PROBLEMS OF THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA AND THE APPLICABILITY OF ALTERNATIVE DISPUTE RESOLUTION

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Abstract
The use of Alternative Dispute Resolution (ADR) processes in criminal matters is a relatively newphenomenon and the increased interest in the application of ADR processes to the criminal justice was borne from a general dissatisfaction with traditional adversarial methods of dispute resolution. The Nigeria criminal justice system is characterized with unnecessary adjournment and delaysas a result of the flood of litigation overflowing its dockets as the demand for adjudication exceeds the capacity of the Courts to deliver justice in a timely manner. The prisons are congested and in highly deplorable conditions. This paper examines the application ofADRmechanisms insolving theseproblems of the administration of criminal justice system in Nigeria. ADR has the potential become a key tool for improving the poor state of criminal justice delivery in the country.

Keywords: ADR, Criminal Justice System, Plea bargain, Compounding, Restorative justice, Litigation.

1. Introduction

It is the duty of every government to combat crime. The process and system of doing this is called the criminal justice system. According to the *Black's Law Dictionary* criminal justice is the collective institutions which an accused offender passes until the accusations have been disposed of or the assessed punishment is concluded.[1] Generally, the criminal justice system is comprised of three organs; first is the law enforcement agencies which is primarily the Nigerian Police Force, second is the judiciary on one side and defence counsels on the other side, the last is the prisons.The overall objective of the criminal justice system in Nigeria is not only to punish crimes but also to prevent and control them. The criminal justice system has grown in leaps and bounds over the years although not without some attendant challenges. Indeed, the administration of criminal justice in Nigeria is faced with various problems ranging from the congestion of prisons, high cost of litigation, discretionary powersof Courts, unnecessary adjournment and delays. As such, these problems continue to affect the search for criminal justice in Nigeria.Hence, the search for a viable alternative for resolving criminal disputes. This paper therefore

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[1]BA Garner, (ed), *Black's Law Dictionary* (9[th]edn, Minnesota: West Publishing Co, 2009) p 431.

examines the application of Alternative Dispute Resolution mechanisms in solving problems of the administration of criminal justice in Nigeria.

2. Problems in the Administration of Criminal Justice System

2.1 The Nigeria Police Force

Police agencies are usually saddled with the difficult constitutional task of enforcing laws and the police obligations have not been easy to realize in Nigeria because of the following problems:

i. *Lack of Public Co-operation:*Public cooperation is the most valuable asset of police organizations in every modern society. This is because criminals live with people in the society and unless informants come up with the useful information concerning the identity of criminals, the police will not be able to perform the expected magic of identifying and arresting criminals.

ii. *Double Standard:*The police is often accused of conniving with criminals. This particular problem is partly responsible for the distrust between the police and members of the public.

iii. *Corruption:*Corruption in the form of exploitation is observed in a wide spectrum of interactions between the police and members of the public. The twenty naira (N20) 'handshake' between the police and bus drivers, taxi drivers, okada riders and motorists has become a regular and shameful sight on our roads and streets. There is also official exploitation of victims of crime in police stations. Usually, crime victims are made to provide money with which to buy the writing materials for making their statements and also made to provide money for fuelling police 'vehicles' which would be used for investigating the scenes of the crime. The policemen also complained that promotion in their organization is not based on merit but on favouritism and loyalty to the Inspector General of Police and other high-ranking officers.[2]

iv. *Planting of Criminal Evidence:*This is another problem, almost a tradition of the Nigeria police force. It involves the planting of criminal or incriminating substance within the property of and on the person of suspects in order to arrest or connect the suspect.

v. *Police Impersonation/Degree of Force:* There are many problems associated with the staff strength of the police force, and the abuse of duty roll call. In recent times, there have been serious cases of impersonation of duty police men or retired officers, who adorn their discarded uniforms and pose as officers.

[2]E, Onwuchekwe, 'The Police and the Administration of Criminal Justice System in Nigeria' (2015) www.academia.eduaccessed 20 February 2017.

2.2 Problems Relating to the Courts

i. *Qualification, Experience and integrity of judicial officers:* obviously the proper functioning and development of any judicial system depends on the calibre of the personnel appointed to man the courts. Quite apart from requisite academic qualification and experience, it is vital that only persons of high moral standard and integrity are appointed judges and magistrates.

ii. *Training of Court Personnel:* In the legal profession, as it is with any other profession the desirability of constant learning and on-the-job training cannot be over-emphasized. Judicial officers need constant training by way of courses, seminars, workshops etc. Such training is also important for court registrars, bailiffs, clerks and all others who work in the judiciary.

iii. *Discretionary Power of the Court:* Another dysfunction of the court as a component of the justice system is the misuse of discretion. Some judges are fond of abuses of the judicial process in the name of using discretion in a case. The wrong use of discretion by a judge could occasion a miscarriage of justice against or in favour of the offender.

iv. *Delay in the dispensation of Justice:* The problem of delays has rendered the speedy dispensation of criminal justice more of a myth than a reality. The delay in the administration of criminal justice runs through pre- trial, trial and post-trial of the criminal justice.

2.3 Problems or Challenges Associated with Prisons

One of the major problems or challenges associated with prisons especially Nigerian prisons are overcrowding/congestion[3] others include:

i. *Onerous and stringent bail conditions:* Accused persons most often in capital offences upon arraignment get remanded in prisons on the order of the court and in cases where bail is granted, some of the accused persons find it extremely difficult to fulfil the conditions of the bail terms so they remain in prison custody pending the perfection of the their bail conditions.[4]

ii. *Logistics problem:*The Nigerian Prisons are faced with a lot of challenges. One of the salient challenges which affect access to justice and cause prison congestion is the unavailability of operational vehicles to convey awaiting trial prison inmates to court for their trials. Often experienced is a situation whereby you find criminal cases being mentioned and the prison officials as well as the accused person will be absent in

[3]Y Akinseye-George, *Nigerian Prisons*: *Justice Sector Reform and Human Rights in Nigeria* – Centre for Socio-Legal Studies CSLS, (Abuja, Nigeria: CSLS Publishing, 2009), p. 308; A O Yekini and M Salisu'Probation As A Non-Custodial Measure In Nigeria: Making A Case For Adult Probation Service' (2013) 7 (1) & (2) *African Journal of Criminology and Justice Studies*,101-113.

[4]*Tochukwu v FRN*(2005) All FWLR (Pt. 278) 1048 at 1072 – 1073, Para C – A where it was heldinter alia.... "to ask that a surety must not be lower in rank than that of a Director in the Federal CivilService is to give a condition which is unattainable and therefore negates the court's decision to grant bail".

court and when the Prison Authorities are contacted, they claim to have been absent from court as a result of unavailability of operational vehicle to convey inmates to courts for their trial.[5]

iii. *Holding charge:* Holding charge is a frame up charge, it is improper, unconstitutional and generally used by the police in holding an accused person in custody while they conduct investigation and gather evidence to bring the accused person before the appropriate courts for trial. It has constituted a major source of congestion in Nigerian Prison and a major clog in the administration of criminal.

3. Meaning and Different Forms of Alternative Dispute Resolution Mechanisms

Alternative dispute resolution is a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.[6]Alternative dispute resolution helps parties resolve their differences without resorting to a more confrontational adjudicative process. It looks at needs, interests, and solutions, and can promote healing. It is voluntary, timely, confidential, and based on mutual agreement. Unlike the conventional courts, it is designed to yield solutions that are adapted to the particular circumstances of individual cases, as it is about solving problems rather than imposing solutions through an adjudicative process.[7]Thus, alternative dispute resolution isan alternative to going to the court and it has different mechanisms such as arbitration, mediation, conciliation and negotiation.

Arbitration: Arbitration is a process in which a third party neutral, after listening to parties in a relatively informal hearing makes a binding decision resolving the dispute.[8]Unlike a judge (a publicofficial) the arbitrator is typically a private person chosen by the parties. The person chosen to arbitrate the dispute often has specialized expertise in the subject matter of the dispute. A dispute that might otherwise go to court becomes subject to binding arbitrationonly by the agreement of the parties. In this sense, arbitration is a creature of contract, and the terms of theparties' particular arbitration agreement.

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[5]C Ndukwe and C I Nwuzor, 'Nigerian Prison Service (NPS) and the Challenges of Social WelfarAdministration: A Case Study of Abakaliki Prison' (2014) 9 (2)*Journal of Policy and Development Studies,* 25;
E E Obioha, "Challenges and Reform in the Nigerian Prison System" (2011) 27(2) *Journal of Social Science,* 102.

[6]Garner, *op cit*,p. 91.

[7]O Olufemi and AImosemi, 'Alternative Dispute Resolution and the Criminal Judicial System: A Possible Synergy
as Salve to Court Congestion in the Nigerian Legal System', (2013) 1(10) *Arabian Journal of Business andManagement Review (Nigerian Chapter),* 60.

[8]K Aina, 'Alternative Dispute Resolution', (1998) 2 (1) *Nigerian Law and Practice Journal, Council of Legal Education, Nigerian Law School,* 171.

Mediation: Mediation also involves the use of a third-party, but a mediator unlike an arbitrator has no authority to impose a resolution on the parties. Instead, the mediator's goal is to facilitate negotiation and help the parties themselves to reach a mutually acceptable settlement oftheir own dispute. Mediation is typically a voluntary process where the parties themselves may choose theperson who will act as the outside facilitator. It is private and confidential, and not open to the public.

Conciliation: Conciliation is a settlement of dispute in an agreeable manner or a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved.[9] The Arbitration and Conciliation Act provides for a right to settle disputes by Conciliation.[10]

Negotiation: Negotiation unlike arbitration does not require the participation of a neutral third-party with decisional authority. Instead, the parties themselves have the responsibility for deciding theterms of any resolution. Negotiation is voluntary, in the sense that disputing parties are not ordinarilyforced to negotiate with each other. The process of negotiation is informal and without defined proceduresor rules governing the presentation of evidence or arguments. Because the goal of negotiation is a mutuallyacceptable resolution, the parties to a negotiation can shape that resolution to suit their own needs andinterests. In essence, negotiation usually involves complete autonomy for the parties involved, without the intervention of third parties.

3.1 Nigerian Legal Framework Encouraging Alternative Dispute Resolution

The laws and rules regulating the establishment of Courts and their procedures made provisions for Alternative Dispute Resolution. There are different laws that have made certain provisions on Alternative Dispute Resolution known law prohibiting Alternative Dispute Resolution. Some rules of Court also demand that the presiding judge is to encourage the parties involved to consider Alternative Dispute Resolution. Some of these statutory provisions and rules of Courts are as follows: Constitution, Acts, Laws, Rules of Court, Rules of Professional Conduct and Case laws/judgments.

i. *Constitution of the Federal Republic of Nigeria:* Section 19 (d) of the Constitution of the Federal Republic of Nigeria[11]provides that the foreign policy objectives shall be the respect for international law and treaty objectives as well as the seeking of settlement of international disputes by negotiation, mediation, arbitration and adjudication. Section 254(3) of the Constitution of the Federal Republic of Nigeria[12]permits the National Industrial Court of Nigeria to establish within its premises an Alternative Dispute Resolution Centre to aid in the speedy disposition of cases that come to the Court.

[9] Garner, *op cit*, p 10.
[10]Cap A18, LFN,2004, ss 37- 55 detailed the provision for conciliation.
[11]1999 as amended.
[12]Third Alteration Act, 2010

ii. *Arbitration and Conciliation Act:* The Arbitration and Conciliation Act[13]is the domestic regulatory framework in Nigeria, modelled after the UNCITRAL Model Law on International Commercial Arbitration.

iii. *Federal High Court Act:* Section 17 of The Federal High Court Act[14] provides for reconciliation in civil and criminal cases – In any proceedings in the Court, the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

iv. *Matrimonial Causes Act:* Section 11 of the Matrimonial Causes Act, [15]in its sub 1 provides that it shall be the duty of the Court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage.

v. *Environmental Impact Assessment Act:* Section 33 of Environmental Impact Assessment Act[16] makes provisions to the effect that the Council can refer a matter to a mediator for mediation.

vi. *National Health Insurance Scheme Act :* Section 26 of National Health Insurance Scheme Act,[17] provides that the arbitration board shall be charged with the responsibility of considering complaints made by any aggrieved party.

vii. *Petroleum Act:* Section 11 of Petroleum Act, [18]provides for settlement of disputes by arbitration. Minerals and Mining Act

viii. *Minerals and Mining Act:* Section 76 of Minerals and Mining Act,[19] provides for arbitration and conciliation.

ix. *Administration of Justice Commission Act:* Section 3 of Administration of Justice Commission Act[20] provides that the commission shall ensure that congestion of cases in courts is drastically reduced.

x. *Economic and Financial Commission Act:* Section 14(2) of the Economic and Financial Crimes Commission Act, [21]section 186 of the Custom and Excise Management Act and section 99(3) of the newly amended Pension Reform Act 2014 all provides for compounding of offences.

xi. *Rules of Court:* Various State High Court Rules such as High Court Rules of Lagos State, High Court Rules of Rivers State, Anambra State High Court Rules etc encourage Alternative Dispute Resolution.

[13] Cap A18, Laws of the Federation of Nigeria (LFN), 2004.
[14]Cap F12, LFN, 2004
[15]Cap M7, LFN, 2004.
[16]Cap E12, LFN, 2004.
[17]Cap N42, LFN, 2004.
[18]Cap P10, LFN, 2004.
[19]Cap M12, LFN, 2004.
[20]Cap A3, LFN, 2004.
[21]2002, Cap E1, LFN, 2004.

xii. Case laws/judgments: While there is a dearth of cases in this aspect of the law because the concept of Alternative Dispute Resolution especially criminal arbitration is still a relatively new concept that is gradually getting entrenched in our legal framework. However, plea bargaining which is an aspect of Alternative Dispute Resolution in the Criminal justice system has recorded a number of cases with notable pronouncements by the Courts.[22]

3.2 Forms of Alternative Dispute Resolution in the Criminal Justice Context

In a criminal justice context, the term ADR can encompass a number of practices which are not considered part of traditional criminal justice. These practices can occur at different stages of the criminal process: they can be a diversion from the Court process or they can be in parallel with the Court process. These processes are generally only applied to offenders who have admitted the offence.

i. Victim-Offender Mediation (VOM)

Victim-offender mediation is not practiced in Nigeria.[23] It is a process that provides interested victims (primarily those of property crimes and minor assaults) the opportunity to meet their offenders in a safe and structured setting. Victim–Offender Mediation, focused on restitution and reconciliation through face-to-face meetings between victims and offenders before trained mediators.The goal is to hold offenders directly accountable while providing important support and assistance to victims. With the assistance of trained mediators, the victims are able to let the offenders know how the crime affected them, receive answers to their questions, and be directly involved in developing a restitution plan that holds the offenders financially accountable for the losses they caused. The offenders are directly responsible for their behaviour and therefore must learn the full impact of what they did and develop a plan for making amends, to the degree possible, to the persons they violated. Offenders' failure to complete the restitution agreement results in further court-imposed consequences. Some VOM programs are called "victim-offender meetings," "victim offender reconciliation," or "victim offender conferences."

ii. Plea Bargain

Plea bargain is generally an agreement in a criminal trial in which a prosecutor and an accused person arrange to settle the case against the accused usually in exchange for concessions.[24] It is also seen as a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concessions by the prosecutor, usually a more lenient sentence or a dismissal of the other charges[25]. It is a case of management strategy.

[22]*Brady v United States*(1970) 394 US 742;*Ohiaeri v Akabeze* (1992) 2NWLR (Pt 221) P 1 at 7 Paras 12.
[23]Practice in countries like Canada and United States of America
[24] Wikipedia – Plea Bargain, <http://en.wikipedia.org/wiki/plea bargain>accessed 25 February, 2017.
[25]Garner, *op cit,* p 1190.

The practice of plea bargain is new in Nigeria. It was not contained in any Nigerian legislation until 2004 when the EFCC Act (Economic and Financial Crimes Commission Act)[26] was enacted and now it is also contained in the Administration of Criminal Justice Act 2015. The EFCC Act, particularly section 13 empowers the EFCC to enter plea bargain with the accused and this is done by compounding the offence before the case is taken to court. EFCC officials can agree with the suspect who would be told to return all the loot for the offence to be compounded. The provision of section 13(2) of the EFCC Act indicates that when an accused agrees to give up money stolen by him; the Commission may compound any offence for which such a person is charged under the Act.[27]

Added impetus to the new concept came with the enactment of the Administration of Criminal Justice Law 2007, Laws of Lagos State, section 76 which introduced and entrenched plea bargain in Lagos State. It has been observed that plea bargain is a welcome development in Nigeria; nevertheless care must be observed in the application and practice of plea bargain in the context of corruption cases in Nigeria.[28]Indeed, plea bargain was first officially employed by EFCC in the trial of Mustafa Adebayo Balogun on 4th April 2005 and followed by the case of *FRN v Emmanuel Nwude&anor*.[29] and has since been employed in several others. A good example of plea bargain was in the *FRN v Cecilia Ibru* trial.[30] A former chief executive officer and managing director of the defunct Oceanic Bank, Mrs Ibru was arraigned by the EFCC in Court on the 31st day of August, 2009 on 25 counts of corrupt practices in office. The charges were subsequently reduced to three and this cannot be unconnected with plea bargaining. Consequent upon plea bargaining between the EFCC and Ibru, the latter decided to plead guilty to the said amended three-count charge of the alleged abuse of office and mismanagement of depositor's funds levelled against her.[31] In his judgment on Friday, the 8th day of October, 2010, Justice Dan Abutu of the Federal High Court Lagos sentenced the accused to six months imprisonment on all the three counts, amounting to eighteen (18) months imprisonment. The sentences however, are to run concurrently and this means that the convict would spend only six months in prison. Many analysts are of the view that this

[26] Act No. 1 2004.
[27] O Samuel, 'Development of Plea Bargain in the Administration of Criminal Justice in Nigeria a revolution, Vaccination against punishment or Mere Expediency' <nails.nigeria.org/pub/oguche> accessed 25
February 2017.
[28] O Samuel, 'Development of Plea Bargain in the Administration of Criminal Justice in Nigeria a revolution, Vaccination against punishment or Mere Expediency'
<nails.nigeria.org/pub/oguche>accessed25
February 2017.
[29]*FRN v Emmanuel Nwude (2006) 2 EFCSLR 145.*
[30]*FRN v Cecilia Ibru (FHC/L/297C/2009)*
[31]*FRN v Cecilia Ibru, supra.*

case shows the possibility of abuse of plea bargaining in the context of its application to corruption cases in Nigeria. It shows that plea bargain is an escape route for criminals who embezzle public funds. Also, that it amounts to vaccination against punishment since culprits may be allowed to keep a large portion of the loots.

iii. Community Dispute Resolution Procedures

This was also evolved to dispose of minor conflicts that were clogging criminal dockets. Its advocates hoped to empower communities to resolve conflicts away from the state's influence and to shift the focus from the offender's individual rights towards community building. The U.S. Department of Justice created model neighbourhood Justice Centers in Atlanta, Kansas City, and Los Angeles in 1977 and other community dispute resolution programs have since developed in response to this model, working with referrals from the community and court system through arbitration and conciliation[32]

iv. Restorative Justice

Restorative justice is an approach to justice that focuses on the needs of the victims and offenders, as well as the community involved, instead of satisfying abstract legal principles or punishing the offenders. Victims take an active role in the process while offenders are advised to take responsibility for their actions to repair the harm they have done, by apologising, returning stolen money or community service. Restorative justice involves both offender and victim and focuses on their personal needs. In addition, it provides help for the offender, in order to avoid future offences. It is based on the theory of justice that considers crime and wrongdoing to be an offence against an individual and community rather than the state[33]. Restorative justice that fosters dialogue between the victim and the offender shows the highest degree of victim satisfaction and offender accountability.

The concept of restorative justice is the practical application of some of the components of Alternative Dispute Resolution to criminal matters and causes. The concept emerged as a social movement for justice reforms. Restorative justice involves the use of Alternative Dispute Resolution multi option justice system which will assist to solve problems of appeals to senior courts which is more expensive in addition to decongesting prison. Restorative justice is one way to respond to criminal act. It puts the emphasis on the wrong done to a person as well as on the wrong done to the community. It recognizes that crime is both a violation of relationships between specific people and an offence against everyone in the state. In Nigeria, restorative justice has now been properly provided for in the Criminal Justice Administration Law of Lagos State and Administration of Criminal Justice Act 2015.

[32]M T Grace, Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility, and Renewing Public Norms, (2010) 34 *Vermont Law Review*, 566.
[33]P Marty, 'Personallizing crime', *Dispute Resolution Magazine,*2000, pp 8-11.

4 Challenges to the Application of ADR in the Nigerian Criminal Justice System

The challenges that may confront the implementation of alternative dispute resolutionin the criminal justice system are:

i. Legislative Framework – Planning and Designing

Meaningful intervention of Alternative Dispute Resolution in the criminal justice system must involve serious amendments to existing laws and the enactment of new ones. The challenge of a statutory scheme in the field of alternative dispute resolutionin Nigeria has been well noted in the civil justice sector.[34] The problem appears to be more accentuated in the criminal justice sector. However, the experience of Lagos State in enacting extensive provisions for plea bargaining in the Administration of Criminal Justice Law 2007 has shown that devising an appropriate legislative scheme is not an insurmountable problem. Save for a few instances where the law provides that the court may allow reconciliation on settlement, or that a prosecution may offer or receive a plea bargain upon fulfilment of certain conditions[35] including that such must be made before the presentation of the evidence of the defence and in any case, the evidence of the prosecution must be insufficient to prove the offence charged beyond reasonable doubt, among other requirements.[36] The implication of the above is that apart from minor offences in the few states where such provisions are made, there is no latitude for Alternative Dispute Resolution, in criminal justice system.

ii. Compoundmentand Concealment

Compoundment or compounding crime is defined as consisting 'of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who has committed a crime.'[37]The law against compounding is firmly entrenched in Nigerian lawmaking it quite difficult to use Alternative Dispute Resolution in criminal cases, despite the fact that Alternative Dispute Resolution is an essential part of the Nigerian customary practice. Hence, it is unlawful, even for prosecutors, to in exchange for any form of restitution, agree to discontinue or fail to pursue the prosecution of an offender in the relevant cases. This is however not absolute as certain offences are legally compoundable and certain bodies are empowered to compound certain offences

[34]CA Ogbuabor*et al,* 'Mainstreaming ADR in Nigeria's Criminal Justice System', (2014) 45(1) *European Journal of Social Sciences*, 40.

[35]see for example High Court Law of Enugu State of Nigeria S. 25 which provides that the court may promote reconciliation and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence not amounting to a felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the court No similar provisions in the Northern Nigeria.

[36] Administration of Criminal Justice Act S. 270 which applies only to courts in the Federal Capital Territory and Federal Courts in Nigeria

[37] Ss 127, 128 and 130 of the Criminal Code which create the offences of compounding a felony andconcealing a crime.

for example, the Economic and Financial Crimes Commission (Establishment) Act empowers the commission to compound offences punishable under the Act.

iii. Orientation

One of the greatest challenges facing the implementation of Alternative Dispute Resolution in the criminal justice system is that of orientation. It has been observed that criminal justice theories can suffer due to lack of acceptance.[38]A vast majority are used to the retributive justice system and would appear to be impervious or hostile to receiving new ideas. It is deeply embedded in our psyche that the only concern of the criminal justice system is punishment of the offender. Thus, for criminal justice to respond more appropriately to criminal behaviour, it must incorporate not only criminal law but principles of restorative justice and alternative dispute resolution based on indigenous jurisprudence and practices of the Nigerian people.[39]

iv. Privatization of Dispute

It has been argued that Alternative Dispute Resolution option privatizes disputes in contexts in which public policy requires the clear intervention of the state with strict public scrutiny. The confidential nature of Alternative Dispute Resolution leads to perpetuation of violence, for instance, in domestic violence, the criminal justice system has played an important role in publicizing the seriousness of domestic violence and in penetrating the silence that allows the perpetrator to commit the offence.

v. Suspicion of Manipulation in the ADR Process

The suspicion that the private process is too open to manipulation and that the procedural safeguards for an independent and impartial adjudication of criminal matters usually found in a normal court trial are largely absent continues to pose a challenges to the use of Alternative Dispute Resolution in the criminal justice process while this fear may be well founded, it appears to be over-blown because as already stated Alternative Dispute Resolution need not be outside the mainstream of the criminal justice system.

vi. *Problem of Power imbalance*

Power imbalance refers to a situation where one person is in the position of control while the other is in the position of subservience so that there is no likelihood of negotiations on the basis of equality. Thus, it is argued, because the offenders committed the offence on his own terms. So, there is no basis for negotiation as there is no equality in bargaining power. These critics argued that when mediation is used instead of the formal court interventions, the result can be dangerous for victims, particularly for women in the domestic violence situation. Alternative Dispute Resolution methods do not ensure any

[38]Ogbuabor,*art cit*, p 39.

[39]C Okafo 'African Jurisprudence and Restorative Justice: The Need to Rethink the PhilosophicalFoundation ofNigerian Criminal Law and Criminal Justice Administration' cited in CG Nnona (ed), *Law, Security and Development: Commemorative Essays of the University of Nigeria Law Faculty* (Enugu: Faculty of Law, University of Nigeria, 2013) pp 247-286.

balance of power between disputants in the settlement process unlike the public courts where the judge holds the balance in the public interest. The problem of power imbalance is one of the greatest concerns of the opponents of Alternative Dispute Resolution in the criminal justice system.[40]

vii. Manpower, Infrastructure, Training and Funding

Notwithstanding the appeal of Alternative Dispute Resolution generally as inexpensive and speedier, its application in the criminal justice system may require huge capital outlay at least at the initial stages. Such funding requirements would go to manpower development and building of infrastructure. There will be need to train and re-train personnel in Alternative Dispute Resolution processes and management techniques.

5. Conclusion and Recommendations

Considering the advantages of Alternative Dispute Resolution, it's obvious that the only way to decongest the courts and allow for settlement of disputes, especially criminal matters, amicably is through the various Alternative Dispute Resolution methods. The writers are therefore of the opinion that even in the criminal justice system, the future of Alternative Dispute Resolution in Nigeria is bright and promising in bringing about a society where disputes are disposed of more expeditiously and at lower costs, without having to resort to judicial settlements. Indeed, it has become imperative for stakeholders in criminal justice administration to seek other alternative approaches in resolving criminal disputes. The writers therefore recommendnationwide education/enlightenment programs. The benefits of Alternative Dispute Resolution and restorative justice should be preached. Advertorials need to be placed on television and radio to ensure that the gospel of restitution is adequately preached. Also, any meaningful intervention of Alternative Dispute Resolution in the criminal justice system must involve serious amendments to existing laws and the enactment of new ones. Such provisions as those that condemn compounding, for example, should be amended to allow certain officials and persons in certain conditions and in respect to different offences particularly property offences to lawfully compound provided the person to whom restitution is made is the victim. Moreover, structures such as Alternative Dispute Resolution centres should be set up in different locations across the country to administer the various appropriate dispute resolution methods. Such centres could be built alongside and in schools, courts, certain public offices, etc.

[40]SB Goldberg *et al*, *Dispute Resolution: Negotiation, Mediation and Other Processes (*2nd edn, Boston, Toronto, London: Little, Brown and Company 1992) p20.