

Transcending the Courtroom: An Appraisal of the Forms of Alternative Dispute Resolution in Contemporary Legal Systems

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Abstract

Alternative Dispute Resolution (ADR) has emerged as a vital component of modern justice delivery systems worldwide. Dissatisfaction with the adversarial nature, cost, and delay of litigation has led to increased reliance on ADR mechanisms that emphasize party autonomy, confidentiality, and preservation of relationships. This paper examines the major forms of ADR, including negotiation, mediation, conciliation, arbitration, and hybrid processes such as med-arb and early neutral evaluation. It outlines the defining features, procedural frameworks, advantages, and limitations of each form. The paper argues that no single form of ADR is universally superior. Rather, the choice depends on the nature of the dispute, the relationship between parties, and the desired outcome. It concludes that a clear understanding of the forms of ADR is essential for disputants, lawyers, and policymakers to promote access to justice and decongest formal courts. The paper recommends continuous legal education, institutional support, and harmonization of ADR processes with cultural realities to maximize their effectiveness.

Keywords: Alternative Dispute Resolution (ADR), Dispute, Forms of ADR, Arbitration.

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INTRODUCTION

The adversarial system of litigation, inherited from English common law, remains the default method of dispute resolution in many jurisdictions, including Nigeria. However, its shortcomings are well documented. Litigation is often protracted, expensive, technical, and destructive of pre-existing relationships. In response, Alternative Dispute Resolution (ADR) has gained global acceptance as a set of mechanisms designed to resolve disputes without resort to full judicial proceedings.

ADR is not a single process but an umbrella term encompassing various forms that differ in structure, level of formality, and the role of the neutral third party. The major forms include negotiation, mediation, conciliation, arbitration, and several hybrid models. Negotiation is the most basic and informal form, involving direct discussions between parties. Mediation introduces a neutral facilitator who assists parties to reach a voluntary settlement. Conciliation is similar but allows the neutral to propose terms of settlement. Arbitration is more formal and adjudicative, where

parties submit their dispute to a neutral arbitrator whose decision, called an award, is binding. Hybrid forms such as med-arb and early neutral evaluation combine elements of these primary processes to suit complex disputes.

In Nigeria, these forms of ADR have been given statutory recognition through the Arbitration and Mediation Act, the Lagos Multi-Door Courthouse Law, and various High Court Rules. They also exist within Customary and Islamic law systems, where elders, family heads, and religious leaders have historically performed mediatory and arbitral roles. Despite this recognition, confusion persists among disputants and even legal practitioners regarding the appropriate form of ADR to adopt for specific disputes.

This paper therefore examines the forms of ADR with a view to clarifying their concepts, processes, and practical utility. It seeks to define the major forms of ADR and analyze their distinguishing features, procedural dynamics; and evaluate their strengths and weaknesses. This paper would ensure a proper

understanding of the forms of ADR which is critical to advancing access to justice, reducing court congestion, and promoting a culture of consensual dispute resolution in Nigeria.

The Concept of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a non-adversarial way of resolving disputes that is being progressively more employed in the public and private sectors, especially in developed countries. ADR helps parties resolve their differences without resorting to a more confrontational adjudicative process. It looks at needs, interests, and solutions, and can promote healing. It is voluntary, timely, confidential, and based on mutual agreement. Unlike the conventional courts, it is designed to yield solutions that are adapted to the particular circumstances of individual cases, as it is about solving problems rather than imposing solutions through an adjudicative process. Thus, ADR and its role in the socio-economic or political life of nations must be acquired by every maturing or seasoned/ veteran lawyer or practitioner in varied fields of proficiency. This, solely, for the reality that dispute is a fact of life which cannot be ignored in any sphere. Therefore, acquiring this requisite expertise is desirable, resulting in positive and strategic rewards for the legal practitioner.

Alternative Dispute Resolution may be defined as a range of dispute resolution processes or mechanisms designed and available outside of, but supplementary to litigation. The Black's Law Dictionary [1] defines alternative dispute resolution thus: "*a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.*" Another definition has said of ADR, to be "*range of procedures that serve as alternative to litigation through the courts for the resolution of disputes, generally involving the intercession and assistance of a neutral impartial third party. In some definitions and more commonly, it excludes not only litigation, but all forms of adjudication.*" [2] Ware has defined ADR to be everything but litigation, because litigation as a matter of law is the default process of dispute resolution. A final addition to the above definitions would be incomplete without the input of Professors Olakunle Orojo and Ayodele Ajomo, [3] two 'leading lights' on Arbitration in Nigeria: '

"ADR is generally used to describe the methods and procedures used to resolve disputes either as alternatives to the traditional disputes resolution mechanism of the court or in some cases as supplementary to such mechanism."

¹ B. Garner 'Black's Law Dictionary' (2014) (10th edn) 191

² Opeyemi Oke, 'ADR and Multi Door Court' Paper delivered by the Chairman Governing Council, The Lagos Multi Door Court House on 3rd March 2011

ADR in the wide sense includes arbitration, conciliation and mediation. Although these methods are alternative to litigation, arbitration in the nature is vastly different from conciliation and mediation. While arbitration is adjudicatory and the award binding on, and enforceable against the parties, conciliation and mediation are consensual. The mediator or conciliator cannot compel the parties to reach a settlement nor can a conciliator impose an award on the parties. [4]

Notable processes or mechanisms of ADR are discussed below;

Forms of Alternative Dispute Resolution in Contemporary Legal System

This segment of the paper will identify and discuss the various forms of Alternative Dispute Resolution in contemporary legal system, however both customary arbitration and Islamic arbitration would be excluded in the discussion.

Negotiation

Black's Law Dictionary⁵ defines negotiation as a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. Negotiation usually involves complete autonomy for the parties involved, without the intervention of third parties. It is an informal process which offers the parties total control over the process, the aim being not to have a winning and losing side, but both parties winning. Negotiation leads to mediation in the sense that the need for mediation arises after the conflicting parties have attempted negotiation, but have reached a deadlock.

Mediation

According to Black's Law Dictionary, mediation is a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. Mediation, as defined in Oxford Dictionary of Law, means a form of alternative dispute resolution in which an independent third party (mediator) assists the parties involved in a dispute or negotiation to achieve a mutually acceptable resolution of the points of conflict. The mediator, who may be a lawyer or a specially trained non-lawyer, has no decision-making powers and cannot force the parties to accept a settlement. According to Haynes, 'Mediation is a process in which a third person helps the participant in a dispute to resolve it. The agreement resolves the problem with a naturally acceptable solution and is structured in a way that helps maintain the continuing relationship of the people involved'. Simply put, mediation is negotiation assisted

³ J O. Orojo, and M A. Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi & Associate Nigeria Limited, 1999) 4

⁴ Ibid, 48

⁵The Black's Law Dictionary (2014) (10th edn) 191

by a third party. It is voluntary, informal, consensual, confidential and not binding on the parties. The mediator's sole function is not to decide the issues or determine right or wrong, but to help the disputants resolve their conflict consensually.

International mediation is widely considered to be a non-coercive and voluntary form of conflict management, particularly practical within the intricate dynamics of international relations dominated by the principles of preservation of actors' independence and autonomy.⁶ However, there are small but significant variations among scholars in defining third-party mediation, especially when it comes to actions that are observed. Over time, several definitions of mediation have been formulated. For Mitchell, [7] a distinct feature of mediation as an intermediary activity is in its purpose of achieving some compromise settlement of issues at stake between conflicting sides, or at least ending disruptive conflict behaviour. According to Raymond and Kegley, [8] this activity can be seen as a method of conflict management and conflict resolution which bring about the use of third parties to help disputants in reaching a voluntary agreement. They see third party involvement usually through actions of facilitation such as: agenda setting, simplification of communication, clarification of respective positions, issue "reconceptualisation", bargaining facilitation and support for agreement. Moore, [9] on the other hand, emphasises the nature of mediation as an extension and elaboration of the negotiation process. Through the intervention of an "acceptable, impartial and neutral" third party, holding no "authoritative" power, mediation facilitates conflicting parties so that they can reach a mutually acceptable settlement.

Bercovitch, Anagnoson and Wille, also highlighted the importance of mediation as a process that has no commanding power. For them, mediation is "a process of conflict management where disputants seek assistance of, or accept an offer of help from, an individual, group, state or organisation to settle their conflict or resolve their differences without resorting to physical force or invoking the authority of the law" [10]

⁶ J Bercovitch, "Mediation in the Most Resistant Cases", in C.A. Crocker, F.O. Hampson, and P.R. Aall, 'Grasping the Nettle: Analyzing Cases of Intractable Conflict' *United States Institute of Peace Press* (2005) 99-121.

⁷ CR Mitchell, *Peacemaking and the Consultant's Role* (Nicholas, 1981)

⁸ G Raymond, and C Kegley, "Third party Mediation and International Norms: a test of two models [1985] (9)(1) *Conflict Management and Peace Science*, 33-52.

⁹ CW Moore, *The Mediation Process* (Jossey-Bass, 1986)

¹⁰ J Bercovitch, TJ Anagnoson, and DL Wille, (1991), "Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations" [1991](28)(1) *Journal of Peace Research*, 8

Mediation usually represents an extension and continuation of parties' own conflict management efforts (i.e. extension of the negotiations process) where a mediator enters the dispute in order to affect, change, resolve, modify or influence the dynamics of previous relations between conflicting sides. [11] Frazier and Dixon [12] emphasised the importance of mediators in formulating potential solutions that are still "legally non-binding" and described third-party mediation as a process during which "the third party proposes specific, non-legally binding options or procedures for the purpose of ending hostilities or crises, or suggest options for resolving a dispute." [13]

At first, the study of international mediation was primarily based on insights coming from the analyses of collective bargaining in economics. [14] Using the same logic that was applied in mediation activities during labour-management disputes, early research assumed a simplistic approach regarding the role of a mediator as a neutral and impartial outside actor that was deprived of any self-interest or leverage in the process of managing the dispute. Thus, mediation as an activity was often seen as a process of mere facilitation and a mediator's role was reduced to a simple channel that assists disputants to communicate. Gradually, various scholars started challenging this unrefined treatment of international mediation. With a number of mediation activities increasing around the globe, researchers started highlighting complex dynamics behind mediation activities, accentuating the interaction of numerous elements that might influence the mediation outcome. [15]

Insights derived from domestic mediation are still fundamental for our understanding of international mediation, with a great deal of overlap in the theoretical understanding of both dynamics. The particular differences that can be found between two processes are a direct result of the context within which they are conducted. In an international system that is deprived of central authority, various international actors conducted mediation activities in conditions that greatly differ from those found on the domestic level. Although, there are

¹¹ J Bercovitch, and A Houston, (1996), "The Study of International Mediation: Theoretical Issues and Empirical Evidence" in J Bercovitch, (Ed.), *Resolving International Conflicts: The Theory and Practice* (Lynne Rienner, 1996), 11-36.

¹² DV Frazier, and WJ Dixon, (2006), "Third party Intermediaries and Negotiated Settlements 1946-2000" [2006] (32)(4) *International Interactions*, 396

¹³ *Ibid*, 396

¹⁴ I W Zartman, "Introduction: Bias, Pre-negotiation and Leverage in Mediation" [2008] (13)(3) *International Negotiation*, 305-310

¹⁵ S Vuković, "Strategies and Bias in International Mediation" [2011] (46) (1) *Cooperation and Conflict*, 113-119.

still strong similarities between the processes of international and domestic mediation, lack of a clear structure on the international level, where actors seek to preserve their independence, made the international mediation more susceptible to the particular self-interests that drive various international actors to get involved in mediating a particular international conflict. While in certain domestic settings, mediation is by rule conducted by a single trustworthy third-party that has no stake in the dispute, international conflicts usually attract and bring into the mediation process different types of outside actors, that are “just as numerous and frequently as diverse in their interests as the warring parties themselves.” [16]

The concept of international mediation generally refers to mediation activities conducted by various international actors with the aim of managing international conflicts on interstate (between countries) and intrastate (between governments and groups challenging their power) levels. Just as disputants in such conflicts can be both state and non-state actors, third-parties that might have an interest to mediate these conflicts can be just as diverse, and include: representatives of states (neighbouring ones, global powers, states of medium and small relative size), representatives of global and regional international organisations, representatives of global NGOs (which could include religious organizations, interest groups with an international agenda, *etc.*), and finally, even individuals (such as Jimmy Carter, Desmond Tutu, Maarti Ahtisaari, *etc.*) that have an established international reputation in managing international conflicts and are able to act as mediators without a formal mandate from a particular state or international organisation.

Already, in 1975, Touval unequivocally emphasised that a biased mediator is not a liability to the process but a potential advantage as it is able to move the party toward which it is biased to reach a negotiated solution. [17] Following these findings, Zartman and Touval refused mediator’s impartiality and neutrality as a necessary prerequisite, and defined mediation in a very simple, yet usefully flexible manner, as “a mode of negotiation in which a third party helps the parties find a solution which they cannot find by themselves.” [18] This novel approach towards the concept of mediator’s

bias induced scholars to conduct a series of studies focusing on various mediation strategies that were characterised by both third-party’s self-interest to manage the dispute and a specific leverage that moves the disputants toward a specific outcome that is mutually acceptable to all three sides. Consequently, novel conceptualisations of manipulative and directive mediation strategies were introduced. [19] In the light of these new findings, international mediators were no longer treated as passive actors in the process that are in charge of only facilitating the communication between parties in conflict. They were rather seen as active third-party in the process of managing the conflict, whose specific characteristics directly affect the outcome of mediation process.

Contemporary scholarship has almost unanimously accepted a multi-causal nature of international mediation. In fact, recent studies of international mediation have commonly acknowledged a variety of factors that can potentially have an effect both on the dynamics and on the outcome of the mediation process.

Conciliation

Conciliation is a form of dispute resolution that aids in the settlement of a disagreement or dispute between two parties. The conciliation process is handled by an impartial individual known as a conciliator, who meets with the parties involved and work with them to arrive at a settlement or resolution. The conciliator, being an active participant in this process, works continuously with both parties to arrive at an agreement acceptable to all. The conciliation process involves the conciliator going back and forth between the parties, discussing the issues involved and what each party is willing to sacrifice, and negotiate in coming to a settlement. The two parties to the process rarely meet, and most discussions are done through the conciliator. One main advantage of conciliation is that it is not legally binding and, therefore, parties can negotiate till a settlement that is pleasing to all can be achieved.

According to Black’s Law Dictionary, conciliation is a settlement of dispute in an agreeable manner or a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved. It is a process in which a third party, known as the conciliator tries to bring two disputing parties together in a bid to restore their relationship before the problem arose. Conciliation is a process used

¹⁶ F O. Hampson, and I W. Zartman, *The Global Power of Talk: Negotiating America’s Interests* (Paradigm Publishers, 2012)

¹⁷ S Touval, (1975), “Biased Intermediaries: Theoretical and Historical Considerations” [1975] (1) (1) *Jerusalem Journal of International Affairs*, 51-69

¹⁸ I W Zartman, and S Touval, “International Mediation in the Post-Cold War Era” [1996] in CA Crocker, FO

Hampson, and PR Aall, *Grasping the Nettle: Analyzing Cases of Intractable Conflict* (United States Institute of Peace Press, 2005), 99-121

¹⁹ S Touval, and I W Zartman, “International Mediation: Conflict Resolution and Power Politics” [1985] (41) (2) *Journal of Social Issues*, 27-45

to restore parties to the position they were, where it fails, other forms of dispute resolution techniques may then be applied. It does not require that any form of agreement must be in existence. The Arbitration and Mediation Act, 2023 provides for a right to settle disputes by conciliation, sections 37-55 detail the provision for conciliation.

The right to settle dispute by conciliation is provided in section 37. Where more than one conciliator is appointed, they may act jointly. Each party may submit statements to the conciliator informing him of the issues to be resolved; the parties may further clarify the conciliator orally or through writing. After considering the issues and a possible settlement in view, the conciliator can prepare a settlement with its terms and send to the parties, after which the parties may accept. If they accept it and execute same, it becomes binding on them. The conciliator is an impartial person who drives the parties towards reaching an agreement. There is great similarity between mediation and conciliation, however, the difference lies in the fact that the conciliator possesses expert knowledge in the said area. However, a mediator seeks to help parties develop a shared understanding of the conflict and to work towards trying to establish a lasting resolution.

Arbitration

Arbitration, much like conciliation, is also a form of dispute resolution in which parties at disagreement can find a resolution without having to go to courts. Arbitration is much like a mini-court in which the parties need to present their case to a panel of arbitrators, along with supporting evidence. The parties are allowed to select one arbitrator each, allowing the two chosen arbitrators to agree on a third arbitrator. A key disadvantage of arbitration is that the decision put forth by the arbitrators are binding. However, in comparison to court proceedings, arbitration can be more advantageous as the parties involved could select their preferred arbitrator instead of having to present their case to an unknown judge. The materials discussed also have more privacy than in a court proceeding as no media or public are allowed to such arbitration proceedings. However, since the decision provided is binding, the parties cannot appeal their case unless they can prove with clear evidence that a fraud has been committed.

The Black's Law Dictionary [20] defines arbitration as a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding. It also defines an arbitrator as a neutral person who resolves disputes between parties, especially by means of

formal arbitration. The principal Act regulating arbitration in Nigeria is the Arbitration and Mediation Act, 2023. This Act in section 57 which is the interpretation section defines arbitration as commercial arbitration whether or not administered by a permanent arbitral institution. [21] Arbitration is a process in which a third party, neutral, after listening to parties in a relatively informal hearing makes a binding decision resolving the dispute. It is the simple version of a trial consisting of simplified rules of evidence. It arises where a third-party neutral is appointed by the parties or an appointing authority to determine the dispute.

Arbitration as an ADR method, derived its recent rapid growth and appeal from the apparent relief which it affords from the complexity and other problem which disputants have to cope with in litigation. Like litigation, arbitration is adjudicatory, but the procedure is usually less formal and is quicker. [22]

Arbitrators and judges have been described as partners in the business of dispensing justice, the judge in the public sector and the arbitrator in the private sector and that although the two processes are similar in that they are both adjudicatory, there are important differences and also valid reasons why one should be preferred to the other. [23]

The suitability of arbitration over litigation in specific cases will depend largely on the nature of the dispute, the size and complexity of the claim and the relationship between the disputants. Some of the following are the advantages of arbitration over litigation; choice of tribunal, privacy, freedom of choice of venue, freedom of choice of law flexibility and simplicity of procedure, saving costs, quicker decision, representation of parties, finality of decisions etc. [24] Some of its advantages are that: the parties can choose who the arbitrator would be, the arbitrator is some form of expert in the relevant field, a party can be represented in the dispute, it's more flexible, less formal, less expensive, less time consuming than a trial, and, its proceedings are open to the public. Arbitration has so many similarities with litigation, because of these similarities, many scholars and jurists have argued that arbitration is not an alternative to litigation. Arbitration itself is becoming more formal with the same procedures as litigation; lawyers apply delay skills of complex legal arguments and procedures into the arbitral process.

In essence, arbitration is really a court process since once it is over, an award has to be filed in court. However, the advantage it has over litigation is that it saves time, resources, and is not fraught with

²⁰ B. A. Garner, *Blacks' Law Dictionary* (10th edn, Thomas West Publishing Company 2014)

²¹ Section 57, Arbitration and Mediation Act, 2023

²²J. Olakunle Orojo and M. Ayodele Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria*, (Mbegi Association (Nigeria) Limited 1999) 41

²³Ibid, 41

²⁴Ibid, 42

unnecessary delays. Arbitration can only commence if there is a valid arbitration agreement between the parties before the dispute which agreement must be in writing as provided under Arbitration and Mediation Act, 2023 in its section 1. Arbitration is a binding form of ADR as against mediation, conciliation and negotiation. The arbitrator can be regarded as a private judge who determines issues between two or more disputing parties. Arbitration is no doubt the most widely used ADR, both nationally and internationally.

Conciliation and Arbitration Compared

Conciliation and arbitration are both carried out with the purpose of peacefully and agreeably resolving the conflict between parties. They are both processes that have been adopted to avoid the hassle and cost involved in going to courts to resolve a dispute. Despite their similarities in the outcome that they try to achieve, a number of major differences between the two are there. In conciliation, most, if not all, communication goes through the conciliator who is trusted by both parties. In arbitration, a panel of arbitrators hears the cases of both parties and examine evidence to come at a resolution. While the decision given by the conciliator is not binding, with room for negotiation, the decision put forth by arbitrators are final and legally binding thereby leaving little room for appeal.

In conciliation, or similar forms of dispute settlement, a person chosen by the parties to a dispute assists them in finding agreement on the solution to their dispute. In arbitration, the person whom the parties have chosen decides for them how the dispute must be resolved. Since, in many respects, the best solution to a dispute is the one which both parties accept voluntarily, there are distinct advantages in conciliation: The difficulty is that the conciliator does not always succeed, so that only a binding decision by a third party can eventually resolve the dispute. A combination of the two methods appears to some as an ideal solution which merges the best of both of them and to others as heresy which, by confusing two fundamentally different methods, renders both of them ineffective. [25]

Mini-Trial

A mini-trial is a private, consensual process where the attorneys for each party make a brief presentation of the case as if at a trial. The presentations are observed by a neutral advisor and by representatives (usually high-level business executives) from each side who have authority to settle the dispute. At the end of the presentations, the representatives attempt to settle the

dispute. If the representatives fail to settle the dispute, the neutral advisor, at the request of the parties, may serve as a mediator or may issue a non-binding opinion as to the likely outcome in court. [26]

The mini-trial uses elements of negotiation, mediation and adjudication to facilitate settlement. Parties or their representatives are exposed in the non-binding mini-trial to the theories, strengths and weaknesses of each side of the controversy. The goal of the mini-trial is to facilitate settlement negotiations between top officials of the parties. The procedure for a mini-trial is usually negotiated in each case. The typical mini-trial involves a stay of court proceedings and limited discovery. At the mini-trial, the lawyers present their abbreviated version of the case to the panel members. The party officials then conduct settlement negotiations facilitated by the neutral panel member. The neutral member may be asked to present a written opinion stating the strengths and weaknesses of each party's position. [27]

The mini-trial was developed to encourage the settlement of business disputes. It is especially useful in large and complex cases where negotiations are stalled, and, like the summary jury trial, the parties need to see for themselves the strengths and weaknesses of their cases in order to reopen negotiations. Cases that would take months or years of litigation can take place in a few days in a mini-trial. The process is much less expensive than litigation and provides confidentiality not found in a trial. The parties are free to be practical and creative in their settlements, unlike traditional resolution of issues by the court. The use of the mini-trial may save a business relationship between parties that might otherwise be destroyed by bitter litigation. The risks of using mini-trials are the possible disclosure of trial strategies and the added expense and delay if a trial is ultimately needed. [28]

The mini-trial can be an efficient and cost-effective method of resolving complex litigation and should be considered when an impasse to negotiations has occurred, but the parties are still interested in the settlement of their dispute. [29]

Other Hybrid Processes

A hybrid dispute resolution process combines elements of two or more traditionally separate processes into one. The most common hybrid process is mediation-arbitration, or "med-arb", which uses the same individual or dispute resolution forum first as a mediator, and then,

²⁵ Michael E. Schneider, *Combining Arbitration with Conciliation*. Lalive & Partners, Geneva.

²⁶ Mini-Trial, American Bar Association 2013 Mediation Week, <https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/mini-trial.html> accessed 9 September 2025

²⁷ Frie, Arndt and Danborn P.C., *Alternative Dispute Resolution: Mini-Trial*, <<http://frieandndt.com/mediationarbitration/alternative-dispute-resolution-mini-trial/>> accessed 9 September 2025

²⁸ Ibid

²⁹ Ibid

if necessary, as an arbitrator. This is distinguished from the common circumstance where more than one type of dispute resolution procedure is provided for in sequence, such as a grievance procedure that provides first for negotiation, then mediation, and finally for arbitration, where each of these processes is carried out by a different person. Med-arb or other hybrid processes are generally used where parties believe a given dispute is likely to require elements of two or more processes, and/or where they believe that an individual or forum is available who has the skills necessary to enact more than one process, with a consequent saving of time and expense.

Med-Arb was first used in U.S. public-sector collective bargaining, particularly for public safety groups (e.g. police and fire departments) where strikes are generally illegal. In many states, the state legislature has called for a hybrid system to resolving these disputes peacefully and efficiently. Usually, such systems call for mediation, after which either party can compel arbitration if the mediation effort fails to reach an agreement. The mediation in this type of case is, actually, the *second* attempt at mediation, following an earlier "pure mediation" effort by the labour-management mediation agency of that state. The hybrid process is invoked if the initial, agency attempt at mediation fails. Such "duplicate mediation" has two advantages: first, neutrals who practice as mediator-arbitrators are sometimes able to apply skills that agency neutrals may not possess to the same degree (though often, the agency neutrals are themselves highly skilled); second, and more important, is that a mediator-arbitrator's suggestions carry more weight than those of a "pure mediator," even when the suggestions are similar or identical. This is because the mediator-arbitrator may have the final decision if the case is unresolved. This gives the "neutral" more perceived power, even in the mediation, and most certainly in the arbitration phase of the process. Med-arb in these contexts has generally been considered effective, as illegal strikes are very rare, and most parties believe the process works effectively and promptly.

However, parties sometimes object to the amount of power a mediator-arbitrator has. Typically, arbitrators never meet with the parties separately, but only meet together where both sides can hear (and rebut) all the arguments the other side makes. In addition, arbitrators avoid reaching any conclusions or dropping hints as to the decision until the last argument has been fully expressed. This mode of working is greatly different from the typical working methods of a mediator, which usually include meeting privately with each party, and at times, trying to persuade a party to make a particular concession, or to try another approach to their negotiations.

If the mediator is also an arbitrator, such pressure can take the form of an implied threat of an adverse decision if one party is seen as being "unreasonable." In such cases, the losing party may

believe (rightly or wrongly) that the decision was influenced by private conversations between the mediator and the opposing party. Concerns about such issues have led some jurisdictions to opt for mediation followed by separate arbitration instead of med-arb as the public service dispute resolution procedure of choice.

Other hybrid combinations of role also exist. The combination of the roles of facilitator and mediator is so common that many believe that the role of a mediator can hardly be fulfilled without taking on a facilitator's role as well — though the converse is not true. And it is quite common for a judge to take on the role of a mediator. While this inherently triggers the same potential concerns as mediation-arbitration, it is indisputable that many cases have been resolved, and often to the satisfaction of all parties, when a judge has engaged in adroit and sensitive intervention along these lines. Parties who understand the risks inherent in mixing the roles of a neutral are in a much better position to make creative uses of available neutral talents, a hallmark of the flexibility that conflict resolution claims as one of its virtues as a field. There is probably no pair of neutral functions that has not been combined in one individual at some point, many times to the benefit of all parties. And there are subtleties in the distinctions between the common combinations: for example, many see a meaningful distinction between a mediator-arbitrator and an arbitrator-mediator. (In this instance, the distinction is in which role the neutral was *primarily* selected for. Thus, describing a neutral as an "arbitrator-mediator" typically sets up an expectation that the case will probably be pursued to the point of a decision by an arbitrator, but with the parties willing to mediate if the circumstances seem favourable. A "mediator-arbitrator" is hired by the parties with the expectation that the focus will be on mediation, with arbitration reserved as a last resort.)

Other forms of hybrid include the "Special Master" in such major issues as the September 11 Victims' Compensation Fund or the "Black Farmers' Case" (involving tens of thousands of farmers who sued the U.S. Department of Agriculture over decades of racial discrimination in its lending policies). Both of these are highly responsible functions that include elements of a mediator, an arbitrator, and a magistrate. Meanwhile, fact-finding, summary jury trials, mini-trials, and private judging have also been described as hybrid processes, although in these instances, the term "hybrid" refers more to a process that exists between two more classical neutral roles than to one in which the neutral is asked to "wear two hats." Although, the latter three processes are more commonly used in more limited or "tractable" conflicts than they are in intractable conflicts, fact-finding is used extensively in intractable

conflicts, [30] and, there are occasions where other hybrid processes might be useful as well.

CONCLUDING REMARKS

Alternative Dispute Resolution is no longer a marginal appendage to litigation but a core pillar of contemporary justice delivery. As this paper has shown, ADR encompasses diverse forms, each with distinct features, procedures, and outcomes. Negotiation offers parties direct control and informality. Mediation and conciliation introduce neutral facilitation while preserving voluntariness and relationships. Arbitration provides a binding, quasi-judicial alternative that combines flexibility with finality. Hybrid models like med-arb and early neutral evaluation demonstrate the adaptability of ADR to complex, multi-layered disputes.

The analysis reveals that no single form of ADR can address all categories of disputes. The choice of process must be informed by the nature of the conflict,

the power dynamics between parties, the need for confidentiality, and the importance of preserving ongoing relationships. In Nigeria, practical challenges remain regarding the practice of alternative dispute resolution. Limited awareness among disputants, inadequate training of practitioners, and the persistence of a litigation-centric legal culture hinder the full utilization of ADR, are some of these challenges.

Ultimately, understanding the forms of ADR is not an academic exercise alone. It is a prerequisite for effective dispute system design. For disputants, it means making informed choices. For lawyers, it demands a shift from adversarial posturing to problem-solving advocacy. For the state, it requires sustained investment in ADR institutions, public enlightenment, and legislative reform. When properly deployed, the various forms of ADR can decongest courts, reduce cost, enhance access to justice, and foster a more restorative and less combative legal culture in Nigeria.

³⁰ (witness the 2002-2003 U.N. effort to confirm or deny Iraq's asserted stockpile of weapons of mass destruction)