



# THE VIABILITY OF THE MULT-DOOR COURTHOUSE HAVING CRIMINAL JURISDICTION: A CRITICAL ANALYSIS

Ansab Beita Yusuf\*

School of Quranic and Legal Studies, Department of Law, Jigawa State College of Education & Legal Studies, P.M.B 1009, Ringim, Jigawa State.

**\*Corresponding Author**  
**Ansab Beita Yusuf**

School of Quranic and Legal Studies, Department of Law, Jigawa State College of Education & Legal Studies, P.M.B 1009, Ringim, Jigawa State.

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**Abstract:** *The Modern Alternative Dispute Resolution was introduced into the world, as a form of method that would aid in alleviating the hardships and disadvantages of courtroom litigation, However, upon careful scrutiny of the systems that employ this method of dispute resolution; it comes to ones focus that the institutions are one-sided in the types of cases they entertain. Cases in point, which this write-up will center on, are the Lagos MultiDoor courthouse. These are one of the current institutions through which Alternative Dispute Resolution mechanisms are being practiced.*

*However, a major drawback characterized by these alternative courts is that their jurisdictions are limited to resolving civil cases.*

*In essence, the other most important aspect of the legal system is neglected, which is the criminal justice system i.e criminal cases. Criminal cases are out rightly excluded from reaping the benefits of this valuable and beneficial concept.*

*A further research by this write-up brings into limelight certain processes within the criminal justice system which are similar to the ADR processes themselves.*

*This article aims at highlighting these criminal law methods which will aid in resolving criminal disputes amicably and agreeably, just like the ADR processes. The mechanisms in focus will be plea bargaining, restorative justice and compoundable offences. The similarities between these methods and these of the ADR processes.*

*The three concepts mentioned above will also be conceptually analyzed by examining their workings and mechanics on points of their theory, practice and application.*

*The write-up will then look into how these criminal law processes can be incorporated and employed into the multi-Door courthouses. In order that the MDCs will have concurrent jurisdictions of both civil and criminal cases.*

**Keywords:** Alternative Dispute Resolution, Criminal Justice System, Multi Door Court House.

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## INTRODUCTION

It is trite for this article to begin by asking and answering the question, What is ADR (Alternative Dispute Resolution)?

The writer Fiadjoe defines ADR

*“In its pristine form, ADR originally referred to a variety of techniques for resolving disputes without litigation. But having regard to the evolution of modern techniques... it might be more accurate now to describe ADR not as an alternative to litigation but one technique which is appropriate in the context of dispute resolution generally.”*<sup>1</sup>

According to the DCON Consulting and Association of Professional Negotiators and Mediators,

*‘Alternative Dispute Resolution refers to all means or methods of resolving disputes outside courtroom litigation. (The acronym ADR has variously been held to refer to Alternative Dispute Resolution, Amicable Dispute Resolution, etc). These include a wide range of processes that encourage dispute resolution primarily by agreement of the parties as against a binding decision in litigation. Thus the word “Alternative” refers to other “options” to litigation.’*<sup>2</sup>

### A BRIEF HISTORICAL DEVELOPMENT OF THE MODERN- DAY ALTERNATIVE DISPUTE RESOLUTION (ADR)

One of the disadvantages of court litigation is that it is too adversarial, costly. Unpredictable, damaging to relationships, rigid and limited to narrow rights-based remedies.

Due to these characteristic features of the court room, delay and inefficient running of the justice system is rampant leading to not only the congestion of the courts with unwarranted cases but also congestion of the prisons as well. The administration and the delivery of justice is therefore bunged up.

In an attempt to eliminate these disadvantages and shortcomings in the legal system, alternative dispute resolution was introduced. This form of dispute resolving mechanism is an alternative or supplement, whereas some say it is a complement to the already existing traditional legal court system, hence the name. It covers a wide range of processes which are considered substitutes to litigation.

ADR processes are regarded as the methodologies for resolving dispute outside courtroom litigation. It is an alternative means of resolving dispute to the normal court process or litigation. There are a number of methods employed in resolving disputes, methods such as mediation, arbitration, conciliation, early neutral evaluation to name but a few.

The process of the modern ADR finds its origin in the United States of America, it was in a quest for judicial panacea, to eliminate the problems in the traditional court system, that the Multidoor Courthouse was conceptualized.

At a national conference held by the American Bar Association In honour of Roscoe Pound in April, 1976. That Professor Frank Sander presented a paper titled ‘Varieties of Dispute Processing.’ In this paper, he proposed a centre for dispute resolution which offers a variety of dispute resolution services. Having regard to the characteristics of a particular mechanism of dispute resolution would be applied to it.

This was the catalyst for what is now known as ‘the Multi Door Court House’. In 1985 it was experimented in states such as Texas, Oklahoma and in the Superior District Court of Columbia. This initiative has extended beyond the borders of the US and has been incorporated into the court systems of various countries such as Nigeria, Brazil, Canada, Japan etc.

Nigeria, being our main concern, through the efforts of some few Nigerian groups (such as the Regional Centre for the International Commercial Arbitration Lagos, DCON Consulting, Association of Professional Negotiators and Mediators etc) this type of modern alternative dispute resolution was introduced and embraced by Nigeria. Currently there are a number of Multi Door Courthouses offering ADR methods/processes across Nigeria, in its various states. States such as Kano, Abuja FCT, Lagos, Borno and Akwa Ibom.

Most of the ADR processes, such as mediation, arbitration, etc, have certain key features and characteristics that are common to each and every ADR process which makes them ready options available to parties with regards to dispute resolution within the multi door court houses. It is these characteristics that make these processes to be known and considered as alternatives to litigation. Key features of the ADR methods are that they are

1. A Consensual Process
2. A Private and Confidential Nature
3. Flexible
4. Inexpensive and Quick.

### ADR IN THE CRIMINAL JUSTICE SYSTEM

In light of the characteristics/features of the ADR process, certain aspects of the criminal justice inculcate some features of the ADR. There are criminal law concepts such as Plea Bargaining, Restorative Justice and Compounding Offences that embrace certain key characteristics similar to that of the ADR methods, most notably negotiation and mediation. We shall consider them one by one.

#### PLEA BARGAINING

*“Plea bargaining involves negotiations between the defendant (through an attorney in the standard case) and the prosecutor as to the conditions under which the defendant will enter a guilty plea.”*<sup>3</sup>

A well-known writer on plea bargaining defines it as consisting of a defendant’s agreement to be self-convicted in exchange of official concessions which may relate to the sentence recommended by the prosecutor or imposed by the court, the offence charged (which may be implicit or explicit).<sup>4</sup>

<sup>1</sup> Fiadjoe, A., Alternative Dispute Resolution: A Developing World Perspective, Cavendish Publishing (2004)p2

<sup>2</sup> 2009 Course Materials, Professional Foundation Course on Alternative Dispute Resolution (ADR) part 1 DCON Consulting and Association of Professional Negotiators and Mediators, Settlement House, Abuja.

<sup>3</sup> Kipnis, K., Criminal Justice & the Negotiated Plea, Ethics, Vol.86, No.2(1976)p93

<sup>4</sup> Alschuler A.W, Plea Bargaining & its History, 79 Columbia Law Review 1(1979) p3

Plea Bargaining is defined as pre-trial negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution.<sup>5</sup>

It is further defined as to make an agreement in which the defendant pleads guilty to a lesser charge and the prosecutors in return drop more serious charges.<sup>6</sup>

Plea Bargaining is of two types, Charge bargaining and Sentence Bargaining. Charge bargaining is where the prosecution allows a defendant to plead guilty to a lesser charge or to only some of the charges framed against him. Whereas Sentence bargaining is an opportunity to negotiate with the prosecution and reduce the number of charges that may have been framed against him.<sup>7</sup>

A key factor of this concept is that it is speedy in nature; it has been helping to reduce the backlog of cases before the courts. As such it can be arranged and settled within minutes. Therefore, it is quick and inexpensive as it reduces the expenses that may occur where the case goes for a full trial, just like the ADR methods.

Another feature of the concept is that it must be made knowingly, intelligently and voluntarily by the defendant.<sup>8</sup> Its voluntariness makes it a consensual process for which an agreement must be made without compulsion between the defendant and the prosecution. Another similarity with the ADR methods.

It further involves negotiation or bargaining, as the name goes, between the prosecutor and the defendant. These negotiations are the backbone of this concept. It is through these dialogs that a common ground is reached and settled upon.

One writer wrote

*"If we accept the proposition that the plea bargain is an integral part of the broad and inclusive concept of Alternative Dispute Resolution, then amongst the various recognized, existing methods within the Alternative Dispute Resolution framework, the plea bargain can be categorized as a mediation process."*<sup>9</sup>

#### RESTORATIVE JUSTICE:

According to Tony Marshall, this criminal law concept is

*'a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.'*<sup>10</sup>

<sup>5</sup> Ghosh, S, Plea Bargaining-An Analysis of the Concept, [www.legalserviceindia.com](http://www.legalserviceindia.com), last visited 07/02/16

<sup>6</sup> *ibid*

<sup>7</sup> *Ibid*

<sup>8</sup> *Boykin v Alabama*, 395 U.S. 238(1969)

<sup>9</sup> Lester, B.J, System Failure The case for supplanting Negotiation with mediation in Plea-Bargaining, 20 OHIO ST.J ON DISP. RESOL. 563(2005) cited in Hallevy, G., Is ADR Philosophy Relevant to Criminal Justice?- Plea Bargains as Mediation Process Between the Accused and the Prosecution

<sup>10</sup> Marshall, T.F, Restorative Justice An Overview, a report by the Home Office Research Development & Statistics Directorate

Restorative Justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders i.e. the victim, the offender, the state and the communities. Certain programs are encouraged through this concept such as victim offender mediation, conferencing, circles, victim assistance, ex-offender assistance, restitution and community service.<sup>11</sup>

There are three (3) principles that form the basis of restorative justice:<sup>12</sup>

A Working together in order to restore /give justice to those who have been injured

B Those who have been directly affected by the crime (i.e. victim) have the opportunity to participate in the restoration of justice if they so wish

C Both the government and the community are involved in restoring justice where a crime has been committed in order to preserve public order and maintain peace.

Looking at the principles, it is clear that restorative justice is a form of mediation and conciliation. The parties are brought together in order to resolve not just the crime that has been committed but also to bring about foreclosure and a sense of restitution to both the victim and the offender.

A key feature of the restorative justice practice/process is that it is a flexible and variable approach which can be adapted to the circumstances, legal traditions, principles and underlying philosophies of established national criminal justice systems.<sup>13</sup> It is of a flexible nature just like the ADR methods.

Another feature of this process is that it does not prejudice the right of states to prosecute alleged offenders.<sup>14</sup> Therefore it still leaves open a chance of going to trial with the case. It has a 'without prejudice' nature which is a similar characteristic of the ADR methods.

Restorative justice can only be used with the free and voluntary consent of the victim and the offender. The agreements must be arrived at voluntarily.<sup>15</sup> This is also a key feature of the ADR methods.

#### COMPOUNDABLE OFFENCES:

Compounding a crime

*'consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who has*

(1999) pg 5; Ashworth, A, Responsibilities, Rights & Restorative Justice, Vol.4, The British Journal of Criminology, N0 3 (Summer 2002) pp578-593; <http://www.jstor.org/stable/23638882>

<sup>11</sup> Omale D.J.O, Restorative Justice as an alternative Dispute Resolution Model: Opinions of victims of crime, and criminal justice professionals in Nigeria, 2009; What is Restorative Justice? [www.restorativejustice.org/](http://www.restorativejustice.org/) last visited 04/05/2015

<sup>12</sup> *Ibid*

<sup>13</sup> Preamble, United Nation's Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters

<sup>14</sup> *Ibid*

<sup>15</sup> Article 7, United Nation's Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters

*committed a crime. There are three elements in this offence under the common law, and under a typical compounding statute (1) the agreement not to prosecute (2) knowledge of the actual commission of a crime; and (3) the receipt of some consideration.*<sup>16</sup>

This common law concept finds its way into our Penal Codes and Criminal Procedure Code both of 1991.

Section 339(1) of the Criminal Procedure Code 1991 provides that

*“The offences punishable under sections of the Penal Code described in the first columns of Appendix C may, subject to the subsequent provisions of this section, be compounded by the person mentioned in the third column of that Appendix.”*

These offences may be compounded by the victim of the offence. In the sense that the victim may accept any form of consideration in lieu of prosecuting the accused person in a court of law. The complainant and defendant may negotiate on the terms on how to go about with the case in order to resolve it amicably without having to go to court and without the state interfering in the matter.

Features which can be deduced from this concept are that it is voluntary and freely made with the consent of both parties.

It is a quick way to resolve cases without having to go through the long and expensive full trial. It is speedy and takes care of the dispute without delay. These are characteristics similar to the ADR methods

The offences which may be compounded are set out in the CPC.<sup>17</sup>

#### THE LAGOS STATE MULTIDOOR COURTHOUSE (LMDC)

The LMDC was established as a result of a private-public partnership between the High Court Justice of Lagos State and the Negotiation and Conflict Management Group (NCMG) on June 11, 2002.<sup>18</sup>

The Lagos Multi Door courthouse was established by a law enacted by the Lagos State House of Assembly in 2007, published in the official gazette and cited as the ‘Lagos Multi Door Courthouse Law’. Its objectives are:

1. By providing alternative mechanisms in the resolution of disputes, the LMDC aims to enhance access to justice
2. It aims to minimize citizen frustration and delay in justice delivery by providing a standard legal frame work for the fair and efficient settlement of disputes through ADR
3. To serve as the main center for the promotion of ADR in Lagos State
4. And to promote growth and effective functioning of the justice system through ADR methods.<sup>19</sup>

The role of the ADR judge, the court, counsel, disputing parties, as well as enforcement of settlement agreements and awards are all provided in the LMDC law, including the regulations concerning the process to be adopted in the course of employing any of the ADR methods in resolving disputes brought before the LMDC.<sup>20</sup>

The Chief Judge of Lagos State is given the power to issue a practice direction to serve as the rules and procedure for the LMDC, this with a view to providing administrative and efficient justice delivery.

The ADR judge is mandated to refer cases to the LMDC in order to settle the dispute amicably and has the obligation to adopt and enforce the terms of settlement reached at the LMDC pertaining to a particular case.<sup>21</sup>

In case where a disputant refuses to attend the mediation sessions and does not provide notice within 48 hours, then he must pay a penalty fee of ₦10000.<sup>22</sup>

Under section 19, once the parties have agreed to settle, a settlement agreement is drawn up by the mediator with the approval of the disputing parties, and it is sent to the High Court for endorsement. Once it is endorsed it is regarded as a consent judgment of the High Court. Any appeals against it will lie to the Court of Appeal.

Mediation sessions are confidential and not open to the public, therefore parties are enjoined to maintain confidentiality. Joint and separate meetings may be held at the discretion of the mediator. Documents may also be tendered.<sup>23</sup>

A proceeding under the LMDC is instituted by three ways; walk-in, referrals and direct intervention. This is done by filing a written request stating the nature of the dispute, names, address/telephone numbers and file 3 copies with LMDC and a copy each for all the other parties.<sup>24</sup>

Once the mediation request is filed, a mediator is appointed by the LMDC with the approval of the parties, or the parties may choose from a shortlist of mediators. In the event that the parties are not able to agree on a mediator, the LMDC may appoint one for them.<sup>25</sup>

A mediator is expected to aid in the settlement of a dispute in an impartial manner, and must not impose a settlement on the disputants. He must at all times encourage speedy resolution of the dispute.<sup>26</sup>

The mediator must aim to settle the dispute within 3 mediation sessions of about 10 day’s interval.<sup>27</sup>

<sup>16</sup> Black’s Law Dictionary

<sup>17</sup> Section 339(1) Criminal Procedure Code of Kano State.

<sup>18</sup> The Lagos Multi Door Courthouse website, [www.lagosmultidoor.org](http://www.lagosmultidoor.org), last visited 17/02/16

<sup>19</sup> S1(2) of the Lagos Multi Door Courthouse Law; Nwana C.(author) A Review of Lagos Multi Door Courthouse: Law and Procedure, in Aliyu I.A. et al (eds) Alternative Dispute Resolution and some contemporary Issues, Kaduna, M.O Press Publishers Ltd (2010) p255.

<sup>20</sup> Sections 16, 17, 18 19 & 20 LMDC law

<sup>21</sup> Article 11 LMDC Practice Direction

<sup>22</sup> Article 13 LMDC Practice Direction

<sup>23</sup> Articles 5 & 13 LMDC Practice Direction

<sup>24</sup> Article 2&3 LMDC Practice Direction

<sup>25</sup> Article 6 LMDC Practice Direction

<sup>26</sup> LMDC Practice Direction Art. 8(b)(c)(d)

<sup>27</sup> Article 12 LMDC Practice Direction

## THE VIABILITY OF THE MULTIDOOR COURT HOUSE HAVING CRIMINAL JURISDICTION THROUGH LEGISLATION

This article shall now proceed to consider whether certain criminal law concepts of dispute resolution can be incorporated into the MultiDoor Courthouse Fold in terms of its legislation.

In Nigeria, Lagos has its own independent law which establishes the court-connected Multi Door Courthouse.<sup>28</sup> The cases referred to it are only civil cases, cases bordering on land disputes, commercial disputes, domestic disputes etc. But if one looks clearly at its legislation, one will find that it does not restrict the jurisdiction of the Multi Door Courthouse to just civil cases. Rather it merely states that the Multidoor Courthouse can resolve disputes without a limitation.<sup>29</sup> The jurisdiction given to it is general in nature.

First and foremost, with regards to its establishment, the Multi Door Court House is referred to as an independent non-profit organization, which is considered as a court-connected Alternative Dispute Resolution Center.<sup>30</sup> An alternative dispute resolving center other than litigation. The only resolving technique that is not employed is the adversarial technique (adjudication). The adjudication center or the courts makes a distinction between criminal and civil cases but entertains both these types of disputes without restriction. The Alternative Dispute Resolution Center supplements litigation; therefore they should embrace all the jurisdictions entertained by litigation without restriction, it is regarded as a dispute resolving center, an alternative to litigation. Litigation or the courts entertains both civil and criminal disputes. The Multi Door Courthouse should also be given the authority to do so as well. As an alternative to litigation, it should be allowed to entertain all types of jurisdictions which the traditional litigation has, civil and criminal. The Multi door courthouse jurisdiction should not be restricted to just civil cases. Parties should be given a wider choice/options in resolving their disputes.

Secondly, its objectives show no restriction as well. It states that it aims at providing access to justice and 'minimize citizen frustration and justice delivery'. It also aims at providing a standard legal framework for the settlement of disputes fairly and efficiently through ADR.<sup>31</sup> The disputes referred to here is not qualified. It does not say civil disputes or even criminal disputes if we like. It does not limit the MDCHs jurisdiction to civil disputes. Therefore, in interpreting the word disputes, the disputes can either be civil or criminal or even both. There is no restriction to the jurisdiction of the MDCH in this area. If we look at other countries such as the US and the UK, its limitation to civil disputes and /or criminal disputes is quite clear and explicit without any qualification.<sup>32</sup> If the legislators of the LMDC law wished to restrict

its jurisdiction to civil cases it would have said so unambiguously and unequivocally.

A further observation that could be made in this regard is pertaining to the functions and powers of the Multi Door Courthouse. The MDCH has the power to resolve disputes using

*'mediation, arbitration, neutral evaluation and any other ADR mechanisms in the resolution of such disputes as may from time to time be referred to the LMDC...'*<sup>33</sup>

This by implication could mean that, the MDCH may use other methods of resolving disputes; and by virtue of our observation above the disputes may be criminal or civil in nature. Therefore, where a dispute borders on the criminal, the concepts of plea bargaining, restorative justice or compoundable offences may be applied in order to resolve the dispute as they share similarities with the ADR concepts.

In light of the provisions of the LMDC law, it can be deduced that the Court is available to all parties both private and public whether the case is civil in nature or criminal in nature. Disputes may be referred to it by any court including the Customary Court of Appeal, the Shari'a Court of Appeal, the Court of Appeal and the Supreme Court.<sup>34</sup>

In the case of *Adejumo V State*<sup>35</sup> the High Court has the legal backing of encouraging, and assisting the amicable settlement of criminal disputes in proceedings for common assault or for any offence not amounting to a felony and not aggravated in degree by way of payment of compensation or other means provided by the court.<sup>36</sup>

Plea Bargaining is more or less negotiation. Compoundable offences fall within the purview of mediation. The only concern is with restorative justice, since it proposes other punishments apart from the traditional fine and imprisonment i.e. community service, apologizing to a victim, restitution etc. But this has been taken care of by the Administration of Criminal Justice Act 2016 which allows for the punishing of an offender through community service as is found in other countries such as United States, Australia etc.

## CONCLUSION

By way of conclusion, the Multi Door Courthouse is a standard, well structured organization that has different doors for the resolution of disputes through ADR methods. Disappointingly, in practice, the MDCHs in Nigeria are limiting their jurisdiction to civil cases; cases of matrimony, land disputes and the like. The MDCH should be made into an open arena for all types of cases, criminal cases included. Point in fact are the three criminal law concepts discussed above; plea bargaining, restorative justice and compoundable offences.

<sup>28</sup> The Lagos Multi Door Courthouse Law No 21 (2007)

<sup>29</sup> i. e whether civil or criminal

<sup>30</sup> Section 1(2) (a) & (b) LMDC Law No 21 (2007)

<sup>31</sup> Section 2 (a) & (b) LMDC Law No 21 (2007)

<sup>32</sup> United Kingdom Civil Procedure Rules 1999; Welch, J.J, *Mediation & Oklahoma's New Dispute Resolution Act*, 20 Tulsa. L.J.114(1984)p117, <http://digitalcommons.tulsa.edu/tlr/vol20/iss1/6>

<sup>33</sup> Section 3 (1) LMDC Law 2007

<sup>34</sup> Bukar, B.A., *Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi Door*, The International Journal of Arbitration, Mediation and Dispute Management, Vol. 79 No. 1, the Chartered Institute of Arbitrators in Association with Sweet & Maxwell (2013)

<sup>35</sup> (2006) 7 NWLR pt 986 pp. 627, 646-647, Also High Court Law, Cap. 60, Laws of Lagos State of Nigeria, 1994 s. 24

<sup>36</sup> Ibid

The laws, rules and procedures of the LMDC have been clearly stated. These legislations have been reviewed to show that the LMDC (through its legislation) can entertain criminal cases since its mandate concerning civil cases is not restrictive.

There are certain offences which are minor and therefore by law can be mediated upon and consequently can come within the purview of the MULTI Door Courthouse.

Congestion of cases in the traditional courts and those in the prisons is a serious problem that is undermining fast disposition and smooth running of the criminal justice system. The benefits of the MDCH should not be narrowed down to just civil cases; the criminal cases need to have a chance at reaping such benefits as well. As Nwosu said concerning this type of proposal (i.e. employing ADR methods to resolve criminal disputes), 'The time to act is Now.'<sup>37</sup>

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<sup>37</sup> Nwosu, K.N, Criminal Justice Reforms in Nigeria: the imperative of fast-track trials; plea bargain; non- custodial options; and Restorative Justice