

Enhancing Sustainable Development By Entrenching Mediation Culture In Nigeria

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“Alternative models can teach cooperation rather than emphasizing conflict, openness rather than secrecy, and dependence on oneself rather than authorities for the resolution of problems.” Judge Dorothy Wright Nelson

ABSTRACT

The application and preference for Alternative Dispute Resolution (ADR) is now popular in Nigeria, although there are still some misconceptions about its true application. This has necessitated the need for the entrenchment of ADR for sustainable development particularly through the court. However, it is observed that mediation is popular but has not been fully entrenched by way of putting in place all the integral mechanisms so as to positively impact on access to justice and justice delivery of the country. Thus, this article attempts to address this gap and proffer possible solution.

Key Words: ADR processes, Mediation, Court-Annexed Mediation, Sustainable development and Nigeria.

INTRODUCTION

The potency of mediation as a means of resolving disputes among other dispute resolution mechanisms is outstanding. In view of the common advantages of mediation as a faster, cheaper and consensual process in which a third party helps to achieve mutually acceptable solution. It should therefore, be adopted to strengthen and enhance sustainable development through the courts in Nigeria, in that litigation has seriously affected the just and quick dispensation of justice.

The paper intends to discuss ways to improve ADR in Nigeria with particular attention on mediation. As such, the usefulness of mediation in terms of its advantages is highlighted. The benefit of court-annexed mediation and the recent developments in Nigeria particularly the practice in Kwara and Lagos State is discussed along with other jurisdictions. Suggestion is made for a Mediation Act for Nigeria to settle family, community, commercial and neighbourhood disputes in an organized manner. Besides, a National Mediation Board is proposed to serve as the anchor for mediation in the country.

MEDIATION: AN OVERVIEW

The adoption of mediation when appropriate saves the parties of unnecessary expenditure and delay. The advantages of mediation are many; lists of these have been given by many authors, for example, Brown, Marriott and Rashid.²² Mediation is a consensual process, cost effective, delay free and a private arrangement. Mediation is specifically designed to achieve settlement unlike other trial-like processes (like arbitration, private judging and the like).²³ One of the advantages of mediation is the intervention of a third party who helps the disputing parties in finding an option which is of mutual benefit. Parties express their emotions, feelings and self interest freely during the course of proceedings, especially during the caucus meetings where the parties express their

²² Henry Brown and Arthur Marriott, *ADR Principles and Practices*, (London: Sweet and Maxwell, 1993), p. 19 See also Syed Khalid Rashid, *ADR in Malaysia*, (Malaysia: Kulliyah of Laws IIUM, 2006) pp.113-114. Lim Lan Yuan, “Mediation, Its Effective Implementation As An Alternative Dispute Resolution Mechanism - Singapore Experience” Paper presented at the National Seminar on Alternative Dispute Resolution, Putrajaya Malaysia, 2002, pp. 2-9. See also Dorothy J. Della Noce, “Mediation Theory and Policy: The legacy of the Pound Conference” *Ohio Journal on Dispute Resolution*, vol. 17, No. 3 (2002) p. 546.

²³ Susan Patterson & Grant Seabolt, *Essentials of Alternative Dispute Resolution*, (Dallas Texas: Pearson Publications Co., 2nd edn., 2001), at 53.

minds freely but in total secrecy from other party, unless they themselves allow the disclosure of issues discussed with the mediator in order to help build a consensus and as well find an option.²⁴

The advantage of mediation can also be understood from the perspective of its universal success rate in the resolution of disputes which is put at 90%.²⁵ In the USA particularly in Florida as in other jurisdictions where statistics has been collected, there is overwhelming evidence that mediation has offered an effective avenue for the resolution of complex issues involving commercial, social as well as business disputes.²⁶ This success is credited to the divinely created human psychology that usually tilts towards amicable resolution of disputes.

In U.S, the popular dissatisfaction with the administration of justice as echoed by the 1976 Pound Conference brought ADR to limelight, particularly mediation, and ever since, its usefulness in the resolution of disputes has been found to be tremendous.²⁷ The dissatisfaction with the litigation-inclined adversarial administration of justice in Nigeria requires a paradigm shift from litigation to ADR, particularly mediation for a sustainable development. The attitude and mind-set which regard the intention and move to mediate as an expression of weakness must change.

TRADITIONAL MEDIATION / CHALLENGES

Mediation in Islamic law known as *Sulh*, with the tradition in Nigeria has been to resolve disputes amicably. Mediation was one of the processes by which disputes were resolved in Nigeria until the introduction of litigation culture by the colonial powers. But the deep-rooted acceptance of the traditional methods is such that till today, mediation plays a significant role in the resolution of disputes. Thus, if it is strengthened at the grass root level and sustained to co-exist with the modern ADR, it may greatly help in the resolution of disputes in Nigeria. This will be in line with the current trend in other countries of the world, particularly China, India, Singapore and Japan.²⁸ The People's Mediation Committees form the backbone of civil justice system in China, likewise the relevance of the *Lok Adalat* and the system of *Panchayat* in India have helped in the administration of justice.²⁹ The Committee of Elders, Family head, Chiefs, Kings, Emirs and Sultan (both at the National and State levels) still play important role in Nigeria. Thus, the need to legally recognise the activities of these agents of peace and harmony is imperative. Much of the effectiveness of the process is based on the collective pressure of public opinion which also ensures respect for resolution reached, and the fear of condemnation for not respecting these resolutions. In Nigeria, traditional mediators symbolise the representatives of the ancestors.³⁰ Notwithstanding the advantages of mediation, certain fear and concern are expressed as far as the use of mediation is concerned. This is viewed as a barrier, like the fear of the effectiveness of the process, doubt of being perceived as a weak party when mediation is proposed which in turn result in hesitation in making move towards exploring mediation. All these are surmountable regardless of been seen as barriers to mediation.³¹ This may be addressed vide a number of ways particularly using the court-annexed mediation. Mediation is apparently an effective means for easing backlog of cases together with its cost effectiveness.³²

THE EXPEDIENCY OF COURT-ANNEXED MEDIATION & ADR

Sequel to the benefit of court-annexed mediation, it is pertinent to highlight the efforts that have been made to entrench ADR in Nigeria, including the establishment of the Multi-Door Courthouse, which is similar to the Court-annexed mediation or Court-Connected ADR centre.

²⁴ Ibid at 11. See also Julie Macfarlane, "The Mediation Alternative" *Rethinking Disputes: The Mediation Alternatives*, edited by Julie Macfarlane, (London: Cavendish Publishing Co., 1997), p. 2.

²⁵ Peter d' Ambrumenil, *Mediation and Arbitration*, (Great Britain: Cavendish Publishing Ltd., 1997), p. 54

²⁶ Joseph B. Stulberg, "Question," *Ohio State Journal on Dispute Resolution*, vol. 17, No. 3 (2002), p. 534.

²⁷ Susan Patterson & Grant Seabolt, n. 2 p. 2. See also Syed Khalid Rashid, *ADR in Malaysia*, n. 1 p. 7.

²⁸ Nora Abdul Hak, "Family Mediation in Asia: A Special Reference to the Law and Practice in Malaysia," vol. 15, No. 1 (2007) *IJUMJ* pp. 125-128.

²⁹ Syed Khalid Rashid, *ADR in Malaysia*, n. 1 pp. 4-5. See also his, "Issues Relevant to the Enactment of a Mediation Law in Malaysia and the Text of a Proposed Mediation Act 2009," Paper presented at the Asian-Pacific Mediation Forum Conference 2007, Kuala Lumpur, p. 5.

³⁰ See Bolaji Owosoye, "Dispute Resolution Mechanisms and Constitutional Rights in Sub-Saharan Africa," Paper written for the United Nations Institute of Training and Research Sub-Regional Workshop on Arbitration and Dispute Resolution, Harare, Zimbabwe 11-15 September, 2000. Document Series No. 14, Published in Geneva, March 2001, p. 23. See <<http://www.unitar.org/pft/sites/default/files/DocSeries14.pdf>> (accessed 18th January, 2013). It is submitted that community sanction can effectively guarantee compliance of a verdict by a traditional chief (by whatever name he is known).

³¹ See Christian Buring-Uhle, *Arbitration and Mediation In Business, Designing Procedures for Effective Conflict Management*, (The Hague: Kluwer Law, 1996), p. 283.

³² See Syed Khalid Rashid, "Issues Relevant to the Enactment of a Mediation Law in Malaysia And the Text of a Proposed Mediation Act 2009," n. 8 pp. 1-2.

The establishment of the court connected ADR in Nigeria was championed by the Negotiation and Conflict Management Group. It led to the establishment of the Lagos Multi-Door Courthouse which is the first Multi-Door Courthouse in Africa.³³ It is designed to diagnose each case or dispute and refer it to an appropriate “door” or mechanism that is best suited to its resolution. The Multi-Door Courthouse has been introduced in Lagos State and the FCT (Federal Capital Territory) Abuja. Kwara State is not left out in this regard. The ADR processes available for the resolution of disputes include mediation, arbitration, conciliation, early neutral evaluation and hybrid processes.³⁴ The success of this experiment demands that the court-annexed ADR be made a general phenomenon and adopted in all States of the Federation of Nigeria for sustainable development. Thus, it is necessary to have a law in place to formalise this position. Although mediation is ordinarily a voluntary process but in view of the contemporary paradigm shift, it is now being ordered by the court either directly or through case management. But this does not remove the voluntariness of the process. Sending a party to mediation or ADR is made compulsory, but party still has the power to settle or not to settle. Investigation has shown that the fear of being perceived as a weak party, lack of knowledge of the availability of mediation as an option to litigation among other reasons have necessitated the court-annexed ADR. Court-annexed mediation is a mediation ordered by the court in view of the nature and circumstances of the case. The parties may employ any other lawful dispute resolution mechanism, if they fail to settle.

The experiment of the multi-door courthouse in Nigeria has brought a reduction in the backlog of cases. As in others, the LMDC is now a part of the Lagos State judiciary as a court-annexed ADR mechanism with jurisdiction to apply mediation, arbitration, conciliation, neutral evaluation and any other ADR mechanism considered suitable.³⁵ Though, a successful implementation of the program requires painstaking regulation, implementation, persistent monitoring and periodic evaluation of the program in view of the fact that the successful implementation of court-annexed mediation in the USA spanned over a period of three decades.³⁶

An ADR expert in Nigeria is of the view that court-annexed mediation is a jurisdictional issue and as such easy to achieve and thus, recommends court-annexed mediation for Nigeria.³⁷ In the same vein, the behind-the-scene architect of Nigerian Arbitration and Conciliation Decree (1988),³⁸ in view of the undue delay and congestion in Nigerian courts, lends his total support to court-annexed ADR in not only in Nigeria but in Africa as a whole.³⁹

The benefit of court-annexed mediation or ADR is tremendous in terms of the court’s input and the fact that parties’ control of the settlement process is maintained.⁴⁰ Research in the US and UK on the processes of court-annexed ADR shows the benefits and usefulness of the program.⁴¹ It guarantees the possibility of using mediation voluntarily by the parties either before or after the commencement of litigation. The virtues of court-annexed ADR were detailed by Judge Dorothy Wright Nelson⁴² among other points that “alternative models can teach cooperation rather than emphasizing conflict, openness rather than secrecy, and dependence on oneself rather than authorities for the resolution of problems.” It is believed that the program will afford courts the opportunity to present new models to the community which is capable of establishing and maintaining important norms for behaviour of citizens.⁴³

Thus, the adoption of court-annexed ADR in Nigeria will enhance sustainable development because it is an added advantage to ease the back log of cases in Nigeria while at the same time it will ensure consensual and

³³ It was initially brought into existence on the 11th day of June, 2002 as a result of the collaboration between the Negotiation and Conflict Management Group (NCMG) and the High Court of Lagos State which provided the space while it was funded by NCMG and the Law Firm of Aina, Blankson & Co. See Mr.Kehinde Aina, “ADR and the Relationship with Court Processes,” a Conference Paper presented at Nigerian Bar Association Annual General/ Delegate Conference, Abuja, 22nd - 27th August, 2004, pp. 2, 6-13.

³⁴ See the Lagos Multi-Door Courthouse Brochure and also <www.thelagosmultidoor.org>

³⁵ See S. 3 (1) of the Lagos Multi-Door Courthouse Law, 2007.

³⁶ The use of ADR ever since its re- awakening on its use is quite over thirty years. See Judge Dorothy Wright Nelson, “ADR in the Federal Courts- One Judge’s Perspective: Issue and challenges Facing Judges, Lawyers, Court administrator, and the Public,” *Ohio Journal on Dispute Resolution*, vol. 17, No. 1 (2001) pp. 1-4.

³⁷ Interview by author with Dr. Paul Obo Idornigie, Kwara State, Nigeria, 5th November, 2008

³⁸ Judge Bola Ajibola, “Recent Development in Arbitration and ADR in African Continent” in *Arbitration & Alternative Dispute Resolution in Africa*, edited by C. J. Amasike (Abuja: The Regent Printing & Publishing Ltd., 2005), p. 17.

³⁹ *Ibid.* at 18

⁴⁰ See Syed Khalid Rashid, “How “Stay of Arbitration” Could Bring About Quicker and Cheaper Settlement of Commercial Dispute,” (2008) LR 188, p. 270.

⁴¹ *Ibid.* See also Brazil, Wayne D, “Court ADR 25 Years after Pound: Have We Found a Better Way?” *Ohio Journal on Dispute Resolution*, vol. 18, No. 1 (2002) at 93-149; Wissler, Roselle L, “Court-Connected Mediation in General Civil Cases: What We Know from Empirical Research,” *Ohio Journal on Dispute Resolution*, vol. 17, No. 3 (2002) pp. 641-73.

⁴² Judge Dorothy Wright Nelson, n. 15 pp. 3-5.

⁴³ *Ibid.*, p. 4.

creative resolution of disputes. An important benefit of the court-annexed mediation is that mediation process becomes an integral part of the judicial system thus, conferring an element of respectability to it. The supervision by the court creates a sense of co-ordination together with an expeditious resolution of dispute. On the whole it ensures a quicker, less expensive, participatory and coordinated resolution of dispute. Besides, as it is conducted on “without prejudice” basis, it offers an avenue for parties to express their interests without an apprehension or fear of a compromise of their legal interest. It also provides psychological backing to the party that it can open its heart before someone who is indeed concerned with his interests and who is really impartial, and above all who can never impose his will on the party, which remains empowered to go for a resolution or reject it.⁴⁴

COURT-ANNEXED MEDIATION IN NIGERIA

The contemplation of court-annexed mediation in some States in Nigeria is a very recent development unlike in the USA and Australia where it has been in operation for about 30 years.⁴⁵ In the US, by virtue of the ADR Act of 1998, all Federal district courts are authorised to require parties to a suit to first go for ADR in all civil cases. In Nigeria, efforts towards bringing in court-annexed mediation can be seen in some of the High Court Rules. Notably, the High Court Rule of Lagos State, Kwara State and Abuja among others which provide for “pre-trial conferences.” The High Court of Lagos State (Civil Procedure) Rules⁴⁶ provide pre-trial conference in its Order 25, Rule 1, as follows:

- (1) (c) *Promoting amicable settlement of the case or adoption of alternative dispute resolution.*

The above provision seeks to promote the resolution of dispute through ADR particularly by paragraph (c). A similar provision which aims at achieving the same objective is the High Court of Kwara State (Civil Procedure) Rules.⁴⁷ But the High Court of the Federal Capital Territory Abuja Civil Procedure Rules⁴⁸ is more specific on the ADR processes than the above provision.⁴⁹ This Rule⁵⁰ provides as follows:

1. A Court or Judge, *with the consent of the parties*, may encourage settlement of any matter (s) before it, by either-
 - (a) Arbitration;
 - (b) Conciliation;
 - (c) Mediation; or

any other lawful recognized method of dispute resolution.⁵¹

In the above provision, consent of parties should be removed. The satisfaction of the court should be enough. Parties cannot object because what is ordered is for their benefit. As earlier observed under the benefit of court-annexed mediation, it is argued that the Lagos and Abuja Multi-Door courthouse is aimed at achieving the same object with the court-annexed program. The introduction of the concept of Multi-Door Courthouse in some jurisdictions and its success there might have influenced a general acceptance of the concept in the whole of Nigeria.

The issue here is that in Nigeria (a country with thirty-six States and a Federal Capital Territory) only few States have adopted the multi-door concept and included pre-trial conferences in their high court rules. It is worthy to note that the experimental practice of mediation under the mediation centres have certainly reduced the back log of cases and as well reduced the number of cases that goes to the courts.⁵²

It therefore, appears appropriate to introduce the court-annexed mediation in the whole country. In some jurisdictions like USA, Australia and India court-annexed mediation is conducted by the court registrar and officers. In New South Wales Supreme Court over 500 mediations were conducted during 2008 by registrars

⁴⁴ See for an expatiation of the potentials of court-annexed mediation. Niranjana J. Bhatt, “Legislative Initiative for Court-Annexed Mediation in India”, June 2003. <<http://www.mediate.com/articles/bhattN.cfm>> (accessed on 6th March, 2013)

⁴⁵ Judge Dorothy Wright Nelson, n. 15 at 1-4.

⁴⁶ The High Court of Lagos State (Civil Procedure) Rules 2004.

⁴⁷ See Order 33 Rule 2 (C) of the High Court of Kwara State (Civil Procedure) Rules 2005.

⁴⁸ The High Court of the Federal Capital Territory Abuja Civil Procedure Rules 2004.

⁴⁹ Lagos and Kwara State High Court Rules.

⁵⁰ The High Court of the Federal Capital Territory Abuja Civil Procedure Rules 2004.

⁵¹ See Order 17 Rule 1 (a-d) of the The High Court of the Federal Capital Territory Abuja Civil Procedure Rules 2004.

⁵² See Sabine Hertveldt, “Repairing a Car with the Engine Running”, <http://www.doingbusiness.org/Documents/casestudies/2007/EC_Nigeria.pdf> (accessed on 3rd February, 2013), at 47.

with a success rate of 59%.⁵³ It has been suggested that issues like the number of settlements; the time within which it is reached, the cost as well as the satisfaction of the parties involved provide a good yard stick to measure the success of the programme.⁵⁴ It is thus, desirable that a periodic evaluation of the programme must be carried out to test the usefulness and success of the programme. There are some ancillary issues which need be provided for in the regulation of the court-annexed mediation, these include the following:

- a) Rules to be drafted by the Chief Justice. It shall be provided that the Chief Justice shall have the power to make rules regulating the practice and procedure of the court-annexed mediation (Practice Direction). Presently in Nigeria, a practice direction has been issued by the Chief Judge of Lagos State pursuant to the power conferred on him by section 30 of the Lagos Multi-Door Courthouse Law.⁵⁵ This practice direction may well serve as a good specimen and guide that may be adopted with the necessary changes to suit a general purpose.
- b) Time-limit to be set for the completion of mediations. In order to ensure a quick and timely resolution of dispute, a time limit within which dispute should be resolved be set. This is imperative so as to avoid delay. At most, a period of thirty days should be set within which an agreement should be reached.⁵⁶
- c) Liability to bear cost. Generally in court-annexed mediation, the State bears the cost, where mediation is by persons (mediators) who are officials of the Court like (registrar, officers of Court or other persons as certified to be so qualified by the Court) the Court (State) should bear the cost by way of social service to the public for the mediation service and use of Court room but where the parties have the means to bear the cost then it should be shared by the parties. The requirement of funding by the government should be paramount for the programme to succeed. Thus, adequate resources are required for the success of the programme.

Where the parties apply for mediation by themselves, they will have to bear the cost but when ordered by the court the court should take care of this. A similar position of this nature is adopted in the US.⁵⁷

It is observed by a legal practitioner that court-annexed mediation in Nigeria may remove suspicion of bias where relations and friends serve as mediators. Court appointed or accredited mediators command respect and ready acceptance.⁵⁸

MEDIATION ACT FOR NIGERIA

The need for a Mediation Act for Nigeria is imperative in view of the non-uniformity and haphazard individual adoption of ADR by the various States. Presently the LMDC has issued a practice direction which regulates the practice and procedure of mediation in the LMDC, the ADR centre in Lagos State.⁵⁹ The High Court Rules and Practice Directions are equally diverse. Therefore, a Mediation Act for Nigeria is needed to cover disputes in the area of family disputes, commercial disputes and neighbourhood disputes among other civil disputes. The diverse fields are presently covered by the Kwara State Citizens Mediation and Conciliation Centre, which

⁵³ See the Supreme Court New South Wales, <http://www.lawlink.nsw.gov.au/lawlink/supreme_court/11_sc.nsf/pages/sco_mediation> (accessed on 6th March, 2013)

⁵⁴ See No 41 at 7 Niranjan J. Bhatt, "Legislative Initiative for Court-Annexed Mediation in India", a paper presented at the 4th Indo-US Legal Forum meet at US Supreme Court on October 15, 2002. <http://www.lawcommissionofindia.nic/adr_conf/niranjan%20annx20%med13.pdf> (accessed on 6 March, 2013) p. 7

⁵⁵ See the LMDC, Practice Direction on Mediation Procedure 2008 enacted by the Hon. Justice A. Ade Alabi, Chief Judge of Lagos State made pursuant to the power conferred on him by section 30 of the Lagos Multi-Door Courthouse Law of May 2007.

⁵⁶ By Article 12 of the Practice Direction on Mediation Procedure 2008 of the Lagos Multi-Door Courthouse, a maximum period of three (3) mediation sessions is set. Each mediation session shall not exceed ten (10) days from the date of the last mediation session. This on the whole comes to a total of thirty days. However, as experienced by this author, despite the success recorded by the Kwara State CMCC, at times the resolutions are not quickly processed for the ADR Judge's signature and this may pose a serious challenge to the success of the program.

⁵⁷ See the Court-annexed Mediation Rules, <http://www.mssc.state.ms.us/rules/msrulesofcourt/court_annexed_mediation.pdf> (accessed on 6th October, 2011)

⁵⁸ Interview by author with Barrister Abdul Razaq Gold, Gold Chambers, Kwara State, Nigeria, 24th November, 2008.

⁵⁹ See the LMDC, Practice Direction on Mediation Procedure 2008 enacted by the Hon. Justice A. Ade Alabi, Chief Judge of Lagos State. The instrument was deemed necessary consequent upon the promulgation of the LMDC Law of May 2007.

resolve disputes professionally. Presently the Government bears the cost, as a service to the community. In just three months a total of 30 cases out of 50 referred have been resolved amicably through mediation to the satisfaction of the parties.⁶⁰ The table below shows the type of dispute, the process and the duration.

Nature of Dispute	Number	Process adopted	Duration
Land Dispute	6 (six)	Mediation	2 Hours to 2 Days
Recovery of Debt	5 (five)	Mediation	1 Day
Employer/Employee	3 (three)	Mediation	1 Week
Family Dispute	2 (two)	Mediation	1 Day to 1 Month
Religious Dispute	1 (one)	Mediation	1 Day
Landlord/Tenant	2 (two)	Mediation	1 Day
Breach of Contract	3 (three)	Mediation	2 Hours to 1 Days
Breach of Contract	4 (four)	Ref. Arb/Mediation	1 Days
Release of Car& oth	4 (four)	Mediation	1 Days

[Source: Kwara State Citizens Mediation and Conciliation Centre]

The above shows the need to support the system to entrench the mediation culture particularly that most of the disputes resolved have been earlier made subject of litigation without any appreciable success. However, one of the challenges is lack of a Mediation Act, which may set the ground rules for conducting mediation and to set an infrastructure for this purpose in the country.⁶¹ Besides, there should be a mediation board to further sustain the development of mediation in Nigeria and spread the culture generally.

Nigerian Mediation Board

It is necessary that a Mediation Board be established in Nigeria. The Board shall be responsible for overseeing and co-ordinating the administration of the process at all levels: designated courts including but not limited to the Federal High Courts, High Courts, Magistrate Courts, Customary Courts, Area Courts and Mediation Centres. The Board should be affiliated to the National Judicial Council (NJC) at the national level and affiliated to the State Judicial Council (SJC) at the State level. Doing so will require amendments in the various Acts.

Composition of the Board

The Mediation Board shall consist of persons who are knowledgeable in ADR theory and practice, that is, familiar with the administration of ADR programmes. At the National level there shall be:

1. A Permanent chairman of the Board nominated by the National Judicial Council (NJC) and other members to include;
2. The Chief Justice of Nigeria or a serving Judge as his representative
3. The President of the Court of Appeal or a serving Judge as his representative
4. The President of the Federal High Court of Appeal or a serving Judge as his representative
5. The Attorney General of the Federation or his representative from the Ministry of Justice
6. The Chief Justice of the States or their representatives
7. Any five chairmen of Mediation centres or their representatives
8. Representatives of the States' Judicial Council
9. The chairman of the Nigerian Bar Association or his representative
10. Representative of Traditional mediation forum appointed by the chairman

⁶⁰ Interview by author with Mrs S. T. Usman, Director of the Citizens Mediation and Conciliation Centre, Ministry of Justice, Kwara State, Nigeria, 11th December, 2009

⁶¹ Interview by author with Barrister Yekin Lawal, Mediator at the Citizens Mediation and Conciliation Centre, Ministry of Justice, Kwara State, Nigeria, 24th November, 2009

11. Representative of Professional private mediation bodies appointed by the chairman
12. Other mediation experts appointed by the chairman of the Mediation Board

While at the State level the Mediation Board shall consists of the following persons:

1. A Permanent chairman of the Board nominated by the State Judicial Council (SJC) and other members to include;
2. The Chief Justice of the State or a serving Judge as his representative
3. The Grand *Khadi* of the *Shari'ah* Court of Appeal or a serving *Khadi* as his representative
4. The President of the Customary Court of Appeal or a serving Judge as his representative
5. The Director of the Directorate of District Court or his representative
6. The Attorney General of the State or his representative from the Ministry of Justice
7. Representatives of the States' Judicial Council
8. The chairman of Mediation centres or their representatives
9. The chairman of the Nigerian Bar Association or his representative
10. Representative of Traditional mediation forum appointed by the chairman
11. Representative of Professional private mediation bodies appointed by the chairman
12. Other mediation experts appointed by the chairman as approved by the SJC.

It is hoped that a composition of this nature is encompassing enough to cover the various interests necessary for a successful administration of mediation programme in Nigeria. It should be stated that 1 & 12 at both levels will be permanent members while 2-11 in both cases are member who are not on a permanent basis but for decision making and the proper administration of the board.

Mediation Centres

The determination of the numbers of mediation centres to be established in the country shall be one of the issues to be addressed by the Act. In the case of Nigeria, a country which presently has thirty-six States and a Federal Capital Territory should have at least thirty-seven mediation centres and as many divisions as possible and necessary considering the population density. The existing Mediation Centres in the various States that have been established shall be allowed to operate under the new arrangement because of their achievements. For example, in the five Lagos Mediation Centres, there are a total of thirty-eight trained mediators, employed and paid by the Lagos State Ministry of Justice.⁶² The centres have over the years reviewed over 17,000 cases and have amicably settled 15,950. Only 332 parties were advised to seek justice in court.⁶³

Qualification and Training of Mediators

Competence of a mediator is no doubt a tool to enhance the quality of the mediation process. Therefore, on the basis of experience acquired over years, training is necessary for mediators for a successful mediation program. The Board shall for this purpose determine and lay down the qualification requirements and training standards for mediators. The requirement of training is so germane that lack of it may mar the whole process.⁶⁴ Training of

⁶² The modus is similar to that of Kwara State in which the mediators are counsels employed and paid by the Kwara State Ministry of Justice. Interview by author with Mrs S. T. Usman, Director of the Citizens Mediation and Conciliation Centre, Ministry of Justice, Kwara State, Nigeria, 11th December, 2009

⁶³ See Sabine Hertveldt, "Repairing a Car with the Engine Running", <http://www.doingbusiness.org/Documents/casestudies/2007/EC_Nigeria.pdf> (accessed on 3rd February, 2013), at 47.

⁶⁴ Joseph B. Stulberg, "Questions", *Ohio State Journal on Dispute Resolution*, vol. 17, No. 3, (2002) pp. 539-543.

mediators further enhances their performance and ensures impartiality.⁶⁵ It is argued that in order to enhance competence of mediators, a standard has to be set for educating mediators, so that the service provided is consistently fair and of high quality.⁶⁶

Accreditation and Training Provider Institutions

The Act shall lay down rules governing accreditation of mediators and for the establishment of a training provider institution. This is desirable in view of the international standard of the requirement for accreditation and the continuous training of mediator. Accreditation becomes imperative as its aim is not only to ensure the functionality of the system but at the same time to ensure that the mediator is competent, professionally qualified, impartial and independent. It is necessary, therefore, that a self-sustaining program should be developed to produce highly skilled cadre of mediators.

Code of Conduct

The Act shall incorporate the code of conduct for mediators which shall serve as the ethical standard for the conduct of mediation. The code of conduct shall recognise the basic principles of self-determination, impartiality, disclosure of conflict of interest, competence, confidentiality, advertisement, fee and other relevant measures to improve mediation. Thus, a committee should be constituted to suggest the draft law to regulate and provide a code of conduct and ethical standards for the mediation process. It is suggested that standard of conduct as used by the American Arbitration Association and the Alternative Dispute Resolution body of the American Bar Association may be studied to derive useful tips that may suit the Nigerian purpose.

Immunity

The Act shall contain provision regarding the immunity of mediators from legal action for negligence. The immunity given to mediators should be as one given to a judge. Thus, mediator must be immune from any claim arising out of any act or omission committed during the mediation process, unless a *mala fide* intention is proved against him. This position is in line with a settled position of judicial authority.⁶⁷ However, the issue of immunity has found its way into contemporary instruments. Generally, it is now provided that neutral shall not be liable to any party for any act or omission relating to his conduct during the proceedings.⁶⁸ This provision is necessary to protect persons from defamatory accusations and harassments.

However, the universal application of ADR in Nigeria will bring the much needed uniformity in the practice of court-annexed mediation in the country as presently such uniformity does not exist.

It is argued that the success of the Lagos and Abuja Multi-Door Courthouse may prompt its adoption at the national level with some adjustments where necessary. This may appear to be more convenient at the operational level, because of its familiarity with the public, its known good, bad and ugly aspects, making its adoption easier, and above all, doing so will provide a solution locally within the country. This may be likened with Australia where the pilot programme first started in New South Wales District Registry (1987) and later on got expanded to the whole province.⁶⁹ Therefore, it is expedient to entrench court-annexed ADR throughout Nigeria for a sustainable development.

It is therefore, expected that the introduction of an Act on Lagos model or USA model will bring about a standardized and harmonised administration of ADR, which will be subject to evaluation on a continuous

⁶⁵ John D. Feerick, "The Peace-Making Role of a Mediator", *Ohio State Journal on Dispute Resolution*, vol. 19, No. 1, (2003) p. 229

⁶⁶ See Government of Alberta, Justice and Attorney General, Report of the Working Committee on Court-Annexed Mediation in Civil Matters, April 26, 2002. <<http://www.justice.gov.ab.ca/courts/Default.aspx?id=3371>> (accessed on 6th March, 2011); See also Lim Lan Yuan, "Mediation, Its Effective Implementation As An Alternative Dispute Resolution Mechanism - Singapore Experience", n. 1 p. 7

⁶⁷ This was the position in the case of *Wagshal v. Foster*, 28 F. 3d 1249, D. C. Cir. 1994, see the UNITED STATE BANKRUPTCY COURT SOUTHERN DISTRICT OF NEWYORK, Issued by Burton R. Lifland, Chief U.S. Bankruptcy Judge. <<http://www.nysb.uscourts.gov/orders/m143.pdf>> (accessed on 6th March, 2013)

⁶⁸ See an example of the exemption from liability in Rule 11- NO LIABILITY of the Arbitration Rules of the Kuala Lumpur Regional Centre for Arbitration 2008. See also John P. McCrory, "Confidentiality in Mediation of Matrimonial Disputes" *The Modern Law Review*, vol. 51 (1988) pp. 455-462, where it is deemed proper that immunity should be given in public interest.

⁶⁹ See John North, "Court-annexed Mediation in Australia", Speech by Law Council President John North to the Malaysian Law Conference, November 17, 2005. See also Malaysian Bar – Court-annexed Mediation in Australia, An Overview of by John North <http://www.malaysianbar.org.my/adr_arbitration_mediation/court_annexed_mediation_in_australia_an_overview_by_john_north.html> (accessed 6th March, 2013).

basis. Besides, in the case of Nigeria the NJC and SJC (Nigerian Judicial Council and State Judicial Council) charged with the responsibility of overseeing the administration of the courts at the Federal and State levels be authorised to assist the courts from High Court level downwards in the establishment and improvement of the model for successful administration.

CONCLUSION

Mediation is a better option in every respect unless the parties are aiming at the determination of a constitutional question for which court's verdict is imperative. Mediation is faster, cheaper and consensual. A neutral third party helps to search for a mutually acceptable solution in the form of an option. Finding such an 'option' is a piece of art which is within the expertise of persons trained as mediators.

Mediation culture deserves to be fully embedded in Nigeria by introducing an enactment like the ADR Act 1998 (of USA). It is useful as it authorizes the court, in all civil cases to compulsorily refer the dispute to an appropriate ADR process. It will place court-annexed mediation on a solid foundation in Nigeria and further strengthen mediation culture through the court machinery. Regarding the non-court annexed mediation, the enactment of a Mediation Act becomes relevant. The Act will address issues like Mediation Board, measures for the proper administration of mediation, mediation centres, qualification, training, accreditation of mediators and training provider institutions as well as drafting of a code of conduct for mediators. The Act should encapsulate traditional mediation and give statutory recognition to it by recognizing the role played by Elders, Chiefs and the Emir, Sultan or Obi-in-Council in the resolution of disputes. This will be in line with the recognition given to the *Panchayats* in India. This will further sustain and strengthen the practice of ADR in Nigeria, by making the best use of a practice that is already in place. Mediation should as well be adopted in the settlement of ethnic and religious issues/disputes as already adopted by the Mediation Centre to settle religious dispute as shown in the table above. Mediation should also be adopted in the settlement of the various racial, ethnic and religious disputes in the country so as to harmonise the conflicting interests and ensure peace to enhance the maintenance of law and order. The entrenchment of the court-annexed mediation together with the existing ADR processes already made part of the court system will further strengthen the application of ADR, court-annexed mediation, mediation culture as an integral part of the judicial system and confer on it the respectability as being statutorily recognized with the resolution enforceable without stress. This may remove the misconception usually in the mind of a party who perceives the suggestion of mediation as a symbol of weakness. Strengthening ADR culture in Nigeria will go a long way in easing the unnecessary burden on its judicial system and foster a consensual, cooperative and creative atmosphere for the resolution of disputes for sustainable development in the country.