that there is a place where they can come and vent their anger, vent their frustration and vent all that there is inside of them and they will not be judged. A little bit of the Socrates method, if you ask me; a bit of it, they allow them to talk and they listen."

In furtherance, **Mediator 5** highlighted other ways the LMDC been useful or beneficial to the disputants. She states "that aside from the court-referral and walk-in, the LMDC offers what they call the Lagos settlement week

4.3.5 The Challenges facing the LMDC

Both ‘**Mediator 1, 2, and 3** revealed that Funding, Awareness, Mediators fees, space, training and lack of confidentiality are some of the challenges facing the LMDC.’

4.3.6 Nigerian Culture- Sanctioning Parties

According to **Mediator 2**,

I would say that making ADR mandatory was the right step that made LMDC to be successful. Looking at how Nigeria function, you know what I mean. The Nigerian culture/ orientation is such that; most of us are used to force before we adhere to rules. Remove force in Nigeria then nothing will be achieved. Anyway, if I go into that, this interview will not end. So I would also say that LMDC is living up to expectation because ADR is now compulsory or mandatory for parties to try before proceeding to the courts as the case maybe. They also need to start sanctioning parties- monetary wise that deliberately does not want to settle. That’s the only language most people understand here.

On the contrary, **Mediator 3** highlighted that in Nigeria

“Most settlements don’t occur in court they occur in the police station. Because the police will use brutality on the person involved and then at times even when the money is in millions if the person drops 10.000 Naira (£20.24). Then tell the person this is what I have, the police will eventually collect it and say when are you (bailing me) they will put down an undertaken that they will be paying them little by little until the matter is settled but thanks to the LMDC, things are changing...”

(LSW) where the court will close down for a week and parties can come into the LMDC and commence their cases which is also free.”

In sum, **Mediator 6** alluded that “I believe that the LMDC has given the parties an opportunity to settle their matters in a non- hostile environment and has given them opportunity to continue family relationship and business relationship. Paying for series of adjournment, appearance etc. These are tactics employed by the lawyers to charge more and more money. It’s sad.”

4.3.7 The Pre-Colonial Arbitral System of Settling Dispute

According to **Mediator 3**, LMDC replicated the pre-colonial arbitral method of settling disputes. He explained:

‘Yes, I almost said it but I wanted to keep quiet but it’s very close to our traditional dispute mechanism now. But mind you, African society particularly our pre-colonial societies had different political and legal structures. Like for instance we do not have prisons in Igbo land whereas we had prisons in Hausa land and Yoruba land. We didn’t have kings in Igbo land whereas we had them in Yoruba land. But most of the Igbo lands didn’t have even the so-called Obi’s and Kings-what we have is the titled men. Then these titled men were the custodians of the moral fabric of the society and then when a person does wrong, he is ostracized in the sense that nobody communicates with him and that is a very huge penalty to pay and so most of the people in the society had an incentive to be of good behavior. So, having regard to our pre-colonial structures, which were immaculately different from each other, we cannot say that mediation exactly replicates the pre-colonial era.’

On the contrary, **Mediator 4** responded, ‘What we could say is that it was very close to our communal way of resolving personal issues.’⁷⁸⁴

4.4 Judges- Three (3) Participants

4.3.8 The Advantages of using LMDC

A Speed and Time

Judges 2 states

Well if you consider that you could be in litigation for five (5) years and you would be in mediation for less than a year than the cost of

⁷⁸⁴ ‘We have the elder, the family, the customary settings, the community which seats on a dispute between people and tries to resolve them - with a bottle of wine or some other thing that they use to invoke the Spirits. Unlike here (LMDC) during the settlement week parties don’t have to pay for anything they just bring their paper, communicate with each other and their matter is resolved. So it equals to our pre-colonial arbitral method of settling disputes, that is our traditional method which is still obtainable in the villages.’

While **Mediator 5** simply stated ‘Not really however, but I can tell you that my director has been invited to train the Oba’s etc.’

coming to court and going its expensive. Plus as long as you are in court there's cost to the court system itself because you have to provide the support service to be able to hear your case.⁷⁸⁵

B Cost Savings

Self-representation and Walk-In:

According to **Judge 1** 'parties do not even need to get a counsel, which makes LMDC much cheaper.' Expressing similar sentiments **Judge 3** pointed out that at times

Parties may not even need to get a counsel they can easily represent themselves and if parties are able to settle with the help of the mediator they just file their terms.

Similarly **Judge 3** opined

If parties went straight to the LMDC in terms of walk-in then you are advised to go and file a suit then at least you been able to ventilate whatever it was and you have the clearer picture of what you are going to do so the costs of mediation from my experience is very minimal compared to what you pay for litigation considering the number of years you could be in litigation for.

C Ego (Apology)

Judge 1 observed,

That all that was needed from the defendant is just a simple apology but because of egoistic nature he didn't give him that. So because he didn't get that, he decided okay, I'm going to court, the defendant too will now be stubborn, you have taken me to court? Don't worry we will meet there but when they will now get to ADR or mediation after one or two sessions the claimant will now open up; which unfortunately he can't say in the open court that this is what this man did to me and he didn't apologize. So the mediators will now say, oh is that the problem? The man will be persuaded to apologize and that is the end of the matter.

⁷⁸⁵ 'There is cost to the clients because he has to pay for the appearances for his counsel in court and even if he is appearing for himself he still has to come to court. Then you have to pay for not filing a process when you were supposed to file. But with mediation once you paid the initial fee that is the end of it. They have maybe maximum four-4 sessions it's done.'

4.3.9 Pre-arbitral colonial method of settling disputes

Judge 3 suggested,

‘I think the LMDC from experience is a holistic alternative dispute resolution system in the sense that native or traditional matters get there and they get it resolved.’⁷⁸⁶

On the contrary, **Judge 2** stated that the ‘LMDC did not replicate the pre-arbitral system.’⁷⁸⁷

4.4.1 Scope of matters covered in the LMDC:

Judge 3 noted that ‘there is no barrier as a subject matter-construction, art and all manner of disputes even disputes involving traditional title and traditional history.’

A Criminal case

According to **Judge 3**, ‘Though I haven’t referred criminal cases to the LMDC because I’m not in the criminal division.’⁷⁸⁸

⁷⁸⁶ Hence they can replicate it but they need to do some **fine tuning** to bring it up to the modern standard, there is nothing bad there, almost all the kings and chiefs hold arbitration and mediation and they achieve success as well. I don’t know whether you are aware of what’s happening in Ekiti?” **She explained** that “The King there have been integrated into the judiciary system. One, they have a set of law reports of judgments pass by the kings, some are litigation, some are mediations, some are arbitration where the king sits in the palace and he listens to parties and he mediates, he employs traditional strategy and he has turn up in all law reports, so I don’t see anything wrong in the LMDC bringing up or making use of the colonial method, more so disputes involving traditional native matters go there as well.”

⁷⁸⁷ In his words “No, they didn’t, I wish they did. Because remember that there was this conflict in Rwanda, the killing, the massacres, the genocides, when they wanted to integrate the societies back. They actually developed an ADR system very similar to what they had, going to chiefs where community members would go to the chiefs to have a resolution so they moved from place to place sitting, calling people forward, hearing from the different sides without necessarily making any judgment. At that place, you know just really gathering information and then sitting down and looking at it from the perspective of whatever community that person came from whereas here, we are talking about all they had to file statements they have to file response. However, what we have or had traditionally was, you would have a chief or somebody in authority but maybe a panel of two or three others and they would sit together, hear both parties and then mediate. But this right its fashioned on oyinbo (English), it’s all oyinbo.”

⁷⁸⁸ “But if I were in the criminal division definitely I will refer some to them. It does not necessarily have to be the minor offences. It all depends on the parties’ even murder. For example, in Nigeria sometimes parties of the respondent who are not interested in the case, because killing or giving them a cow or even the defendant won’t bring their brother back. They might say what we want is that, so, so amount of money should go towards his children’s school fees. This is the number of schools his children are and this is how much they pay they can decide to settle out of court.”

However, **Judge 2** pointed out ‘They have started settling criminal, but no referral yet from my docket.’

4.4.2 The Challenges facing the LMDC

A Funding and Awareness

On the other hand, **Judge 2** highlighted ‘funding and awareness are the challenges facing the LMDC.’

Additionally **Judge 2** says,

‘I think LMDC having more qualified mediators in their employment will help as opposed to relying mostly on the core of mediators it goes back to funding. The administrative staff you know the tools that they work with for instance they have to communicate with the parties, they have to send out notices.’⁷⁸⁹

4.4.3 Sanctioning of Parties

Judge 1 presents reasons why ‘ADR judges go to the LMDC sometimes to attend to the matters as he proceeds to explain the form this takes it becomes clear that at times some respondent are reluctant to submit to ADR or mediation.’⁷⁹⁰

On the contrary, **Judge 3** observed

⁷⁸⁹ “So they need tools like more computers, so that they can send mail notices where they have email addresses and where they don’t, where they have to send hard copy notices then to provide them with a courier we would do the work.”

⁷⁹⁰ ‘ He states: “So my job is to try and persuade them in the need to see how they can resolve this matter amicably instead of the urge of going through the normal court to file it. They have been instances where the respondent refused to come and there were no penalties for their failure to attend the ADR. Presently I don’t know if there were any law that can force them to come since is a voluntary thing that is the only reservations that I have about it. That if they don’t attend there is nothing one can do but it can’t happen in court, parties must attend court. I don’t know if there is anything to make them come.”

‘At a point, if there is no submission they invite the ADR Judges to have audience with the recalcitrant respondent to know why they have not submitted to mediation, some will talk to them, they will submit, some will talk to them they won’t submit. Its party driven, nothing the center and I can do about it.’

4.4.4 Lawyers not accepting ADR

Judge 3 pointed out also ‘When we started they are few lawyers who do not believe in ADR.’

A Knotty matters

According to **Judge 1**, in court there are ‘some knotty matters’⁷⁹¹ that can take nothing less than three (3), or four (4), five (5) years.’

B De novo cases

Judge 3 pointed out ‘an equally significant aspect of delay in litigation is as a result of De novo cases.’⁷⁹² On the contrary, he stated that ‘ADR matters can not last more than six (6) months or one year.’

C Nature of Disputes

Judge 3 also pointed out an important criterion on how best to resolve a dispute.

If the cases are ADR amenable, there is no point sending it to court in the first place, like matrimonial causes.

⁷⁹¹ Explaining Knotty matters “In the sense that some matters is difficult to get parties to settle. Now you say parties filing series of applications and the applications will be coming from the defendants to sort of delay the matter. At times a matter is called in court the defendants after announcing appearance will say he has a preliminary objections you have to deal with that first. That will take some time if you are now lucky let’s say you started trial mid points they may be application to amend those are the causes of delay.”

⁷⁹² She states “In fact I have one very old case they have given evidence but has been pending for about fifteen (15) to Twenty (20) years. But I happen to be the trial judge. They started giving evidence they now decided they want to settle and I was very happy that after this years- so like that one if at the end of the day they agree on terms. They will now file terms of settlement but the unfortunate thing is that they have been series of delay from judge to judge. And sometimes a matter will be with a particular judge after the judge retires it will now be reassigned to another judge and the judge will have to start De novo in fact that is one of the causes of delay.”

D The Relationship between Disputants

On the other hand **Judge 2**, highlighted another important criteria, which is the relationship between disputants.⁷⁹³

E Enforcement

Judge 2, noted,

They also carry the stamp of judicial enforcement like any other judgement of the Lagos high court. That is the effectiveness of the LMDC practice.

4.4.5 Magistrates – 2 Participants

4.4.6 The Advantages of using the LMDC

A Speed and time

Magistrate 1 stated that

‘The court is not successful in terms of speed, but we are doing so much. I mean they are getting it right but also you can’t blame them. The volume is there, we are in Lagos I mean the numbers, and it can be a lot of factors involved. Lagos is overpopulated, the volume of cases or offences that come up. Are they managing the numbers? No, I don’t think so. But with LMDC you can’t put a time, we would have to take a study of maybe cases in a year and look at how to predetermine that- you can’t really say. When you have to manage human beings the other person is upset or both are upset, managing them you

⁷⁹³ He illustrated where “married couples will say that they are discussing settlement and I will now say this is ADR matter you are already discussing settlement, Should I just refer you to ADR? The answer I get sometimes is we are almost about settling maybe we just have one or two issues to resolve. So they will now ask for an adjournment for report of settlement.”

can't say, you can't place a time, some may seem very fast while some might not be. I think there is a timeline of three (3) months at the LMDC. So far they have been okay with managing cases.'

Conversely, **Magistrate 2** stated that

Yes, some cases I sent to the LMDC it was settled within, two (2) days and I have had a day too. But I don't know the percentage because I don't have it off head but for the magistrates court it has very much reduced our volume per se.

B Cost saving

Mediators fee

According to Magistrate 2,

We all know ADR is cheaper. Then at the LMDC is much cheaper. Aside from the administrative fee, which is quite reasonable -10,000 Naira, (£19.96) which I feel that anybody can afford that. With that fee it is easier to say I want to mediate. LMDC even gives concession if you cannot pay; for you to ask for reduced amount so again the cost-effectiveness is positive for MDC.

Hidden costs in litigation

Lawyer's fees

Magistrate 1 exemplified the above position

For instance, like you are going to litigate then it means that one, you are briefing a lawyer who may not necessarily be or it could be your lawyer or could be a referred lawyer who also has hidden costs.⁷⁹⁴

4.4.6 Access Method

Simple process

The magistrates pointed out that ‘at the LMDC it is a bit less formal.’

A Why Mediation is Preferred:

Magistrate 1 made an important observation on why parties prefer mediation.

Parties really believe that mediators have integrity, are impartial. They believe in the power they have and so they trust them. However, most lawyers lack the listed attributes.

However, **Magistrate 2** opined that parties ‘prefer litigation.’ ‘The fact that they are just coming in to court and what I tell them when they come is that ‘I’m paid to be here is not costing me anything but it is costing you this and this.’

4.4.7 Scopes of matters covered at the LMDC

A Criminal matters

According to **Magistrate 2**,

Parties bring cases like civil recovery of premises; you will know it is a recovery of premises matter but couched with a criminal coloration. Maybe ‘they will now say’ somebody assaulted me and all of that and

⁷⁹⁴ “So when we are talking about costs is not cost only to the parties is cost to the system. So I find it onerous on the system because when you have two parties with a lot of satellites personalities hitch to it. So by the time you look at it, the cost is heavy as against when you have an issue where A, B, C is concerned and decides to go to LMDC and address the issue in front of a mediator and they talk to each other like ‘I don’t have an issue with you. I mean we disagree to agree on that’ then you now take the issues itself and focus your energy on that. So it saves cost going straight to LMDC instead of litigation.”

if you just do a little bit of preliminaries you find out that they are landlord and tenants.

Restorative Courts

Magistrate 1 clarified that the restorative courts was introduced last year. She stated:

You are able to separate the real issues and then if you must at all go through the way of adjudication, then the adversarial way then it is reduced to its barest minimum so the others are things you can ‘jaw jaw.’ So that’s the way I do it before the restorative courts was formally opened sometimes this year (2019). So now I just look at it as a change, if it is a simple offence I send it straight to restorative court.

B Nature of Disputes

Magistrate 1 indicated ‘important criteria on how best to resolve a dispute by separating her cases into amenable cases and non-amenable cases.’

D Ego (Apology)

Magistrate 2 affirms that issues can be solved just by simple apology. She indicates

You know a lot of disputes is caused by ‘Ego’ so I think the mediation session under the LMDC has been able to tackle that by providing an atmosphere where parties can dialogue and resolve their disputes. So LMDC has been beneficial and useful to the parties.

In contrast, **Magistrate 1** stated that parties cultivated the habit of going to court as it encourages ‘I must have a pound of flesh’; you know I mean everybody knows everybody even in the courts.’

You hear litigants bragging I am going to deal with him, I am going to him, I know the judge, I must deal with him and I am going to win the case. I tell you, the judiciary and bar did not address a lot of deliberate ignorance because there is profit in mischief.

4.4.7 Pre-colonial Arbitral method of settling dispute

Magistrate 2 pointed out that

Multi-Door Courthouses (MDC) are one of the things that foreigners have couched for us in such an elaborated flowery word there is nothing new that they have brought. In the yore days when they use to settle disputes in the village like other people under the mango tree it works perfectly well. So I look at ADR under LMDC and I think this is a joke, is an irony of sorts that you will now come and tell me that they brought something that is always been us, our traditional method of settling disputes.⁷⁹⁵

However, **Magistrate 1** disagreed with the above –statement. She pointed out that

No, the LMDC have not replicated the pre-arbitral method of settling disputes and that is one of the things I feel is a problem because we are trying to copy western or the way it is done. We are not going back to how we did it; I think that’s a major problem.

We are not involving the community enough I mean back then it used to be the community like the chief, the king, the community leaders, and the traditional leaders.⁷⁹⁶

4.4.7 How useful or beneficial the LMDC has been to the disputants?

Magistrate 1 indicated that

It has been useful to parties because a whole lot of parties go back home as friends. She further stated, “Apart from the parties, it has been useful or beneficial to us (magistrates). I’m being selfish now; they have reduced my workload, with what I have to do daily compare to what I used to do.

To validate the above position, **Magistrate 2** stated,

⁷⁹⁵ “Indeed they came and brought the court system and we bought into that, we buy into any crap and then they take it away and then we import it again and refuse to let go but we acknowledged that litigation is theirs; do you understand but they can’t acknowledge that ADR was stolen from us. As long as I’m concerned we just gone back to our roots, which is the way, it should be. As far as I am concerned, they have not introduced to me anything that is special. They have just giving it some flowery name and all of that, even to date we practice that in the family you sit down and your siblings are quarrelling, husband and wife are quarrelling the elder ones come, the family, in-laws everybody will sit down and dialogue it so it has always been and will always be our method of settling dispute. Is just that we didn’t package it well, they saw all its benefits it and they helped us repack it, without acknowledging us.”

⁷⁹⁶ But now we are trying the Restorative justice, Practice direction and the methods used -things like circles which is all western, it’s not traditional we are not going back on how we used to do it. So it has not replicated that. However, I think it should find a suitable settlement method that is ours that is not foreign that we can own and say this is ours.”

Yes, absolutely, you find out that people that are initially reluctant come out thanking me and they say to me ‘wow this works! But you see it just takes that extra mile to persuade people. Sometimes I tell them it’s easier to have a cup of tea or coffee, while you’re talking in a relaxed mood you know. And then sometimes you’ll find out that issue was no issue in the first place, that’s what mediation does.

4.4.8 The Challenges facing the LMDC

4.4.9 Sensitizing, Incentives for Lawyers, Sanction and Awareness

Magistrate 2 highlighted ‘that the first rule of improving the LMDC, is by sensitizing the Nigeria Bar Association (NBA) to put ADR cases as a criteria for becoming a Senior Advocate of Nigeria (SAN) or Judge. You will see more lawyers will encourage parties by handling non-contentious cases.’

Magistrate 2 indicated ‘the need for more awareness and sanctioning.’ While **Magistrate 1** stated ‘I would think that LMDC have manpower problem.’

4.5.1 Lawyers not accepting ADR

Again **Magistrate 2** states:

Lawyers believe that each time they are adjourning matters, they are getting certain fees, transport allowance from their clients so they want to enrich their pockets more.

4.5.2 Rating the performance of the LMDC

According to **Magistrate 1**, ‘I rate them 3 and half in conflict resolution.’

I have seen the mediators resolve cases. They are interested in getting parties resolve they are trying, but not there yet.

‘I rate them a 4, they still need to improve’, states **Magistrate 2**.

4.5.2 Lawyers- Four (4) Participants

4.5.3 The Advantages of using ADR

A Speed and Time

Lawyer 2 emphasized that ‘that the time line for a case at the LMDC is an average of 3 months or 4 months.’ However, he stated that ‘he has done cases that extended to one year. What was the problem? The answer is lawyers.’ They keep making excuse.’

On the other hand, **Lawyer 3** illustrated that he had a landlord matter that falls under the jurisdiction of the High court (H.C). He states:

So the client wanted this tenant to leave but he did not want to go through the whole hog of issuing a six (6) months notice and he advised that they should go to mediation. So we all went to LMDC and the matter was resolved within a week. This argument is validated by statement from **lawyer 4** Lagos court was very clogged and has matters that has lasted for 12 years or 5 years in court whereas not so at the LMDC. They settle within a week or 2 days.

Finally, **lawyer 1** emphasized that Mediation at the LMDC ‘does not last more than 2 weeks and if 2weeks has elapsed and the mediator feels that he can still settle it, he can apply for extension.’ The highest disputes can last is **6** months and it goes back to court.’

B Cost- Savings

LMDC Cost

Lawyer 1 highlighted the cost effectiveness of going straight through the LMDC door is that-

It is cheaper, so if you want to file a process in the LMDC it may not cost you more than 15,000 Naira (£29.98) to 30,000 Naira (£59.95). Let me say, that is for huge claims. Sometimes is as cheap as 5,000 Naira (£9.99). It saves cost, to all parties involved and time and resources for everybody because it is shorter than litigation.

On the contrary, **Lawyer 2** pointed out that ‘LMDC is cheaper but in Lagos a case has to be filed in the court before it will be referred to ADR. So it is still incurring the cost of filing a matter but given the processes is shorter, cost is lower because the matter can be resolved in four (4) months or Six (6) months unlike if you go into litigation.’

Lawyer 4 stated that

Definitely saves cost going straight to the LMDC because you resolve the matter within a day or in a week but if you were going to litigation you will pay more, and affords the parties the opportunity to sit in a conducive room.

Litigation Cost

Lawyer 2 points out that it won’t cost you much at the LMDC but in the regular court.’

The charges are higher like affidavits and appearance fee are paid for you don’t get the issues like that at LMDC.

Lawyer 3 corroborated with the above evidence that ‘Litigation will take years.’ However, **lawyer 4** clarified why lawyers need to make money.⁷⁹⁷

4.5.3 Scopes of disputes covered and not covered in the LMDC

⁷⁹⁷ “In as much as the law is a vocation it is also a business, lawyers needs to make money and we need to maintain ourselves and practice. But I don’t think it’s a lose-lose situation for us. Now that lawyers know that disputes can be resolved at the MDC is faster instead of having a matter for ten (10) years in courts while I can resolve it in 2- 3 weeks.”

A Criminal matters

Lawyer 1 denoted that

LMDC is a huge success especially now that they have started settling criminal cases.

On the other hand, **Lawyer 4** pointed out that

He does not know if the LMDC has started handling criminal disputes, but he is sure its civil disputes that they handle.

Lawyer 3 and **lawyer 2** confirmed that the MDC ‘has unlimited jurisdiction. What this means is that any amount even if it is one Naira or even if it is one kobo, but can not settle-divorce. But they have started settling criminal cases.’

B Mandatory ADR

As earlier said it has impacted tremendously in the sense

Those cases, which are meant to be for litigation, are now by default assigned to ADR that is in the MDC system. Though mandatory ADR, which is the court, referred mediation is not in line with the ethics of ADR. ADR is purely voluntary stated **lawyer 4**.

4.5.4 Mediation as a Peaceful tool

Lawyer 1 affirmed,

Mediation is a faster and cheaper friendly mode of peaceful resolution.

He went ahead to explain that ‘each of the above stated words means something important.’

First, friendly means that we want to have peace and still remain friends if we resolve it through the court process we may be enemies for life whereas if is through the MDC it is a win-win situation. Secondly, friendly mode: we will be friends again. They will be forgiveness that is a parameter that looks at the pre-colonial era. Is a win-win, there will be no hard feelings everybody will forgive each other the court will go for a maximum sanction, LMDC will go for no sanction, and so mediation is a peace tool.

B Why Mediation is preferred?

Lawyer 1 clarifies that it depends on the

Character of the case; some cases are better for litigation while some cases are better for ADR.

Lawyer 2 expressed a contrary opinion. He stated that his ‘client see court as the last resort because they are commercial or corporate entities. They don’t want to have bad relationship with their customer/ client.’

Lawyer 3 affirms that ‘the dispute resolution preferred is mediation.’

Because mediation is more relaxed and affords the parties a space to ventilate their anger and also have more room to negotiate unlike arbitration that resorts to law sometimes.

Following through, **Lawyer 4** explains,

It is faster, cheaper and more effective and win-win situation for parties and parties are happy to continue using mediation.

4.5.4 The Challenges facing the LMDC

4.5.5 LMDC Clogged and lack of space

Lawyer 4 further pointed out that the

LMDC is getting clogged. However, they now have the Lagos settlement week, if you go to the LSW it is jam packed, note that during the LSW- it is free.⁷⁹⁸

⁷⁹⁸ “On the lack of space: when “we started settling disputes at the LMDC it wasn’t that big, they started creating more rooms, building though it is still not enough because a lot of people are now using the LMDC. Where they are presently situated is like an appendage to the court, they have fewer rooms to themselves and because of the fewer rooms, the rooms are not built for the purpose. It is just a demarcation sometimes you hear the party’s conversations and the people on the other side are listening to the conversation. There was a day we had to go and tell the people to please lower their tones and it’s meant to be confidential.”

4.5.6 Lawyers not accepting ADR

The statement made by **Lawyer 2** demonstrates why lawyers do not accept ADR.

The parties will not want to pay because LMDC encourages self-representation.

Lawyer 1 stated that the challenges facing the LMDC are

‘Non-patronage of lawyers, poor education of the masses on the concept of ADR and taking LMDC away from the court premises.’

He indicated that

Many litigants do not feel fulfilled when matters is resolved in ADR. They feel like the punishment is not harsh enough or is not justice because most times ADR ends as a win-win situation.⁷⁹⁹

In furtherance, **Lawyer 2** highlighted that ‘lawyers are not really open in recommending out of court settlements.’ However, some of the judges

Even go to scold lawyers. Thus Lawyers are beginning to tilt towards it and they no longer see it as waste of time. So by and by the MDC is coming handy.

On the contrary, **Lawyer 1** insisted that

That lawyers are a clog because from experience Lawyers even go advising their client that ‘when we get there don’t accept you will win this case.

A African Culture-ADR is free

Lawyer 1 went on to explain that even if

The parties uses the ADR to achieve its purpose, they pay less. They give you more respect when you wear the full legal regalia and say objection, my lord.⁸⁰⁰

⁷⁹⁹ “Some of the litigants don't like a win-win situation they want a winner takes all approach that is ‘if you want to beat me, beat me make I die (pigeon English), ‘if you can't beat me, let me beat you until you die. But the LMDC encourages forgiveness, let the sleeping dog lie, overlook some things so that affects the patronage of some lawyers. Like I earlier said, Lawyers believe that they will lose money when they go to ADR and the general masses are not educated enough to know that a lawyer should be paid his due service.”

⁸⁰⁰ They will say my money is talking and if you invoice them One Million Naira (£1,998.60) they will pay.

B Awareness

Lawyer 1 highlighted another challenge, which is that

The parties are not yet aware that they do not need a lawyer to approach the LMDC and get result and some parties don't know about the MDC." They don't know because the office is located in the old premises of the court, if you ask me they should even relocate the office.

On the hand, **Lawyer 2** validated the above statement by stating that

Lack of facilities, parties would prefer a neutral environment other than the court premises, shortfall in personal and the unwillingness of lawyers to make the process work. These are few challenges that confront the LMDC.

C Limiting their invitations only by phone calls:

Lawyer 2 pointed out that 'the case managers limit their invitations by phone calls. They find it difficult to serve parties or send email.'

Lawyer 3 enumerated 'two more major challenges facing the LMDC, which are enforceability: Dilatory tactics of counsel⁸⁰¹ and sincerity of the parties.'⁸⁰²

But in ADR, when the lawyer says is over and you raise an invoice, they think the lawyer is not serious? You know why? Because here in this part of the world, in our culture- African. ADR is meant to be free we are not meant to pay for making peace; culturally we expect it to be free. So the new trend of saying that someone should pay you for making peace is strange to us.

⁸⁰¹ The second challenge is enforceability. 'This surfaces where parties must have drawn out the 'Terms of agreement' (TOA). He pointed out that when parties sign the TOA and one party defaults they still need to go back to court. The same court that you actually want to avoid and like I say a smart lawyer on the other side can still apply this delay tactics, we call it '**dilatory tactics of counsel**' where they bring in all sorts of legal jargon or deliberate attempts by counsel to delay matters unreasonable' stated **Lawyer 4**.

⁸⁰² The 'first challenge is sincerity.' He states "most of the parties are not sincere they take advantage of the whole process to see if they can buy time for themselves. At the end of the day when it comes to compliance they deliberately fail because ab initio they were not sincere."

D ADR (A Drop in their Revenue)

On the contrary, **Lawyer 4** pointed that ‘lawyers are changing, that they are gradually accepting ADR.’

He states

Initially, when LMDC first started, parties did not take the LMDC serious because their lawyers did not accept mediation because they think it’s ‘a drop in their revenue.’ But now that lawyers are accepting mediating at the LMDC, the parties too are using the LMDC more. I think that a challenge is sorted out.

Similarly, **Lawyer 3** is of the same view that

Because lawyers believe that ADR is ‘A Drop in their Revenue’ or better still ADR is not as lucrative as to courts since is faster, the hours might not gather much legal fees the way it could have in litigation but in terms of diligent case management.

4.5.6 The Pre-arbitral method of settling disputes

According to **Lawyer 1**, the word arbitral suggests a force that is not challengeable.

An unquestionable authority, it suggests no body should challenge me. If you remove the arbitral the sentence will mean. Can it replace the pre-colonial mode of conflict resolution? My answer is yes. People in the city now see the LMDC as a modern replacement of settling disputes to what they used to have in the olden days. Where disputes were settled peacefully and sanctions are given. So I would say yes LMDC has replicated the pre-arbitral method.

Lawyer 2 states that

Yes, they have however, lets not look at it in the context of pre-colonial, though that would have been good if it had, its westernized now. First the language- the mediation is conducted in English language so sometimes litigants can’t really speak the language it is still left for their lawyers to express it. So we have not really Africanized⁸⁰³ it except for a

⁸⁰³ He went on to explain what it Africanized means. “Before the Western way of resolving disputes we have our African way where parties are made to come to a compromise for the larger good.”

few of the mediators that tried to Africanize it. We still give it a little formal outlook. It still has the former outlook but not really what we see in our Africa communities.

On the other hand, **Lawyer 3** corroborated with above statement made by **lawyer2**. 'He stated that I think they are related in a way but with modern twist or modification.'

You know when you talk about pre-colonial arbitral you bring parties and try settle their matters and there is no difference from what we have now at the LMDC. They do the same thing but within certain threshold, their laws are modernized in fact I think LMDC has replicated the pre-colonial method but with modification.

On the contrary, **Lawyer 4** pointed out

I don't think they have replicated the pre-colonial arbitral method of settling disputes, in fairness to the LMDC the major mechanism used in the LMDC is with mediation.

4.5.7 Directors- 4 Participants

4.5.8 The Advantages of using the LMDC

A Speed and Time

The speedy resolution of disputes is 'one of the indicators of effectiveness' says **director 3**. Additionally, 'effectiveness was compared or measured with the amount of cases they had settled from the first intake of cases till date. The directors believe that there appears to be acceleration in the increase of cases hence why litigation is getting faster. The above thinking is supported by statement from the entire directors especially **Director 2**.'⁸⁰⁴

⁸⁰⁴ " We can do that by motivating and encouraging judges to refer their cases to the MDC. We have judges that have 300, 400, 500 and some 800 all their dockets and that information alone will tell you automatically that the judiciary system cannot even if they want to be effective. You cannot have a judge having 400 or 500 cases in their dockets and you expect the cases to just cease or just spend one year in courts. Is not going to be possible it is only that one judge in that court and he has only between 9am and 4pm or 9am and 5pm, he has holidays in between so what has the LMDC done to the dockets of the courts? Well one-way you can find out is we have conducted what we call the (CDRE- Courts dispute resolution Ethics).

Director 4:

I would address this from a social perspective I am not going to necessarily look at numbers although if we look at numbers we have said it we have done okay, we have done over 14,000 cases handled and not settled all but in which we have seen the effectiveness and the impact we've made.

In terms of lives that has been affected, the opportunities that have been given to people to discuss across the table. If you have a dispute and you go to the court system is the lawyer who addresses the judge but at the MDC you have a situation where parties sit around the table and can speak for themselves.

Finally, **Director 1** 'identified that LMDC have timelines and on average they could have a dispute being mediated in one day or you could have a dispute ending in three (3) months so maybe it does not or is not continuous maybe about three sessions or four sessions but for banking disputes, you sometimes have six (6) months or seven (7) months because of documentation, access to the governing board all those kind of issues.' Thus, **Director 3** gave a detailed account on time frame for each subject matter specific disputes.⁸⁰⁵

"How many cases are in the court? How many ADR amenable cases are in the High court of Lagos? So what we did is that we sent case managers in turns, we just got about 20 and we just said go into the courts, go to the dockets of each ADR amenable courts and find out how many cases are ADR amenable record it and will use it when we want to do a settlement week or something and tell the judge we have looked through your dockets and we have find out that there are 55 cases that are ADR amenable send them to the settlement week lets see and we had a CDRE last year and we had one this year and we had one in 2017.

Now what the CDRE is doing is helping us statistics sort of. How many ADR amenable cases are here? How many are being resolved? So what impact are we making on the dockets of judges that have ADR amenable cases in their dockets. So I'm saying that we are not looking at cases that are not ADR. There's nothing we can do about it but the cases that are ADR amenable. Let's find out how many we have removed from the dockets of the judges and let's find out how many we have resolved so its currently on going but the average we can get is from the matters that we have done, we have like 62% settlement rate so that 's one." So we started in 2002 that is about 17 years ago. So we gone from a stage when we had the first settlement week in 2009 we settled about 29 cases to a place where we settling about 300 cases and this is 2019 we started with maybe by having about 200 or 300 cases for 2002 to now where we have 3000 cases I am talking of yearly /annually.

We also started with one mini programs a court connected ADR center, we have walk-ins or the court will refer to a case. But now we have the ADR Units, we have the ADR track, we also have different programs like Lagos settlement week, and we even have what we call the Commercial Intervention Strategy."

⁸⁰⁵ She stated that "Okay, we have time line of our own because we set time for our case. So if we have to do mediations and complete it within 6 weeks that is the timeline we have given ourselves and that is the writing to the legal party, to the respondents."

B Cost Saving

Whether the disputant's not having a lawyer saves cost?

Director 4 indicated that

Well, if you go to litigation you would have to pay filing fees, which we do here. You would also have to pay a lawyer if the party's want to hire a lawyer when they come here, they can is their choice. Where it becomes cost effective is over time so typically now what both lawyers are doing and what we try to teach in mediation advocacy is that in billing the client doesn't then have to pay for 12 years or we don't have to put in court fees or appearance fees in court and all of that you can pay appearance fees for mediation but because you can actually resolve in two sittings or three sittings or four (4) sittings then the parties can actually negotiate with a lawyer and say look for my disputes I'm not going to spend so much time what can I pay you it is in terms of time-more than anything.

4.5.9 Scopes of matters covered and not covered at the LMDC

A Criminal matter / Restorative Justice

However, **Director 1** pointed out

However, **Director 2** stated that:

We cover commercial, administration of estate, some aspects of criminal matter (that is minor offences) through the restorative justice door. We also deal with the issue of child custody and child maintenance, lease, land matters, loan facilities, different issues, tenancy we have several matters like that, basically commercial, we deal with very wide range of disputes.

4.6.1 Has the LMDC been useful or beneficial to the disputants?

According to **Director 1** asserted that

I think they are in a better position to respond to that question, so I don't want to start second guessing their thoughts but from a front roll

sit I do know very well that the benefits of the LMDC to the disputants is simply huge and quite difficult to quantify and if you care, one of the cases that came to the MDC in the earlier days was a matter involving the former vice president of Nigeria Chief Alex Ekwueme which was in court for seventeen (17) years, I'm sure you have heard that story before? Okay, you see. And you aware then that it took just one day to resolve that case in mediation that is one vivid example and there's been many other stories subsequent to that so to the question as to how beneficial? Yes, it has been?⁸⁰⁶

4.6.2 Rating the Performance of the LMDC

Director 1, 2 and 3 rated LMDC 'a four (4) because of the success stories - the walk-in has increased. However because their mandate is to decongest the courts but in decongesting the courts they are looking at a long-term vision which cannot be immediate.'

A Enforcement

Owing to the fact that the LMDC is a 'court-connected ADR, other ADR centers like OPD and CMC come to the LMDC for enforcement of judgment. So the impact and effectiveness has been felt' says **Director 3**.

B Dialogue / Communication

⁸⁰⁶ **Director 3** confirms the aforementioned viewpoint by stating that: "I don't know where to start from, but you can for yourself and you have seen a lot of things going on here. I'm sure they will give you zealous of examples so without a doubt the LMDC is a story that is worthy of celebration in terms of changes it brought to disputants in terms of cost savings and in terms of resolving their disputes in a timely manner."

Why Mediation? "It is really important to point out that it all depends on the type of case and the party's preference. Though most types for the walk-in the parties opt for mediation," says Director 2.

Director 4: "There is no preferred dispute resolution, not at all because it would depend on the case type so it depends if you have an arbitrary clause you can't come to mediation except if the parties agree of course and if it is mediation it depends on the type of dispute if it is neutral evolution so it depends so there is no preferred dispute resolution." On the contrary, **Director 1** implied that "parties could save a lot of money if they stop hiring lawyers then they can stop paying cumbersome amount of money for appearance fees and so on besides they do not necessarily need them during the mediation session."

These findings indicated an essential point raised by **Director 3** on the importance of communication or dialogue between parties.⁸⁰⁷

4.6.3 The Impact of the Lagos Settlement Week (LSW) / ADR Track /ADR Unit

Director 2 stated,

We find out that the Lagos settlement week has helped us in decongesting the courts.⁸⁰⁸

4.6.4 The Pre-arbitral method of settling disputes

Director 1:

I don't think is about necessarily replicating it but rather the pre-colonial arbitral method is a fallacy because in my view the whole essence of LMDC, particularly mediation processes which is a major part of what LMDC offers away from arbitration in which is not as robust as mediation is. Mediation by its very nature is quite very Afrocentric is an Africa way of doing business or doing things so I don't think it is correct to say that is any way replicated anything colonial if anything colonialism took away from Africa is that mediation process itself." Litigation vice versa is alien to the African Culture.

Similarly, **Director 2** states,

I will say LMDC is a bit like that but of course it has added the modern skills to it. So what we are saying is that before the colonial days came and introduced the court system. Before that time we were settling disputes, we didn't go to court and we had an effective dispute resolution in Africa we are using,

⁸⁰⁷ She states that *"Even when they end up not settling their matter at the LMDC but at least they have heard each other out, there is been some kind of healing and in most cases they carry on doing business."*

⁸⁰⁸ *"Because what the settlement week does is to remove cases. That is to remove ADR amenable cases from the court and schedule them for mediation."*

On the contrary, **Director 4** observed that 'apart from the LSW unit, the ADR Track and ADR Unit has also contributed immensely in the reduction of the courts docket.'

you go to the head of the family if he doesn't settle, go to the 'Baale' of the community that sort of thing.⁸⁰⁹

On the other hand, **Director 3** pointed out that

LMDC has replicated the pre-arbitral method of settling disputes, though what they had then is not what is happening now.

Director 4:

Before colonization you know typically they say you sit on trees and sit outside and will resolve a dispute. Is just that now its been formalized they are processes now there is a lot of documentation even if it is kept confidential that is the extent to which we have continued the system so to speak. But we have made it formalized it has ethics and it has rules, it has people who has a lot of training. That's the difference between now and then its gone further to make enforceable through the court system so that's the difference.

4.6.5 The Challenges facing the LMDC

4.6.6 Lack of Confidentiality and Privacy:

Director 4 and **3** pointed out that space is one of the issues facing the LMDC.

The need for an expansion is crucial so as to preserve the confidentiality process of the ADR.

A Submission and Specialization

⁸⁰⁹ "Now we can say that ADR is a return to that but with some introduction of professionalism and skills to ensure that the mediation and arbitration are actually done in a way that will be effective, impartial, and independent and of value to the citizenry that it was erected for. So in those days the Igwe's, the chiefs or the baale's or the traditional rulers will just say what happened. But now its been done professionally because mediation skills are properly introduced there is standardization, there is regularization, there is ethics all those kind of things are now put into place so that we have wholesome ADR system so I think yes it has adopted but of course with change there is its own twist to make it more efficient and effective to use."

The Directors pointed out the ‘issue of submission, compelling parties and to attend the mediation session is a core challenge facing the LMDC. Specialization was also indicated as a challenge.’⁸¹⁰

4.6.7 Focus Group 1 -8 Participants

4.6.8 The Advantages of using LMDC

A Speed and Time

Party A indicated that their case lasted for three (3) weeks, it borders on oil and Gas. He emphasised that it ‘lasted this long due to the complexity of that this kind of matter. However, he pointed out that this length of time couldn’t be obtained in litigation.’

Similarly, **Party B** stated that ‘their matter is in banking which is quite complex and it took about four (4) weeks. Thus, is time liberal instead of us going back and forth adjourning dates in courts.’

Additionally, **Party C** stated,

My matter was on matrimonial causes and it lasted approximately three (3) weeks.⁸¹¹

⁸¹⁰ Conversely, **Director 1** validated the earlier statement as he states that: “*Submission but I think is been eroded little by little with a lot of advocacy- so if people could submit more and more than ever it will help decongest the court dockets.*” There is also, however, a further point to be considered which is specialization. **Director 2** highlighted that “*There is a need to have more specialization for the mediators so I want to be able to say I have a panel because they have background in certain subject areas. We should get to a point where you probably have mediation training in telecommunications so you begin to so for me I would like to see that.*”

⁸¹¹ “I believe it is speedier than litigation, because it ended in short duration of time though I compromised on some things that I didn’t want to but I have other things to do. So I accept it and forge ahead.”

On the contrary **Party D** states,

Like I said it took less than 30 minutes and the matter was settled (family disputes) within a day. For sure LMDC is a success, its faster and quicker.

Party E also stated

My matter in LMDC lasted about three (3) days. However, **Party F** indicated that my case in LMDC is still on going but I have been here for 2 days now.

Similarly, **Party G** pointed out

My dispute is in tenancy, been on going for four days now. I must say the LMDC is far much better than going through the long process of litigation.

Finally, **Party H** stated that his dispute lasted up to 2 days –today is the second day.

B Cost -Saving

Cost of legal-representation

Party A pointed out that

Although we went straight to court and spent a lot of money for legal fees. However I now know that you save a lot going straight to LMDC than going to Litigation. At the LMDC I paid no fee. Another interesting thing with the LMDC is that from the day the judge directed us to here and even after signing the TOS that is the resolution reached no one has come to disturb us for payment yet.

Conversely, **Party B** indicated that

Yes, the cost-effectiveness of going straight to LMDC than going to litigation is that you do not pay at the LMDC as opposed going to litigation but because is a court-referred audit matter (matter involving financial issue) we will pay but the sum of, I can not remember now. But is not as much as what the lawyer charged a high fee of I million naira, which is equivalent to £1,966.88 for legal fees because they continued representing me here but we are not looking at the money

but a timely outcome.’ It is essential to point out that he is a representative of a bank.”

On the other hand, **Party C** stated that ‘it is cost-effective going to LMDC than straight to litigation because it is faster and minimizes cost.’

For instance, I paid my lawyer 500,000 Naira, just for legal representation (equivalent to £981. 16). Obviously, he was not thinking about my case, he was thinking about enriching himself because when I was referred to this place, he encouraged me not to settle here, so I can keep paying him.

On getting to the MDC I was told that I do not necessarily need a lawyer, so I paid half of the money charged and told him he can go home, that I do not need his services anymore. Once we started the mediation session, after the joint session we reconciled.

An equally significant aspect of cost was raised by, **Party D-**

If your case gets referred here it is free. I must confess I was not thinking about the cost. For me when I went to see a lawyer, I was so hurt, I was angry and wanted justice. But now I’m happy that the judge sent us here at least I have saved so much money. I just paid the part fee of 200,000naira (£196.46) out of 300,000 Naira (£589.48) originally charged by my lawyer.

Party E confirms-

Yes, I quite agree with what have been said so far, that it is cost-effective going straight to the LMDC than to litigation- court-referred matters you pay no administrative fee. But you have to make payments if it is an audit matter. More so, if your case is sent here during the settlement week you pay nothing but you pay a certain amount of fee for walk-in matters. However, what you pay is so minimal than when you go straight to litigation your matter stays in court forever and you pay through your nose though you get justice but the end result is you make an enemy for life.

On the other hand, **Party F** critically ‘analyzed why going straight to LMDC is more cost-effective.’⁸¹²

⁸¹² He indicates “as a matter of fact the LMDC has a walk-in path, so you can walk-in and is so fast compared to the normal court system because when you serve a party, the party has about 42 days within which to react or respond but if it is mediation through the LMDC the party is expected and if he/ she is willingly to accept mediation could react the next day or within days and then one, two or 4 sittings a lot of progress could be made

Figure 2: WALK-IN - NON-MONETARY CLAIMS

Individuals

Category	Mediation Session Fees per party	Mediator's Fee (N)
Indigent	Nil	NA
Average income	30,000	NA
High Net worth individuals	60,000	NA

Additionally **Party G** highlighted that

Going straight to LMDC is more cost-effective than going to litigation comparatively speaking, in the sense that matters have a time limit here unlike in litigation or court system. Where a court lasts 10-11 years or 'till thou kingdom thou come' but at LMDC they charge nothing for administrative fee. But if it is during the Lagos settlement Week (LSW) it is free, parties pay nothing.

Party H validated the above statements by saying that

Like they have all said going straight to LMDC is more cost-effective than going to litigation as you do not need to bribe the mediator or anybody. Unlike in litigation, where people bribe the judge, you pay endless money to your counsel and even bribe the clerk.

and the matter would be settled thereby making it cheaper than litigation. I took the walk-in path and I paid the sum of 10, 000 naira for administrative fee and upon completion of the matter I will pay 30,000 naira for the mediation session fee. To me, the cost is nothing compared to the fees that I could have paid in litigation. I decided not to pay for legal representative.”

4.6.9 The Pre-colonial arbitral method of settling disputes

Party A, affirmed,

LMDC has replicated the Pre-colonial arbitral method of settling disputes so much. However, the only difference is that the LMDC has a law that suits the modern type of disputes unlike the pre-colonial system of settling disputes that has no stated law. More so, people's mindset has changed, people now leave their village or communities to the city and then when a dispute arises people tend to look for the closest method to the pre-arbitral method of settling disputes in the city though we still have this in the villages but most people have banished themselves to the city with no hope of coming back. This is our method of settling disputes that was replicated.

This point is also sustained by **Party B**'s statement

Yes, the LMDC has replicated the pre-colonial arbitral method of settling disputes because they look at cases objectively and come to a right conclusion and that's what was obtainable in the olden days.

Similarly **Party C**, indicates that the

LMDC has replicated the pre-arbitral method of settling disputes because cases are not being jeopardized or I would say in the short end of the stick at the LMDC and likewise during the pre-colonial days. Also I know 'we might not get everything we want or what they say a little to the left and a little to the right' because we have to compromise and that's the same thing, we do in the traditional African system of settlement.

Party D, Party E, Party F and Party G agreed that the LMDC has replicated the pre-colonial arbitral method of settling dispute because

It replicates the same pattern of settling disputes during the pre-colonial days and is still obtainable till date but LMDC is modernized.' However, **Party H**, emphasized "before the court system, people have a way of resolving issues faster as soon as the elders, kindred or Oba or obi gets involved they ask questions and listen to what happened and then they tell the offender to apologize to the offended party or pay a fine or sometimes he/ she is banished and that resolves the disputes or conflicts. So we are accustomed with this method of settling disputes because we had this system of resolving issues in the pre-colonial days, this is why more people are using the LMDC you see

them trooping in and out as you can see. They work in the same way but LMDC repackaged in such a way that we have the mediator listening and jotting notes.

4.7.1 Ego-Apology

However, **Party C** stated,

At first, I wasn't happy that I was referred to the LMDC but when the matter started I understood what caused the conflict, so that's what LMDC does. It's very effective. For me, when we had the first session with the mediator, we freely expressed ourselves reflecting on our actions, I demanded for an apology and I got it. That's what litigation cannot give you or give anymore-personal satisfaction.⁸¹³

The sentiment expressed in the above statement, embodies the view made by **Party D**. He states

LMDC is very much effective when compared to litigation. My case stayed in court for so many years without being heard mind you, it is my dad's case and he is late now. On getting here my uncle apologized though I felt bitter that he could have done that when his brother was alive but its okay, I have put everything behind me now.

Mediation as a peaceful tool

According to **Party A**

The Mediation session has helped me to have a better understanding on why he did what he did so I have moved on, I have forgiven him.

Party B simply stated that he 'had to apologise on behalf of his bank to their client.'

However, **Party E, Party F**, both agreed that 'mediation session at the LMDC is useful and because it affords them the opportunity to dialogue and understand how

⁸¹³ To be honest it was what solved the matter. So Instead of us wasting time in court; we have the opportunity of settling on time and in a conducive atmosphere. Apart from that, we also get to understand ourselves much better; I would say what happens during the mediation session it's a form of synergy between the parties. Of course, I feel relieved and happy, now that we have settled. I thank God for the LMDC."

their actions may have triggered the conflict or disputes. Acknowledging that ‘the regular courts intensifies disputes.’

Similarly **Party G** stated,

The mediation session is an avenue where we can sit down, talk, listen and have a better understanding on what went wrong in the first place.

Party H highlights how the LMDC is useful

We get to talk, listen to one another and have an impartial mediator facilitate the process and the offender apologises. I just dropped a 2 million-naira lawsuit because the other party apologised profusely.

4.7.2 Rating the performance of the LMDC

On rating the performance of LMDC **Party A**, rated them a five (5) because ‘the resolution reached in his case was in timely manner compared to court cases he had in the past that lasted for so long.’

On the other hand, **Party B** rated ‘LMDC a four (4) for their performance in conflict resolution. Because of the challenges in administration I mentioned earlier. If not I would have given a 5.’

Following through, **Party C** rated LMDC a five (5) because

Of its usefulness and benefits, which supersedes that of Litigation.

Party D, E, F, G, rated LMDC a four (4) for their performance so far insisting that:

‘LMDC will beat litigation anytime and explained why they rated 4, was because of the challenges mentioned earlier.’

Party H gave a holistic view on why he rated LMDC a (4)-

Principally the challenge the center faces-as it is party driven and the parties must willingly agree to participant that is also it’s weakness because a party who has a bad case could decide not to cooperate at the session or may decide not to attend the session.

A What dispute resolution process is preferred?

Party A states, ‘I prefer Mediation.’ On the other hand, **Party B** explained why he prefers Mediation: Because it’s affordable and faster than litigation.

Similarly **Party C** specifies ‘Mediation is preferred because of its confidential nature.’

Party D, Party E, Party G and H, states, ‘Mediation because of the opportunity it gave them to talk, listen to one another and iron things out.’

On the contrary, **Party F** indicates,

He prefers litigation but now he now prefers mediation because of the outcome of his dispute.

4.7.3 The Challenges facing the LMDC

4.7.4 Space, parties not showing up, awareness and funding

Party B observed that the ‘issue of space is a challenge facing the LMDC. Illustrating with the hours they have been at the LMDC, for about two hours scouting for space to start their session’.⁸¹⁴

Conversely, **Party C** elaborates on the challenges facing the LMDC from his observation –‘funding and parties not showing up for their sessions.’

He states,

⁸¹⁴ “We couldn't get any where, we had to reschedule the session for lack of space. So the officials should put their heads and hands together for space. And even when you get one, you can hear other people talking. So there is no privacy and confidentiality at the LMDC. And also the issue of awareness before the court-referred us here, I have never heard about the LMDC.”

Before my opponent showed up for this case. It took like three days before he even responded to all the calls from the case manager. Something needs to be done about that because he cannot try that in court.

Additionally, **Party D** validates the aforementioned statements. He states

Some of the challenges facing the LMDC are space, the mediator's room is a makeshift and I could hear what other parties are saying during my mediation session. I was conscious also of not speaking out so loud too during my session, in fact I was not comfortable.

On the contrary, **Party E** suggested 'changing the name Multi-Door Courthouse.' He went on to point out that

If LMDC leaves the court premises; most people will walk-in on their own. Right now, I think people are scared to come here, they are thinking is the same with litigation because of the name-multi-door courthouse.

Reinforcing some of the aforementioned challenges facing the LMDC. **Party H** stated that 'funding, few mediators and space poses a huge challenge to the LMDC.'

A Mandatory ADR

It is important to point out that he used the word 'mandatory'⁸¹⁵

Party A responded,

I had to come here because I had no choice. It was compulsory. I feel that the judge referring us (parties) to the LMDC might go against us if we refuse to settle, if the matter gets back to his court. So that's a big challenge facing the LMDC.

However, like I said before it's because of the way people behave in this country. They sometimes disobey court orders even when they know there will be repercussion. I tell you what will happen if it is not mandatory for parties to come here. I will not be here and I think so many parties will not come here, someone like myself came because the judge mandated me to come but I'm glad that we did attend at the end.

⁸¹⁵ And I followed up on that and asked him. 'How do you feel about the court directing you to the LMDC?'

On further enquiry on how they feel **Party A** indicates

Yes, in a way though I don't feel that way anymore but initially I felt pressured that if I refuse and when the judge sees our case in court it will go against us. You know how we do things in these countries. (He laughs) and that's why I am happy that you are not using names in this interview. Before they come after me, no freedom of speech and all that. It's sad.

On the contrary **party B**, stated that

I like how the court has made it mandatory for parties to come here. 'Truth be told, we hear hard in this country. So mandatory by referral has helped and is the same during the pre-colonial days, you are mandated to answer the elders when they invite you for an issue, you cant say no even till now. You dare not say no.

4.7.4 Lack of Confidence with the Judiciary

Party A stated that LMDC is very much effective because it saves time.

There was paper work to be filed and unnecessary payment made to lawyers at the court but when we got referred here, no unnecessary paper work was demanded. He further pointed out "that judiciary system in Nigeria is corrupt most rich people always want to win, so they bribe the judges though not all of them are corrupt. However, you can't try that here at the (LMDC). So to me, LMDC is far more effective than litigation.

On the contrary, **Party B** stated that LMDC is

Very effective than the courts in Lagos because it has helped to resolve so many disputes. However, she pointed out that people including herself has lost confidence with the judiciary due to alleged corruption of bribery associated with the judiciary. She went on to point out that at the LMDC matters are free.

Party C illustrated with an example on how

One occasion his lawyer requested that he does not want to appear before this judge and asked for his case to be transferred to another judge. He said the judge is because he takes bribe.

4.7.5 Focus group 2 -5 participants

4.7.6 The Advantages of using LMDC

A Speed and Time

According to **Party 1**

My matter was sent here after 12 years in court and within two days we made progress and today is the 3rd and final day. We have signed the terms of agreement (TOS) and I'm glad that there is something like this in Lagos State.

On the other hand, **Party 2** states,

I came in to sign the TOS; the matter lasted for a week. It's a land dispute that my father left for us but my brothers; we have been in court for so long." "In fact I don't want to talk about what happened in court but as God would have it, the matter lasted for 4 days here," stated **Party 3**. **Party 4** elaborates that '...my case has been resolved today, within a week of referral.'

Lastly, **Party 5** stated,

This is my 2nd day but my case has been adjourned for next week but once the resolution is reached. I will accept it because it is mutually beneficial.

B Cost Saving

Court –Referred Matters

Party 1 elaborates that she paid nothing. It's affordable going through the court. Whereas, the legal fee was 150,000 Naira. On the other hand, **Party 2**-(business transaction) affirmed that he paid no admin fee.

So I went to hire a (SAN). And he sent a bill of 2million equivalent to £5,229.95 of course I told him I could not afford that. So litigation is way more expensive. I think LMDC to an extent have been professional enough to help us get a resolution. I had no legal representation.

Similarly, **Party 2** simply said he ‘paid a minimum amount at the LMDC. Litigation is costlier than LMDC.’ **Party 5** did not indicate ‘how much he paid; he simply said I couldn’t remember.’

Cost- Walk-in matter

Party 3 indicated,

I paid admin fee, which was 10,000 naira and mediation session fee of 30,000 naira. He pointed out that, he did not hire a lawyer. So to me it is more cost-effective going straight to the LMDC than litigation...

Walk-in matter

It is essential to point out that **Party 3** indicated that he initiated the case himself and that he heard about the LMDC through his cousin.

Party 3 explained further how he feels after his case has been resolved- “ Happy.” He indicates,

I have suffered a lot since the matter has been in court and I don’t want to recall the ordeal we have been through.

4.7.7 Why Mediation is Preferred

Party 1 highlighted that she prefers mediation, as ‘it is cheap and more user friendly.’ On the other hand, **Party 2** and **Party 3** explains that they prefer ‘mediation because it reconciles parties and it is more efficient compared to litigation.’ **Party 4** stated that he prefers ‘mediation because it is reliable and party-driven.’ Finally, **Party 5** validated the above-statements. He said ‘he prefers mediation because of the simplicity of the process.’

4.7.8 Rating the Performance of the LMDC in Conflict / Dispute Resolution

According to **Party 2**, he rated them a 5 explaining,

If I had known about this place I wouldn't have wasted my resources in court.

Similarly, **Party 3**-rated LMDC a 5 stating his reasons as

When I walked in here, I felt at peace and they were efficient in attending to my case. On the other hand, **Party 1** rated LMDC a 4 in conflict resolution.

Due to the way his 'conflict was handled he felt 'it was a success, he said.' **Party 4** also rated them a 5. However, **Party 5** rated them a 3 stating 'it might change if my matter is resolved next week.'

C Ego/ Apology

According to **Party 1**

Honestly speaking if we did not settle, at least I now understand how I made the other party feel and made him understand how I feel too. I couldn't own up that I was at fault and apologise. But now I have apologised and I feel better.

D Party-autonomy/ Flexibility of the Process

Party 2 elucidated that

Another good thing about this place is that we are free to continue with the process or not. For instance, I can change my mind during the mediation session if I do not agree with the terms or if we do not want to resolve the matter anymore.

Party 3 validates the above stated view. He indicated that,

Our mediation session was carried out by us, the mediator was just there to ask few questions that made me feel at ease and say how I feel.

4.7.9 The Pre-arbitral colonial method of settling disputes

Party 1 stated, ‘Yes, the LMDC has replicated the pre-arbitral colonial method of settling’. He revealed

ADR is an African way of settling dispute they borrowed our Africa Culture and tradition whereby there was nothing like going to court rather the elders will come together and arbitrate over matters. So it is part of our culture, once there is conflict between two people, families get involved and start looking for solution by going to the Oba for settlement. So LMDC is the modern one that was extended into the court.

Party 2 highlighted that in a way LMDC replicated the pre-arbitral method of settling disputes. He stated

We settled matters in the olden days just like this. You can still sit down and talk about your disputes with the elders and Oba and you get to appreciate the most critical and difficult matter after they have talked or advised you. So I believe LMDC has brought that back.

Similarly, **Party 3, 4 and 5** validated the above stated submission by affirming that ‘LMDC replicated the pre-arbitral method of settling disputes that the only difference is that it works with litigation.’

4.8.1 The Challenges facing the LMDC

A Lack of confidence in the Judiciary system

Party 1 indicates that

‘LMDC saves cost and there is no ‘maga maga’ (foul play).’ Everything here is straightforward in contrast to litigation- there they will extort money from you.’

B Sanctioning and Infrastructure

On the contrary, **Party 2** stated that ‘the LMDC should start sanctioning parties that they do not show up for mediation session. And he observed that LMDC needed a bigger building.’ To buttress the above point **Party 3** affirmed-

There is no privacy during mediation at the LMDC except if you are lucky to get a room downstairs.

C Mandatory ADR

Party 1 elucidated,

The dispute is still on going but we are making headway. It has helped us a lot and also helped us to say our minds and this is a big relief for me. My case was court-referred.

On further enquiry, on how she feels with the court referral? **Party 1** explained that she-

Didn't feel pressured coming here, that she agreed with the judge's wisdom -who felt it was something that could be resolved here.

On the contrary, **Party 2** stated that 'his case was also court-referral- business transaction.' He went on to state that

At first I was not happy but I couldn't argue with the judge or dare say to the judge 'No, I wont go to the LMDC'. Why? "Because I do not want my case to be affected by my refusal. If it wasn't mandatory I won't have come to the LMDC. Yes, I felt pressured at first, but when I came here I felt comfortable and relaxed, talking about the matter with the mediator and with the other party.

On how he feels about the referral, **Party 4** stated 'I felt bullied into coming here by the judge.'

Finally, **Party 5** simply stated that 'his matter was court-referred and he felt okay with the judge's decision.' However, **Party 4** and **5** stated, 'they couldn't think of any challenges.'

4.8.2 Focus Group 3 -8 Participants

4.8.2 The Advantages of using the LMDC

A Speed and Time

According to **Party A**, indicates that ‘his matter lasted for a day at the LMDC.’

On the other hand, **Party B** indicated,

That there matter lasted up to 3 weeks but we have settled.
Signed TOS Today.

Following through, **Party C** indicates that they settled on

The third day, which is today” Additionally, **Party D** states
“our matter only lasted 3 days and we just signed the TOS
before you called us in for this discussion.

However, **Party E** affirmed,

My matter is on going, just 4 days at the LMDC. Though it is
better to be here, as it will take longer time in court. According
to **Party F** “Our matter has stayed up to 3 weeks, we were
waiting to hear from the bank manager that's why it is taking
time but hopefully by next week we will reach an agreement.
So it is not the fault of the LMDC it is from our end.”

B Cost Savings

Court-referral fees

Party B indicates

Well, my company paid the fees, I am here to represent them
but I cannot tell you how much we paid but what I do know is
that the (lawyers) size your pocket, they can charge you from
500,000 naira to the sum of 5million naira and as long as the
case remains in court they will keep charging you but on

getting here we paid nothing but will only pay for the mediators fee (30,000 naira) since we have settled the matter.” **Party F** pointed out “I just heard court-referral and my lawyer explained the process to me, my bank was referred here by the High court judge.

However, ‘we paid nothing on getting here.’ Finally, **Party G**, stated that ‘she paid nothing.’

Cost of legal representation

Party E affirmed that he paid nothing on getting to the LMDC. He went on to state that-

Now can you compare that to legal fees, filing fees, appearance fees and so on in litigation? Though in here (Lagos) they charge bulk money for a lawyer, which includes filing fees, appearance fees and more so you bribe the clerks and even some times the judges, so what we pay in court is never ending. That is all included in the legal charge. But you know the lawyer must charge a fortune even before the case begins, so for the legal fees I paid 300,000 naira (£598.06).

However, **Party C** simply stated,

You can’t compare the courts and LMDC. Litigation cost is more expensive than the cost in LMDC. I paid nothing when I came here.

Party A, C, D, H affirmed that ‘LMDC settles disputes faster and cheaper than litigation, so in that regards LMDC is more effective than litigation.’

B Party Autonomy / Flexibility

Party A confirms that

LMDC gives us the opportunity to settle disputes outside the courts so if both parties agree to the resolution at the MDC then the case will be settled. The courts referred me to the LMDC.

To buttress the point made above, **Party G** stated,

This is my 2nd day here and could have settled but the other party needed to wait for his lawyer to come, so we are still but our matter is on Matrimonial issue.

Finally **Party H** concluded

That their matter is up to 2 weeks now, still on-going. We were referred to the LMDC. This case has been on going since 2001 in the court, almost nineteen (19) years.

4.8.3 Has the LMDC been useful or beneficial to the disputants?

Also emphasizing on how they felt about using the –LMDC, **Party A** indicates that for the MDC:

To be here in Lagos state shows that Nigeria is working hard to reduce the cases in court and to make businesses to flourish and also the timeframe for settling matters cannot be compared to litigation that can last for so many years.

On the other hand, **Party B** states

I feel elated that my case that lasted for 6 years in the court was resolved within 2 weeks at the LMDC.

Harshness of litigation

Party C elaborates on the Harshness or wickedness of the court system.

In furtherance, ‘he stated that litigation brings out the worse in people and he will not like to pay it a visit anytime soon. My case in court lasted for over 6years, I feel contented that my case came here. Also emphasizing on how happy he is about the settlement.

Party D indicates

I feel happy that my case will not continue to spend perpetuity in the court. It’s a big weight off my shoulder- like within 3 days my case was settled at the LMDC.

However, **Party E** indicates that

Court is brutal; the atmosphere at LMDC is welcoming than the courts. He further stated ‘although his case is still on going that he is not worried one bit.’ I know we will settle soon, it all depends on both of us.’

Party F, G and H said that ‘they agreed with the views of the other participant.’

4.8.3 Apology / Ego

Party E stated,

I approached the LMDC because my sister and I were fighting over our late father’s property. It’s sad but that’s life. We have started talking but I only want her to apologise.

Party B sustained the point stated by **Party E**. **He** states

Whereas you pay this small amount at the LMDC and the sessions are user-friendly than the regular court or litigation.

4.8.4 Rating the Performance of the LMDC in Conflict / Dispute Resolution

According to **Party A**, rated the LMDC ‘a **4** in performance of conflict / dispute Resolution. As they made some crucial and strategic moves towards resolving this disputes on time and we are satisfied.’

Party B, C, D, E, F, G concurred with the aforementioned statement. ‘They rated LMDC a 4.’ On the other hand, **Party H** explained ‘why he rated LMDC a **4**’:

If we were in court we are not allowed to speak up, except if you were a witness in a case but if we were in court, I don't think that would have been possible.

4.8.5 The Pre- colonial arbitral method of settling disputes

In terms of LMDC replicating the pre-arbitral colonial methods of settling disputes.

Party A stated that

Yes, LMDC has replicated the pre-colonial arbitral methods of settling dispute but LMDC is contemporary. I think that is the only difference between the two.

In contrast, **Party B** explained that ‘Yes, LMDC has replicated the pre-colonial arbitral method of settling dispute.’

Party B emphasised ‘that this is the way we settle matters before colonisation and even to date- in our villages.’

However, **Party C** noticed ‘that LMDC has replicated the pre-colonial arbitral system but there are a lot of differences between the two.’ Explaining this **Party B** indicates that-

This is the way we settle matters before colonisation and in some areas it is still used but the difference is with the way they function. For example, the LMDC has also discarded the swearing in. Also, the LMDC goes to see where the land is situated if there is a case like that, they all go there. Apart from that, the LMDC and traditional system of settling disputes are the same.

The sentiment expressed by the above statements embodies the view of **Party E**. He states,

We have chief, elders or obi in authority presiding over matters, which is the same at the LMDC, but they are called mediators. They would sit together, hear both parties and then settle the matter with the help of the parties- this is what the customary method thrives on before it was repackaged.” On the contrary, **Party G** indicates that the LMDC is so refined and has laws, as opposed to the traditional method with no stated laws. No, I do not think there was replication.

A Why Mediation preferred?

Party A, B, C, D, E, F, G and H: ‘Out of all dispute resolution- Mediation is the best because it is more of amicable resolution.’ However, **Party E** further explained the preference for mediation, which they all agreed to.

He states, ‘More so, it is faster using the LMDC and saves cost compared to litigation.’

4.8.4 The Challenges facing the LMDC

A Awareness / Infrastructure

According to **Party A,**

LMDC needs more awareness, as most people don’t know about them. Also the Issue of attendance should be looked into, they should make it compulsory for parties to show up for their session. If not let the court place a fine or punishment on defaulting parties.

Non-attendance and Lack of Awareness:

Party F, G and H confirmed that the ‘Issue of non-attendance, and more rooms is a huge challenge.’ On the other hand, **Party B** concluded that ‘lack of awareness is a challenge facing the LMDC.’

B Mandatory ADR

Party C noted that they are ‘not comfortable with the judge directing parties to the LMDC that it might affect their case considering in case it returns to the court.’

The sentiment expressed in the above statement embodies the view made **Party D,**

That the judge is not the best person to make a referral because of prejudice, especially in this part of the clime-Nigeria.

Party H pointed that ‘the judge mandated me (party) to come to the LMDC for settlement and I feel is harsh because ADR is meant to be voluntary not forcing parties to mediate.’

C Lack of confidence in the Judiciary

Party B elucidated that the LMDC is very much effective because

We are making faster progress than we could have done at the court, which is far more effective than litigation, but I hope LMDC will be able to carry on this way. You know our country is corrupt and so is the judiciary; I hope LMDC will continue being impartial and corruption free.

4.8.3 SUMMARY OF FINDINGS AND CONCLUSIONS

It is a known fact that the court system in particular Nigeria, is currently congested and the time frame it takes to get justice from the courts is fast becoming a mirage than reality to the common man. Hence the qualitative findings have provided advantages, observations, instances and grievances nursed by various categories. Thus the next chapter will analyze the scope of issues covered herein. These findings have been put forward to determine the effectiveness of the LMDC practice thus far, the following findings include:

i) One recurring theme in all categories was the use of criminal proceedings at the LMDC through the Restorative Justice door. This is a new development at the LMDC because in the past, there was a conflict in issue or a debate with whether or not

criminal proceedings should be used⁸¹⁶ or whether the LMDC is the right place it should be used?

ii) Another popular view amongst the participants was that the parties could choose not to have a legal representative. Almost all the participants agreed that this is the way forward in a bid to ensure that the parties engage with the process. This is the first LMDC study that has provided evidence- that parties choosing not to continue with their lawyers during mediation session have made the sessions devoid of distractions or deterrence.

iii) Furthermore, another finding especially amongst the focus group is the unpredictable costs of legal representative. It was found that not having legal representatives minimizes cost.

iv) Consequently most of the parties addressed the issue of cost by comparing the actual figures they paid for litigation, legal representatives, court referral or commencing a matter via the walk-in route.

v) Another popular view is the role and impact of the settlement week program in decongesting the dockets of the court.

vi) Furthermore it was found that the direct intervention (one of the ways, matters can be brought to the LMDC) which is stipulated in the Art 4 of the LMDC practice direction 2007 was not mentioned amongst all the categories. However, this finding brought to the forefront the differences and functionality of the ADR Track, ADR Unit and Lagos Settlement Week (LSW) office. Additionally, it reveals the role of members of the governing council.

vii) Another recurring theme amongst the categories was the impact of Speed and Time.

ix) Also, amongst all the participants- they affirmed that mediation is a peaceful tool used by the mediators.

x) Another finding especially amongst lawyers, mediators, case managers and parties is the part or effect Ego / apology has to play in deescalating dispute.

⁸¹⁶ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 16.

xi) Another hindrance or challenges to the settlement of disputes was pointed out by amongst all participants, which are sincerity of the parties and enforceability.

xii) The findings reveal that parties are worried about the confidentiality of the mediation process at the LMDC.

xiii) Lawyers not accepting ADR were identified by all the participants as one of the major challenges facing the growth of LMDC. The findings reveal that the lawyers employ dilatory tactics of counsel or what they simply called delay tactics.

xiv) Further finding especially amongst the case managers, mediators and party's reveals that mediation is a peaceful tool used in the resolution of conflict compared to litigation. That has been revealed in these findings as a battleground amongst all the above-stated participants.

xv) The Pre-arbitral colonial method of settling disputes was a recurring theme in all the categories. This is the first study to provide an insight on whether the LMDC has replicated the pre-arbitral colonial method of settling disputes.

xvi) The findings indicate that the LMDC is no longer a private organisation like in the early days. It is government owned therefore it remits accounts to the state government.

xvii) Rating the performance of LMDC in dispute resolution is to provide an insight into the workings of the LMDC.

xviii) Also, the findings revealed the flexibility and party participatory is such that parties who are unable to attend the mediation session can access the session virtually.

xix) Additionally, another challenge discovered is the need for more manpower because their work has increased that also would improve workflow performance in the center.

xx) The findings also identified a lack or loss of confidence in the judiciary which is one aspect of hindrance to justice because parties are not sure or fully confident about the decision they are getting, is a just one or not.

xxi) Nigerian culture was one of the perimeters for measuring mandatory ADR and sanctions amongst the categories. The findings also raised a pertinent question whether the ADR judge is the best person to recommend that people go to ADR?

xxii) Another findings amongst the judges that revealed one of the causes of delay are naughty matters, which lead to de novo cases.

xxiii) Funding is one of the biggest challenges facing the LMDC. If they have enough money, issue of service will be easier for them, expanding the scope of people that host per day or even getting more meeting rooms, even to hire more staffs.

xxiv) This finding also revealed why they undertook adequate training for mediators and lawyers. This finding also revealed that some ethical challenges with the mediators. Also lack of specialization amongst the mediators has been evidenced as one of the reasons for the lack of increase or lack of patronizing LMDC.

4.8.4 CONCLUSION

These qualitative findings have firmly established that the LMDC has added minor criminal offences into the scopes of matters handled through the restorative justice door. This has demonstrated for the first time, that this development will impact greatly in the decongestion of the courts dockets, not only the civil dockets but also in criminal courts. However, it can be fair to say that LMDC is slowly picking up and it goes nowhere long enough to match up with the civil cases settled so far.

Notwithstanding these limitations, the LMDC has been a huge success in the legal corridor. This finding has documented the impact of the LMDC in the speedy dispensation of justice through the civil courts and picking pace in the criminal courts. It has also revealed the simplicity of the LMDC procedure where party's meet and can negotiate without their lawyer's assistance if they deem fit or they can negotiate with themselves.

At the same time, the mediator and the parties work together to ensure that they come to agreement. It is essential to point out that if after the negotiations and they succeeded in resolving their matter, the result is that the award is then taken back to court for court to make it a consent judgement of the parties and that gives it a force

of the law and there are unique feature of a consent judgement in law. It is pertinent to point out that the only ground under which a party can appeal against a consent judgement is if it was obtained by fraud and in the absence of any fraud is difficult to appeal against a consent judgement.

Thus, the effectiveness is unequivocal because if judgement could be categorised in a hierarchy, consent judgement will rank number one or topmost because it is an agreement, it is not a judgement or decisions that was imposed by the arbiter or by the judge on the parties but was derived from the conversations and mutual understanding of litigants to that effect the law holds it in high esteem. They also carry the stamp of judicial enforcement like any other judgement of the Lagos high court.

However, it can be seen from the themes in all the categories observed that the LMDC have their challenges. Most especially on funding, awareness, office space, sanctioning and awareness. Finally, this finding indicates that these challenges can impede the effectiveness of the LMDC practice.

CHAPTER FIVE: ANALYSIS ON THE EFFECTIVENESS OF THE LMDC PRACTICE

5.1 INTRODUCTION

This chapter will analyse in detail what the LMDC is all about and whether the effectiveness associated with its uniqueness lives up to the expectation or its overriding objectives. Therefore, hearing from the stakeholders and users who go to seek remedies at the LMDC is vital.

This chapter examines the effectiveness of the LMDC practice and to what extent the LMDC replicates the pre-colonial arbitral system and deals with the critical scope of issues covered based on Lagos state. The themes and subthemes would be grouped under advantages and disadvantages facing the LMDC. The chapter concludes by highlighting the effectiveness of the LMDC and at the same time, the challenges facing the LMDC practice. In the same vein a critical analysis of the quantitative findings were thus provided.

5.1.1 THE ADVANTAGES FACING THE LMDC

A ACCESS METHOD

Simple Process/ methods of initiating action at the LMDC:

The LMDC practice direction on mediation procedure 2008⁸¹⁷ and reviewed piece of literature⁸¹⁸ stated that the party could commence or initiate their matters at the LMDC in three simple ways.⁸¹⁹ First by walk-in, court referral and finally by direct intervention.⁸²⁰

⁸¹⁷ Article 2 (d) Practice Direction on Mediation Procedure 2008.

⁸¹⁸ The Association of Multi-Door Courthouse of Nigeria, A Compendium of Articles on Alternative Dispute Resolution (ADR) 17

⁸¹⁹ Centre, 'The LMDC ADR Awareness Program: Workings of the Lagos Multi-Door Courthouse '12.

⁸²⁰ Art 2 (d) Practice Direction on Mediation Procedure 2008.

Consequent upon that, all of the respondents stated otherwise- they alluded that parties can commence actions in two ways, by parties approaching the LMDC to settle their disputes and by the judge referring the parties to court for an amicable settlement, which is a simple process and more straightforward than commencing an action in court.

Merely looking at the above statement, one can see the disparity between the reviewed pieces of literature stated and the ones stated by the stakeholders. Thus it has provided for the first time that the third method of initiating action through the direct intervention by the LMDC has never been used.

The above-stated notion was acknowledged by the **case manager 1** who stated: ‘since I started working here, LMDC has never intervened directly by inviting parties.’

However, this is not in line with section 3 (8) of the LMDC Law 2015; which stipulates:

The LMDC is to promote or undertake projects or other activities including but not limited to the Settlement Week, which in the opinion of the Council will further assist in decongesting the courts and help to achieve the purpose for which the LMDC was established.⁸²¹

This finding was unexpected and suggested that LMDC on the face of it, is not assisting parties in disputes by extending an invitation to them though this research has shown that it does not in any way affect access to justice or hinders access to justice; instead, there seems to be a high rate of settlement for walk-ins in recent years. However, Franklin Covey pointed out that ‘highly effective practices must have defined outcomes before they act.’⁸²²

Thus, the sentiment expressed in the quotation embodies the view that a law does not operate in a vacuum, there must be something it was created for, or it seeks to resolve. In view of this fact, one can assume that if this third method of initiating matters by the LMDC has been in use, it could have aided the reduction of the dockets and increased the numbers of cases resolved in the LMDC by far, which in turn strengthens the effectiveness of the LMDC practice. Though parties confirmed that

⁸²¹ Lagos State Multi-door Court Law 2015

⁸²² Franklin Covey, *The 7 Habits of the Highly Effective People* (Signature Edition 4.0) 56.

this simple process employed by the LMDC has enabled them settle their cases effortlessly unlike the rigorous process of initiating a case in court.

However, looking at that provision from another angle or more strictly, direct intervention by LMDC may connote the LMDC inviting parties for the Lagos Settlement Week (LSW). Half of the literature evaluated failed to specify or address the above notion.

Consequently, another effort that has been put in place by the LMDC to ensure its effectiveness is by creating different roles or sectors, to help deliver a fast track dispute resolution that in turn will amplify efficient services to its users. Such roles are the ADR Track, ADR Unit, the Lagos Settlement Week (LSW) office and the governing council. ADR track is an office initiated under the LMDC. For cases filed directly to the regular court but screened to the LMDC for mediation. They also handle new cases that have not gone for trial, filed through the high court but screened to the LMDC for Mediation. On the other hand, the ADR unit office handles the walk-in and court-referral cases.

In contrast, the LSW office handles the walk-in and on-going court cases referred by judges for settlement week. Finally, the governing council formulates the policies or framework that drives the operations of the LMDC. An equally significant aspect of the governing council is that it guides the management in formulating or making sure that they set up a standard and ethical ways of achieving the mission and vision of the LMDC-which is to enhance access to justice. They also see to it that all that management does is in line with the law that establishes the LMDC. The above observations were revealed in these findings, however, previous studies or reviewed literature has not dealt empirically with the above stated discourse.

Additionally, parties stated that they are at liberty to use any of the different doors available at (Mediation,⁸²³ Arbitration,⁸²⁴ Conciliation, Negotiation and Early Neutral

⁸²³ **Mediation:** Although Mediation is the preferred dispute resolution by all the participants because of its cost-effectiveness and parties do not have to have it in their agreement before they can access it. On the other hand, arbitration is more expensive and based on this finding is not used and not as popular as mediation.

⁸²⁴ The reasons why Arbitration is widely used or popular amongst the parties are as follows: (This was giving by the two Arbitrators and other stakeholders) Is because Arbitration is basically based on agreement by the parties in the foresight of a dispute in the future which is inserted in the arbitration clause. Though there are instances where parties can still opt for arbitration without it being in the agreement clause ab initio. So what it means is that

Evaluation) the LMDC except if it was a court –referred matter and any other restricting clause.

Another unique advantage of using the LMDC is that - if it is a dispute as to land or property the parties and the mediators might precede to the scene/ location of the subject of the disputes so the mediators can properly mediate over it and the parties bear the cost. Often it is agreed that the parties and mediator meet at the LMDC and they all leave for the locus together. Both parties are there to answer whatever questions the mediator might have.

However, suppose it is an exceptional case, where the parties cannot bear to stay in the same venue for their mediation session. It will have to be held in different venues, then the party who cannot bear to sit with the other party or that wants that separated venue will pay for that venue. Then the mediator will go there, but if the mediator has to spend so much in getting there, then the LMDC will reimburse the mediator. The LMDC covers the mediator while the party covers themselves.

On the other hand, flexibility and party participatory of the mediation session at the LMDC, especially with parties who are unable to attend the mediation session in person have been indicated as one of the strong root of effectiveness in the ADR process both in the reviewed literature and in the findings.

It was revealed that parties can now access the session through virtual participation or session; hence parties can be represented through Skype, WhatsApp video or Facebook if they live abroad or in another state within Nigeria. However, those who are coming into the LMDC physically as a representative of a party who lives abroad; he/she must have a letter of authority that they have the consent of the party to appear or that they can take decisions on their behalf -whether a corporate body or an

parties are not at liberty unlike in mediation to request mediation on the spot or the judge cannot request that on their behalf except if the arbitration agreement stipulates that. Though there is an exception to this general rule, if both parties agree to commence settlement at Arbitration after the agreement and if both parties have inserted an alternative settlement in the drafting of the agreement. That they can resort to mediation or med-arb if Arbitration fails, however, under the LMDC it is still classified as walk-in and court-referred routes.

Hence, the LMDC introduced a sense of contract of freedom for the parties where they are at liberty to walk-in, come as they are, chose any door that they feel is appropriate to their dispute/conflict, or even use the LMDC venue (from other centres) as their arbitration hearing to hear each other out and structure their terms of settlement (TOS) and the TOS will be enforced as a consent judgement. The above stated functions and processes had been set up to streamline the procedures in order to ensure continuous improvement in the effectiveness of the LMDC practice.

individual. Flexibility and party- participatory also reveals itself during the very early stages of the mediation process, where the parties and their counsels are in attendance. The mediators always made it clear to the parties that Mediation is party-driven that the parties have full autonomy to stop the session at any time or leave whenever they want, that is why they are shown the exit doors prior before the session commences. The parties in this finding revealed full autonomy. That there are not influenced by the mediator to settle in a particular way.

The focal point is that they have this autonomy that is the (parties) alone can sign the terms of settlement or can appoint another person to append their signature on the terms of the settlement but then the party autonomy reveals itself in the sense that the party at the very long run takes full responsibility for the terms of the settlement. For the following reasons, ADR or MDC platforms⁸²⁵ are renowned for its adoption of very simple procedures that undoubtedly reassures users of resolution of disputes in a manner, which largely embraces the win-win approach and shuns the winner-loser mentality of litigation. Additionally, these empirical findings has also provided other prominent advantages of using the ADR system as an accessible, dependable, simple and viable Alternative Dispute Resolution (ADR) with procedures and processes are well streamlined to suit the modern-day commercial transactions. Hence from this finding, this simple mode of access and procedures has contributed to the effectiveness of the LMDC.

5.1.2 HAS THE LMDC REPLICATED THE PRE-ARBITRAL COLONIAL METHOD OF SETTling DISPUTES?

In the reviewed literature, there was a debate on whether the Traditional Method of Settling Dispute (TAMSD) evolved to this modern day Alternative Dispute Resolution (ADR). Pertinent questions were raised on whether this was a legal transplant from the western world to the African continent or vice versa.⁸²⁶

⁸²⁵ Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 64.

⁸²⁶ Grande (n251) 63

Against this backdrop, this is the first study to provide an insight from the disputants and stakeholders into whether the LMDC has replicated the pre-arbitral colonial method of settling disputes. It has been argued that the western style of ADR is not the first time that the African continent is coming in contact with Alternative Dispute Resolution (ADR). The African continent has always had its indigenous means of settling dispute before the advent of the Europeans. Elisabetta Grande elaborated more on the above subject matter in her article. She begged the question,⁸²⁷ does this mean that we are experiencing a new kind of legal transplant from less complex to more complex societies?

Grande pointed out that the 'data collected in 1993 shows that legal transplants usually take place from more complex societies to a less complex society.'⁸²⁸ However, the literature reviewed in this research indicates that some of the titled men illustrated how disputes were settled in their community via the TAMSD.⁸²⁹ More so, the researcher was born in Nigeria. The researcher has witnessed the way disputes were resolved from her community and from various other communities in Nigeria and neighbouring countries like the Benin Republic⁸³⁰ and Ghana⁸³¹ that the researcher was opportune to live in. She asserts that this method was part and parcel of the Africa continent.

Lending credence to the above is the case of Rwanda's traditional judicial system⁸³² in new places where it was implemented; it was successful. Thus, Gacaca corroborates with the evidence stated in the reviewed literature about the traditional method of settling disputes in Nigeria, which is the spirit of Ubuntu.⁸³³ This ancient universal philosophy connotes collective respect for human dignity, the art of being human, to value the good of the community above self-interest, it is to show respect to others

⁸²⁷ Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context'.

⁸²⁸ Ibid.

⁸²⁹ Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 13

⁸³⁰ Dominic Paaga, Dandeebo, Gordon 'Assessing the Appeal of Traditional Dispute Resolution Methods in Land Dispute Management: Cases from the Upper West Region' (2014) 4 *Developing Country Studies* 3

⁸³¹ Sophie Andreetta, 'The Symbolic Power of the State: Inheritance Disputes and Litigants Judicial Trajectories' (2020) 43 *Polar* 1

⁸³² Chika Ezeanya-Esiobu stated that Gacaca was used after the genocide in Rwanda's national court system when the genocide ended in 1994; their court system was in shambles there was no judges, lawyers to try hundreds of cases. So their government came up with the idea to resuscitate a traditional system that was known to them and infused into the judicial system that they called Gacaca. Gacaca is a community based judicial system where members of the community members come together to elect men and women of proven integrity to try cases. It is pertinent to point out that by the time Gacaca concluded its trial of genocide cases in 2012. 12,000 community-based courts had tried about 1.2million cases. Cited Chika Ezeanya-Esiobu, *How Africa can use its traditional Knowledge to make progress* (Ted Global 2017).

⁸³³ Center for Khemitology, *Short Course on Ubuntu Philosophy* 2020 9

and to be honest and trustworthy, it is fairness to all, it is to be compassionate, forgiving, compromise, it is the spiritual foundation of African societies, and which signifies 'I am because we are, we are because you are' (Umntu ngumuntu ngabantu).⁸³⁴ The 'we' connotes the community, and the 'I' connotes the individual or personhood. To the African, the 'we' means his/her extended family or lineage. If you contrast this with 'Des Cartes' maxim, on which Europeanism is based, it says 'I think. Therefore I am' (Cogito Ergo Sum).⁸³⁵ Additionally, Chief Ibronke, (SAN)⁸³⁶ validates the above statement:

Before the colonial period, disputes between members of the community and different communities were resolved using the traditional method of administration of justice to wit: by elders, chiefs and other paramount rulers of the community.⁸³⁷

On the other hand, Gluckman posits that:

In the native courts that were set up, the litigants themselves pleaded their own case and in default thereof, e.g. Because of age, status, or physical disability, their parents, guardians, husbands or relatives were allowed to plead on their behalf.⁸³⁸ In these judicial systems, professional pleaders or barristers as they are known today were not required. The legal and judicial systems at this time, to a considerable extent, derived their strength from the predominant influence of religion in the traditional society.⁸³⁹

The sentiment expressed in both quotations embodies the view or supports the submission of the researcher that the Traditional African Method of settling dispute was pre-existing before the colonial era in Nigeria.

⁸³⁴ Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context'.

⁸³⁵ Ibid.Center for Khemitology, *Short Course on Ubuntu Philosophy*

⁸³⁶ Senior Advocate of Nigeria (SAN) is a rank awarded to practitioners or academia that have distinguished themselves in practice and are considered the best in advocacy.

⁸³⁷ Nwosu (304) 91

⁸³⁸ Max Gluckman, 'Cross-examination and the Substantive Law in African Traditional Courts' in MacCormick D. (ed) *Lawyers in their Social Setting* (1976) 30 cited in Nwosu, *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibronke, SAN* 91.

⁸³⁹ Adewoye Omoniyi, *The Legal Profession in Nigeria 1865-1962* (Longman, 1977) 7 Cited in Nwosu, *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibronke, SAN*, 91.

A Legal Transplant⁸⁴⁰

Implications:

From the research findings, all the participants affirmed that the new ADR is from the past – TAMSD. Validating the above view **Lawyer 1** pointed out that

“The word arbitral suggests a force that is not challengeable an unquestionable authority. If you remove the arbitral the sentence will mean has the LMDC replicated the pre-colonial mode of dispute resolution? My answer is yes. In fact that is what it’s meant to be the LMDC is the modernised way of settling disputes in the / my village. The difference between now and then is that the society has changed into a multifaceted society. Now young men and women leave their parents and stay in the cities and form new families, new homes in urban cities when they have conflict in these cities. The traditional family home is too far away from them to help resolve their conflict in a traditional way. However the LMDC is now a home outside a home, an institution outside the home. To replace or fill in the gap of resolving disputes / conflicts the way it should have been assuming everybody -all brothers and sisters are living together in the traditional setting in those days it was easier for mediation to thrive because of the way people lived, communities lived together under one traditional head if the communities tell you to do this and you refuse they excommunicate you. They can even banish you and then it

⁸⁴⁰ Legal transplant simply means to carry or take an idea from one aspect of a law or take the whole law from a place to another place.⁸⁴⁰ The place in this context connotes the developing clime to the developed clime or vis a vis. The main issue being discussed here is whether or not ADR can be deemed to be a new kind of legal transplant from a less complex to a more complex society though this was highlighted in the theoretical perspective but the need for proper analysis is called for as it was raised in this findings. It is pertinent to point out that complex society is the civilized society while less complex society is the remote or developing nation. Now the grounds for raising this question is because comparative legal study or legal scholars has shown that legal transplants usually take place from more complex societies to a less complex society.⁸⁴⁰ So what that means is that over the years, some legal scholars have concluded that if there has to be a legal transplant, it should be from ‘a more complex society to a less complex society.’⁸⁴⁰ Just like colonization moved from a more complex society to a less complex society. Colonialism moved ideas, everything new that is originally located in the complex society, to the regions, to the suburbs, to the local settings. Now, that forms bases or assumptions that every time a new rule, a new principle, new findings, a new development in law it must always move from the advanced society to a less complex society.

was a shame that you were even banished but today in some communities people cannot even be banished because they are not even living together. People don't even want to go back to their villagers they have already given themselves life banishment by living in town forever without coming back. Consequently those sanctions can never work and those are the traditionally parameters are no longer trendy. So for the creation of the LMDC in these cities where these people live becomes an alternative becomes a well replacement of the colonial mode of conflict resolution. I would say yes it has replicated the pre-method of settling dispute?"

Conversely, Party A, B; C, D and E unanimously echoed that 'the LMDC has replicated the pre-arbitral method of settling a dispute. It is just that it is modernised with civilisation and so on.'

The viewpoint mentioned above has established that the TAMSD is relatively not new in the African Continent, precisely Nigeria, since all the elements and benefits associated with the earlier like the aid of the neutral party resolving a dispute to arriving at a well thought out arrangement by both parties to a binding decision can be seen in ADR. More so, the writer describes the LMDC as a transplant from America, and at the same time as an African Institution; this reason for the latter is because African people are influenced by the traditional practices of their people. Hence the cultural nuances and practices of their people cannot be denied or expunged. The researcher observed how neutrals were trained at the LMDC, and I was privileged to train as a co-mediator. They teach and encourage the neutrals on how to interact with the parties in their local dialect and the essential skills and level of awareness of the cultural nuance of the parties and provide culturally acceptable solutions. Hence once this cultural nuance raises its head, the neutral party has been trained to tackle it. By and large, though the LMDC borrowed this scheme from America or what most people refer to as a legal transplant, they have modified the scheme to suit the cultural orientation of their people. From all indications, most states in Nigeria have replicated or adopted the LMDC. The recent data collected by the writer has demonstrated that the LMDC is a success story and, for the most part, effective because it has replicated

the pre-colonial method of settling disputes (LMDC). Against this backdrop, it is argued that the LMDC has found fertile ground in Lagos and beyond.

Does that mean ADR is a form of a legal transplant from less complex to a more complex society?⁸⁴¹ Then this will be a reversal to the general rule of scholars⁸⁴² who have come to the conclusion that legal transplant usually moves from a more complex society to a less complex society. It is pertinent to point out that Grande disagrees that ADR is a form of legal transplant based on the foundation of what scholars are saying over the years. Grande finds it easier to align her views with Alan Watson's opinion by concluding that if this is a principle, if this is how legal transplant usually occurs then ADR cannot be a legal transplant because ADR moves from region of less complex society to a more complex society. However, Alan Watson also pointed out that the phenomenon of 'transplant is not restricted to the modern world.'⁸⁴³

On the other hand, Legrand, Pierre pointed out:

At best, what can be displaced from one jurisdiction to another is, literally, a meaningless form of words. To claim more is to claim too much. In any meaningful sense of the term, 'legal transplants,' therefore, cannot happen.⁸⁴⁴

The views above support the notion that transplant can come from anywhere, lesser or more complex society. Nonetheless Grande does not agree that this move is a legal transplant because by the standard she has set. ADR does not meet those requirements in terms of what she has adopted as the bases or identities of a legal transplant.⁸⁴⁵ However, despite this movement, Grande avers that it cannot be a legal transplant because it is coming from Africa or lesser complex society. Though, she pointed out that the basis of her conclusion is that ADR in a less complex society are usually group-based or community-based.⁸⁴⁶ Thus, it is anchored on the institution of the

⁸⁴¹ Grande (n251) 63

⁸⁴² Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context'.

⁸⁴³ Alan Watson, *Legal Transplants An Approach To Comparative Law* (University of Georgia Press 1993) 22.

⁸⁴⁴ Pierre Legrand, 'The Impossibility of Legal Transplants' (1997) *Maastricht Journal of European and Comparative Law* 120

⁸⁴⁵ Grande (n251) 64

⁸⁴⁶ Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context' 63.

community entity, not individualistic society. In her words, she states: ‘this structure or institution cannot be transferred to a more complex society.’⁸⁴⁷

What she means is that if one begins to say that ADR is a form of legal transplant. Did ADR now move with these basic features it is known for in Africa? For example, ADR is ‘society based.’⁸⁴⁸ These are the people that facilitate Traditional African Method of Settling Disputes (TAMSD), therefore if one now says that ADR is a move or a transplant from village to township then where is the age group? Where are those basic community structures that Traditional African Society (TAS) is known with? They cannot be found in western culture. Thus it is argued that the presence of ADR in the western world cannot be seen as a transplant because TAMSD did not come with the features it is known for to the western clime.⁸⁴⁹ Secondly, Grande highlighted ‘that even in the less complex society, these institutions are disappearing or they no longer exist or is not as strong as it is used to be.’⁸⁵⁰ What she means is that even in the traditional society that even today, one can no longer get all those age groups or it does not exist. Hence since these institutions do not exist; therefore, it cannot be called a legal transplant. Therefore it cannot be said that ADR is a form of a legal transplant ‘from a less to a more complex society.’

Revaluating the Grande’s Assertion:

It is argued that Grande failed to realize that every general rule has an exception. This means despite the fact that it is true that comparative study shows that legal transplant is usually moving from a more complex society to a less complex society,⁸⁵¹ ADR is an exception to the general rule. This is because both sides of the divide agree that ADR moves from rural to complex society as it is argued that ADR originated from less complex society to more complex, so we agree on this. However, where we differ is what Grande is questioning, whether this move is a form of legal transplant?

However, she made no move in trying to define a legal transplant. Another factor established on is that there is no universally accepted transactional model of legal transplant that is to say there is no laid down features or ingredients, or procedures of

⁸⁴⁷ Ibid 68

⁸⁴⁸ ibid 69

⁸⁴⁹ Ibid 63

⁸⁵⁰ Ibid.

⁸⁵¹ Ibid 69

legal transplants. Therefore the opinion of the writer that because of the inability to transact or transport its institutional structures from a less complex to a more complex before it can become accepted as a legal transplant, is baseless. So since there are no universal setup rules, there are no watertight ingredients that ADR must meet up before it is called a legal transplant or yardsticks that ADR must comply with, so there are no bases for the harsh treatment of ADR by the writer by stating because ‘ADR is not moving to the complex society with the institutional structures. Therefore, it cannot be recognized as a legal transplant.’⁸⁵²

In conclusion, it is argued that law evolves and is dynamic. The society may change,⁸⁵³ but the basic principles of ADR remain the same, ADR might have moved from a less complex society where it is much more promoted by institutional structure to a more complex society. Where similar institutionally structure does not exist and yet, retains its principles or features or the basic things for which we know ADR for-talking about features it is beyond equivocation that ADR is usually informal or semi-formal. ADR is usually based on a win-win situation; it is a form of restorative Justice, ADR facilitates peaceful coexistence between disputants. It has no strict technicalities; it is based or focuses on substantive justice and not technical justice. These and many more are distinguishing features of TAMSD which ADR has sustained even as it moves from a less complex society to complex society. The features adumbrated are the inherent; the inalienable feature of TAMSD that ADR has moved with even as it is moving from less complex to a more complex society is still held tight these basic features. The researcher would like to emphasize at this point that the adoption and recognition of ADR is not an abandonment of the state institutions or state apparatus for legal Justice.

In other words, ADR compliments a state structure both can always coexist for the good of the society. These submissions are made because the writer asserted that acceptance of ADR is the automatic abandonment of the state structure, the researcher disagrees with this notion; as the researcher believes that both of them can coexist. The presence of ADR does not derogate the state apparatus or state structure for the conventional legal system, which the advanced countries are known for.

⁸⁵² Ibid.

⁸⁵³ Moore (n258).

Based on the foregoing, this thesis concludes that ADR is a form of a legal transplant from a less complex to a more complex society. ADR is a reversal or an exception to the conclusion of scholars that legal transplant must always move or usually move from more complex society to a less complex society.

This finding has shown that in all the categories that 95% of all the participants attested that the LMDC replicated the pre-arbitral method of settling disputes out of that 95% some were of the opinion that it has been repackaged, improved, modified or modernized on its return. However, the other 3% believes that LMDC should take it back to the traditional way (incorporating the Oba's -Kings) that the westerns has refused to or without acknowledging that ADR was from Africa. In comparison, 2 % asserted that there had been no replication that ADR is new.

The researcher agrees with the observation from most of the participants that the LMDC has replicated the Pre-arbitral method of settling disputes. In hindsight, the Alternative Dispute Resolution (ADR) process has undergone different phases or revolutions. Within the Western clime, the concept of ADR has attained colossal popularity. It has gained a reputation as an 'alternative' to litigation.

In contrast, ADR was the primary method of settling disputes/conflicts within Africa,⁸⁵⁴ in the yore days though with a different name-Traditional African Method of Settling Dispute (TAMSD). However, its second return to Africa has been branded as ADR and has gradually gained immense popularity and significance; however, the westerns have not acknowledged that this mode of settlement originated from Africa, and Nigeria is the given context.

By and large, the research concludes that there was a replication. However what is done is to improve TAMSD from what it used to be thus it was scientifically reproduced in such a way that it can be fitted into the modern day dispute resolution. That is not to suggest in any way that litigation is irrelevant, litigation is still very crucial, but it is more supplemented by those mechanisms like mediation so with the cases that do not need to go to litigation track they can be attended to by mediation.

Thus, there is a new face of justice in Nigeria. What is embedded in the Africa Culture is mediation, is reconciliation, is harmonious coexistence among people

⁸⁵⁴ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 2

which is also kindred in terms of the faces of dispute resolution in the Africa Community, so to that extent there is nothing colonial about it, but what the LMDC has done is going back to what they used to be or what they used in settling disputes as Africans.

It approximates to their pre-colonial to the extent that it allows the talk in an informal setting in a place where people will give each other a listening ear where their idiosyncrasies are not labelled outrageous or where they are not brought down with one's opinion instead where people actually engage. Is like an engagement to settle, one can present to the elders, obi, oba or king the reality against the backdrop of all they have said or happened, and then they can see the reality. Initially, there is a kind of shock. However, naturally, one adjusts sufficiently when it is discovered that the field of the dispute has been reduced drastically and then the settlement takes place.

The underlying factor of the pre- colonial arbitral method of settling disputes is that it is predicated on the consent of both parties, peaceful co-existence and compromise which is what legitimized the entire decision, which is similar to the modern or repackaged ADR. Which has resulted in managing disputes effectively and hence the buy-in from the LMDC users because it has been explicitly tailored with all the benefits associated with the pre-colonial arbitral method to meet the needs of the citizenry or the common man and as such has made LMDC quite effective and an outright advantage over litigation.

Following from the above, the pre-colonial arbitral method is an indigenous element of settling dispute at the LMDC. Finally, for this notion to still being debated- that transplant still move or must move from more complex society to a less complex society is because some people from the African continent still suffer as a result of colonialism -its destructive effects on the African tradition has made most people to shy away from their tradition or they have no confidence from what emanates from their continent instead they promote western philosophy, religion and culture. However, there are some benefits of colonialism that cannot be overemphasized.

5.1.3 SCOPE OF MATTERS COVERED AT THE LMDC

According to the findings, it could be said that LMDC mainly covers banking, lease, loan facilities, family disputes/land matters, matrimonial causes, alimony, issue of child custody and child maintenance, tenancy matters, and business-commercial transactions, however, this finding is the first to reveal that, LMDC now covers criminal cases- minor offences-felonies or misdemeanours. Hence as LMDC now deals with an extensive range of disputes has proved its effectiveness. As these findings have shown, LMDC has started attracting high-volumes of cases hence it can be said that they are committed in or have contributed in enhancing access to justice to disputants.

5.1.4 SCOPE OF MATTERS NOT COVERED AT THE LMDC

On the other hand, the scopes of disputes revealed that is not covered at the LMDC include divorce and capital offences.

According to the mediation skills training handbook these areas are non- mediate able matters. For a particular matter to be mediated they have to come under mediate able matters.⁸⁵⁵ For instance, disputes that has to do with contracts, these are core fundamental mediate able matters although is not all the time that it gets settled but because is a contract that is amenable to mediation. However, matters that has to do with money, it does not necessarily has to do with contract, it could be stealing, fraud but if one party is willing to pay and then the other party is going to accept the repayment then it can be mediated.

On the contrary, **judge 3** pointed out that ‘in criminal matters we have what is called ‘compoundable matters, there are criminal matters that parties can actually mediate a settlement including fraud, stealing and even murder.’

Yes, it does not necessarily have to be the minor offences. It all depends on the parties’ even as heinous as murder. For example, in Nigeria sometimes parties of the respondent who are not interested in the murder case, because killing the person or giving them a cow or even the defendant won’t bring their brother back. They might say what we want is that, so, so amount of money should go towards his

⁸⁵⁵ LMDC, *Mediation Skills Training Handbook* (2019) 4

children's school fees. This is the number of schools his children are and this is how much they pay they can decide to settle out of court.

The relevance of the two divergent views is to highlight that no matter the complexity of a case that it can be resolved depending on the 'willingness of the parties' which is in line with the views of most of the categories in this findings.

In a bid for clarity, this research has classified them into two: criminal matters and civil matters. Divorce is civil proceedings, but due to its unique nature in Nigeria is not mediated.⁸⁵⁶ Nonetheless, the findings revealed that ancillary matters or related matters associated with divorce – like the welfare of children, custody matters, sharing of properties, maintenance and alimony, these can be mediated because parties can negotiate⁸⁵⁷ or can bargain in the shadow of the law.⁸⁵⁸

However, in Nigeria divorce has to be an order of the court filed through the high courts of a State.⁸⁵⁹ Thus Section 15 (1) of the Matrimonial Causes Act (Nigeria) provides that only a court of law or judge can order a decree for the dissolution of marriage.⁸⁶⁰ This is against the backdrop that there is a lot of technicalities or conditions -that must be fulfilled, and one such condition is that the sole ground for dissolution of marriage is that it has broken down irretrievably.⁸⁶¹

Furthermore, section 15 (1) of the matrimonial causes acts -is an act that takes care of issues of dissolution of marriages and nullity of marriage dissolution of marriage is talking of how to cancel a valid marriage whereas nullity of marriage is how to cancel an invalid marriage.⁸⁶² However, the contrasting act is the Marriage Act that takes care of how to come together as husband and wife. The researcher would call it the ingredients and requirement that will make a valid marriage. Thus Marriage Act 1990

⁸⁵⁶ Laws of the Federation of Nigeria, Matrimonial causes Act 1990.

⁸⁵⁷ Majority of family disputes are referred from the family courts during the compulsory conference stage of litigation and must be mediated with due consideration to the interest of the child. Cited in The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 50.

⁸⁵⁸ Mnookin, 'Bargaining in the Shadow of the Law,' *The Case of Divorce* 969

⁸⁵⁹ Laws of the Federation of Nigeria, Matrimonial causes Act 1990.

⁸⁶⁰ Ibid.

⁸⁶¹ Ibid.

takes care of the building of marriage and the Matrimonial Causes Act 1990 takes care of the dissolution and cancellation of marriage.

In light of the preceding, in Nigeria, in order to make sure the marriage has broken down irretrievably, an independent opinion which is the judge, the arbiter is allowed to use legal yardstick which is provided under section 15 (2) (a) (h) of the MCA to conduct acid test on the marriage to know fully well if it has broken down irretrievably for that to be done. There are eight (8) factual circumstances, which the judge is to use and check whether the petitioners, which can be either the husband or wife-, are saying the truth that the marriage has broken down Irretrievably. There is a non-classification of mediate able matters particularly when the law gives the court the jurisdiction to handle that matter alone and that's why decree nisi and decree absolute are just for the High court (H.C) alone, it cannot be given to a mediator.⁸⁶³ However, the above-mentioned ancillary or related matters can be handled through mediation. Though, some of the lawyers highlighted in this findings why the mediator could not handle divorce because the mediator is just an advisor but does not give

⁸⁶³ Some of the examples are as follows:

- 1) **Adultery:** Since the marriage, has the petitioner been involved in adultery if the answer is yes then the next question is 'does the respondent find the adultery intolerably? Perhaps he has committed adultery many years ago and the wife or the husband has forgiven and moved on and say lets forget it, thus is no longer going to be counted as a ground for divorce- that is what they call condonation, the petitioner have condoned it. So the fact that he has committed adultery is not a ground, that is why we need an independent party the arbiter asking 'okay, fine he has committed adultery so when you heard it what did you do? You forgave? So what has happened to your forgiveness? so that explains condonation. However, if a party committed adultery and the other party does not see it intolerably then it is a ground for divorce.
- 2) **Unreasonable behaviour:** Since the marriage, has the man behaved unreasonably or the woman behaved unreasonably in the sense that the other party cannot reasonably be expected to be living with him. Now the question is what is an unreasonable behaviour? In Nigeria same sex marriage due to the same sex bill prohibition 2013 provided that a man and a man is constituted as unreasonable behaviour and can form a ground for divorce that is the law still says marriage as you see in **Corbett v Corbett**. Mr Corbett went to court because he realized he was married to a man who changed his reproductive organ to a woman. Then what was before the court was to decide who is a woman? Now the court decided that a woman is somebody who at the time of birth, its reproductive organ is female then that is a woman (in fact that is where the difference between a man and a female was established) this rule is a legal precedent in Nigeria and is still prevalent till date.
- 3) **Living apart:** If husband and wife have lived apart for 2years is a ground for divorce.
- 4) This is different from 3years when it is up to 3years it does not matter if the other party is objecting because one party did not stay for up to 3yrs and has not seen each other.
- 5) **Desertion:** When one of the parties has abandoned the other party and moved away /moved out of the house in search of greener of greener pastures.
- 6) **Consummation of Marriage:** This one is usually uncommon and that is that respondent has wilfully and persistently refused to consummate the marriage.
- 7) **Conjugal right:** Another ground for dissolution is that the other party for a period of one year fails to compel with a decree of conjugal right made under the act.
- 8) That the other spouse has been absent for seven year. The rule on presumption of death if the other party has not seen the other party or spouse for six or seven years. They can ask for divorce and they can go marry another person because he is presumed to be dead. Nigeria, Matrimonial causes Act.

judgement. Hitherto there is a limit to what LMDC can handle, it is an advantage because parties can easily access the right door to their cases in little or no time. However, it can also be classified as a disadvantage because there is a limit to what they can settle, which is reasonable in law in a strict sense. Nevertheless this finding has revealed that the MDC is a helping hand to litigation and was not birthed to replace the court. Has this status quo changed due to the introduction of the Restorative Justice programme by the practice direction? ⁸⁶⁴

Though, it is believed, that it is high time LMDC delves into divorce⁸⁶⁵ except where there is domestic violence.⁸⁶⁶ By extending its scope to cover divorce proceedings as divorce is within the remit of ADR in certain jurisdictions like England and Wales. However, the need for more awareness by scholars for the government and judiciary to amend section 15(1) of the matrimonial causes act is vital. However, divorce requires a pronouncement of the law and stamped with judges authority.

A Criminal Proceeding

Restorative Justice

However, the most recurring theme in all categories was the use of criminal proceedings at the LMDC. As earlier stated in this research, this is a new development in the field of ADR in different jurisdiction but most notably in Lagos State. Though there was a debate with whether criminal offences or proceedings should be settled through ADR ⁸⁶⁷ or whether the LMDC is the right place crimes should be resolved?⁸⁶⁸ The previous study carried out by Professor Onyema suggested widening the remit of the LMDC to criminal matters (such as small value or low-level thefts).⁸⁶⁹

⁸⁶⁴ Practice Direction on Restorative Justice 14

⁸⁶⁵ Parkinson, *Family Mediation: Appropriate Dispute Resolution in a New Family Justice System* 8.

⁸⁶⁶ Kingsley Nwokolo, 'To What Extent Is The Mediation Process Useful To A Victim Of Domestic Violence When The Dispute Is Over Finances/Children Upon Separation Or Divorce?', University of Westminster Regent Campus 2007) 29.

⁸⁶⁷ Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 40.

⁸⁶⁸ Onyema (n2) 16

⁸⁶⁹ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' 17.

This implies that the LMDC expanding its scopes to criminal now aligns with its objectives respectively in section 2 a, b, c, d,⁸⁷⁰ it is essential to point out that in 2019 the LMDC achieved a new⁸⁷¹ milestone by taken on criminal offences. Illustrating the type of criminal law settled at the LMDC **Director 1** stated that:

However you know that there is some police matter at the magistrate courts that is civil but sugar-coated with criminality when you look at it is all about the civil matter of contract between parties, breach of those contract terms and defaults like using the police to fight for their civil rights is those type of criminal matters that LMDC responds to or handles.

In hindsight, when a crime is committed the same storyline or course events that gave rise to the crime can also give rise to civil action. For example, if someone steals a phone and he/ she gets caught. The person he stole from might demand compensation it might be that he wants the person to go to prison. Then it is criminal compensation that he is looking for if the compensation he wants is for the offender to return his phone and take his trouble elsewhere the compensation he is looking for is civil compensation or if the compensation he wants is for inconveniences that he has suffered. Since the time he was denied access to his phone, in addition to his phone, the offender has to give him extra money, then it is civil compensation. Hence, there is a trajectory between the criminal proceedings and civil justice system, meaning it goes through the restorative justice door. What then is Restorative Justice?⁸⁷²

On the other hand, Darren McStravick has identified 'that many restorative advocates have noted difficulties in clearly and concisely defining the concept and the true nature of its practical and theoretical role within restorative justice practices.'⁸⁷³

The above view is not far from the truth on the part of the users in Nigeria jurisdiction in particular Lagos. However, some of the stakeholders interviewed—the directors, magistrates and the judges are fully aware of how it functions. This distinction is vital

⁸⁷⁰ Laws of Lagos State, Lagos Multi-Door Courthouse Law 2015

⁸⁷¹ Ibid.

⁸⁷² Restorative justice is theory of justice that emphasizes on the harm caused by criminal behaviour. It is best accomplished by giving people an opportunity, for the offender and the victim (victim offender mediation) to meet where they want to and decide together. And this can lead transformation of their relationship. It's an entirely voluntary process. *Cited in Practice Direction on Mediation Procedure 2008.*

⁸⁷³ Darren J McStravick, 'Adult reparation panels and offender-centric meso-communities: an answer to the conundrum' (2018) 1 *The International Journal of Restorative Justice* 97.

because Restorative justice is quite new in Lagos State⁸⁷⁴ unlike in England and Ireland.⁸⁷⁵

Subsequently what this means is that the Lagos State through the previous chief judge of Lagos State passed into law the ability of the LMDC to mediate criminal disputes; however, they under the practice direction on Restorative justice have restricted or excluded capital offences, sexual offences, kidnapping and certain fraud (financial crimes)⁸⁷⁶ but has vested jurisdiction to try minor offences, revealed **Director 1**. Additionally, it revealed that the LMDC training has commenced for magistrates and the judiciary in batches.

In sum, this highlights another active service provided by the LMDC. However, a lot of the work has been on the civil, commercial side and not so much of the criminal side. More so none of the parties from the focus group knew anything about this innovation. How would LMDC enhance access to justice on the criminal proceedings? Because it took several years for disputants to accept the scheme, and some are yet to, going by the statistics. Does LMDC have a place? Without a doubt, it does have a place in terms of the justice side. This is because in the past, criminal matters cannot be mediated mainly because it is crime of the state and the punishment stated by law is usually retributive by nature not necessarily to put the victim and offender in a win-win position (which is what mediation is all about).

The findings in this research have revealed that there is now paradigm shift in Nigeria, where mediators will bring victims and offenders together in a safe and structured setting to discuss the crime, its aftermath and steps needed to make amends. However, it raises the pertinent question of whether the LMDC would benefit Lagos citizens from its greater engagement with criminal law matters? Without a doubt, it will and has-going from the recent data collected and the interviews conducted. It indicated that the dockets of the court have drastically reduced⁸⁷⁷ (the impact of the above-stated position can be glaring seen in ESMDC)⁸⁷⁸ unlike in the previous years. In line with the above viewpoint, the LMDC should continue to expand its tentacles in the region of capital offences, not only in civil matters since the research has indicated

⁸⁷⁴ Practice Direction on Restorative Justice .

⁸⁷⁵ McStravick, 'Adult reparation panels and offender-centric meso-communities: an answer to the conundrum'96.

⁸⁷⁶ Practice Direction on Restorative Justice 8

⁸⁷⁷ See Chapter 4 findings of the LMDC and the LMDC Quantitative Data analyzed in Chapter 5.

⁸⁷⁸ See attached ESMDC findings in appendix.

that parties can settle any matter via ADR to be precise MDC so far, both parties have agreed to do so.⁸⁷⁹

Hence it would benefit the citizenry for the scope of matters settled under the LMDC / ADR to be widened to include scopes not yet covered, which is in line with their Primary objectives to enhance access to Justice for its citizenry and reduce the citizen's frustration.⁸⁸⁰ Nevertheless, much works need to be done to widen its powers under the new rule⁸⁸¹ and also educate the parties and stakeholders on the truism that Mediation will do much good for the offender and victim, more so it will aid in decongesting the already decongested prison in -Lagos State.⁸⁸²

5.1.5 Judges-Enforcement

One of the most prominent advantages of the LMDC practice is that the judiciary advocates that Litigation alone cannot do the work. Thus, they added other means, which is Alternative Dispute Resolution under their umbrella and carved out another sector in the judiciary known as the ADR Judges. That is the significant difference between the normal ADR and the court-connected ADR. There is a synergy between Litigation and other ADR options, but in private ADR, it stands alone.

However, the findings indicated that all the participants in the different categories are calling for judges to start sanctioning recalcitrant parties who take advantage of the process in order to buy time for themselves knowing fully well they can not fulfil the terms of the agreement.

Conversely, when it is the time for compliance or after enforcement has taken place, they recede vis-a-vis, forcing the other party to go back to courts. Apart from the parties forestalling enforcement, which is line with the findings by all categories. The

⁸⁷⁹ See Chapter 5 Qualitative analysis of the LMDC.

⁸⁸⁰ Section 2 (a) (b) of the LMDC Act 2015

⁸⁸¹ Practice Direction on Restorative Justice .

⁸⁸² Ibrahim Danjuma, Muhamad, Rohaida, Munzil, Mohd, 'Prisons' condition and treatment of prisoners in Nigeria: towards genuine reformation of prisoners or a violation of prisoners' rights?' (2019) 44 Commonwealth Law Bulletin 1

finding also revealed that lawyers are applying dilatory tactics to delay⁸⁸³ enforcement through their parties- by stating that parties signed under duress.

5.1.6 Ego and Apology

Also, all the participants pointed out the part or effect Ego and apology has to play in dispute resolution. When an individual is unable to achieve a certain goal, the individual can express anger. This anger is frustration, when this is directed inwards it can lead to depression and mental health problems, now when it is directed outwards it leads to aggression, i.e. aggressive behaviour when is extreme it can be criminal.⁸⁸⁴ Hence the need to look in-depth at the Psychological causes of disputes / conflicts using the psychoanalysis theory (which is still in use and very much relevant) according to Sigmund Freud, that is the id, the ego and the superego.⁸⁸⁵

A Through the Lens View of Sigmund Freud

The id is made of inner drives, the biological instinct that drives destructive, and aggressive and violent behaviour.⁸⁸⁶ Now, the ego is the rational mind and superego is made up of morals, societal expectations which is basically what one learnt to be right

⁸⁸³ Perhaps the most dramatic evidence of the effects was stated by lawyer 3 on the dilatory tactics employed by lawyers. 'Dilatory tactics of counsel is where they bring in all sorts of legal jargon or deliberate attempts by counsel to delay matters unreasonable.' They use it to delay the enforcement of judgements and they are different ways they can go about it. Some can say that they signed under duress and the court takes it seriously I have seen a situation like this. The courts called both parties and asked them is this your signature and he said 'My Lord I was forced into signing the agreement.' There are already in doubts, so the court takes it with all seriousness. The court might set it down for whatever the courts, or the courts uses their discretion to set it down for whatever it deems fit in that situation all the hard work that was put into it has gone out of the window. Some will say maybe there should be a regulation or statutes that states when the parties signed an agreement that automatically it should be enforced. But there is a school of thought that will tell you that because LMDC doesn't have that power you cannot just enforce until you approach the court. I think that the only way out is that they should empower them to enforce such things that mean there will be duplicity of roles between the judiciary and the LMDC.

There are more like quasi judiciary, it is only the judiciary that has that power to enforce such things so it is neither here nor there the issue of enforceability is also a challenge. So if there can be like a law given them power to enforce those things, though there maybe issues because you now have two arms or like duplicity of rules and you know we work with the ground norm we know the arms of government, we know that the judiciary is in charge of interpreting what the law says and also the executive enforces but given the LMDC quasi judicial powers or powers of the courts might be very difficult.'

⁸⁸⁴ Muzaffer Sherif, *Group Conflict and Co-operation: Their Social Psychology* (Psychology Press 2015) 42.

⁸⁸⁵ Courtney Ackerman, *Psychoanalysis: A Brief History of Freud's Psychoanalytic Theory* (Positive Psychology. com 2020).

⁸⁸⁶ Ibid.

and what one learnt to be wrong, it is the most tied to reality⁸⁸⁷ Freud stated that when growing up it is the superego is the conscious.⁸⁸⁸

Now when a battle between the innate drives and one's morals takes place, this results in conflict within the person's mind and unresolved conflicts lead to maladaptive behaviour- when there is an unresolved conflicts,⁸⁸⁹ then the person will start having a coping mechanism and just develop prejudice which is wrong perception and wrong perception can lead to criminal behaviour.⁸⁹⁰ Obviously as well disputes between individuals can occur because of competition between sharing of resources or, attitudinal differences. When an individual, who already has so many conflicts within him, tends to let out this frustration in maladaptive ways-some of this maladaptive ways when they are very extreme are criminal in nature.⁸⁹¹

The Group and its effect on the individual

Grande pointed out that in Africa, the society being collective as opposed to individualistic⁸⁹² and even in the individualistic societies, man is a social being and the group he lives in where he lives and survives influences him.⁸⁹³ Now in Africa, it's more so that the group holds power over the individual. Africa is a collective society where his group defines the individual.⁸⁹⁴ The researcher considers that was why the Traditional African Method of Settling Dispute (TAMSD) flourished.

In the same vein, this finding has discovered that is why the LMDC too is progressing because of mediation, which is patterned after the TAMSD-reconciliation, forgiveness amongst others. During the mediation session, the parties revealed that once they got an apology, in most cases they settled the matter. Party C also validated the above view.⁸⁹⁵

⁸⁸⁷ Ibid.

⁸⁸⁸ Ibid.

⁸⁸⁹ Ibid.

⁸⁹⁰ Sherif, *Group Conflict and Co-operation: Their Social Psychology* 42.

⁸⁹¹ *ibid* 42

⁸⁹² Grande (n251) 66

⁸⁹³ Peter, Ebigbo, Harmony Restoration Therapy: Theory and Practice International Journal for Psychotherapy in Africa, Vol. 2,1, 22-23 cited in Umegbolu, *The Lagos Multi-Door Courthouse (LMDC) in Nigeria*.

⁸⁹⁴ Grande (n4) 68

⁸⁹⁵ "At first, I wasn't happy that I was referred to the LMDC but when the matter started I understood what caused the conflict, so that's what LMDC does. It's very effective; it's a win-win in the sense that I now understand what

This line of thinking was prevalent in other categories, it was also revealed that is not only the party that suffers from ego, and lawyers too suffer from the latter.⁸⁹⁶ The question would be how does it affect Mediation or the interplay between id, ego and superego with mediation?

Therefore what mediation does is using dialogue which itself is a therapeutic tool⁸⁹⁷ or a peace tool as this findings has revealed. The talk or dialogue which has been viewed as peaceful tool by this findings and which is in line with Galtung analysis of peace being an opposite coin to violence.⁸⁹⁸ The dialogue by both the parties and mediator represses threatening thoughts (id) and when the apology comes it reinforces peace and shifts or removes the ego. Dr Susan Heitler reinforces this viewpoint where she highlighted a therapeutic process in mediation as

A process of truth-telling, apology, and reconciliation relieves emotional distress in the injured party, and launches a process of repentance for the harm-doer.⁸⁹⁹

The sentiment expressed in the above statement, embodies the view made by Party D.⁹⁰⁰ The above case validates the point in regards to ego being one of the causes of

caused the conflict in the first place and hopefully next time it won't repeat itself. For me, when we had the first session with the mediator, we freely expressed ourselves reflecting on our actions, I demanded for an apology and I got it. That's what litigation cannot give you or give anymore-personal satisfaction. To be honest it was what solved the matter. So Instead of us wasting time in court; we have the opportunity of settling on time and in a conducive atmosphere. Apart from that, we also get to understand ourselves much better; I would say what happens during the mediation session it's a form of synergy between the two parties in the LMDC. Of course, I feel relieved and happy, now that we have settled. I thank God for the LMDC."

⁸⁹⁶ Conversely, **Lawyer 2** pointed it out "I have incidents where you still see lawyers arguing in mediation because they are the ones driving the process some will even tell their client let's leave here. I have attended one, the lawyers opening speech- a senior advocate of Nigeria (SAN) was derogating and condescending. His opening speech I confronted him and 'said you don't use this kind of words on our clients he told me I should shut up small boy' and 'I told him we are not here for age' we are here to represent our clients interest so age has nothing to do here, year at the bar has nothing to do here we are just professionals with the most respectful tone I could use at that point."

"He told me if I say anything again he is going to walk out and I told him to walk out, he walked out. I wanted to leave, but his client told us to sit down that we could resolve this thing without him. You see, if not that he was bold to say we should please sit down, that he didn't understand why his lawyer has to behave that way. We actually resolved it. So what that man needed was his money. So for him whatever this lawyer is saying is not his problem he needed his lawyer on how this issue will be resolved he needed his money back, 'you see how the SAN advocate could have thwarted the process' so because like I said when lawyers are in control of the process they tend or perhaps carry their litigation spirit to it and sometimes their client don't really leave there with satisfaction."

⁸⁹⁷ Ackerman (n846) 1

⁸⁹⁸ Johan Galtung, 'Violence, Peace, and Peace Research' (1969) 6 Journal of Peace Research 183

⁸⁹⁹ Susan Heitler, 'Therapeutic Mediation: An Alternative to Costly Litigation' (1998) Colorado Lawyer 4

⁹⁰⁰ He stated "My case stayed in court for so many years without being heard mind you, it is my dad's case and he is late now. On getting here my uncle apologized though I felt bitter that he could have done that when his brother was alive but its okay, I have put everything behind me now."

dispute. As people who are not in good terms with their families and communities tend to suffer a lot of seclusion like ‘ostracisation,’ which is bad for the person’s mental health,⁹⁰¹ though this is still prevalent to date.⁹⁰²

The Maslow’s law of belonging (ness):

Abraham Maslow stated that sense of belonging (ness) is one of the needs that a human being psychologically needs to be able to feel well, but only when he belongs and feel accepted within that particular group.⁹⁰³ Similarly, Burton asserted that human needs are usually the core cause of conflict between people.⁹⁰⁴ He went ahead to describe the interaction of human conflicts and how they seem to affect the result of conflict, the individual or group of individuals; especially in Africa where they must introduce themselves within the group.

How Maslow’s theory is related to Dispute / Conflict Resolution in Africa

As Grande observed everybody comes from kindred, so an average Africa defines himself within his family, within his group. Similarly, Professor Ebigbo opines that the African would be defined by ‘what his group says of him or thinks of him.’⁹⁰⁵

The researcher believes this is true because she is from the African continent, and this is a general practice in the community where she hails from. Although we are all social being, however in African society, its society influences them and what they usually think of themselves is what people in the group or unit, like their parents, friends, siblings and colleagues, think of them. It is pertinent to point out that in Africa, Nigeria to be precise, they do not have enough psychotherapist but what comes to help in health problems and in the same vein in restoring conflict/dispute is

⁹⁰¹ Eric Wesselmann, Dan, Ispas, Olson, Mark, Mark, Swerdlik, Natasha, Caudle, "Does perceived ostracism contribute to mental health concerns among veterans who have been deployed?" (2018) Illinois State University 6

⁹⁰² Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 23

⁹⁰³ Ackerman, *Psychoanalysis: A Brief History of Freud's Psychoanalytic Theory* (n846) 1.

⁹⁰⁴ Zozulia Olexandrivna, 'The Conflict within the Concepts of Needs Abraham Maslow and John Burton: Archetypal Analysis ' (2017) Faculty of of humanities and social technologies, National Technical University "Kharkiv Polytechnic Institute" 93.

⁹⁰⁵ Ebigbo, 'Harmony Restoration Therapy: Theory And Practice', 64.

the social groups – the elders, the families, the strong extended families system, the kindred, the villagers and in recent years the churches.⁹⁰⁶

Going back to the study / findings, one could see from the parties that they want to settle but most times their ego gets in the way or the lawyers ego's they want to dictate the tune but once the opponent apologises then in most cases the matter is resolved. Though this research has shown that the reason behind this is because though they want to foot their bill but most of them want to attain the rank of SAN or a judge.⁹⁰⁷ **Lawyer 1** insisted 'that lawyers are a clog in the wheel it's effectiveness to resolving issues because from experience lawyers even go about advising their client that when we get there do not accept you will win this case. They believe that ADR is Africanized.'⁹⁰⁸

Another angle to the Africanized that was raised by **Lawyer 1** is that ADR in 'Africa is free.' Hence, the mediation processes at the LMDC has replicated or tapped into this benefits of the TAMSD-in terms of null charge or cheap cost, in terms of the quality of mediation training, CEDR Training⁹⁰⁹ amongst many others. Which has resulted in managing disputes effectively, maintaining a cordial / business relationship. Thus, the increase of settlement at the LMDC and the views of the participants has attested or validated the above assertion.

Reviewed Literature:

Though the mediation textbooks and articles explained managing conflict.⁹¹⁰ This is the first finding that looked beyond that -to report an association between Ego and high intensity of cases in the courts; is as a result of parties putting first their desire for self-centred recognition and rights above the higher goals of- the authentic relationship. **Case manager 3** emphasises that mediation encourages such atmosphere

⁹⁰⁶ Ibid.

⁹⁰⁷ The more contentious cases they settle, they more they can attain this rank. So they can be called addressed as the learned silk. ADR in Nigeria do not handle contentious cases, so most lawyers would want to go to court rather than settle at the LMDC.

⁹⁰⁸ The meaning of Africanized in this context: "Before the Western way of resolving disputes we have our African way where parties are made to come to a compromise for the larger good that is one."⁹⁰⁸

⁹⁰⁹ It means Centre for Effective Dispute Resolution. This is an accredited mediation centre located in London, United Kingdom.

⁹¹⁰ Lisa Parkinson, Family Mediation (3rd edn, Family Law 2014) 2-3.

for parties to let go of their ego suggesting that the court structure does the opposite.⁹¹¹”

Similarly, **Party C** stated that for me, when we had the first session with the mediator, we freely expressed ourselves reflecting on our actions, I demanded for an apology and I got it.⁹¹²

Thus, the way ‘ego’ intensifies dispute or conflict⁹¹³ is the same way simple ‘apology’ during the mediation session, tend to solve the problem with the resultant effect of a win/win. Which the parties said they do not get in Litigation because the court is structured at such as a battlefield in the sense that it encourages ‘I will show you’ or win/ lose, mentality. Thus, the finding indicates that the court processes take longer time because ‘people are bent on rolling the dice, to take the gamble, ignoring the stakes.’⁹¹⁴ Therefore, this is an added advantage for parties using the LMDC.

B Mediation as a Peaceful Tool?

Mediation as a peaceful tool is an additional subtheme in this theme especially amongst the case managers, mediators and parties. They pointed out that Mediation is a peaceful tool used in the resolution of dispute. From the findings, it was revealed that communication, which goes hand in hand with Mediation, is a useful tool used by the mediators, especially during the opening statement. They ask-open ended questions and this, in turn, allows them to express themselves better and reassures parties to bare their minds out.⁹¹⁵

⁹¹¹ In her words: ... “the court edifice play with egotism and deceit, and by so doing wholly overplay the importance of winning at all cost and besides everyone is juicing out of it- the lawyers, the clerks and sometimes the judges.”

⁹¹² “That’s what litigation cannot give you or give anymore-personal satisfaction. To be honest it was what solved the matter. So Instead of us wasting time in court; we have the opportunity of settling on time and in a conducive atmosphere”

⁹¹³ Ryan Holiday, *Ego Is the Enemy: The Fight to Master Our Greatest Opponent* (Portfolio / Penguin, 2016) 59.

⁹¹⁴ Ibid 5

⁹¹⁵ Parkinson (n 871) 87.

This observation is corroborated; by the observation made by **Mediator 2** she ascribed Mediation as a ‘peaceful tool while comparing it to Litigation.’ She went on to state that:

I realized that this parties just needed to talk, mediator talking to them, just to make them see reasons and then they talk to themselves, I said okay if both parties cannot settle it, I guess we have to close. As I was about leaving, they rushed me and said madam we are ready to settle at the car park. It just goes to show that I must have said many things, emotionally I must have talked to them, I must have reasoned along with them that must have made them rushed down to the car park to say yes, they want to settle the matter.⁹¹⁶

Similarly, Mediator 3 cited an example in support of the above notion.⁹¹⁷ For these reasons, it is argued that the mediation session at the LMDC is a little bit of the Socrates method. Where parties are allowed to talk, reach an agreement that they are happy with and mediators listen. All the participants, including most of the parties, affirmed that LMDC had given them hope. That there is a place where they can come and vent their anger, vent their frustration and vent all that there is inside of them, and settle thereafter reach an amicable settlements.

On the contrary, **lawyer 2** revealed that lawyers ‘do not think ADR or mediation is justice.’ This point is sustained by the reviewed literature of Genn Hazel, where she argued against the use of private Justice (ADR) to resolve disputes.⁹¹⁸ On the contrary, Stephen Covey stated that if ‘it is not a win for both of us we both lose. That is why win-win in relationships is the only realistic alternative.’⁹¹⁹

⁹¹⁶ She concluded by stating, “Mediation is a peace tool as opposed to the commotion in Litigation. I can say that because I have practised for over fifteen (15) years now. Nevertheless, it can work that way with the right mediator. So that again shows that LMDC is picking the right mediators.”

⁹¹⁷ “A tenant who wants to be nasty knows that he will need to leave the house without paying a dime is a benefit to him. So even though he is told to stay for just 6months or three (3) months and then leave with the rent he owes, he will say wow this is a good deal. However, then he is not happy because is like he wanted twelve (12) months but then he is getting 6months, and he is not paying a dime, his wife will say, common that is a good deal.”

⁹¹⁸ Tony Guise, 'Is Mediation Justice?' 2019) <<https://www.mediate.com/articles/guise-is-mediation-justice.cfm>> accessed 20th August 2020.

⁹¹⁹ Covey (n541) 91

Flowing from the above, it is high time scholars move away from the ‘vanishing trial’⁹²⁰ phenomenon and realistically take in what private justice has done or is doing for litigants. How do parties feel about it? Has it provided access to justice at a cheaper rate, speedier rate and effective rate? The researcher believes that is the type of justice commercial people in business are eager to have. A lecture carried out by Professor Sandel, Michael has demonstrated that justice means different things to different people.⁹²¹

Thus, it is argued that this finding has been able to depict or highlight the above-line of thinking. However, during the finding, the researcher asked a profound question to a mediator whom she followed in for one of her session as a trainee co-mediator on what she thinks should be the yardstick for measuring if justice is justice in the private settlement?

The mediator answered,

Whether at the end of the mediation session do you see the joy in the eyes and faces of the parties”? That is **number 1**, then **number 2** at the end of the session even if the parties are frowning. Do you look beneath the façade of the frown and check their demeanour? Something like emotional intelligence? Psyche them up and with all these frowns, what do they think about the session? Furthermore, you will be shocked and surprised to find that they are like fine though I did not get all that I need,’ but I got it within a short period.

In support of the above view, some of the parties stated that ‘when the other party apologized they experienced or felt personal satisfaction, he felt happy and now wants to settle.’ At the same time, some said that they now understand why the other party did what they did. They will not pursue this matter anymore because they now have a clearer understanding of what went wrong.’

It is agreed that the happiness of the parties is primary if both sides were quarrelling, shouting, employing inventive against each other will leave at the end of

⁹²⁰ Stephan Landsman, 'So What - Possible Implications of the Vanishing Trial Phenomenon' (2004) 1 J Empirical Legal Stud 973

⁹²¹ Michael Sandel, *Justice: What's the Right Thing to Do?* (Penguin 2010) 8

the session happy even if they do not shake hands, it is Justice. It is a plus for the LMDC.

Additionally, from the parties opinion, these findings have presented evidence that Mediation is not only successful when a party wins or loses but sometimes just getting a more lucid understanding or better clarification of the issue is also success in Mediation.

A Legal Representation

This finding has presented evidence that has not been addressed in the reviewed literature about legal representatives being a stumbling block to the mediation sessions or as one of the mediators pointed out a ‘clog in the wheel of LMDC effectiveness to resolving issues.’ Some of the participants in support of this notion agreed that parties should represent themselves because they feel that this is the way forward for the LMDC to ensure that the parties fully engage with the process, free from distractions or pressure from their lawyers not to settle.

Another interesting angle from **case manager 2** to this ‘is that parties have realized that they do not need the lawyers for anything at their mediation session.’ She stated,

It could be something so trivial that they realized that they did not even need to engage a lawyer to assist them they can speak for themselves with the other side and come to an understanding and resolve their matter so it has started gaining acceptance more than 2 or 3 years ago.

Lawyer 2 further stated that Lawyers even go advising their client. ‘When we get there do not accept the settlement you will win this case.’

The sentiment expressed in the quotation embodies the view that many lawyers in Lagos do not see arbitration or mediation as a way of showing their legal prowess, Ego comes in too, money and the desire for big fees. They believe when the matter lingers on in court, that is when they make more money. So why would they want to shorten the process and say we have settled? They want to win at all times. It is essential to the point out that some of the lawyers also observed or gave valid reasons

on parties who do not have their lawyers at the mediation session. They revealed that ‘they will fall prey to the other parties who have brought a lawyer with them.’

Robert Mnookin and others sustain this point stated above. They identified that ‘attorneys participation in negotiation may lead to mutually beneficial settlements that would not otherwise have been possible.’⁹²²

The finding also revealed that lawyers distract the clients by telling them not to be truthful with the fact and not to compromise on anything. Thus, the mediator cannot really do so much; lending credence to the above **case manager 1** stated that:

Some parties come in hoarding facts that they will use against the other party; they are still looking at it as ‘let me do this here’ in the court I will now shoot the arrow. Thus, this has really impeded the effectiveness of the LMDC practice.

Having considered the above notion, it is also reasonable to look at the opinions of some lawyers who are not in support of the aforementioned notion. On the contrary, lawyer 3 illustrated why many lawyers do not like LMDC.

The problem of lawyers about LMDC is that most lawyers see it as a waste of time, and actually it is. Moreover, what makes it a waste of time for most lawyers is because the majority of cases being hosted by LMDC about 90 to 95% are court-referred cases. Most of these court-referred cases have exhausted the option of settling out, and it did not work before they resulted in Litigation.

Consequently, referring them back to out of court settlement is like a waste of time to the lawyer who knows the history of the case that this thing is not resolvable by ADR. Why will a lawyer who knows the history of the case feel that he is wasting his time? So when you say lawyers are not happy or do not like ADR, this is one of the reasons. From both submissions, one can infer that lawyers do not support ADR. Are there two sides to the coin? It is interesting to explore more reasons why the majority of the

⁹²² Sternlight Jean, 'Lawyers' Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Non adversarial Setting' (1999) 14 Ohio State Journal on Dispute Resolution 272.

participants feel that lawyers are one of the problems that have impeded the efficiency of the process / effectiveness of the LMDC practice.

5.1.7 A CRITICAL LOOK AT THE ISSUE OF COST AT THE LMDC

A Cost Savings

Similarly, parties addressed the issue of cost by comparing the actual figures they paid for legal representative fees, court referral fees and cost for commencing a matter via the walk-in route. This is the first finding to reveal that parties who dropped their legal representatives, their charges are cheaper than the parties who carried on with their lawyers representing them. Hence some participants acknowledged that is cost-effective accessing the LMDC first or going straight to the LMDC.

In contrast, the majority of the participants stated otherwise- that is cheaper through the court referral route. However, they reached a consensus, that not continuing with a legal representative saves cost; **Case manager 2** revealed the impact of doing away with a legal representation. He went on to explain what this means:

Mediation is party participatory. Parties do not need a lawyer, whenever a mediator is assigned to a matter. They are meant to feel comfortable in the entire process as much as possible; they help them understand the process. Moreover, parties get to say ‘this is how we want it to go the mediator does not need to interfere. Their lawyers too do not interfere that is the party autonomy in ADR.

However in the case of *Edgar v Edgar*⁹²³ must be born in mind. In this case the court took account the events around the making of the parties agreement and raised pertinent questions to find out if one party had exploited a dominant position? Did one party have inadequate knowledge?⁹²⁴

⁹²³ EWCA Civ 2

⁹²⁴ Umegbolu (n615) 150

This case has strengthened the notion that it poses a prevailing challenge for one party not to have a legal representative. It is essential to point out that some parties highlighted the administrative fees of the LMDC, which was also a yardstick in measuring the cost-effectiveness of LMDC compared to the cost of personal litigation fees that they have paid presently or in the past.

Furthermore, another finding revealed, especially amongst the parties, is the unpredictable costs of legal representative. It was found that not having legal representatives minimizes cost. However, these findings also revealed that when parties are embroiled in disputes, their primary concern is the outcome not necessarily how much they are paying to start it. It was further revealed that when it is a court referral, the party must have paid the law firm to handle it, which of course in Lagos as depicted in this finding charge bulk money in one stretch. It was also revealed that in the eastern part of the country like in Enugu they charge peanut (very cheap) but continue collecting appearance fee, per appearance, adjournment fee amongst others. Although one or two firms in Lagos still indulge in appearance fee, as revealed in the finding.

However, it is selective, and it is not the dominant practice in Lagos, it is just amongst those firms that are not doing so well. On the contrary, the well-established firm charge upfront a bulk fee that covers the whole litigation process. Therefore if a matter is already refereed from court to mediation, it does not make any difference in terms of cost, the cost is already born. Although it is still better in the sense that some times that money is not fully paid, it could be a substantial amount like 60% or 70% is already paid. The findings reveal that though the lawyer will still ask for his balance and they might negotiate if they conclude it through LMDC.

Party D. validated the above statement,

For me when I went to see a lawyer, I was so hurt, I was angry and wanted justice. But now I'm happy that the judge sent us here at least I have saved so much money. I just paid the part fee of 200,000 Naira (£196.46) out of 300,000 Naira (£589.48) originally charged.

Nevertheless, the findings have shown that some of the parties are concerned about the outcome if it gives them the results they desire in a short duration of time they

would be happy at the end of the day and pay. It is argued that where the cost-effectiveness comes in is through the walk-in, but then it has its challenges too.

Number one; there is a low level of exposure on the litigant's part. Only a few litigants are well exposed to know that this is what they can do themselves and then take the step to do it themselves even when they are educated, they might have the knowledge but lack the confidence.

On the other hand, it is free for an indigent party who used the walk-in route. However, they have to apply in person or through a lawyer requesting and explaining their circumstances before the person will get an approval for mediation. To compare this with the amount that a litigant has paid a lawyer which has been stated in this finding that they charge a minimum cost of 200,000 naira equivalent to £351.53 depending on the calibre of the client and depending on the law firm and if the judge should refer them to LMDC, the party has to pay a part payment of the money which was initially charged which is about 100,000 naira equivalent to £24.31.

Flowing from the above, the researcher argues that it does not end there for the indigent party, though it is cheaper on the face of it, the party may not be able to structure his claim. After the enforcement, if it is monetary transactions, the other party may not be sincere as indicated by **lawyer 3** and may or will not fulfil his side of the bargain.

Then the case moves back to court; however, if the litigant is well versed as some parties in these findings that decided to do away with their lawyer and represent themselves. Some of them succeeded, they still paid a part –payment of the initial money charged for Litigation. However, they pointed out that they did not pay any unnecessary fees at the LMDC such as filing, adjournment fee, bribing the clerks and judges.

So **Party F** critically analysed the walk-in route

I took the walk-in path and I paid the sum of 10, 000 naira for administrative fee and upon completion of the matter I will pay 30,000 naira for the mediation session fee. To me, the cost is nothing compared to the fees that I could have paid in litigation.

All the categories in the finding also attributed the money paid at the LMDC as minimal compared to going straight to Litigation where cases can last for twelve (12) years or forever.

Party B from **focus group 1** affirmed that the cost-effectiveness of going straight to LMDC than going to litigation is that they do not pay an exorbitant amount at the LMDC. He pointed out that the lawyer charges a high fee of I million naira, which is equivalent to £1,966.88 for legal fees, they continued representing him here. However, we are not looking at the money but a ‘timely outcome.’

It is essential to point out that he is a representative of a bank so they can afford that amount of money and another crucial point is that if their case came through during the settlement week, then it is free. In furtherance, Party F indicated that the ‘walk-in is faster compared to the normal court system because when they serve a party, the party has about 42 days within which to react or respond.’⁹²⁵

For these reasons, the walk-in route is cheaper than court-referral at the long run and free from haggling as the LMDC have a fee schedule that will be given to a party once they enter the centre. Therefore the researcher concludes that they are transparent to a certain extent. What this means is that economically and procedurally wise, the walk-in client saves more money than the court-referred party but not so many people consider these options as mentioned earlier. Most importantly, most parties pointed out that they are not looking for money. However, the Justice they want to get is just personal satisfaction like they simply put it ‘an apology that is what they want.’

One of the significant advantages of accessing mediation through the LMDC not only is it cost-effective but it delivers justice. The finding above has provided a piece of additional evidence vis-à-vis the question posed by Professor Onyema- on whether the cost of ADR processes has an impact on the accessibility of the scheme to all citizens of Lagos. It has been affirmed, that the cost of ADR processes has a great impact on the accessibility of the scheme, however it is argued that she was referring to mediation, which is mostly used in LMDC. More so, in arbitration court referral and the walk-in route is not free. Also revealed in this finding is the cost of

⁹²⁵ “But if it is through the LMDC the party is expected and if he/ she is willing to accept mediation could react or respond the next day or within days and then one, two or 4 sittings much progress could be made, and the matter would be settled thereby making it cheaper than litigation.”

commencing arbitration, which is most times more expensive than the cost of filing a lawsuit;⁹²⁶ it demonstrates that the LMDC, to an extent, has provided cost-effective justice to the litigants, particularly in mediation.

B The Impact Lagos Settlement Week (LSW) / District Settlement Week on Cost

An equally, significant advantage of the LMDC is the settlement week. It is a week set down by the rules of LMDC that they will be massive engagement on court-referred cases on their table. Therefore going by what is obtainable at the settlement week, it still experiments primarily from court-referred cases. It is where the court will close down for a week and parties can come into the LMDC and commence their cases, which is also free. In the hope of offering a second chance at resolving disputes amongst litigants through another door within the conventional courts.

One of the very ways the LSW/ DSW has been proving to be very effective is that it helps the poor/indigent to have access to justice at a cheaper rate, speedier rate and efficient rate. An example is through some low-income matters, like landlord and tenant matters. So if they go to court, the landlord has to pay and engage a lawyer. The tenants will do the same thing but coming through the LSW which is under the LMDC is free of charge within a day their matter is resolved, so it is cost-effective, it has provided justice at a cheaper rate and efficient, secure access. As what they get at court, they get at the LMDC. They will forward the settlement to the court, and it becomes a consent judgement of the court.

The findings have presented evidence that LMDC has helped / boosted up the Lagos state government judiciary. It also has enabled the congestion of the court. However, they are not yet there at the apex; but then again the court system is not the way it used to be before the LMDC got into full swing from 2002 to date it has helped the court system. According to the finding, the court system relies so much on the LMDC to get its dockets cleared.⁹²⁷

⁹²⁶ Thomas Stipanowich, 'Arbitration: The New Litigation' 26.

⁹²⁷ See chapter 4 – stakeholders.

Additionally, it has also helped the Lagos state government not to lose business, by making Lagos state investment attractive because people come to settle their matter so instead of pushing them to the courts and leaving it there for decades they could refer the matter to the LMDC and they could help mediate the matter. It is essential to point out that the Lagos State government is so much interested in what the LMDC are doing and that is why they are ready to fund them, however, at times the bureaucracy in getting funds released is difficult, this finding has revealed.

The findings revealed the presence of the District Settlement Week (DSW) Programme, which has not been revealed in the reviewed literature. Just like the name implies, has to do with the magistrate and the district court, so it rotates between the magistrate's courts. In 2018, LMDC had Yaba district settlement week, and in 2019 it was a combination of all the magistrate courts.⁹²⁸

The findings indicate Lagos settlement week deals with the high court cases; In contrast, the district settlement week deals with all the matters, which has to do with the magistrate and district court with the sole aim of decongestion of the case dockets of all ADR amenable matters. In view of the reviewed literature,⁹²⁹ this finding has filled in the gap in the literature by revealing that the cost of using the ADR processes at the LMDC has a positive impact on the accessibility of the scheme, hence one would say that the LMDC enhances access to justice due to their cost savings.

5.1.7 CONFIDENTIALITY AND IMPARTIALITY CLAUSE IN MEDIATION

Confidentiality is a paramount advantage and at the same time, an inherent disadvantage or challenge facing the mediation process. Without a doubt, all the categories confirmed that the advantage is that the mediation session is private. Due to the confidentiality agreement signed at the opening statement by both parties, which cannot be used in courts, and also the mediator cannot be called to testify in the court of law. However in Nigeria, there is no Federal or State Legislation that governs

⁹²⁸ They did not just go to the specific magisterial district; they did all-round magistrate court that meant Ikeja, Yaba, and Tinubu magisterial courts referred matters for 2014, 2016 and 2017 the dispute settlement week.

⁹²⁹ See Annexed forms.

mediation.⁹³⁰ Hence each ADR Centre has the guidelines that govern them, thus the LMDC has their own set of guidelines. One such rule is the confidentiality agreement⁹³¹ that demands all the parties involved in the disputes must sign it. Their mediators must sign form 5 and 6 documents that stipulate that every information exchanged during the mediation proceedings is confidential. The parties will participate in an Alternative Dispute Resolution (ADR) session to be conducted in accordance with the Practice Direction regarding the ADR Centre. The parties agree that:

(a) Statements made and documents produced in an ADR session or in the pre-session conference and not otherwise discoverable are not subject to disclosure through discovery or any other process and are not admissible into evidence for any purpose, including impeaching credibility.

(b) The notes, records, and recollections of the Dispute Resolution Specialist, Mediator or Arbitrator conducting the ADR session are confidential and protected from disclosure for all purposes, and

(c) The ADR Judge, Dispute Resolution Specialist, Mediator or Arbitrator presiding over the ADR session has immunity as described in the Practice Direction.⁹³² Besides the confidentiality forms, the mediator would have to sign the disclosure agreement forms to show that he has no personal interest in the matter. Even when he had a personal interest in the matter he has to disclose that interest to both parties. Furthermore if, both parties did not object to his authority to proceed as the mediator in their matter; thus, no one would say they are partial, unlike in litigation. The judges do not sign any disclosure agreement; this is why bribery, as indicated in this finding, is prevalent in the courts.

Subsequent upon this, confidentiality agreement nudges the parties to air their minds during the mediation session having the assurances that it will not be used against them in the courts or any other place for that matter. Indeed a yearning for confidentiality is one of the motivations why parties in a dispute could opt for ADR instead of litigation. This is because the latter is mostly held in the public, while the

⁹³⁰ See Annexed Confidentiality Forms 5 and 6.

⁹³¹ Ibid.

⁹³² Ibid.

earlier are agreed and carried out privately. Thus the confidentiality agreement signed by the parties at the LMDC reinforces the confidence that parties; who are in business or who wants to keep personal matters private have when they walk-in to the centres- that to an extent their privacy are guaranteed. However, a confidentiality clause or agreement will not be inescapable for a party if misrepresentation or fraud is alleged.⁹³³

This subtheme is an inherent advantage and to an extent has its challenges facing the mediation process under the LMDC. Without a doubt, all the categories confirmed that the advantage is that the mediation session is confidential and private. Especially, due to the confidentiality agreement signed at the opening statement by both parties, which cannot be used in courts, and also the mediator cannot be called to testify in the court of law. It is argued that not having enough rooms is an inherent challenge obstructing the confidentiality of the process at the LMDC. Some of the parties revealed that they could overhear other party's conversation during their session from where they are sitting. Waiting for their sessions to begin especially if they are using the room's upstairs. The researcher equally observed that too, the walls are partitioned into cubicles and not soundproofed. However, the room downstairs is soundproofed.

5.1.8 SPEED AND TIME

The LMDC has carved out a niche for themselves by providing the shortest time frame (average of three (3) months) for settling disputes in comparison to litigation of an average timeframe of five (5) years. Case manager 2 went on to explain how speedy resolution of disputes has impacted or contributed to the efficiency of the LMDC practice:

Yes, it has impacted resolution of dispute a great deal, several matters that come to court. We have matters that have been in court for fourteen (14) years or more, and they get resolved here within a short time especially compared to how long they have been in court and then parties begin to wonder why were they even wasting so much time in the first place. So that has even made parties instead of going to court they walk-in on their own to LMDC and say 'let us try this' only when

⁹³³ The Lagos Multi-Door Courthouse, The LMDC ADR Awareness Program Workings of the LMDC (2019) 15

it does not work out that they tend to go to court so is like an eye-opener for so many people.

Similarly, **Case manager 1** agrees with the above view ‘but pointed out that at the LMDC, once a party files the matter as a walk-in matter within one week a mediator is assigned; however, in court, a party can file a matter. It takes another forty-two (42) days for the other party to respond.’⁹³⁴

Following through, all the categories most especially the parties themselves firmly established that the LMDC has an effect or has impacted tremendously on the speedy settlement of cases in Lagos. One of such cases that were revealed in this finding was the Akwebo’s matter that has lingered in court for twenty (20) years. However, it got settled at the LMDC within one day and also adjournment is not allowed for more than two weeks; however, in exceptional cases, mediation has been adjourned for three weeks. However, this research evaluated the effectiveness of time at the LMDC for the first time, from the parties themselves, and they all affirmed that the LMDC has a time frame of three (3) months. However, they revealed that in order to determine speed, it depends on these five criteria. They include:

- The willingness of the parties,
- The nature of the dispute
- The mediator
- Cost
- Time

⁹³⁴ ‘So it takes another time for the party to go back to court to get an application guaranteed to serve by substituted means even the substituted means sometimes can be frustrating because if they go by posting at the last known address-somebody might come to harass the bailiff while he is posting the service and so and so forth before the other person will respond. Then he will now respond, they will just realize three (3) months have gone, and nothing has happened in court. Even when the court case takes off, and the judge is not sitting for some official assignment or the courts are on vacation, or there is a public holiday in between, or there is a strike action nationwide, all sorts of things come up. However, LMDC sits on a daily basis.’

When many parties come for mediation, most times are court-referred, and some parties that are fed up with the court system come with an open mind. That anything can happen, that is, if the parties are not closing the door, the door in this context means their mind-set to resolve or not to resolve the disputes. However, the nature of disputes comes into play, whether under the scope of disputes that can be resolved via ADR?

Furthermore, if that is the case, is it something that the mediator can handle? Thus it also depends on the mediator who would look at that situation and handle it by resolving it. Looking at cost, the lawyers get paid faster at the LMDC because instead of getting caught in litigation for 10, 20 or 30 years, matters are resolved within three months. The claimant gets paid (if it is monetary matter). The defendant pay at whatever rate their pockets fit. The crux of the matter is that there is a two (2) months timeline for walk-in matters, from the day they walk-in and submits the entire required document. For the court-referral, though matters can linger to four (4) days, a week or two weeks none has exceeded two (2) months which when compared to the length of time most of their cases has stayed in court, one can agree that the LMDC is very effective as far as reducing the workload on the court's dockets expeditiously/ in a timely fashion. Hence providing empirical evidence that speedy dispensation of cases is an outright advantage for parties using LMDC/ADR.

On the contrary, another finding mainly amongst judges revealed one of the causes of the delay in litigation was as a result of some naughty matters. This is a means whereby parties file frivolous application in a bid to waste the time of the court; the judge must hear the applications, determine and rule on it. Consequently, some matter might last for a year or two, and some will take a very long time.⁹³⁵ These are one of the main reasons why Mediation is being sought after because there are no

⁹³⁵ Judge 1 'I have one very old case the parties have given evidence. The case has been pending for about fifteen (15) to Twenty (20) years, but I happen to be the trial judge. They have started giving evidence, they decided they want to settle, and I was pleased that after these years if at the end of the day they agree on terms of settlement (TOS). They will now file 'terms of settlement', but the unfortunate thing is that they have been series of delay from judge to judge and sometimes a matter will be with a particular judge after the judge retires it will now be reassigned to another judge. The judge will have to start de novo; in fact, that is one of the causes of delay.'

unnecessary delays as depicted by **Director 1**⁹³⁶ Additionally, the parties agreed with the above assertion.

A Rating the Performance of LMDC in Dispute Resolution

This is a subtheme under Speed and time. It is the first finding after almost eight (8) years to provide an opportunity for both the stakeholders of the LMDC and for the first time those who represent the users to be heard- by rating how the LMDC has fared so far. Additionally, this is the first finding to find out if the court users who go to seek remedies are happy with how⁹³⁷ and when their disputes were resolved, which is the fundamental aim or objective of this research- is to be able to ascertain if the LMDC is as effective as has been stated by (previous research) hearing from independent parties/ users who has no alliance with LMDC.

Most participants compared the performance of LMDC to other paralegal bodies or ADR centres and litigation to arrive at their answers. Four (4) and (5) was a constant reoccurrence amongst the different categories. This has also backed the quantitative analysis that due to its competence in settling disputes effectively, more and more users /parties are leaning or moving towards mediation through the LMDC.

5.2 THE CHALLENGES FACING THE LMDC

Lack of confidence in the judiciary

⁹³⁶ 'Identified that LMDC have timelines and on average they could have a dispute being mediated in one day or they could have a dispute ending in three (3) months so maybe it doesn't or is not continuous maybe about three sessions or four sessions but for banking disputes, you sometimes have six (6) months or -seven (7) months (exception) because of documentation, access to the governing board all those kind of issues.'

⁹³⁷ No Language barrier -It is essential to point out that I worked, as an intern thus I co-mediated some mediation sessions and discovered that there is no language barrier amongst, the parties and mediator. They can speak broken English or their dialect to express themselves better, and the mediators are allowed to communicate back in their native dialect or broken English. This is an added advantage to the LMDC practice. They are encouraged to communicate in their local dialect, indicating that culturally nuances are accommodated. This affirms that the LMDC is effective and its process streamlined to enhance access to justice.

The findings also identified a lack of confidence or strong perception of corruption with the judiciary amongst all the participants. This is one aspect of hindrance to justice and because parties are not sure or fully confident about the decision they are getting, is a just one or not.

Evidently, a strong perception of the judiciary weakens confidence, it is a back door way of depriving people from accessing the court because the constitution is clear nobody will stop the parties from going to court but because the party lacks confidence that he/ she is not going to get justice that it is how it hinders access to justice. Thus, the critical question then becomes in that climate of lack of confidence in the judicial system should more people be encouraged to use ADR. The findings in this report have indicated that litigants are moving towards ADR as a result of the above -mentioned theme.

5.2.1 Lawyers not embracing ADR: A Drop in their Revenue (ADR)

There is a general notion amongst the participants in this finding that lawyers feel that ADR has come to replace litigation and most times this finding has revealed that they do not act in the best interest of the process of mediation. Thus, they employ ‘dilatatory tactics of counsel’ or delay tactics.

Lawyer 2 sighted an example of a

‘Senior Advocate of Nigeria (SAN) who came for Mediation with his client, tried to sabotage the process but unfortunately for him. The client saw that there is light in the tunnel or better put he was there for his money and decided to stay. In this particular instance, without the guidance of a legal representative or lawyer, the matter still went on to the resolution.’

This shows that lawyers who carry ‘their litigation spirit to mediation’ are not necessarily the best option to settlement within mediation. However, this finding has provided insights behind this aforementioned contention- is as a result of the fear that ADR (which was revealed as ‘a drop in revenue’) has come to take away their daily bread or their source of livelihood.

Administrator 2 revealed that the mentality of lawyers in Nigeria is such that they feel that Mediation is not going to get them enough money because the management time is short.⁹³⁸ She went ahead to reveal how the lawyers measure how much they will make if they take their matters to the LMDC-

In most cases, it takes two days or a week to settle. Thus, they will not be able to get enough money. So because of that most lawyers prefer to stay in the courts they can stay for years, and the money keeps coming.

Lawyer 4 extends our knowledge on why lawyers need to make money. He explained that ‘in as much as the law is a vocation, it is also a business, lawyers need to make money, and they need to maintain themselves and practice.’

However, he pointed out that this is not a lose-lose situation for them to embrace ADR,⁹³⁹ however, the other side of the coin is that it is beyond lawyers because their clients rely a lot on them while coming for the process; in other words, they cannot take ‘the potted plant approach.’ It was revealed that when the parties come, to the session, they just keep quiet and they look at their lawyer to talk on their behalf.

Finally, it is essential to point out that almost all the categories proffered a solution. Case manager 4 stated

That Nigerian Bar Association (NBA) should recognize non-contentious cases. Furthermore, include it as one of the criteria or make it an incentive for lawyers or counsels to be eligible for ranks like Senior Advocate of Nigeria (SAN), Judges and Magistrates.

The sentiments revealed by the above theme discloses that lawyers have a very important role to play in reinforcing the decisions of their clients in adopting ADR as an efficient and beneficial way of resolving disputes. However, the need for lawyers

⁹³⁸ It is a more effective way of settling disputes if you ask me. As I said, you are taking bread from the lawyer's mouth, and they will fight you.

⁹³⁹ ‘Acknowledging that in recent years that they now know that disputes can be resolved at the LMDC within two (2) three to (3) weeks, which is faster than having a matter stay for ten (10) years in court.’ He gave insights on how he charges his client for ADR cases- ‘I bill the client a million naira for proceedings at the LMDC and if we can resolve it there. Then all I get is a million naira (1million naira-£1,981.56), but if I do not resolve at the LMDC, we have to go to Litigation, and I charge 2.5 million naira (£4,953.90). So if I can make one million naira in 3 weeks is better for me than staying in courts for 5 to 10 years.’

and parties to embrace ADR is crucial and the only way disputants can embrace ADR is for their lawyers to advocate for it. The finding has revealed that most lawyers would prefer several years of torments, adjournments and frivolities in court than encourage a client to give in to mediation or ADR in resolving a dispute.

5.2.2 Nigerian Culture in Relation to Sanctioning Parties

Nigerian culture was one of the perimeters for measuring sanctioning parties amongst all the categories. This finding has been raised in the reviewed literature, and it was highlighted that to improve the standard of the LMDC that the LMDC should be stricter about party attendance. However, it was indicated by some of the participants that because Mediation is voluntary, a party may decide to come or come later or may decide not to attend the mediation session and LMDC will do nothing about it.

It is pertinent to point out that the mediator is not compensated for those hours spent in waiting for the parties to arrive. They all pointed out that something should be done about it and more specifically 'start sanctioning parties' because that is the only language the people understand. More so, they attributed this pattern of behaviour to what they called the culture in compliance, which is achieved with brute-force and compulsion.

However, this problem is from both the informal-family and formal-organizational sector, where force and punishment are used and seen as a norm in disciplining people in Nigeria. Thus, they suggested that sanctioning parties is the only way out of this problem. That if this is not done soon then, LMDC will start encountering delay just like Litigation and that will impede the effectiveness of the LMDC practice.

On the contrary, some participants feel that sanctioning parties will remove the voluntariness of the process, which is the bedrock of ADR.

A Mandatory ADR

Parties reveal that in relation to the Nigerian scenario or situation that court referral should not be compulsory or mandatory because if a judge refers the case to court and the party goes back to court and says 'we did not resolve'. The judge might not be happy because his dockets are filled up, and he wants to decongest it.

From the findings it has been established that the above stated notion can happen elsewhere but not in Nigeria and even when the party loses, he or she will say that they are 'witching' them.

So is the judge the right person to refer cases to the LMDC? Do they need to insulate the judges? However, some lawyers argued that the court referral should not be mandatory. They pointed out that although this generates traffic for LMDC, it should not be so; attendance or appearance at ADR should be voluntary.

There seem to be divergent opinions on mandatory ADR, though it has its advantages. However, if great care or attention is not giving to the questions given above, then it becomes a disadvantage to the LMDC practice and therefore will obstruct the effectiveness of the practice.

5.2.3 Funding /Awareness/ and Infrastructure

One of the main challenges that were revealed in these findings was funding. If they are well funded, the issue of service will be easier for them, expanding the scope of people that host per day, even getting more meeting rooms and even to hire more staffs. Assuming LMDC is well sponsored and financed, and they engage in the mass campaign. They will have large patronage of the walk-in client then LMDC will be recording more cases because they are handling cases that are naturally fit for mediation or ADR.

Thus, the percentile value of cases that did not pass through ADR in the informal sector before going to court is very minimal. If they have 100 cases, most likely, 68 % of them were court-referred cases. The researcher argues that LMDC need some grant- they need a project manager in charge of getting grants to assist in the funding that is available in the state. The focal point here is that it is in the Lagos State interests to maintain the LMDC because it reduces the workload of the judges, it will also solve the problem for more manpower at the LMDC.

Lending credence to the above, the judges during their interview attested that they are not under so much stress as such as before because the LMDC has helped reduce their heavy caseloads and their case managers attested that funding would improve the workflow performance both in arbitration and in mediation. More so, the researcher argues that it is good for the state/ community because if their disputes are being resolved, they can go about their business a lot quicker. This is because it reduces unnecessarily tensions in the state and in turn, increases or improves the tax that will be returned to the Lagos state government. If this is well managed, will boost the effectiveness of the LMDC, which in turn enhances access to justice for the disputants / litigants.

5.2.4 QUANTITATIVE ANALYSIS OF THE LAGOS MULTI-DOOR COURTHOUSE (LMDC)

The quantitative analysis or aspect of the LMDC looks at the actual numbers over the years to drive insight into how the system has improved or deteriorated as the case may be. In addition to the performance, the researcher will compare these figures to the unofficial KPI data obtained during this research to make an informed conclusion as to whether the system met their goal during a specific period. The findings from Table 1, Figure 1, and Figure 2 below will help paint a picture that will add to the overall discourse of the effectiveness of the LMDC over the years.

LAGOS MULTI-DOOR COURTHOUSE
YEARLY STATISTICS (2002 - 2019)

Item	PERFORMANCE INDICATORS	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	TOTAL
A	No of Case In-Take	6	84	54	50	19	35	70	231	229	295	496	713	832	1614	2067	1639	2659	3032	14125
B	No of Court Referred Cases	0	58	17	25	6	3	30	142	141	185	350	582	744	1404	1687	1174	2339	2135	11022
C	No of Walk-In Cases	6	26	37	25	13	32	40	89	88	110	146	131	88	210	380	465	320	897	3103
D	No of Full Submission Cases	4	39	26	35	13	18	49	207	201	289	453	661	590	926	1282	1244	1985	2574	10596
E	No of Non-Submission Cases	2	45	28	15	6	17	21	24	28	6	43	52	242	688	785	395	674	458	3529
F	No of Cases Mediated (G+H)	4	39	26	35	13	18	49	207	201	289	430	627	549	832	1145	1109	1779	1837	9189
G	No of Settled Cases	2	17	14	12	4	10	17	83	80	97	212	352	387	539	835	833	1068	927	5489
H	No of Not-Settled/Stalled Cases	2	22	12	23	9	8	32	124	121	192	218	275	162	293	310	276	711	910	3700
I	No of On-going Cases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	396	397
J	No of Discontinued/Withdrawn Cases	0	0	0	0	0	0	0	0	0	0	23	34	41	94	137	135	205	327	996
K	No of Awaiting Payment Cases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14	14
L	Settlement Rate (G/F)	50%	44%	54%	34%	31%	56%	35%	40%	40%	34%	49%	56%	70%	65%	73%	75%	60%	50%	60%

Explanatory Notes:

- A. No. of Case In-Take: Number of cases screened as suitable for mediation.
- B. No. of Court Referred Cases: Number of cases referred from the court
- C. No of Walk-In Cases: Number of cases where a party visits the LMDC to file a case without previous referral from court.
- D. No. of Full Submission Cases: Number of cases where parties have fully submitted for mediation
- E. No. of Non-Submission Cases: Number of cases where either one or none of the parties have submitted to the mediation process and mediation could not hold.
- F. No. of Mediated Cases: Cases that have gone through the mediation process.
- G. No. of Settled Cases: Number of cases that have been resolved through mediation.
- H. No. of Not-Settled Cases: Number of cases that could not be resolved through mediation and the stalled cases has been stalled for long and return to court for some reasons.
- I. No. of On-going Cases: Number of cases that are presently in mediation.
- J. No. of Awaiting Payment Cases: Number of cases where parties have submitted but are yet to make payments to the LMDC (ADR Unit).
- K. No. of Discontinued/Withdrawn Cases: Number of cases where parties have requested that their cases be withdrawn from mediation.

The Lagos Multi-Door Courthouse - Performance Overview 2002-2019

Figure 1: Total Case in-take

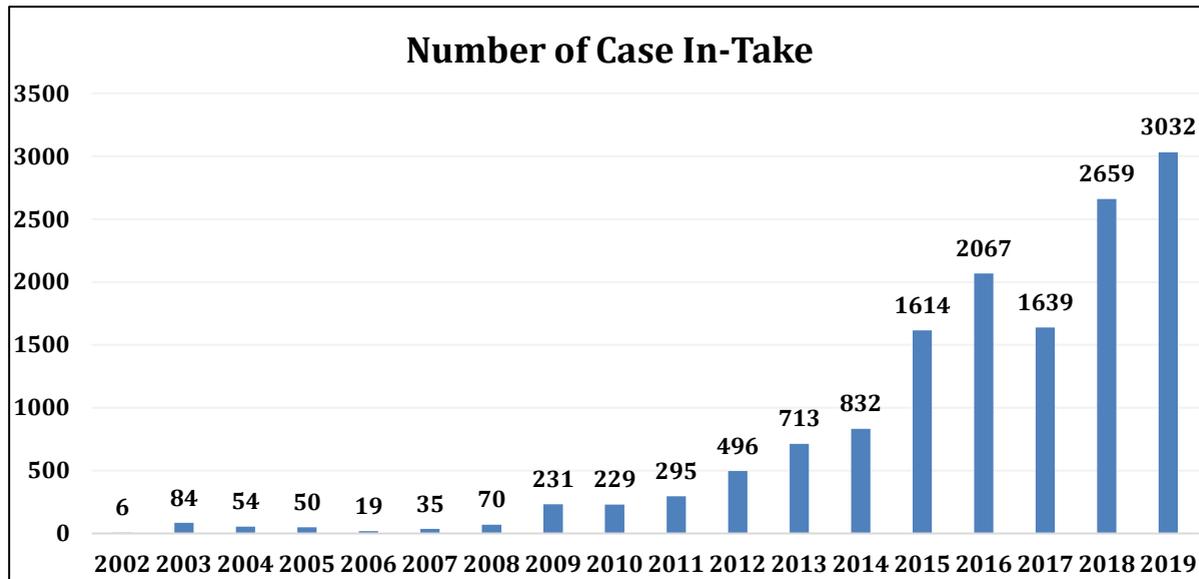
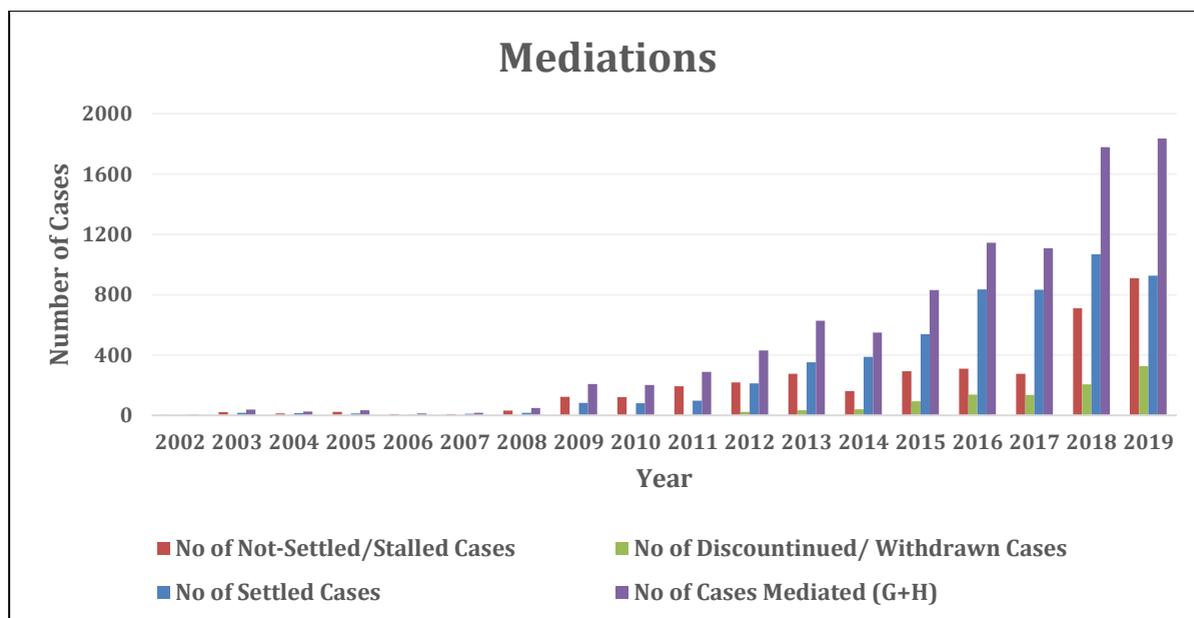


Figure 2: Mediations



The Analysis

Table 1 above has shown a consistent increase in the number of both court referred and walk-in cases to the LMDC. This is consistent in Figure 1 above, which shows a continuous increase in the total number of cases

over the years, except in 2017. The researcher confirms from the LMDC representative that the dip in 2017 is as a result of poor turn out of a number of courts that participated in the Ikorodu Settlement Week Programme (IKSW). There were only seven courts in attendance due to the location and poor awareness campaign.

Consequently, there was a reduction in the number of cases received during the programme, which affected the annual numbers. However, the increase in the number of cases was consistent in the subsequent years as the location of the settlement week was moved back to the more central location and better campaign strategy was deployed.

Figure 2 above shows that in the early years, a large number of cases filed with the LMDC were discontinued or withdrawn and the majority of cases were also consistently not settled or stalled and returned to the court system, with the exception of 2004, when more mediated cases were settled than stalled or not settled.

To put this into context; in 2003, 39 cases were mediated, 17 (44%) were settled, and 22 (56%) were not settled or stalled; in 2005, out of the 35 cases that were mediated, 12 (34%) were settled, and 23 (66%) were not settled or stalled. Those numbers for 2004 were 26 cases mediated, 14 (54%) settled cases and 12 (46%) not settled or stalled cases. The researcher had the opportunity to interview a good number of parties and also facilitated focus groups to drive insight and draw some conclusions from the responses as to why this is the case. This has been explained in detail in the early part of this chapter.

Those higher numbers of not settled or stalled cases against settled cases in the reporting period, which was widening over the early part of the years, was consistent until 2013. The LMDC statistics show that in 2013, 627 cases were mediated, 352 (56%) were settled, and only 275 (44%) were not settled or stalled. This exponential increase in the number of cases and the higher number of settled cases was as a result of increased awareness and of course, the effective delivery of the services by the LMDC. This increase in the number of mediated cases and consequently, the high number of settled cases in comparison to the number of not settled or stalled cases was consistent for the rest of the reporting period. The year 2018 showed a record number of settled cases. Out of the 1779 mediated cases, 1068 (60%), highest ever, were settled and 711 (40%) were not settled or stalled. The most current figures show that 1837 cases were mediated in 2019, 927 (50%) were settled, and 910 (49%) were not settled or stalled.

Though there are still a higher number of settled cases in 2019, the numbers of not settled or stalled cases were relatively high. This is a big concern, which the researcher could not identify the reason and whether there is any follow up from the LMDC as to what the final decisions reached for those high number of cases that were returned to the court system.

The researcher suggested that the ADR Track department may have to follow up and provide further guidance on referring those cases to the appropriate agencies like Office of the Public Defender (OPD) and Citizens Mediation Center (CMC).

Overall, the last seven years has shown significant improvement in the number of fully submitted cases, the numbers mediated, with significantly higher numbers of settled cases in comparison to the not settled or stalled cases. This is a significant improvement and a show of effectiveness over the years. The researcher, however, argues that more work needs to be done in order to reduce the number of cases that were not settled or stalled.

5.2.4 CONCLUSION

This Chapter has been able to highlight the difference the LMDC is brought to the infrastructure of justice- the introduction of the criminal proceedings, its cost-effectiveness, and the difference its brought for the parties to be well informed that they are different fora apart from litigation.

Where they can access justice without fear for the unknown but avails an opportunity for them to settle their matters in non- hostile environment, and it's brought potential foreign direct investment because the last thing that investors want to have is an avenue where they waste their time and resources, they want their disputes to get resolved very quickly. They cannot deal with an environment where they get locked down onto litigation trial for decades. They want an environment where whatever commercial disputes arise can be resolved and resolved quickly, and they continue their business relationship.

Undoubtedly the story of Lagos State in terms of resolving disputes by providing such an environment cannot be written without putting into consideration the place and the position of the LMDC as an enterprise. Without an equation, the findings has indicated that the LMDC is highly effective; it has met all the criteria that may help to determine how particular types of disputes can be resolved, which is as follows:

Nature of disputes, relationship between the disputants, cost and speed,⁹⁴⁰ thus it can be said that the LMDC streamlined procedures is profoundly in the interest of the parties.

This in effect implies that what it offers is to be able to determine what is the best way a matter can be resolved and it is vital to see that is not every case that is necessarily fitted to the LMDC. Some cases are not given to mediation but are best to go to the litigation track. However, to sustain a viable and effective LMDC, the LMDC cum government needs to address the listed challenges stated herein, most notably on funding.

⁹⁴⁰ Levin (n4) 78.

CHAPTER SIX: FINDINGS AND ANALYSIS OF THE ENUGU STATE MULTI- DOOR COURTHOUSE (ESMDC) AS AN EXAMPLE OF THE LMDC IMPACT

6.1 INTRODUCTION

As previously stated in this research, the Lagos Multi-Door Courthouse (LMDC) was conceived to provide users and their respective counsels with practical alternatives processes for the settlement of commercial disputes and various types of disputes, akin to the public justice system. The Enugu State Multi-Door Courthouse (ESMDC) in September 2018 formally opened its doors to the public, replicating the Lagos Multi-Door Courthouse (LMDC) framework.

This process of replication and adoption had Justice P.N. Emehelu, the Enugu State Chief Judge, spearheaded the campaign, which is recognised as the ESMDC. It is essential to point out that Justice P.N Emehelu, in her efforts to ensure sustainability of the newly established ESMDC, invited the former Director of the LMDC Mrs Caroline Etuk to start up this scheme in the Eastern part of Nigeria-Enugu State.

This chapter evaluates the impact of the LMDC on (ESMDC) and the present-day perception or understanding of dispute resolution process and its diversities. In the same vein identifying some of its similarities and differences in the procedures of approach and mode of operations in a bid to throw more light on the uniqueness of the scheme while highlighting some of the notable challenges faced. Therefore, taking into cognisance the perceptions and experiences from the stakeholders, experience of the service givers, as well as the experience of the users who go to seek remedies at both schemes shall form a focal point of analysis in this chapter. This perceptions and experiences were determined through the qualitative findings and discussions from the Interviews and Focus group discussion respectively.

These findings are presented in two sections –the advantages and challenges facing the Court-connected ADR through the ESMDC; guided by the questions that were put across to the interviewees and users who sought or have been directed by the Court to seek remedies through the ESMDC. It concludes with the substantial viewpoints stated herein by all the categories on the current state and contentment with the ESMDC practice while at the same time probing the problems faced. In this chapter, the analysis from the findings is conducted in seven different categories: Director, Mediators, Case Managers, Lawyers, Magistrates, Judges and Focus group.

These are coordinated with the studies aims and objectives. It is critical to point out categorically that the analytical tools employed are thematic content or exploratory analysis.

Below are all themes and sub-themes created with the assistance of Nvivo 12 software from the questions modelled by the researcher to the categories mentioned above.

6.1.1 THE ADVANTAGES OF USING THE ESMDC

A ACCESS METHOD

LMDC Scheme v. ESMDC Scheme-how they function

It is pertinent to point out that though previous findings on LMDC did not deal with these themes. However, considering the fact that this chapter looks at the impact of the LMDC scheme on the ESMDC, hence providing insights from the respondents on the above-mentioned discourse is vital.

As earlier indicated in this research, the journey taken by the (LMDC) from its inception till date is a clear indication that there is a buy-in from all stakeholders and disputants. That ADR through the LMDC works because of its success story -with access to justice.

As a result, there is now a shift for a change in the psyche of the citizenry that litigation is not the one way or the only way to resolve disputes. However, there are alternatives that are available and being provided by the Court-connected ADR Centre within the High Court of Lagos state, which is the Lagos Multi-Door Courthouse.⁹⁴¹ It is vital to point out that other states in Nigeria have emulated the LMDC by replicating the ADR-MDC Model because of its effectiveness of delivering speedy dispensation of justice to its citizenry.

At the time of this writing, there is thirty-six (36) States in Nigeria plus the Federal Capital Territory FCT Abuja. Out of these states, there are 17 (seventeen) Multi-Door Courthouses in different states across Nigeria. This demonstrates how the LMDC has impacted not just in ADR but also in many other things.

As a matter of fact, Lagos as a city has an intrinsic force of always being ahead of other cities in capturing civilisation particularly as new laws and policies usually originate from Lagos.⁹⁴² Hence, it is therefore not surprising that the LMDC was the first to replicate the Multi-Door Court in Nigeria. One can see the positive impact of the LMDC not only on the justice delivery pattern of Lagos State but also on other States of the Federation.⁹⁴³

Against this backdrop, most of the respondents apart from the users provided an insight into some of the similarities and to an extent distinctions between the two MDC procedures with particular reference to the LMDC and ESMDC in an approach that unveils the huge impact the LMDC have had on ESMDC and other

⁹⁴¹ Umegbolu, 'The Enugu State Multi-Door Courthouse (ESMDC)', 1

⁹⁴² The Association of Multi-Door Courthouse of Nigeria, A compendium of Articles on Alternative Dispute Resolution (ADR) 7.

⁹⁴³ Bukola, Faturoti, Institutionalised ADR and Access to Justice: The Changing Faces of the Nigerian Judicial System 2014 Research Gate, 68.

States of the Federation of Nigeria in the administration of Justice. To buttress the point made above Mediator 2⁹⁴⁴ pointed out that the scheme is a government led initiatives.

Similarly, **Case Manager 3** extends our knowledge on the similarities and distinctions between the ESMDC and LMDC where he pointed out ‘the law and practice direction of ESMDC was modelled after the LMDC with just minor alterations to adapt it to the circumstances.’⁹⁴⁵ However, Director 1 highlighted another distinguishing factor between how the two schemes operate by revealing that the ESMDC do not have a governing council yet unlike the LMDC.⁹⁴⁶

Looking at the above-mentioned statements, it is evident that the slight distinction on the face of it is due to the fact that the ESMDC is barely a year old at the time of this study and would definitely need time to put things into perspective- unlike the LMDC that have been in existence for almost 20 years old. Hence the use of the phrase ‘yet’ connotes that ESMDC intends to do so, just like the LMDC did in later years.⁹⁴⁷ However, on further scrutiny of the ESMDC law, the researcher found or is able to establish that there is an allocated section for the overall supervision of the ESMDC, which is vested in the Governing council.⁹⁴⁸

By and large, the findings have indicated that there are very minor alterations made to the ESMDC. However, it is necessary to state that from these findings and after both laws were scrutinized that LMDC model⁹⁴⁹ is a standard template for ESMDC and by implication shares the same objectives,⁹⁵⁰ which is to enhance access to justice for all it’s citizenry.

However, the reviewed piece of literature stated that ‘the LMDC model has inspired similar initiatives in several other states like Kano, Oyo, Akwa-Ibom, Anambra and Abuja.’⁹⁵¹ Consequently the theoretical perspectives or implications have corroborated with these findings. What this means is that each of the sentiments made by all the stakeholders and service givers⁹⁵² reveals an essential contribution to our understanding of, the similarities in their respective modus operandi, which qualifies as an advantage of using the MDC for largely having the same standard templates- which makes it is easier for a State like Enugu or other States yet to embrace this scheme to replicate or study what the LMDC had done and is doing to leverage the democratisation of access to justice in the State and ensure the effectiveness of the both schemes in terms of being a court-connected ADR centre which provides a comprehensive approach to dispute resolution within the administrative structure of the courts and most significantly it has also revealed for the first time the impact of the LMDC on other States with particular reference to the ESMDC.

⁹⁴⁴ Find the full statement at the mediator’s category –see 23 of the Annexed ESMDC Interview Copy.

⁹⁴⁵ For the full statement, see the Case Manager Category 7 of the Annexed ESMDC Interview Copy.

⁹⁴⁶ ‘It is part of their law- I believe at the next quarter of next year that will be put in place, which once it’s done. They would have now the proper oversight it will not be the Chief Judge (C.J) that they will report to, though they will report to the CJ when the need is, it won’t be that the CJ’s duty to follow us up but the responsibility of the governing council’s.’ Director 1 see annexed ESMDC Interview.

⁹⁴⁷ See chapter 5 LMDC Analysis.

⁹⁴⁸ Section 7 Enugu State Multi-Door Courthouse (ESMDC) Law 2018.

⁹⁴⁹ Section 2 Lagos State Multi-door Court Law 2015.

⁹⁵⁰ Section 4 Enugu State Multi-Door Courthouse (ESMDC) Law 2018.

⁹⁵¹ The Association of Multi-Door Courthouse of Nigeria, A compendium of Articles on Alternative Dispute Resolution (ADR) 22.

⁹⁵² See Annexed ESMDC Interview.

Simple Process

The reviewed piece of literature⁹⁵³ in this study provided insights into the three-access methods for parties to initiate their matters at the LMDC,⁹⁵⁴ which includes court-referral, walk-in and direct intervention.⁹⁵⁵

However, the LMDC findings revealed that there are two (2) main methods, which parties can use to access the MDC. These access methods are the court-referral and the walk-in methods. On the first method of access, which is by way of court -referral, the court or the ADR judge deems it fit to refer a particular matter or dispute to the MDC. Then on the second method of access, which is the walk-in method, basically entails where the party initiates matters (by walking into the MDC to make a complaint). These methods of access have been referred to as a simple and a more straightforward process of access, unlike the complexities that come with initiating an action in court.⁹⁵⁶

Conversely the majority of the ESMDC categories- the judges, lawyers, case managers and focus groups, highlighted the same aforementioned methods. However, only **Judge 1** mentioned the third (3) method of access, which is the direct intervention.⁹⁵⁷ In contrast, direct intervention was not stated in all the categories in the LMDC findings. Evidence presented points to the fact that in practice there are actually three ways of commencing an action at the MDC as indicated in the literature reviewed in the course of this study.⁹⁵⁸ Although there was no explanation on how direct intervention works; more so, in the quantitative data it was only cases or matters received through the walk-in and court-referral that were indicated or stated. This study has been able to provide evidence that the third option direct intervention has not been used. In guidance as to what this means the ESMDC rule stipulates in section 4c 1-2:⁹⁵⁹

- 1) “The ESMDC may intervene in cases in the public domain which can be resolved through ADR.”
- 2) “In the case of Direct Interventions, the Director of the ESMDC shall write to disputing parties and invite them to submit to the ADR process.”

From the above, it is illustrative that the ESMDC can intervene where the well being of the citizenry is at stake. An equally significant aspect from the aforementioned is that both schemes are in a position to get more matters settled if the directors would judiciously utilise the third mode of commencing actions or matters. However, it is also reasonable to point out that the establishment of the MDC in Enugu had notably had a direct impact on the court dockets within just a year of its establishment, which clearly depicts

⁹⁵³ The Association of Multi-Door Courthouse of Nigeria, A compendium of Articles on Alternative Dispute Resolution (ADR) 17.

⁹⁵⁴ So basically the MDC is where you have alternative dispute resolution like mediation, arbitration, conciliation, negotiation, early neutral evaluation and hybrid process-the med-arb.

⁹⁵⁵ The Lagos Multi-Door Court, The LMDC ADR Awareness Program Workings of the LMDC (2019) 4

⁹⁵⁶ See Chapter 5 LMDC Findings.

⁹⁵⁷ Section 1 Enugu State Multi-Door Courthouse (ESMDC) Law 2018.

⁹⁵⁸ Practice Direction on Mediation Procedure 2008, 3.

⁹⁵⁹ Ibid.

progress in the right direction, more like the LMDC,⁹⁶⁰ whose impressive records spans through almost twenty (20) years of their establishment.⁹⁶¹

By and large, the ESMDC have been a continuation of colossal, and this also can be found in the objectives of the ESMDC which⁹⁶² are the same as that of LMDC and other MDC in Nigeria because it was structured after the LMDC scheme or model, so virtually all the LMDC is empowered to do under the law, ESMDC is authorised to do same.

Director 1 pointed out that before:

‘She left the LMDC that they introduced the court dispute resolution audit (CDRA) in which the case managers identified ADR amenable cases which cut the work in half and based on that they now notified the court registrar’s who would sort the files out and batch them for us. They took those identified cases and screened them however; they find out that some of these cases do not need to run into the settlement week; hence the identified cases were left off. It is pertinent to point out that the courts did a lot of that work on hands, as they were not computerised.⁹⁶³ But if they create a database they can actually track the cases through the life cycle of the cases. For instance Justice’s A court had over 300 cases and almost 70% of them were land matters which were over 10 years.’⁹⁶⁴

What this means is that the ESMDC is building up on the LMDC practise- the CDRA is part of the simple procedure employed by the ESMDC which was introduced by the former director of the LMDC⁹⁶⁵ who is the director of the ESMDC.

Flowing from the above, ESMDC in developing proficiency in dispute resolution had replicated the Court Dispute Resolution Audit (CDRA) practise in which the case managers of the ESMDC collated cases from the various courts dockets in the preview of determining the significant amount of cases in a bid to identify and settle ADR amenable cases through the ESMDC. It is essential to point out that both the ESMDC and LMDC schemes offer facilitative mediation and not evaluative.⁹⁶⁶ They also do not send evaluation back to the court because that is the underlying principle of ADR- it is a confidential process.⁹⁶⁷ Furthermore, it is imperative to point out that the process is to ensure that a neutral, opens an informal platform of discussion with disputing parties. Where the discussion is without prejudice, the parties can either follow it through or

⁹⁶⁰ The users, case managers, mediators, magistrates and judges adequately pointed the above assertions in their statements under the advantages of using ESMDC. See annexed interviews on ESMDC.

⁹⁶¹ Onyema (n2) 25

⁹⁶² Section 1 Enugu State Multi-Door Courthouse (ESMDC) Law 2018.

⁹⁶³ See Annexed Interview ESMDC Director 1.

⁹⁶⁴ See Annexed Interview ESMDC.

⁹⁶⁵ Director 1 stated ‘typically just before I left Lagos some thoughts came up and I discussed it with my team all these years we have been running settlement week in the dark because we don't really understand what is going on in the court dockets. Would it be much better if we understood? Apart from the fact that a court has certain cases if we actually understood how the demography of the case is within a certain courts and we generally have a lot of information so that when we intervene; we are intervening kind of in full sight of what is going on and then a few other objectives we had around it, so we called it the court dispute resolution audit.’

⁹⁶⁶ Umegbolu, ‘The Enugu State Multi-Door Courthouse (ESMDC)’

⁹⁶⁷ See Annexed form 5 and 6 ESMDC.

sign the Terms of Settlement (TOS), but afterwards, they cannot carry it over to the court because of the confidential nature of ADR.

Another similar process and advantage of using the LMDC and ESMDC was discovered during the researchers internship at both centres. In disputes as to land or property the parties and the mediators might proceed to the scene / location of the subject matter of the disputes, so that the mediators can properly mediate over it. It is vital to point out that the parties bear the cost. Often times, it is agreed that the parties and mediator meet at the LMDC or ESMDC and they all leave for the locus together. Both parties are there to answer whatever questions or provide details as the mediator may require for the amicable resolution of the disputes.

On exceptional circumstance where it may be possible to entertain both parties together at the same location; especially in cases where one or both of the parties finds it intolerable to be on the same location with the other party, the meeting will be held at different venues and the party or parties that have requested for the meeting to be held at separate venue will pay for that venue.

However, where the mediator had to spend so much time and money to get to the venue the centre will reimburse the mediator. The LMDC and ESMDC cover the mediator, while the parties cover themselves.

Generally, the court-annexed ADR or MDC platforms are renowned for its adoption of very simple procedures that undoubtedly reassures users of resolution of disputes in a manner, which largely embraces the win-win approach and shuns the winner-loser mentality of litigation. Additionally, this finding had also provided other prominent advantages of using the ADR system as an accessible, dependable, simple and viable alternative dispute resolution with procedures and processes which are well streamlined to suit the modern-day commercial transactions.

Upon the completion of ADR proceedings in both schemes, settlement agreements, which are duly signed by the parties and enforced as a Consent Judgement between the parties and the ADR Judge further endorses such contracts while adopting it- shall stand as a judgement of the court. These are the fundamental features of the MDC, which is entrenched on the simple procedure to access, screen, and then make referrals. In other words, this is a major advantage of the multi-door courthouse- is a hub for where all the alternative dispute resolution mechanisms are deployed to dispense with cases in Enugu State via its simple mode of accessibility though this is the strong footing introduced by the LMDC to enhance access to justice in general.

As stated earlier, this research had observed that ESMDC is largely an offshoot of the LMDC, with the former inculcating and adopting the alternative dispute resolution of the latter with slight alteration in the processes and procedures, as seen in the law establishing same; however the practices, underlining principles and goals are entirely the same.

Validating the above view is the statement, made by the former director of LMDC who is also the present director of the ESMDC.⁹⁶⁸ She pointed out that

‘She was the Director of the LMDC for (9) nine years. Thus, if she wants something, she tells somebody that she wants to see the guides and it’s obvious that everybody there is in support of us, they want us to succeed here as well. For instance, the primary training held at the ESMDC for its staff featured majorly faculties of trainers from LMDC.’

From the above statement one can see that both schemes work together, thus the ESMDC replicated the LMDC model and this is one of the major impacts of the LMDC on not only the ESMDC but also for the remaining sixteen (16) MDC in the country. The above observations were revealed in these findings thus making it the first study to portray this discourse.

6.1.2 SCOPE OF MATTERS COVERED AT THE ESMDC

As earlier mentioned in this study, MDC is a concept, and one of its prime duties is to appropriately allocate cases to a right door, thereby reducing the dockets of the courts.⁹⁶⁹ The focal point is that since the MDC is a helpmate, which cannot be mediated.⁹⁷⁰ Such disputes were referred to as non-contentious or ADR amenable matters in this finding. By and large, disputes that can be mediated are contractual in nature⁹⁷¹ these are core primary mediate able matters.

Against this backdrop, most of the respondents pointed out that,⁹⁷² ESMDC covers mainly disputes ranging from banking disputes, lease, family, land matters, matrimonial causes, alimony issue, intercommunity disagreements, child custody and child maintenance, tenancy matters, commercial transactions, constitutionally matters, felonies, fundamental rights and inheritance. However, this finding is the first to reveal that ESMDC, settle minor criminal offences such as misdemeanour and malicious damages.

Mediator 2 further opines that ‘although the administration of criminal justice act and even law of Enugu state gives judges the power to refer criminal matters to the ESMDC.’⁹⁷³

⁹⁶⁸ See Annexed interview ESMDC, 41.

⁹⁶⁹ Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 65.

⁹⁷⁰ Umegbolu, 'The Enugu State Multi-Door Courthouse (ESMDC)', 48

⁹⁷¹ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook*

⁹⁷² The Lawyers, Case managers, magistrates, judges, Director, some of the mediators and users- See annexed ESMDC interviews

⁹⁷³ See Annexed ESMDC Interview

The focal point is that apart from settling of contractual matters, they cover criminal disputes. However, the type of criminal offence that they resolve are few minor offences -mainly offences that deal with economic crime and finances of the government. For instance, matters that have to do with money, it could be stealing and fraud, but if one party is willing to pay and then the other party is going to accept the repayment, then it can also be mediated. It is evident that the ESMDC opening up its platform to a wide range matters is committed to sustaining an enabling structure that guarantees unwavering access to a speedy, efficacious and dependable dispensation of justice in the State.

Thus as these findings, illustrate that from the commencement of the MDC in Enugu State they cover an extensive range of matters now proves the ESMDC is committed to expediting access to a speedy dispensation of justice in the State.

6.1.3 SCOPE OF MATTERS NOT COVERED AT THE ESMDC

On the other hand, this study also revealed that some matters or disputes are not within the ambits of ADR to settle or mediate. This is a validation of the theoretical perspective that clearly states that they are disputes, which are not ADR amenable to mediation.⁹⁷⁴ Such matters that cannot be mediated were revealed by most of the respondents, as capital offences, kidnapping, armed robbery, rape, election petition, divorce proceedings and felonies.

Flowing from the above, the researcher argues that it is not really about the comparison between ADR and litigation; it is a matter of all the processes should be effective in the space because typically, there are many matters that have no business being in the court in the first place, but should have been sent to ADR, where it would be judiciously and adequately dealt with. In other words, the MDC is about classification and categorisation of cases for the ease of access to justice. This lends credence to the growing amount of literature, which sought to demystify that there are certain matters, or disputes that ADR is not well suited for.⁹⁷⁵ These encapsulate that no dispute resolution continuum is grander to the other. Hence, to a large extent, the effectiveness of any process is ordinarily determined by the facts and circumstances of a particular case.⁹⁷⁶ In the grand scheme of things, what is vital is for the appropriation of cases to the mechanism that is well suited to the resolution of the dispute or matter.

However, with the coming of the ESMDC, vis-a-vis the LMDC, the dilemma of overburdening the courts with matters that can be easily resolved through ADR have been greatly reduced, as the courts are now left to concentrate more on core matters, fundamental matters that ordinarily cannot be resolved through ADR. In view of this position, this subtheme is deemed as an advantage by this researcher because parties can easily access the right door to their disputes in little or no time. Though, it can also be classified as a

⁹⁷⁴ LMDC, *Mediation Skills Training Handbook*

⁹⁷⁵ The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 51

⁹⁷⁶ Derri (n15) 163

disadvantage because there is a limit to what they can settle. Nonetheless, this finding has revealed to an extent that this status quo has changed due to the introduction of the restorative justice programme.

A CRIMINAL PROCEEDING

Restorative Justice

To reiterate the most recurring subthemes in all the categories was the commencement of settlement of criminal disputes, with particular attention to minor offences; through the restorative Justice door under the magistrate courts. However, that there was a debate with whether criminal offences or proceedings should be settled through ADR⁹⁷⁷ or whether the LMDC is the right place crimes should be resolved?⁹⁷⁸

This now leads to the previous study carried out in 2012 on the LMDC by Professor Onyema, where she suggested widening the remit of the LMDC to criminal matters by suggesting that small value or low-level thefts should go through the restorative justice tools.⁹⁷⁹ Evidently, this research finding has demonstrated that in recent years the LMDC has followed through with the suggestion by Onyema by extending the scope of matters covered in a bid to enhance the effectiveness of the scheme.

In contrast, Enugu state in the southeast of Nigeria, who embraced and replicated the LMDC in 2018, started settling minor offences (from date of inception) comprising of conversion, stealing, loan/issuance of dud- a collection of loans from financial institutions that lead to the recovery of loans or issuance of dud cheques that can be charged to the regular Court as a criminal case.⁹⁸⁰ Meanwhile, on money matters, it can also be referred to ESMDC by the presiding Magistrate if the defendant is already making a commitment by paying the money while the matter is on-going for mention at the regular Court. Hence within the short time of its existence, the ESMDC has been able to accomplish so much by settling half of the cases as depicted in the data. This was achieved within a short duration of time- eight (8) months from the date of inception September 2018 to March 2019.⁹⁸¹ They are still settling more claims both from the civil and criminal route till date. Prior to this, it would, therefore, hold through that heavy caseloads and delay has been a significant issue at the courts in Enugu thus the introduction of the ESMDC.⁹⁸² Apart from the respondents mentioning the types of criminal matters resolved in the centre, the quantitative data collected attested to the fact that they settle criminal matters. Hence it is pertinent to point out that the scope of matters covered or not covered are the same in both schemes.

⁹⁷⁷ Levin, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* 40.

⁹⁷⁸ Onyema (n2) 16

⁹⁷⁹ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.'

⁹⁸⁰ ESMDC Mediation Skills training Handbook 2019, 5.

⁹⁸¹ Umegbolu (n901)

⁹⁸² Umegbolu, 'The Enugu State Multi-Door Courthouse (ESMDC)'

Though criminal proceedings under restorative justice was adequately dealt with in the previous chapter, however, in these findings all the respondents⁹⁸³ illustrated the type of criminal matters settled at the ESMDC thus indicating for the first time that ESMDC has started settling criminal matters through the restorative justice door.⁹⁸⁴ It is essential to point out that mediation is used in restorative justice with the sole intent of attaining reconciliation between the victim and the wrongdoer which provides some form of reparation to the victim such as apology or monetary compensation and in appropriate cases through in kind services to the victims.⁹⁸⁵ On the contrary, the Community Service Programmes require offenders to address the indirect harm to the community caused by crime by performing unpaid work that benefits that particular community.⁹⁸⁶

Some of the respondents pointed out that criminal cases such as ‘OBT’ (Obtaining by false pretence), attempted murder and assault are sugar-coated with civil transaction.’ What this means is that maybe that such cases can be settled at the ESMDC when it is intertwined to a civil transaction. In essence when a crime is committed the same story line or events that gave rise to the crime can also give rise to civil action.

For instance, Mr AX bought a land from Mr AB and at the end of the day when he wants to enter the property; he finds out that the land is encumbered. Dissatisfied with this, Mr AX would then request for a refund of the money paid for the land from Mr AB who in turn failed to refund.

At the end of the day Mr AX might charge Mr AB the offender for fraud but ordinarily when it gets to the mediation session, Mr AX might raise that this transaction did not work, and expresses his disappointment and may then state that what he wants is monetary compensation: that is civil compensation or the compensation for the inconveniences that he had suffered since the time he was refused entry or ownership of the land and/or in addition the embarrassment he has faced thus far, an interest or more money to the one he paid Mr AB when securing the land. Then once that is done or adhered to, then that settles it nobody will go to jail, then that is civil compensation, which is within the remit of ADR.

When such dispute are brought at the ESMDC for mediation, mediators would look at the root cause of what started that quarrel in the first place and how it degenerated to what became a violent fight and crime. At the end of the day, upon identifying relevant issues through dialogue and concessions the offender having remorsefully tendered an apology and may need to pay for civil compensation to the victim and the matter would be resolved amicably.

⁹⁸³ See the annexed Interviews ESMDC -under Magistrate, Case managers, Judges, Mediators and Directors.

⁹⁸⁴ Restorative justice involves both a proactive approach to preventing harm and conflict; and activities that repair harm where conflicts have already arisen. Where the latter is required, a facilitated restorative meeting can be held. This enables individuals and groups to work together to improve their mutual understanding of an issue and jointly reach the best available solution *cited in* Restorative Justice Council, 'What is Restorative Justice?' '<<<https://restorativejustice.org.uk/what-restorative-justice>>> accessed 24th November 2020 '

⁹⁸⁵ Practice Direction on Restorative Justice 7

⁹⁸⁶ Ibid 8

From the findings, in most cases where a party realises that it is practically impossible to recover the money stolen from the criminal trial in a regular court, that is when the party may approach the MDC for restitution. Often times, in the course of mediation the offender can either pay back what they have stolen, or in the circumstance where it is impossible to agree on the said amount stolen, it may be agreed that the offender pay a substantial amount to the victim and upon compliance the matter resolved. This has been instrumental to decongesting the courts and has reduced the cost of the victims.

The sentiments expressed above, embodies **Mediator 3's** view

Minor offences include stealing, breach of the peace (a land tussle-if one of the parties goes into the land and destroys something then it is criminal and the person is arrested for the crime) and it is sent to court.⁹⁸⁷

Flowing from the above statement made by Mediator 3 demonstrates that going through mediation benefits both the offender and the victim. Thus one can safely say that in criminal matters, what the ESMDC settle is the civil aspect of the case through the restorative justice intervention which when successfully applied and resolved, implicitly lays the criminal aspect of the matter to rest. Hence the ultimate approach will be in ensuring that both parties get a fair deal from the justice system, with the offender taking the full responsibility in manner agreed and victim compensated accordingly. The process promotes cordialness as it allows the parties to amicably resolve their differences, rather than contribute to unnecessary delay which may as well threaten just dispositions by keeping defendants in jail or weakening witnesses memories.⁹⁸⁸ Thus settling this criminal matters that is clogged with a civil aspect enhances access to justice.

Evidently, the ESMDC in a short period of time has impacted on a remarkable volume of civil dispute; but very growth trajectory in criminal cases in view of the quantitative data. So for now, the effectiveness and efficacy of the system on criminal cases cannot be measured since the ESMDC is just a year old and the LMDC only started settling the criminal matters early 2019. However, it is worthy of note to state categorically that the study has improved on the findings of Professor Onyema.⁹⁸⁹ However, this is the first finding to establish that the ESMDC has started settling criminal matters, which was not in the remit of ADR. Though this finding used the LMDC as a case study thus it dwells on the procedures adopted by the MDC to enhance access to justice. Hence this finding is the first to bring to the fore of knowledge the impact of the LMDC on the ESMDC and it is fair to say that the ESMDC are on the right track. Thus, the LMDC has significantly impacted on the ESMDC, which is also an advantage of using the scheme. This can be seen

⁹⁸⁷ 'The court sends it here (ESMDC) (we tend to resolve the aspect to a large extent some of the criminal matters has the clog of criminality, but what drives it is civil). It actually has a double prong approach- we do not just aim to resolve that criminal aspect because we know that what is driving the criminal aspect is a civil issue behind at that background so once you resolve that land tussle between them to a large extent the other one goes away, so we kill two birds with one stone in that instant.'

⁹⁸⁸ Levin (n4) 199

⁹⁸⁹ Onyema (n2) 16

from the perceptions of the parties, and the number of cases settled through the ESMDC virtually all the system in less than a year.

6.1.4 A CRITICAL LOOK AT THE ISSUE OF COST AT THE ESMDC

A Cost Savings

The issue of cost was also one of the recurring themes in both schemes; most of the respondents revealed the cost comparison between going straight to the ESMDC instead of litigation. Both the users and respondents addressed the issue of cost by comparing the actual figures they pay for court-referral, cost of legal representative and cost of initiating a matter through the walk-in route. Hence it is essential to point out that cost was one of the main standard or criteria for establishing the effectiveness of ADR that prompted the rise of Alternative Dispute Resolution in most jurisdictions. And it is also one of the tests used in establishing effectiveness of the LMDC. Thus, this finding used the ESMDC as a case study however; it dwells on the procedures adopted by the LMDC to enhance access to justice.

Against this backdrop, the case managers and the parties pointed out that ‘parties save cost through the walk-in route because they do not pay for filing fees at the ESMDC.’⁹⁹⁰ Hence it is fair to say that both case managers and parties arrived at one thing. The acknowledgement that fees charged at the ESMDC is a lot cheaper than litigation—in contrast, highlighting on the incessant adjournment inherent in the courtrooms as opposed to the swift settlement mechanism obtainable at the MDC. They both reveal that there is no regular adjournment at ESMDC. This is predicated on the fact that there is a timeframe of three (3) months outlined by the ESMDC. This line of thinking could be seen in all the categories in this case study and also prevalent in the previous analysis captured at the LMDC case study.

On the contrast, most of the respondents pointed out that it is cheaper through the court-referral. However, the impact of not having a legal representative was highlighted by most of the case managers that

‘The mediators always make it clear to the parties that mediation is party-driven that the parties have the freedom to opt-out of the session at any time or leave whenever they want and can come into the session without their lawyers and also speak for themselves during the session without the services of their lawyers. That is why they are shown the exit doors prior before the session commences.’

⁹⁹⁰ See annexed ESMDC Interview.

Only parties can sign the terms of settlement (TOS) they can appoint a lawyer to guide them through on the terms of the settlement. However, the party autonomy reveals itself in the sense that the party at the very long run takes full responsibility for the terms of the settlement.

These findings illustrate that most of the groups revealed for the first time that parties at the ESMDC do not need a lawyer or counsel to represent them because it is party-driven. They also pointed out that why parties need the services of a lawyer in litigation is because of the terminologies spoken in court, the complexity or rigidity of litigation. However, it was revealed that the lawyers can only offer professional advise to parties during the mediation session and not to speak on their behalf. Thus parties are at liberty to express themselves as they so wish, except they give their lawyers power of attorney to do so.

To validate the above viewpoints, **Lawyer 2** states

However, in mediation, the party say whatever they want to say, sign the TOS themselves, so they can afford not to hire us. Moreover, if they decide to hire a lawyer to do that, then he needs the parties' consent and will have to consult the party before he speaks on their behalf during the joint mediation session.

It can be seen from the above statement that, it appears that parties do not need the services of their lawyers at the MDC. The reason being that ADR provides them with qualitative resolutions, less costly and not necessarily legal solutions, where they want control of the action, when the dispute involves complex issues and when the parties do not insist on having their day in court.

However, parties without legal representation can be exposed to an imbalance of power.⁹⁹¹ On the contrary, Robert Mnookin indicated that 'lawyers may make negotiations more adversarial and painful, and thereby make it more difficult and costly for the spouses to reach agreement.'⁹⁹²

Flowing from the above, the researcher argues that the power imbalance between parties is prevalent in both litigation and ADR; thus parties should be adequately informed about the pros and cons in having a legal representative and leave them to make their decisions. However, from this finding, in ADR the pros outweighs the cons because some respondents have pointed out at times it could be something so frivolous that parties can handle themselves and do not need a lawyer. This is against the backdrop that effective mediators are trained to balance the power between participants where there is a power imbalance. In fact,

⁹⁹¹ Owen, Fiss, 'Against Settlement' (1984) Yale Law School, 1073

⁹⁹² Mnookin (n537) 98

literature in the field of international mediation asserts that mediation is the preferable format for dispute resolution especially when there is a great difference in power.⁹⁹³

Conversely, a party has the freedom to stop the mediation session at any time if they feel that their interest or needs are not adequately represented. However, it is essential to point out that in Nigeria, just like **party 2** highlighted ‘people speak to their relatives or friends who are lawyers, without paying a dime so most times they are adequately prepared.’ Thus this finding has presented further evidence that has not been addressed in the reviewed literature that apart from saving cost, parties would want their disputes resolved in a timely manner without their lawyer’s interference or obstructions.

However, as mentioned above, some of the respondents highlighted the importance of having a legal representative though revealed that self-representation saves cost. Nevertheless, these findings also revealed that when parties are embroiled in disputes, their primary goal is the outcome not necessarily how much they are paying their lawyers. Nonetheless once the financial impact of continuing with the matter is explained to the party by a skilled mediator or a magistrate they try to settle in order to save cost.⁹⁹⁴

For these reasons, the researcher contends that the above mentioned findings demonstrates for the first time that parties going straight to the ESMDC is far cheaper as fees charged are minimal when compared to lawyers fees,⁹⁹⁵ which spans over longer period if when their case are in court.

To buttress the point made above, an indigent party that walks into the ESMDC (not within the settlement week) will pay a non-refundable administrative fee of 5,000 Naira equivalent to £10.16. Thus, the party will not be charged for mediation session, though for an average income earner for non-monetary claims, will be charged a non-refundable fee of 5,000 Naira per party and a mediator session fee of 10,000 Naira. Also, for a high net worth individuals the sum of 15,000 Naira will be charged and the same amount of administrative fees of 5,000 Naira will be paid. It is essential to state that the indigent party, who used the Walk-in method, would have to apply in person or through a lawyer requesting and explaining their circumstances (they must have paid for the lawyers service) before the party will get an approval for his case to be mediated. However, one cannot compare this to the amount of money that a litigant would pay a lawyer and will continue paying incessant fees as stated herein through out the time the matter will be heard in court that spans up to twelve (12) years⁹⁹⁶ as the finding has revealed.

⁹⁹³ Rene Rimelspach, 'Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation Program' ABA Section of Dispute Resolution 101.

⁹⁹⁴ See annexed ESMDC – magistrate’s category under cost.

⁹⁹⁵ Similarly, Party 9 from focus group (3) indicated ‘that is free to commence your case at the ESMDC unlike in litigation that is so expensive I paid the sum of 110,000 naira (equivalent to 220.77 Pound sterling) just for legal representation, I settle this and settle that the list is never-ending. However, litigation takes longer for a dispute to be resolved whereas at the ESMDC is free, and I have wondered if I am in Nigeria because things like this do not come free here.’

⁹⁹⁶ See annexed interview on ESMDC-magistrates and focus group.

Thus the researcher argues that where the cost-effectiveness comes in is through the walk-in route, the schedule of fees is made available from the onset at the MDC so one knows what he is budgeting. These fees are predictable unlike litigation fees, which is unpredictable thereby making parties to spend unbudgeted lump sum of money. This finding has also revealed that in Enugu, law firms charge cheaper, but continue collecting the aforementioned charges unlike in Lagos that they charge bulk money in one stretch. However, to reduce cost disputants or parties may opt to commence the mediation processes without a legal representation, however only disputants that are well exposed to know that they can represent themselves without hiring the services of a lawyer *ab initio*.

In court-referral a party must have paid the filing fee in court and in most cases a significant amount of the lawyer's fee too. However, where the party decides to do without the lawyer under the legal practitioners Act, the lawyer has the obligation to refund his client the remaining balance.

Against this backdrop, even though the court refereed matters are free, a party would have spent a substantial amount of money if they went straight to court than to the ESMDC finding depicts. Indeed, cost saving is one of the most notable advantages of ADR⁹⁹⁷ and this is evident at the ESMDC and LMDC especially during the settlement week that is free⁹⁹⁸ to settle matters respectively.

It was also revealed that parties who dropped their legal representatives, their charges were cheaper than the parties who carried on with their lawyers representing them. Hence most of the respondents agreed that is cost-effective going straight to the schemes first before going to litigation. However, the cost of legal representative was the most daunting in both findings because most times the court system is burdened by lawyers filing frivolous application at every considerably moment in trial which makes litigation very cumbersome as well. In other words, the findings reveals that lawyers in Nigeria rely more on technicalities and the judges sometimes encourage them.⁹⁹⁹

B The Impact of Enugu State Settlement Week (ESSW) on Cost

It is essential to point out that some of the parties the researcher spoke with at the ESMDC came to settle their matters during the settlement week thus they highlighted that the role of the Enugu State Settlement Week (ESSW)¹⁰⁰⁰ with regards to cost savings; bearing in mind, the need to give an over view on what the Settlement week entails is prominent in this subtheme.

⁹⁹⁸ Though mediator 3 pointed that out 'that though the parties did not pay for it however the cost was born by the Enugu state government.'

⁹⁹⁹ See annexed both ESMDC.

¹⁰⁰⁰ By and large, settlement week was revealed in LMDC however, most of the parties from the discussion group did not settle their cases during the settlement week.

The settlement week is a joint initiative of the Lagos Multi-Door Courthouse, the Lagos State Judiciary, the Lagos State Government and the Nigerian Bar Association (NBA).¹⁰⁰¹ This is an equally, significant advantage and direct impact of the LMDC on the ESMDC especially amongst the focus group. This is the zero-sum payment to dispense matters during the Enugu State Settlement week (ESSW). It is essential to point out that most of the respondent both at the LMDC and the ESMDC both affirmed that the cost of commencing a dispute during the settlement week is zero-sum as opposed to the expensive cost of litigation at the regular court. The focal point here is that with the exception of settlement week, which is free, parties are expected to pay an administrative fee and mediators fee. However these are all included in the fee schedule and no incessant payment is demanded unlike in litigation where incessant fees such as filings, adjournment fees,¹⁰⁰² and appearance fee per appearance will still be charged. Evidently, one of the primary benefits of the Settlement Week is that it has proven to be effective with regards to giving unequivocal access to justice, both the indigent and the rich alike.¹⁰⁰³

Furthermore, this finding has provided additional evidence to the effect that the fees for walk-in and court-referral are free for both the indigent and the well to do citizens during the settlement week, and this demonstrates another leeway that both state government in conjunction with the judiciary and the MDC are keen on given equal footing amongst all the citizenry. To have an equal opportunity in accessing justice through ADR and the justice system which aligns with the overriding objective (Section 1A-E of the ESMDC rules 2018 and section 2 a-d of the LMDC rule 2015) of both schemes. Hence this is another positive impact of the LMDC on ESMDC and without a doubt an added advantage of using the scheme; which would in turn enhance their effectiveness. The sentiment stated above embodies the findings revealed by the respondents about the Settlement Week in Lagos. The Introduction of the settlement week and the recent online settlement month during the COVID-19 Pandemic era demonstrates yet another enormous contribution and impact of the LMDC with particular emphasis on the ESMDC. However, the researcher argues that the LMDC is better positioned to attract more users than the ESMDC and other states due to the

¹⁰⁰¹ The Lagos Settlement Week (L.S.W.) as the name implies is a week set aside by the Chief Judge of Lagos State for specific courts to clear the backlog of cases through referrals to the LMDC for possible resolution through the ADR processes *cited in* The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse: Lagos Settlement Week -Frequently Asked Questions (FAQS) Cited in* Umegbolu (n301). Hence most of the cases that are treated during the settlement week are court-referred and walk-in matters. These are cases that have been attempted in the informal setting ADR and failed, thus the real motive behind the LSW is to find a way of decongesting the high courts. In other words, the court wants to give a second try to those cases and also to uphold the High Court of Lagos (H.C.L.) State Rules; **Order 3 Rule 11:** For all originating processes filed in the Registry shall be screened to determine the suitability for ADR mechanisms and may be referred to the Lagos Multi-Door Court House or any appropriate ADR institution.’ Cited in Umegbolu, *The Lagos Multi-Door Courthouse (LMDC) in Nigeria*. For the following reasons, HCL Rules, in collaboration with the LMDC, has demonstrated the viability of Alternative Dispute Resolution for Justice reform and continues to serve as a model for other states of the federation. Cited in *ibid*. It is essential to point out that the first settlement week programme for 2019 was held at the beginning of the year. And the subsequent one was held in December 2019. The next settlement week is from the 21st-25th September 2020. It is essential to point out that before the Lagos Settlement Week (L.S.W.) takes off. The case managers will have to go to the court to screen matters that are ADR amenable. Cited in *ibid*.

¹⁰⁰² For instance, **Party A- focus group (2)** ‘that the court can say come today and you get there they will not sit you have lost your valuable time and money. However, at the ESMDC, the mediators are here all the time.’

¹⁰⁰³ Section 30 Enugu State Multi-Door Courthouse (ESMDC) Law 2018.

environment in which it is operating from being the 7th largest economic city¹⁰⁰⁴ in comparison to Enugu, which is known as the city of civil servants and is economically average compared to Lagos state.¹⁰⁰⁵ This is evidenced in the administrative fee of the LMDC, which is (for average and high-rate earners) 10,000 naira equivalent to £20.10) non-refundable fee per party, whereas the ESMDC charges 5,000 naira (Equivalent to £10.05) a non-refundable fee per party.

Additionally, according to the ESMDC quantitative data analysed by this researcher, it shows a substantial amount of disputes settled during the settlement week; thus, if this is sustained more matters would be settled and it will drive more investors to the states. Conversely, in view of the reviewed literature,¹⁰⁰⁶ this finding has filled in the gap in the literature by revealing that the cost of using the ADR processes at the ESMDC has a positive impact on the accessibility of the scheme, hence one would say that the ESMDC enhances access to justice due to their cost savings which aligns with that of the ESMDC.

5.1.8 CONFIDENTIALITY AND IMPARTIALITY CLAUSE IN MEDIATION

Confidentiality in the reviewed literature in this study was pointed out as a dominant advantage in ADR.¹⁰⁰⁷ However in Nigeria, there is no Federal or State Legislation that governs Mediation.¹⁰⁰⁸ Hence each ADR Centre has the guidelines that govern them, thus both the LMDC and ESMDC has their own set of guidelines. One of such rules is the confidentiality agreement that demands all the parties involved in the disputes and their Mediators, must sign Form 5 and 6 documents, which stipulates that every information exchanged during the mediation proceedings is confidential.¹⁰⁰⁹ The parties will participate in an Alternative Dispute Resolution (ADR) Session to be conducted in accordance with the Practice Direction of the ADR Centre. The parties agree that:

(a) Statements made and documents produced in an ADR Session or in the pre-session conference and not otherwise discoverable are not subject to disclosure through discovery or any other process and are not admissible into evidence for any purpose, including impeaching credibility.

(b) The notes, records, and recollections of the Dispute Resolution Specialist, Mediator or Arbitrator conducting the ADR Session are confidential and protected from disclosure for all purposes, and

¹⁰⁰⁴ Kazeem Yomi, 'Lagos is Africa's 7th largest economy and is about to get bigger with its first oil finds ' 2016) <<<https://qz.com/africa/676819/lagos-is-africas-7th-largest-economy-and-is-about-to-get-bigger-with-its-first-oil-finds/>>> accessed 23rd October 2020

¹⁰⁰⁵ Ibid.

¹⁰⁰⁶ Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' (n2) 16.

¹⁰⁰⁷ Blake, *A Practical Approach to Alternative Dispute Resolution* 43

¹⁰⁰⁸ Etuk, *Mediation Matters* 6

¹⁰⁰⁹ See Annexed LMDC Form 5 confidentiality agreements and LMDC Form 6 agreement to mediate.

(c) The ADR Judge, Dispute Resolution Specialist, Mediator or Arbitrator presiding over the ADR Session has immunity as described in the Practice Direction.¹⁰¹⁰ It is essential to point out that the aforementioned forms are a prerequisite for parties at the LMDC too. Besides the confidentiality forms, the mediator would have to sign the disclosure agreement forms to show that he has no personal interest in the matter. And even when he had a personal interest in the matter that he has disclosed that interest to both parties. Furthermore if, both parties did not object to his authority to proceed as the mediator in their matter; thus, no one would say they are partial, unlike in litigation. The judges do not sign any disclosure agreement; hence why bribery, as indicated in this finding, is prevalent in the courts.

Subsequent upon this, confidentiality agreement nudges the parties to air their views during the mediation session having the assurances that it will not be used against them in the courts or any other place for that matter. Indeed a yearning for confidentiality is one of the motivations why parties in a dispute opt for ADR instead of litigation. This is because the latter is mostly held in the public, while the earlier are agreed and carried out privately. Thus the confidentiality agreement signed by the parties at the ESMDC reinforces the confidence that parties; who are in business or who wants to keep personal matters private have when they walk-in to the centres- that to an extent their privacy are guaranteed. However, a confidentiality clause or agreement will not be inescapable for a party if misrepresentation or fraud is alleged.¹⁰¹¹

This subtheme is an inherent advantage and to an extent has its challenges facing the mediation process under the ESMDC. Without a doubt, all the categories confirmed that the advantage is that the mediation session is confidential and private. Especially, due to the confidentiality agreement signed at the opening statement by both parties, which cannot be used in courts, and also the mediator cannot be called to testify in the Court of law. It is, however, essential to note that not having enough mediation rooms is an inherent challenge obstructing the confidentiality of the process at the both schemes.

Lending credence to the above, both the respondents and some of the parties at both centres revealed and complained that they could overhear other party's conversation during their session from where they are sitting. The researcher equally observed that too, the walls are partitioned into cubicles and not soundproofed so even though the parties signed the confidentiality agreement with the intent of their dialogue and documents utilised in the session remaining a secret, due to the infrastructure and space constraints, this secret might come into the open. For instance, if it is a high profile person or business that is in question and there is a hostile witness eavesdropping or a journalist in the next room - as a result of the cubicles or thin walls the end result is that confidentiality and privacy is breached. Thus this is also a disadvantage facing both centres.

¹⁰¹⁰ See Annexed form 5.

¹⁰¹¹ Blake, *A Practical Approach to Alternative Dispute Resolution* 51

In sum, the confidentiality clause and impartiality clause is another tremendous impact the LMDC practice has on ESMDC practice though it has an inherent disadvantage. Nevertheless, it is not as a result of their practice but rather as a result of fund that would be easily remedied.

6.1.5 SPEED AND TIME

The workload of the courts, are so much mutated with so many litigation matters because the courts are overworked and following the Lagos litigation system, incessant applications, multiple interlocutory applications on adjournment thus following this rigorous rules and practice of procedures sometimes cases are delayed. In the grand scheme of things, behind the legal frustration¹⁰¹² was intensified by delay and in this findings, some of the respondents also pointed out that lack of confidence in the judiciary¹⁰¹³ was also a contributory factor that deprives parties from not having their day in court. What delay creates is a kind of disappointment and frustration on the matter of the litigants and that could lead to regrets of taking the judicial process. And that could lead to some disputants or litigants even resulting to self-help so as to hasten their own demand for justice- sometimes it results to jungle justice or destruction of public or private property to make their point.

To buttress this point, the recent SARS¹⁰¹⁴ protest touched down most courts in Lagos and the LMDC though the protests started out as a peaceful one but eventually hoodlums who were obviously aggrieved with the (problems associated with the Court system) in Lagos hijacked it¹⁰¹⁵. Again due to delayed trials

¹⁰¹² Chinwe Umegbolu, 'Behind the Legal Frustration' (2020) Mediatecom

¹⁰¹³ Lack of confidence in the judiciary- the findings also recognized a lack of confidence or strong perception of corruption with the judiciary amongst most of the participants especially the parties. To buttress the point made above, Party 1,3,4,5,6,7,8, 9 and 10 from focus group (3) on bribery and corruption in the future. They agreed that 'they see no challenges with the ESMDC except if it changes in future like start accepting bribe, but as of present they can see no challenges facing the ESMDC. However, Party 3 from focus group (3) on Mandatory ADR alleged, "that the judiciary is corrupt, so imagine me saying no to court-referral? The judge will get angry with me and then decide to favour my opponent, so it is better I take my chances at the ESMDC, and I thank God I did." Following through, Party 2 from the focus group (3) on Non-partiality at ESMDC revealed: 'Yes, ADR through the ESMDC has been useful because there is no partiality, corruption and bribery unlike in litigation where the rich parties can bribe the judges and they become partial. For these reasons, hindrance to Justice is not only about parties not being able to access the courts because of cost but also because parties are not sure or fully confident about the decision they are getting, if it is a just one or not. Because of the section 36 (1) of the Nigeria constitution 1999 is clear no one will stop the parties from accessing the court, it is their fundamental right, however, strong perception of the judicial as depicted above -weakens the confidence of the people and it is a back door way of depriving people from accessing the court because it hinders access to justice. So it begs the question is the judge the right person to refer the parties to ADR or ESMDC? The findings in this report have indicated that the latter should not be the case.

¹⁰¹⁴ Chinwe Umegbolu, 'End SARS: A Revolution by the people for the people on police brutality in Nigeria ' 2020)accessed 20th December 2020

¹⁰¹⁵ The Nigeria police's Special Anti-Robbery Squad (SARS) has been accused of unlawful arrests, the invasion of youth's privacy by searching phones and laptops, kidnapping, rape, humiliation, extortion and extrajudicial killings. To validate the above viewpoint, Kaycee Madu, Canada's first black minister of justice, recently gave a detailed account on how the Nigerian police allegedly murdered his cousin Chrisantus Nwabueze Korie in 2013. He went on to reveal how the police did everything to obstruct the investigation into the murder incident. Aside from this gut-wrenching incident, so many painful experiences encountered by so many Nigerian's were shared on various news outlets and social

and delay in the administration of justice ‘investors left Nigeria because the legal system was clogged by so many wheels and that was what happened in other countries like Canada, US, and even UK before they introduced the MDC system and ADR system by the Woolf Commission report in the UK which was adopted by the US, Canada, Australia, Denmark, South Africa and Swaziland.’¹⁰¹⁶

Evidently, the LMDC and ESMDC were introduced, as an antidote to curb or mitigate such excesses associated with the Court system, as depicted in these findings where one party must fail and one must win. So the Court system is a winner takes all and a loser losses all; but in the ADR system it could be win- win for both parties. Hence speed and time, which is another crucial finding is an advantage, highlighted by all respondents, and which is an underlying factor that prompted the use of ADR in almost all the jurisdiction,¹⁰¹⁷ particularly in Nigeria. The time frame of cases in courts as pointed out in the theoretical section of this study was 15years,¹⁰¹⁸ which aligns with these empirical findings of 10-20years.¹⁰¹⁹

Though this finding dwells in the procedures adopted by the MDC to enhance access to justice thus this findings is the first to use LMDC and ESMDC to outline the time frame that dispute last in both schemes and to an extent how long it last in litigation. Although this finding is similar to that of the LMDC, however, it strengthens the direct impact of the LMDC on the speedy dispensation of justice.

To be specific, all the respondents attested that cases or matters in the ESMDC last for one-day or two days. However, there is evidence from the LMDC findings, which was also given, in this finding - not all cases settle within a day or two days due to some factors. Such factors are the availability of the parties- some parties live abroad while in some cases will require the bank representative to report back to the director or to the principal to get his opinion before he signs the Terms of Settlement (TOS) or agree to any concession. Secondly, the party’s acceptance of the mediation process and finally the sincerity of parties and their counsels, whether they want to settle the matter or not? If they do not want to settle, then they would employ dilatory tactics to forestall or frustrate the mediation session thereby making matters exceed a day or two days stated in some reviewed literature.¹⁰²⁰ Apart from the reason given by **Mediator 1**, some of the respondents underlined other reasons why some cases do not end within a day or two days. That ‘due to the complexities of some cases like land dispute, matrimonial settlement and banking. For instance, land dispute would require the mediators and parties to visit the locus in quo thus this would affect the duration of the matter.’

media platforms. Nevertheless, the Nigerian government kept turning a deaf ear and did absolutely nothing to stop this. More so, when the case gets to court, it is delayed, or the Judges are compromised (taking bribes from the rich client for them to give judgement in their favour). However, after days of protests, on 11th October 2020 to be precise, the Nigerian government disbanded the SARS unit. Cited in *ibid*

¹⁰¹⁶ See annexed ESMDC Interviews judge’s category.

¹⁰¹⁷ Blake, *A Practical Approach to Alternative Dispute Resolution* 3

¹⁰¹⁸ Stella, Dawson, *Alternative Courthouse in Lagos Speeds delivery of Justice* (Thomas Reuters Foundation) 23 accessed 23rd January 2019

¹⁰¹⁹ See annexed ESMDC findings Magistrate.

¹⁰²⁰ *Ibid* (n977)

Consequent upon that, the researcher argues that the resultant effect is that cases would linger on- for a week or two weeks, however, the MDC has proffered a solution to that by having a time frame for their matters if not heard or settled. On the other hand, there is no time frame put in place to curb the number of years cases could or should remain in court. However, this finding has provided evidence that cases during the settlement week has a time span of one to two days.

Following through all the categories most especially the parties- firmly established that ESMDC has an effect or has impacted tremendously on the speedy settlement of cases in the courts in Enugu. However, most of the respondents elucidated that the ESMDC has a time frame or 'definite time span for matters to be resolved within 3months which starts from the date the mediator is appointed -60 days, but in rare events,' it exceeds the 3months-6months then the matter is returned to the courts. In earnest, they try to see that matters are resolved on the shortest possible time. So parties can go on with their lives and if it does not succeed in the events of a court referred matter, they send it back to court, or if the party feels that this process will not guarantee or provide what he wants, then it is sent back to court because mediation is a voluntary process. What the parties are expected to do is to make good faith attempt, and if it does not work, they cannot be forced to sign the TOS. However, during the settlement week, most of the matters were settled in a day because the settlement week is a time bound programme. So what it means that under the settlement cases are time bound within a day or two days but the regular ESMDC-walk-in and court-referred matters does not exceed six (6) months.

To validate the above viewpoint, **Mediator 2** pointed out:

Yes, the existence or creation of the ESMDC has impacted on the volume of the civil matters in court because you see landlords going to court to eject tenants and at the end of the day the case will take up to 6 month. But when they come to MDC, they reach an agreement that the tenants are leaving the premises. All they need to do is to give at least 3-6 months time for the person to move and the matter is resolved immediately. I have had a tenancy matter that I have resolved within 15 minutes but if it is in the court you spend up to 6-8 months, and they will suffer several cases of adjournment. At the end of the day they will have the dispute of whether the judgement was fair etc. But in MDC is a consent judgement you cannot deny what you agreed and signed.

Conversely, **Lawyer 3** stated

It depends on the parties and circumstances, but the one I did here started around February and our cases ended around May, so it lasted for 3.5 months which is quicker than litigation and as they have a time frame that does not exceed 4 months. Sometimes passions may get high, you make room for the contingency that they may be disagreement and then a party may walk out and come back two days later so you do not have a defiant time frame, but then this is the time frame given by the ESMDC which is three (3) months.

It is essential to point out that most of the parties settled in a day. Thus the timeline gives it a time limit, and there is an absence of unnecessary inhibitions like what is obtainable in the regular court settings where lawyers rely on technicalities to waste the precious time of the courts and drag the matters.

These findings have revealed that speedy dispensation plays a significant role in mediation. Thus the above mentioned time frame stipulated in both schemes should be used or serve as a guideline in setting up a time frame for the Nigeria justice system and other jurisdictions in a bid to reform the latter.

The focal point here is that this theme is another noticeable impact the LMDC practice has on the ESMDC. Without a doubt, it has been very effective in the speedy and timely dispensation of justice; as can be gleaned from the number of cases recorded that was settled in the quantitative data within a year. More so, from the parties who walk-in on their own and from the court referral matters on a typical day it shows that public or parties have absolute confidence in what ESMDC do within just eight (8) months of inception, in hindsight that some of the cases have been in court for quite a while or for years and then they come at the ESMDC within days matters are resolved.¹⁰²¹

B Rating the Performance of the ESMDC in Dispute Resolution

This is a subtheme under the speed and time, this is the first finding to provide an opportunity for both the stakeholders of the ESMDC, and the users to rate the ESMDC performance in dispute resolution-one (1) being the least and five (5) the highest.

The finding illustrates that the ESMDC has been effective in settling dispute within one year in the State. Thus, most participants compared the performance of ESMDC to other ADR centers, ('especially 'enforcement issues, which are why the end-users are not motivated to utilize their process through the private ADR, centers confidently. They come to the ESMDC being court-connected to enforce the TOS') to arrive at their answers. Four (4) and (5) was a constant reoccurrence amongst the different categories, especially with the parties both at the schemes that rated them four (4) because it is free from bribery and corruption, which has crept into the court. However, most of the parties rated them five (5) stating that they cannot find any fault with them. This has also backed the quantitative analysis in this chapter that due to its competence in settling disputes effectively, more and more users /parties are leaning or moving towards Mediation through the MDC. This very finding is the same as that of LMDC, where the respondents rated 4 and 5 for their performance.

Additionally, this is the first finding to reveal that the perceptions and experiences of the court users who go to seek remedies at the MDC. This finding gathered that users are happy with the way and manner their

respective disputes are resolved, which is one of the fundamental aim or objective of this research. With the transformational impact of the MDC particularly, Enugu State, the researcher is of the opinion that other states of the Federation, and Sub-Saharan African countries ought to replicate this scheme so as to enhance access to justice for their citizenry. Thus, this evaluation is important which is hearing from independent parties/ users from other states who has no alliance with the LMDC would or has reinforced the impact and the view that the scheme is effective and its process has been streamlined by removing the complexities associated with litigation.

6.1.5 HAS THE ESMDC REPLICATED THE PRE-ARBITRAL COLONIAL METHOD OF SETTLING DISPUTES?

As stated in the LMDC findings, there has been a debate in the reviewed literature on whether ADR was a legal transplant from the western world to the African continent or vice versa.¹⁰²² Thus this is the first study to provide insights on whether the ESMDC has replicated the pre-arbitral colonial method of settling disputes in view of offering additional evidence on the impact of the LMDC on other states in particular ESMDC. Hence this was a recurring finding in all categories in both schemes and was adequately addressed in the LMDC findings.¹⁰²³ Nonetheless it is imperative to buttress the points raised in the LMDC by presenting the views of the ESMDC respondents. Most of the respondents affirmed that the ESMDC replicated the pre-arbitral method of settling a dispute but with modifications with the exceptions of two respondents¹⁰²⁴ who pointed out that ESMDC is ‘modified to align with civilisation in the sense that it is in tune with modern disputes- there is no banishment or ostracisation like they do in traditional African method of settling dispute (TAMSD).’ Though in recent years some of those practises have been expunged however some traits of pre-colonial arbitral method are still portrayed in the MDC. Such traits like greetings, language and who apologises first. Such cultural nuances are prevalent in both ESMDC and the LMDC. It was observed that parties are encouraged to speak the Igbo language, and the mediator states this at the beginning of his or her opening statement thus there is no language barrier amongst, the parties and mediator.

Mediator 2 ‘portrays a picture that the parties are allowed to speak their native language immediately the dispute resolution begins.’ What this does is that once they realise that they can communicate in their local dialect the person who is a mediator understands their language and traditional insinuations and cultural nuances tend to open up very fast and thereby disputes settle faster. Also, at the mediation session, simple things mediators do at the beginning of the mediation session is vital, like who sits down first? Who greets whom? Addressing the parties in their proper names as in Oba, Chief or Igwe or an Elder and for instance

¹⁰²² Grande (n251) 63

¹⁰²³ See Chapter 5.

¹⁰²⁴ See Annexed ESMDC Category Case Managers.

who apologises first. These are the traditional mode of operation by the forefathers in Nigeria that has been passed down from one generation to the other.

Consequently, these findings affirm that respondents both from the LMDC and ESMDC that the modes mentioned above of showing respect have settled cases faster than even the core things that are in dispute during the mediation session. The researcher observed from a parties statement that unambiguously expressed that he ‘got angry not because they pulled down his yam barn but because a woman¹⁰²⁵ who should be giving him respect did it.’ The role of cultural nuance in settling disputes fast in both LMDC and ESMDC cannot be overemphasised.

On the contrary, in the court parties do not have the opportunity to experience those cultural nuances because the law in no way recognises those cultural barriers or those cultural nuances as the relevant laws do not recognise cultural nuances to play any vital role in the administration of justice, instead the law focuses on the evidences before it in determining what is justifiable in the circumstance. It is vital to note that in court, they can provide an interpreter for a party that cannot speak English but the magistrate, lawyer and judge will not speak any other language apart from the English language. These findings are the first study to reveal that cultural nuances can assist parties to settle their dispute, which validates the findings that both scheme replicated the pre-colonial arbitral method of settling disputes. This is an added advantage to the ESMDC and another example of the positive impact of the LMDC practice on ESMDC.

To reiterate, the focal point here is that there is an infusion or replication of the pre-colonial method of settling disputes, which is now a well-fined tuned ADR systematic way of settling disputes used in both schemes. Though it is to note that early neutral evaluation, restorative justice all these are subsumed into ADR, were also in the pre-colonial method of settling disputes but was not given different names. They were classified under one name, which is ‘omenala’ (the custom or culture of the land).

Custom or culture reveals itself in the sense that in Africa, customary arbitration already forms an intrinsic part of their culture and all that happens in ADR is obtainable in customary arbitration except oath taking. For instance, they are three elements to this-the first is that in arbitration, the group of people be it the Obi, Igwe, Chief etc who otherwise act as arbitrators over a dispute between the parties. As consequence, it shows firstly parties volunteering to submit and which is the element of customary arbitration overlapping with the ADR, a voluntary submission. The second is parties will accept the terms and acceptance which is what happens in the customary arbitration, it also overlaps ADR. The third one and final one, parties, be it Kinsmen will agree that they will be bind and sometimes in order to be binding, it involves some of oath-taking in customary rudimental arbitration and exactly the same binding nature that flows through the new

¹⁰²⁵ Umegbolu (n 259)

ADR now institutionalised.¹⁰²⁶ Thus a constant reminder of this helps the lawyers, beneficial and the end-user to opt for ADR.

From the findings thus far one can argue that the ESMDC has replicated the pre-colonial arbitral method of settling disputes. Again, these finding aligns with that of the LMDC where most of the perceptions of the respondents confirmed that the above discourse which was recognised as a legal transplant that took flight or moved from the less complex country to a more complex country. Though modified, its benefits remain the same.

6.1.6 EGO AND APOLOGY

Another prominent advantage revealed by this finding is that ADR affords both lawyers and the parties an avenue to set aside their ego and apologise to each other. This theme was critically analysed in the LMDC findings- it presents a psychological dynamics on the interplay between the role of Ego/ apology in escalating and deescalating of disputes.¹⁰²⁷ To have an insight on to the above subtheme, the ego is a Greek word for eimi.¹⁰²⁸ So the ego can be described as a person's sense of self, their sense of identity, their sense of importance and self-esteem.¹⁰²⁹ According to Sigmund Freud one of the founding fathers of Psychology, psychoanalysis to be précised.¹⁰³⁰ The ego is part of the mind that takes a decision, according to Freud; there are three parts of the mind, which are the id, ego and superego.¹⁰³¹ Furthermore, to understand the ego, one needs to understand the id and superego. Thus the ego is the part of the mind that is instinctual, biological is that part of the individual that drives the desires, their wants irrespective of the consequence.¹⁰³² Moreover, it operates on an unconscious level and the superego, on the other hand, is made up of the individual morals, values, upbringing, social norms and expectations.¹⁰³³ The superego has two components the conscious and the ideal self. The conscious is that part of an individual that makes him feels guilty when they do something inappropriate- the ideal self is that imaginary perfect self, of whom one

¹⁰²⁶ Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?*

¹⁰²⁷ See annexed LMDC findings on 25.

¹⁰²⁸ Robin Hood, *The Routledge Handbook of Greek Mythology Based on H.J.Rose's Handbook of Greek Mythology* (Routledge Taylor & Francis Group 2004) 4 Cited in Chinwe Stella Umegbolu, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution* (2020).

¹⁰²⁹ Thomas Metzinger, *The Ego Tunnel the science of the mind and the myth of the self* (Basic Books 2009) 5 Cited in Umegbolu, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution*

¹⁰³⁰ Jerome Neu, *The Cambridge Companion to Freud* (Cambridge University Press 2006) 2 Cited in Umegbolu, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution*

¹⁰³¹ Umegbolu, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution*

¹⁰³² Ibid.

¹⁰³³ Ibid.

ought to be. These constitute the superego; it takes decision by negotiating between the id and the superego.¹⁰³⁴

For instance, if an individual like sweet things and so he goes past a candy store or an ice cream truck, and he wants to get the ice cream then the superego reminds him that sugar is not good for him. What does the ego do? The ego thinks about what is actually best for an individual.¹⁰³⁵ The person's ego might say 'just for today he can have one cone of ice cream that is the ego. It is that part of the mind that thinks and takes decisions. In psychological terms, that is what the ego is and so when one talks about an apology. An apology appeals to the superego component of the mind where a person's conscious and ideal person lies.¹⁰³⁶

Thus the person does not want to be a jerk; he wants to be a nice person, he wants to show compassion and understanding.¹⁰³⁷ For example, so where the victim offers the offender an apology¹⁰³⁸ especially when it is genuine, the person's superego will be able to exact influence on the ego, and the person's ego will let go.'

In view of this, in litigation when people are fighting, they do not hear each other. However, mediation offers that opportunity to sit down with each other, and if they have an excellent mediator, they will be able to listen, hear each other out. A lot of bottled up emotions, aggression, anger and frustration, can let out.¹⁰³⁹ Now one party can see the other party and vice versa. They will be able to see each other, acknowledge each other and understand where they are coming from, that is important for the ego because the parties are fighting the ego is bruised, and it is threatened. Thus, the ego pumps itself up and ready to receive blows and give blows.¹⁰⁴⁰ So when one or a party has an apology coming is like soothing to the ego, its like release, it disarms that threatened and bruised ego.¹⁰⁴¹

Furthermore, even if one cannot achieve an immediate result like settlements or reconciliation but at least come to a state whereby parties are more willing to address the fact. For instance, if Mr MX is arguing blinding, then the person's ego is telling the person if he agrees with let's say, Mr XY, then he is a loser, or he is stupid. He will keep arguing until he comes to a stage where that ego can function a bit more in a healthy way.¹⁰⁴²

In other words, he drops the unhealthy way of reasoning and will be able to let his guide down then he can focus on solving the problem at hand.¹⁰⁴³ That goes a long way in making the mediation process a successful one. So even when they do not resolve or reconcile they have aired their views, they know how their actions

¹⁰³⁴ Ibid.

¹⁰³⁵ Ibid.

¹⁰³⁶ Ibid.

¹⁰³⁷ Ibid.

¹⁰³⁸ Heitler (n997) 4

¹⁰³⁹ Umegbolu, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution*

¹⁰⁴⁰ Ackerman (n846)

¹⁰⁴¹ Umegbolu, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution*

¹⁰⁴² Ibid.

¹⁰⁴³ Ibid.

have impacted on the other party, they have talked about it and are aware of what lead to the dispute/conflict thus it must not always end in settlement. To use one word to describe it is therapeutic, and it is healing.¹⁰⁴⁴ However, in mediation, the mediator and the opposing parties all have all level of emotional maturity but if the mediator is dealing with a psychopath; it is impossible to achieve success.¹⁰⁴⁵ There are cases where mediation works perfectly, and there are cases where litigation is the best fit. Consequently, the researcher believes in knowing that this above subject matter will be great of help to both the lawyers and mediators in resolving disputes.

Substantiating the above subject matter, most of the respondents revealed that the psychologically effect of ego reveals itself in the mind-set of the lawyers who could perhaps intervene in the dispute resolution. This mind-set, which is instated in lawyers from law school, a competitive approach is inevitable or as the researcher calls it ‘I will show you what I am made of in court.’

Additionally, it was also revealed that the party’s mind-set is such that most times they want to win at all cost. Thus these are some of the factors that escalate and deescalates disputes or conflict. Freud’s theory has added additional evidence that litigation-lawyers and sometimes the party’s feed on the id and on ego. Indeed it is upon this basis that litigation is rooted on- the client would want to see that he wins at all cost and the lawyer has an ethical duty to represent his clients to the best of his ability.

However, the superego reveals itself in mediation, which is down to dialogue / talk which itself is therapeutic tool or a peaceful tool as this finding has revealed. The talk or the dialogue, which has been revealed in this finding, does not happen in litigation.¹⁰⁴⁶ However, in Mediation, dialogue has been revealed as a peaceful tool- it brings out even issues that maybe one of the parties never thought of to have escalated the conflict or disputes. So it allows a wholesome settlement, devoid of ego and not just addressing the problem at the moment. However, it goes to the root of the cause of that problem. Hence, the threatening thoughts gained from their situatedness, psyche and mind-set, which are their conscious, which fortifies peace and shifts or removes the ego. Thus once the dialogue happens and the apology comes it reinforces the superego.¹⁰⁴⁷ Dr Susan Heitler reinforces this viewpoint where she highlighted a therapeutic process in mediation as -

A process of truth telling, apology and reconciliation, which relives emotional distress in the injured party and launches a process of repentance for the harm-doer.¹⁰⁴⁸

The sentiment expressed in the above statement, embodies the view made by **Case manager 1**

¹⁰⁴⁴ Ibid (n997) 5

¹⁰⁴⁵ Ibid (n1000)

¹⁰⁴⁶ See annexed ESMDC findings on Ego/ apology 26.

¹⁰⁴⁷ Chinwe, Umegbolu, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution* (Edublogs, 2020).

¹⁰⁴⁸ Heitler (n997) 4

That the first line of protocol at the ESMDC in both criminal and civil matters is by dialogue. The parties are encouraged to dialogue or talk things through during the joint session by the mediator. With this now, two parties are coming to a neutral ground, nobody is choosing a venue for them, they come here; however, they want to settle. Some people come here; the mediator encourages them through dialogue, and they apologise to each other. They forgive debts that run in thousands and millions. They will forgive each other, and the matter is settled.

“You hear them saying okay I will withdraw all my claims this one will say I will withdraw my counterclaims and the case is redeemed, and relationships are amended and families reunited.”

Following through **Judge 1** disclosed that

People have this ego I will teach you a lesson and they take the matter to court, they believe if they lose in the High Court (H.C) they go to court of appeal etc. And if it is between a rich man and a poor man they will want to frustrate the poor party.

Conversely, Mediator 3 highlighted that

Even the parties has started letting go of their ‘ego’ you hear them heaving a sigh of relief when one of the parties apologise and they too will apologise.

The researcher embraces the above viewpoints, as they underpin the viewpoint about ADR as a peaceful tool or a therapeutic tool, which is a massive advantage to ADR through the ESMDC while indirectly establishing that the court system is structured as a battlefield. Whereas the earlier encourages apologising and setting aside people’s difference, the latter encourages or augments the differences in people, thereby encouraging ego, which has been identified by this finding as a tool that escalates disputes.

From the researchers observation during the mediation sessions, both at the LMDC and the ESMDC, in some cases, it does not mean that the party that first apologised is wrong and the other is right. Instead, ADR creates an atmosphere or ambient environment through the mediators that assist the parties to value their relationship more than their ego. It is essential to point out that this was a recurring theme amongst all the LMDC respondents, thus reinforcing that the LMDC has a direct impact on the ESMDC practice.

A Mediation as a Peaceful Tool

An additional subtheme in this theme, particularly amongst the users, judges, lawyers and magistrate, elucidated that Mediation¹⁰⁴⁹ is a peaceful tool used in the resolution of a dispute. From the findings, it was revealed that communication or dialogue, which is in pari pasu with mediation, is a useful tool used by the

¹⁰⁴⁹ Hence, most of the respondents in these findings and LMDC findings identified that Mediation is the preferred disputes resolution because it is cheaper than arbitration; arbitration is more formal it is very akin to litigation except some little differences.

mediators, especially during the opening statement. They ask open-ended questions and this, in turn, allows them to express themselves better and reassures parties to bare their minds out.¹⁰⁵⁰ Why would parties go to a process? Let's say in litigation that a decision is forced down their throat? Why would they want to choose an alternative that is simple and less complicated?

Mediator 2 corroborates with this observation.¹⁰⁵¹ Equally, Mediator 3 indicated that

At the end of the mediation session one can see the parties hugging and gisting about old times but if that were to be in the court they will not be on speaking terms because the court system is structured to encourage acrimony and mediation is structured to encourage peace and reconciliation, once that relationship is restored, parties can go back as friends.

On the hand other, Lawyer 2 declared that 'ESMDC is a huge success because it has helped decongest the court. It has made families live in peace and harmony even after going through the ordeal of the court.'¹⁰⁵² On the part of the parties, most of them revealed that when the other party apologised they experienced personal satisfaction and then wants to settle.

Evidently, one can see at the ESMDC there is the absence of legal proceedings instead the processes are so flexible where parties are given a chance to talk things over and tell each other how they feel and get closure. Hence the researcher argues that mediation is a peaceful tool because party's relationship is restored- simply by parties reaching an agreement that they are happy with and mediators are there to listen, set the ground rules and assist them. When they come to the ESMDC, they are rest assured that they have a mediator that is empathetic and ready to assist them through dialoguing in resolving their disputes while paying cheap amount of money, it is party-driven and in an ambient environment. Where they can discuss and have a level of civility and understanding amongst themselves- not too forceful or argumentative like they do in the court of law. Moreover, from the respondents most especially the parties or users opinion, these findings have presented evidence that ADR is not only useful when both parties win but sometimes just getting a better explanation and closure on how they feel about the disputes, or how the disputes have affected their relationship is also a victory for the users.

In sum, this subtheme confirms the findings on LMDC and clarifies the impact of the LMDC practice on the ESMDC. More so, the general advantages of using the court-annexed ADR through the ESMDC that is an

¹⁰⁵⁰ Parkinson, *Family Mediation: Appropriate Dispute Resolution in a New Family Justice System* 87.

¹⁰⁵¹ Emphasized how mediation is a peaceful tool-'and at the end of day, parties had sat down and aired their grievances and pain during caucus. I probed and saw that there is serious underlying issue and once you touch that during the mediation you see that years of pain is settled and replaced with laughter and restores cordial relationship/ friendship.'

incentive or more advantageous than litigation which would be useful to Sub-Saharan African countries and other jurisdiction that would want to embark on replicating the Multi-Door Courthouse in the future.

6.1.7 JUDGES-ENFORCEMENT

One of the most prominent advantages of LMDC practice that was also revealed in the ESMDC practice is that the judiciary and the government had continued to advocate and maintain that disputing parties explore the ADR in settling their respective disputes that encouraged the decongestion of the courts as matters that are less contentious or considered inappropriate are swiftly referred to ADR. Thus they added other means, which is ADR under their umbrella and carved out another sector in the judiciary known as the ADR Judges.

Validating the above statement, **Case manager 1** explains,

I think why the MDC processes are more authentic than the rest of other private ADR institution is because it is a court-connected ADR. Whatever that comes as terms of the settlement is taken as consent judgement of the court, and also the ADR Judge is there to ask the party ‘haven’t you gone to attend mediation’? ‘Why did you fail’?

On the other hand, **Case manager 3** pointed out

Litigants who are used to the culture of litigation cannot on their own walk into the ESMDC without the referral from the ADR judge. In other words, without the judges promoting or taking a stand with ADR the litigants matters could still be lying in court for donkey years.

The sentiment expressed in the above quotation embodies the reason why ESMDC has garnered some support and compliance, as it is a court-connected ADR. In essence, the Terms of Settlement (TOS) as agreed by the parties during ADR goes back to court and it is adopted as the judgement of the court thereby saving the parties the stress that comes with litigation.

That is the significant difference between the normal ADR and the court-connected ADR. There is a synergy between litigation and other ADR options, but in private ADR, it stands alone. However, the findings indicated that all the participants in the different categories are calling for judges to start sanctioning recalcitrant parties who take advantage of the process in order to buy time for themselves knowing fully well they can not fulfil the terms of the agreement. Equally, when it is the time for compliance or after enforcement has taken place, they recede vis-a-vis, forcing the other party to go back to courts. Apart from the parties forestalling enforcement, which is line with the findings by all categories. The finding also revealed that lawyers are applying dilatory tactics to delay enforcement through their parties- by stating that parties signed under duress.

6.2 THE CHALLENGES FACING THE ESMDC

Nigerian Culture in terms of Sanctioning Parties

Nigerian culture in terms of sanctioning recalcitrant parties is one of the major challenges facing the ESMDC and has also been revealed in both the reviewed literature and in the LMDC findings as a major challenge they are facing. It was revealed that in order to enhance the standard or ensure that the ESMDC stays on the path of effectiveness that they should maintain a stricter compliance of party attendance. However, it was revealed by most of the parties that due to the fact that ADR is voluntary thus the ESMDC could not be firm.

Magistrate 1 stated, ‘sometimes our people need that person to be in authority and insist on certain things, you know you have to drop some of the guidelines and step in like this is what it should be. I think they just need to firm up a bit and maybe a cost sanction but then it wouldn’t be voluntary if they should do that.’¹⁰⁵³

Flowing from the above, that parties can decide not to come for the mediation session or even default after the enforcement, an ADR Judge can summon defaulting parties to show cause why he does not want to continue in the process but cannot sanction or do anything about a recalcitrant party who refuses appending his signature or withdraws on the Terms of Settlement (TOS), which is the final agreement after mediation. There is nothing under the law for now that the ADR Judge or magistrate can do. It goes to the question of voluntariness, which is the core principle of mediation. Hence the need to start sanctioning parties because they are used to getting punitive punishment from the court and even in the informal setting –the Nigerian culture of raising children thus their psyche is wired that way. The findings revealed that if nothing is done about this then both the LMDC and ESMDC will deteriorate or will start encountering delay just like the adversarial system- that will impede its effectiveness, and impact of the practice. However, some respondents were of the opinion that sanctioning parties will take away the voluntariness of the process, which is the substratum of ADR. The direct impact of the LMDC is revealed in the sense that if LMDC has started sanctioning parties then the aforementioned challenge will not be the case in the ESMDC; they would have towed that line from the day of commencement.

¹⁰⁵³ ‘I think that’s what they really need to do; they just need a little bit of power. You are called and you have to come and answer, you have to make out time like if it’s in the court you are to appear on a Monday and you don’t come and they say come next Thursday and you still did not come. You know if you don’t come and if it is a criminal matter, a bench warrant will be issued, if it’s civil matter you are foreclosed or cost is levied and all that, maybe there should be ways of getting people not to obey all these little, little rules. That’s the problem they have.’

6.2.1 Mandatory ADR

On the other hand, court referral, which is viewed as mandatory ADR, was also raised by most of the respondents in the finding. They pointed out that mandating party to ‘ADR takes away the party autonomy in ADR.’ Additionally, the parties reveal that in relation to the Nigerian scenario that the court should not refer matters to ADR because if a judge refers the case to ADR and the party goes back to court and says ‘we did not resolve.’ The judge might not be happy because his dockets are filled up.

To buttress the point above, statements from two different groups indicates as follows:

Party A - that at first she was not happy and felt pressured coming here, however, I can’t say no to my lord, because I do not want my case to be affected if I say no that I am not coming here. I decided to go and try it, and I’m happy with the outcome. I am pleased with the way my matter has been handled.

On the contrary, Party B opined, ‘ her case was court-referred.’

And she agreed with the judge because nothing has been achieved since it was in court, so I was open to trying something else. So I did not feel pressured at all.

Taking into account the divergent opinions on the challenges mentioned above, though it has its advantages. However, it begs the question is the judge the right person to refer cases to both the ESMDC and LMDC? Do they need to isolate the judges?

Though the above-mentioned theme has its advantages, however, if adequate attention is not giving to the highlighted challenges, then it may obstruct the positive impact of the LMDC practice or scheme on the ESMDC in the sense that parties may begin to deliberately obstruct or delay the mediation session all in the bid for their case to be returned to the court.

Awareness, Funding, Short-Staffed, Training and Infrastructure

From the findings and quantitative data analysed in this study not many people patronize the ESMDC especially through the Walk-In method. This is because parties do not know much about ADR and also people in the rural communities do not know that it exists partly and even if they know, some of them do not yet understand the ADR processes.¹⁰⁵⁴ It is essential to point out that the ESMDC at the high court premises

¹⁰⁵⁴ Validating the above position, **Party D** pointed out that the ‘ESMDC is in dire need of more space, rooms as he could overhear the other party during his mediation session.’

Conversely, **Arbitrator 1** revealed that ‘the parties on their own can also walk-in to the MDC and seek for a initiation/ renovation/ renegotiation of their matter. But you know in practice it is not the way it is not very easy to see parties walk-in on their own. More often than not, is not all the cases that resolve cases referred to the courthouse by the judges and I think part of the problem why parties do not voluntarily take their matters to the MDC is because of the limited understanding of the ADR process which is made up of mediation, arbitration, conciliation.’

at Independence layout, which is in the city unlike LMDC, which currently has two offices, is located at the very central locations on the Island and Mainland of Lagos State. Though the ESMDC embarks on campaign in the cities but due to the lack of funding is still not enough to cover all streets.

Apart from awareness, the issue of training, hiring more staffs and getting a bigger building was pointed out as challenges facing the scheme.

To validate the above earlier point made, **Director 1** confirmed ‘that they had the major pieces of training at the end of January / February and employed faculties of trainers from Lagos to help reduce the caseload during the settlement week.’

Equally, **Mediator 3** ESMDC opines,

‘Due to the lack of rooms, you can overhear parties discussing which is not entirely confidential anymore. We had to use the facilities of the courts just for a day, and after that day we had to make due by converting some of our office spaces to mediation rooms is one of the things that have been hampering our progress.’

The above statement embodies the view that if ESMDC is well financed then they will get a bigger building, they will also be located in Courts premises in the rural areas, they will also engage in massive campaign, they will have more patronage of the walk-in client and recalcitrant parties will not forestall the ADR process in a bid to get back to court. In essence, the percentile value of cases that came before the settlement week is minimal. More so, that training and space is a contributing factor to the lack of confidentiality and this can be seen from both schemes. The researcher argues that like the LMDC the ESMDC needs some grants to assist them, the focal point here is that it is in the interest of both states for its government to maintain the MDC schemes as it reduces the dockets of the court, which in turn enhances access to justice for their citizenry.

The sentiment above signifies that if they are well funded then the issue of awareness will not be a problem. Thus in the grand scheme of things, one of the major challenges facing the ESMDC is funding, which is in pari pesu with awareness campaign.¹⁰⁵⁵ Hence, if there are no funds then the awareness campaigns cannot go on and this will significantly hinder the growth process of the ESMDC to reach out and sensitize to the general public on the benefits of approaching the ESMDC. However, these challenges could be seen at the

¹⁰⁵⁵ Although during my intern at the ESMDC, the researcher observed that the Client relation’s officer is subsumed within the business development and advocacy of the ESMDC. It is their job to go out and search for matters from the organisation, agencies from the institution. The public in general that has disputes resolutions concerns then it is their job to go to them, to educate them and to advocate the objectives of the ESMDC.

By and large, the client relation’s officer has diaries to help them remember dates given to the parties for their meeting, and these would be passed on to their members that are on leave who share the case files amongst members not on leave. For these reasons, I believe they have an understanding policy mutually at the ESMDC. Hence, it is fair to say that this department’s role in advocating for people to employ the services of the ESMDC is a potent advantage that contributes to the effectiveness of the ADR processes through the ESMDC though from the findings is still not enough.

LMDC findings and this has started manifesting or beginning to reveal itself at the ESMDC. Most of the respondents in this finding identified the aforementioned topics, as a challenge facing the ESMDC practice.

6.2.3 Lawyers not embracing ADR: A Drop in Revenue (ADR)

Most of the respondents have pointed out that the lawyers not embracing ADR is a considerable challenge facing the ESMDC; this was recurrent in the LMDC findings. It clearly stated that they ‘let their ego get in their way thinking they are in court and they will want to win at all cost.’ Consequently, it signifies that the lawyers are yet to embrace ADR. Some of the reasons given by the respondents are that the ‘lawyers are afraid that the parties will become self-reliant and they will stop employing their services.’

In contrast, in the LMDC findings, the lawyers in Lagos state are beginning to accept ADR gradually. However, the lawyers in Enugu are yet to get to this stage; they believe that the ADR will hinder them from making money. Hence, they call it ‘A drop in their revenue,’ so they use all sort of tactics to frustrate the parties settling their dispute in order to proceed back to court. It is essential to point out that the Enugu state is the only functional MDC in the Eastern part of the Federation because the Anambra Multi-Door Courthouse (AMDC) was shut down due to the fact that people prefer going to courts.

The sentiments revealed by the above theme reveals that lawyers have a very important role to play in reinforcing the decisions of their clients to adopting ADR as an efficient and beneficial way of resolving disputes. However, the need for lawyers and parties to embrace ADR is crucial and the only way disputants can embrace ADR is for their lawyers to advocate for it. This finding has revealed that most lawyers would prefer several years of torments, adjournments and frivolities in Court than encourage a client to give in to mediation or ADR in resolving a dispute.

6.2.4 SUMMARY OF FINDINGS AND CONCLUSIONS

Within the remit of law and the Multi-Door Courthouse Concept, the ADR process has now become intertwined. Thus it has been employed to enhance access to justice for its citizenry. As a result, different MDC has been established in Nigeria, the first amongst them was LMDC and due to its success stories in

relation to the speedy dispensation of justice. Various states in the Federation decided to replicate this scheme. One of such States includes Enugu State, which is located in the Eastern part of Nigeria.

Consequently, the qualitative findings have provided detailed first-hand experience, which has been classified under the advantages of using the ESMDC. Furthermore, challenges facing the ESMDC by various categories in a bid to fully comprehend the impact of the Lagos Multi-Door Courthouse on other states to be precise ESMDC. Thus the next chapter will scrutinize the scope of issues covered herein. These findings have been put forward to determine the impact of the LMDC practice; which is as follows:

- i) A recurrent theme amongst the participants was the impact of the settlement week on the justice system in Enugu State in terms of reduction of the caseloads, cost-effective and user-friendly solutions to both the litigants and disputants.
- ii) Another popular view in all categories was the use of criminal proceedings at the ESMDC through the restorative justice door.
- iii) Furthermore, another finding, especially amongst the focus group is the zero-sum payment at the ESMDC to dispense matters during the settlement week. Additionally, most of the participants revealed the cost comparison between going straight to the ESMDC instead of litigation and cost of parties walking in on their own, legal-representation, cost saved from Adjournment in litigation. This is the first finding to bring the aforementioned themes to the forefront of knowledge.
- iv) It was found in this finding that ESMDC scope of matters covered are limited thus does not include capital offences, election petitions and divorce.
- v) Also, the findings revealed the flexibility and party autonomy- is such that parties who are unable to attend the mediation session can access the session virtually.
- vi) Another new finding was revealed by the directors, mediators and case managers; on the distinctions and similarities between the ESMDC and LMDC.
- vii) Additionally, amongst the mediators and the researcher, cultural nuance was discovered as one of the attributes that aid in the settlement of disputes.
- viii) Another prominent amongst all participants was the use of ADR processes as a peaceful tool.
- ix) Lawyers not embracing ADR were identified by all the participants as one of the significant challenges facing the growth of LMDC. The findings reveal that the need to provide incentives for lawyers to embrace this process is crucial.
- x) Finding in all the categories establishes that Party autonomy and flexibility of the ADR process leads to a win-win for the parties in a dispute.

- xi) Another recurring theme amongst the categories was the impact of speed and time.
- xii) Another finding, especially amongst lawyers, mediators, case managers and parties, is the interplay between ego/apology has to play in dispute resolution.
- xiii) Another hindrance or challenges to the settlement of disputes was pointed out by amongst all participants, which are sanctioning of the parties, awareness and enforceability of the terms of agreement (TOA).
- xiv) The findings reveal that parties are worried about the confidentiality of the mediation process at the LMDC.
- xv) The Pre-arbitral colonial method of settling disputes was a recurring theme in all the categories. This is the first study to provide an insight into whether the ESMDC has replicated the pre-arbitral colonial method of settling disputes.
- xvi) The findings also revealed that the rating the performance of LMDC in dispute resolution is to provide an insight into the workings of the ESMDC.
- xviii) The findings also identified the issue of mandatory ADR and a lack or loss of confidence in the judiciary which is one aspect of hindrance to access to justice because parties are not sure or fully confident about the decision they are getting, is a just one or not. The findings also raised a pertinent question if whether the ADR judge is the best person to recommend that people go to ADR?
- xix) Funding is one of the biggest challenges facing ESMDC. If they have enough money, the issue of employing more staff, space, the issue of increasing the scope of areas covered during awareness will increase the patronization of ESMDC through the walk-in method.

QUANTITATIVE ANALYSIS ON ESMDC

It was impossible to acquire any structured historical data from the ESMDC. This is largely because they are relatively new, they opened their doors in September 2018, and as such not much has been recorded. However, in response to the questionnaire designed and submitted by the researcher, the ESMDC Data Officer was able to give different data and insight regarding the operation and performance of the organization till date.

The response indicated that the ESMDC has 34 trained Mediators and 10 Arbitrators. As at 13/11/2019, the ESMDC received a total number of 392 court-referred cases and 173 were walk-in cases, totaling 565 filed

cased till date. A total number of 333 cases were mediated, out of which 129 (39%) were settled, 32 (9%) were not settled or stalled while 8 (2%) were discontinued or withdrawn. It is safe to say that mediation has been identified as the main process of conflict resolution adopted by ESMDC, following the LMDC footsteps. The researcher observed that it appears that the ESMDC tends to give disputants the freedom to choose from various conflict resolution processes available, and the disputants inclined towards mediation, no single case has been resolved through arbitration since inception though ESMDC has developed Arbitration capabilities.

B Enugu State Settlement Week (ESSW) Programme 2019 – Statistical Details

ESSW Program 2019 and obtained first-hand data of all the activities. The granular level information was tabulated and analyzed for better visualization in the following charts and tables.

Table 2 below shows that 321 cases were recorded during the settlement week and 126 (39%) which the highest came from the Magistrate court, followed by 105 (33%) walk-in and 89 (28%) from the High Court. It is worth mentioning that out of eleven case types received, 47 (37%) were criminal cases from the magistrate court referrals. The high number of walk-in cases also indicated the effectiveness and trust that disputants have on the process. The total number received within settlement week is more than three (3) quarters of all the cases received within one year of the start of the ESMDC. This is an excellent testament to what can be achieved in the nearest future, and all down to the effectiveness and impact of the Lagos Multi-Door Court.

ESSW PROGRAMME 2019 STATISTICAL DETAILS
FIGURE 1: PERCENTAGE OF MEDIATED/SETTLED CASES

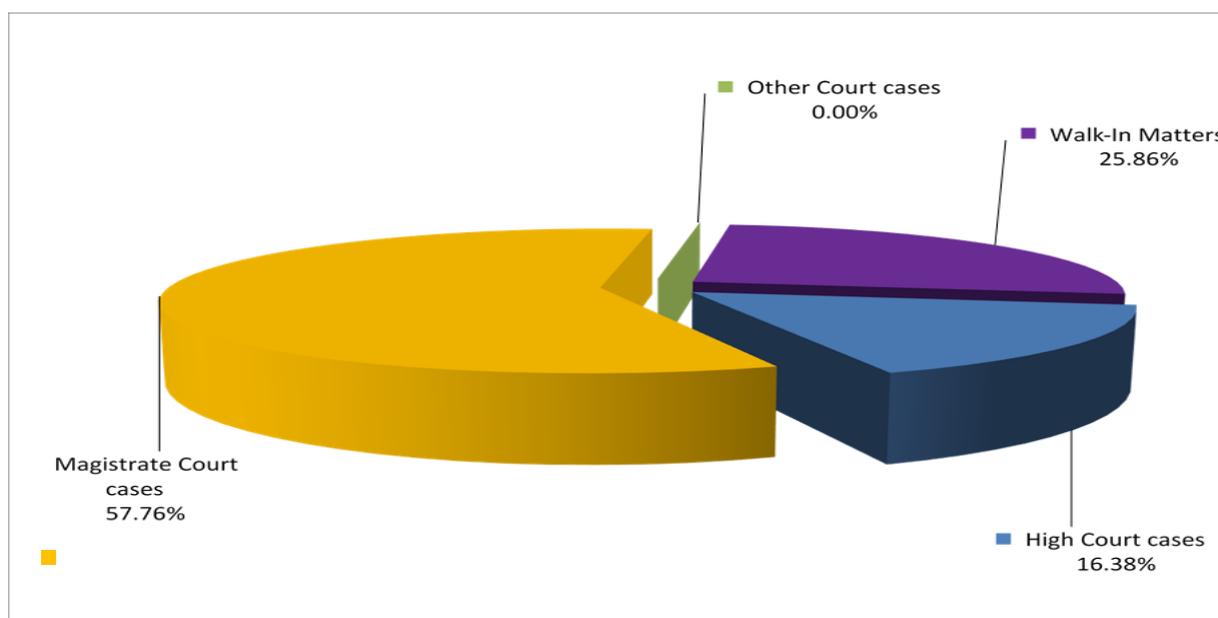


TABLE 3: ESSW SUMMARY OF CASE TYPOLOGY

CASE TYPE	HIGH COURT	MAGISTRATE COURT	OTHERCOURT (CUSTOMARY COURT)	WALK-IN	TOTAL
Debt Recovery	2	2	0	33	37
Family	15	0	1	10	26
Land	9	0	0	2	11
Tenancy	2	41	0	15	58
Civil	21	20	0	29	70
Property	2	0	0	1	3
Criminal	0	47	0	2	49
Contract	23	13	0	9	45
Labour	0	0	0	2	2
Administration of Estate	11	0	0	2	13
Tort	4	3	0	0	7
Total	89	126	1	105	321

FIGURE 2: HIGH COURT CASE TYPE DEMOGRAPHY

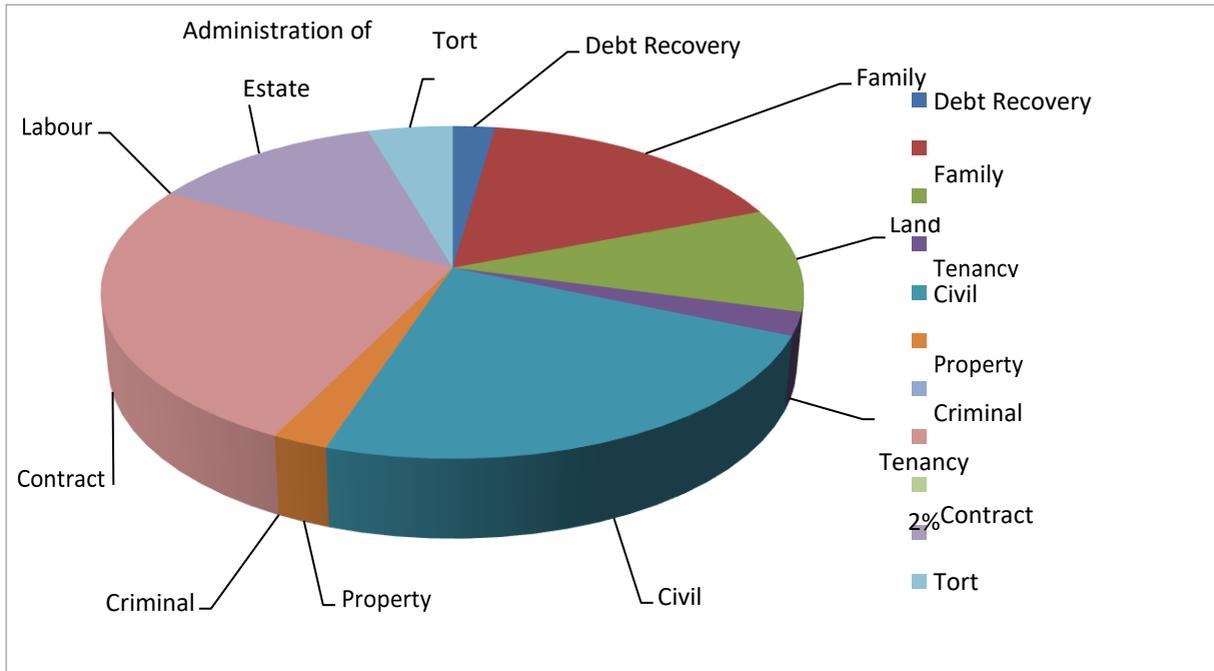


FIGURE 3: MAGISTRATE COURT CASE TYPE DEMOGRAPHY

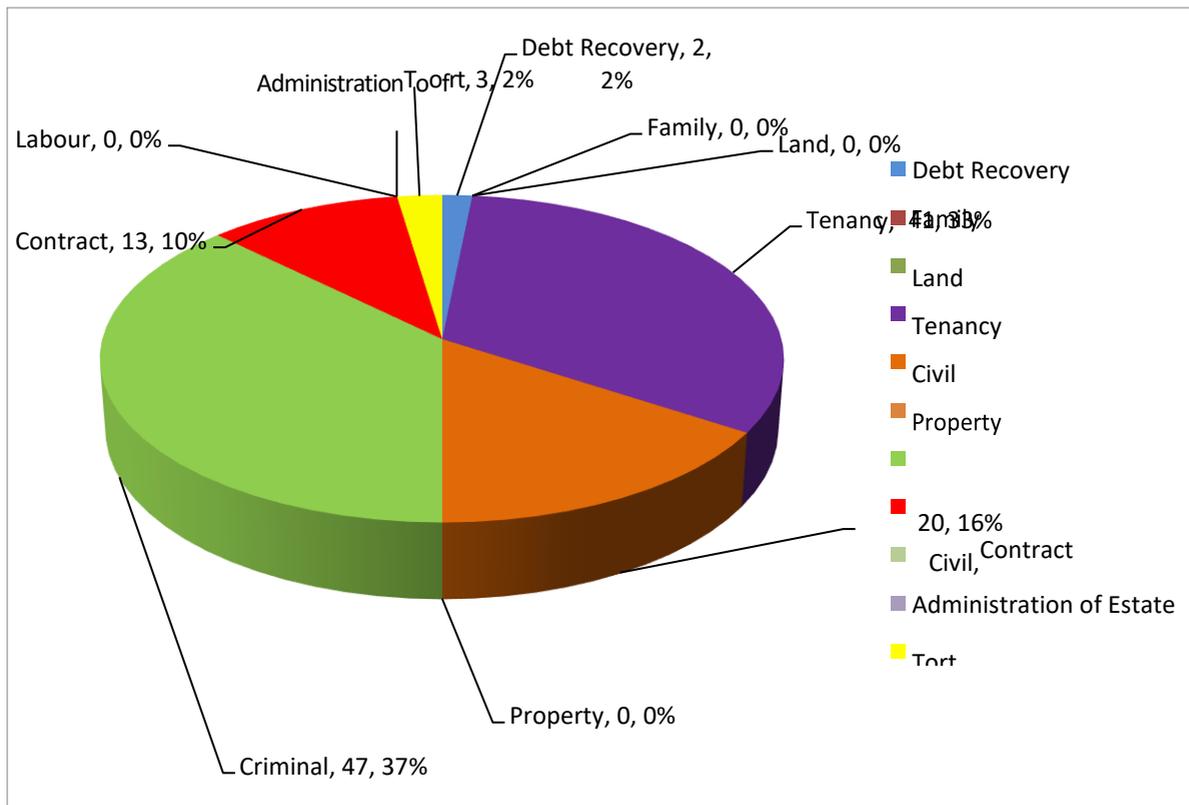


FIGURE 4: CASE TYPE DEMOGRAPHY FOR WALK-IN MATTERS

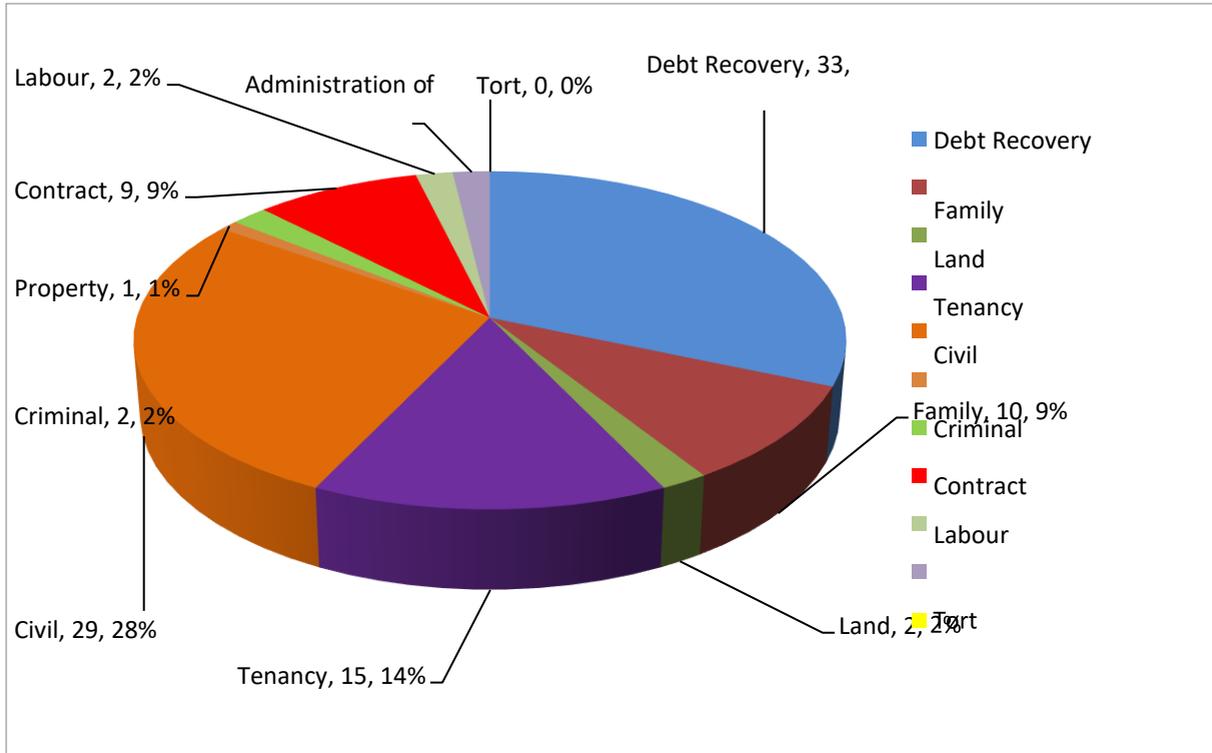


FIGURE 5: HIGH COURT MEDIATED/SETTLED CASES FOR ESSW 2019

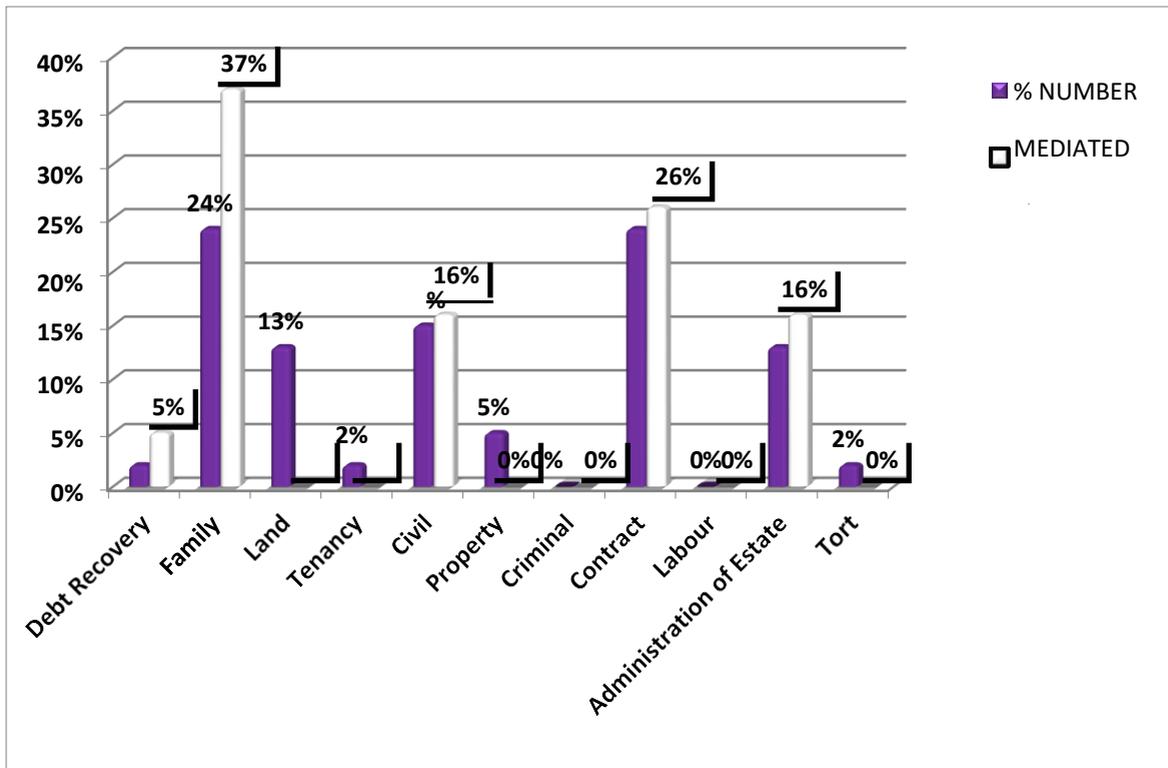


FIGURE 6: MAGISTRATE COURT MEDIATED/SETTLED CASES FOR ESSW 2019

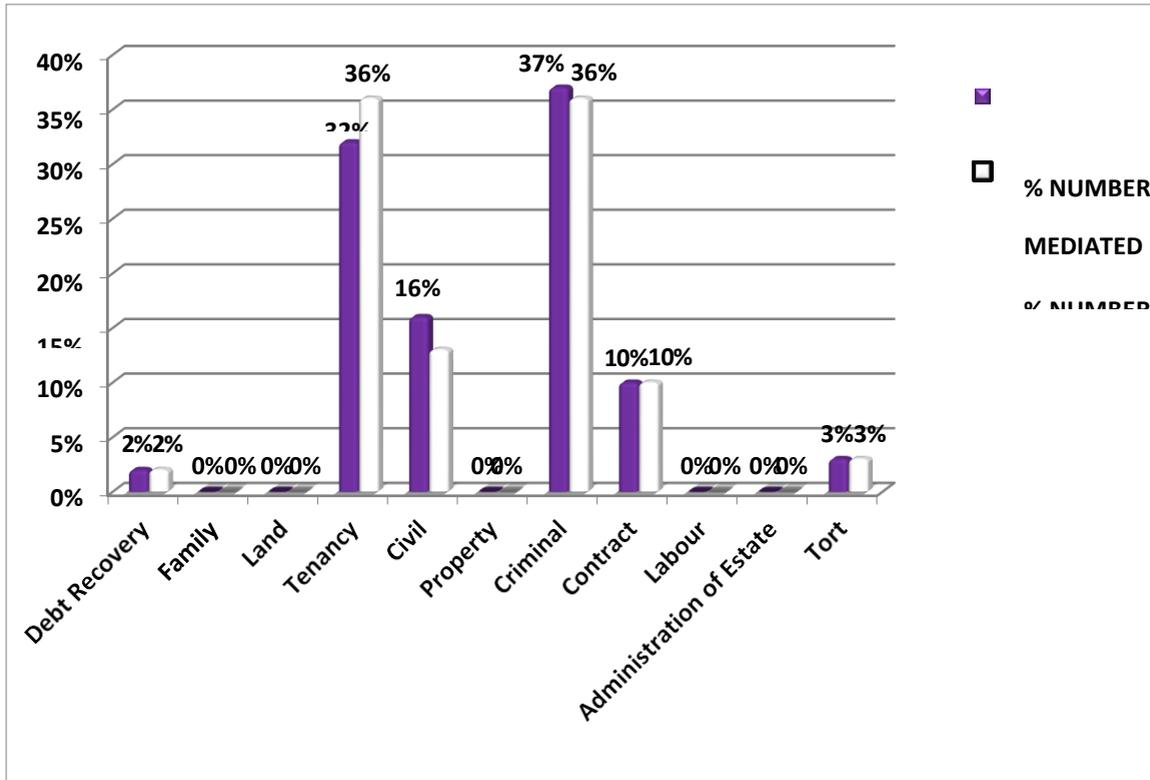


FIGURE 7: WALK-IN MEDIATED/SETTLED MATTERS FOR ESSW 2019

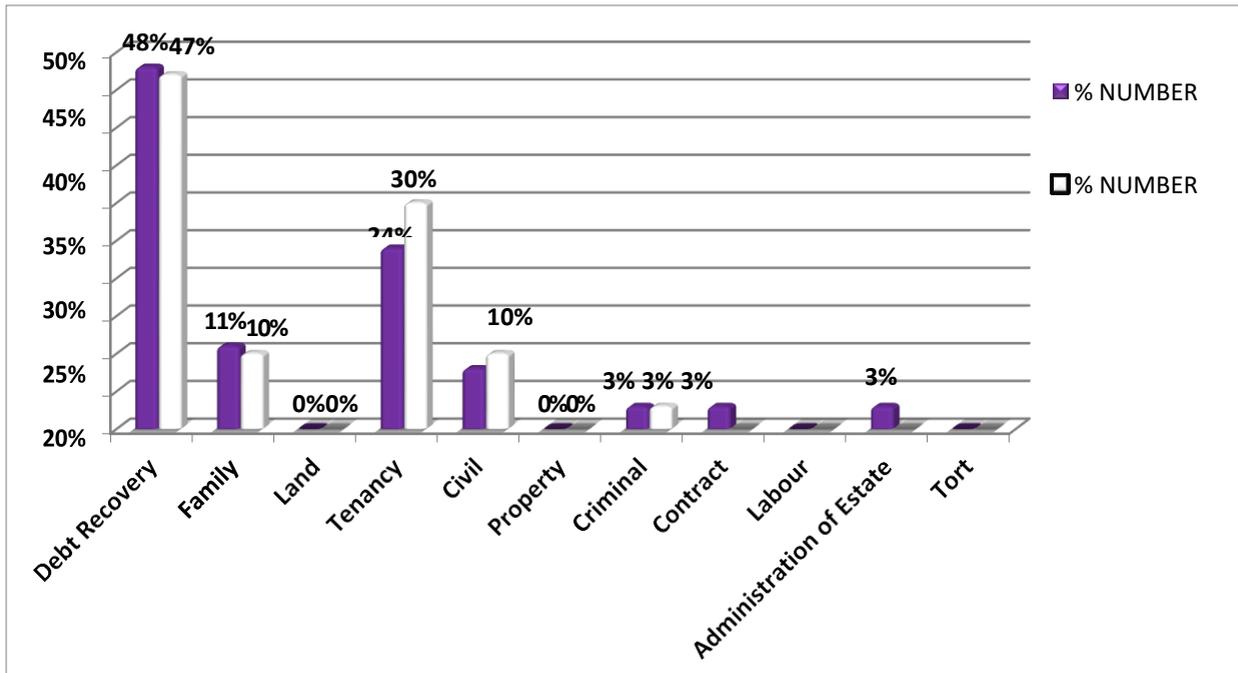


TABLE 4: SUMMARY OF CASE TYPOLOGY FOR ESSW 2019 CASES

S/N	CASE TYPE	TOTAL NUMBER MEDIATED	% NUMBER MEDIATED	NUMBR FULLY SETTLED	%NUMBER SETTLED
	Debt Recovery	21	12%	16	14%
	Family	15	9%	10	9%
	Land	6	4%	0	0%
	Tenancy	39	22%	33	28%
	Civil	24	14%	15	13%
	Property	2	1%	0	0%
	Criminal	35	20%	25	21%
	Contract	21	12%	12	10%
	Labour	0	0%	0	0%
	Administration of Estate	7	4%	3	3%
	Tort	4	2%	2	2%
	TOTAL	174		116	

FIGURE 8: PERCENTAGE OF SETTLED CASES FOR ESSW 2019

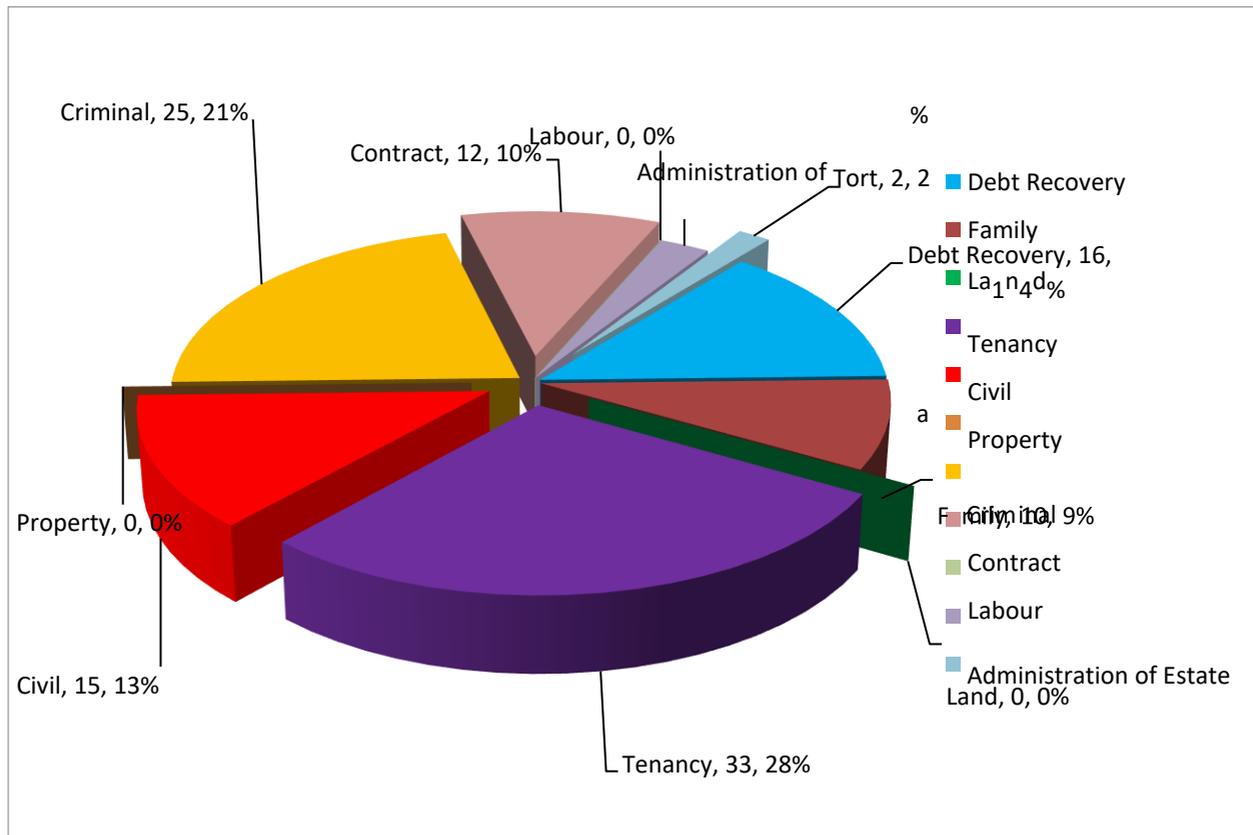


FIGURE 9: ESSW 2019 MEDIATED/SETTLED CASES

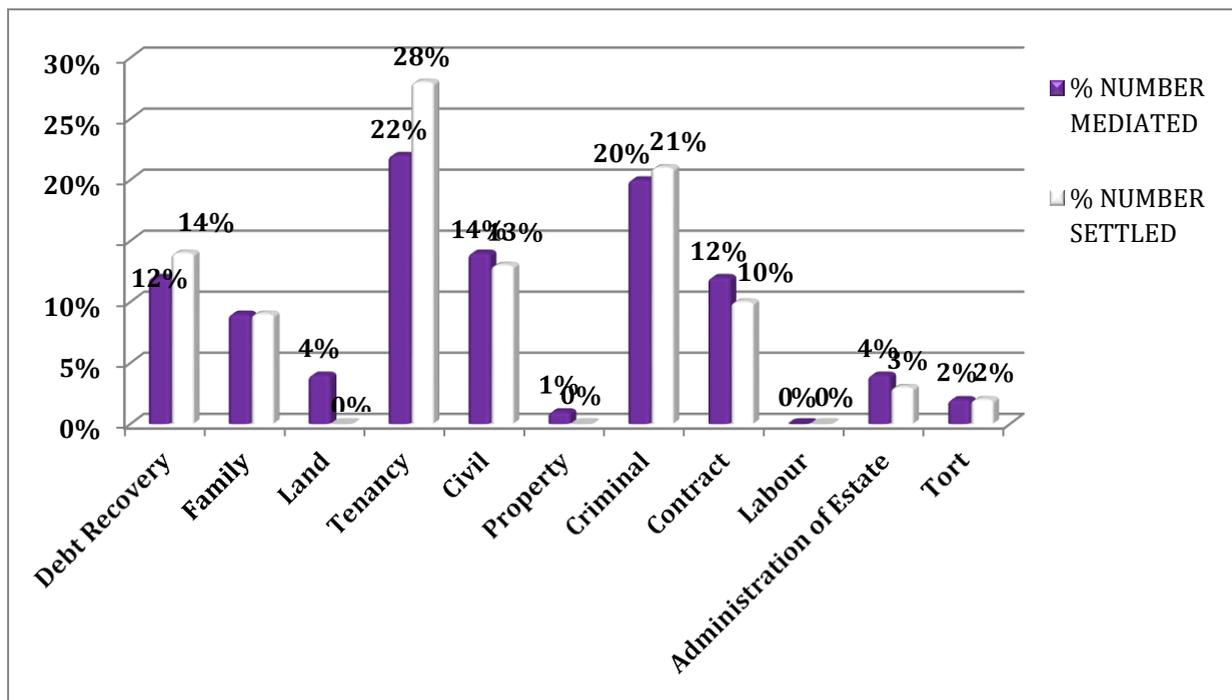


Table 3 above show that out of the 174 cases that were mediated during the settlement week, 116 (67%) were settled. This also goes to support the effectiveness of the system, which will only increase the continued reliability and trust the populace will have in the Multi-Door Court System going forward.

Figure 10 and 11 shows a more granular analysis of percentages and numbers mediated versus settled by case types. Tenancy conflict came at the top with 22% of settled cases from 28% that were mediated. This is followed by criminal case type at 21% mediated and 20% were settled.

6.2.6 CONCLUSION

These qualitative findings, which are almost similar to that of the LMDC, have firmly established the impact of the LMDC on the Enugu state. In the grand scheme of things, MDC is an Institution of its own. However, it is a way to promote efficacy by the courts akin to sending cases and litigants/ disputants to the right door that best suit the settlement of their disputes. Thus these findings have demonstrated for the first time, the keenness of the African continent in particular Nigeria to embrace definite steps towards the reformation of their justice system by adopting and infusing the western court-connected ADR processes into their unique African method of dispute resolution.

Against this backdrop, this finding has highlighted that the infusion, to some extent, has enhanced access to justice for the two states used in this study. However, there are challenges or limitations if not looked into, would impede the effectiveness of both schemes.

CHAPTER SEVEN: CONCLUSION AND RECOMMENDATIONS

7.1 GENERAL SUMMARY OF RESEARCH ARGUMENTS / FINDINGS

The research has shown that the LMDC was conceived out of the urgent need to reduce litigation burden of the court and create a more civil and conducive atmosphere where legitimate disputes can be expeditiously and adequately dealt with. The LMDC has proven to be more dynamic and reliable over the years.

Furthermore, users have successfully utilized its platform to permanently resolve a significant chunk of the grievances arising from legal transactions, otherwise would have been unnecessarily prolonged and frustrated by litigation in a regular court. However, as shown, in the previous chapter, to sustain a viable and effective LMDC, the government needs to do more by way of funding, which is crucial in ensuring vibrant and well-articulated awareness campaigns as revealed by the findings.

The findings of the study have shown that the LMDC must be structured in such a way to allow it, through its council board, make well informed corporate and financial decisions, aimed at delivering financial value that is commensurate with the professional services rendered to users. As it will further assure improved service delivery, bolster and encourage more lawyers and non-lawyers to venture into ADR in a full-time professional capacity, guarantee reasonable financial remuneration for services rendered and build capacity to handle more commercial matters.

Nonetheless, it is argued that implementing a relatively structured financial remuneration for professionals and mediators would instead advance the quality of services, reinforce more significant commitment on the part of professionals and mediators; reposition it on the right part as a dependable alternative to the adversarial system where users can boldly take advantage of a faster approach to resolving transactional disputes. The researcher argues that the Multi-Door Courthouse (MDC) will remain cheaper and a more dependable approach considering the fast nature of resolving disputes, devoid of the delays and frustrations associated with the adversarial system as shown in the course of this study.

In the findings the respondents have indicated that the adversarial system is inappropriate in most cases. However, it acknowledges that the adversarial system and alternative system need each other to survive in order to function and deliver appropriately.

Significance of the Findings

In the course of this study, it has been shown that the relevant laws regulating the practices and procedures of the MDC in several states of the federation of Nigeria (with particular reference to the ESMDC) were deliberately and adequately developed, structured and reviewed to significantly conform to the LMDC model. This decision to replicate the LMDC model in several states of the Federation is inspired by the significant successes recorded by the LMDC as the forerunner of Multi-Door Courthouses (MDC) in Nigeria. The LMDC has been identified as an inspiration to all other MDC in Nigeria. This emulation of approaches, practices and procedures with slight modification has further advanced access to justice, especially in ESMDC.

In summary, this thesis has brought to the forefront of knowledge, a new debate on the effectiveness of the LMDC after eight years. It has also revealed the humble beginnings of ESMDC and the impact of LMDC in serving as a role model to other states who are yet to replicate the scheme, and especially in other African / other Sub-Saharan countries where there is an urgent need to enhance access to justice.

However, it is not enough to only model the MDC laws after the LMDC, the relevant laws must give room for coordinated and adequate cooperation among the MDC states to provide further continued research, special training, and proper mentoring from the more advanced states to the less advanced states. This will serve as a fundamental tool to strengthen the orientations and principles the MDC is established.

7.1.2 Areas for Future Research

The birth of the MDC in Nigeria was borne out of delay, frustration and exorbitant cost associated with the adversarial system of settling disputes. The need to sustain the bedrock upon which it was established is instructive; the demand for a sustainable change or tweak on the legal framework to meet recalcitrant parties' issues is legitimate.

By and large, the MDC should be structured in such a way to tackle the issues associated with the untenable attitude of recalcitrant parties or users whose cases were mostly court-referred. Who would in connection with their lawyer come up with all sorts of tactics to boycott mediation session in a bid to stalling the mediation process capitalising on the apparent reason that the judge will not sanction them. The relevant laws should be structured so that there should be legal consequences for such attitudes of recalcitrant parties and users to compel commitment and active participation during the mediation sessions for optimal result in oriented MDC outcomes.

Additionally, in view of the recent happenings at the LMDC, (Covid-19) and its touching down by hoodlums during the ENDSARS protest which brought about the online services, it is imperative for future research to investigate on how the end users respond to logistics and challenges of using the remote services.

7.1.3 RECOMMENDATION

In view of the above findings, the following recommendations are proposed: -

1) The Need To Start Sanctioning Parties: The findings on Nigerian culture have prompted this recommendation. Nigeria culture in terms of sanctioning recalcitrant parties is one of the major challenges facing the ESMDC, which has also been revealed in both the reviewed literatures and in the LMDC findings, as a major challenge facing the MDC. It is regrettable that a party or parties can decide not to come for the mediation session or even default after the enforcement, however an ADR Judge can only summon a defaulting party or parties to show cause why they do not want to continue with the process but cannot sanction or do anything about a

recalcitrant party who refuses appending his signature or withdraws on the Terms of Settlement (TOS), which is the final agreement after mediation. It is pathetic that there is nothing under the law for now that the ADR Judge or Magistrate can do. It was revealed that in order to enhance the standard or ensure that both schemes stay on the path of effectiveness, that they should maintain a stricter compliance of party attendance. Thus, mediation sessions should be made compulsory for parties to attend. So that parties that do not show up when it is time for compliance or after enforcement has taken place thereby forcing the other party to go back to courts should be cost sanctioned. As a result of this, the researcher recommends the sum of 40,000 Naira (equivalent to £80.40). This will serve as a deterrent to future recalcitrant users and parties from attempting to derail the courts or waste the precious time of the courts.

In the same vein, these obvious challenges have been pointed out in Chapter Six and have noted that for the sanctions to be implemented, it has to come from the courts because the LMDC does not have such powers to enforce laws or sanctions. Therefore, sanctioning these parties would achieve the objective of the MDC particularly in enhancing its effectiveness and commitment on the part of parties or potential users.

2) *The Need to Incentivise Lawyers:* Some of the respondents in different categories specifically Magistrates, Mediators and Case Managers have revealed that lawyers need incentives that would make them embrace ADR and prompt them to send matters to the MDC. Validating the above viewpoint, **Magistrate 1** revealed ‘one of the criteria of becoming a judge in Nigeria.’¹⁰⁵⁶

¹⁰⁵⁶ ‘I am sorry I will deviate a bit like some of my colleagues do not like sending matters to ADR because it does not add up to their cases and eventually if you want to be elevated as to become a Judge. It would help if you had cases, and they must be contested cases. Not the content because they do not have time to go through it, and they do not have time to start reading what you have written, so all I know is that these three (3) cases that I have so far that has been settled there at the ESMDC. If I had done it on my own through the courts is a plus for me too but being settled at the MDC is not a plus.’ Non contested cases are the cases that you send to the MDC so when someone looks at it and says no I am going to write a sound judgement on this and is going to be a plus for me, I send to ADR, and they come out victorious. If it can be added to cases that would be used to evaluate me- mostly when it is referred by the court, I was able to go through the cases, the issues before the court and I found out that these are issues that can be settled amicably at the MDC. If I should get a plus for it people would, willing send. But when you are doing it for the parties and those at the MDC they are the ones that get a pat at the back for it, you do not get it, magistrates do not get it for sending the matters so when they know they are not getting it, they will decide why should I? Let me sit down. I have been doing it all along. So let me continue because I tell you the

The respondents mentioned above arrived at one thing, and that is to include non-contentious cases as a criterion in becoming a SAN or a Judge. Their line of thinking resonates with the researcher; however, the researcher believes that lawyers complicate issues because they are better-equipped or trained to advise clients without any incentives. After all, they have an ethical duty to their clients at all times. More so, the clients look up to the lawyers to guide them; if someone has a problem, the first thing he or she does is to call a lawyer for advice on the best legal option available in resolving the problem. Thus, the lawyers owe a fiduciary duty to their clients and more to their profession to advise clients accordingly.

However, since the respondents have pointed out that Lawyers and Magistrates do not get selected or will not be considered for the rank of a SAN or Judge, then the law or the criteria should be modified to suit the Nigerian law. In fact, the validation of the process would still come from the top. In other words, when the well-respected lawyers are going for it or embracing mediation or other alternative means of settling disputes. Then the Nigeria Bar Association (NBA) will also go for it, that is a call for change-for non-contentious matters to be enacted into the relevant laws as part of the criteria of becoming a SAN or Judge. How then can this be achieved?

The line of thinking behind this is that if people that are well-positioned or big law firms start promoting these incentives, the top lawyers will irrigate the base and it becomes trendy. The researcher is of the opinion that the Nigeria Bar Association (NBA) will lend their voice, which will be enacted as a criterion by the government. However, this is not like going through the normal process of calculating the number of contentious cases they have settled before appointing them as part of the judiciary amongst others, instead; go through an ADR Process. For example, the type of cases the lawyers or magistrates could have handled to become a SAN or a Judge. Can these incentives be a huge encouragement to make lawyers to soft-peddle and accept the ADR scheme? When the ADR Scheme becomes one of the criteria for attaining the topflight positions of a SAN or Judge, considered to form part of the recommendations sent to the relevant bodies, it will go a long way to encourage the Magistrate to send or refer their matters, and then the lawyers would be more open to

cases that have been so far settled if I had gone on with them I would have gotten a judgement. When I am done, I need to add to my volume of cases because when you compile your cases, they look at volume and thus this can elevate me to a judge.

it. The relevant laws should be restructured so that the MDC is recognised and lawyers who engage in the process professionally and have distinguished themselves can boldly present their accomplishments as a criterion to attaining the highest pedestal of the legal profession.

This finding is an eye-opener on how both schemes can overcome the challenges of most lawyers not promoting ADR. However, it is essential to point out that the MDC has embarked on mediation advocacy for lawyers to know more about ADR;¹⁰⁵⁷ regrettably, this challenge is still prevalent.

In sum, to set up incentives like making the non-contentious cases - which ADR falls under to be one of the criteria or an incentive for promoting Lawyers and Magistrates to Judges and SAN.¹⁰⁵⁸ In other words, by including ADR matters, which are classified as non-contentious matters by so doing, both the Magistrates most especially lawyers, will start championing ADR by referring more clients or cases to ADR. This will accelerate the number of disputes settled in LMDC, and it will invariably reduce the dockets of the courts drastically.

3) ***Lack of Confidence in the Judiciary in Mandating Parties to ADR:*** The fundamental obligation of the judiciary is to interpret the law with the primary objective to ensure that justice is done or seen to have been done in every single matter brought before it.

In the course of dispensing justice, the judiciary must assume the position of an impartial umpire, however, it is regrettable that this is not always the case, as most parties or users under the court-referred matters to ADR are uncertain of getting

¹⁰⁵⁷ It is effort thrown into creating awareness and training lawyers on what to do in mediation fora. Many lawyers are quite ignorant of what happens in a proper formal mediation environment. They do not know what to expect, they have not had exposure to that type of dispute resolution, and do not know how to identify their relevance within that space. Hence raises prevalent questions like where does that place a lawyer? Does he get paid his full fees? Or does he get paid half the fees? How does the lawyer structure his practice around this sort of eventualities? Indeed, all these are learning competencies that lawyers must embrace to feel comfortable and useful and run their mediation representation profitably? So those are all the issues that are addressed during mediation advocacy training. Cited in Chinwe Umegbolu, *Episode 12: Enhancing Access to Justice in Enugu through the ESMDC-Under the leadership of Mrs Caroline Etuk* (Edublogs 2021) accessed 20th July 2021

¹⁰⁵⁸ Senior Advocate of Nigeria (SAN) is a rank awarded to practitioners or academia that have distinguished themselves in practice and are considered the best in advocacy.

justice from the judicial system especially when their matters referred to the ADR fails. It has been argued that when the matters recommended by the judges return to the ADR judges, bias subconsciously play out on the part of the judges especially when they have full details of the reasons why the matter failed and the roles the parties played at the MDC that resulted in the matter failing; hence, parties no longer express confidence in the judicial system, as they are likely to be victimised for their respective roles and actions which is subjected to the judges interpretation, understanding and decision. As a result, the researcher is of the opinion that when court-referred matters to ADR fails, the matters should not be returned to the same ADR judge that made the recommendation to ADR. It should be returned to the judiciary and probably to another ADR judge without giving reasons why the matter failed. All that should be noted in the case file to prevent prejudice is ‘why mediation is not successful’ and parties should be prohibited from giving any detail of what transpired at the ADR during the course of rehearing the matter by the new ADR judge. The researcher argues that this will go a long way in reassuring the parties of the possibilities of getting justice from the system, as well as reinforcing the need for the judges to impartially, judiciously and meticulously dispense justice in the respective matter or matters.

4) *High Perception Of Corruption:* In addition to other notable disadvantages of the adversarial system, this study has observed further that one of the significant challenge facing the Judicial process is the perception of corruption. It has been argued that the Election Petition Tribunal process is set up by the Government of the Federation to administer justice in cases or disputes relating to election into a political office are one area that is marred with prevalent corruption. The entire judicial system has been vehemently criticised for being highly corrupt. Most litigants no longer depend on the judicial process and many have relied in self-help in resolving their respective legal battles. The recent END SARS protest that degenerated into bloodshed and sheer lawlessness, which saw the Lagos High Court and some other courts across the Federation vandalised beyond recognition, is a testament of the people’s displeasure with the judicial system. Regrettably, the LMDC is situated within the Lagos High Court is not spared. Obviously, there is an urgent need to reassure the people that the Court is there to serve them, and they can always depend

on the Court to do considerable justice in their respective matters. However, this will take much work and some time, but it is achievable.

In view of the aforesaid, the researcher would recommend an amendment into some of the relevant laws which will allow for the option of an ADR process for Election Petition and some other sensitive matters that have further indicted the judiciary for corruption, as this would restore some level of confidence on litigants who are sure of a dependable alternative to resolve their disputes. The research has found that ADR through the MDC is free from allegations of prevalent corruption. The ADR set up is such that parties would have to agree or come to an agreement on their own with the help of a mediator, thus free from any external interference. Therefore, the tribunal, being a special court, can rectify such agreements. Consequently, they can do ADR subject to the tribunal's rectification; this will make the work of the tribunal easier, they do not need to be calling for evidence amongst others. Whatever the parties Terms of Agreement (TOA) states, the tribunal can adopt as a consent judgment. This will significantly decongest the courts and create a cordial relationship within the party or between the parties.

5) *The Time Limit For The Court Cases:* Can the judicial system borrow from what MDC does with the timeframe? These findings have revealed that speedy dispensation plays a significant role in mediation at the MDC but the opposite is the case with litigation. Thus, it is argued that setting a timeframe for the dispensation of justice in a particular matter allows for purposefulness and commitment on the part of the courts and litigants alike. The courts should push for sanctions and consequences that will compel compliance with the courts' set rules for a more proactive and speedy adjudication of matters before it. Thus, the timeframe stipulated in both MDC schemes should serve as a guideline in setting up a timeframe for the Nigeria justice system. The researcher advocates for radical revitalisation and reforms of the respective laws in tandem with the courts' enforcement of timeframe. This will restore more confidence in the dispensation of justice.

Flowing from the above, it will be appropriate to state the obvious that in most cases, it takes the High Court (H.C) about 3000 days for parties to process their cases and

obtain judgment; whereas, if the parties take the ADR route, it takes a day or a week, and maximum three (3) months to finalise their respective cases. Evidently, there is something the MDC is doing right that the judiciary can borrow from, mostly if the judges are provided with the necessary tools that they need. For example, there are no transcribers in the courts, the judges have to write everything themselves in longhand, of course, it will take time. In view of the pattern of the court above, it is therefore necessary to ask the following questions: How do you expect the judges to reasonably conclude and give judgment in a particular matter within three (3) months considering their workload and with the current pattern of the court? Does the pattern of running the courts without transcribers and compelling the judges to take down everything on their own not amount to waste of quality and precious time of the court at the expense of justice? Hence, the current pattern of the court amounts to a total waste of the precious time of the court as well as that of the litigants. It is anti-timeframe and would always be counterproductive to the mandate of the court, which is to appropriately, and adequately dispense justice within a reasonable time. This setback in the pattern of the court have seen many litigants end up with appeals on the grounds of injustice, as well as the appeal courts upholding their claims of injustice. What about the litigants that are unable to appeal for either financial reasons or otherwise and are compelled by the system to live with the injustice meted out on them? Further that there should be a shift from the current pattern of the court for a faster dispensation of justice. The laws should make provisions for the inclusion of transcribers and other technological supports that would accelerate the court processes, else it becomes too congested. Thus, it has become necessary that the Government of the Federation, State Government and all other stakeholders in the justice system of the Country push for the promotion, inclusion and establishment of more ADR centres and MDCs across the thirty-six (36) States, including the Federal Capital Territory of the Federation.

Apparently, the reforms of the court patterns through the inclusion of modern patterns of resolving legal issues, patterning the laws to allow for the inclusion of the MDC in more lawful resolutions as well as promoting and establishing more vibrant ADR centres and MDC, would clearly revitalise the judicial system and reposition the Country in a manner that will change Nigeria's ranking in low court reforms globally.

6) *The Need To Provide Disability Accessibility Practice Direction:*

The researcher observed that there is discrimination because of legal barriers posed by non –accessibility. The courts lack the availability of some essential utilities like recorders, sign language interpreters, ramps, lifts, and wheelchairs that would ordinarily give the disabled persons access to justice has been observed. With the courts’ nomenclature and pattern, it is practically impossible for persons with disabilities to have unimpeded access to justice. This has made life too unbearable for the physically challenged persons in Nigeria, with most living in abject poverty and unable to access justice, whether through the regular courts or MDC.

In one breath, with the advent of COVID-19, the use of technology to access justice has heightened; however, this may not be easy to come by as most disabled persons may lack the skill or not be able to access or afford the technology by reason of their special conditions and poverty. Thus, the issue of poverty raises its head, and it raises other problems and other needs, which will be for a future research tool. Clearly, more sensitization from the part of the holders of justice is needed.

Consequently, a solution for a practical way for the government of the Federation to establish a sense of inclusion or belonging by providing infrastructures that incorporate essential utilities like recorders, sign language, interpreters, ramps, lifts, and wheelchairs, for the disabled through the sensitization of the Nigeria Bar Association (NBA), and the needs of persons with disabilities be specifically adequately listed and properly enacted into the relevant laws.

7) *Extend The Scope Of The LMDC To Cover Divorce:* The researcher argues that it is high time the LMDC extends its scope to cover divorce proceedings. Regrettably, under the Nigerian legal jurisprudence, divorce proceedings cannot be settled through ADR, however, this study believes that even where there is domestic violence,¹⁰⁵⁹ the mediators should be adequately trained to employ therapeutic model-of settling a dispute and combine it with the facilitative model. The latter is what they are using at the moment. However, therapeutic model assumes that the parties cannot effectively

¹⁰⁵⁹Aimee Davis, 'Mediating Domestic Cases Involving Domestic Violence: Solution or Setback?' (2007) Cardozo Journal of Conflict Resolution 8

deal with their issues until emotional issues are resolved.¹⁰⁶⁰ It is a model that underpins family mediation as emotional concerns which is central to the success or otherwise. Thus, it makes the model suitable for family mediation,¹⁰⁶¹ because divorce is within the remit of the ADR in certain jurisdictions like England and Wales, which is, where the commonwealth nations including Nigeria copies court reforms.¹⁰⁶² However, the need for more awareness by scholars for the government and judiciary to push for the amendment of Section 15(1) of the Matrimonial Causes¹⁰⁶³ Act is vital.

8) *World Population Increase and Exponential Increase of Population in Nigeria:*

That is one of the critical factors that have negatively impacted the effectiveness of Litigation and, if not adequately managed, would adversely affect the ADR's effectiveness through the LMDC. Though, the MDC has embarked on training lawyers and non-lawyers via conferences and seminars. However, more awareness needs to go into the grassroots campaign. This will provide more insights into what Court - Connected ADR is. More people can initiate their matters without the judges' referral, and this will go a long way to encourage other States of the Federation that are yet to embrace the scheme to take advantage.

For example, in 1955, the Nigerian population was only 41,086,100.¹⁰⁶⁴ However, the current estimated population now is over four times that size, precisely 207,866,456¹⁰⁶⁵ and all the courtrooms and judges have not increased in consonance with the current estimated population. Hence, the population is a significant factor, so no matter how many Multi-Door Courthouse (MDC) that has been established or built, as long as they are not being built in proportion to the increase in population, the overflow in the courthouses will continue to be there. If they want to see cases answered or dealt within a short time, there should be more MDC. Currently, it may not be enough, but it already is a good way to start.

¹⁰⁶⁰ Heitler (n997)

¹⁰⁶¹ Heitler, 'Therapeutic Mediation: An Alternative to Costly Litigation' .

¹⁰⁶² The Association of Multi-Door Courthouse of Nigeria, A Compendium of Articles on Alternative Dispute Resolution (ADR) 7

¹⁰⁶³ Laws of the Federation of Nigeria, Matrimonial causes Act 1990.

¹⁰⁶⁴ Worldometer, 'Nigerian Population' 2020) <<<https://www.worldometers.info/world-population/nigeria> population/> > accessed 4th November .

¹⁰⁶⁵ Ibid.

Given the above, it has become crucial to analyse the number of persons who file cases at the court and the MDC. Most of the current facilities comprising the Court Houses were built by the westerners – colonial masters, who took into proper account the number of the population and cases handled by the courts. Regrettably, only very few additional court houses have been built by the Federal Government of Nigeria and incommensurate with the country’s current population, the number of cases, and the number of Judges designated to attend to the cases; hence, the overflowing of cases coming before the Courts. For example, the Supreme Court has slots of eighteen (18) judges, of whom 4 (four) have retired.

Additionally, with all the political cases going to the Supreme Court, only thirteen (13) or eighteen (18) judges will be deciding the cases, whereas, considering the current realities, the Supreme Court needs nothing less than 36 -56 judges. However, suppose the government decides not to take drastic and proactive measures to rectify these apparent inadequacies. In that case, the population and number of cases before it, and with current realities will overwhelm the courts; the MDC remains a drop in the ocean, however it has served good for the common man. Thus, more MDC in Lagos, both at the High Court and Magistrate Courts and across the Federation is recommended.

9) ***Education -Mass Awareness Advocacy***: It is essential to point out that the LMDC needs to engage in a mass education of the society, for the stakeholders or users to understand why the monetary sanctions should be / are being enforced.

Conversely, the users and potential users need to be educated through awareness campaigns in conferences, radio jingles, and podcasts on the ADR process’s advantages and benefits. This is important because the user’s psyche is still Litigation orientated, thus the need for continuous mass awareness through technology on the benefits and advantages of the Alternatives method of settling disputes is needed.

Additionally, the need to go back to the grassroots like primary schools, secondary schools, trade persons and universities is essential to reorient or reposition their mind-sets or psyche at early stages. Thus, ADR should be a part of the school curriculum not as an elective, but as a compulsory course because it is also available in litigation,

a part of the curriculum in all tertiary schools. What this does is that it creates a balanced story rather than a one-sided story, as it is the case in Nigeria and the United Kingdom.

The first is the university's system or educational system; 93% of education is focused on litigation in the university and law school in Nigeria and most jurisdiction, which means that, basically, only 7% of the teaching is about ADR. This is largely because ADR is not a compulsory course, but elective. Now, what that means is that if students graduate eventually, their first port of call is Litigation. Though, the MDC has embarked on training lawyers and non-lawyers via conferences and seminars, more awareness needs to go into the grassroots campaign. This will provide more insights into what ADR is. More people can initiate their matters without the judges' referral, and this will go a long way to encourage other States of the Federation that are yet to embrace the scheme to take advantage.

10) ***Podcast / Social Media: An Antidote To The Above Mentioned Subject Matter-Bias:*** The answer to the above question is that in life generally, there is bias everywhere especially where someone is not yet familiar with the subject matter – humans tend to either criticise or ignore what they are not familiar with. Realistically, the human mind is such that it takes something that it does not know and shoves it into one category in mind and sometimes this knowledge is inaccurate. Hence, the one that takes away bias beyond every other thing is a personal experience.¹⁰⁶⁶ Consequently, the need to give people the opportunity to experience this new subject matter is through awareness. Furthermore, if more lawyers train to become mediators, they will also create more opportunities to let their expertise be known. More so, awareness campaigns and opportunities whereby traditional leaders, religious leaders, who have a substantial influence in the society can give words of credence and endorse the use of the ADR and MDC platforms, would be a significant step in the right direction. It will go a long way to sensitise the subject matter. This is the

¹⁰⁶⁶ Artika Tyner, 'Unconscious Bias, Implicit Bias, and Micro aggressions: What Can We Do about Them?' (American Bar Association 2019) <<https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2019/july-august/unconscious-bias-implicit-bias-microaggressions-what-can-we-do-about-them/>> accessed 7th December 2020.

enumerated factor that would take away or solve subject matter bias regarding lawyers embracing ADR.

It is essential to point out that social media can be a great tool in advancing the ADR and MDC agenda. It can be adequately and sufficiently utilised to create more awareness on the above subject matter. The researcher started a podcast channel in order to create awareness on ADR, and in just two months of starting and with over five episodes, it has amassed over 100 views. Imagine if an organisation like the MDC should start one with all the contacts it has.

The researcher recommends a Podcast channel because the world is fast becoming a global village. A ten-year-old child can now access the Internet where different advocates would discuss ADR and court-connected ADR. The wordings used will be simple words so that the layman can easily understand and this would be distributed on different social media platforms. However, informal training from home should come first; parents should teach their children about these alternatives too.

11) *Confidentiality of the ADR Process and Funding goes Hand in Hand*: Though the MDC standard is impeccable compared to other mediation centres and courthouses, however, the MDC is short-staffed. Thus, more funding is needed to employ more staff to handle more cases during the settlement week. Additionally, this finding has indicated that the neutrals or mediators visit the locus in quo. Hence, the need for corporations and universities to partner with the MDC even though it is cost-effective for the parties, they still need to raise awareness for those in the hinterlands (rural areas and churches) to know that they are in existence- it is capital intensive. Thus the researcher recommends the need for the LMDC to move to a multifaceted structure with more rooms; thus, the confidentiality of the parties will be better protected.

It is crucial that both schemes need to purchase or get their own transportation for the outreach campaign that they embark on. Thus, the government needs to put the LMDC at the forefront of accessing funding first before other organisations due to the MDC's performance in reducing the courts' dockets of the state.

12) *The Need To Remove The LMDC from The Court Premises:* Though few respondents complained that they would feel better if the LMDC is removed from the Court premises, it scares them. This is because they have been traumatised by the court system's rigidity and the years that their cases lingered in court. Consequently, psychological it affects their emotions, as such affects their decision to use the scheme.

From recent happenings like SARS protest- hoodlums who were pained by the police's injustices through the courts, touched down the courts and LMDC, which is located in the court premises. Hence, old filings, which were not stored in clouds, were destroyed and the government is yet to provide a new venue for the LMDC. Thus, the need to have a cloud-based data storage system is crucial, and in so doing, they can work remotely, especially in the current pandemic. The LMDC should collaborate with the State Government and should partner with reliable companies into IT to avoid future reoccurrence.

13) *Finally, The Researcher Appreciates That ADR Is Already A Westernised Form Of Adjudicating Matters:*

It is a modern trend in the western world to explore the ADR alternative in resolving disputes, but it is not to say that Nigeria should abolish the customary laws or ways of settling disputes in African especially in more rural areas of Nigeria. Mediators should be trained on emotional intelligence in a bid to pick out those cultural nuances and utilise it during the mediation session.

In sum, to facilitate the effectiveness of Court-Connected ADR through the MDC, the MDC should be adequately staffed with exceptionally trained officers who are sufficiently skilled in the management, classification and categorisation of cases appropriately. It has been observed that many matters go to court when they have no business being in court, but should ordinarily be dealt with by ADR, hence, the effectiveness of the case management prowess of the MDC staffing is crucial for the attainment of the MDC goals of a dependable alternative to litigation. It is a case of management concept that can be likened to square pegs in square holes and round pegs in round holes, so when that is done correctly, then the entire justice system benefits. Furthermore, when lawyers come to understand that ADR has not come to take out their source of earning, then it helps them. The researcher is of the opinion

that it will contribute or enhance the effectiveness of the LMDC. Thus, if the above-stated recommendation can be followed or implemented, then the effectiveness of the LMDC practice can be fully attained.

7.2 CONCLUSION

The thesis inductively has argued that the Lagos Multi-Door Courthouse (LMDC) directly impacts other states in Nigeria, particularly the states that have replicated the LMDC. Particular reference may be made to the Enugu State Multi-Door Courthouse (ESMDC). Considering the length of time, the ESMDC has been in existence. It has also been argued that the level of advantages generated or recorded therein demonstrates that the scheme is a success story. Conversely, the thesis has provided concrete evidence of ADR penetration via Criminal law at the LMDC for the first time after eighteen (18) years of existence and ESMDC from the date of inception.

Additionally, the thesis has firmly established that getting Justice through the private settlement in this context through the LMDC, a court-connected ADR, is attainable and of a more significant effect than Litigation. The thesis has established that the Pre-colonial method of settling disputes or the Traditional African Method of Settling disputes (TAMSD) is the 'repackaged ADR' is the primary method of settling disputes in Africa, particularly Nigeria during the Pre-colonial era. However, during the post-colonial era, Litigation was coerced on these natives. Thus it became their main method of settling disputes instead of an Alternative, as it were.

The advantages mentioned above are the same as that of the LMDC, like mode of access, simple procedure-giving qualitative decision-making, cost-effectiveness, speedy dispensation of justice, party autonomy, and the confidentiality of the ADR process contributes to the overall effectiveness of the LMDC vis a vis ESMDC which aligns with the advantages and effectiveness of the private ADR. It is argued further that this has significantly impacted the civil and of recent criminal courts' dockets. Hitherto, the general public, service givers and stakeholders have attested to their cases being settled in a timely fashion, unlike in litigation.

In line with the question posed at the beginning of this research and going by the data analysed herein, it is argued that the ESMDC replicated the LMDC practice, and its impact on the ESMDC can be gleaned from the above discourse. However, both states have had a varying degree of success with their experiment with the MDC. The extent to which these innovations have impacted the disputants' lives is enormous but not fully appreciated. Nevertheless, two undeniable facts are that the MDC is effective and gaining acceptance among the Nigerian populace. Thus, while it continues to be perceived as second to litigation, its impact on the court dockets and citizens' lives remains strong as more people seek solace within the MDC's confines.

Consequently, the challenges observed in this study and the recommendations made herein (particularly on expanding the scope of matters covered by the MDC and for each scheme to start a podcast which costs nothing) should be adequately considered and practically addressed. To preserve further the MDC's effectiveness in its noble mission of decongesting the court's dockets and ensuring that justice is appropriately and adequately dispensed within a short time to the advantage of the citizens and the country at large. Flowing from the above, it is argued that LMDC has been a 'fit for purpose institution.' However, it is essential to note that the challenges raised in this study will impede the effectiveness of both schemes if they are not duly addressed and the recommendation offered in this study implemented.

BIBLIOGRAPHY

PRIMARY SOURCES

Cases

Clifford Ifeanyichukwu Onyeike v Stanbic IBTC Bank PLC
NWEKE v. FRN (2019) LPELR-SC
All E.R. Rep. 1 HL
146F.3D242
EWCA Civ 2
366 B.C.A.C. 127 CA
7 N.W.L.R. 283 Court of Appeal Enugu
N.W.L.R Supreme Court of Nigeria
Chief Emenike Mgbenena v Nze Okey Ogbazi Traditional Supreme Council Obosi
All N.L.R. 358
S.C. 193
EWCA CIV 302
EWCA Civ 576

Legislation

Order 3 Rule 11 High Courts(Civil Procedure Rules) 2004
Laws of Lagos State, Lagos Multi-Door Courthouse Law 2015
European Code of Conduct for Mediators para 4
Lagos State Multi-door Court Law 2015
Practice Direction on Mediation Procedure 2008
New York Convention
Lagos State Multi-Door Courthouse (LMDC) 2007
ESMDC Mediation Skills training Handbook 2019
Practice Direction on Restorative Justice
Enugu State Multi-Door Courthouse (ESMDC) Law 2018
Arbitration Act 1996
Constitution of the Federal Republic of Nigeria 1999
The Arbitration and Conciliation Act 1990
Laws of the Federation of Nigeria the Interpretation Act chapter 192
Laws of the Federation of Nigeria, Matrimonial causes Act 1990
International Chamber of Commerce (ICC)
High Court of Lagos State Rules Civil Procedure Rules 2019
Expeditious Disposal of Civil Cases Practice Direction: Pre-Action Protocol Lagos State
Judiciary
High Court of Lagos State (Civil Procedures) Rules 2004
Research and Enterprise Team, *Bream Policy* (University of Brighton 2019)

SECONDARY SOURCES

Books

Achebe C, *Arrow of God* (Anchor Books, Doubleday 1969)
Barrett J, Barrett, Joseph, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* (First edn, Jossey-Bass 2004)

Beer J, Eileen, Stief *The Mediators Handbook* (3rd edn, Conflict Resolution Programs 1997)

Blake S, Browne, Julie, Sime, Stuart, *A Practical Approach to Alternative Dispute Resolution* (2nd edn, Oxford University Press 2012)

Born G, *International Arbitration: Law and Practice* (Wolters Kluwer Law & Business 2012)

Briggs C, *Learning how to ask: A sociolinguistic appraisal of the role of the interview in social science research* (Cambridge University Press, 1986)

Brooker P, *Mediation Law: Journey through Institutionalism to Juridification* (Routledge, 2013)

Brown H, Arthur, Marriot *ADR: Principles and Practice* (3rd edn, Sweet & Maxwell 2011)

Brown RB, *Doing your Dissertation in Business and Management the Reality of Researching and Writing* (Sage Publications 2006)

Burns A, *History of Nigeria* (8th edn, George Allen & Unwin Ltd 1978)

Cahillane L, Schweppe, Jennifer (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016)

Cortés P, *Voluntariness as the Achilles' Heel of ADR: The Case for Incentives and Mandatory Redress Schemes. In The Law of Consumer Redress in an Evolving Digital Market: Upgrading from Alternative to Online Dispute Resolution* (Cambridge University Press, 2017)

Covey F, *The 7 Habits of Highly Effective People* (Signature Edition 4.0)

Creswell J, Creswell, David, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (5th edn, Sage 2018)

Creutzfeldt N, Nelson, Marc, McConnachie, Kirsten (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge Taylor & Francis Group 2020)

Derri DK, *Alternative Dispute Resolution in Nigeria A functional approach* (Malthouse Press Limited 2016)

Dickens C, *Bleak House* (Oxford University Press 2008)

Egbunike N, *Dyed Thoughts A Conversation in and from My Country* (Feathers and Ink 2012)

Egbunike N, *Dyed Thoughts: A Conversation in and from My Country* (Feathers and Ink 2012)

Feeney A, Heit, Evan (eds), *Inductive Reasoning Experimental, Developmental and Computational Approaches* (Cambridge University Press 2007)

Feldman M, "One-Stop" *Commercial Dispute Resolution Services: Implications for International Investment Law. In: Chaisse J., Choukroune L., Jusoh S. (eds) Handbook of International Investment Law and Policy.* (Springer, Singapore 2020)

Fiadjoe A, *Alternative Dispute Resolution: A Developing World Perspective* (Cavendish Publishing Limited 2004)

Genn H, *The Hamlyn Lectures 2008: Judging Civil Justice* (Cambridge University Press, 2010)

Genn H, *Paths to Justice: What People Do and Think About Going to law* (Oxford: Hart Publishing 2011)

Gray P, Williamson, John, Kamp, David, Dalphin, John, *The Research Imagination: An Introduction to Qualitative and Quantitative Methods* (Cambridge University Press 2007)

Hattaway Me, *The Second Part of King Henry VI* (Cambridge University Press 1991)

Hayes M, Williams, Catherine *Family Law Principles, Policy and Practice* (2nd edn, Butterworths 1999)

Henn M, Weinstein, Mark, Foard, Nick, *A Critical Introduction to Social Research* (2nd edn, Sage 2009)

Holiday R, *Ego Is the Enemy: The Fight to Master Our Greatest Opponent* (Portfolio / Penguin, 2016)

Hood R, *The Routledge Handbook of Greek Mythology Based on H.J.Rose's Handbook of Greek Mythology* (Routledge Taylor & Francis Group 2004)

Kumar R, *Research Methodology a step-by-step guide for beginners* (3rd edn, Sage Publications 2011)

Levin L, Wheeler, Russell, *The Pound Conference: Perspectives on Justice in the Future Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of justice* (West Publishing Co. St. Paul Minnesota 1979)

Lew J, Loukas, Mistelis, Stefan, Kroll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003)

Marks S, *Watching the Wind Conflict Resolution During South Africa's Transition to Democracy* (United States Institute of Peace 2000)

Merife U, Obinna, Igwe, *Easy Guide to Civil Procedure in Nigeria (Young Lawyers' Companion)* (Taracota Nigeria Limited 2016)

Merton RK, Fiske, Marjorie, Kendall, Patricia L *The Focused Interview: A Manual of Problems and Procedures* (2nd edn, Free Press 1990)

Metzinger T, *The Ego Tunnel the science of the mind and the myth of the self* (Basic Books 2009)

Moscatti MF, Palmer, Michael, Roberts, Marian (eds), *Comparative Dispute Resolution* (Edward Elgar Publishing 2020)

Moses M, *The Principles and Practice of International Commercial Arbitration* (2nd edn, Cambridge University Press 2012)

Neu J, *The Cambridge Companion to Freud* (Cambridge University Press 2006)

Nwankwo P, *Criminal Justice in the Pre-Colonial, Colonial, and Post-Colonial Eras An Application of the Colonial Model to Changes in the Severity of Punishment in the Nigerian Law* (University Press of America 2010)

Nwosu K, (ed) *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibronke, SAN* (DCONconsulting 2004)

O'Shea V, *Shaping your workplace Culture a Practical Guide* (Culture Shapers Publications, 2018)

Ofobuikwe O, *Nigerian Government and Politics the Changing Scene* (3rd edn, John Jacob's Classic 2007)

Okereafoezeke N, *Law and Justice in Post -British Nigeria Conflicts and Interactions between Native and Foreign Systems of Social Control in Igbo* (Library of Congress Cataloging -in-Publication Data 2002)

Omoniyi A, *The Legal Profession in Nigeria 1865-1962* (Longman, 1977)

Oniekoro F, *Practice Notes and Guides on Litigation (Civil Claims and Criminal Trials)* (Chenglo Limited 2011)

Onyema E, *Rethinking the Role of African National Courts in Arbitration* (Wolters Kluwer 2018)

Orojo JO, Ajomo, Ayodele, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associates (Nigeria) Limited 1999)

Orwell G, *Animal Farm: A Fairy Story* (Penguin Group 2003)

Osamor B, *Fundamentals of Criminal Procedure in Nigeria* (Dee-Sage Nigeria Limited 2004)

Parkinson L, *Family Mediation: Appropriate Dispute Resolution in a New Family Justice System* (2nd edn, Family Law 2011)

Parkinson L, *Family Mediation* (3rd edn, Family Law 2014)

Rhee CHV, Fu, Yulin (ed), *Civil Litigation in China and Europe: Essays on the Role of the Judge and the Parties* (2014)

Roger Fisher U, William, *Getting to Yes: Negotiating an agreement without giving in* (Random House Business Books 2012)

Sandel M, *Justice: What's the Right Thing to Do?* (Penguin 2010)

Schiff D, *The Modern Law Review*, vol 39 (Wiley 1976)

Sherif M, *Group Conflict and Co-operation: Their Social Psychology* (Psychology Press 2015)

Sydel S, (ed) *Totems and Teachers: Key Figures in the History of Anthropology* (Walnet Creek, CA 2004)

Tashakkori A, Teddlie, Charles, *Handbook of Mixed Methods in Social and Behavioural Research* (Sage Publications 2003)

Tashakkori A, Teddlie, Charles *Sage Handbook of Mixed Methods in Social and Behavioural Research* (2nd edn, Sage 2010)

The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles Alternative Dispute Resolution (ADR)*, vol 1 (The Association of Multi-Door Courthouses of Nigeria 2013)

The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* (2016)

The Lagos Multi-Door Courthouse...The ADR Centre..., *The Lagos Multi-Door Courthouse Neutrals' Handbook* (2016)

Thelwall M, *World Association Thematic Analysis : A Social Media Text Exploration Strategy* (Morgan & Claypool 2021)

Van Rhee CH, Yulin, Fu, (ed), *Civil Litigation in China and Europe: Essays on the Role of the Judge and the Parties* (2014)

Watkins D, Burton, Mandy (ed) *Research Methods in Law* (2nd edn, Routledge 2018)

Watson A, *Legal Transplants An Approach To Comparative Law* (University of Georgia Press 1993)

Journals /Articles

Aina K, 'ADR 2000 - Resolving Corporate Disputes In the 21st Century ' (Institute of Directors (IOD) Members Evening)

Ipaye A, 'Understanding and Application of Alternative Dispute Resolution (ADR) System in the Magistrates Courts' (Training Workshop for Newly Appointed Magistrates Organised by the National Judicial Institute (NJI))

, 'History of the Distinctions between Trespass, Detinue, and Trover' (1905) 18, No. 5 Harvard Law Review, 402

Adekoya F, Prince-Alex, Iwu, 'Arbitration Procedures and Practice in Nigeria: Overview ' (2017) Thomson Reuters Practical Law

Agrawal K, 'Justice Dispensation through the Alternative Dispute Resolution System in India' (2014) 2 Russian Law Journal

Ahmed M, 'Bridging the gap between alternative dispute resolution and robust adverse costs orders' (2015) 66 Northern Ireland Legal Quarterly

Aina K, 'Alternative Dispute Resolution' (2008) The Guardian Newspaper

Akeredolu A, 'A Comparative Appraisal of the Practice and Procedure of Court Connected Alternative Dispute Resolution in Nigeria, United States of America, and United Kingdom.' (2013) University of Ibadan Institutional Repository

Akeredolu A, 'Duel to Death or Speak to Life: Alternative Dispute Resolution for Today and Tomorrow' (2018) 7th Inaugural lecture

Andreetta S, 'The Symbolic Power of the State: Inheritance Disputes and Litigants Judicial Trajectories ' (2020) 43 Polar

Ani C, 'Alternative Dispute Resolution ' Academia

Anyim W, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries' (2019) Library Philosophy and Practice (e-journal)

Born G, 'Keynote Address: Arbitration and the Freedom to Associate' (2009-2010) 38 Ga J Int'l & Comp L

Boyarsky S, "Let's kill all the lawyers": What did Shakespeare mean?' (1991) 12 Journal of Legal Medicine

Brandon M, Field, Rachael,, 'An Analysis of the Complexity of Power in Facilitative Mediation and Practical Strategies for Ensuring a Fair Process' (2020) 39 Resolution Institute | the arbitrator & mediator

Carbonneau TE, 'Arguments in Favour of the Triumph of Arbitration ' (2009) 10 10 Cardozo J Conflict Resol

Centre TLM-DC, 'The LMDC ADR Awareness Program: Workings of the Lagos Multi-Door Courthouse ' (2019)

Constable T, Sonia, Ferreira, 'If you refuse to engage in alternative dispute resolution, you do so at your own peril' (2020) Dentons

Dam K, 'The Judiciary and Economic Development ' (2006) U Chicago Law & Economic Development, Olin Working Paper No 287

Danjuma I, Muhamad, Rohaida, Munzil, Mohd, 'Prisons' condition and treatment of prisoners in Nigeria: towards genuine reformation of prisoners or a violation of prisoners' rights?' (2019) 44 Commonwealth Law Bulletin

Davis A, 'Mediating Domestic Cases Involving Domestic Violence: Solution or Setback?' (2007) Cardozo Journal of Conflict Resolution

Dayton K, 'The Myth of Alternative Dispute Resolution in the Federal Courts ' (1999) 76 Iowa Law review

Dohrenwend A, 'Serving Up the Feedback Sandwich' (2002) 9 Fam Pract Manag

Drahozal CR, 'Arbitration Costs and Forum Accessibility: Empirical Evidence ' (2008) 41 U Mich J L Reform

Eberle E, 'The Method and Role of Comparative Law' (2009) 8 Washington University Global Studies Law Review

Ebigbo P, 'Harmony Restoration Therapy: Theory And Practice' (2017) 2 International Journal for Psychotherapy in Africa

Egbunike-Umegbolu C, 'The Linctus of Choosing a Mediator ' (2019) Mediatecom

Ezike EO, 'Developing a Statutory Framework for ADR in Nigeria' (2011-2012) 10 Nig J R

Ezeanya-Esiobu C, *How Africa can use its traditional Knowledge to make progress* (Ted Global 2017)

Moore D, *Methodological Assumptions and Analytical Frameworks Regarding Religion Part Two* (Harvard Divinity School (Harvard MOOC edx online course 2020) 2015)

Faturoti B, 'Accessing ADR through the Courts in Nigeria' (2012) ResearchGate

Faturoti B, 'Institutionalised ADR and Access to Justice: The Changing Faces of the Nigerian Judicial System ' (2014) Research Gate

Fiss O, 'Against Settlement' (1984) Yale Law School

Folberg J, Alison, Taylor 'Reviewed Work Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation ' (1986) 84 Michigan Law Review

Fuller L, 'Mediation, Its Forms and Functions' (1971) 44 Southern California Law Review

Galtung J, 'Violence, Peace, and Peace Research ' (1969) 6 Journal of Peace Research

Gane DM, 'The Birth of a New Equity' (1923) 67 SOLIC J & WKLY REP

Grande E, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context' (1999) 43 African Law

Greco A, 'ADR and a Smile: Neocolonialism and the West's Newest Export in Africa ' (2010) 10 Pepperdine Dispute Resolution Law Journal

Green E, Marks, Jonathan, Olson, Ronald 'Settling large case litigation: an alternative approach' (1977) 11 Loy LA L Rev 493

Gummi LH, 'Sink or Swim: Evolving a Broader Definition of Courts Through the Multi-Door Approach to Dispute Resolution and the Implications it has for Traditional Court Systems ' (2010) International Journal For Court Administration

Hantrais L, 'Comparative Methods ' (1995) Social Research University of Surrey

Heitler S, 'Therapeutic Mediation: An Alternative to Costly Litigation' ' (1998) Colorado Lawyer

Henderson H, 'Women's Roles in Traditional Onitsha Society- 'An ethnographic research conducted in Onitsha around 1960's ' (1960) A Mighty Tree Onitsha History, Kingship, and Changing Cultures

Hyman J, 'Swimming in the Deep End: Dealing with Justice in Mediation ' (2005) 6 *Cardozo Journal of Conflict Resolution*

Hyman J, 'Swimming in the Deep End: Dealing with Justice in Mediation ' (2005) 6 *Cardozo Journal of Conflict Resolution*

Idang G, 'African Culture and Values ' (2015) 16 *University of South Africa Phronimon*

Idowu W, 'African Jurisprudence and the Reconciliation Theory of Law ' (2006) 37 *Cambrian L Rev*

Jean S, 'Lawyers' Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Non adversarial Setting' (1999) 14 *Ohio State Journal on Dispute Resolution*

Kaur H, Chandigarh, Uils 'Mixed Methods Research ' (2015) *Academike*

Landsman S, 'So What - Possible Implications of the Vanishing Trial Phenomenon' (2004) 1 *J Empirical Legal Stud*

Law H, 'History of the Distinctions between Trespass, Detinue, and Trover' (1905) 18 *Harvard Law Review*

Legrand P, 'The Impossibility of Legal Transplants' (1997) *Maastricht Journal of European and Comparative Law*

Main T, 'ADR the New Equity ' (2005) *Scholarly Works Paper 739*

Martin L, 'Jeremy Bentham: utilitarianism, public policy and the administrative state ' (2007) 3 *Management History (Archive)*

Matteucci G, 'Mandatory Mediation, The Italian Experience ' (2015) 16 *Revista Eletrônica de Direito Processual – REDP*

Mcmanus M, Brianna, Silverstein 'Brief History of Alternative Dispute Resolution in the United States ' (2011) *I Cadmus*

McStravick DJ, 'Adult reparation panels and offender-centric meso-communities: an answer to the conundrum' (2018) 1 *The International Journal of Restorative Justice*

Menkel-Meadow C, 'Remembrance of things Past? The Relationship of Past to Future in Pursuing Justice in Mediation ' (2004) 5 *Cardozo J Conflict Resol*

Menkel-Meadow C, "Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve, Current Legal Problems" (2005) *ResearchGate*

Menkel-Meadow C, 'Empirical Studies of ADR: The Baseline Problem of What ADR is and What it is Compared to ' (2009) *Draft- For Oxford Handbook of Empirical Legal Studies (Peter Cane and Herbert Kritzer, editors, forthcoming)*

Menkel-Meadow C, 'Maintaining ADR Integrity' (2009) 27 *Wiley InterScience*

Mnookin RH, Lewis, Kornhauser, 'Bargaining in the Shadow of the Law,' *The Case of Divorce* (1979) 88 *The Yale Law Journal, Dispute Resolution*

Moore D, 'Methodological Assumptions and Analytical Frameworks Regarding Religion Part Three ' (2015) *Harvard Divinity School*

Newlyn D, 'Focus groups: The who, what, when, where and why of their value in legal research' (2012) 5 *The Australasian Law Teachers Association*

Ntuli N, 'Africa: Alternative Dispute Resolution in a Comparative Perspective' (2018) *Conflict Studies Quarterly*

Obiwuru CR, 'Justice and its administration in Igboland before the dawn of the present millennium' (2020) *Journal of Historical Studies (JHS)*

Oduntan G, 'Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria' (2017) 20 *Journal of Money Laundering Control*

Okogbule N, 'Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects ' (2005) 2 *International Journal on Human Rights*

Olexandrivna Z, 'The Conflict within the Concepts of Needs Abraham Maslow and John Burton: Archetypal Analysis ' (2017) *Faculty of of humanities and social technologies, National Technical University "Kharkiv Polytechnic Institute"*

Onyema E, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' (2013) 2 *Apogee Journal of Business, Property and Constitutional Law*

Orojo O, Ajomo, Ayodele 'Law and Practice of Arbitration and Conciliation in Nigeria ' (1999) *Mbeyi & Associates (Nigeria) Limited*

Paaga D, Dandeebo, Gordon 'Assessing the Appeal of Traditional Dispute Resolution Methods in Land Dispute Management: Cases from the Upper West Region ' (2014) 4 Developing Country Studies

Platsas A, 'A Cosmopolitan Ethos for our Future Lawyers (in English) (2015) ' (2015) 150 Law: J Higher Sch Econ

Polden P, 'Stranger than Fiction? The Jennens Inheritance in Fact and Fiction Part 1: The Jennens Fortune in the Courts' ' (2003) Sage

Reitz JC, 'How to Do Comparative Law' (1998) 46 The American Journal Comparative Law

Resnik J, 'Bring back Bentham: Open Courts, "Terror trials," and Public Sphere(s)' (2011) Yale Faculty Scholarship

Rhodes-Vivour AO, 'Mediation (A "Face Saving Device") - The Nigerian Perspective' (2008) 4 Journal of the International Bar Association Legal Practice Division Mediation Committee Newsletter

Rimelspach R, 'Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation Program' ABA Section of Dispute Resolution

Rothchild D, 'Unofficial Mediation and the Nigeria-Biafra War' (1997) 3 Nationalism & Ethnic Politics

S. Banji Fajonyom D, A, 'Bringing Justice Closer to the People: An Assessment of the Lagos State (Nigeria) Office of the Public Defender (OPD)' (2007) 15 Social Sciences

Shane M, 'The Difference between Mediation and Conciliation' (1995) 50 Dispute Resolution Journal

Sinclair K, 'Legal Reasoning: In Search of an Adequate Theory of Argument ' (1971) 59 Calif L Rev 821

Sokefun J, Nduka, Njoku 'The Court System in Nigeria: Jurisdiction and Appeals ' (2016) 2 International Journal of Business and Applied Social Science

Stipanowich T, 'ADR and the Vanishing Trial: The Growth and Impact of Alternative Dispute Resolution.' (2004) 1 Empirical Legal Studies

Stipanowich T, 'Arbitration: The New Litigation' (2010) 1 University of Illinois Law Review

Taiwo K, Onyeonoru, Ifeanyi 'Archival Review of The Role of the Citizens Mediation Centre in Landlord-Tenant Dispute Resolution in Lagos State, Nigeria' (2016) 3rd International Conference on African Development Issues

Umegbolu C, 'The Enugu State Multi-Door Courthouse (ESMDC)' (2019) Mediatecom

Umegbolu C, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today ' (2020) 39 (1) Resolution Institute | the arbitrator & mediator

Umegbolu C, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today ' (2020) 39 Resolution Institute | the arbitrator & mediator

Umegbolu C, 'Behind the Legal Frustration' (2020) Mediatecom

Umegbolu C, 'Violence against women in Nigeria ' (2020) Wisconsin Institute for Peace and Conflict Studies

Umegbolu C, 'In response to Obiwuru Chidera Rex article- Justice and its administration in Igboland before the dawn of the present millennium (at his request)' (2020) ResearchGate

Umegbolu CS, 'Access to Justice for People with Disability in Nigeria: Therapeutic Day Care Centre (TDCC) as a Case Study' (2021) 7 Athens Journal of Law

Umezurike G, *An Appraisal of Igbo Traditional Method of Conflict Resolution* (Queens College, City University of New York 2019)

Ackerman C, *Psychoanalysis: A Brief History of Freud's Psychoanalytic Theory* (Positive Psychology. com 2020)

Umegbolu C, *Why I am excited about my Research* (University of Brighton 2019)

Umegbolu C, *Episode 5: What are the factors that could influence the selection of an ADR option?* (2020)

Umegbolu C, *Episode 7: The Similarities between the Customary arbitration and the Modern day Arbitration* (Edublogs 2020)

Umegbolu C, *The Lagos Multi-Door Courthouse: Online Dispute Resolution in COVID-19 Era* (Edublogs 2020)

Umegbolu C, *Episode 12: Enhancing Access to Justice in Enugu through the ESMDC-Under the leadership of Mrs Caroline Etuk* (Edublogs 2021)

Umegbolu C, *Episode 15: Careers in ADR with Professor Emilia Onyema* (Resolution Institute | member connect 2021)

Umegbolu C, *Is Arbitration within the remit of ADR?* (Edublogs 2021)

Umegbolu CS, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution* (2020)

Uruchi O, 'Creative Approaches to Crime: The Case for Alternative Dispute Resolution (ADR) in the Magistracy in Nigeria' (2015) 36 *Journal of Law, Policy and Globalization*

Wesselmann E, Dan, Ispas, Olson, Mark, Mark, Swerdlik, Natasha, Caudle, "Does perceived ostracism contribute to mental health concerns among veterans who have been deployed?" (2018) Illinois State University

Whitehouse M, 'Regulating civil mediation in England and Wales: towards a 'win-win' outcome' (2017) University of Hull

Zuckerman A, 'Lord Woolf's Access to Justice! Plus ca change...' (1996) 59 *The Modern Law Review*

Zumeta Z, 'Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation' Mediatecom

Etuk C, Obiaya, Ike, Onuma, Ikechukwu, Ivenso, Nnezi (eds), *Mediation Matters* (Obra Legal 2018)

Channels TV, *View From The Top Interviews Obi Of Onitsha; Nnaemeka Achebe* (2015)

Bream UoB, *University's Research Ethics Policy 2019* (2019)

The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse: Lagos Settlement Week -Frequently Asked Questions (FAQS)* (2020)

Abdullah MAH, 'An Investigation of the Development of Mediation in the UK Construction Industry ' (A Thesis Submitted to the University of Manchester for the Degree of Doctor of Philosophy 2015)

Akeredolu A, 'A Comparative Appraisal of The Practice and Procedure of Court-Connected Alternative Dispute Resolution in Nigeria, United States of America and United Kingdom' (University of Ibadan 2013)

Enwonwu PORC, 'Christainity and Socio-Cultural Practices in Onitsha Contemporary Society ' (University of Nigeria, Nsukka 2007)

Frynas JG, 'Litigation in the Nigeria Oil Industry: A Socio-Legal Analysis of the Legal Disputes Between Oil Companies and Communities ' (University of St Andrews 1999)

Goh GM, 'Dispute Settlement in International Space Law: A Multi-Door Courthouse for Outer Space ' (Leiden University 2007)

Haloush H, 'Online alternative dispute resolution as a solution to cross-border electronic commercial disputes' (University of Leeds 2003)

Nwokolo K, 'To What Extent Is The Mediation Process Useful To A Victim Of Domestic Violence When The Dispute Is Over Finances/Children Upon Separation Or Divorce?' (University of Westminster Regent Campus 2007)

Ogaji O, 'The Viability of Applying Alternative Dispute Resolution Processes in the Niger Delta Conflict ' (University of Warwick, Coventry, United Kingdom 2013)

Ogar O, 'International Commercial Arbitration: The Principal Issues and Conflicts of Laws Challenges in Dispute Resolution' (University of Bradford 2013)

Umegbolu C, 'To What Extent is Arbitration a Cheaper and more Efficient Process of Dispute Resolution – in Comparison to Litigation?' (Kingston University London 2014)

Umegbolu CS, 'To What Extent is Arbitration a Cheaper and more Efficient Process of Dispute Resolution – in Comparison to Litigation?' (Kingston University London 2014)

Center for Khemitology, *Short Course on Ubuntu Philosophy* (2020)

Centre... TLM-DCTA, *The LMDC ADR AWARENESS PROGRAM:WORKINGS OF THE LAGOS MULTI-DOOR COURTHOUSE* (2015)

Ebigbo O, *Conflicts and Disputes in 'Amaofuo village'*

Ebigbo OP, *Conflicts and Disputes in 'Amaofuo village'* (2021)

LMDC, *Mediation Skills Training Handbook* (2019)

Onyema E, *A discussion we had -from her unpublished book* (SOAS 2018)
Aina K, 'Alternative Dispute Resolution' *The Guardian Newspaper* (Nigeria)

Websites

Allidina S, 'Funding Access to Justice' (*Raconteur Media*, 2016)
<<<https://www.raconteur.net/risk-management/funding-access-to-justice>>> accessed 5th June 2019

Ani C, 'Alternative Dispute Resolution in Nigeria A Study of the Lagos Multi-Door Courthouse (LMDC) ' (*Resolution Department, Nigerian Institute of Legal Studies Lagos*, <https://www.academia.edu/31440831/ALTERNATIVE_DISPUTE_RESOLUTION_IN_NIGERIA_A_STUDY_OF_THE_LMDC> accessed 8th August

Attorneys AB, 'Kehinde Aina ' (2021) < <<https://www.ainablankson.com/kehinde-aina/>> > accessed 7th July

Chukwurah F, 'Why Africans get a raw deal in the justice system ' (2017)
<<<https://edition.cnn.com/2017/05/05/africa/access-justice-africa-view/index.html>> > accessed 24th April 2019

Cohen D, 'Evaluative Mediation' (*Mediate.com*, 2011)
<<https://www.mediate.com/author/Diane-Cohen/1019>> accessed 20th September 2019

Curle A, 'Mediation During the Nigerian Civil War' (1967-70) accessed 4th June 2019

Dalrock, 'Bargaining in the Shadow of the Law' (2012) <
<aw<<http://dalrock.wordpress.com/2012>>> accessed

Dawson S, 'Alternative Courthouse in Lagos speeds delivery of justice ' (*Thomas Reuters Foundation* 2013) <<http://cms.trust.org/item/20130522080353-sa1vp>> accessed 23rd January 2019

Digest O, 'Building a Pro Bono Culture in Nigeria ' (<<<https://www.osiwa.org/access-to-justice/building-a-pro-bono-culture-in-nigeria/>> > accessed 10th December 2020

Eunice O, 'Alternative Dispute Resolution ' (2004)
<<http://www.nigerianlawguru.com/articles/arbitration/ALTERNATIVE_DISPUTE_RESOLUTION.htm> > accessed 5th June 2019

Fulbright NR, 'International Arbitration Report' (2013)
<<https://www.nortonrosefulbright.com/en/knowledge/publications/17457c8d/international-arbitration-report>> accessed 6th December 2018

Guise T, 'Is Mediation Justice?' (2019) <<https://www.mediate.com/articles/guise-is-mediation-justice.cfm>> accessed 20th August 2020

Hughes C, 'Quantitative and qualitative approaches [online]' (2006)
<http://www2.warwick.ac.uk/fac/soc/sociology/staff/academicstaff/chughes/hughesc_index/teachingresearchprocess/quantitativequalitative/quantitativequalitative/> accessed 1st January 2018

Institute SCA, 'Emergency Relief under the Swiss Rules (Art. 43) An overview after 8 years of practice' (2020) <<https://www.swissarbitration.org/files/620/untitled folder/Emergency Proceedings under the Swiss Rules>> accessed 11th November 2019

Justice SC, 'Access to Justice Literature Review: Alternative Dispute Resolution in Scotland and other jurisdictions' (2014)
<<https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-publications/literature-review-on-adr-methods.pdf?sfvrsn=2>> accessed 26th March 2021

Lagos State Judiciary, 'Judiciary Information System (JIS) ' (<<<https://lagosjudiciary.gov.ng/ViewDirectories.aspx>> > accessed 21st May 2021

Lecture ALsNfaL, 'Abraham Lincoln Online Speeches & Writings' (<<https://www.abrahamlincolnonline.org/lincoln/speeches/lawlect.htm>> accessed 26th May 2019

Leithead A, 'The city that won't stop growing: How can Lagos cope with its spiralling population?' (*BBC News*, 2017) <<<https://www.bbc.co.uk/news/resources/idt-sh/lagos>>> accessed 2nd April 2020

Napley K, 'A global trend towards mediation: views from lawyers in 13 countries' (*Dispute Resolution Law*, 2014) <<https://www.kingsleynapley.co.uk/insights/blogs/dispute-resolution-law-blog/a-global-trend-towards-mediation-views-from-lawyers-in-13-countries>> accessed 9th March 2020

Rass-Masson N, Rouas, Virginie, 'Effective access to Justice - European Parliament ' (*Europa EU*, 2017) <<[https://www.europarl.europa.eu/RegData/etudes/STUD/.../IPOL_STU\(2017\)596818_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/.../IPOL_STU(2017)596818_EN.pdf)>> accessed 21st May 2019

Resnik J, 'The Democracy in Courts: Jeremy Bentham, Publicity,' and the Privatization of Process in the Twenty-First Century' (<<https://www.helsinki.fi/nofo/NoFo10RESNIK.pdf> > accessed 26th May 2019

Resolution Institute, 'Welcome to Member Connect' (2021) <<<https://memberconnect.resolution.institute/communities/communityhome/digestviewer/viewthread?>>> accessed 25th November 2021

Restorative Justice Council, 'What is Restorative Justice? ' (<<<https://restorativejustice.org.uk/what-restorative-justice>>> accessed 24th November 2020

Rozenberg J, 'Dame Hazel Genn warns of 'downgrading' of civil justice' (2008) accessed 25th January 2020

ThisDay Newspaper, 'Lagos Designates 24 Magistrate Courts to Try ' (2021) <<<https://www.thisdaylive.com/index.php/2021/08/10/lagos-designates-24-magistrate-courts-to-try/>>> accessed 20th May 2020

Kio-Lawson T, 'Lagos State Judges take a stand on ADR ' *BusinessDay* (<<www.businessdayonline.com>> accessed 20th February 2020

Nation T, 'Catching the ADR bug in Lagos' (<<<https://thenationonlineng.net/catching-the-adr-bug-in-lagos/>>> >

Onyema E, 'The Continued 'Trial' of the Nigeria Legal System in IPCO V NNPC ' (<<https://www.pressreader.com/nigeria/thisday/20170404/282458528806825>> accessed 3rd June 2019

Tyner A, 'Unconscious Bias, Implicit Bias, and Micro aggressions: What Can We Do about Them? ' (*American Bar Association* 2019) <<https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2019/july-august/unconscious-bias-implicit-bias-microaggressions-what-can-we-do-about-them/>> accessed 7th December 2020

Umegbolu C, 'End SARS: A Revolution by the people for the people on police brutality in Nigeria ' (2020) accessed 20th December 2020

Umegbolu C, 'Episode 9: The LMDC Journey under the leadership of Mrs Adeyinka Aroyewun. ' (*University of Brighton*, 2020) <<<https://research.brighton.ac.uk/en/publications/episode-9-the-lmdc-journey-under-the-leadership-of-mrs-adeyinka-a>>> accessed 13th January 2021

University C, 'Dictionary' (<<<https://dictionary.cambridge.org/dictionary/english/effectiveness>>> accessed 17th January 2021

Worldometer, 'Nigerian Population' (2020) <<<https://www.worldometers.info/world-population/nigeria> population/>> accessed 4th November

Yomi K, 'Lagos is Africa's 7th largest economy and is about to get bigger with its first oil finds ' (2016) <<<https://qz.com/africa/676819/lagos-is-africas-7th-largest-economy-and-is-about-to-get-bigger-with-its-first-oil-finds/>>> accessed 23rd October 2020

ANNEXED ESMDC INTERVIEW

Category ESMDC

Judges -3 Participants

Advantages of using the court-annexed ADR through the ESMDC

Access Method:

Simple procedure:

Judge 1 pointed out that the ‘approach to commence cases at the MDC is in three (3) ways

1) **Walk-in system**- ‘the parties can walk in to the MDC and file his or her complaints or from there the MDC will take it up and invite the parties and the process of mediation starts.’

2) By **referral system from the courts**, ‘any of the courts -the magistrate court, the customary court of appeal, the high court, this courts can refer matters to the MDC because it is believed that is good to settle and resolve matters through ADR system at the ESMDC but that has to be done with the consent of the parties because you can not force ADR process on the parties. The parties have to agree on their own that they are going to resolve their differences through ADR system which maybe mediation, arbitration, etc. Although arbitration is part of ADR but it is more or less like litigation and it is as a result of the contract entered into by the parties.’

3) Also, **the third way is referral** but ‘the referral is not by the courts, the referral comes from the traditional rulers or the churches or the parties on their own can agree to refer the matter to the MDC without the court prompting them.’

On the other hand, **Judge 3** explained,

The ESMDC is very accessible. Indeed, at the onset, the centre had to sensitize lawyers, and litigants as well as the general public on the services available and the benefits of the centre.

However, **Judge 2** firmly established ‘that matters can be commenced in three ways-walk-in, court referral and direct intervention.’

Scope of matters covered at the ESMDC

Criminal Proceedings

Judge 1 revealed that the ESMDC settles criminal cases. Explaining

The kind of criminal disputes that they will resolve are few like minor offences mainly offences that deal with economic crime, finances of the government etc.

On the contrary, **Judge 2** stated,

The ESMDC settles criminal cases however they do not settle capital offences and they are very few simple offences. Simple offences are very minor they are very few because anything from 3 years is a felony and nobody can mediate felony. Explaining further “Simple offences are less than 3 years downwards and they are very few. Though there is no doubt about that it has impacted on the volume of civil dispute, it has done that but very marginally because I’m not sure that they have resolved up to 400 cases since its inception.

ADR as a Peaceful Tool

Judge 1 gave an example,

If a party is claiming 1million naira and you are claiming both interest and the mediator may say this your interest rate is too much. It may make it too much for the debtor to pay and why not take only the interest and if the party agrees that settles the matter and the debtor goes home. And the creditor goes home happy because he has gotten his money and his return on his investment and the debtor is happy

because he has finally been made to lift the big load out of his head created by the debts.

What dispute resolution process is preferred?

On the other hand, Judge 2 stated

Mediation but it depends I must answer you with that 90% is mediation but there are some that there are good for conciliation like family matters, husband and wife, intercommunity matters especially where there are neighbours they reconcile so that they can still live in peace. Well meditative-conciliation is better in economic matters.

Judge 1

It creates a kind of confidence on the investor that his money is lost by litigation if you say go by arbitration. By the time you get your arbitrators and pay them, it is more expensive than litigation so the best method is using government institutionalised system so that informs the establishment of MDC in Nigeria.

Speed and Delay:

On what prompted the introduction of the MDC in Nigeria, Judge 1 revealed,

That it was caused by the workload of the courts, delayed trials in the administration of justice.” And again due to delayed trials and delay in the administration of justice the investors were running away from Nigeria because our legal system was clogged by so many wheels. And that was what happened in other countries in Canada, even US, even UK before they introduced the MDC system and ADR system by the Woolf commission report in the UK which was adopted by the US, Canada, Australia, Denmark, South Africa, Swaziland.

On the contrary, **Judge 3** highlighted that

ESMDC became very necessary in Enugu due to acute congestion of cases in court. For years, Enugu State Judiciary operated with about half its full compliments of High court Judges, so the few judges available were usually overwhelmed with dockets bursting at the seams.

How has the ESMDC been useful to the disputants?

Judge 3 stated

So far, two (2) cases referred to the centre from my court have been settled at the centre. Indeed, when the parties came back to court, they seemed quite satisfied with the outcome.

Cost-savings

Indigent parties, court referral and Self-representation:

Judge 2 was of the view that

Going to ESMDC instead of litigation is far cheaper as fees charged are minimal when compared to lawyers' fees, which spans over longer period." For instance, an indigent party that walks into the LMDC will pay a non-refundable administrative fee of 5,000 naira equivalent to £10.16. However, the party will not be charged for mediation session.

Judge 3 pointed out

That the court-refereed case is free so it is cheaper going to the ESMDC first.

Conversely, Judge 1 illustrated with an example on the cost-effectiveness going straight to the ESMDC.

In this case, Imagine a tenants living in a house for the past 25 years not paying rent, and when the case came to my colleague and it was referred to ADR. He was told 'okay go back and pay all your rent to leave the house for the man or they will ask landlord. Whenever they pay you the money will you allow him to stay? And the landlord said no problem and that is the end.' They will be happy again, a case that lasted 25 years.

Judge 1 also revealed that

The cost-effectiveness of going straight to the ESMDC than the court is that parties do not need the services of a lawyer; therefore, they do not pay any fee. Though under the law, parties can also represent themselves in court, it is not encouraged not to have a legal counsel.

Consent Judgement:

Judge 1 extends our knowledge on the benefits of a consent judgement. Explaining,

Some people still believe that the best way to settle is by litigation. Where the order of the court is final but at the same time the resolution of cases through MDC is also effective because the resolved issues which are known as the (TOS); will be sent to the court for adoption as a consent judgement which operates as any other court judgement.

Conversely, **Judge 2** pointed out that “consent judgement which is known as an agreed judgement is most times obtained for the interest of the parties.”

Ego / Apology:

Judge 1 disclosed that

People have this ego I will teach you lesson and they take the matter to court, they believe if they lose in the High Court (H.C) they go to court of appeal etc. And if it is between a rich man and a poor they will want to frustrate the poor party. If the parties want their disputes to be resolved within one day, it could be done but sometimes a recalcitrant party might decide to waste time and when that happens it will continue being adjourned from day to day- reveals **Judge 2**.

The Impact of the L.SW/ how useful the ESMDC has been to the disputants

Judge 1 extends our knowledge on how the ESMDC has been useful or beneficial to the disputants while linking it to the LSW.

He emphasised

That the ESMDC has settled lots of cases like the last family I settled their matter during the settlement week. They came out happy, saying so this case has finally come to an end. Like, imagine your tenants living in your house for the past 25 years not paying your rent. And suddenly ADR said okay go back and pay all his rent or leave the house for the man or they will ask landlord whenever they pay you the money? Will you allow him the tenant to stay and he says no problem, that is the end of the matter.' They will be happy again, a case that lasted 25 years. So it's been useful or beneficial amongst disputants.

The 'ESMDC has been very effective. The high settlement rate at the 2019 Settlement week attests to this fact' revealed **Judge 2**.

Consequently **Judge 3** indicated that the

ESMDC has been very effective. The settlement week also closed a lot of cases that have been pending in court for ages.

On whether the ESMDC has replicated the Pre-arbitral method of settling disputes?

Judge 1 affirmed that

Yes, the thing is that the local system remains the local system is not the one practised in the ESMDC. The one practised at the ESMDC has been modernised.

Similarly, **Judge 2** indicated that

Yes, it has replicated the pre-arbitral method but the ESMDC is formalised and a modern system of settling conflict or disputes.

Judge 3 simply responded,

Without a doubt, Yes, ESMDC has replicated the pre-colonial arbitral method of dispute resolution.

Flexibility and Voluntariness of the ADR Process:

Judge 1 suggests,

You can mediate trillions and millions of naira and with MDC in Enugu even people from overseas can refer their own matters and it would be resolved in Enugu and that is.

Also emphasizing on the **flexibility of the ADR**, **Judge 2** pointed out

ADR can be done online without necessarily the parties seeing themselves. It is very accessible.

On the other hand, **Judge 1** threw more light on the voluntariness in ADR

The courts can refer matters to the MDC because it is believed that is good to settle and resolve matters through ADR system to the MDC but that has to be done with the consent of the parties because you can not force ADR process on the parties the parties have to agree on their own that they are going to resolve their differences through ADR system which maybe mediation, arbitration, etc. Although arbitration is part of ADR but it is more or less like litigation and it is as a result of the contract entered into by the parties.

Speed and Time

Judge 1 indicated

That it is why it is better than litigation, dispute is not suppose to last than longer than 6 months but I know they have resolved so many disputes under weeks up to a month, so it depends on the cooperation of the parties. If the parties want their disputes to be resolved within one day, it could be done but sometimes the recalcitrant party decides to waste time and when that happens it will continue being adjourned from day to day. So I think basically it shouldn't last more than 3 months. But they are some that are peculiar matters that can last to 6 months so it depends. The law did not suggest the minimum period it will last or the maximum period it will last knowing that this is a human institution.

Similarly, **Judge 2** stated

Between 6 weeks to 4 months, depending on the complexity of the case. Where the ESMDC have to engage a surveyor in land dispute or visit the locus, it may take up to 4 months.

Judge 3 stated that “Usually between 3 months and 1 year.”

Challenges facing the LMDC:

Issue of Enforcement:

Judge 1 emphasised

That one of the advantages of ADR is that party’s settlement depends on them. So if the parties want their disputes to be resolved within one day, it could be done, it depends on them. However, sometimes a recalcitrant party may decide to waste time, and when that happens, it will continue being adjourned from day to day.

Non-submission, training, funding, office space and Decentralization of the ESMDC

On the other hand, **Judge 2** elucidated ‘that the problem of non-submission by some parties, training, funding and Inadequate office space, mediation rooms and Decentralization of the ESMDC.’

Conversely **Judge 3** indicated

I believe the major challenge now is funding, since the State has helped engaged a number of skilled staff. Funding so as to increase the salary of the skilled staff at the ESMDC like mediators, arbitrators etc.

Case Managers (5) Participants

The Advantages of using ADR through the ESMDC practice or providers

Access Method

Simple procedure

Case Manager 4 evaluates the **simple procedure associated with the MDC**

She pointed out that

Basically by its nature is provided to serve as an alternative to the formal litigation as a means of dispute resolution. Additionally, its arrangement is a party-driven arrangement when you approach the MDC. The lawyers will have to sit behind the parties ordinarily in court you see the lawyers at the forefront arguing the matters of their clients but the MDC is party driven so the parties do their case with the assistance of their counsel.

Case manager 1 indicates

Multi-door courthouse is a hub for Alternative Dispute Resolution in Enugu State. And how it works is in 2 ways by virtue of Walk in or by virtue of court referral. It is a hub where all the alternative dispute resolution mechanisms are deployed to dispense with cases so for the Walk in it's when a matter is initiated by the party by coming into the MDC to make a complaint to fill some necessary forms. The second method of access is by court referral which its where the court deems it fit to refer a particular matter or case to the MDC. So basically the MDC is where you have alternative dispute resolution like mediation, arbitration, conciliation or mixed -the med-arb and all that. For the walk-in matters you need to pay the requisite fees, filing fees, serving fees and all that but for the court-referral is free.

Howe ever, the Case Managers revealed the distinctions between the ESMDC and LMDC. **Case manager 2** elucidated that

Like the court registrar were part of the restructuring for the LMDC here the registrar were not restructured so that when processes comes in the centre registrar screens there and determines the cases appropriate for litigation and those that can be settled for ADR so whichever falls in each track can which are channelled appropriately. However, at the ESMDC the process is different like the customer service will welcome the new case and will now channel it to the centre registrar.

Furthermore, **Case manager 3** extends our knowledge on the similarities and distinctions between the ESMDC and LMDC

The law and practice direction of ESMDC was modelled after the LMDC with just minor alterations or changes to adapt it to the circumstances. We worked on the provisions and sent it to the house of assembly, which also reviewed and sent it back to the chief judge of ESMDC and after much deliberation and removal or alterations the law was passed is different from the LMDC Law.

Cost Savings

Self-representation, Adjournment and cost of walk-in during the settlement:

According to Case manager 1

Generally, ADR is cost-effective, it is speedy, and it is friendly, so it is cost-effectiveness to come straight to the ESMDC.' Why? The parties are charged less, and they do not necessarily need to get a lawyer except they want to. Though in Enugu, lawyers charge less here than in Lagos, it is between 50,000-100,000. I must point out that they charge for appearance fee, which is about 5,000naira and adjournment fee separately.

Although in courts, parties do not need to get a lawyer, then at a point, they might need to because they are some things that will be going on that a layman can't comprehend. So it is cost-effective walking straight to the ESMDC than going directly to litigation because parties spend less money and time. They are no adjournment fees etc. in mediation.

On the contrary, **Case manager 2** pointed out "that at least the parties will not pay filing fee, if you go straight what I call walk-in you don't pay filing fee but if you go to the court they have to make a referral. That means you must have paid a filing fee for the process at the court and lawyers fees too."

In furtherance, **Case manager 2** shed a contemporary light on adjournment at the ESMDC while comparing it to adjournment in the judicial system. Denoting

That adjournment depends on the parties and complexities of the matter at hand. Settlement for one day depends on what the parties want if both parties want to settle that day –sure. We have more than 10 cases settled in one day during the settlement week. I am sure from the normal ESMDC dockets we also had more than 20 of such cases in some cases you hear that these people can never settle, but what they met and everybody says his own side, and at the end of the day they will conclude, they will reach an agreement, and that settles it.

Case manager 4 validated the above stated sentiments; she averred that

One of the attractions of the MDC is that it is time effective, it is cost effective and it also has the outlook of friendly and amicable resolution of matters. A typical litigants will see any party on the other side in court as an enemy and there is this saying that when two parties go to court they don't come back as friends. But the MDC is intended to derive attention, create a friendly atmosphere for a resolution of any issue by the parties themselves being guided by the facilitators and made to see the reason why they have to resolve amicably.

Expressing similar sentiments **Case manager 3** opines,

So you do not have an equilateral of adjournments upon adjournments at the ESMDC, you will always be reminded that this is mediation and you have a specific time to have this settled it is not like you take (1) one year or two (2) years except maybe you travelled, and something happened, something that has to be reasonable that takes you outside here for your matter not to go on, but within three (3) months you are expected to have finish whatever you want to do most cases do not even meet the 5th session in mediation, some 1st mediation settles, 2nd mediation session, I'm not sure any matter has ever gone beyond 5th session meanwhile in court you have 50th adjournment, and the parties will keep paying their lawyers for each adjournment unlike at the ESMDC the parties make one payment if it is walk-in and no more payment.

Hence, people came to initiate their cases, so for that walk-in is free because it's coming under the settlement week and for the court, a referral is also free.

Scopes of matters not covered at the ESMDC:

Case manager 2 highlighted that

ESMDC have not even started handling cases from customary courts. We just left them out and at some point when you have many numbers of cases, but you have just a few numbers of case managers who are handling these cases the ESMDC might become congested like the traditional courts.

On the other hand, **Case manager 1** pointed out that ‘they have not started handling election petitions, kidnapping and capital offences.’

Scopes of matters covered at the ESMDC:

Criminal Proceedings

Case manager 1 revealed

They settle minor criminal offences such as - misdemeanour, malicious damages, which is very good.

Similarly, **case manager 2** disclosed that they cover criminal cases. In his words

Simple offences or minor offences are amenable to ADR. It ranges from assault and malicious damages we have also settled so many.

On the other hand, **Case manager 3** indicated,

That cases like family matters, husband and wife, intercommunity matters especially where there are neighbours, and landlord and tenants cases are covered at the ESMDC.

Equally, **Case manager 4** confirmed that

They settle matters that relate to family, tenancy, commercial disputes etc. MDC is intended to facilitate speedy, amicable, friendly resolution of matters, which is an alternative to the formal litigation.

The Impact of the Law Settlement Week and how it works / Cost

Case manager 1 revealed

That for the settlement week was a week set aside by the chief judge to decongest the court’s dockets, and it’s free. So there were no charges for cases referred from settlement week. We also had walk-in matters

from parties because we sent out publicity materials, radio advert and television advert.

Roughly we had about 106 walk-in matters then 204 courts referred matters then for the court-referred matters. We had a process pre-settlement week, which started in 2nd of October where we had to screen cases from the court dockets to identify all the ADR amenable cases that we can file in for the settlement week. So after the screening my colleagues and I were all assigned a courtroom. And each person had to attend to those courtrooms, identify the file, screen them and make copies of the documents-the statements of claim, statement of defence, for the ones that have them in the files. Then for the ones that didn't have the processes you need to call the lawyers for them to bring in copies after the screening and all that we had what we call pre-mediation workshop. This is to intimate parties, usually for ADR or mediation setting there is what they call pre-mediation conference. Where the parties and their counsel are invited before the main mediation starts to brief them on what the process is about and what they are expected to do. If they have documents to bring in, they can get them. If they have maybe witnesses to bring along that is when you tell the case manager this is it. And if you have reservations just before the mediation, you can air them. So for the settlement week, we didn't have them per case because the normal process is that each case will have a conference on its own. But for the settlement week, it was all the cases for the settlement week that were already identified and screened in; we had a pre-mediation workshop for all the parties and their counsel to brief them on what is expected. What they need to do, some of the forms were filled on that day, the agreement to mediate and also inform them about the mediators, the neutrals who are not partisans they are not even supposed to be known by the parties. And if the parties happen to know any of the mediators for any of their matters, they need to identify it on time to indicate that they have a relationship. So that whatever the outcome is no one is going to raise an eyeball like you have a relationship with the lady that person has tried to favour him/her.

During the workshop, new cases also came in that day, people that didn't know about it but heard about the workshop also brought in their walk-in matters. Then for some lawyers we already have matters here before the settlement week it was also an opportunity for them to even know about the settlement week. On that day we also distributed publicity materials and flyers and some other information materials so after that was the mediator's parley. Because mediators for the mediation week were screened and identified as screened so that we know the number of mediators we will be using for the settlement

week that was basically handled by the director and some mediators came in from Lagos because the mediators they have already on ground for the ESMDC the usual process was also engaged. The new people were also brought in both from ICMC and other independent mediators who submitted their applications and was successful so after that there was a parley for mediators in the office with few case managers around. The whole processes were explained, how is going to run and all that then after we move into the settlement week proper that was one week long of mediation.

Case Manager 4 simply stated that

When you look at what it takes to file processes alone- legal fees and even if your lawyer is out of time he has to pay the penalties in court. So it is quite expensive or cost intensive while cost of filing at the MDC is zero-sum payment. Hence mediation is cost effective than litigation because that aspect of cost is taking off their shoulder, which is a huge relief for the disputants.

ADR as a peaceful:

In these findings, the case managers demonstrated ‘how effective ADR is employed as a tool in fostering peace. Leveraging on giving parties to a dispute a sense of belonging in that sense that they do not feel cheated.’

Case manager 1 highlighted that when using ADR that

Nobody feels like you have given this judge something, that is why he is partial, or party A has given the judgement in the other parties favour. Furthermore, it maintains a relationship; nobody has ever gone to court with someone, and remains friends. I don't think so except maybe is a business like two (2) companies, and party A and Party B are just staff of the companies, or maybe their companies went to court, and they could remain friends but when individuals go to court. That friendship has been tampered with, but in ADR it helps even to cement and reunite both parties.

For example, at the ESMDC we had some matrimonial causes matters - husband and wife that want to separate, and during mediation both of them come together to understand themselves and that yes it was a misunderstanding all this while.

Following through, **case manager 2** pointed out

There was also a particular matter where two neighbours at a point asked to be excused, no mediator, no counsel both of them talked to each other and settled, but you know you don't get that in court. In court, everybody gives a bloody nose because everybody wants to win. They want to do anything to win that case even lie on top, to conspire, even to do more harm to the other party anything possible to get that judgement. The reverse is the case with ADR; it gives them more opportunity to air their view. For example, they can shout, they can insult, but in court, they cannot shout, nor even cry.

Ego / Apology

In ADR parties have the chance to apologise to each other revealed **case manager 3**.

She went on to point out that some people come to the ESMDC and they forgive debts by merely apologising to each other. Debts that runs in thousands and millions they will forgive each other. The other party that was offended will say okay I withdraw all claims. The other party then said I would withdraw my counterclaims. Furthermore, that case was redeemed, and relationships amended, and families reunited.

Speed and Time:

Initially, when the 'ESMDC took off, some courts were apprehensive in giving them cases. In other words, they were not receiving cases, but at some point that changed, they started having referral within a few weeks.' **Case manager 1** illustrated his viewpoint with the example below:

So for the court dockets taken out 93 cases just in one week through referral to the ESMDC has impacted on the court's dockets and I am sure from there own general dockets the (ESMDC). They have settled more than 200 cases just in the space of 'I know (1) one year you will say that one year is too much for 200 cases it should be more than 200, but then this is a new system which people are still trying to get used to.

Explaining ‘that less complex cases are better brought to the ESMDC.’ **Case manager 2** observed that

Within a space of at most 3 months which is the dispensed time except if the parties are now the one's trying to prolong the matter maybe because they don't have time to settle within time, but you can see how short you can just take your money any day you appear here.

For **Case manager 2**, ESMDC ‘has been beneficial to the users because ADR is win-win, and they have a maximum of (3) three months to settle their cases. So both the applicants and the respondents have 50, 50 gain to make.’ “So you gain this way, and I also gain this way, so it has been very beneficial going by comments many people some cases have lasted more than two years in courts and just a day of being here is settled.”

The Court as a Battlefield:

Case manager 2 pointed that

Yeah, it's simple psychology, the way the litigation is structured, its meant to be confrontational whereas ADR is peaceful, they are allowed to air your view and say it as it is in their heart. Nevertheless, in court- the court will say 'no we are not here for stories just go straight to the point,' 'Did you or did you not'? Meanwhile, those things the party were saying are things that will relieve him and also help him forgive if they need to forgive. The whole adversarial process or system is to bring anarchy.

Criminal Proceedings:

This finding provides insights on whether criminal matters can be settled with ADR processes through the ESMDC. Bearing in mind, that the findings in the previous chapter revealed that the LMDC just started settling criminal proceedings through the restorative doors in 2019.

Case manager 2 stated that

Yes very much, the existence and creation of the ESMDC impacted the volume of cases in the courts not just civil cases

but also in criminal cases like simple offences, which are amenable to ADR.

ADR Judge:

In the previous findings for Lagos, the ADR judge came up as a disadvantage due to strong perception of alleged corruption, however in these findings under the ESMDC it was revealed as an advantage / pros.

Case manager 1 explains the reason behind this present thinking as

“I think why the MDC processes are more authentic than the rest of other private ADR institutions is because it is court-connected ADR. Whatever that comes as terms of the settlement is taken as consent judgement of the court, and also the ADR Judge is there to ask the party 'haven't you gone to attend mediation'? 'Why did you fail?’

On the other hand, **Case Manager 3** pointed out “litigants who are used to the culture of litigation cannot on their own walk into the ESMDC without the referral from the ADR judge. In other words, without the judges promoting or taking a stand with ADR the litigants matters could still be lying in court for donkey years.”

The sentiment expressed in the above quotation embodies **Case Manager 2** viewpoints:

That is why ESMDC has garnered some support and compliance is because it's court-connected ADR knowing that everything that has happened goes back to courts even though the terms of settlement go to court and it is a judgement of court it saves the parties the stress. So being court-connected makes it what we can say a traditional setting but then it has come back to being the verdict or judgement of the court as agreed by the parties they are all alternatives to dispute resolution.

Ego/ Apology

Case Manager 1 pointed out

That the first line of protocol at the ESMDC in both criminal and civil matters is by dialogue. The parties are encouraged to

dialogue or even render apology to each other during the joint session by the mediator. So with this now 2 parties are coming to a neutral ground, nobody is choosing venue for you, you come here however you want to settle, some people come here and they forgive debts that runs in thousands and millions they will just forgive each other and okay I will withdraw all my claims this one will say I will withdraw my counterclaims and the case is redeemed and relationships are amended and families reunited.

Case Manager 2 extends our knowledge by providing a complete detail on how dialogue used in ADR benefits the parties. He states,

Sometimes in courts cases, the courts do not address the problem. The real problem aftermath may be that there is a fight, and someone is arrested and charged for malicious damage or something; meanwhile, the real problem is property- is in dispute nobody is looking at that.

Fine, the person is persecuted, and whatever happens, the verdict is given, but there is a still fight because that problem hasn't been addressed. However in Mediation, it brings even issues that maybe one of the parties never thought of the other party raises its say like so and so time this happened, that this this... so it allows a wholesome settlement and not just addressing the problem at the moment. However, it goes to the root of the cause of that problem.

Flexibility of the process: Case Manager 2 elucidated

And all that but just like you have contempt of courts- courts will charge you for contempt. I have never heard that a court compels you to go for mediation.

On the other hand, **Case Manager 3** pointed out

That from the beginning of the ADR process at the ESMDC that the parties are at liberty to stop the process and opt-out.

Party Autonomy/ Party Driven:

Case Manager 1 pointed out that

For the settlement week, mediation was deployed and the mediators or the neutrals were just there to facilitate the settlement and encourage parties but whatever that came out as a term of settlement were all party driven. It was the idea of the parties that this is what this person said and the other person said and all that. And you know also in

mediation you just have the mediators, yourself, the counsel, you don't have the crowd like people coming in to distract or change things and all that for me I think mediation is or should be the most preferred process at the ESMDC because it is party driven.

On whether the ESMDC has replicated the pre-arbitral method of settling dispute?

Case manager 1 revealed that

No, you know those days it has to be a discussion, but someone gives a verdict.

However, at the ESMDC nobody gives a verdict except if it is arbitration, so I say it has not replicated it because now you have the neutrals, the neutrals are not there to give verdicts that if you do not follow they will be ostracized. It is just the two parties, basically the applicants and the respondents. And then the facilitator says okay how do we resolve this? So the neutral is just facilitating, and he/she would ask the parties' what do you want' the party will say. The neutral will then ask do you accept what this person says? Both of the parties will reach an agreement; the parties will agree on the terms, so it is not the traditional thing because the chief will say 'you say your own and I will say my own' after the two my verdict is that you have to vacate or do this or do that. He tells the defaulting party to apologise.

On the contrary, **Case manager 3** confirms

That the MDC is a concept that originated from America which has replicated the pre-arbitral method of settling disputes. However, they took out the bits that weren't good like oath taking, ostracising, took those out and modernised it and called it ADR and that was moved back to us. Yes, both the LMDC and ESMDC have replicated the pre-arbitral method of settling disputes, but it is a modified version that we are witnessing today.

Case manager 2 elaborates that going by history ESMDC has replicated the pre-arbitral method of settling disputes. She observes that even as

We speak to the traditional rulers who are part of the prospects the ESMDC is making to involve the traditional rulers as part

of mediators because at their palaces and kingdoms they settle disputes between their communities and their king's men.

So they will have expert knowledge on mediation. So I will say it has always been there -that is the traditional African method of settling disputes has not replicated it instead ADR replicated the traditional method of settling disputes.

Finally, **case manager 2** pointed,

That is why we as proponents of ADR are trying to make African ADR Relevant and see if that can be added as criteria to become a SAN or a Judge. That is another way of encouraging lawyers to explore even for judges and magistrates too, which will be part of their returns.

Lawyers not embracing ADR:

This means that lawyers are yet to embrace ADR because they are afraid that the parties will become self-reliant and they will stop employing their services. In contrast, in the previous findings from the LMDC study the lawyers in Lagos state are beginning to accept ADR gradually.

Lending credence to the above, is **case manager 1** pointed out:

Okay go and settle... then their lawyers will tell their clients do not listen to them which settlement?

Case manager 2 provides insights on the need for lawyers to become ADR advocates. He stated

So there it is very beneficial only if we can embrace it and the only way we can embrace it is for lawyers to advocate for it because why parties do not give in to mediation is because of Lawyers. For example, my friend will now tell his party we cannot settle this case with ADR meanwhile what he is looking after is his money is not after having that case settled. I do not know how far the law has gone in having a lawyers ADR settled cases added as part of his judgement, maybe judgement they have gotten in their favour through settling ADR cases.

Conversely **case manager 5** validated the above-mentioned sentiment, she indicated

It is a more effective way of settling disputes if you ask me. As I said, you are taking bread from the lawyer's mouth, and they will fight you.

Rating the performance of the ESMDC:

Case manager 3 rated the LMDC 'four (4) in their performance in dispute resolution while comparing to the other resolution centers that has had enforcement issues which is why the end users are not motivated to use these centres confidently utilize their process.

On the other hand, **Case manager 1** rated the performance of the "ESMDC in conflict or dispute Resolution a 4 because the system is still new. Though so far so good but then again I'm sure some people are not satisfied with the whole process so that's why I rated it a 4."

Case Manager 5 elucidated

But we need like the state actors they need to play an important role in developing the ADR mechanism in Nigeria, people do not know that ADR exist, the ignorance in the system is mind blowing. But then again the judiciary needs to do more like create a small claim courts for ODR. For example, you go a magistrate court in the morning and they have about 30 court cases in their dockets and remember they still write in shorthand. The government needs to do a lot of training for judges telling judges that you can not do this anymore employ people then have the recordings so that somebody is writing and another person is recording. So he can sit down in the evening and listen to the recording vis-a-viz the note that the transcriber made for him.

How has the ESMDC been useful or beneficial to the disputants? [1] [SEP]

Both **case managers 1, 2 and 3** ascertained that the court-connected ADR through the ESMDC has been quite useful to the disputants because of the many benefits it offers.

To validate the above viewpoint **case manager 2** revealed two of such benefits as:

The ADR process is highly confidential and allows the parties to exercise a high degree of control, which is flexible unlike what is obtainable in the traditional court setting. Where the lawyers take charge of the interest of

their clients, and represent them in court, which makes the process for parties rigid like the traditional litigation and is an economical processes that we service here and this economical processes are efficient.

Following through **case manager 3**, identified that

Generally, people will always prefer mediation because it's party driven, the parties decides how they want to settle unlike arbitration where the arbitrator will say just like the normal courtroom the judge gives verdict. I think mediation is the most or should be the most preferred.

Moreover, **case manager 3** documented the impact of the ESMDC on the disputants.

The appreciation of the disputants show after their cases has been resolved. You can see the sheer joy in their eyes when they come to say thank us. I will categorically state that the usefulness of the MDC on disputants is too numerous to mention. You should hear that from them.

Settlement Week

Case manager 1 suggest that from “the day ESMDC commenced that the scheme has been successful. In her own words, “Yes, from the inception and then to settlement week ESMDC is a success because they are some hard nuts cases to crack that as soon as it gets here at the mediation they are crushed not just cracked but crushed.”

Case manager 2 revealed the “settlement week was a week set aside by the chief judge to decongest the courts dockets. It's free that because they were no charges for cases referred from settlement week then we also had walk in matters from parties because we sent out publicity materials, radio advert, television advert. So people came to initiate their cases so for that walk in is free because it's coming under the settlement week and for the court referral is also free.”

Lack of confidence in the judiciary

Case Manager 5 stated that

Let me take something like medical negligence for instance it is something you see in Nigeria everyday and people do not know that they can claim. Both claiming for damages, both criminal prosecution depending on the level of negligence, depending on the part of the medical practitioners people don't know even when they do know; we also have the issue of the ignorance aspect. For example somebody kills a relation and one pastor tells you 'to err is human to forgive is divine' that no matter what you do it may not bring him back your relation- let's ask for forgiveness. Forgetting if that medical practitioner is not really qualified in regards to his qualifications if it is not nipped in the bud by reporting him that he will also kill more people. So this are some of the challenges we have so we have the law for the rich we have the law for the poor. The poor cannot afford to go to court even when the innocent are being sent to prison because the police will convince them to say that they are guilty and that the judge will just leave a lenient judgment. There is this lawyer all over Facebook on how he saved a man from being sentenced to long term imprisonment because even the alleged offence was not known to law but you know the magistrate is not going to come down to the gallery. But this young lawyer stepped up and defended this man and that was how the man did not go to prison. These are some of the challenges the law practice in Nigeria has- is not developing. We need a lot of education on medical negligence and other aspects of law especially ADR but unfortunately the judge or magistrate sitting on the case cannot descend to the gallery.

The Challenges facing ESMDC

Nigeria Culture in relation to Sanctioning of parties

The case managers pointed out that parties 'come to the ESMDC being court-connected to enforce the TOS.' **Case manager 1** validated the above viewpoint stating:

Though parties can default after the enforcement, an ADR Judge can summon defaulting parties to show cause why he does not want to continue in the process but where a recalcitrant party refuses appending his signature or withdraws on the Terms of Settlement (TOS), which is the final agreement after mediation. There is nothing under the law for now that the ADR

Judge or magistrate can do. It goes to the question of voluntariness which is the core principle of mediation.

Following through, **Case manager 2** pointed out that

“If the ESMDC do not implement a monetary sanction on parties who default like not showing up for the mediation session or deliberately misleading the court during the TOS then the ESMDC will deteriorate like the court.”

Case Manager 5 averred

To create sanctions for those who decide not to keep to their TOS.

On the contrary, **case manager 3** disclosed,

“That sanctioning parties will exterminate the voluntariness of the mediation process.”

Incentives for lawyers

Case manager 1 proffered a solution that will prompt lawyers to embrace ADR. She states “that is why we are proponents of ADR trying to make African ADR Relevant and see if that can be added as criteria to become a SAN or a Judge. That is another way of encouraging lawyers to explore ADR even for judges and magistrates too, which will be part of their returns.”

ESMDC seen as a Court

Case Manager 5 pointed out that

I cannot say that because I have seen some people come to me after they have gone for mediation. That the other party is refusing to abide by the decision, so the aim of going to the MDC is already defeated if you are still forced to go back to litigation then the aim will be defeated and generally people take offense easily because you took him to the MDC he still considers as a court. Some people do not consider the MDC as a

mediation center they see it as a court so they will do anything to frustrate you from achieving your aim of taking them to such mediation center.

Short-Staffed and Non-Compliance of Lawyers

The **Case manager 2** ascribed 'short staffed as a major a challenge facing the ESMDC.

We have a challenge as to the number of cases trooping in now since after the settlement.' Elaborating further

So we have limited number of staff members not that we are too limited but it could overwhelm us because we get cases from court of appeal, federal high court, magistrate, state high court. We haven't even started handling customary courts we just left them out. At some point when we have much number of cases but then have just few numbers of case managers who are handling these cases. The ESMDC might become congested like the traditional courts. This is the why the client relations officer help out in the case management of matters.

Case manager 1 validated the above viewpoint by emphasising that "I am acting in the capacity of a **volunteer** for the settlement week and I am the case manager of the settlement week. We were invited because the ESMC need more hands during this period. Basically what we do is for the settlement week and we hope to end or by this month our work will come to an end. Then we have to transfer the remaining cases to the normal ESMDC."

On the contrary, **Case manager 3** pointed out that number one challenge facing the 'ESMDC are lawyers.'

I think number one is non-compliance by lawyers, they are yet to embrace the process and also another challenge we may be having again is the lack of facility, the numbers of room for mediations is not enough.

Magistrate (4) participants

Advantages of using ESMDC

Scopes of matters covered at the ESMDC

Magistrate 2 indicated that “most times parties bring in irrelevant simple cases brought under the guise of the criminal case like the other case I had where someone went and stole bush meat from a related (family) member. So once I noticed that is really a family issue I referred them to the ESMDC.”

In furtherance, **magistrate 3** pointed out they ‘settle Land dispute.’

Finally, **magistrate 1** gave a comprehensive list of cases that can be covered at the ESMDC.

However, we take on cases like stealing, what the parties might want is restitution so when they come in for mediation, they pay back what they have stolen and most times they do not agree on the said amount they stole but they are encouraged to pay a substantial amount then decongests the courts and reduces the cost of the complainants.

So sometimes they stole their phone, they just want to get whatever they lose back and when they realised that they do not get all that in court they prefer to come to the ESMDC so they can get restitution in some cases.

She went on to state that:

Minor offences include stealing, breach of peace (a land tussle-if one of the parties goes into the land and destroys something then it is criminal and the person is arrested for the crime) and it is sent to court and the court sends it here (ESMDC) (we tend to resolve the aspect to a large extent some of the criminal matters has the clog of criminality but what actually drives it is civil) actually have a double prong approach we don't just aim to resolve that criminal aspect because we know that what is driving the criminal aspect is a civil issue behind at that background so once you resolve that land tussle between them to a large extent the other one goes away so we kill two birds with one stone in that instant.

Scopes of matters not covered at the ESMDC

So the ESMDC ‘does not settle murder cases’ reveals **Magistrate 2**.

Criminal Proceedings

Magistrate 1 revealed that the ESMDC covers or settles criminal cases.

Yes, they have started settling criminal cases, I have settled like two (2) already. You know the law provides that certain minor criminal cases can be settled under ADR.

ADR as a Peaceful Tool

Magistrate 1 extends our knowledge on ‘why they do not rush family matters at the ESMDC.’ This is because

When it comes to family matters during the mediation, a lot of them want to unburden all their pain and all the stress. But by the time they do that in several sessions you see some of them keep in touch with you, we also pray with them and give them moral support outside mediation when their case is ended.

However, **magistrate 2** stated that with “the MDC is structured to be create a peaceful environment or atmosphere whereas the court system is structured to create anarchy or to be firm. So when people come to court they see it as do or die. I think that's the whole difference.”

Cost-effectiveness

Magistrate 2 stated

The cost-effectiveness of going straight to ESMDC than to Litigation is that it is cheaper and quick to settle in the ESMDC. For example, one of the cases that I settled in the MDC, what they stole from the guy was worth about 650,000 naira equivalent to £1,322.31.

However, before then he had spent more than 800,000 thousand naira £1,628.47 trying to pursue the case, paying the cases when he came for the mediation, and he was still talking about continuing with the court case. However, during caucusing, I now asked him how much have you spent? Furthermore, he quoted the above sum, and I asked him does it make any sense pursuing this case that you have spent much money, and I told

him in private. I told him that the lawyers keep collecting money and you keep paying their brief and when I pointed out the financial impact of continuing with the matter he listened to me and said that he did not know that mediation was better. Now he knows it is better to save his money and he decided to go back to the joint caucus and ironed out things with the other party, he reached an amicable agreement with the other party he was paid the money in instalment, and that was it.

How has the ESMDC been useful and beneficial to the disputants?

According to **Magistrate 1**

Yes, it has been useful to the parties, after the settlement, they thank us if we had known that this existed we would never have wasted our time in court.

Conversely, **Magistrate 3** indicated

Yes, I tell you they leave happy, it is a win-win for all the parties. There is no victor; there is no vanquish that kind of thing, so everybody leaves happy.

Equally, **Magistrate 4** affirmed that the ESMDC has been useful and beneficial to the disputants. In her own words-

Yes, very well most of the matters that have been referred so far have more or less decongested the courts to a large extent because most of the civil suits. For example the case I handled laid there for like six (6) years. No serious progress and even full trial have not commenced but in a matter of a week or a few days after 2 (two) short adjournment the matter has been resolved. Most of the court volumes have really come down-the effectiveness as it is here in Enugu has so much impacted on the volume in the regular court, someone mentioned in one of the matters that we are hearing that there is a very pathetic number. As of the moment there are about five (5000) divorce matters pending in the H.C of Enugu State alone.

On the contrary, **Magistrate 2** stated

I would not say the ESMDC has replicated the pre-colonial method I would say that the ESMDC have their own standard, but I think they combine both because when it comes to serious traditionalist and the Igbo culture, we resolve some of this

matters by going back to the grassroots and even impacting them with some Igbo proverbs we do make use of it. Sometimes I tell the parties in the Igbo language “onwere ihe mmadu ji okwu na uka eme” (There is nothing one can gain from conflict). I think I will say ESMDC combines both.

Criminal Proceedings

Magistrate 1 confirmed that ‘she had settled criminal cases through the LMDC.’

Yes, I think I have had one criminal case that has been settled and another one that they reported today that settlement is in progress. I have had two; the first one had to do with, I will call a landlord and his tenants. It is a church they have been in the property for many years like after the civil war I think they said they came there since 1970, there are three brothers. The father of the defendants and his brothers gave the church the premises, they entered there, and they have been there undisturbed. Then the three men that gave them the premises died, and this people took over and then this man is now saying that head of the family that he decides that the land is just his so that these people should come to him for everything.

However, whatever that happened, they refused and all that and went and destroyed their fence, their gates, their signpost and all, so the matter came to court and lingered and lingered. It did not start from my court it came from another court and other jurisdictions, and it was assigned to him but on mid-way. I realised that the church is not ready to leave the premises they will remain on the premises the man did not say he did not destroy. He said that because the pastor keeps calling him names from the facts so far placed before me at that time. I found out that this man will go in for this and most likely will be a custodial sentence. Then you have a landlord going to prison because of something he did to his tenants what will be the relationship after serving the term. So I just decided that the best thing was to have these people settle this thing amicably that is the first one and then the second one that is still fair though has to do with siblings one died. The other should take over his property, and one of them went and forged document saying that the property now belongs to her. All that it is

actually in court for forgery of documents. And I said these are siblings if eventually, they can prove that she did this she will go in for it and how will they feel this is a relationship that we need to maintain no matter what. They are siblings of the same parents, so I decided to send it to the LMDC and when you see instances like this siblings, or there is a relationship you need to maintain whether criminal or not I referred them to the MDC.

Magistrate 2 highlighted

That irrelevant simple cases most times, which parties bring under the guise of the criminal case. Like the other case I had where someone went and stole his bush meat but they were related (family).

Lending credence to the above, **Magistrate 3** confirmed that ESMDC has started settling criminal cases.

“I have settled like two (2) criminal cases already as a mediator at the ESMDC.”

Speed and Time

Magistrate 2 pointed out

It depends on the case and the peculiarities of a particular case. For instance, sometimes if it is a criminal matter it does not really last long but if it is a criminal matter that has 5 or 6 sister cases it will take some time but the one that takes the most time is Land dispute. Even before they came to the centre some of them have been in court for 10 years, some 15years, some 20 years there is a lot of emotions and all that. And then for family matter we do not rush family matters because you really have to now give them your time. So that you now listen to them because sometimes is not about mediation. When it comes to family matters you see that sometimes even during the mediation a lot of them want to unburden all their pain and all the stress. But by the time they do that in several sections you see some of them keep in touch with you. We also pray with them and give them moral support outside mediation when their case are ended.

On the other hand, **magistrate 3** simply stated, “at the ESMDC is minimum of 3 months for disputes to last.”

What dispute resolution is preferred at the ESMDC?

Magistrate 2 was of the opinion that

The dispute resolution preferred at the ESMDC is 100% mediation but it depends on the cases like in the jurisdiction where I stay on there have a lot of family coming to court over a irrelevant simple cases most times they bring it under the guise of the criminal case.

Conversely, **Magistrate 4** pointed out

I would say mediation because the process is a bit more relaxed and of course before you submit to mediation its at the will and consent of the parties. They will have to fill a form eliciting their consent and also the facilitators have been adequately trained to guide the parties. Also it is a form of a win-win situation unlike where you go to court they hand down a judgement you see that this is the winner and the loser loses everything. Then the other party will go on appeal and the matter lingers and generations unborn will come and inherit such matters as it were. So mediation I would say is the most effective because it affords all the parties all the opportunities to present their matters and also see reason to concede one thing or the other-you win, I win. There must be a common point of consensus so mediation is effective.

Incentives for Lawyers:

Magistrate 1 pointed out “I am sorry I will deviate a bit like some of my colleagues do not like sending matters to the ADR because it does not add up to their cases and eventually if you want to be elevated as to become a Judge. It would help if you had cases, and they must be contested cases. Not the content because they do not have time to go through it, and they do not have time to start reading what you have written, so all I know is that these 3 cases that I have so far that has been settled there at the ESMDC. If I had done it on my own through

the courts is a plus for me too but being settled at the MDC is not a plus.”

Non contested cases are the cases that you send to the MDC so when someone looks at it and says no I am going to write a sound judgement on this and is going to be a plus for me, I send to ADR, and they come out victorious.

If It can be added to cases that would be used to evaluate me first of all mostly when it is referred by the court, first of all, I was able to go through the cases, the issues before the court and I found out that these are issues that can be settled amicably at the MDC if I should get a plus for it people would, the willing to send but when you are doing it for the parties and those at the MDC they are the ones that get a pat at the back for it, you do not get it, magistrates do not get it for sending the matters so when they know they are not getting it, they will decide why should I, let me sit down I have been doing it on along so let me continue because I tell you the cases that have been so far settled if I had gone on with them I would have gotten a judgement. That when I am done, I need to add to my volume of cases because when you compile your cases, they look at volume.”

The Settlement Week

Magistrate 1 elucidated

So I think its generally getting people aware of what it's really is but with the settlement week they just had I think like two weeks or three weeks back here in the State and I have heard so many lawyers say we didn't know it was going to be this easy, this good, everybody left happy and some of them still got paid by their clients so it is actually getting people aware and understanding what the MDC is.

Equally **Magistrate 2** indicated

However, the settlement week was an eye opener, the lawyers after they had a taste of what mediation was all about they started bringing their own personal cases as walk-ins and also the court-referral increased because a lot of judges and magistrates started supporting the ESMDC.

Consequently, **Magistrate 3** pointed out

Is wonderful I wish you were here but at least you can see the number of people here? During the settlement week this place was vibrating, people were everywhere. We had over 200 cases here and settled a 100 and something within a week. I had 4 cases, and I settled 3, some had 10 and settled 8 etc. It was an eye-opener for people, and these can work some lawyers that came there for the first time they said I'm bringing 5 of my cases since then you see the flood of cases coming into the ESMDC.

Finally, **Magistrate 4** concluded that

I am of the opinion that reasonable progress has been made since the adoption of the process in Enugu, Lagos (LMDC) has been like the pilot drive, the pacesetter and every other region especially Enugu has been making efforts to see how we will domesticate here and put it into action. So from inception there has been reasonable progress made so far because apart from the regular MDC just recently about (2) two weeks ago a whole week long has been dedicated to settlement week which had over 300 matters being referred from the regular court to the MDC for a resolution. So that has decongested the regular court with litigation matters and also given an opportunity for clients to be effectively amicably resolve matters. I would say there has been ample progress and another aspect of that is the consciousness has also been deepened in the minds of the litigants some of them did not understand the need for MDC because the awareness is broader and also they are beginning to see reasons why they have to submit to MDC. I think reasonable progress has been made so far or since inception.

Challenges facing the ESMDC

Mandatory ADR / Nigerian Culture in relation to Sanctioning Parties:

Magistrate 1 stated,

You know they tell you it is a voluntary thing then you can't be firm. But sometimes our people need that person to be in authority and insist on certain things, you know you have to drop some of the guidelines and step in like this is what it should be. I think they just need to firm up a bit and maybe a cost sanction but then it wouldn't be voluntary if they should do that. I think that's what they really need to; they just need a little bit powers. You are called and you have to come and

answer, you have to make out time like if it's in the court you are to appear on a Monday and you don't come and they say come next Thursday and you don't come. You know if you don't come and if it is a criminal matter, a bench warrant will be issued, if it's civil you are foreclosed or cost is levied and all that, maybe there should be ways of getting people not to obey all these little, little rules. That's the problem they have.

ADR (A drop in revenue):

Magistrate 1 revealed

Lawyers and their little idiosyncrasies where most times the multi-door courthouse they think ADR is there to take away their daily bread.

Also, **Magistrate 2** opined

But of course like everything in Nigeria will always have a teething problem like the most issue we initially had and still do have is getting the lawyers on board on the mediation process. For example, my experience once I wanted a matter to be seriously resolved, sometimes is either you get hold of the lawyers involved, or you get them on your side or get them removed from the session or caucus.

They either aid your mediation or block your mediation by instigating the parties not to get into an agreement with the other party. So it is a fifty-fifty thing because there was an issue I had it was a criminal matter, I realised that during the mediation process the lawyers would want to quote law they want to mess up the whole situation, so I read in between the lines. I now said I want to see the party's alone can the lawyers please step out? It did not take more than 1 hour and the parties settled, and I now realised that too many things the lawyers were telling them were not true because they want to collect the brief and some of them get angry that parties come to the mediation and they have named the ADR as A Drop in Revenue.

In sum, **Magistrate 4** elucidated

Well, everything at this formative stage will definitely have its own challenges. For example, we are still nurturing it, but the challenges will hover around understaffing and the facilities available. We just concluded mediation week. They had to call for volunteers to assist,

probably considering the volume of matters well over 300 within a week that had to be referred. So the issue of understaffing came to fall in the last MDC week and then the issue of facilities. At times you have to be given an early date in the morning, and then you have to wait till about 3 pm because the facilities available were not sufficient then it has to be on shifts bases (about three shifting a day). Then your matter will have to be adjourned again till the next day, so the issue of understaffing and generally the issue of awareness. In our environment, some people do not deliberately go to court because they believe that the matters will last for 10 or 20 years when they go to court. Unfortunately, some of them resort to self-help as a way of trying to get what they think is their right. However, if these challenges are taken care of and expeditiously handled and dealt with- the litigants or parties in the circumstance would understand that they could deal with these matters effectively, amicably. Within a short period then they will be able to submit more to ADR. The issue of awareness on the government itself, the judiciary, and even the NBA. The NBA should advise lawyers to advise their clients to seek ADR other than litigation, as it were. However, it affects the legal fees, as some lawyers would say. However, there are some matters they do pro-bono; they could also make recommendations to clients and encourage them and advise them to refer such matters to ADR/ ESMDC.

Category- Mediator (4) Participants

Advantages of using the ESMDC

Simple Procedure

Mediator 4 elaborated on the simple procedure adopted by the MDC

The MDC has adopted a simple system that works. For example, someone with a complaint will go to the MDC basically the person may have attempted to go to court and will be advised to approach the MDC (because it is easier, it is faster, its cheaper, the litigants will still retain some form of friendship after mediation / arbitration). He will fill a form and will summon the other person. Mediator (s) will be assigned to their matter and a date will be given to both parties for them to appear at the LMDC. During the session the person that brought the issue will table his issues and the other party can reply and

if it's something they can settle within themselves the mediator will help them draw up an agreement otherwise known as Terms of agreement (TOA), the parties will sign then if both of them acted in good faith then it will settle the issue.

The Differences and Similarities between the ESMDC and LMDC

Mediator 2 pointed out that

The development and implementation of laws started with the present vice-president Professor Osinbajo and after him the former governor of Lagos State Babatunde Fashola, SAN. Fashola was Professor. Osinbajo Personal Assistant as attorney general, Fashola became attorney general and later became Lagos state governor. So there has been continuous implementation of justice sector caucus in Lagos.

Speed and Time

On how long a dispute last, **Mediator 3** stated that

ESMDC has a time frame or definite time span matter resolved in here but you know you can't sacrifice the provisions of the law, justice on the altar of the law most times we try to ensure that matters are resolved from the date the mediator is appointed 60 days but in the rare events it exceeds the 60 days we try to see that matters are resolved on the shortest possible time. So parties can go on with their lives and if it doesn't succeed in the events of a court referred matter we send it back to court, or if the party feels that this process won't guarantee or provide what he wants then it is sent back to court because mediation is a voluntary process. What the parties are expected to do is to make good faith attempt, well if doesn't work we can't force you to sign Terms that you don't agree to.

Though, we are trying hard to see that matters were resolved in one (1) day during the Settlement week a whole of the matters were settled in a day. We were under enormous pressure to ensure that we resolve matters in a day (one session) because is

a time bound programme. It is something we believe that can be done even the regular ESMDC -walk-in and court referred.

To validate the above viewpoint, **Mediator 2** pointed out

Yes, the existence or creation of the ESMDC has impacted on the volume of the civil matters in court, because you see landlords going to court to eject tenants and at the end of the day the case will take up to 6 months. However, when you come to MDC, and they reach an agreement that the tenants are leaving the premises all you need to do is to give at least 3- 6 months for the person to move and the matter is resolved immediately. I have had a tenancy matter that I have resolved within 15 minutes, but it is in the court you spend up to 6-8 months. They will suffer several cases of adjournment at the end of the day they will have the dispute of whether the judgement was fair etc. but in MDC is a consent judgement you can not deny what you agreed and signed.

On the contrary, **Mediator 1** pointed out

Ordinarily, a dispute should not last for more than 60 days but one of the problems is that another person will give another person a power of attorney to represent him in the process. But at the end of the day they will soon go back to them for decision, maybe a particular position you have to go and clear with your principle and that can last up 6 months because the parties are abroad and if you say something they need to confirm with the party abroad before you can go on with that case.

Corroborating with the above viewpoint **Mediator 4** indicated that

It was because of the time it takes to conclude a matter in court. For example, a party may initiate a procedure, maybe a tenancy matter. It may take two or three years, and he is still on the same matter and remember the person still has a right of appeal if the other party (i.e. the tenant) really want to frustrate the landlord. He may be in court just to recover possession for Seven (7) years or Ten (10) years; meanwhile, he has stopped paying rent. So in order to avoid all these, some people go to the MDC and invite the tenant they settle, and if it is a business transaction, the same happens they resolve the issue. However, some parties who did not act in good faith after the settlement will still drag the matter back to litigation/court.

Cultural Nuance

Mediator 2 portrays ‘a picture that the parties are allowed to speak their native language immediately the dispute resolution begins.’

Conversely **Mediator 4**

Maintained that they respect the parties by not addressing them by their first names, especially the elderly ones. You know, this indicates respect in African culture.

Flexibility of the ADR Process:

Mediator 3 pointed out that ‘they use Skype and Whatsapp to communicate with the abroad parties.’

On the other hand, **Mediator 2** clarified that

We do use video calls but is not all time. Because of the time difference due to where they are staying, somebody that should be in bed and you will be calling that person, but we are managing I think so far so good.

On whether the ESMDC has replicated the pre-arbitral method of settling dispute?

Mediator 1 gave a holistic view of the above-subject matter.

So if there is a dispute, they will have to settle it in-house within the nuclear family. However, if the dispute escalates, they go to the ‘Umunna’, and if it escalates outside many times, they have to invite the kindred we will eventually tell them. That if you do not settle this, then you have to take it to the elders in the village and sometimes the elders will have to play by equity. I believe it is a return to what we had, and this will work here. Though there is going to be a lot of challenges it will work, it is our method of settling a dispute years ago and still exists in the various villages.

To validate the above viewpoint **Mediator, 2** stated,

Yes, they have replicated the pre-arbitral method of settling a dispute. Totally with major modifications.

On the other hand, **mediator 3** pointed out

To an extent the ESMDC has replicated the pre-arbitral method of settling a dispute, I know the traditional method is very much informal. So the MDC tried to let us call it a middle ground not strictly formal it is between the formal and informal. So the MDC system is not altogether formal process but is not as informal as resolution methods used by our forefathers before litigation and all the formal dispute resolution came into being. At the MDC, we try to ensure that parties follow a regiment that takes into consideration their convenience, like in court, which is strictly formal. We have parties who are mandated to come at a particular venue and at a particular time to have their matters resolved if you don't come on that day, it won't favour you. However, at the MDC before you fix any date for mediation, we consider it with the parties which date will be convenient for them. The ambience is conducive for parties to resolve their matter, unlike the pre-arbitral system.

Mediator 4 elucidated that

ESMDC did not totally replicate or in fact did not replicate anything. It's an entirely new system of its own. This is because in the pre-colonial arbitral system it happens between the kindred and they respect the decisions. It is the same process that the modern ADR adopted. It happened that the parties would respect the decisions of the elders in that setting. They believe that the elders will say the truth and they already know the system so whatever the community comes up with they tend to agree with it more. That is why a lot of people prefer the ESMDC.

Scopes of matters not covered at the ESMDC

Mediator 3 was of the opinion that

With the coming of the ESMDC, the courts were now left with core matters, fundamental matters that they know that ordinarily cannot be resolved through ADR, Constitutional matters, felonies, fundamental rights issues.

Mediator 1 pointed out

Not capital offences, armed robbery, rape, election petition, divorce etc. Do not go to the ESMDC.

Scopes of matters covered at the ESMDC

Mediator 4 simply stated matters like tenancy and commercial matters.

Explaining further **mediator 2** explains

Matters that is miscellaneous in nature. Although the administration of criminal justice act and even law of Enugu state gives judges the power to refer criminal matters to the ESMDC.

Party Autonomy and Confidentiality:

Mediator 3 indicated that one of the advantages of the 'MDC is that the parties are at liberty to select any door that they want their case to be settled in while pointing out that

The court referral which is mandatory takes away the voluntariness of the process.” “ I would point out that there is a confidentiality agreement signed at the opening statement by parties, which cannot be used in courts, and also the mediator cannot be called to testify in the court of law.

On the other hand, **Mediator 2** pointed out the parties are 'encouraged to speak their language and also they can stop the mediation session whenever they feel like.'

Congestion of the Court Dockets:

Many cases have been settled within this 12 past months, we have referrals from Magistrate, high court and walk-ins and we have been able to resolve a good number of percentage of this matters- revealed **Mediator 2.**

Mediator 3 affirmed that the creation or existence of MDC impacted on the volume of the civil disputes in the state court because

We have had matters coming from virtually all over the courts in Enugu state. I'm sure with the caseload that we have currently if not for the MDC they will still be in the various courts and then we just have Enugu state settlement week. Where we targeted resolving 300 matters we exceeded the 300 and we are able to resolve currently some of the matters are still on going, so we have resolved more than a 100 of those matters, these are matters that ordinarily would have still be in the dockets of the court but the ESMDC has had those matters disposed of, the judges and the magistrate can now give more time to those matters that are not ADR amenable.

Rating the Performance of the ESMDC in Dispute / Conflict Resolution:

Mediator 2 rated the performance of 'ESMDC a **3.5**, simply stating that it is still a work-in-progress.'

Conversely, **Mediator 3** rated ESMDC a **4** while pointing out "that the ESMDC want to be the hub of justice in the eastern part of Enugu state but they still have a long way to go." On the Contrary, **Mediator 4** ESMDC basically discourage other people for involving lawyers so I will rate 2.

Cost- savings:

Cost of Walk-in and Cost of legal representative

Mediator 2 pointed out that

One of the cost-effectiveness's of going straight to the ESMDC than going to litigation is that ESMDC offers access to justice, to the common man so that he can have access to the court. We also have walk-in where the party pay a little /(token of 5,000.00 naira equivalent to £10:19) amount of money which last for 3 or 4 adjournments- to have their disputes resolved, and you must not appear with a lawyer. So we save that cost of legal representation and no unnecessary cost for paying for briefs for your lawyer and appearance fee which can amount to 150,000 naira (equivalent to 305.66 Pound).

Conversely, **Mediator 3** indicated that

The cost-effectiveness of going straight to the ESMDC than litigation. Is that we have matters that have been in court since the '90s. Then you have been paying lawyers for those number of years going to courts and all the inconveniences then you have not gotten what you are after, but you have an ESMDC process that you can use to ensure that your matter is resolved as fast as possible. Meanwhile, you do not pay so much for matters on our regular dockets; they are also cost-effective. Parties pay administrative fees very minimal amount and then fees for dispatch) and during the Enugu settlement week, it was free of charge for all parties and then you can imagine 300 matters was free of charge for the parties. "When we say free of charge is not that someone did not pay the cost, but the cost was not born by the parties it was born by the Enugu state government.

What is the cost effectiveness of going straight to MDC instead of going to litigation?

Mediator 4 stated that

If you are lucky and the person you brought to MDC agrees and abides by decision reached or to TOS reached then it saves the parties a lot of money and time but whereby the person decides not to agree and they dare you to do your worst that means you have to return to court- incurring double expensive.

ADR as a Peaceful Tool

Mediator 2 emphasised

And at the end of the day, parties had sat down and aired their grievances and pain. During the caucus, I probed and saw that there was a serious underlying issue. Once you touch this during the mediation session, you see that years of pain is settled and replaced with laughter and restored cordial relationship/ friendship.

To validate the above viewpoint, **Mediator 3** indicated,

Yes, ADR has been very useful to the disputants; you can see people testifying because I mediated a peculiar case. It came into the court as a criminal matter; the parties were friends from the banking sector but became enemies once the case went to court. Nevertheless, at the end of the mediation session, they were hugging and gisting about old times, but in the court, they were not talking to each other. The court system is structured to encourage acrimony, and mediation is structured to encourage

peace and reconciliation, once that relationship is restored, parties can go back as friends.

What Dispute Resolution Process is preferred?

Mediator 4 explained

It depends on the matter because it is not every dispute that can be brought under Arbitration, mediation and conciliation. I do not have any preference.

However, **Mediator 1** specifically stated that Mediation is preferred.

He states “Mediation is preferred though it is worthy of note that parties are allowed to talk it out and mediator will list what they want but in arbitration the arbitrator imposes what they want on the parties.”

‘I would say mediation because it is cheaper and flexible’ revealed **mediator 2**

Has the ESMDC been useful to the disputants?

Mediator 2 confirmed that

The parties keep coming to thank us and some of these parties have recommended the ESMDC to other people to come in and start their cases.

Speed and Time:

According to **Mediator 3** ESMDC

Has been effective in reducing the matter at the court dockets. Simple matters that can be resolved through ADR has been in the courts for 8, 9 20 years etc. But at the ESMDC it can only last for 2 days or 3 days and the maximum dispute can last at the ESMDC for just 3months.

Finally **Mediator 4** pointed out that

It depends on the complexity of the matter. However, it usually last between 3 weeks to 3 months, sometimes one sitting.

The Court as a Battlefield:

Mediator 3 emphasised that

Parties have complained that they would feel better if the courthouse is removed. Because it scares them, they have been traumatised by the use of the traditional court, so psychological it affects their psyche so if that can be done and also remove MDC from the courts.

Criminal proceedings:

Mediator 1 revealed that the

ESMDC do have criminal cases especially criminal cases that emanated from civil transaction. 'Most of the criminal cases we have at the ESMDC they will term it 'OBT' (Obtaining by false pretence) but at the end of the day you will see that is a civil transaction.

Maybe someone gives you money to buy land and at the end of the day when you want to enter the property you find out that it is encumbered. And start asking the person that you gave your money to produce the money and at the end of the day you start charging for fraud. But ordinarily when you come to round table like this all you need do is that this transaction did not work, I want my money back. Nobody will go to jail at the end of the day they will pay you and you will go and also there are cases like attempted murder, which is a criminal offence, but when you look closely it emanated from maybe a domestic violence from the home. And at the end of the day there was fighting and something got out of hand and they say is attempted murder. When such disputes are brought at the ESMDC you take care of that root cause of that thing. What at started that quarrel in the first thing that led to that fight and at the end of the day they will recover and go home.

On the other hand, **Mediator 3** highlighted

That cases like land disputes that people tend to fight or kill each other are criminal and it is sent to court and the court sends it here (ESMDC).

Mandatory ADR / Sanctioning Parties

Mediator 1 pointed out that they ‘the ESMDC should start sanctioning parties that they do not show up for mediation session. Also compulsory mediation or mandating parties to mediation absolves the party autonomy in ADR.’

On the contrary, **Mediator 2** clarified

Matters at the ESMDC are not strictly suited to the civil matters we can handle minor criminal matters, in fact, we have handled many of them and resolved and to extent we have helped decongest the prisons also because the minor criminal matters that will go to court the parties may be reprimanded in prison pending when the matters comes up and when they are granted bail.

The Justice Reform Team:

Mediator 1 pointed out ‘the justice reform team are interested in the ESMDC and trying to collaborate with ESMDC in any way they can because they know that the ESMDC that will help justice go to the grassroots.’

Explaining further

Justice reform team is a symbol of like with the way you had different sectors it assumes or look at the justice sector, the justice delivery sector is a project that was powered by DFID, the British council, it was powered a long time ago and I have helped them in an aspect. I was a consultant to them, finding an aspect when they were doing, reviewing the performance of court system how fast are they delivering justice? Are they sitting everyday? How does the caseload in that way I was a consultant there so I have to go to visit the courts and make a report we were like eight (8). So what we did during the settlement week or before the settlement week was to take up a small bit of what they are going to go and say, and say lets publicise the settlement week for you, so they started playing jingles in radio Nigeria, all the FM and aside the cases that was brought from the courts, many people for the first time now

went to mdc and say "onweru onye na achom okwu" (someone is looking for my trouble)."

What Dispute Resolution is preferred at the ESMDC?

Mediator 2 stated

For now, we are concentrating mostly on Mediation because the fast track -is a type of court that conducts speedy trials- you go through everything that has to do with court and you need a judge for that. That court is here and the arbitration unit is here but now what we are doing is mediation.

Challenges facing the ESMDC

Mandatory ADR / Nigeria Culture in relation to Sanctioning Parties

Mediator 1 pointed out that they 'the ESMDC should start sanctioning parties that they do not show up for mediation session. And he observed that mandating parties to ADR takes away the party autonomy in ADR.'

Mediator 2 extends our knowledge on why the judges are not sanctioning recalcitrant parties.

Explaining this **Mediator 2** states

I think for now the judges are taking it easy on the parties because some of them can't afford 2000 naira and you are sanctioning them. The judges are just trying to make it simple for them.

Mediator 4 gave comprehensive insight on the phrase '**The Nigerian Factor-**'

In Nigeria, people only obey things that can be enforced. That is why the executive arm of government has people that execute orders. They know that ADR is not enforceable, so they will dare you to do your worst. However, some fair percentage of parties do abide by their decision, but most don't. They need to sanction them; definitely, there should be a law in ADR to that effect. In the sense that they believe that the

system will favour the person that went to report the case at the MDC, that is why people do not follow through with their TOA. Mind you, the court will not penalise the person for not abiding by the TOS; hence more and more parties do not uphold their TOS. I think the ESMDC should make it mandatory because if you cannot enforce a decision, why bother going there in the first place.

ADR (A Drop in revenue)

Mediator 3 revealed that ‘they are getting the support of the judiciary, however the lawyers think it’s ‘A drop in their revenues.’ However, we want them to know that they can maximise the opportunities at the ESMDC. For example, in this law week, today I was speaking with a couple of lawyers 3 or 4 and they said that’ ‘you know that this mediation is removing money from lawyers it's taken away our means of livelihood’.

Mediator 2 validated the above point

The lawyer’s think that ADR is a drop in their revenue, they discourage their clients a lot. For example, when the judges ask ‘like don’t you think this is appropriate for the MDC to settle? The lawyers will quickly say no, no.

Mediator 1 pointed out

Similarly **Mediator 3** indicated

Well we are getting the support of the judiciary, what we want to explore further is incentives for lawyers that will make them more involved in the process that is one of the disadvantages. They think it’s ‘A drop in their revenues’, we want them to know that they can maximise the opportunities at the ESMDC.

Space Constraints / Confidentiality agreement:

On the other hand, **Mediator 2 pointed out**

Space is a big challenge but I think the Chief Judge (C.J) and the government are working to see if we could have a bigger

space like during the settlement week we didn't have enough space for mediation.

Mediator 3 revealed that 'Parties could hear each during the mediation session which is no longer confidential.' Emphasising that

Process we had to use the facilities of the courts just for a day and after that day we had to make due by converting some of our office spaces to mediation rooms is actually one of the things that have been hampering our progress. But you know that both the mediators and parties sign a confidentiality agreement so nothing leaves this room.

Office space and issue of submission

Mediator 1 disclosed that

One of the challenges facing the ESMDC is that the centre needs a bigger structure / building to accommodate the parties because at times you will see the place overflowing with people that have come for mediation.

Mediator 1 further pointed out

Another thing is the issue of submission because no matter how we look at it mediation is still voluntary and in a clime like Nigeria culture has a lot to play if there is no rule some people tend to break the law easily and such situation like this mediation being voluntary some parties can choose not to come because they know nothing can be done to them because they know the ESMDC cannot compile attendance. Unless is a court-referred which if you are not coming is a contempt of court but if is a walk-in a party may choose not to come and we don't have that force to compile that attendance. If it's court referred the ADR Judge can sanction the parties.

Incentives for lawyers

Mediator 1 explained

What we want to explore further is incentives for lawyers that will make them more involved in the process that is one of the disadvantages.

On the other hand, **mediator 2** gave a comprehensive viewpoint on the need for **Incentives** for lawyers. **Mediator 2** explained

I will be speaking at the NBA Conference on reasons why lawyers are lethargic to ADR. For instance, the judges, the magistrates will tell the lawyers that they need a certain number of cases that must have handled for the applications for senior advocate of Nigeria (SAN). They need 20 high court cases contested, 6 court of appeal cases and 4 supreme court cases but they don't mention any requirements as regards what case has to go to ADR.

Last year, a federal high court judge brought up this issue seriously during the law week in Lagos and he mentioned the fact that they need to amend the law to include mediation its difficult because they have not even included Arbitration and yet there is an arbitration act.

What happens is for instance particularly the aspect of the requirement let's take the SAN there is an ethics and privileges committee, they have the power to say these are the requirements and these are not requirement, they have added to the requirement for instance cases that you have done free of charge, that is called pro bono cases. But nothing on ADR, so that's why lawyers do not take on ADR because there is no reward. For instance, during the settlement week I had eight (8) cases and in one week I settled 6. Now I'm looking for 20 Cases to which to apply to be a Senior Advocate of Nigeria (SAN) in fourteen (14) years, 20 cases in 14 years and I don't have but I have six (6) in one week from LMDC. The fact is that we need to adopt ADR more and it needs to be part of the criteria for becoming a SAN and a judge.

Awareness

Mediator 1 indicated,

In Easter most people never knew about ESMDC. However, people are beginning to hear about the ESMDC though this is still not enough. Many people still do not know about us.

The above sentiment embodies the viewpoint expressed by **Mediator 2**

Yes, so it's been very fruitful but the only thing is to make it to be well known, there is need to work on the people for them to know about it and patronize us.

Lack of Confidentiality:

Mediator 3 opined that the ESMDC need 'more rooms or a bigger building because of the parties private sessions.'

Due to the lack of rooms, you can overhear parties discussing which is not entirely confidential anymore. We had to use the facilities of the courts just for a day, and after that day we had to make due by converting some of our office spaces to mediation rooms is one of the things that have been hampering our progress.

ESMDC being at the court centre is not a good idea

Mediator 4 stated that

Is only enlightened people that know that the LMDC is an ADR centre but most people consider here as court they do not know the difference. It is also challenges that they are facing.

Lawyer (4) participants

Advantages of using the ESMDC

Simple procedure:

Lawyer 1 gave a comprehensive view of how the ESMDC work:

Through the **Walk-in** route-The parties' file, their pleadings that are the statement of claim for the person who brought in the case. And the person who is now sued will now file his or her sentence of defence with regards to what he or she knows about the case. Then when the

case or the pleadings is now before a judge, then the judge will now tell the parties that the court will refer the case to MDC. Then the parties will now have to go to the MDC. And then the court will now give the parties forms to fill. Then the parties will fill the forms in regards to their status; in the case, the name of the case, and they will fill their contact address and phone numbers.

So when the file now gets to MDC, then the case manager in the MDC will now be the person to contact the lawyers of both parties. That we are going to have a session based on these your case, it has been referred to the ESMDC, and we will have a session on this date. So please make sure you attend then when that date gets closer then the case manager will now have to send a message to the lawyers. That your case is coming on this date, so that is how the MDC work, then the meetings followed or took place. The cases settled at the ESMDC is a land dispute, I was privileged to settle a land case at the ESMDC, the claimant said he bought the land in 1983 and the man that sold to him finally died.

Then the children in getting the letter of administration now included the property that was sold to him he said no. That it cannot happen, the court now has to refer the matter to MDC after which the man that bought the land now came and said that he did not know that the land does not belong to the family. He apologised and actually knelt down because the man that said he bought from the father of the family that sold is a wealthy man in Nigeria because of that he has to concede to the plea of the man that bought and the cases was finally settled.

Though, **Lawyer 2** pointed out that the “ESMDC has a very simple proceedings, CONSENT is a very vital ingredients when it comes to referral parties. The judge with their wisdom may deem it fit to refer the litigants to ESMDC.”

“However, they do it in agreement, the judge will ask and allow the parties to talk it through with their lawyers before they make their decisions. And when the parties agree the judge will ask the registrar of the court to issue them with a form, the form says that they have gone through protocol that they will be confronted with the MDC and they have accepted or agreed to go through MDC process or parties can either walk-in to start a claim by themselves.

Lawyer 1-stated

Matters that are miscellaneous in nature, not capital offences, go to the ESMDC.

Conversely, **Lawyer 4** elucidated that -

I was in the MDC once it was a divorce matter children were involved so it was a court ordered ADR- to reach decisions on custody, maintenance because if it were to be in court it will take up seven (7) adjournments. Then afterwards the case will be returned to court to form part of the judgement of the court. So that was why I went to the MDC. You can see that the procedure is quite simple compared to that of the court.

On the other hand, Lawyer 2 simply indicated, ‘that custody and family inheritance are covered in the ESMDC.’

Scopes of matters covered at the ESMDC

Lawyer 1 revealed that ESMDC covers cases

Like banking, lease, family disputes/ land matters, matrimonial causes, alimony issue of child custody and child maintenance, tenancy matters, and commercial transactions.

On the other hand, **Lawyer 2** stated “custody, child maintenance, land matters and tenancy matters” And **lawyer 3** pointed out “inheritance or family dispute”

Finally, **Lawyer 4** confirmed that tenancy matters are within the scope of matters settled via ESMDC. He stated

I made enquiries from them I realised that they are cases that are brought their which are tenancy matter and you bring them there and you pay a certain fee and you invite the other party and they settle.

Ego/ Apology

Lawyer 1 pointed out

I was privileged to settle a land case at the ESMDC, the claimant said he bought the land in 1983 and the man that sold to him finally died. Then the children on getting the letter of administration now included

the property that was sold to him. The claimant said no that it couldn't happen; the land has been sold to him. The court referred the matter to MDC after which the man that bought the land, now came and said that he did not know that the land does not belong to the family, he apologised and actually knelt down the case was finally settled. Imagine if this case had continued in court, I bet the man will not have conceded. However, it is different at the ESMDC, the mediator assists the parties to talk to each other about how they feel, and thus it is not ego-driven like the court system is.

Cost Savings

Administrative fee and self-representation

Lawyer 1 revealed that the cost-effectiveness of going straight to ESMDC than to litigation is that

The cost is less at the ESMDC because they just need to register their case unlike the heavy amount involved in litigation. If they have to pay anything at the ESMDC is the admin fee, which is 5,000 naira so they are not comparable at all.

On the contrary, **lawyer 2** pointed out that 'the cost-effectiveness of going straight to ESMDC than to Litigation is that the parties are at liberty to elect whether they require a legal representation or they can come themselves sit down on the table to find solutions to their conflict or dispute. And since it is party -driven it saves money for both the state and the individual. As far as I know you don't pay money to initiate a claim at the MDC so it's very much cost-effective than litigation.'

What Dispute Resolution is preferred?

Lawyer 2 simply stated "Mediation, though it depends on the nature of the case."

Speed and Time

Based on personal experience I will actually say that the ESMDC have been very effective and beneficial to the litigants and to me as a person because the case I just mentioned I was

seriously involved in the case, and if the case had gone on to full trial at the regular court I do not think the case would have ended in the next **5 or 6 years** so because of that I am of the opinion that ESMDC has been quite effective revealed **Lawyer 1**.

Explaining further **lawyer 1** stated that a

Dispute could last for 3 weeks maximum and the minimum depending on the nature of the case involved. Because the first day is the general session, the second day you go into the general introduction and general discussion of the case and on the third sitting normally becomes when the party sits and they talk to each other and know what the problem is so they can actually sort it out themselves.”

On the other hand, **Lawyer 2** highlighted Like matters that we did sometime in January it was about custody and the matter has lingered on in court about 2 years before the learned trial judge in his wisdom deemed it fit to refer the matter to MDC. And when it got to MDC within about 3 months the matter was resolved and the parties were happy and I think the greatest impact is the speedy dispensation and then the fact that it is always a win-win for the parties.

Conversely, **lawyer 3** stated It depends on the parties and circumstances, but the one I did here started around February and our cases ended around May, so it lasted for 3.5 months though it ends quicker than litigation and they have a time frame that does not exceed 4 months. Sometimes passions may get high, you make room for the contingency that they may be disagreement and then a party may walk out and come two later so you don't have a defiant time frame but the this is the time frame given by the ESMDC which is 3 months.

On how useful or beneficial the ESMDC has been to the disputants?

Lawyer 1 point out “So people actually came and they settled a lot of disputes, so it was a way of cutting costs and taking care of the less privileges that cannot afford the cost of litigation and you know the culture in Nigeria is that if you are poor in Nigeria you can't speak out.”

Voluntariness of the ADR Process

Lawyer 2 indicated

And it is a straightforward proceeding, consent is a very vital ingredient when it comes to referral parties- can be referred by the judge with their wisdom they may deem it fit to refer the litigants to ESMDC. He brings it up as an opinion or observation by saying have gone through the circumstances and the facts of the case that it will be better to refer the matter to ESMDC. Suppose it is a matter that bothers on inheritance or family or some parties are depressed and got angry because they are not in harmony or they are quarrelling with their family. In Africa, we believe in peace, being in harmony with each other in order to ensure that after the case has been resolved that everybody will be in peace with each other.

ADR as a peaceful tool

On the contrary, **Lawyer 2** suggested that ESMDC

It is a huge success because it has helped decongest the court. It has made families live in peace and harmony even after going through the ordeal of the court process and also cases that have been lying in court without success has been settled through the ESMDC. Though I am a lawyer, the fear most parties have when hiring a lawyer is vanished now, except they want to retain the services of a lawyer.

Decongestion of the courts

Lawyer 2 revealed

That MDC has been effective since its inception it has recorded tremendous success, there are now few cases that comes up for trial because the MDC has been on it's best, clearing cases off the dockets of the court. A case that has been in courts for donkey years have been resolved with the ESMDC- is very much effective.

On whether the ESMDC replicated the pre-arbitral method of settling dispute?

Lawyer 2 pointed out

It has replicated the pre-arbitral but not fully like the rules are clear, they are certain cases that will ordinarily not come to MDC like capital offences etc. I believe that is where the traditional African method of settling cases is still handy because the pre-arbitral method or traditional method handles all types of cases.

Lending credence to the above, **Lawyer 4**

Yes, to a large extent, I mean if you go back to medieval times, the oath-taking etc. You find out that the ADR is an improvement on the Pre-colonial method of settling disputes. Both share the same neutral person listening to disputes; parties making concessions, and decisions are reached within a day or two.

Self-representation:

Lawyer 3 elaborates on the reasons why parties hire a counsel to represent them in court. “In other words, they will be so confused with terminologies spoke in court and filings that they will be like I don’t know let me get a lawyer. Even if the counsel is there, he is just there to advise the parties and not to speak on their behalf. However, in mediation, if there is any need for the party to consult a lawyer, they can say lawyer please how do I do this? Will I be favoured if this happens and all.”

To validate the above viewpoints, **Lawyer 2** states “However, in mediation, the party say whatever they want to say, sign the TOS themselves, so basically they can afford not to hire us. And if they decide to hire a lawyer to do that, the lawyer will need the parties consent and will have to consult the party before he speaks on their behalf during the joint mediation session.”

Has the ESMDC been useful or beneficial to the disputants?

Lawyer 2 indicated that

“ESMDC been useful or beneficial to the disputants, I as a legal practitioner/ lawyer know that people don't rush to court and even hire us- I must confess I have not been making as much money as I have been making, people or parties prefer the services of a mediator through the ESMDC.”

Cost savings:

Walk-in fee, cost of court-referral and litigation fee

Lawyer 1 indicated

The cost-effectiveness of going straight to ESMDC than to Litigation is that the cost is less because parties will only pay 5,000naira (10.16 pounds) walk-in fee and it is court-referral it is free but you spend so much on filing cases, adjournment fee, counsel fees that will be amounting to 150,000 naira (304.65 Pound) depending on the law court.

ADR as a peaceful tool

Lawyer 2 indicated that

The court-connected ADR through the ESMDC works well because as a matter of fact it has assisted both the lawyers and the litigants in resolving or getting rapid resolution in respect of their disputes that may have come up in the course of their affair. But I believe that one of the vital innovation that the MDC brought is the speedy dispensation of justice as we know the MDC and then processes therein in the procedure is more party driven so here we find out that the parties are given the opportunity to ventilate their grievances it is more like a win-win for everybody.

Speed and Time

Lawyer 2 pointed out

The MDC and its officials ensure that nobody goes home unhappy they reach a compromise and most times people do not go back to court. Like matters that we did sometime in January it was about custody and the matter has lingered on in court about 2 years before the learned trial judge in his wisdom deemed it fit to refer the matter to MDC and when it got to MDC within about 3 months the matter was resolved and the parties were happy and I think the greatest impact is the speedy dispensation and then the fact that it is always a win-win for the parties.

On the other hand, **lawyer 3** indicated

It depends on the parties and circumstances, but the one I did here started around February and our cases ended around May, so it lasted for 3.5 months though it ends quicker than litigation and they have a time frame that does not exceed 4 months. Sometimes passions may get high, you make room for the contingency that they may be disagreement and then a party may walk out and come two later so you don't have a defiant time frame but this is the time frame given by the ESMDC which is **3 months**.

Rating the performance of the ESMDC

Lawyer 1 stated

Having participated or had the experience in accompanying my client to ESMDC for a resolution, I will give them a 3.5. From the level of participation I did.

Consequently, **Lawyer 2** stated

I will rate the performance of the ESMDC in conflict resolution a Four (4) based on what I have said so far, they have done well but more needs to be done.

Finally, **Lawyer 4** rated the ESMDC a 3, in his own words-

I will give them three (3) because I'm positive and objective that they will improve or do a lot better than they are doing now.

Challenges facing the ESMDC

Lawyers not embracing ADR

Lawyer 1 opined

The perception that the lawyers are having that the ESMDC will take their job away. The ESMDC has a lot of work to do in regards to the orientation of lawyers to tell them that they can be part of the ESMDC mechanism. You can do some training to become mediators; carry lawyers along will go a long way. Imagine the jingle used to mock the legal profession. A man in the jingle kept saying that if the either party takes him to court that the matter will last to 7 years or even more. Also, they don't have enough professionals that are knowledgeable/expertise in the field that cases normally come from because if your case is on crime, you have to have someone who specialises in criminology. So that the person will be in the position to understand that the intents of the accused criminal-the actus reus, the mens rea and the actual crime having been committed.

Validating the above view, Lawyer 4 added

It obviously it is faster than going to the court but some of the challenges I see is that I don't think that the lawyers want the MDC to develop so if the judiciary is not strong enough to develop it because there are some lawyers who work on only

tenancy matters if they start sending those matters to MDC they will not have clients anymore.

The Challenges facing the Disabled Parties in Nigeria

Lawyer 4 pointed out that

The challenge we have here in Nigeria in terms of development of law is that our law has not really developed and even the court system and MDC are not equipped to handle cases or handle disabled people. Look at the roads, there is no point talking about facilities as you can see there are no lifts or mobility for the disabled persons. We need people like you to campaign for this people. Additionally, we do not have enough awareness about the impact of law on the society and the fact that people can actually rely on the law for instance to settle their grievance as it were unlike in the UK where you have some of this old cases like even the tort merchant - the Donoghue and Stevenson. Even the court system and MDC are not equipped to handle cases for disabled people.

Lack of Trust in the Judiciary:

On the other hand, **Lawyer 4** indicated that

We don't really have such cases developing the law simpliciter because first of all, we don't like to sue because there is this belief that going to court is very expensive and it takes a lot of time then there is the ignorance aspect which is a major problem that we have in Nigeria people just say lets us settle this matter and move on people do not believe in the Judiciary system as it were that is the truth right now because the judiciary system is at its lowest point and it really affects (us) lawyers.

Space Constraints

Lawyer 2 simply stated, “*The ESMDC needs to build more centres in the High court and employ more staffs.*”

Arbitrators (2) Participants

Advantages of using the ESMDC

Simple procedure:

Arbitrator 1 stated that

Matters can be referred by the judge if he believes that matter before him is worthy which can be resolved, discussed, ADR processed and the parties on their own can also walk-in to the MDC and seek for an initiation/ renovation/ renegotiation of their matter. However, you know in practice, it is not the way it is not very easy to see parties walk-in on their own. More often than not, not all the cases are resolved via referral by the judges. Moreover, I think part of the problem why parties do not voluntarily take their matters to the MDC is because of the limited understanding of the ADR process, which is made up of mediation, arbitration, and conciliation.

Cost savings

Arbitrator 1 elucidated

It is way cheaper, I am a Senior advocate of Nigeria (SAN) I know how much my law firm charges and compare that to charges in LMDC then you know ESMDC is rendering free services to the users. However, not all cases are a good fit for ESMDC. The problem we have in Nigeria is that the courts dockets are full up and the process of adjudication is very cumbersome as well.

For example, at the moment I understand that even the supreme courts are congested, so if you file an appeal at the supreme courts today the appeal wouldn't be heard till end of 2020 or 2021 so that's give you an idea what goes on at the lower court and also the judges still write in

long terms. You know the judge has to take all statement made by parties this is notwithstanding the fact that the H.C rules are changed to accommodate the pressures of parties where you now upload all the documents and the witness simply adopt its witness statement.

Thirdly I think is the attitude of lawyers, lawyers need to be re-educated and they need to understand that justice should be obtained as quickly as possible but over here in Nigeria we have adopted attitude of filing frivolous application at every considerably moment in trial. So you find lawyers relying more on technicalities and you see the judges saying to the lawyer go ahead with the technicalities. They should learn to dwell a little less on technicalities and get to the proceedings or roots of the matter. Again judges have become afraid because petition has been against them, the problem is that the judiciary needs to strike the right balance so sometimes when application is filed and so these are the factors that make litigation cumbersome and make litigation long. if the lawyers attitude will change that is looking for technicalities to prolong a case then our court dockets will continue to remain filled up and I wish it will get to the point that judges don't write in long term.

On further questioning on how much he charges for court cases as a SAN, he stated about four (4) million naira (equivalent to 8,366.08-pound sterling).

Speed and Time

According to **Arbitrator 2**

It all depends on the parties, but some cases can last for a day or 2, while some can last for a month. All in all it does not exceed a year, the case returns to the courts.

Rating the Performance of the ESMDC

According to **Arbitrator 1**,

I will rate them 3, so far so good as they have been able to accomplish so much in 1 year than litigation. Although the ESMDC still has a long way to go.

Arbitrator 2 rated them a 4 stating,

That what they have accomplished just in one year is enormous and currently they are leading in dispute resolution apart from Lagos.

Has the ESMDC been useful or beneficial to the disputants?

Arbitrator 2 revealed

Though it is still new, however users are attesting to its effectiveness after their cases at the ESMDC.

Following through, **Arbitrator 1** pointed out that

The judiciary are also attesting to the effectiveness of ESMDC by the way they refer cases to the ESMDC, one of the judges told me how she is no longer stressed because her dockets are no longer over flooded with cases. So it is very effective.

Whether ESMDC replicated the pre-arbitral method of settling disputes?

I would not say that they have. By and large, they are guided by the MDC arbitration acts. However, mediation is more Popular because mediation, as it were, is cheaper and because their matter is referred from the courts, the mediators assist the parties to settle their disputes amicably, revealed **Arbitrator 2**.

Category: Director (2) Participants

The Advantages of using ADR through the ESMDC practice or providers

Simple Procedure

Director 1 elucidated, 'that she was called to engage- to start up a programme by the Negotiation and Conflict Management Group (NCMG) which was founded by Mr Kehinde Aina. That is the organisation that set up the LMDC which was the first in Africa, they brought a consultancy to set up an MDC in Enugu State.'

She stated,

So essentially my job has been to start this off from scratch I was involved in the interview of staff and selection of staff to a certain extent and training of staff, mapping out the programme, creating work plans and action plan for the activities schedule and all that. I have been directing, creations practically everything setting up processes for the receipt of cases, mediation of cases. I was in Lagos for 9yrs, If I want something, I just tell somebody that I want to see the guides usually they know that is your creation so there is not much of a fight and I guess everybody there is in the support they want us to succeed here as well.

Essentially training of mediators, luckily there is some mediators with the British council consultancy that mediates for the MDC and they trained 9 mediators from Enugu. So when I came, those are the people that I called up as soon as we started training and people heard that there was a programme case started coming, mind you we didn't have a signboard or anything. And by the time I sat on 12 cases, I said to myself I couldn't do this and effectively do my administrative work as well. I need to get people, so I called them in did coaching for them, gave them some of the cases and that is how we started. Had the primary training at the end of January/ February we pulled faculties of trainers from Lagos Multi-Door Court (LMDC), and we had our first mediation skills training with 25 new mediators. From then on, we started mentoring those people I think they were ready when the settlement week came. And when we need external help for the settlement week to give it some credibility, the direction it needs you to have to have a committee. So we told the C.J she appointed a committee all the plans we made we tell the committee they can rectify it or accept it."

Like the LMDC cases, ESMDC cases can be either ‘referred in two ways- by the judge, and parties can walk in by themselves to lay their complaint.’ However, the director revealed profound distinctions between the LMDC and ESMDC.

According to **Director 1**

We do not have a governing council yet, but it is part of their law I believe at the next quarter of next year that will be put in place which once it is done they would have now the proper oversight. It will not be the Chief Judge (C.J) that they will report to, though they will report to the C.J. when need be. However, it will not be that the C.J.’s duty to follow us but the duty of the governing council’s duty.

On further questioning on if there are any other differences between the two schemes?

Director 1 pointed out the LMDC started in 2002 and I joined them in 2006 I became director in 2008; I think the law was passed in 2007.

She went on to state “so basically whenever I need anything I call the clerk to help me with it. There are seventeen (17) MDC in Nigeria though many of them are not doing well.” I come here, for instance, I have a work plan, a strategy that I sent to the Chief Judge (C.J) well ahead of time that this is how we have to start and this is how we have to progress. I tell my people always that Lagos is Lagos, but it does not necessarily have to be the prime of the MDC we can give them a run too.”

However, Director 1 revealed the similarities between the two schemes:

And then typically just before I left Lagos some thoughts came up, and I discussed it with my team. All these years we have been running settlement week in the dark because we do not understand what is going on in the court dockets. Would it be much better if we understood it? Apart from the fact that a court has some instances if we understood how the demography of the case is within certain courts. We generally have much information so that when we intervene, we are intervening kind of in the full sight of what is going on. And then a few other objectives we had around it, so we called it **the court dispute resolution audit** -Like having an audit for the court that was shortly when I left Enugu.

Moreover, I do not know how effectively they are doing now, but when I came to Enugu, we now introduced -the court dispute resolution audit. Hence, we did all the audit of all the court, high courts and magistrate courts, and we had our data. Now is based on that data we said ‘okay’ this is what we were going to do- four-settlement week in Enugu State. So it was like an informed thing now I am thinking a lot of that like cases that were identified, all the cases came they were all the sheets, the schedules etc. Now when the settlement week team was trained and came on board what we did in Lagos we usually go to the court interface with the court’s staffs and then check files, now they did not need to that.”

Conversely, Director 1 revealed that

So we are building up on the Lagos practice and then typically just before I left Lagos some thoughts came up and I discussed it with my team all these years we have been running settlement week in the dark because we don't really understand what is going in in the court dockets. Would it be much better if we understood? Apart from the fact that a court has certain cases if we actually understood how the demography of the case is within a certain courts and we generally have a lot of information so that when we intervene, we are intervening kind of in full sight of what is going on and then a few other objectives we had around it, so we called it the court dispute resolution audit -Like having an audit for the court, that was shortly I left Enugu and I don't know how effectively they are doing now but when I came to Enugu we now introduced - the court dispute resolution audit so we did all the audit of all the court, high courts and magistrate courts and we had our data. Now is based on that data we said ‘okay’ this is what we going to do 'four settlement week in Enugu State. So it was like an informed thing now I'm thinking a lot of that like cases that were identified, all the cases came they were all the sheets, the schedules etc. Now when the settlement week team was trained and came on board what we did in Lagos we usually go

to the court interface with the courts staffs and then check files, now they didn't need to that.

Here all the information we already had. So using the data they had from the court dispute resolution audit (CDRA) they could do identify ADR amenable cases which cut the work in half and based on that we now notified the court registrar's this are the cases that we would want to sort the files out and batch them for us which is what happened. They now took those identified cases and now screened them and of course when you screen you find out that some of these cases you don't need to run into the settlement week so those were left off so we took the ones that we needed. A lot of that work was done on hands the courts are not computerised because if they create a database of that data you can actually track the cases through the life cycle of the cases because that data also had like a report for instance Justice U's court he had like 300 and something cases and almost 70% of the were land matters now why his case was saturated with land matters I can't say a good many of them were over 10 years so we had like the life of the case above 5 years, above 10 years etc. So if we now decide okay we have finished the settlement week but do we have a special programme to deal with land matter? We know exactly where to go and what cases to pull out, so those sorts of things.

Restorative Justice:

However, Director 1 pointed out

Another thing that I am passionate about is restorative justice; Lagos State is doing restorative justice and we have started having referrals. However, the initiative was introduced by the prison fellowship of Nigeria. It is an NGO now they got the ministry of justice interested and got the judiciary interested

and handed over the prison to the government, so it is government-run for now, they are not fully operational yet, but it took years to get into that.

Now, I have been doing some assessment for the British council in Adamawa State, Federal Capital Territory, also in Anambra State, which is pilot's state for those particular programmes. So I said to myself, I am in Enugu now and we recommend that the MDC should be the vehicle, so let me implement that in Enugu.

Speed and Time

Availability of parties

On the other hand, **Director 2** revealed, "the factors that affect the speed of cases at the ESMDC are the availability of the parties. Some parties live abroad. And secondly, the parties acceptance of the mediation process."

Similarly, Director 1 clarified that

I would say it depends on the type of cases and the parties though time limit is 3 months.

Has the ESMDC useful or beneficial to the disputants?

Director 1 indicated that

I would say a big yes going by the data so far it looks like we have attracted the attention so far of 700 and something cases which for the first year is a lot of cases, I would say yes. As awareness is growing in fact is a bit interesting because even with the push back of the legal community it seems as if it's not bothering the ESMDC.

To validate the above position, **Director 2** stated

It has been useful to parties because a whole lot parties go back home

as friends.

The Court dispute resolution audit (CDRA) as a tool to decongest the court dockets

Director 1 revealed that

So using the data from the Court dispute resolution audit (CDRA) they could identify ADR amenable cases, which cut the work in half and based on that we now notified the court registrar. This is the case that we would want to sort the files out and batch them for us, which is what happened. They now took those identified cases and now screened them and of course when they screen you find out that some of these cases you don't need to run into the settlement week, so those were left off, so we took the ones that we needed.

On the other hand, a lot of that work was done

On **hands, the courts are not computerised** because if they create a database of that data, you can track the cases through the life cycle of the cases because that data also had like a report. For instance, Justice U's court he had like 300 and something cases and almost 70% of them were land matters. Now why his case was saturated with land matters, I cannot say a good many of them were over 10 years, so we had like the life of the case above 5 years, above 10 years etc. So if we now decide okay we have finished the settlement week but do we have a special programme to deal with the land matter? We know exactly where to go and what cases to pull out, so those sorts of things.

Cost-savings

Director 1 revealed, "The cost-effectiveness of going to the ESMDC than going straight to litigation is that the party spends less or no money at the ESMDC than at the litigation. For instance, settlement week, which is free,

and if the court has referred you. What you pay by walking in is peanut than the cost of filing and hiring a lawyer.”

Whether the ESMDC replicated the pre-colonial arbitral method of settling dispute?

Director 1 confirms that:

Yes, ESMDC has replicated the pre-colonial arbitral method of settling dispute however ESMDC is the modern version.

On rating, the performance of the ESMDC in conflict resolution compared to litigation?

The Directors rated the performance of the ESMDC with its speed and professionalism in settling matters.

According to **Director 2** rated the LMDC a “4 because most cases that have been referred to the ESMDC from the courts are usually settled within the 60 days or less time in comparison to the regular courts.”

On the contrary, **Director 1** rated ESMDC a “5, so far so good within one year we have been able to accomplish so much.”

What dispute resolution is preferred at the ESMDC?

Director 1 highlighted that ‘all the MDC Scheme, Mediation is the prominent process.’

Explaining further “Lagos, I do not know how much the arbitration dockets has grown? You know Arbitration is a high-ended thing, and I guess the arbitration community makes more noise than the mediation people. However, there is more mediation done in any part of the world than Arbitration. There is an organisation we just formed, and the specific objective is to project and promote mediation. You know that mediation even has a place in Arbitration.”

The Challenges facing the ESMDC

The ‘Civil Servants way of working’

Director 1 extends our knowledge on the way most civil servants behave in Enugu State.

Explaining, I have a few challenges with some staffs actually, when we came one of our few early meetings and I asked what level are you guys on? They said level 9, and when they told me the amount and I said this is small and I said I don't think the ESMDC will work because I drive people very hard. And you know the typical civil service in Nigeria. You know people come to work when they like and we now initiated a discussion with the Chief Judge (C.J), the minister of justice has an allowance which is an add on to what they get that makes it worthwhile. Now the difference here is like between 40,000 and 180 something thousand and one of the past attorney general had got that package she now promised that she will make a case for them to get that and she succeeded. And guess what someone went to the judiciary and pasted something saying the C.J is partial and that the ESMDC people are given special treatment and special privileges and all that.

With all that you found out that one department is not pulling its weight while others are really making full time commitment and you can see them putting everything and other departments is not, sometimes that's the cause not being paid well. With one Mr C is always one excuse or the other and I will blast them because they are used to that “civil servant way” of working and I feel bad afterwards and I will go in and say please all I want is some movement for this place to make it worth for everybody's. Well because you are now all on the same salary scheme and one person is thinking why am I slaving and the other person is not. When the centre registrar started to complain that this behaviour is affecting the commitment of other members of the staff and I spoke to them and said if I start by micromanaging you guys. You will not like it at all however, the mediation skill training I fielded all of them both the case managers and people in the advocacy unit. I also complained to the Chief Judge (C.J) that some of them are not pulling their weight and that these people can be posted elsewhere in the judiciary but she said they need to be sacked and I kept quiet. You know some of them came with the governor's ticket etc. And the governor was told and he said get the person out. And when money came for training C.J said remove the names of the people not pulling their weights and that was it they lost out of the training and today other people have received mediation certification, they are training when their is an opportunity like settlement week they showcased their skills and I have told them today

the level of commitment is what will be used for promotion and training.

Lawyers not embracing ADR:

The directors emphasised that ‘Lawyers are complaining, but cases are still coming in and the dangerous thing is once the litigant and the disputants begin to accept their independence then it can never happen.’

According to Director 1,

The other day the parties settled, and counsel was saying no we are not going to sign etc. and he was angry, one of the main parties who reside in china he appointed his brother as his attorney here. Moreover, they engaged this lawyer here, and he had to communicate with the brother in china by calling him with that interface with the attorney and himself on the phone and the mediator the matter was settled. Furthermore, the lawyers were angry, and he said he told them not to settle below 7 million, and they went and settled with 3.5 million, the attorney (a medical doctor) said that when the lawyer called him, the way the lawyer spoke to him you would have thought that he was just a child and he sacked the lawyer. The catch here is that once you go to court, you get to the ESMDC faster because the parties feel that they are participating in the justice process, they can talk, and they reach an agreement, and the agreement gets converted into a consent judgement.

On the other hand, **Director 2** point out “the lawyers, tell parties negative things about ESMDC, but when these parties come here, they see all the benefits and make up their minds to continue with their matters at the ESMDC.

Short staffed / Training:

Director 1 pointed out that they

Had the major trainings in the end of January/ February we pulled faculties of trainers from Lagos and we had our first mediation skills training (25) and from then on we started mentoring those people. I think they were ready when the settlement week came, though they were not enough. And when we need external help for the settlement week to give it some credibility, the direction it needs you have to have

a committee so we told the Chief Judge (C.J) she appointed a committee.

Basically all the plans we made we tell the committee they can rectify it or accept it. There is a lot of work to do as far as I am concerned you can't keep bringing people out from Lagos not with the airport closed for instance, nobody will even want to come. So the need to have our own facilities is becoming more pressing.

Funding and Training

Apart from these challenges stated above, **Director 2** went on to list 'that funding and adequate training are other challenges facing the LMDC.'

Focus Group 2 (4) parties

Advantages of using the ESMDC

Scopes of matters covered at the MDC

Party A revealed that her 'case bothers on disputes over land while **Party B** pointed out that her dispute bothers on tenancy matter.'

ADR as a Peaceful Tool

Party A reveals, "ADR through the ESMDC is not like litigation that creates an atmosphere of hate. Now it has been implemented it has helped poor persons like myself to sit on the table and discuss with the other party and tell him what he has done to me and how I feel about it. Furthermore, I am happy the way ESMDC are receiving people and attending to them."

On the other hand, **Party B** elucidated

I thank God for the new development in court matter in this Enugu State this time, because the idea of introducing this MDC is to ease the tension of the pain that the court has inflicted in our peoples lives.

So with the courts many of them deviate from what they are not supposed to do and do what is not proper but at the ESMDC, the mediator do not know the parties in disputes they are just neutral with intention of restoring peace and preserving their relationship. Like in my case we have been experiencing good relation towards resolving our problem, thanks to the Enugu State government for introducing it this time and it will ease so many cases.

On the contrary, **Party D** pointed out that

I'm happy that the ESMDC is in the state to help the court because the court is suffering with delay and over congestion. The ESMDC has been a source of joy to many of us here, the mediators have time to listen to us and we are allowed to iron out our differences, its quite peaceful.

Has the ESMDC been beneficial or useful to the disputants?

Party A indicated that

Yes, very useful to parties, Can't you see how happy I am? Before I came to the ESMDC we were not on talking terms but now we have started talking, so it is useful and beneficial to the parties

Party C simply stated that ESMDC "is beneficial to us, because it saves cost and preserves relationship."

Finally, **Party D explained**

Yes, It is beneficial to us, because it has alleviated my suffering from paying for adjournment fees, fees upon fees to the lawyer. Thank God for ESMDC.

Ego/ Apology

Party B state

When I came to the ESMDC I was not on talking terms with my opponent but now we have started talking, I have accepted his apology, I have forgiven him. Truly ESMDC is useful.

Dialogue

According to **Party B**,

The cost-effectiveness of going straight to the ESMDC than litigation is that in ESMDC, you are free to express yourself but at litigation, it is like you are in a cage, you cannot express yourself.

Party D simply ‘agreed with **party B**’

Legal representation

Party A pointed out

In this place I do not need lawyers, because they do not to explain anything to me. They do not use clear language, which I understand.

Lawyers not embracing ADR

Party A pointed out

I had a lawyer but when we had the first meeting, he was discouraging me and today I came in without him, the matter was resolved.

Cost Savings

Party A extends our knowledge on the cost-effectiveness of going straight to the ESMDC than litigation “is that the court can say come today and you get there they will not sit you have lost your valuable time and money. However, at the ESMDC, the mediators are here all the time. Moreover, at this place, you do not pay a dim; it is free.”

Conversely, **Party C** pointed out that the cost-effectiveness of going straight to the ESMDC than ‘litigation is that it is free and faster in settling matters.’

In sum, **Party D** stated

The cost-effectiveness of going straight to the ESMDC than litigation is that in ESMDC they charge nothing. They also encouraged us to

speaking for ourselves, so we do not need the services of a lawyer. Which I have done, I will offset the last instalment with my lawyer when we took the case to court.

The Impact of the Settlement week on parties

Party A stated

Yes, this place has helped significantly during the Enugu Settlement Week; you can see the people in here is because of the simple way it helps parties settle their matters. She went on to reveal-We did not know that the ESMDC existed in this Enugu except during the ESSW.

Similarly, **Party B** pointed out “they settled many cases, including my case. I thank the Enugu state government for providing us with this because people are tired of going to the courts.”

Speed and Time

According to **Party A**,

This case has been in court for the past 3 years. However, this is the 2nd day here, have concluded the case.

Following through **Party C** stated,

Yes, ESMDC is beneficial, cases do not stay for 12 years here or more, my case has been here for a day, and it was concluded in a day-today. Like I said it before it has restored families and business relationships.

Delay and Congestion

Party D simply stated

I agree with the last speakers has said about the ESMDC, I'm also happy that the ESMDC is in the state to help the court because the court is suffering with delay and over congestion.

Flexibility and Party autonomy

Party A elucidated that

Because you have the freedom to talk as you wish at the ESMDC and sit with your opponent and discuss your issues. You can do that in the open court.

Party B stated,

The ESMDC is effective because it encourages more liberty to express your feeling than in the court.

Party D indicates “

Yes, I agree with the speakers you can talk easily at the ESMDC, unlike in litigation by the lawyer and the judge controls you.

What Dispute Resolution is preferred?

According to **Party A**, I prefer Mediation.

Party B, C and D revealed, “that they now prefer Mediation is much preferred and is a good development, and I like the way it allows the party to iron out their differences.”

How long does a dispute last at ESMDC?

Party A pointed out “ I know for 2 days. **Party B** revealed, “ Dispute can last in the court for more than 3 years but in ESMDC is a day.” Moreover, I am happy about the whole mediation process at ESMDC. **Party C** opines that the matter has been in court for up to 12 years but here one day. **Party D** states “In court up to 50 years but here a week.”

Lack of confidence in the judiciary

Bribery and corruption

Party A indicates

I am happy to see the MDC in Enugu because before, some people who have money more than each other can use their money in the

court. Furthermore, even the case that can even be short for some months, maybe longer. They have given bribe because they have the money. They will not allow the court to go on, and they will be adjourning.

To validate the above position, Party C revealed “Yes, ESMDC is a success for now; I hope ESMDC is maintained like this free from corruption, which has crept into the court. I pray it does not happen at the ESMDC.”

Has the ESMDC replicated the pre-arbitral method of settling disputes?

Party A simply stated,

Yes, they have. The court was never the way for us to settle disputes, we had our traditional method or ways of settling disputes and is still functioning but our people have been brainwashed in during colonialism. To start using the court as a first option, they have been induced...

However, **Party B** explained further

Yes, it has replicated the pre-arbitral method of settling disputes, there is no doubt about that, but this is more formal with rules unlike the traditional system of settling disputes.

Finally, **Party C** and **D** ‘agreed with **Party A** and **Party B**’s notion that the ESMDC has replicated the pre-arbitral method of settling disputes.’

Rating the performance of the ESMDC

Party A, reveals “I will rate them 5, which is the highest because I have seen it is above average.”

Following through, **Party B, C and D** rated the ESMDC ‘a 5 pointing out that they are happy with the way they handled their disputes.’

Challenges facing the ESMDC

Nigeria culture in terms of sanctioning parties/ Awareness and Lack of confidentiality:

Mandatory ADR

Party A pointed out that ‘her case was court referred by the judge’

On further enquiry, I asked her how she feels about the court referral? **Party A** indicated,

That at first she was not happy and felt pressured coming here, however, I can’t say no to my lord, because I do not want my case to be affected if I say no that I am not coming here. I decided to go and try it, and I’m happy with the outcome. I am pleased with the way my matter has been handled.

On the contrary, **Party B** opined, ‘ her case was court-referred.’

And she agreed with the judge because nothing has been achieved since it was in court, so I was open to trying something else. So I did not feel pressured at all.

Party B states that

Sanctioning parties that do not obey the time given by the ESMDC to attend mediation at the ESMDC.

While **Party C** observed ‘the need to enlighten the public on how the happenings at the ESMDC.’

Finally, **Party D** pointed out that the ‘ESMDC is in dire need of more space, rooms as he could overhear the other party during his mediation session.’

Focus Group 3 (10) Parties

ADR as peaceful tool

According to **Party 1**,

I felt a bit bullied into coming to the ESMDC, but when I came into the ESMDC, the atmosphere alone calmed me down. Furthermore, when I meet the mediator, and the session started, I felt at peace, and we started talking. The mediator reminded me that as a Christian, we

should follow the path of Christ during the introductory speech and that alone touched me and I knew I was at the right place.

On the other hand, **Party 3** opined

Yes, the ESMDC is more effective than litigation because you can see parties leaving here (ESMDC) on time, smiling and chatting unlike when they first got to the ESMDC from the courts. So it is so effective.

Party 4 pointed out that “the ESMDC has been very useful to me because they want people to reconcile rather than fight each other like the court promotes fighting and anger.” Also, **Party 7** revealed

Yes, ESMDC is very beneficial because we emerged from the meeting and hugged each other, litigation cannot offer that rather parties become enemies.

Party 5 stated “Yes, ESMDC has been very useful and beneficial to me because from what I have seen so far it has allowed parties to say the truth without fear that it will worsen their case or get them into trouble.”

Cost savings

Mediation is free at the ESMDC

Party 1 revealed “To me, the cost-effectiveness of going straight to the ESMDC than going to litigation is that it is free; you are not charged a penny while in litigation I have spent close to 100,000naira (equivalent to 200.72pound sterling) just for appearance fee and filing fee. I had to borrow money to pay the legal fee. My sister, litigation is not for an average person like me. That’s why I thank God for this place (ESMDC).”

Party 2 indicated that

The cost-effectiveness of going straight to the ESMDC than going to litigation is that at the ESMDC you do not charge for the matter to be heard, unlike litigation that you will pay through your nose. On further enquiry on how much he paid his lawyer. He said, “It was from his former experience of settling in court.

On the other hand, **Party 3** stated

The cost-effectiveness of going straight to the ESMDC than going to litigation is that it is free. In fact, when my case first appeared in court, it was sent straight to ESMDC, the judge asked me, and I agreed. So I only paid for filing fees and legal cost which was 70,000 naira (equivalent to 140.44 pounds sterling).

On further enquiry, if the judge asked you before he referred your case to the ESMDC, and how did you feel about the judge referring your case to ESMDC? **Party 3** revealed that

I felt pressured by the judge, but I still went ahead Yes because my lawyer advised me to say yes if I said no my case would be affected you know how the system works in Nigeria.

Party 4, 5, 6 and 7 ‘all agreed that parties do not pay any fee at the ESMDC, so their matters are resolved free of charge which cannot be attained in litigation.’

Following through, **Party 8** elucidated

In my case I was referred by the court and I paid no dim and I have been happy apart from that I am on speaking terms with my landlord.

Party 9 indicated that

Is free to commence your case at the ESMDC unlike in litigation that is so expensive I paid the sum of 110,000 naira (equivalent to 220.77 Pound sterling) just for legal representation, I settle this and settle that the list is never-ending. However, litigation takes longer for a dispute to be resolved whereas at the ESMDC is free, and I have wondered if I am in Nigeria because things like this do not come free here.

Party 10 pointed out

The cost-effectiveness of going straight to the ESMDC than going to litigation is that ESMDC is free unlike litigation that lawyers will keep demanding for all sorts of fees.

Party 5, 6, 7, 8, 9 and 10: ‘Yes, we agree with what the other parties has said, it is very much effective, as it has restored relationship with no cost incurred unlike litigation that saps one of his life savings.’

Self-representation/legal representation

Party 2 revealed

I walked in to the ESMDC to file my matter without a lawyer but my cousin is a lawyer so he advises me free of charge on what to do. So I paid nothing here.

Decongestion of the courts

Party 4 stated,

You can see how parties are trooping in and out of here, it shows you the court is gradually getting decongested. Furthermore, the way they have been able to get the opponent and me into this meeting in the first place and finally to start talking is incredible. ESMDC is very effective.

Ego/Apology

Party 1 stated

I prefer Mediation because of the opportunity it affords. For example, we were able to speak to one another and then set aside our ego and sorted out the issues involved with the help of the neutral.

Party 2 suggested

Yes, the ESMDC has been useful to me, because when I came here I was unhappy, that my extended family and I were in court over a piece of land, we weren't speaking to each other but thanks to the ESMDC we have started speaking to each other and I'm happy once again and there is so much joy in my life because you know as Africans, family is everything.

On the other hand, **Party 3** opines “We have been ironing out our matter by ourselves, in a peaceful way and we both have apologised and made some concession.”

Party 4 pointed out

I have wanted to pursue the case further, but that changed at the ESMDC. As soon as we started the mediation session, the mediator assisted us, and finally, he apologised to me, and I accepted. I am happier now.

Party 9 revealed

Yes, ESMDC is very useful and beneficial to me because of the simple process that has been adopted by mediation this has allowed us (parties) to apologise to one another both parties will compromise and both parties are all winners unlike in litigation that one person can win and the other party will lose.

However, **Party 5** denoted

Yes, ESMDC is very useful and beneficial to us because of the simple process that has been adopted by mediation, which allows parties to express themselves and apologise.

Conversely, **Party 6** stated

ESMDC has been quite useful and beneficial to me because of the process that has been adopted by mediation, which is different from that of litigation. Litigation allows parties to fight for who is right and not looking at the party's welfare and state of mind because fighting or anger destroys the people's state of mind unlike mediation, which allows parties to express themselves and apologise to each other.

Rating the performance of the ESMDC

Party 1 opined

I will rate them a 5 in a conflict resolution when compared to litigation because I cannot fault them in dispute resolution or any way. Because they have made others and me to be happy as well as restored homes, businesses, saving cost for poor parties like me etc. So I cannot fault them in any way.

On the contrary, **Party 2** rated 'ESMDC a 4.5 in dispute resolution'; it is convenient; in fact, it is the best way of settling conflict far better than litigation.'

Similarly, **Party 3** rated

ESMDC a 4, I can't fault them in any way they have tried for me. I walked-in here (ESMDC) very unhappy but now I'm happy because of the way they are handling my dispute, they got us talking and in the same room. That is something I thought would never happen but Kudos to the ESMDC they were able to break that circle.

However, **Party 4** rated them '5 because they settle cases faster, cheaper, and they paid attention to my needs.'

Party 5, 6,7,8,9 and 10: 'Agreed with **Party 4** by rating ESMDC a 5 and they stated that they would recommend them to their families and friends because they are superb especially the mediators, they are impartial and empathetic'

Pre-colonial arbitral method of settling disputes

Party 1, 2,3,4,5,6,7,8,9 and 10: Yes, **party 1** stated

That the ESMDC had replicated the pre-arbitral method of settling disputes because the pre-arbitral method or traditional method restores relationship, it also has a neutral party who is like the Igwe or the kinsmen who settles disputes in our communities and olden days. More so, it is cost-effective so also is the ESMDC, but the ESMDC has modern law while the pre-arbitral has the 'omenala' (the custom of the land) guiding the process." And then **party 2-10** said validated what 'he said, "He is right.

Speed and Time

Party 3 indicated

It has been useful and beneficial to me; I'm at the point of resolving my conflict within just a day I have been at the ESMDC.

Party 4 stated

I heard the MDC preserves relationship and it is faster than litigation, but I'm not interested in preserving the relationship at this stage but I want the judgement faster so I like the ESMDC for that but at this stage I'm not interested in reconciliation all I want is my money back period.' My case was court referred.

Party 3 stated "In court it takes so long like 8 years or even a decade for your matter to be heard or settled but at the ESMDC it depends on the parties if they decide to settle by making concession they can settle with in a day like my own case for instance, it's likely that I might settle it today that is my mind set." Finally, **Party 1** revealed that his matter settled within a day.'

Non-partiality at ESMDC

Party 2 stated “Yes, ESMDC has been useful because there is no partiality, corruption and bribery at the ESMDC unlike in litigation where the rich parties can bribe the judges and they become partial.”

What dispute resolution is preferred?

Party 2 simply stated, “I prefer Mediation because I am a Christian.”

On the other hand, Party 3 stated ‘Like I said I want peace and that is why I came to the ESMDC and that is why I prefer mediation.’

Party 4, 5, 6, 7, 8, 9 and 10 confirmed ‘that they prefer Mediation because it helps build relationship and allows parties to say their mind by so doing they speak the truth but most especially is faster than litigation.’

Challenges facing the ESMDC

Lawyers not embracing ADR:

Party 1 pointed out that

My lawyer kept asking for money he did not encourage me at all, but in ADR things are done differently. The lawyers should emulate mediators. I’m happy that the ESMDC is in Enugu.

Nigeria culture in relation to Mandatory ADR / Bribery and corruption in the future

According to **Party 1, 3,4,5,6,7,8, 9 and 10**: Agreed that ‘they see no challenges with the ESMDC except if it changes in future like if they become corrupt in future like start accepting a bribe, but as of present they can see no challenges facing the ESMDC. They insisted that the standard is perfect that they have nothing that they will add or say for the standard to be more than it is now.’

However, **Party 3** from focus group (3) on Mandatory ADR alleged, “that the judiciary is corrupt, so imagine me saying no to court-referral? The judge will get

angry with me and might decide to favour my opponent, so it is better I take my chances at the ESMDC, and I thank God I did.”

On the other hand, **Party 9** indicated “Yes, if it is not mandatory than few people will be at the ESMDC because our people prefer force, if there is no force then our people will not take it serious. So, mandatory ADR is good.

ANNEXED - FORMS



Name _____ of _____ Applicant:

Name _____ of _____ Principal Contact:

Address:

Tel. _____ No: _____ E-mail:

Name _____ of _____ Attorney/Firm/Referrer (if any):

Address _____ of _____ Attorney/Firm/Referrer (if any):

Tel. No: _____

Email: _____

Dated: _____ Signature/Seal of Submitting

Party: _____ *Please indicate if Counsel /Referrer here undergo*

Mediation Advocacy Training.

YES

NO



IN THE HIGH COURT OF LAGOS

FORM 2

LMDC No:

SUBMISSION FORM

I/We _____

(Name of submitting individual or company)

of

(Address)

in a dispute

with _____

(Name of other Party)

DO HEREBY SUBMIT THE DISPUTE WITH THE ABOVE NAMED FOR:

MEDIATION

ARBITRATION

EARLY NEUTRAL EVALUATION

ANY PROCESS RECOMMENDED (Please Tick One)

(Attach a Brief Statement in Response (4 copies) with the most relevant documents).

Name of Submitting Party:

Name of Principal Contact:

Designation:

Address:

Tel. No: _____ E-mail:

Name _____ of _____ Attorney/Firm/Referrer _____ (if any): _____

Address _____ of _____ Attorney/Firm/ _____ Referrer _____ (if any): _____

Tel. No: _____

Email: _____

Dated: _____ Signature/Seal _____ of _____ Submitting Party: _____

Please indicate if Counsel /Referrer here undergo Mediation Advocacy Training.

YES

NO



IN THE HIGH COURT OF LAGOS

FORM 5

LMDC No:

CONFIDENTIALITY AGREEMENT

BETWEEN

_____ APPLIC
ANT

AND _____ RES
PONDENT

The parties will participate in an Alternative Dispute Resolution (A.D.R.) Session to be conducted in accordance with the Practice Direction regarding the A.D.R. Centre. The parties agree that:

- (a) Statements made and documents produced in an A.D.R. Session or in the pre-session conference and not otherwise discoverable are not subject to disclosure

through discovery or any other process and are not admissible into evidence for any purpose, including impeaching credibility

- (b) The notes, records, and recollections of the Dispute Resolution Specialist, Mediator or Arbitrator conducting the A.D.R. Session are confidential and protected from disclosure for all purposes, and

- (c) The ADR Judge, Dispute Resolution Specialist, Mediator or Arbitrator presiding over the A.D.R. Session has immunity as described in the Practice Direction.

Dated:

Signed:

Applicant

Respondent

Mediator/Arbitrator

Applicant's Counsel

Respondent's Counsel



IN THE HIGH COURT OF LAGOS

FORM 6

LMDC No:

AGREEMENT TO MEDIATE

To be completed and signed at Pre-Session Meeting

1 The Dispute

We, the undersigned parties, certify that we have been advised of the availability of the range of processes known as Alternative Dispute Resolution (“ADR”) designed to aid parties in resolving their disputes outside a formal judicial proceeding and of the existence of the court-based Lagos Multi Door Courthouse (“LMDC”) ADR Centre and hereby agree to submit to Mediation (the ‘Mediation’) in accordance with the LMDC Practice Direction (PD) and NCMG Mediation Rules, the following dispute:

[Brief description of dispute]

2 The Procedure

The PD will determine the conduct of the Mediation and is hereby incorporated into and forms part of this Agreement. (*Subject to the following agreed variations, if any*)

3 The Mediator

We agree to the appointment of¹⁰⁶⁷..... as Mediator of this dispute (the ‘Mediator’).

4 Schedule of Costs and Fees

We agree to the LMDC Schedule of Costs and Fees which we have read.

5 Authority to settle

The Parties or their appointed Lead Negotiator on the day will have full authority to settle on behalf of the party he or she represents. Names of all present will be confirmed in the ADR Notice after which time no changes will be made without the full agreement of all Parties to the dispute.

6 Other participants

The following, in addition to the Parties and their respective Counsel, will be present on behalf of each of the Parties at the Mediation:

Party A:

[State names and position]

- 1.
- 2.

¹⁰⁶⁷ If not decided at meeting, indicate ‘to be confirmed in ADR Notice’

Party B:

[State names and position]

- 1.
- 2.

All persons present at the Mediation will append their signatures to this Agreement confirming their submission to all the terms herein and those of the ADR Procedure.

7 Place and time

The Mediation will take place at ¹⁰⁶⁸ on.....starting at.....am/pm

8 Confidentiality and Privilege

- (a) All information and documents produced for the purposes of the Mediation and
- (b) All dealings between the parties in connection with the Mediation and
- (c) All dealings between the parties and the appointed Mediator shall be treated as confidential and not be disclosed to any other party, nor used for any purpose other than this Mediation and the resolution of the dispute and shall be treated as without prejudice and privileged from production in any court proceedings, save that privilege shall not attach to any pre-existing documents which would in any event be disclosable.

Save as otherwise agreed by the Parties:

- ◆ the fact that the dispute is subject to Mediation shall not be treated as confidential;
- ◆ any settlement agreement reached shall not be treated as confidential.

¹⁰⁶⁸ If not decided at meeting, indicate 'to be confirmed in ADR Notice'

9 Law and jurisdiction

This Agreement shall be governed by the Laws of Nigeria and the Courts of Lagos shall have exclusive jurisdiction on any matter arising out of this Mediation.

10 Indemnity

Neither the Mediator, the Assistant nor any Co-Mediator nor the Lagos Multi-Door Courthouse or any of its employees or associates shall be liable to the Parties for any act or omission in connection with the services provided in relation to the Mediation, unless such act or omission is shown to have been in bad faith.

11 Privilege accorded to the Mediator

No party will seek in any court proceedings to obtain or adduce any evidence or documents from the Mediator in relation to the Mediation or any settlement agreement made at or after the Mediation.

Signed: [Party A]
.....

Signed: [Party B]

Signed: [Counsel Party A]
.....
.....

Signed: [Counsel Party B]

Dispute Resolution Officer for LMDC

(rubber stamp over?)



IN THE HIGH COURT OF LAGOS

FORM 7

DISCLOSURE FORM

BETWEEN

_____ APPLICANT

AND

_____ RESPONDENT

Being aware of the importance of parties to have complete confidence in the arbitrator's/mediator's impartiality, I hereby state that I have / do not have any past or present relationship with the parties or their counsel, direct or indirect, whether financial, professional, social or of any other kind which could prejudice my expected role in this matter. If any such relationship develops during the course of the mediation/ arbitration or if there is any change at any time in the bio-data that I have provided the LMDC, it will also be disclosed and any doubt will be resolved in favor of disclosure.

The LMDC will bring all facts disclosed to the attention of the parties.

I HAVE NOTHING TO DISCLOSE.

[]

I HEREBY DISCLOSE THE FOLLOWING:

[]

(Kindly attach details)

Dated:

Name:

Signed:



MEDIATOR'S REPORT

This report is a brief statement of the Mediator, providing the ADR Centre with a summary of events which took place at the Mediation session. The co-operation of the Mediator, by filling this report after each session is important for an effective administration and case management.

Applicant:

Respondent:

Mediator's Name:

Date: Time Started: Time
Ended:

Interim Report:

Steps required of the centre (if any)

Comments:

Date of next Mediation Session (if any)

Mediator's Signature/ Date

*Kindly request for individual sheets of paper if needed

Steps required of the Centre (if any)

Comments:

Date of next Mediation Session (if any)

Mediator's Signature/ Date

*Kindly request for individual sheets of paper if needed

SAMPLE FORMAT FOR STATEMENT OF ISSUES

IN THE HIGH COURT OF LAGOS
THE LAGOS MULTI-DOOR COURTHOUSE
THE ADR CENTRE
LAGOS

BETWEEN

ABC APPLICANT

AND

XYZ RESPONDENT

APPLICANT'S STATEMENT OF ISSUES

OR

RESPONDENT'S STATEMENT IN RESPONSE

1)

2)

3)

Dated this Day of 200

Name: }

Address: } Counsel/Applicant/Respondent

Signature: }



Matter:

Date:

Name of Attendee	Organization	Position	Telephone No	Signature

--	--	--	--	--



ADR JUDGE'S REPORT

This report is a brief statement of the ADR Judge, providing the ADR Centre with a summary of events which took place at his session with the recalcitrant parties. The report should include any orders made, directives given as well as general observations. The co-operation of the ADR Judge, by filling this report after each session is important for effective administration and case management.

Applicant:

Respondent:

ADR Judge:

Date: Time Started: Time
Ended:

Session Report:

Steps required of the centre (if any)

Comments:

Date of next Mediation Session (if any)

Mediator's Signature/ Date

*Kindly request for individual sheets of paper if needed

Steps required of the centre (if any)

Comments:

Date of next Mediation Session (if any)

ADR Judge's Signature/ Date

*Kindly request for individual sheets of paper if needed

REPORT SHEET

Matter: _____

