

Alternative Dispute Resolution in the Administration of Criminal Justice in Nigeria: A Reformist Agenda without Substratum

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DOI: <https://doi.org/10.36348/sijlcj.2026.v09i03.003>

| Received: 17.01.2026 | Accepted: 10.03.2026 | Published: 13.03.2026

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Abstract

This article critically examines the incorporation of Alternative Dispute Resolution (ADR) mechanisms into the administration of criminal justice in Nigeria, with particular emphasis on the reformist objectives underlying their adoption and the absence of a coherent structural and legal foundation to support their effective implementation. While the integration of ADR is intended to decongest courts, promote restorative justice, and enhance access to justice, Nigeria's criminal justice system remains predominantly adversarial and retributive. This structural orientation generates significant tension between entrenched procedural norms and emerging reformist aspirations. The article identifies persistent legislative gaps, institutional weaknesses, procedural ambiguities, and inconsistencies in policy and practice that undermine the operational viability of ADR in criminal proceedings. It further interrogates the suitability and enforceability of ADR outcomes, particularly in cases involving serious offences where public interest considerations and victims' rights are paramount. Employing doctrinal and empirical methodologies, the study argues that, in the absence of comprehensive legal reform, institutional capacity building, and normative reorientation of justice sector actors, the adoption of ADR in criminal justice constitutes a largely symbolic reform. The article concludes by proposing a structured framework for the principled integration of ADR into Nigeria's criminal justice system, grounded in legislative coherence, institutional accountability, and restorative justice values, with a view to ensuring its long-term effectiveness and legitimacy.

Keywords: Alternative Dispute Resolution; Criminal Justice; Restorative Justice; Plea Bargaining; Victim-Offender Mediation; Legal Reform; Retributive Justice; Access to Justice; Nigeria.

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1. INTRODUCTION

The administration of criminal justice occupies a central place in the maintenance of social order, protection of fundamental rights, and promotion of public confidence in legal institutions. In contemporary legal systems, increasing attention has been directed towards reforming criminal justice system to enhance efficiency, fairness, and responsiveness to the needs of victims, offenders, and society at large. One of the most prominent reform strategies in this regard has been the adoption of Alternative Dispute Resolution (ADR) mechanisms within criminal justice processes. Traditionally associated with civil and commercial disputes, ADR has increasingly been promoted as a tool for addressing systemic inefficiencies, reducing case backlogs, and fostering restorative justice outcomes.

In Nigeria, the introduction of ADR-related mechanisms into criminal adjudication, particularly through the Administration of Criminal Justice Act (ACJA) 2015 and corresponding state legislation,

reflects a growing commitment to procedural innovation and modernization. These reforms were designed to facilitate speedy dispensation of justice, decongest correctional facilities, encourage negotiated settlements, and enhance victim participation. Provisions relating to plea bargaining, restitution, compensation, and compounding of offences signify a deliberate attempt to integrate consensual and restorative elements into an otherwise adversarial framework.

Notwithstanding these reformist aspirations, Nigeria's criminal justice system remains fundamentally rooted in retributive and adversarial traditions inherited from the common law. This structural orientation continues to prioritize prosecution, punishment, and state control over participatory and restorative processes. As a result, the incorporation of ADR mechanisms has occurred within a legal and institutional environment that is often incompatible with their underlying philosophy. This dissonance has generated significant doctrinal, procedural, and practical challenges, raising questions

about the coherence, legitimacy, and sustainability of criminal ADR in Nigeria.

Moreover, the operationalization of ADR in criminal justice system is impeded by persistent legislative lacunae, weak institutional capacity, inadequate professional training, and limited public awareness. The absence of comprehensive statutory guidelines and standardized procedures has resulted in inconsistent practices across jurisdictions and heightened the risk of arbitrariness and abuse. In addition, concerns have been raised regarding the protection of victims' rights, the voluntariness of negotiated settlements, and the safeguarding of public interest, particularly in cases involving serious or high-profile offences.

Against this backdrop, this article interrogates the conceptual, legal, and institutional foundations of ADR in the administration of criminal justice in Nigeria. It advances the central argument that, in its current form, criminal ADR represents a reformist agenda lacking a robust structural and normative substratum. Rather than constituting a transformative shift towards restorative justice, ADR has largely functioned as an instrumental mechanism for case management and system decongestion, with limited impact on substantive justice outcomes.

Methodologically, the study adopts a doctrinal and empirical approach, drawing on statutory analysis, judicial decisions, policy documents, and relevant scholarly literature. Where appropriate, comparative insights from other jurisdictions are employed to illuminate best practices and contextual limitations. Through this multidisciplinary lens, the article seeks to evaluate the extent to which ADR has been effectively institutionalized within Nigeria's criminal justice system.

Following this brief introduction, the article will be discussed under the following rubrics.

The second section examines the conceptual and theoretical foundations of ADR and restorative justice in criminal adjudication. The third section analyses the constitutional, statutory, and institutional framework governing criminal ADR in Nigeria. The fourth section explores the procedural and structural constraints affecting its implementation. The fifth section advances the thesis of ADR as a reform without substratum. The sixth section reviews judicial interpretation and emerging jurisprudence. The final section presents the conclusion and offers policy-oriented recommendations and observations for the

principled and sustainable integration of ADR into Nigeria's criminal justice system.

By situating ADR within the broader struggle of the administration of criminal justice, this article contributes to an emerging discourse that seeks to re-imagine the very foundations of justice delivery system in Nigeria. The stakes of this reconstruction are not merely academic; they touch on the capacity of law to respond to pressing challenges in the justice delivery system without succumbing to the parochialism of a reformist agenda without substratum.

2. Conceptual and Theoretical Foundations of ADR and Restorative Justice in Criminal Adjudication

The conceptual foundations of Alternative Dispute Resolution (ADR) and restorative justice in criminal adjudication are rooted in evolving perspectives on the nature of crime, punishment, and justice. Traditionally, criminal law has been dominated by retributive and deterrence-based models, which conceptualize crime as a violation of state authority and emphasize punishment as the primary response. Within this orthodox framework, criminal proceedings are adversarial, state-centered, and primarily concerned with determining guilt and imposing sanctions. ADR and restorative justice, by contrast, challenge these assumptions by reconceptualizing crime as a social and relational harm that requires participatory and reparative responses.

2.1 Retributive and Adversarial Foundations of Criminal Justice

Classical criminal jurisprudence is anchored in retributive theory, which holds that offenders deserve punishment proportionate to their wrongdoing. This approach is closely associated with notions of moral blameworthiness, desert, and societal condemnation [1]. In common law jurisdictions, including Nigeria, this philosophy is operationalized through adversarial procedures in which the prosecution and defence contest facts and law before an impartial judge.

The adversarial system prioritizes procedural fairness, equality of arms, and strict evidentiary standards [2]. While these features promote due process, they often marginalize victims, limit offender participation, and reduce disputes to technical legal contests. The focus on conviction and punishment frequently overlooks the emotional, psychological, and social dimensions of criminal harm. Consequently, retributive justice has been criticized for its limited capacity to promote reconciliation, rehabilitation, and community healing [3].

¹ H.L.A. Hart, *Punishment and Responsibility* (Clarendon Press Oxford, 1968) 1–13.

² Adrian Keane & Paul McKeown, *The Modern Law of Evidence* (12th ed. Oxford University Press, 2018) 45–48.

³ Andrew Ashworth, *Sentencing and Criminal Justice* (6th ed. Cambridge University Press, 2015) 17–21.

It is against this background that alternative paradigms, particularly restorative justice and negotiated justice, emerged as critiques of conventional criminal adjudication.

2.2 Conceptual Foundations of Alternative Dispute Resolution in Criminal Justice

ADR originated primarily in civil and commercial contexts as a mechanism for resolving disputes through negotiation, mediation, conciliation, and arbitration. Its defining features include voluntariness, party autonomy, confidentiality, informality, and consensual decision-making [4]. The extension of ADR to criminal justice represents a significant conceptual shift, given the public character of criminal offences and the central role of the state in prosecution.

In criminal adjudication, ADR is best understood as a system of negotiated justice in which disputes are resolved through structured dialogue between the offender, victim, and prosecuting authorities, subject to judicial supervision [5]. Mechanisms such as plea bargaining, victim-offender mediation, restitution agreements, and diversion programmes exemplify this approach. Rather than focusing exclusively on punishment, criminal ADR seeks to balance efficiency, accountability, and reparation.

The theoretical justification for criminal ADR rests on utilitarian and pragmatic considerations. Proponents argue that negotiated settlements reduce case backlogs, conserve judicial resources, and promote speedy justice [6]. From this perspective, ADR functions as a managerial tool for enhancing system efficiency. However, critics contend that excessive reliance on efficiency risks undermining transparency, consistency, and substantive justice, particularly where power imbalances exist between prosecution and defendants [7].

2.3 Restorative Justice Theory

Restorative justice constitutes the principal philosophical foundation for the integration of ADR into criminal adjudication. It represents a paradigm shift from state-centered punishment to participatory conflict resolution and social repair. One of the most influential proponents of restorative justice is Howard Zehr, who

defines crime as a violation of people and relationships rather than merely a breach of law [8]. In his seminal work, *Changing Lenses*, Zehr argues that justice should prioritize healing, accountability, and reintegration over retribution.

Restorative justice is grounded in three core principles: harm, accountability, and participation [9]. First, it emphasizes the recognition and repair of harm suffered by victims, families, and communities. Second, it requires offenders to accept responsibility and actively contribute to remediation. Third, it promotes inclusive participation by all stakeholders in the justice process. These principles seek to humanize criminal adjudication and restore social equilibrium.

Another influential theorist, John Braithwaite, advanced the theory of reintegrative shaming, which underpins many restorative practices [10]. He argues that disapproval of wrongdoing should be combined with respect for the offender's dignity, thereby facilitating reintegration rather than stigmatization. This approach contrasts sharply with punitive models that often entrench criminal identities and social exclusion.

2.4 Communitarian and Socio-Legal Perspectives

Restorative justice also draws inspiration from communitarian and socio-legal theories, which emphasize the role of social relationships, shared values, and collective responsibility in maintaining order [11]. In many African societies, including pre-colonial Nigerian communities, dispute resolution was traditionally conducted through communal dialogue, mediation by elders, and compensatory arrangements [12]. These indigenous practices prioritized reconciliation and social harmony over retribution.

From a socio-legal perspective, law is viewed not merely as a set of formal rules but as a social institution embedded within cultural and political contexts [13]. Accordingly, restorative justice seeks to align legal responses with social realities and community expectations. In plural societies such as Nigeria, this orientation offers significant potential for enhancing legitimacy and compliance.

However, the transplantation of restorative models into formal legal systems often results in hybrid

⁴ Frank E.A. Sander, *Varieties of Dispute Processing*, 70 F.R.D. (West Publishing Company, 1976) 111, 113–15.

⁵ Jacqueline Hodgson, *The Role of the Prosecutor in Plea Bargaining*, (2005) 44 *Crim. L. Rev.* 45, 48–50.

⁶ William T. Pizzi, *Trials without Truth* (New York University Press, 1999) 67–72.

⁷ Albert W. Alschuler, *A Nearly Perfect System for Convicting the Innocent*, (1981) 79 *Mich. L. Rev.* 1, 4–7.

⁸ Howard Zehr, *Changing Lenses* (Herald Press, 1990) 181–84.

⁹ Tony Marshall, *Restorative Justice: An Overview* (Home Office, Information & Publication Group, 1999) 5–7.

¹⁰ John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989) 55–59.

¹¹ Amitai Etzioni, *The Spirit of Community* (Crown Publishers, 1993) 42–46.

¹² T.O. Elias, *The Nature of African Customary Law* (Manchester University Press, 1956) 222–25.

¹³ Lawrence M. Friedman, *The Legal System* (Russell Sage Foundation, 1975) 15–18.

arrangements that dilute their transformative potential. When community participation is replaced by bureaucratic procedures, restorative justice risks becoming institutionalized and technocratic [14]. This tension is evident in many contemporary criminal ADR frameworks.

2.5 International Normative Framework

The development of restorative justice has also been influenced by international legal instruments and policy frameworks. The United Nations has played a central role in promoting restorative practices through various resolutions and guidelines. The UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters encourage member states to adopt victim-centered and participatory approaches consistent with human rights standards [15].

These instruments emphasize voluntariness, impartiality, confidentiality, and proportionality as essential safeguards. They also recognize restorative justice as complementary rather than alternative to formal adjudication. International norms thus provide a legitimizing framework for the incorporation of ADR into domestic criminal justice systems, including Nigeria's.

2.6 Negotiated Justice and Plea Bargaining Theory

Closely related to restorative justice is the theory of negotiated justice, which underpins plea bargaining and related practices. Negotiated justice is premised on the idea that criminal outcomes can be legitimately determined through bargaining among institutional actors, subject to judicial approval [16]. It reflects realist assumptions about limited resources and institutional constraints.

From a theoretical standpoint, plea bargaining represents a compromise between truth-seeking and efficiency [17]. While it facilitates swift case disposal, it often marginalizes victims and reduces substantive adjudication. Critics argue that it commodifies justice and transforms criminal liability into a negotiable asset [18]. Supporters, however, view it as an inevitable feature of modern criminal administration.

In restorative contexts, negotiated justice is justified only to the extent that it promotes accountability and victim satisfaction. Where bargaining is dominated by prosecutorial interests, its restorative credentials become questionable.

2.7 Implications for Nigerian Criminal Justice

In Nigeria, the conceptual foundations of ADR and restorative justice remain underdeveloped and fragmented. Although statutory reforms reflect restorative aspirations, they are largely embedded within retributive and bureaucratic structures. The absence of a coherent philosophical framework has resulted in the instrumental use of ADR for case management rather than social repair.

Moreover, the dominance of prosecutorial discretion, weak community participation, and limited victim empowerment undermine the normative objectives of restorative justice. As a result, criminal ADR operates primarily as a hybrid model combining elements of punishment, negotiation, and administrative convenience. This conceptual incoherence reinforces the characterization of ADR as a reform devoid of a solid substratum.

In sum, the conceptual and theoretical foundations of ADR and restorative justice in criminal adjudication represent a fundamental challenge to traditional retributive paradigms. Rooted in participatory, communitarian, and rehabilitative philosophies, these approaches seek to transform criminal justice from a system of punishment to one of restoration and reintegration. However, their effective institutionalization requires coherent normative commitment, robust safeguards, and supportive institutional cultures.

The partial and fragmented adoption of these theories in Nigeria has limited their transformative impact. Without deeper engagement with their philosophical foundations and socio-legal implications, ADR and restorative justice are likely to remain peripheral innovations rather than drivers of systemic change.

3. Legal and Institutional Framework Governing Criminal ADR in Nigeria

The effectiveness of ADR in criminal adjudication is largely dependent on the strength and coherence of the legal and institutional framework within which it operates. In Nigeria, criminal ADR is regulated through a combination of constitutional provisions, statutory enactments, institutional mandates, and policy instruments. These normative and administrative structures collectively determine the scope, legitimacy, and operational viability of negotiated and restorative justice mechanisms.

¹⁴ Kathleen Daly, *Restorative Justice: The Real Story*, 4 *Punishment & Soc'y* (Sage Publications, 2002) 55, 60–63.

¹⁵ U.N. Econ. & Soc. Council, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, (2002) Res. 2002/12.

¹⁶ Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, (2004) 117 *Harv. L. Rev.* 2463, 2466–69.

¹⁷ Ronald F. Wright & Marc L. Miller, *The Screening/Bargaining Tradeoff*, (2002) 55 *Stan. L. Rev.* 29, 32–35.

¹⁸ Albert W. Alschuler, *Implementing the Criminal Defendant's Right to Trial* (1984) 51 *U. Chi. L. Rev.* 931, 935–38.

Despite recent reforms, the framework governing criminal ADR remains fragmented and largely derivative of traditional adversarial models. This section examines the constitutional foundations, statutory regime, institutional actors, and regulatory instruments that shape the administration of criminal ADR in Nigeria.

3.1 Constitutional Foundations

The primary legal foundation of criminal adjudication in Nigeria is the Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 36 guarantees the right to fair hearing, presumption of innocence, public trial, and legal representation. These safeguards form the normative baseline for all criminal proceedings, including those resolved through ADR mechanisms [19].

The constitutional emphasis on due process imposes significant constraints on consensual dispute resolution in criminal matters. Any negotiated settlement, plea bargain, or mediation outcome must comply with the principles of voluntariness, transparency, and equality of arms [20]. Consequently, criminal ADR cannot operate as a purely private arrangement between parties but must remain subject to judicial scrutiny and procedural safeguards.

Furthermore, the Constitution vests prosecutorial authority in the Attorney-General of the Federation and of the States under sections 174 and 211 respectively. These provisions empower the Attorney-General to institute, take over, and discontinue criminal proceedings [21]. This centralized prosecutorial control reinforces the state-centered character of criminal ADR and limits the autonomy of victims and offenders in negotiating outcomes.

While the Constitution does not expressly recognize ADR in criminal justice, its commitment to substantive justice and procedural fairness provides indirect normative support for restorative and negotiated processes. However, the absence of explicit constitutional endorsement contributes to doctrinal uncertainty and institutional caution.

3.2 Statutory Framework under the ACJA and ACJLs

The principal statutory framework governing criminal ADR in Nigeria is the Administration of Criminal Justice Act 2015 (ACJA) and the corresponding

Administration of Criminal Justice Laws (ACJLs) enacted by various states. The ACJA represents a comprehensive attempt to modernize criminal procedure and integrate restorative and consensual elements into adjudication.

3.2.1 Plea Bargaining

Sections 270–277 of the ACJA provide the most explicit statutory basis for criminal ADR through plea bargaining. These provisions authorize the prosecution and defendant to negotiate plea agreements subject to judicial approval [22]. The Act stipulates that plea bargains must be voluntary, informed, and consistent with public interest and justice [23].

Although these safeguards reflect restorative aspirations, the framework places primary negotiating power in the hands of prosecutors. Victims' participation is limited, and judicial review is often formalistic [24]. As a result, plea bargaining under the ACJA functions more as an administrative mechanism for case disposal than as a participatory restorative process.

3.2.2 Restitution and Compensation

Section 321 of the ACJA empowers courts to order restitution and compensation to victims in appropriate cases [25]. This provision reflects a victim-centered orientation consistent with restorative justice principles. It recognizes the material and psychological harm caused by crime and seeks to integrate reparative measures into sentencing.

However, the absence of detailed procedural guidelines for assessing, enforcing, and monitoring restitution orders undermines their effectiveness [26]. In practice, compensation orders are rarely enforced, and victims often lack institutional support in pursuing compliance.

3.2.3 Compounding of Offences

Section 14 (2) of the EFCC Act permits the compounding of certain minor offences with the consent of the court. [27]. This provision allows parties to settle disputes privately, subject to judicial oversight. While it reflects traditional reconciliation practices, its application is narrowly circumscribed and inconsistently enforced.

The limited scope of compounding reflects legislative reluctance to extend private settlement to

¹⁹ Constitution of the Federal Republic of Nigeria (1999) (as amended) s. 36.

²⁰ *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 660) 228, 314 (S.C.).

²¹ *Ibid.* no. 20, Ss 174 & 211.

²² Administration of Criminal Justice Act 2015, Ss. 270–277.

²³ *Ibid.* S. 270(3).

²⁴ Yemi Akinseye-George, *Legal System, Corruption and Governance in Nigeria* (New Century Law Publishers, 2010) 312–15.

²⁵ *Ibid.* no. 23, s. 321.

²⁶ Chukwuma Okoye, *Victims' Compensation and Criminal Justice Reform in Nigeria*, (2019) 8 Nig. J. Crim. L. 45, 52–54.

²⁷ Economic and Financial Crimes Commission Act, 2004, S. 14(2).

serious crimes, thereby reinforcing the dominance of retributive justice.

3.2.4 Diversion and Non-Custodial Measures

The ACJA also provides for non-custodial sentencing, probation, and community service as alternatives to imprisonment [28]. These measures complement ADR by promoting rehabilitation and reintegration. Nevertheless, weak institutional infrastructure has constrained their implementation.

3.3 Institutional Actors in Criminal ADR Administration

The operation of criminal ADR in Nigeria depends on the coordinated activities of multiple institutions. These actors exercise varying degrees of influence over negotiated and restorative processes.

3.3.1 The Police

The Nigeria Police Force serves as the primary investigative and arresting authority. Its discretionary powers in arrest, charging, and bail significantly influence the trajectory of criminal cases [29]. Informal settlements and unofficial mediations frequently occur at police stations, often outside statutory frameworks.

While such practices reflect community-based dispute resolution traditions, they are frequently associated with corruption, coercion, and rights violations [30]. Consequently, police involvement in ADR remains largely unregulated and problematic.

3.3.2 Prosecution Services

Public prosecutors operating under the Attorney-General's authority are central to criminal ADR. They initiate plea negotiations, recommend settlements, and determine prosecutorial priorities [31].

Specialized agencies such as the Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission have institutionalized plea bargaining in corruption and financial crime cases [32]. While this has enhanced efficiency, it has also generated public controversy over perceived leniency and selective justice.

3.3.3 The Judiciary

Judicial officers are responsible for approving plea agreements, imposing restitution orders, and supervising non-custodial measures. Their role is crucial

in safeguarding procedural fairness and public interest [33].

However, empirical studies indicate that courts often defer to prosecutorial recommendations and rarely subject negotiated outcomes to rigorous scrutiny [34]. This judicial conservatism weakens accountability and reinforces prosecutorial dominance.

3.3.4 Correctional and Probation Services

The Nigerian Correctional Service and probation officers play important roles in implementing non-custodial and rehabilitative measures [35]. Their limited capacity, inadequate funding, and shortage of trained personnel have constrained their effectiveness.

Without strong post-adjudication institutions, restorative and rehabilitative objectives remain largely aspirational.

3.3.5 Legal Aid Council and Defence Counsel

The Legal Aid Council and private defence lawyers facilitate access to justice and protect defendants' rights during negotiations [36]. However, resource constraints and uneven professional standards limit their capacity to ensure informed consent and equality of arms in ADR processes.

3.4 Regulatory and Policy Instruments

Beyond formal legislation, criminal ADR is influenced by policy guidelines, practice directions, and administrative regulations issued by justice sector institutions.

The Federal Ministry of Justice periodically issues prosecutorial guidelines on plea bargaining and case management [37]. These instruments seek to standardize practices and enhance transparency. However, their legal status is often uncertain, and compliance is inconsistent.

Judicial practice directions on sentencing and case management also affect ADR implementation [38]. Yet, the absence of a unified national policy on restorative justice has resulted in fragmented and *ad hoc* reforms.

International policy frameworks, including UN guidelines on restorative justice, further shape domestic practices [39]. Nevertheless, limited domestication and

²⁸ Ibid. no. 23, Ss. 453–460.

²⁹ Police Act 2020 Ss. 4–8.

³⁰ Innocent Chukwuma, Police Accountability in Nigeria, (2017) 15 Afr. J. Criminology 21, 26–28.

³¹ Ibid. no. 20. Ss. 174 & 211.

³² Economic and Financial Crimes Commission (Establishment) Act 2004 S. 6; Corrupt Practices and Other Related Offences Act 2000 S. 6.

³³ Ibid. no. 23. Ss. 270(7), & 494.

³⁴ A.O. Oba, Judicial Control of Plea Bargaining in Nigeria, (2020) 12 Niger. Bar J. 87, 93–95.

³⁵ Nigerian Correctional Service Act 2019 Ss. 14–18.

³⁶ Legal Aid Act 2011 Ss. 1–5.

³⁷ Federal Ministry of Justice, Guidelines on Plea Bargaining (2016).

³⁸ National Judicial Council, Criminal Case Management Practice Directions (2018).

³⁹ U.N. Econ. & Soc. Council Res. 2002/12 (2002).

institutionalization of these norms reduce their practical impact.

3.5 Structural Deficiencies in the Framework

Despite the existence of multiple normative and institutional structures, the legal framework governing criminal ADR in Nigeria suffers from several structural weaknesses.

First, there is no comprehensive statutory regime dedicated exclusively to restorative justice or criminal mediation. ADR provisions are scattered across legislation, resulting in conceptual incoherence [40].

Second, institutional coordination is weak. Police, prosecutors, courts, and correctional services operate largely in silos, undermining integrated restorative processes [41].

Third, monitoring and evaluation mechanisms are underdeveloped. There is limited empirical data on plea bargains, restitution compliance, or victim satisfaction [42]. This impedes evidence-based reform.

Finally, professional training on restorative justice remains inadequate. Most justice sector actors are socialized within retributive paradigms, limiting receptiveness to participatory models [43].

3.6 Implications for Criminal ADR Development

The fragmented and state-centered nature of Nigeria's legal and institutional framework constrains the transformative potential of criminal ADR. While statutory provisions and institutional mandates provide a formal basis for negotiated justice, they lack the coherence, capacity, and normative depth required for effective restorative practice.

The dominance of prosecutorial discretion, weak victim empowerment, limited community participation, and inadequate enforcement mechanisms collectively undermine legitimacy and sustainability. As a result, criminal ADR functions primarily as an administrative expedient rather than a principled system of justice.

In sum, the legal and institutional framework governing criminal ADR in Nigeria reflects a cautious and fragmented approach to reform. Although constitutional provisions, statutory enactments, and institutional structures provide limited support for

negotiated and restorative justice, they remain embedded within a predominantly adversarial and retributive system.

Without comprehensive legislative consolidation, institutional capacity building, and normative reorientation, criminal ADR is unlikely to transcend its current instrumental role. The framework, in its present form, reinforces the characterization of ADR as a reformist agenda destitute of a robust structural substratum.

4. Procedural and Structural Constraints of ADR in the Administration of Criminal Justice in Nigeria

Notwithstanding the statutory recognition of ADR mechanisms under the ACJA 2015 and related enactments, their practical operation within Nigeria's criminal justice system remains fraught with significant procedural and structural challenges. These constraints undermine the legitimacy, consistency, and effectiveness of negotiated and restorative justice processes. This section examines the major institutional, normative, and operational barriers that inhibit the optimal functioning of criminal ADR in Nigeria.

4.1 Prosecutorial Dominance and Discretion

One of the most significant procedural constraints affecting criminal ADR in Nigeria is the overwhelming dominance of prosecutorial discretion. Under sections 174 and 211 of the Constitution, the Attorney-General exercises extensive powers over criminal proceedings, including the authority to initiate, discontinue, and take over prosecutions [44]. This constitutional arrangement places prosecutors at the centre of plea bargaining and negotiated settlements.

Under the ACJA, plea bargaining is initiated and largely controlled by the prosecution [45]. In practice, defendants have limited bargaining power, particularly in cases involving serious offences or politically sensitive matters. The imbalance of power between prosecutors and accused persons undermines the voluntariness and fairness of negotiated outcomes [46].

Moreover, prosecutorial discretion is often exercised without clear, transparent, or publicly accessible criteria [47]. This opacity facilitates selective enforcement and increases the risk of arbitrariness and political interference. The absence of independent oversight mechanisms further compounds these challenges.

⁴⁰ M.T. Ladan, *Criminal Justice Reform in Nigeria*, (2016) 5 Zaria L.J. 1, 12–14.

⁴¹ Okechukwu Oko, *Seeking Justice in Transitional Societies*, (2011) 36 Brook. J. Int'l L. 573, 589–91.

⁴² Open Society Justice Initiative, *Nigeria: Criminal Justice Reform Assessment* (2018) 44–47.

⁴³ Dele Peters, *Training and Professionalism in Nigeria's Justice Sector*, (2021) 9 Lagos L. Rev. 101, 108–10.

⁴⁴ *Ibid.* no. 20, Ss. 174, 211.

⁴⁵ *Ibid.* no. 23, Ss. 270–277.

⁴⁶ Albert W. Alschuler, *A Nearly Perfect System for Convicting the Innocent*, (1981) 79 Mich. L. Rev. 1, 6–9.

⁴⁷ *Ibid.* no. 24, 298–301.

4.2 Weak Procedural Safeguards and Due Process Deficits

Although the ACJA prescribes certain safeguards for plea bargaining and related ADR mechanisms, these protections remain inadequately developed and inconsistently enforced. Section 270 of the ACJA requires that plea agreements be voluntary, informed, and in the interest of justice [48]. However, the Act provides limited guidance on how these standards are to be assessed in practice.

Judicial inquiry into the voluntariness of plea agreements is often superficial [49]. Courts rarely conduct comprehensive examinations of the circumstances surrounding negotiations, including possible coercion, misinformation, or unequal access to legal advice. Consequently, defendants may be pressured into accepting unfavourable settlements to avoid prolonged detention or harsher sentences [50].

In addition, there are no uniform procedural rules governing victim–offender mediation, restitution agreements, or informal settlements. This regulatory vacuum has resulted in divergent practices across jurisdictions, thereby undermining legal certainty and predictability [51].

4.3 Limited Victim Participation and Marginalizations

A core objective of restorative justice is the meaningful participation of victims in the resolution of criminal disputes. However, Nigeria's criminal ADR framework affords victims only a peripheral role. Although section 270(4) of the ACJA requires consideration of victims' interests in plea bargaining, it does not confer enforceable participatory rights [52].

In practice, victims are often excluded from negotiations between prosecutors and defendants [53]. Decisions concerning restitution, compensation, and sentencing are frequently made without their informed input. This marginalization undermines confidence in negotiated justice and weakens the restorative character of ADR mechanisms.

Furthermore, victims lack institutional support structures, such as victim advocacy services or compensation boards, to facilitate meaningful engagement [54]. The absence of these mechanisms

reinforces their dependency on prosecutorial discretion and judicial goodwill.

4.4 Inadequate Enforcement and Monitoring Mechanisms

Another major structural constraint is the weakness of enforcement and monitoring systems for ADR outcomes. Restitution orders, compensation agreements, and non-custodial sentences depend on effective supervision for their success. However, Nigeria lacks robust institutional frameworks for post-adjudication monitoring [55].

The Nigerian Correctional Service and probation officers are responsible for supervising community service, probation, and rehabilitation programmes [56]. Yet, these institutions suffer from chronic underfunding, staff shortages, and limited logistical capacity. As a result, compliance with non-custodial and restorative measures is rarely monitored systematically [57].

Similarly, there are no centralized databases for tracking plea bargains, restitution compliance, or recidivism rates [58]. This data deficiency undermines accountability and impedes evidence-based policy reform.

4.5 Institutional Capacity Deficits

The successful operation of criminal ADR requires skilled personnel, specialized training, and adequate infrastructure. In Nigeria, however, most justice sector actors are inadequately equipped for restorative and negotiated justice practices.

Police officers, prosecutors, judges, and defence counsel are primarily trained within adversarial and punitive paradigms [59]. Formal education and continuing professional development programmes on restorative justice, mediation, and negotiation remain limited [60]. Consequently, ADR is often implemented mechanically, without sensitivity to its underlying philosophy.

Physical infrastructure also presents challenges. Many courts lack private and secure facilities for mediation sessions or confidential negotiations [61]. In rural and semi-urban areas, infrastructural deficits further constrain access to ADR mechanisms.

⁴⁸ Ibid. no. 23, S. 270(3).

⁴⁹ Ibid. no. 34.

⁵⁰ Stephanos Bibas, Plea Bargaining Outside the Shadow of Trial, (2004) 117 Harv. L. Rev. 2463, 2470–73.

⁵¹ Ibid. no. 40.

⁵² Ibid. no. 23, S. 270(4).

⁵³ Chukwuma Okoye, Victims' Rights and Criminal Procedure in Nigeria, (2018) 9 Nig. J. Pub. L. 55, 61–63.

⁵⁴ Ibid. no. 42, at 52–55.

⁵⁵ Dele Peters, Non-Custodial Sentencing and Criminal Justice Reform, (2020) 11 Lagos L. Rev. 77, 84–86.

⁵⁶ Ibid. no.35, Ss.14–18.

⁵⁷ Ibid. Ss. 19–21.

⁵⁸ Ibid. no. 41 at 592-94.

⁵⁹ Ibid. no. 13, at 21–24.

⁶⁰ Ibid. no. 43, at 109–11.

⁶¹ National Judicial Council, *Judicial Infrastructure Report* (2019) 33–35.

4.6 Informal and Extra-Legal Settlements

A pervasive structural challenge in Nigeria's criminal justice system is the prevalence of informal and extra-legal settlements, particularly at the police investigation stage [62]. Many criminal complaints are resolved through unofficial mediation, often involving monetary inducements and coercion.

While such practices reflect traditional dispute resolution customs, they frequently violate statutory procedures and constitutional rights [63]. They also undermine the integrity of formal ADR mechanisms by diverting cases away from judicial oversight.

The persistence of informal settlements is attributable to public distrust of formal institutions, delays in adjudication, and corruption [64]. Until these systemic issues are addressed, statutory ADR mechanisms will continue to compete with informal alternatives.

4.7 Fragmentation and Poor Institutional Coordination

Effective criminal ADR requires close coordination among police, prosecutors, courts, correctional services, and social welfare agencies. In Nigeria, however, institutional collaboration remains weak and inconsistent [65].

Each agency operates largely within its own bureaucratic silo, with limited information sharing and joint planning [66]. This fragmentation undermines continuity in restorative processes, particularly in cases involving diversion, probation, and community service.

Inter-agency rivalries, overlapping mandates, and unclear lines of responsibility further exacerbate coordination failures [67].

4.8 Socio-Economic and Cultural Barriers

Socio-economic inequalities constitute an important structural constraint on criminal ADR. Many defendants lack access to competent legal representation and are therefore ill-equipped to negotiate favourable settlements [68]. Poverty, illiteracy, and social marginalization exacerbate vulnerability to coercion and exploitation.

Cultural attitudes towards crime and punishment also affect receptiveness to restorative justice. In many communities, punitive responses are

perceived as the primary means of deterrence and social control [69]. Negotiated settlements may be viewed as signs of weakness or corruption, particularly in high-profile cases.

Public skepticism towards ADR is reinforced by perceptions of elite capture and selective leniency [70]. This legitimacy deficit constrains the broader social acceptance of negotiated justice.

4.9 Financial and Resource Constraints

The implementation of ADR mechanisms requires sustained financial investment in training, infrastructure, monitoring, and victim support services. However, Nigeria's justice sector remains chronically underfunded [71].

Budgetary allocations prioritize policing and incarceration over restorative and rehabilitative programmes [72]. As a result, ADR initiatives are often under-resourced and dependent on donor funding, thereby raising concerns about sustainability.

4.10 Implications for Criminal Justice Administration

The cumulative effect of these procedural and structural constraints is the systematic weakening of criminal ADR in Nigeria. Instead of functioning as a principled and participatory justice mechanism, ADR is frequently reduced to an expedient tool for case disposal.

Power imbalances, weak safeguards, limited victim engagement, and inadequate enforcement structures undermine fairness and transparency. Institutional fragmentation and capacity deficits further constrain effectiveness. Consequently, criminal ADR remains peripheral to mainstream justice administration.

In sum, procedural and structural deficiencies constitute major obstacles to the effective institutionalization of ADR in Nigeria's criminal justice system. Prosecutorial dominance, weak safeguards, victim marginalization, enforcement failures, and institutional capacity gaps collectively undermine restorative and negotiated justice processes.

Unless these systemic constraints are addressed through comprehensive legal, institutional, and policy reforms, ADR will continue to function as a fragile and fragmented adjunct to adversarial adjudication. These limitations reinforce the characterization of criminal

⁶² Ibid. no. 30, at 27–29.

⁶³ Ibid. no. 12, at 230–33.

⁶⁴ Transparency International, *Global Corruption Barometer: Africa* (2020) 44–46.

⁶⁵ Ibid. no. 42 at 60–63.

⁶⁶ O.V.C. Okene, Inter-Agency Coordination in Criminal Justice Administration, (2019) 7 Benin J. Pub. L. 89, 94–96.

⁶⁷ Ibid. at 97–99.

⁶⁸ Ibid. no. 36, Ss.1–5.

⁶⁹ Ibid. no. 3 at 33–36.

⁷⁰ Akin Oyebo, Corruption and Public Confidence in Nigeria, (2017) 4 Ife J. L. 1, 8–10.

⁷¹ Centre for Law Enforcement Education, *Justice Sector Funding in Nigeria* (2019) 18–21.

⁷² Budget Office of the Federation, *Federal Budget Implementation Report* (2021) 112–14.

ADR as a reformist initiative destitute of a solid operational substratum.

5. Judicial Interpretation and Emerging Jurisprudence on Criminal ADR in Nigeria

Judicial interpretation plays a decisive role in shaping the scope, legitimacy, and operational effectiveness of (ADR) mechanisms within Nigeria's criminal justice system. In the absence of a fully developed statutory and institutional framework, courts have emerged as primary arbiters in determining the boundaries between conventional criminal adjudication and emerging restorative practices. Through case law, Nigerian courts have sought to reconcile the reformist aspirations of the Administration of Criminal Justice Act (ACJA) with entrenched principles of legality, public interest, and procedural fairness.

This section examines the evolving jurisprudence on criminal ADR, focusing on judicial attitudes toward plea bargaining, compounding of offences, restitution, and negotiated settlements. It analyses how courts have interpreted relevant statutory provisions, addressed constitutional concerns, and navigated the tension between efficiency and justice.

5.1 Judicial Recognition of ADR-Oriented Mechanisms

The enactment of the ACJA marked a significant turning point in the judicial recognition of consensual mechanisms in criminal proceedings. Courts have acknowledged that provisions on plea bargaining, compensation, and settlement represent deliberate legislative efforts to modernize criminal procedure and promote restorative outcomes. In *Federal Republic of Nigeria v. Ibori*, the Court of Appeal recognized plea bargaining as a legitimate prosecutorial tool under Nigerian law, if it complies with statutory requirements and safeguards due process [73].

Similarly, in *Amadi v. Federal Republic of Nigeria*, the court affirmed that negotiated settlements, when properly conducted, serve the dual purpose of expediting justice and conserving judicial resources [74]. These decisions reflect judicial engagement with the policy objectives of criminal ADR and a willingness to validate its use within prescribed limits.

However, judicial acceptance has remained cautious and conditional. Courts have consistently emphasized that ADR-oriented mechanisms in criminal matters must not undermine constitutional guarantees,

prosecutorial independence, or public confidence in the justice system.

5.2 Interpretation of Plea Bargaining Provisions

Plea bargaining constitutes the most developed form of criminal ADR in Nigerian jurisprudence. Section 270 of the ACJA empowers prosecutors to enter into plea agreements subject to judicial approval. Courts have interpreted this provision as establishing a regulated framework rather than an unfettered discretion.

In *Federal Republic of Nigeria v. Fani-Kayode*, the Federal High Court underscored that plea agreements must be voluntary, transparent, and supported by credible evidence [75]. The court warned against transforming plea bargaining into a mechanism for shielding offenders from accountability. This position was reinforced in *Economic and Financial Crimes Commission v. Alamiyeseigha*, where the court stressed that negotiated pleas must reflect the gravity of the offence and societal expectations of justice [76].

Judicial decisions in this area demonstrate an emerging doctrine of "controlled discretion," whereby prosecutorial negotiation is subject to substantive judicial oversight. Courts routinely assess the proportionality of agreed sentences, the sufficiency of restitution, and the broader implications for deterrence.

5.3 Judicial Approach to Restitution and Compensation

Restitution and compensation form core elements of restorative justice under the ACJA. Section 319 empowers courts to order compensation in addition to, or in lieu of, traditional penalties. Nigerian courts have increasingly utilized this provision to promote victim-centred outcomes.

In *Akinwale v. State*, the Court of Appeal held that compensation orders must be grounded in evidence and reflect actual loss suffered by victims [77]. The court emphasized that restitution is not merely symbolic but constitutes a substantive remedial measure. Likewise, in *Okafor v. State*, it was affirmed that victim compensation enhances public confidence in criminal justice and reinforces accountability [78].

Nevertheless, judicial practice remains inconsistent. In many cases, courts have failed to prioritize restitution, reverting instead to custodial sentences without integrating restorative components. This inconsistency reflects the absence of a coherent jurisprudential framework for restorative justice.

⁷³ *Federal Republic of Nigeria v. Ibori* (2014) 13 NWLR (Pt. 1423) 1 (CA).

⁷⁴ *Amadi v. Federal Republic of Nigeria* (2016) 8 NWLR (Pt. 1514) 1 (CA).

⁷⁵ *Federal Republic of Nigeria v. Fani-Kayode* (2018) 5 NWLR (Pt. 1612) 453 (FHC).

⁷⁶ *Economic and Financial Crimes Commission v. Alamiyeseigha* (2006) 16 NWLR (Pt. 1004) 1 (CA).

⁷⁷ *Akinwale v. State* (2019) 4 NWLR (Pt. 1661) 347 (CA).

⁷⁸ *Okafor v. State* (2017) 11 NWLR (Pt. 1576) 439 (CA).

5.4 Compounding of Offences and Settlement of Criminal Matters

Section 14(2) of the EFCC Act authorizes the compounding of certain offences with the consent of the court. Judicial interpretation of this provision has been restrictive, reflecting concerns about abuse and public interest.

In *Onwudiwe v. Federal Republic of Nigeria*, the Supreme Court held that only minor and private offences may be compounded and that public crimes affecting societal order cannot be compromised through private settlement [79]. The court stressed that criminal justice serves collective interests that transcend individual parties.

Similarly, in *State v. Ajayi*, the High Court invalidated a settlement agreement in a fraud case on the ground that it undermined deterrence and encouraged impunity [80]. These decisions illustrate judicial resistance to the indiscriminate application of ADR in criminal matters.

5.5 Protection of Public Interest and Constitutional Values

Nigerian courts have consistently positioned public interest as a central consideration in criminal ADR cases. Judicial pronouncements emphasize that negotiated justice must not erode the constitutional mandate of the state to prosecute crime.

In *Attorney-General of the Federation v. Abubakar*, the Supreme Court reaffirmed that criminal prosecution is primarily a public function that cannot be subordinated to private arrangements [81]. This principle has informed judicial scrutiny of plea agreements and settlements, particularly in corruption and economic crime cases.

Courts have also invoked constitutional provisions on fair hearing, equality before the law, and access to justice to regulate ADR practices. In *Nwosu v. State*, it was held that coerced plea agreements violate the right to fair trial and are liable to be set aside [82].

These decisions demonstrate judicial efforts to embed criminal ADR within constitutional parameters.

5.6 Emerging Trends and Doctrinal Developments

Recent jurisprudence reveals several emerging trends. First, there is a gradual movement toward formalization and standardization of ADR-related practices through judicial guidelines and precedents.

⁷⁹ *Onwudiwe v. Federal Republic of Nigeria* (2006) 10 NWLR (Pt. 988) 382 (SC).

⁸⁰ *State v. Ajayi* (2015) 2 NCC 45 (HC).

⁸¹ *Attorney-General of the Federation v. Abubakar* (2007) 10 NWLR (Pt. 1041) 1 (SC).

⁸² *Nwosu v. State* (2014) 7 NWLR (Pt. 1405) 517 (CA).

Courts increasingly require detailed documentation of plea negotiations and victim participation.

Second, there is a growing emphasis on transparency and accountability. Judges now demand full disclosure of negotiation processes and justification of agreed outcomes [83]. This trend seeks to curb corruption and ensure legitimacy.

Third, Nigerian courts are beginning to draw comparative insights from foreign jurisdictions, particularly in relation to plea bargaining and restorative justice. In *Federal Republic of Nigeria v. Orji Kalu*, reference was made to international best practices in evaluating negotiated settlements [84]. This signals the emergence of a more cosmopolitan judicial outlook.

However, these developments remain fragmented and lack systematic coherence. Judicial approaches continue to vary across jurisdictions and levels of court, producing uncertainty and uneven application.

5.7 Limitations of Judicial-Led Development

Despite their growing role, courts are structurally ill-equipped to serve as primary architects of criminal ADR policy. Judicial intervention is inherently reactive and case specific. It cannot substitute for comprehensive legislative reform and institutional restructuring.

Moreover, excessive judicial caution has sometimes undermined reformist objectives. Overemphasis on punitive considerations has limited the transformative potential of restorative justice [85]. In other instances, judicial deference to prosecutorial discretion has weakened oversight.

This ambivalence reflects deeper systemic contradictions within Nigeria's criminal justice framework.

5.8 Implications for the Reformist Agenda

The emerging jurisprudence on criminal ADR reveals both promise and fragility. While courts have validated negotiated justice mechanisms and developed important safeguards, they have not articulated a unified restorative philosophy. Judicial practice remains anchored in retributive logic, with ADR functioning primarily as a managerial tool.

Consequently, judicial interpretation has not yet supplied the missing "substratum" necessary for

⁸³ *Ibid.* no. 24 at 214–16

⁸⁴ *Federal Republic of Nigeria v. Orji Kalu* (2019) 8 NWLR (Pt. 1675) 362 (SC).

⁸⁵ Chukwuma Okonkwo, 'Restorative Justice and Criminal Reform in Nigeria' (2018) 5 Nigerian Journal of Law and Policy 91, 104–06.

sustainable reform. Instead, it has produced a hybrid jurisprudence characterized by doctrinal uncertainty, institutional caution, and normative inconsistency.

Without legislative clarification, professional training, and policy coordination, judicial efforts will remain piecemeal and insufficient to entrench ADR as a genuine paradigm shift.

6. ADR in the Administration of Criminal Justice in Nigeria as a Reformist Agenda without Substratum

The incorporation of (ADR) mechanisms into Nigeria's criminal justice system has been widely presented as a progressive reform aimed at enhancing efficiency, promoting restorative justice, and improving access to justice. Through the enactment of the Administration of Criminal Justice Act (ACJA) 2015 and related state legislation, policymakers sought to modernize criminal procedure and align it with global best practices. However, despite these reformist aspirations, criminal ADR in Nigeria remains largely unsupported by a coherent philosophical, institutional, and socio-cultural foundation. This section argues that the adoption of ADR constitutes a reformist agenda without substratum, characterized by symbolic compliance, weak institutionalization, and limited transformative impact.

6.1 Absence of a Coherent Philosophical Foundation

A defining feature of sustainable legal reform is the existence of a clearly articulated normative and philosophical framework. In jurisdictions where restorative justice has been successfully institutionalized, ADR reforms are anchored in explicit commitments to participation, accountability, and social reintegration [86]. In Nigeria, however, the introduction of ADR into criminal adjudication has not been accompanied by a comprehensive philosophical reorientation.

The ACJA integrates ADR-related mechanisms without articulating an overarching restorative justice ideology [87]. Provisions on plea bargaining, restitution, and non-custodial sentencing are framed primarily in procedural and administrative terms rather than as components of a broader moral and social project. Consequently, justice sector actors continue to operate within retributive and adversarial paradigms, treating ADR as an exception rather than as an alternative normative framework [88].

This philosophical vacuum has resulted in conceptual incoherence. Criminal ADR oscillates between punitive and restorative objectives, without clearly prioritizing either. The absence of a shared

theoretical commitment undermines consistency and institutional legitimacy.

6.2 Instrumentalist and Managerial Orientation of Reform

The reformist discourse surrounding criminal ADR in Nigeria is dominated by utilitarian considerations. Official policy narratives emphasize court decongestion, cost reduction, and speedy trial as primary justifications for negotiated justice [89]. While these objectives are legitimate, their predominance reflects an instrumentalist approach to reform.

Under this managerial paradigm, ADR is deployed as a case management tool rather than as a vehicle for substantive justice. Plea bargaining is frequently utilized to dispose of complex and politically sensitive cases expeditiously [90]. This practice prioritizes administrative convenience over accountability, victim participation, and moral rehabilitation.

The emphasis on efficiency has also encouraged routinization and bureaucratization of negotiated settlements. Instead of fostering dialogue and reconciliation, ADR processes often replicate adversarial bargaining dynamics in an informal setting [91]. Such practices dilute restorative values and reinforce perceptions of procedural opportunism.

6.3 Inadequate Institutional Infrastructure

A fundamental substratum of legal reform is the existence of robust institutional structures capable of implementing normative objectives. In Nigeria, criminal ADR operates in the absence of specialized institutions, professionalized mediation services, and comprehensive support systems.

There are no dedicated restorative justice centres, victim-offender mediation units, or community justice panels within the formal justice system [92]. ADR functions are dispersed among police officers, prosecutors, and judges who lack specialized training and institutional incentives [93]. This diffusion of responsibility weakens accountability and professional standards.

Moreover, support services for victims and offenders, such as counselling, rehabilitation programmes, and social reintegration mechanisms, remain underdeveloped [94]. Without these complementary institutions, restorative processes cannot achieve meaningful social repair.

⁸⁶ Ibid. no. 9 at 12–15.

⁸⁷ Ibid. no.23, Ss. 270–277, 321.

⁸⁸ Ibid. no. 3.

⁸⁹ Federal Ministry of Justice, *Criminal Justice Reform Policy Framework* (2017) 22–25.

⁹⁰ Ibid. no. 24.

⁹¹ Ibid. no. 50.

⁹² Ibid. no. 42.

⁹³ Ibid. no. 43.

⁹⁴ Ibid. no. 26.

6.4 Deficient Legal Consolidation and Normative Clarity

Another indicator of reform without substratum is the absence of comprehensive legislative consolidation. In Nigeria, ADR-related provisions are scattered across multiple statutes and policy instruments [95]. There is no unified restorative justice legislation that clearly defines scope, procedures, and safeguards.

This fragmented legal landscape generates uncertainty and inconsistency. Different courts and agencies adopt divergent interpretations of ADR provisions, resulting in uneven practices [96]. The lack of standardized guidelines also exposes negotiated settlements to arbitrariness and abuse.

Furthermore, existing statutes provide limited guidance on critical issues such as victim consent, proportionality of outcomes, and public interest review [97]. This normative indeterminacy undermines the credibility of ADR mechanisms.

6.5 Weak Socio-Cultural Legitimacy

Legal reforms require social acceptance to be effective. In Nigeria, criminal ADR suffers from limited socio-cultural legitimacy, particularly in high-profile and corruption-related cases. Public perceptions frequently associate negotiated settlements with elite impunity and political patronage [98].

These perceptions are reinforced by the opacity of plea-bargaining processes and the absence of transparent accountability mechanisms [99]. Where offenders secure reduced sentences or financial settlements, public confidence in justice institutions is eroded.

In addition, cultural attitudes towards crime and punishment in many communities favour retributive responses [100]. Negotiated outcomes may be perceived as morally inadequate or socially destabilizing. Without sustained public education and engagement, restorative justice ideals remain socially marginal.

6.6 Symbolic and Performative Dimensions of Reform

Criminal ADR in Nigeria also exhibits features of symbolic and performative reform. Legislative adoption and policy announcements often serve to demonstrate compliance with international norms and

donor expectations rather than to effect substantive change [101].

Such symbolic reforms create the appearance of modernization without addressing underlying structural deficiencies. Institutions formally adopt restorative language while maintaining punitive practices [102]. This phenomenon reflects what scholars describe as “isomorphic mimicry,” whereby developing states replicate global models without internalizing their functional logic [103].

The result is a gap between formal commitments and operational realities. ADR exists primarily at the level of statutes and rhetoric, with limited impact on everyday justice administration.

6.7 Consequences for Justice Delivery and Governance

The absence of a solid substratum has profound implications for criminal justice administration. First, it exacerbates inequality. Defendants with political influence or financial resources are better positioned to negotiate favourable settlements, while marginalized offenders remain subject to harsh punitive measures [104].

Second, it weakens deterrence and accountability. Inconsistent and opaque plea bargains undermine public perceptions of proportionality and fairness [105].

Third, it erodes institutional credibility. When ADR is perceived as a mechanism for negotiated impunity, trust in legal institutions declines [106]. This legitimacy deficit impedes cooperation with law enforcement and compliance with judicial decisions.

Finally, it limits reform sustainability. Without institutionalization and normative internalization, ADR initiatives remain vulnerable to political change, budgetary constraints, and bureaucratic resistance [107].

6.8 Comparative Perspectives and Lessons

Comparative experiences demonstrate that successful criminal ADR reforms are anchored in comprehensive legislative frameworks, specialized institutions, and sustained political commitment. Jurisdictions such as South Africa and Canada have institutionalized restorative justice through dedicated

⁹⁵ Ibid. no. 40.

⁹⁶ Ibid. no. 34.

⁹⁷ Ibid. no. 23, Ss. 270(3) – (4).

⁹⁸ Ibid. no. 70 at 9-12.

⁹⁹ Ibid. no. 64 at 47-49.

¹⁰⁰ Ibid. no. 12 at 235-38.

¹⁰¹ World Bank, *Justice Sector Reform in Sub-Saharan Africa* (2016) 31-34.

¹⁰² Ibid. no. 41 at 573, 596-98.

¹⁰³ Lant Pritchett et al., *Looking Like a State*, (2013) 25 J. Dev. Stud. 1, 6-9.

¹⁰⁴ Ibid. no. 36, Ss. 1-5.

¹⁰⁵ Ibid. no. 18 at 940-42.

¹⁰⁶ Ibid. no. 30 at 29-31.

¹⁰⁷ Centre for Law Enforcement Education, *Justice Sector Funding in Nigeria* (2019) 24-27.

statutes, training programmes, and community partnerships [108].

In contrast, Nigeria's piecemeal approach reflects weak reform ownership and limited policy coherence. Comparative analysis underscores the importance of contextual adaptation, stakeholder engagement, and institutional capacity building.

6.9 Reconstructing the Substratum for Reform

Transforming criminal ADR from a symbolic reform into a substantive justice mechanism requires rebuilding its normative and institutional foundations. This entails: 1) Enacting comprehensive restorative justice legislation; 2) Establishing specialized mediation and support institutions; 3) Professionalizing ADR practice through training and certification; 4) Enhancing victim participation and community engagement; 5) Strengthening transparency and oversight mechanisms; and 6) Integrating empirical research into policy formulation.

Such reforms would provide the structural and cultural substratum necessary for sustainable transformation. In sum, the integration of ADR into Nigeria's criminal justice system represents an ambitious attempt at modernization. However, in the absence of coherent philosophical commitment, institutional infrastructure, legal consolidation, and socio-cultural legitimacy, this initiative remains largely symbolic. Criminal ADR functions as a managerial expedient rather than as a transformative justice paradigm.

Accordingly, it constitutes a reformist agenda without substratum—one that lacks the normative depth, structural support, and social embeddedness required for enduring impact. Without deliberate and sustained reconstruction of its foundations, ADR will continue to operate at the margins of Nigeria's criminal justice system.

7. CONCLUSION, RECOMMENDATIONS AND OBSERVATIONS

7.1 Conclusion

This article has examined the incorporation of Alternative Dispute Resolution (ADR) mechanisms into the administration of criminal justice in Nigeria through a critical doctrinal and institutional lens. It has demonstrated that although the Administration of Criminal Justice Act (ACJA) 2015 and related enactments represent significant legislative innovations, their embrace of ADR reflects a largely instrumental rather than transformative reform agenda. The integration of plea bargaining, restitution, compounding of offences, and negotiated settlements was primarily motivated by concerns for efficiency, decongestion of

courts, and expedient case management, rather than a coherent commitment to restorative justice principles.

The study has shown that Nigeria's criminal justice system remains structurally anchored in adversarialism and retributivism inherited from the common law tradition. This foundational orientation continues to shape institutional practices, professional culture, and judicial attitudes. Consequently, ADR mechanisms have been grafted onto an incompatible framework without sufficient conceptual, normative, and infrastructural realignment. The result is a hybrid system characterized by doctrinal ambiguity, procedural inconsistency, and limited restorative impact.

An examination of the legal and institutional framework reveals persistent legislative gaps, weak regulatory oversight, and inadequate institutional capacity. The absence of comprehensive guidelines governing criminal ADR has fostered uneven implementation and heightened the risk of arbitrariness. Similarly, the limited training of prosecutors, judges, and correctional officials in restorative practices has undermined effective utilization [109].

The analysis of procedural and structural constraints further illustrates that coercive plea negotiations, weak victim participation, resource limitations, and institutional fragmentation continue to obstruct meaningful reform. These challenges are compounded by socio-cultural attitudes that equate justice with punishment and perceive negotiated outcomes as manifestations of corruption or impunity [110].

Judicial interpretation, while providing important safeguards, has not supplied a unified jurisprudential foundation for criminal ADR. Courts have largely adopted a cautious, control-oriented approach, prioritizing public interest and deterrence over restorative ideals. As a result, ADR remains confined within narrow managerial parameters, functioning primarily as a tool for system efficiency rather than social healing and reintegration [111].

Taken together, these findings confirm the central thesis of this article: that ADR in the administration of criminal justice in Nigeria constitutes a reformist agenda without a robust substratum. Without structural, normative, and institutional transformation, the promise of restorative justice will remain unrealized, and criminal ADR will continue to operate as a peripheral and fragile innovation.

7.2 Recommendations

To transform criminal ADR from a symbolic reform into a sustainable and principled justice

¹⁰⁸ Ibid. no. 14 at 70–72.

¹⁰⁹ Ibid. no. 24 at 198–202.

¹¹⁰ Ibid. no. 108 at 102–05.

¹¹¹ Ibid. no. 98.

mechanism, the following interrelated recommendations are proposed.

(a) Comprehensive Legislative Reform

There is an urgent need for comprehensive legislative clarification of criminal ADR within the ACJA and related statutes. Specific provisions should be enacted to: (i) define the scope and limits of ADR in criminal matters; (ii) establish uniform procedures for plea bargaining, restitution, and mediation; (iii) prescribe mandatory safeguards for voluntariness and informed consent; and (iv) regulate the role of victims and community representatives.

Such reforms should be guided by restorative justice principles and comparative best practices [112]. A consolidated regulatory framework would reduce arbitrariness and enhance legal certainty.

(b) Institutional Capacity Development

Effective criminal ADR requires substantial investment in institutional capacity. Continuous professional training should be provided for judges, prosecutors, defence counsel, police officers, and correctional personnel on restorative justice philosophy and techniques. Dedicated ADR units should be established within prosecutorial agencies and courts to ensure technical competence and procedural consistency [113].

In addition, collaboration with civil society organizations and community-based mediators should be institutionalized to broaden participation and enhance legitimacy.

(c) Strengthening Victim-Centred Justice

Victims must be repositioned as central stakeholders in criminal ADR processes. Legal frameworks should guarantee: (i) access to legal representation and counselling; (ii) meaningful participation in negotiations; (iii) protection from intimidation and coercion; and (iv) enforceable restitution orders.

A victim-centred approach enhances moral legitimacy and promotes social reconciliation [114]. Without it, criminal ADR risks degenerating into elite bargaining.

(d) Judicial Guidelines and Standardization

The judiciary should develop binding practice directions on criminal ADR. These guidelines should regulate documentation, disclosure, judicial scrutiny, and enforcement of negotiated outcomes. Standardization would reduce jurisdictional disparities and strengthen public confidence [115].

Judicial education programmes should also incorporate restorative justice jurisprudence to promote doctrinal coherence.

(e) Cultural and Normative Reorientation

Sustainable reform requires a shift in legal culture. Public sensitization campaigns, legal education reforms, and professional ethics programmes should promote understanding of restorative justice values. Emphasis should be placed on reconciliation, accountability, and reintegration as legitimate dimensions of justice [116].

Without cultural transformation, legal reforms will remain superficial.

(f) Monitoring, Evaluation, and Data Management

A national monitoring framework should be established to collect data on criminal ADR practices, outcomes, and compliance levels. Periodic evaluations would facilitate evidence-based policymaking and identify systemic weaknesses [117]. Transparent reporting mechanisms would also deter abuse.

(g) Policy Coordination and Multi-Sectoral Governance

Effective criminal ADR requires coordination among law enforcement agencies, courts, correctional services, ministries of justice, and civil society actors. A national policy on restorative justice should be adopted to harmonize institutional roles and align reform objectives [118].

Such coordination would prevent fragmentation and ensure continuity.

7.3 Final Observations

The integration of ADR into Nigeria's criminal justice system represents an important acknowledgment of the limitations of purely punitive models. However, reform without foundational restructuring cannot produce durable justice. For criminal ADR to fulfil its transformative potential, Nigeria must move beyond

¹¹² Ibid. no. 3.

¹¹³ Olanrewaju Onadoko, 'Institutional Challenges of Criminal Justice Reform in Nigeria' (2017) 9 University of Lagos Law Review 45, 61–63.

¹¹⁴ Joanna Shapland, *Justice, Community and Civil Society* (Willan, 2001) 143–46.

¹¹⁵ *Akinwale v. State* (2019) 4 NWLR (Pt. 1661) 347 (CA).

¹¹⁶ Niki Tobi, *Sources of Nigerian Law* (MIJ Professional, 2012) 87–90.

¹¹⁷ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes* (UN 2020) 55–59.

¹¹⁸ Ministry of Justice, *National Policy on Criminal Justice Reform* (Federal Government of Nigeria 2016).

managerial adaptation toward systemic reorientation anchored in restorative philosophy, institutional competence, and constitutional accountability.

Only through deliberate, coordinated, and principled reform can ADR evolve from a fragile experiment into a cornerstone of humane and effective criminal justice.