Strengthening the Criminal Justice System in Nigeria through Alternative Dispute Resolution

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Abstract

It is generally argued that criminal justice system is entrusted with the responsibility for controlling criminal behaviour and punishing the offenders. The process commences with the commission of a crime and continues with subsequent interventions by the law-enforcement agencies. However, many factors come into play in determining whether or not the whole process runs its full course, considering its inefficiency in recent times. Using a qualitative method, this article examines the effectiveness or otherwise of the newly introduced alternative dispute resolution (ADR) in terms of the Administration of Criminal Justice Act, 2015, in order to ascertain whether or not the concept is comprehensive as a mechanism for protecting the victims, the accused person and society. The findings revealed that the current criminal justice system in Nigeria is poor, ineffective and in dire need of reform. The article therefore recommends, among other things, that Nigeria move away from the conventional retributive justice system and incorporate a restorative or reparative justice system. ADR should also be strengthened in order to provide for effective and timely dispute resolution that is able to support a modern economy. Furthermore, there should be more training courses for all the participants in the justice system, as training will serve to enhance the effective administration of criminal justice in Nigeria.

Keywords: administration of criminal justice; alternative dispute resolution; criminal justice system; retributive justice system; restorative/reparative justice system

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Introduction

Globally, some conflicts, disputes, problems and issues give rise to offences for which criminal prosecution becomes necessary. Consequently, in any society the availability of an efficient system for criminal justice is indispensable. However, the Nigerian criminal justice system has always been cumbersome and characterised by many delays as the wheels of justice turn, albeit slowly. The criminal justice system is therefore unable to meet the needs of the country's ever-increasing population seeking justice on a daily basis. Against this background, this article examines the newly introduced "alternative dispute resolution" (ADR) in the criminal justice system. The goal is to ascertain whether or not the new legislative framework (Administration of Criminal Justice Act (ACJA), 2015) is suitable, adequate, effective and comprehensive as a mechanism in protecting the victims and the accused persons in Nigeria. The article is divided into six parts. The next section examines the method adopted by this article. In part three, the author overviews the Nigerian criminal justice system, while section four is dedicated to a critical analysis of the legal framework for the criminal justice system in Nigeria; part five examines the applicability of the ADR in the administration of criminal justice in Nigeria. This is followed by a conclusion and recommendations section in part six, the aim of which is to suggest ways of strengthening the criminal justice system, reduce the crime rate and decongest the custodial institutions in Nigeria.

Method

A qualitative research methodology was adopted in this article for the purpose of examining the strength of the criminal justice system in Nigeria using an ADR mechanism. The method involves both doctrinal and non-doctrinal approaches. The doctrinal approach covers primary and secondary sources of materials. The primary materials include statutes, case law and other official documents. The secondary sources, on the other hand, include existing literature in the area of studies such as books, newspapers, magazines, journals and articles on the internet. The doctrinal approach therefore helps with identifying both the laws and the works of various scholars relevant to ADR and the administration of criminal justice.

The non-doctrinal approach covers the collection of data from stakeholders of the criminal justice system by using structured questionnaires as a tool. The stakeholders include the police, the judiciary, the legislators, the prison service, the legal practitioners, the victims and the offenders. Since the administration of criminal justice has both legal and social implications, it is necessary that a socio-legal approach be taken. Therefore, through the non-doctrinal approach, this article elicits information from the respondents about their perceptions of the Nigerian criminal justice system as well as their attitude towards the application of ADR in the criminal justice system in Nigeria.

Tables 1 and 2 below show the socio-economic backgrounds and distributions of the respondents from the six geo-political zones and their cities. Most of the respondents (793, representing 63%) were males, reflecting the predominance of males in the population of Nigeria. This finding supports the data of the National Population Commission (NPC). Thus, the over-sampling of males will not affect the findings of this article. Table 1 also indicates that the majority of the respondents (597, representing 48%) are within the age bracket of $18 \leq 45$ years and more than a quarter (31%) belonged to $46 \leq 65$-year age group. The reason for this is that most of the respondents were able-bodied men and women who were from the working class. With regard to marital status, a significant proportion of the respondents (703, representing 56%) were married and the majority of the respondents are police officers (434, representing 35%). The respondents were examined in relation to the level of education they had attained. The data shown in Table 1 further revealed that a majority of the respondents (501, representing 39.8%) had attended tertiary educational institutions. Those who possess secondary-school education qualifications followed with 30.6% (385); 24.7% (311) respondents attended primary schools; 4.9% (61) respondents have no formal education and almost half (48%) of the respondents were Muslims.

Data from Table 2 below further reveal that 197 (15.7%) respondents reside in Bauchi; 207 (16.4%) respondents reside in Awka; 225 (17.9%) respondents reside in Ilorin; 203 (16.1%) respondents reside in Sokoto; 216 (17.2%) respondents reside in Lagos, whereas 210 (16.7%) respondents reside in Asaba. The criteria for the selection were based on the six geo-political zones of the country, excluding the Federal Capital Territory, Abuja and the states were based on the fact that they are cosmopolitan and industrial cities compared to other states in each of the zones and two of the states (Bauchi and Sokoto) are yet to domesticate ACJA, while four states (Lagos, Kwara, Anambra and Delta) have enacted their respective Administration of Criminal Justice Laws. Significantly, the rates of arrest and of the commission of alleged crimes in these cities are reasonably higher within their geographical zones, as can be seen in Table 3 below. The selection of the sample from which data of this article were drawn was through multi-stage purposive sampling techniques. The purposive sampling technique was adopted primarily because of the non-availability of a sampling frame for the target population. The target population was randomly selected and a total of 1 500 respondents (250 in each of the cities) were selected from the listed target population where 1 258 returned the questionnaires.

Table 1: Socio-economic Backgrounds of Respondents

Socio-demographic background	Frequency	Percentage
Sex		
Male	793	63
Female	465	37
Total	1 258	100
Age		
18 ≤ 45 years	597	48
46 ≤ 65 years	392	31
66 years and above	265	21
Total	1 258	100
Marital status		
Married	703	56
Single	365	29
Others	190	15
Total	1 258	100
Occupation		
Police	434	35
Prison officer	374	30
Judiciary	271	21
Accused persons	93	7
Legal practitioners	58	5
Victims	28	2
Total	1 258	100
Educational qualification		
No formal education	61	4.9
Primary school	311	24.7
Secondary school education	385	30.6
Tertiary education	501	39.8
Total	1 258	100
Religion		
Christianity	503	40
Islam	598	48
Traditional religion	105	8
Others	52	4
Total	1 258	100

Table 2: Distribution of Respondents by Geographical Zone and Cities

Zone	States	City	Frequency	Percentage
North-East	Bauchi State	Bauchi	197	15.7
South-East	Anambra State	Awka	207	16.4
North-Central	Kwara State	Ilorin	225	17.9
North-West	Sokoto State	Sokoto	203	16.1
South-West	Lagos State	Lagos	216	17.2
South-South	Delta State	Asaba	210	16.7
Total			1 258	100

Table 3: Crime Statistics, Reported Offences by Type and State, 2016

State	Offence against persons	Offence against property	Offence against lawful authority	Offence against local acts	Total no of cases 2016	% share of total cases

FCT	2 984	9 350	843	4	13 181	10.48
Abia	230	113	21	0	364	0.29
Adamawa	779	1 417	56	7	2 259	1.80
Akwa-Ibom	840	333	232	6	1 411	1.12
Anambra	898	1 413	142	81	2 534	2.01
Bauchi	812	1 713	118	14	2 657	2.11
Bayelsa	612	837	91	1	1 541	1.23
Benue	463	497	0	129	1 089	0.87
Borno	423	479	3	269	1 174	0.93
Cross-River	1 134	1 154	100	35	2 423	1.93
Delta	3 911	2,502	1,202	252	7 867	6.25
Ebonyi	572	595	44	0	1 211	0.96
Edo	697	307	0	0	1 004	0.80
Ekiti	718	1 008	103	0	1 829	1.45
Enugu	886	1 094	124	0	2 104	1.67
Gombe	513	1 350	19	356	2 238	1.78
Imo	954	873	103	0	1 930	1.53
Jigawa	321	214	37	74	646	0.51
Kaduna	338	502	129	37	1 006	0.80
Kano	1 981	2 375	318	243	4 917	3.91
Kastina	51	65	4	0	120	0.10
Kebbi	656	370	21	108	1 155	0.92
Kogi	294	480	17	7	798	0.63

Kwara	327	614	21	22	984	0.78
Lagos	15 426	22 885	6 768	306	45 385	36.08
Nasarawa	489	725	14	92	1 320	1.05
Niger	528	1 083	53	105	1 769	1.41
Ogun	1 122	1 112	145	0	2 379	1.89
Ondo	1 037	1 934	521	1	3 493	2.78
Osun	258	540	57	333	1 188	0.94
Oyo	1 377	1 752	314	0	3 443	2.74
Plateau	470	1 938	145	0	2553	2.03
Rivers	1 683	897	271	143	2 994	2.38
Sokoto	496	1 055	29	0	1 580	1.26
Taraba	719	998	55	45	1,817	1.44
Yobe	398	520	18	8	944	0.75
Zamfara	157	303	6	17	483	0.38
National	**45 554**	**65 397**	**12 144**	**2 695**	**125 790**	**100**

Source: Nigeria Watch Database. Available at <http://www.nigeriawatch.org/media/html/> (accessed 17 March 2019). See also Crime Statistics: Reported Offences, 2016. Available at <www.nigerianstat.gov.ng> (accessed 19 March 2019); National Bureau of Statistics (NBS), 2019

An Overview of the Nigerian Criminal Justice System

In every society, there is a general assumption that disputes, conflicts and crimes are inevitable and the imperative for a functional criminal justice system. Instructively, the criminal justice system is entrusted with the responsibility for controlling criminal behaviour and punishing offenders. In Nigeria, the criminal justice system is a process as well as a set of stages. It commences with the commission of a crime and continues with subsequent interventions by the law-enforcement agencies of the system that have

the power to arrest, arraign, put on trial, punish and sentence an offender.[1] However, many factors come into play in determining whether or not the whole process or all the stages of the criminal justice system run their full course, considering its inefficiency in recent times. This has been questioned particularly because of the increased difficulty in reaching a conclusion of any kind in many criminal cases and because the country still labours under an ineffective administration of justice.[2] This is supported by the author's fieldwork in Figure 1 below, where the majority of the respondents (1 180, representing 94%) out of 1 258 respondents strongly agreed and 4% agreed that "the administration of criminal justice in Nigeria is slow". In addition, Nigeria is saddled with a series of challenges, problems and shortcomings such as unnecessary delays,[3] archaic systems and procedures,[4] corruption[5] and the congestion of courts with cases, among other problems.[6]

In response to the question about how the respondents perceived the performance of the criminal justice system in Nigeria, the majority (representing 81.7% in Figure 2 below) hold the view that the administration of criminal justice in Nigeria is performing poorly. The data in these figures gained credence in the Amnesty International Report[7] that the perception of the criminal justice system in Nigeria is overwhelmingly negative. The reason behind this position has been justified by the studies of Omobamidele and Adekunbi,[8] who opined that the current state of the Nigerian criminal justice system is as a result of delays in the delivery of justice. A similar study by Tosin et al[9] identified three major actors as the sources of the problems of the Nigeria criminal justice system: the courts, the police and the prison system. To them, these three actors are "the length and breadth of the Nigeria criminal justice system".[10] This postulation is supported by

1 Sandra Jacobs, "Natural Law, Poetic Justice and the Talionic Formulation". Political Theology Journal 14.

2 C Chinyere, "Towards Fast Tracking Justice Delivery in Civil Proceedings in Nigeria". Nigerian Institute of Advanced Legal Studies Journal 3: 53.

3 B Hannatu, "Enhancing Speedy Dispensation of Justice: Practical Hints on Case Flow Management". Paper presented at the Conference of all Nigerian Judges of the Lower Courts, National Judicial Institute, 23 November 2016.

4 Austine Alegeh, "Practical Steps to Reforms of the Administration of Justice in Nigeria". Available at <http://www.nigerianbar.org.ng/index.php/downloads/all> (accessed 28 April 2018).

5 Alegeh (n 4).

6 PA Anyebe, "Towards Fast Tracking Justice Delivery in Civil Proceedings in Nigeria". NIALS Journal 53.

7 See Amnesty International Report (2017/18). Available at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF> (accessed 27 April 2018).

8 M Olufemiand A Imosemi, "lternative Dispute Resolution and the Criminal Judicial System: A Possible Synergy as Salve to Court Congestion in the Nigerian Legal System". Arabian Journal of Business and Management Review (Nigerian Chapter) 1: 10.

9 T Olonisakin, A Ogunleye and S Adebayo, "The Nigeria Criminal Justice System And Its Effectiveness In Criminal Behaviour Control: A Social-Psychological Analysis". IOSR Journal of Humanities and Social Science (IOSR-JHSS) 22(2) IV: 33–48.

10 Olonisakin, Ogunleye and Adebayo (n 9).

the present author's fieldwork, where 62% of the respondents in an administered questionnaire – as shown in Figure 3 below – revealed the ineffectiveness of the judiciary in the administration of criminal justice in Nigeria. The respondents were asked whether the prison service achieves the desired objectives of rehabilitation and reformation of offenders. Figure 4 below reflects their responses that prisons do not achieve their objectives. This is a confirmation of the studies conducted by Tosin et al that "prison institutions did not achieve the desired objectives in the administration of criminal justice". In his study, Wambua[11] attributed the delay in the administration of criminal justice system to insufficient or a lack of equipment, bribery, corruption and poor management of the Police Force.

In recent times, a study has shown that imprisonment was no longer serving the purpose for which it was founded, as many people became hardened criminals in prisons and would always find their way back to prison after their release.[12]

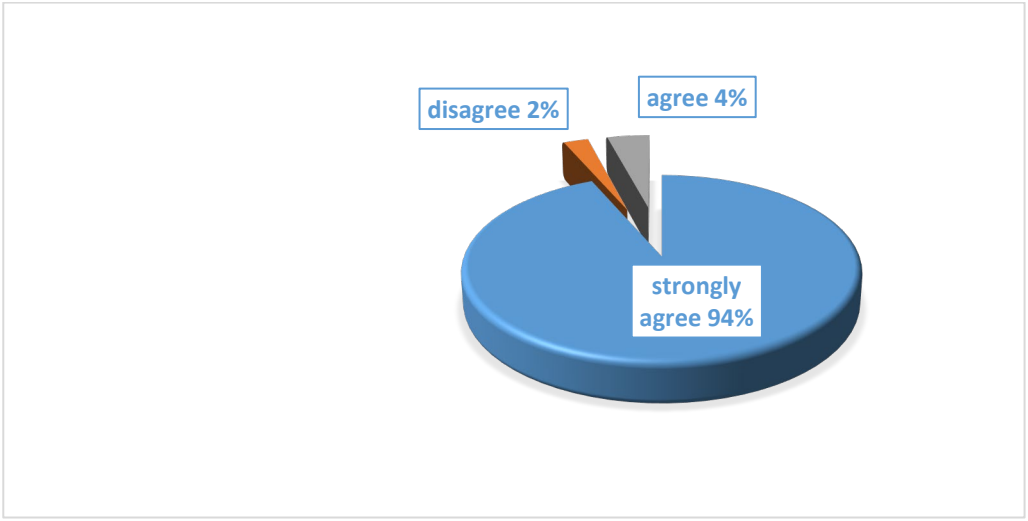

Figure 1: The Administration of Criminal Justice in Nigeria measured on a Scale from 0 to 100 (Speedy or Slow Performance)

11 P Wambua, "Police Corruption in Africa undermines Trust, but Support for Law Enforcement remains Strong". Afrobarometer Dispatch 56.

12 CE Ogbozor, "From Hell to Hell: The Travails of Ex-prisoners in Nigeria". Paper presented at the 11th International Conference on Penal Abolition (ICOPA XI) held in Tasmania, Australia.

Table 4: Experience with the Nigerian Criminal Justice System

Experience of victims	**Freq**	**%**	**Experience of victims**	**Freq**	**%**
Have you been victim of crime?			Which kind of crime?		
Yes	844	67.1	Felony Offence	880	70.0
No	414	32.9	Misdemeanor Offence	210	16.7
Total	1 258	100	Simple Offence	168	13.3
			Total	1 258	100
Do you know these categories of crime?			Have you lodged a complaint with respect of the crime committed against you?		
Felony Offence	880	70			
Misdemeanour Offence	210	16.7			
Simple Offence	168	13.3	Yes	629	50
Total	1 258	100	No	629	50
			Total	1 258	100
If answer to the above question is yes, how long did it take the police to investigate the reported crime?			Has the person who committed the crime been taken to court?		
			Yes	721	57.3
Less than 6 months	15	1.2	No	537	42.7
More than 6 months	800	63.6	Total	1 258	100
More than 1 year	443	35.2			
Total	1 258	100			
Can you identify the court that the accused was taken to?			Has the case been concluded?		
Area/Customary Court	200	15.9	Yes	1 002	79.7
Magistrate's Court	850	67.6	No	256	20.3
High Court	108	8.6	Total	1 258	100
Appellate Court	100	7.9			
Total	1 258	100			

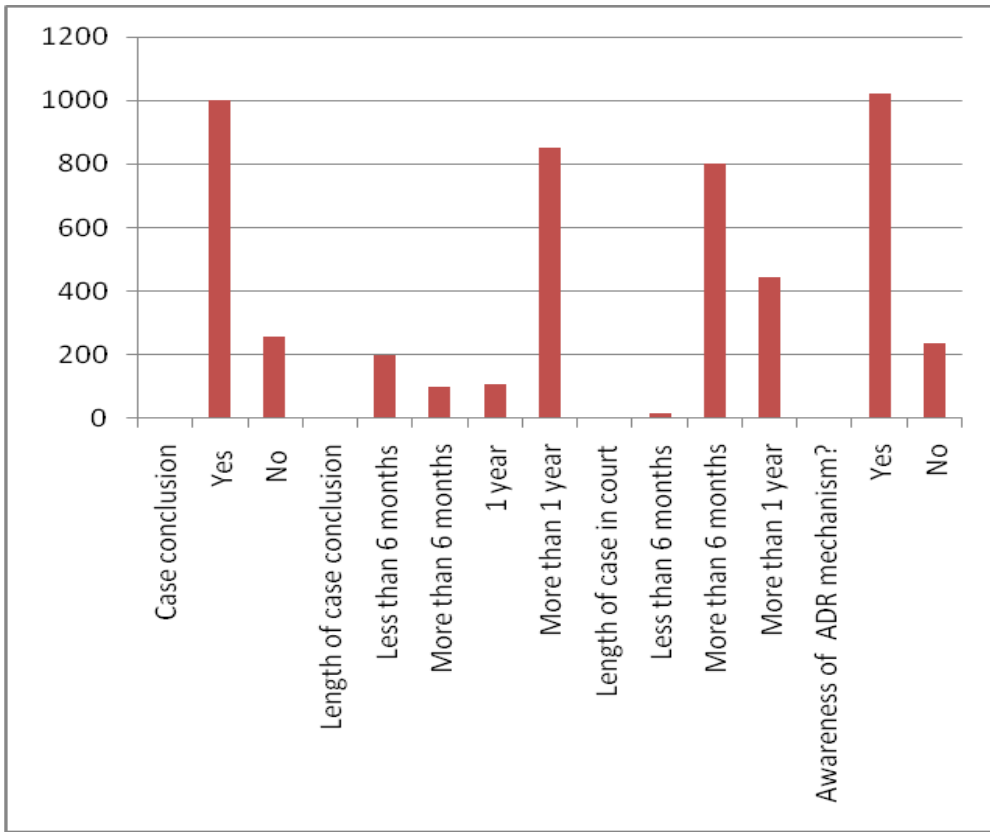

Chart 1: Experience with the Nigerian Criminal Justice System

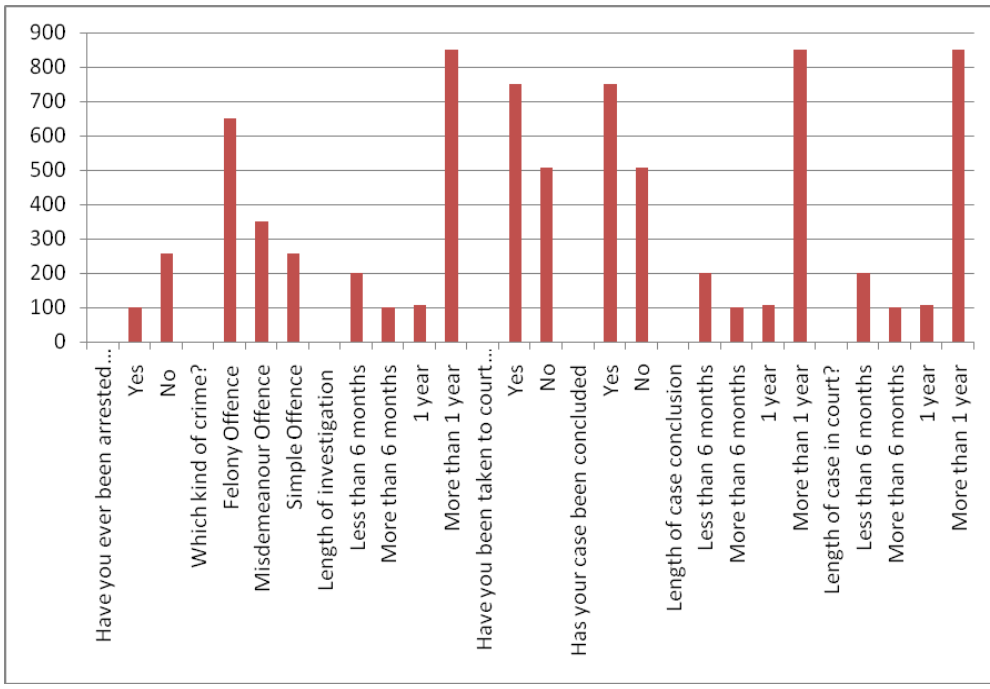

Chart 2: Experience with the Nigerian Criminal Justice System

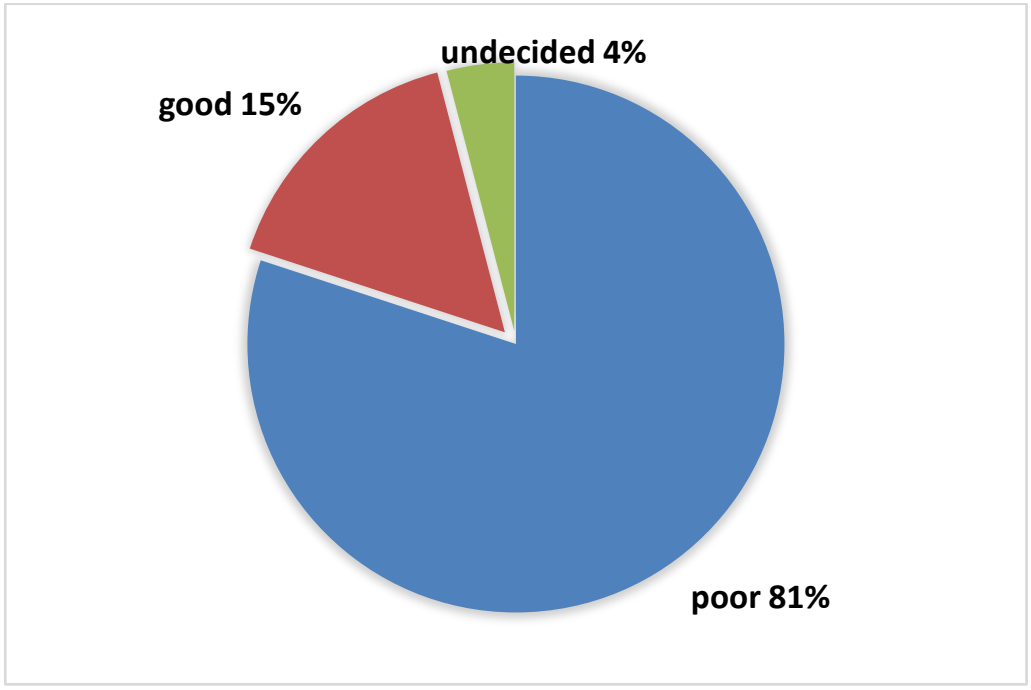

Figure 2: Perception of the Nigerian Criminal Justice System

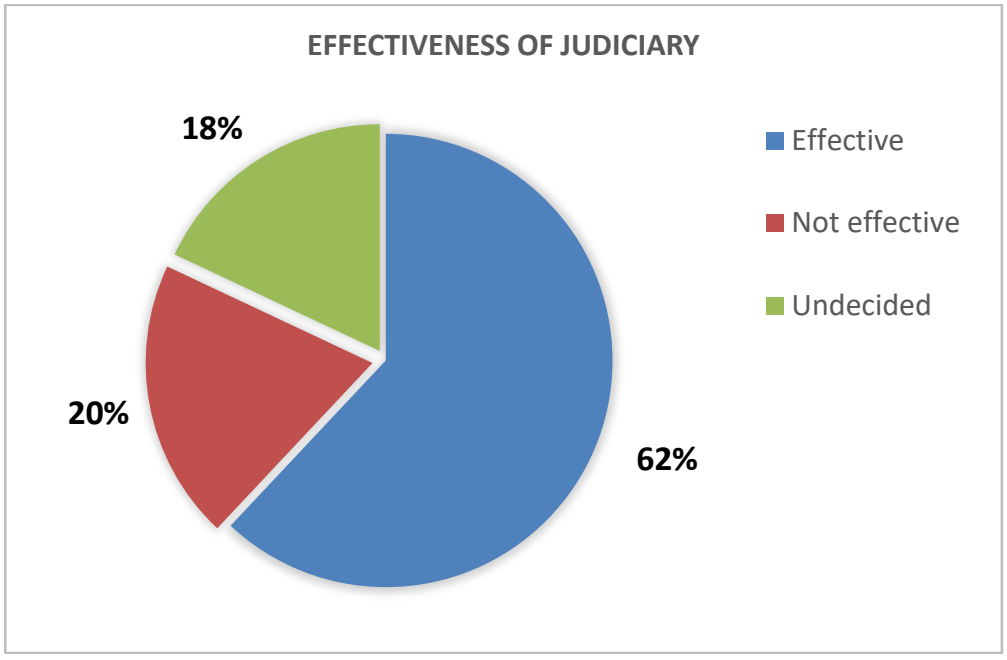

Figure 3: Respondents' Views on the Effectiveness of the Judiciary in the Administration of the Criminal Justice System

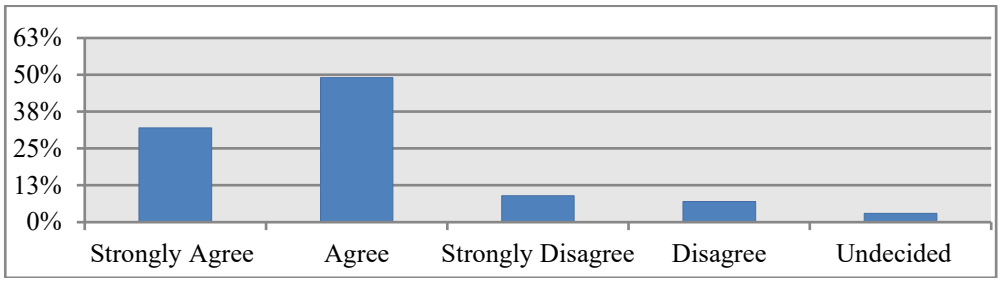

Figure 4: Respondents' Views on whether Prison Institution did not achieve the Desired Objectives

From the presentation in Table 4 above, it becomes clear that 67.6% of the respondents confirmed that most of the cases were tried at the magistrate's court level. Also, 70% of the respondents confirmed that most of the cases tried in the magistrate's court are felony offences. It should be noted that a magistrate's court has no jurisdiction to try felony offences, especially those offences that carry capital punishment such as murder, manslaughter, armed robbery, treason and treasonable felony. The implication of this is that a lot of accused persons will be held without trial since the magistrate's courts are not competent to hear and determine capital offences; and this is one of the reasons for over-congestion in prisons in Nigeria.

It is further shown in Table 4 and the charts above that 63.6% of the respondents expressed the view that the investigation of cases by the police lasted more than six months, while 67.6% of them equally confirmed that it takes more than one year for cases to be concluded in court. It can be deduced from these responses that any delay in criminal trials hinders the effective administration of criminal justice in Nigeria and therefore calls for application of ADR.

Until 2015, the general application of ADR in Nigeria was a common and acceptable phenomenon in the civil justice context only; but the same cannot be said for criminal cases due to the accusatorial or adversarial criminal procedures adopted in Nigeria. This is evident in the case of *BJ Export & Chemical Processing Co v Kaduna Refining and Petrochemical Ltd,*[13] where Mohammed JCA held thus:

> It is trite that disputes which are the subject of an arbitration agreement must be arbitrable. In other words, the agreement must not cover matters which by the law of the state are not allowed to be settled privately or by arbitration usually because this will be contrary to the public policy. Thus a criminal matter, like the allegation of fraud raised by the respondent in this case, does not admit of settlement by arbitration as was clearly

[13] (2003) FWLR (Pt 165) 445 at 465; (2003) 24 WRN at 74.

stated by the Supreme Court in the case of *Kano State Urban Development Board v Fanz Construction Ltd.*[14]

From the above it can be seen that ADR was common in civil proceedings only and largely foreign to criminal procedure. The next section critiques the legal framework for criminal justice system in Nigeria.

Legal Framework for Criminal Justice System in Nigeria: A Critique

The first legal instrument for justice system delivery in Nigeria is the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended). The Constitution is a crucial enactment in any proceeding, whether civil or criminal, because it is the supreme law of Nigeria.[15] As a result of its supremacy, all criminal proceedings must be conducted in a manner that does not conflict with constitutional provisions. Hence, all the constitutional provisions for fundamental human rights,[16] most especially the right to a fair hearing,[17] must be strictly adhered to. For instance, section 36(5) of the 1999 Constitution presumed an accused person to be innocent until proven otherwise. As such, ADR contravenes this section as it is employed when parties agree to it and the implication is to ask the accused person to admit their guilt. Thus, ADR takes away the fundamental right of an accused to be presumed innocent until proven guilty.

Other constitutional provisions which are crucial to criminal proceedings include *nolle prosequi*,[18] the prerogative of mercy[19] and the jurisdictions of courts in criminal cases.[20] Arguably, the Constitution ensures special laws and policies that are needed to safeguard the rights of offenders. The Constitution, as the G*rundnorm*, provides the basis for the government/institutions and for the arrest, arraignment and trial of the accused person in Nigeria. Instructively in Nigeria, prior to the enactment of the Administration of Criminal Justice Act in 2015, criminal matters were regulated by various laws at both the federal and the state or regional levels. Notable among these were Acts, laws, decrees or edicts which have been repealed or amended over the years. Examples of the laws currently in force and regulating crime in Nigeria include: the Criminal Code Act (CC),[21] the Criminal Procedure Act (CPA),[22] the Penal Code (PC),[23]

14 (1990) 4 NWLR (Pt 142) 1 at 32–33.
15 See ss 1–3 CFRN 1999 (as amended).
16 Chapter 4 CFRN 1999 (as amended).
17 Section 36 CFRN 1999 (as amended).
18 Sections 174(1) and 211(1) CFRN 1999 (as amended).
19 Sections 175(1) and 212(1) CFRN 1999 (as amended).
20 Chapter 7 CFRN 1999 (as amended).
21 Cap C38 Laws of Federation 2004. It is applicable only in the Southern States.
22 Cap 43 Laws of Federation 1958 and the Criminal Procedure Laws of Southern States.
23 The Penal Code is the substantive law on crime in the Northern region of Nigeria.

the Criminal Procedure Code (CPC),[24] the Administration of Criminal Justice Act, the Economic and Financial Crime Commission Act;[25] the Police Act,[26] the Prison Act,[27] the Corrupt Practices and Other Related Offences Act,[28] the Money Laundering (Prohibition) Act,[29] the National Drug Law Enforcement Agency Act,[30] the Examination Malpractice Act[31] and the Administration of Criminal Justice Law of Lagos State (ACJIL 2007).[32]

However, despite the existence of CPA, CCA, PC, CPC and other legislation to regulate criminal matters in Nigeria, studies have shown the large numbers of inmates that are awaiting trials in prisons and how prison yards are overcrowded.[33] This was evident in a report in which President Muhammadu Buhari raised an alarming voice over the state of the nation's prisons, noting that "it was a national scandal that many prisons were overcrowded by 90 percent".[34] He further stressed the "need to put in place urgent new

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24 Cap 30 Laws of Northern Nigeria, 1963. It was enacted for the then Northern region government in 1963 to govern criminal proceedings in Northern Nigeria.

25 Cap E1 LFN 2004. The independent Corrupt Practices and Other Related Offences Commission Act outlined the manifestations of corruption in ss 8–26. They consist broadly of four criminal offences: gratification, fraud, bribery and counselling offences relating to corruption. The Economic and Financial Crimes Commission Establishment Act, on the other hand, has as its objective dealing with "the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally". See generally s 46 of the Economic and Financial Crime Commission Act, 2004 (as amended).

26 Cap P19 Laws of Federation of Nigeria 2004. The Police Act first came into effect on 1 April 1943. The Act has subsequently been amended several times over the years. The most recent amendment was done in 2004. See H Umoru, "Bill to replace 75 years Old Police Act scales Second Reading". Available at <https://www.vanguardngr.com/2018/07/bill-to-replace-75-year-old-police-act-scales-second-reading/> (accessed 20 August 2018).

The Police Force is established and created by s 214 of the Constitution and has been saddled with the responsibility of maintaining law and order, preventing and detecting crime, conducting investigations, arrest, bail and search, execution of a warrant of arrest and the protection of persons and property. See s 215 of the CFRN 1999 (as amended) and s 4 of the Police Act 2004.

27 Cap P29 Laws of the Federation of Nigeria 2004. The Prison Act provides for the organisation and administration of prisons in Nigeria and other matters ancillary thereto. It also sets the goal and orientation of the prison as custody and production of inmates on court order and their rehabilitation and reintegration into the society. The prison system in Nigeria is the institution at the end of the administration of criminal justice process.

28 Cap C31 LFN 2004.

29 7 of 2011.

30 Cap N30 LFN 2004.

31 Cap E15 LFN 2004.

32 The Administration of Criminal Justice Law of Lagos State 2007 was amended in 2011.

33 See International Centre for Investigative Reporting. Available at <https://www.icirnigeria.org> (accessed 11 March 2019). See also National Bureau of Statistics, 2016. Available at <https://www.nigerianstat.gov.ng> (accessed 13 March 2019).

34 Sunnewsonline, cited in O Tosin, "Time to reform Nigeria's Criminal Justice System". 2015 Journal of Law and Criminal Justice American Research Institute for Policy Development. Available at <http://dx.doi.org/10.15640/jlcj.v3n2a7> (accessed 10 January 2019). See also Jo-Anne Wemmers,

measures to speedily decongest the prisons across the country". This posits that the dispensing of justice in Nigeria appears to be too slow and sluggish. On average, a matter takes approximately 15 years before it is judicially concluded, despite the existence of the enabling laws. For instance, in the case of *Williams Owodo v State*,[35] the accused spent 17 years and ten months in prison custody. He was later discharged and acquitted for the offence of murder levelled against him. As stated earlier, justice delayed is justice denied. Any delay in the administration of criminal justice is a major inhibiting factor to the effective administration of justice in Nigeria,[36] as was put in perspective by Zeisel et al: "delay in the courts is unqualifiedly bad."[37] Another instance is the case of *Ubani v State*,[38] which was concluded at the Supreme Court 31 years after it was first filed, and that of *Oronti v Onigbajo*,[39] which was concluded 41 years after the suit was filed. This position was also confirmed by Amnesty International in 2008 when it tagged the criminal justice system in Nigeria as a "conveyor belt of injustice, from beginning to end".[40] In addition, Ayorinde referred to the system of criminal justice as "dysfunctional, outdated and absolutely not fit for purpose".[41] In a *Punch Newspaper* of 2013, it was reported that the criminal procedure in Nigeria has "remained largely old and unresponsive to the quick dispensation of justice".[42]

Another instance is the congestion of cases which occurs when cases are filed at a rate far in excesses of what judges in the court's jurisdiction can dispose of within a reasonable time. This position has been confirmed by Obaseki,[43] when he stated that:

"Restorative Justice for Victims of Crime: A Victim-oriented Approach to Restorative Justice". 2002 International Review of Victimology 19: 43–59.

35 This was reproduced in *The Nation*, Lagos, 29 December 2012 at 48 and 49.

36 See "Assessing the Crime Fighters, 1999: The Ability of the Criminal Justice System to Solve and Prosecute Crime". Martin Schonteich, Institute for Security Studies, Occasional Paper No 40. Available at <https://www.africaportal.org>paper40> (accessed 7 July 2018).

37 See H Zeile, H Halven and B Bucholz, "Delay in the Court: An Analysis of the Remedies for Delayed Justice". 1960 Washington University Law Quarterly 1: 115. Available at <https://openscholarship.wustl.edu/law_lawreview/vol1960/iss1/11> (accessed 12 February 2020).

38 (2003) 18 NWLR (Pt 852) 224.

39 (2012) 12 NWLR (Pt 1313) 23.

40 Amnesty International, "Nigeria: Criminal Justice System Utterly Failing Nigerian People". Available at <https://www.amnesty.org/press-releases/2008/02/nigeria-criminal-justice-system-utterly-failing-nigerian-people-majority/> (accessed 20 October 2016).

41 Chief BolajiAyorinde, cited in O Tosin, "Time to Reform Nigeria's Criminal Justice System". Journal of Law and Criminal Justice American Research Institute for Policy Development. Available at <http://dx.doi.org/10.15640/jlcj.v3n2a7> (accessed 10 January 2019).

42 Paper delivered at the Biennial National Convention and Delegates Conference of Magistrates' Association of Nigeria "Corruption delaying Criminal Justice in Nigeria – CJ" (1 May 2013). *Punch Newspaper*.

43 AO Obaseki, "Constitutional Structure and the Position of the Judiciary-Interpretive Jurisdiction of the Courts and Interpretation of Other Statutes". In *Judicial Lectures: Continuing Education for the Judiciary* (Lagos: MIJ Publishing). See also AO Obaseki, "Justice in Nigerian Courts in Statistics:

> Congestion tends to defeat the objective of the Rule of Law and deprive litigants of fundamental right of fair hearing within reasonable time. It effectively delays justice in the courts and constitutes a clog in the wheel of the administration of justice.

Similarly, insufficient budgetary allocation for judicial institutions to build more structures creates a disincentive for the institutions to comply. Other factors such as non-compliance with procedural requirements, a lack of diligent prosecution, the death or disappearance of the accused, and the discharge or acquittal of the accused hinder the effective administration of criminal justice in Nigeria.[44]

Interestingly, the need for a new and revised criminal justice law as against the CPA and CPC that hitherto applied to the state and came into force in 1945 and 1963 brought about the Administration of Criminal Justice Laws (ACJL). This law was enacted to govern criminal proceeding in their respective states. The first state to enact the ACJL is Lagos State in 2007, which was later amended in 2011. The enactment of the Administration of Criminal Justice Law has repealed and rendered the CPA inapplicable by those states.[45] Furthermore, the enactment of the Administration of Criminal Justice Act by the Nigeria National Assembly in 2015 has replaced the CPA with regard to matters pertaining to Federal Courts; including the Courts of the Federal Capital Territory.[46] Since the CPA and the CPC were no longer efficient and effective in providing access to justice, the ACJA and ACJL were enacted to bring the Criminal Procedure Laws in Nigeria up to date with current needs in the criminal justice system and to improve access to justice.[47] Incidentally, Nigeria now has a unique and integrated law applicable in all Federal courts and with respect to offences contained in Federal Legislations.[48] However, the provisions of the Act are not applicable to a court martial.

The scope of the ACJA is wider than the CPA and the CPC. The ACJA goes beyond criminal procedure; it includes the entire criminal justice process from arrest, investigation, trial, custodial matters and sentencing guidelines.[49] Hence the ACJA by merging and preserving the major provisions of the two principal criminal justice

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Case Flow Management and Problems of Congestion of Cases in Courts". In *Judicial Lectures: Continuing Education for the Judiciary* (Lagos: MIJ Professional Publishers Ltd).

44 Olonisakin, Ogunleye and Adebayo (n 9) 33–48.

45 The states that have enacted ACJIL in their respective states include Cross River, Ekiti, Anambra, Rivers, Enugu, Delta, Kaduna, Lagos, Akwa Ibom, Oyo, Kwara, Ondo and Federal Capital Territory (FCT-Abuja). See International Centre for Investigative Reporting. Available at <https://www.icirnigeria.org> (accessed 11 May 2019).

46 Section 2 of the Administration of Criminal Justice Act 2015.

47 P Ocheme, "The Lagos Administration of Criminal Justice Law (ACJL): Legislative Rascality or a Legal Menu for Access to Justice?" Available at <https://www.scribd.com/document/378180514/The-Lagos-Administration-of-Criminal-Justice-Law-Acjl-The-Nigerian> (accessed 18 August 2018).

48 See Parts 8 to 30 of the ACJA, 2015; see s 86 in particular.

49 Available at <https://lawpavilion.com/blog/the-administration-of-criminal-justice-act-2015-acja/> (accessed 25 April 2018).

legislations in Nigeria, that is the CPA and CPC and introducing new provisions, have provided a unified and advanced legislation for the administration of criminal justice in Nigeria. The purpose of ACJA seems as an attempt to safeguard the interest of the victims and the offender as seen in section 1 of the Act which provides as follows:

> The purpose of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim.

Interestingly, ACJA introduces innovative provisions in furtherance of its purpose. Some of these innovations include the introduction of a "plea bargain",[50] a suspended sentence and community service;[51] remand time limit;[52] electronic recording of confessional statements[53] and day-to-day trials.[54] In sum, this article contends that, by the enactment of the provisions of ACJA, the Nigerian government seems to have reformed its criminal justice system which appears to have incorporated all provisions in the CPA and CPC. The enactment of ACJA indicates a paradigm shift from retributive criminal justice system to restorative criminal justice system particularly because it pays serious attention to the needs of the society, the victims, vulnerable persons and human dignity generally.[55] The provisions of the ACJA are also aimed at protecting the rights of the accused. Examples include sections 460,[56] 306,[57] 396,[58] 15(4)[59] and 296,[60] to mention a few. Without doubt, ACJA has various innovative provisions that seek to protect the interests of the accused persons. However, many challenges affecting the criminal justice system have defeated the purpose of the ACJA.[61] For instance, the ACJA as a Federal Act is an enactment on criminal matters

50 Section 270 of the ACJA, 2015.
51 Section 460.
52 Section 296.
53 Section 15(4).
54 Section 396.
55 See the provisions of ss 8(1), 460(1)–(2), 468 and 314 of the ACJA, 2015, among others.
56 It provides for the suspension of the sentence of the accused and community service.
57 By the provision of s 306, the application for stay of proceedings shall no longer be heard in respect of a criminal matter before the court.
58 This provides for a day-to-day trial such as that upon arraignment; the trial of the defendant shall proceed from day to day until the conclusion of the trial. Where a day-to-day trial is impracticable, the Act provides that parties shall be entitled to only five adjournments each. The interval between each adjournment, according to the Act, shall not exceed two weeks. Where the trial is still not concluded, the interval for adjournments will be reduced to seven days each.
59 By this section, the ACJA provides that a Confessional Statement may be made by means of an electronic recording on a retrievable video compact disc or such other audio-visual means.
60 By this provision, a suspect shall not be remanded for more than 14 days at first instance, renewable for a time not exceeding 14 days where "good cause" is shown.
61 These challenges include corruption, congestion of courts and prisons, and insufficient funds.

that is not within the exclusive legislative competence of the National Assembly.[62] This Federal Act (with the exception of the Federal Courts and Federal Capital Territory, Abuja, which has direct application) can become binding on states only if it is approved by a simple majority of all the states or if, in the alternative, interested states pass their own version with or without reference to the Federal Statute.[63] The analysis so far is to demonstrate that despite several developments in the criminal justice system in Nigeria, it continues to be unclear whether the enactments for reformation have been able to offer a panacea to the problems associated with the system and this calls for the evaluation of the applicability of ADR in the next section of this article.

Applicability of Alternative Dispute Resolution in the Administration of Criminal Justice in Nigeria

Black's Law Dictionary[64] defines ADR as "a procedure for settling a dispute by means other than litigation". The concept of ADR gains credence from section 19(*d*) of the Constitution of the Federal Republic of Nigeria, 1999, which "accommodates the settlement of international disputes by negotiation, mediation; conciliation; arbitration and adjudication" in the Nigerian foreign objectives.[65] As noted in the preceding section, arbitration and other forms of ADR are restricted to civil matters.[66] The reason is evident in the provisions of sections 127–130 of the Criminal Code, which relate to the concept of the compounding[67] and concealing offences which do not enjoin victims to ordinarily withdraw criminal cases against the offenders, since the buck of criminal proceedings lies with the state and not the victims. These provisions show that ADR is not encouraged in felony offences, which hinders the effective application of ADR in all criminal cases. More importantly, there is the likelihood of jettisoning the punitive aim and restricting the retributive justice employed in criminal law with the application of ADR. Interestingly, despite these enactments, the application of ADR has traditionally been recognised in the Nigerian criminal justice system. For instance, in the traditional Tiv, Igbo and Northern part of the country, the concept of ADR has been

62 See ANafiu and T Oyesina, "ACJA 2015: So Far, Not Too Good". Available at <https://newtelegraphonline.com/2017/12/acja-2015-far-not-good/> (accessed 25 April 2018).

63 Out of 36 States in the Federation, only 14 apply the ACJA; the remaining 22 are still using the CPA and the CPC in the administration of criminal justice.

64 BA Garner *Black's Law Dictionary* Ninth edition (United States: West Publishing Co) 91.

65 O Uruchi, "Creative Approaches to Crime: The Case for Alternative Dispute Resolution (ADR) in the Magistracy in Nigeria". Journal of Law, Policy and Globalization 36.

66 See the case of *BJ Exports & Chemical Processing Co v Kaduna Refining and Petrochemical Ltd* (n 13).

67 Compounding of offence is "an act on the part of the victim, who decides to pardon the offence committed by the accused person, and asks the court to exonerate him, which does not mean that the offence has not been committed; it only means that the victim swilling to pardon it or has accepted some form of compensation for what he or she has suffered". See *Chidolue v EFCC* (2012) 5 NWLR (Pt 1292) at 160. See also *Black's Law Dictionary* Sixth edition 207–208.

entrenched.[68] Similarly, rules of some courts in Nigeria have encouraged the application of ADR in criminal matters. For instance, section 26 of the District Courts Law of Katsina State provides that:

> A District Court shall, so far as there is proper opportunity, promote reconciliation among persons over whom such a court has jurisdiction, and encourage and facilitate the settlement in an amicable way without recourse to litigation of matters in difference between them.[69]

In the same vein, section 17 of the Federal High Court Act[70] provides that "in any proceedings in the court, the court may promote reconciliation among parties thereto and encourage and facilitate the amicable settlement thereof". Further, sections 151, 204, 208, 209 and 223 of the Child Rights Act (CRA)[71] have a set of objectives of ADR, when the CRA empowered the Family Court to hear and determine criminal cases involving children in Nigeria and a child within this spectrum cannot be subjected to the adult criminal processes, but can only be subjected to the child justice administration process which applies a welfare-based approach in dealing with cases involving children.[72]

The measures to be employed by the Family Court extend to diverting children from the formal justice system to community-based programmes wherever possible. In section 209,[73] the police, prosecutors or any other person dealing with a case involving a child offender is empowered "to dispose of cases without resorting to formal trial by using other means of settlement including supervision, guidance; restitution and compensation of victims especially in non-serious offences".[74] In section 223(2) of the

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68 The concept of "comenala" exists in the Igbo society, the "jir and tar" concept exists in the Tiv area of North-Central, while the concept of "sulh and ad takhim" described the concept of ADR in the Northern part of the country. See CC Obiego, "Igbo Idea of God, Lucerna, 1, 28" in CA Ogbuabor, CC Obi-Ochiabutor and EL Okiche, "Using Alternative Dispute Resolution (ADR) in the Criminal Justice System: Comparative Perspectives". Bassey Andah Journal 6. Available at <https://www.raadaa.com> (accessed 15 March 2019). See also Paul Bohannan, *Justice and Judgment among the Tiv* (London, New York, Toronto: Oxford University Press); N Okafo, *Reconstructing Law and Justice in a Post-colony England* (United States: Ashgate Publishing Company).

69 District Court Law Cap 39 Vol 1 Laws of Katsina State 1991.

70 Cap 12, LFN 2004.

71 Cap C50, Laws of the Federation of Nigeria, 2004.

72 See s 149 of the CRA, 2003.

73 See B Owasanoye and M Wenham, "Street Children and Juvenile Justice System in Lagos State of Nigeria, Human Development Initiative". In HC Okoro*, Juvenile Justice Administration in Nigeria and International Standards on the Rights of the Child* (Issues in Juvenile Justice Administration in Nigeria, 2003) 31. Here, the police have the first opportunity to divert child offenders from the formal court system, followed by the prosecutors and then the magistrates and judges, who are empowered to operate a model of justice that is first restorative, then rehabilitative and in the least retributive.

74 See s 209 of the CRA, 2003.

Act, the Court is enjoined to exercise discretion in how to deal with the case after determination of the guilt of the child, including the omnibus clause[75] to deal with the matter in any other manner legally permitted. Thus, the principle objective is to make the imposition of confinement a last resort and to be ordered only where there is no other way of dealing with the child.[76]

Apart from the above provisions, the application of ADR is also encouraged under the concept of plea bargaining. In this regard, section 14 of the Economic and Financial Crimes Commission Act empowers the commission "to compound offences in order to obtain practical restitution". This concept has been in existence since 2007 in Lagos State Administration of Criminal Justice Law[77] and it has been finally incorporated into the Administration of Criminal Justice Act (ACJA), 2015.[78] Under the ACJA, the concept of plea bargaining has general application in all Federal Courts in Nigeria.[79] It stands to be applied by all 36 states of the Federation upon domestication of the Act – which has been applicable in Lagos State since 2007 and amended in 2011, and the provisions are *pari material* with section 270 of ACJA. The Nigerian government adopts this concept by leaning on the American jurisprudence which was established in the case of *Robert M Brady v United States*.[80] There the Supreme Court of the United States stated that:

> … of course, that the prevalence of guilty pleas is explainable does not necessarily invalidate those pleas or the system which produce them. But we cannot hold that it is unconstitutional for the State to extend a benefit to a defendant *who in turn extends a substantial benefit to the State and who demonstrates by his plea that he is ready and willing to admit his crime and enter a correctional system in a frame of mind that affords hope for success in rehabilitation over shorter period of time than might otherwise be necessary*.[81]

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75 The judges are empowered under s 223 above to dispose of cases, where they are satisfied that an offence has been committed, with alternatives to custodial or institutional placement. The section also provides for situations where there is sufficient evidence to prosecute, and, where decisions have been taken to proceed to trial, that diversion must be considered in each and every case in order to meet the needs of the child and encourage the child to be accountable for the harm caused. Also, s 213 of the Child Rights Act does not permit the terms "conviction" or "sentence" to be used in relation to a child dealt with in the court.

76 See s 223(2) of the CRA.

77 See Administration of Criminal Justice Law, Lagos State, 2007 (as amended).

78 See generally s 270 of the ACJA.

79 These courts are the Federal High Court, the Court of Appeal, the Customary Court of Appeal, the Shariah Court of Appeal and the Supreme Court.

80 397 US 742 (90 S Ct 1463, 25 L Ed 2d 747).

81 Emphasis added.

Another piece of American jurisprudence which serves as a classic case relied on in Nigeria is the Supreme Court of the United States decision in the case of *Santobello v New York*,[82] where the court held that:

> The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargaining' is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of Judges and court facilities.

The implication of the Supreme Court of United States judgment in *Robert M Brady v United States* is twofold. One, the court allows a lesser sentence of 50 years' imprisonment for the act of the defendant who was charged with kidnapping, which carries a punishment of the death penalty. Second, the defendant whose act demanded that he be killed opted for a lesser sentence for the hope of entering a correctional system that can afford him success in rehabilitation and reintegration into society as a law-abiding citizen.

Based on the above preposition, the Nigerian Supreme Court in *Federal Republic of Nigeria v Igbinedion*[83] itemised the advantages of a plea bargain as one of the ADR mechanisms to include:

i. That the accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment and the publicity the trial will involve.

ii. iThe prosecution saves time and the expense of a lengthy trial.

iii. Both prosecution and the defendant are spared the uncertainty of going to trial.

iv. The court system is saved the burden of conducting a trial on every crime charged.

This Supreme Court decision has been affirmed by Alamin[84] that "ADR process saves time and facilitates justice by assisting in reducing the workload of courts thereby decongesting the Nigerian courts". Also, Nlerum[85] has opined that

> the cost of litigation is enormous when compared to the cost of resolving disputes via the alternative dispute resolution methods and that inability to bear the cost of litigation

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82 404 US 257 (1971).

83 (2014) All FWLR (Pt 734) 101 at 144–147.

84 M Alamin, "Introducing Alternative Dispute Resolution in Criminal Litigation: An Overview". Journal of Research in Humanities and Social Science 3(11): 68–82.

85 S Nlerum, "Access to Justice & Human Rights Protection in Nigeria: Problems & Prospects". Benin Journal on Public Law 3: 43.

> by the victim or the offender remain one of the major challenges of the Nigerian criminal justice system.

In another study by Nlerum,[86] it has been confirmed that:

> there are several instances where accused persons who cannot afford a legal practitioner are detained for unnecessarily long period of time due to lack of legal representatives. In other instances, various institutions and agencies in the Nigerian criminal justice system has failed to carry out their various duties which are cost intensive due to lack of funds.

The origin of the concept of plea bargaining in Nigeria could be traced to the trial of former Inspector-General of Police, TafaBalogun[87] in 2005, followed by *FRN v DSP Alamieseigha*[88] and that of *FRN v Cecilia Ibru*.[89]

The essence of plea bargaining has been aptly put in *PML (Securities) Co Ltd v FRN*,[90] as follows:

> The essence of a plea bargain agreement is not just to conclude a trial. There has to be a negotiated agreement between the prosecution and the person accused of a crime, whereby the accused agrees to plead guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecution, which is usually in the form of a more lenient sentence or a dismissal of the other charges.[91]

By implication, the parties under the plea bargaining concept must abide by the terms of the plea bargain agreement, otherwise any aggrieved party has the right of appeal to challenge the infringement of their fundamental human right to a fair hearing.[92] In this regard, the court cannot by virtue of section 270(11)(*c*) of ACJA impose any sentence heavier than the terms agreed upon by the parties without informing the accused person of its intention to impose a heavier sentence.[93] Similarly, the court must abide by the terms of a plea bargain to impose a lighter sentence of a fine where the terms have

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86 See S Nlerum, "The Nigerian Factor and the Criminal Justice System". Available at <https://www.google.com.ng/search?ei=5YRFW> (accessed 18 May 2018).

87 *FRN v TafaBalogun* Unreported case number FHC/ABJ/CR/14/2005.

88 (2006) 16 NWLR (Pt 1004).

89 Unreported case number FHC/L/297C/2009. See also *Romrig Big Ltd v FRN* (2015) 3 NWLR (Pt 1445) at 62; *Nwude v FRN* (2015) 5 NWLR (Pt 1506) at 471.

90 (2018) All FWLR (Pt 966) 168 at 203.

91 See *Black's Law Dictionary* Ninth edition 203. See also *Bryan Garner's Black's Law Dictionary* Eighth edition 1190.

92 See s 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

93 See *Bando v Federal Republic of Nigeria* (2016) All FWLR (Pt 841) 1510 at 1516.

described imprisonment with an option of fine in the sentencing procedure for default by the defendant. That is, the option of a fine comes before imprisonment.[94]

The importance of the provision of plea bargaining under ACJA has improved the effective administration of criminal justice in Nigeria on the basis that it avoids delays in the disposition of pending cases and it reduces the costs of trial and appeal.[95] However, before the application of this concept, the prosecution must "consult the police responsible for the investigation of the case and the victim". The Attorney-General must also be satisfied that the acceptance of the plea bargain is in the interests of the public, justice, public policy[96] and the need to prevent the abuse of legal process.[97] Interestingly, the ADR mechanisms are becoming key tools for improving the deplorable state of criminal justice delivery in Nigeria. However, it should be noted that the concept of plea bargaining is employed in high-profile official corruption and banking fraud cases. That is, it is employed in the trial of financial crimes in comparison to what is obtainable in other jurisdictions, such as the United States, as is evident in the case of *Robert M Brady v United States.*

Table 5: Attitude towards the Application of Alternative Dispute Resolution in the Criminal Justice System

Attitude towards application of ADR in criminal justice system	**Freq**	**%**	**Attitude towards application of ADR in criminal justice system**	**Freq**	**%**

94 Ibid. See also *Ogunbayo v State* (2007) All FWLR (Pt 365) 408, (2007) 8 NWLR (Pt 1035) 157.

95 See s 270(5)(*b*)(vii)–(viii) of the ACJA.

96 In *Federal Republic of Nigeria v Igbinedion* (2014) All FWLR (Pt 734) 101 at 130, the court was of the opinion that "public policy demands that there should be an end to litigation … Not only must the court not encourage prolongation of a dispute, it must also discourage proliferation of litigation."

97 See s 270(3) of the ACJA. See also *Bando v Federal Republic of Nigeria* (n 93).

Are you familiar with mediation, conciliation, reconciliation or other alternative means of settling disputes?:			Have you witnessed an alternative means of settling disputes before?:		
Yes	1 020	81.1	Yes	458	36.4
No	238	19	No	800	63.3
Total	1 258	100	Total	1 258	100
How will you rate the process?:			In a criminal case, which would you prefer to use in resolving it?:		
Good	1 000	79.5	ADR mechanism	1 020	81.1
Poor	200	15.9	Court process	238	19.0
Undecided	58	4.6	Total	1 258	100
Total	1 258	100			
ADR is faster than court processes:			ADR is more satisfactory than court process:		
Strongly agree	800	63.6	Strongly agree	800	63.6
Agree	200	15.9	Agree	200	15.9
Undecided	50	4	Undecided	50	4.0
Disagree	150	11.9	Disagree	150	11.9
Strongly disagree	58	4.6	Strongly disagree	58	4.6
Total	1 258	100	Total	1 258	100
ADR can be used in resolving criminal matters:			ADR can be used to administer justice in criminal matters:		
Strongly agree	100	8			
Agree	500	39.7	Strongly agree	100	8.0
Undecided	58	4.6	Agree	500	39.7
Disagree	100	8	Undecided	58	4.6
Strongly disagree	500	39.7	Disagree	100	8.0
Total	1 258	100	Strongly disagree	500	39.7
			Total	1 258	100
ADR protects the interest of both victim and accused person:			ADR should be used in all criminal cases:		
			Strongly agree	100	8.0
Strongly agree	800	63.6	Agree	500	39.7
Agree	200	15.9	Undecided	58	4.6
Undecided	50	4	Disagree	100	8.0
Disagree	150	11.9	Strongly disagree	500	39.7
Strongly disagree	58	4.6	Total	1 258	100
Total	1 258	100			

ADR should only be used in minor offences:			ADR should only be used in financial offences:		
Strongly agree	100	8	Strongly agree	58	4.6
Agree	500	39.7	Agree	150	39.7
Undecided	58	4.6	Undecided	50	4.0
Disagree	100	8	Disagree	200	15.9
Strongly disagree	500	39.7	Strongly disagree	800	63.6
Total	1 258	100	Total	1 258	100
ADR should be first be employed before resorting to court process:			Application of ADR in criminal cases will be more effective to rehabilitate/ reform the accused person than being incarcerated in prison:		
Strongly agree	900	71.5	Strongly agree	900	71.5
Agree	200	15.9	Agree	200	15.9
Undecided	8	0.6	Undecided	8	0.6
Disagree	100	8	Disagree	100	8.0
Strongly disagree	50	4	Strongly disagree	50	4.0
Total	1 258	100	Total	1 258	100
Application of ADR in criminal cases will boost Nigerian economy:			ACJA does not adequately address issues of ADR in criminal matters:		
Strongly agree	200	15.9	Strongly agree	200	15.9
Agree	800	63.6	Agree	800	63.6
Undecided	50	4	Undecided	50	4.0
Disagree	150	11.9	Disagree	150	11.9
Strongly disagree	58	4.6	Strongly disagree	58	4.6
Total	1 258	100	Total	1 258	100
ACJA is not effective:			Refusal of some states to domesticate ACJA hinder the effective administration of criminal justice in Nigeria:		
Strongly agree	200	15.9	Strongly agree	900	71.5
Agree	800	63.6	Agree	200	15.9
Undecided	50	4	Undecided	8	0.6
Disagree	150	11.9	Disagree	100	8.0
Strongly disagree	58	4.6	Strongly disagree	50	4.0
Total	1 258	100	Total	1 258	100

Enactment of ACJL by all States of Federation will enhance the application of ADR in criminal justice system:					
Strongly agree	900	71.5			
Agree	200	15.9			
Undecided	8	0.6			
Disagree	100	8			
Strongly disagree	50	4			
Total	1 258	100			

Table 5 above indicates the attitudes and perceptions of Nigerian society towards the application of ADR in the criminal justice system through the empirical data. For instance, 81.1% of the respondents prefer ADR in comparison to litigation; 79.5% of them expressed the view that "ADR gives more protection to both the victims and the offenders". Furthermore, 87.4% of the respondents are of the view that the application of ADR in criminal cases enhances the reformation and rehabilitation of offenders rather than incarcerating the offenders in prison. By applying the concept of ADR, the economy of the country will be boosted as this process will be faster than court processes. In all, the majority of the respondents (79.5% in two different intervals of the administering questionnaires) support this position. As shown in Table 5 and the existing literature, the administration of criminal justice is more effective with the application of ADR through a plea-bargaining agreement.

Surprisingly, the findings in Table 5 confirmed the position in this article that the concept of plea bargain is used in financial cases because 79.5% of the respondents strongly disagree that ADR should be confined only to those cases. However, there is no variance in the views expressed by the respondents in another interval in Table 5, where the findings revealed that 47.7% agreed and 47.7% also disagreed that ADR should be applied in all criminal matters.

Despite the importance and widespread global acceptance of the efficacy of these emerging principles and practices of ADR in promoting effective criminal justice administration, attempts in Nigeria to integrate this concept into the criminal justice system have yielded limited results, because there are no clear prosecutorial policies and guidelines for public prosecutions in Nigeria at either the Federal and or the state level. This position is further confirmed in the findings in Table 5, where 79.5% of the respondents expressed the view that the provision for ADR under ACJA is inadequate.[98] Some 87.4% of the respondents lamented that the refusal of some states to domesticate ACJA hinders the effective administration of criminal justice in Nigeria. In fact, 87.4%

[98] Almost 20 states in the Federation are yet to domesticate the ACJA.

of them, in another interval, expressed the view that the "enactment of ACJA by all the States of the Federation will enhance the application of ADR in criminal justice system". However, this may be connected to the findings in Table 5, where 63.6% of the respondents held the view that a lack of awareness of the concept of ADR hinders the effective administration of criminal justice in Nigeria.

Conclusion and Recommendations

Without doubt, the criminal justice system of a country needs to be efficient, prompt, dynamic, proactive and culturally relevant, because it is central to governance. More so, a country's criminal justice system has a far-reaching effect on economic productivity, social cohesion and the rule of law.[99] However, the Nigerian criminal justice system falls short of these requirements. The system remains riddled with delays, [100] corruption,[101] inefficiency,[102] procedural bottlenecks[103] and many other factors, which all add up to the inefficiency of the criminal justice system. As shown, the Nigerian criminal justice system is still bedeviled by the influence of the colonial era, as it still retains the laws on crime which were enacted by the British colonial masters. The Penal and Criminal Codes of 1960 and 1963 are still in operation to date in 20 states that are yet to domesticate ACJA and they are still applying the provisions of Criminal Procedure Code and the Criminal Procedure Act, which are obsolete.

This article finds that the current criminal justice system in Nigeria is poor, ineffective and in dire need of a reform. Therefore, there is a need for change from the criminal justice system currently in force in Nigeria to a more reformative and rehabilitative system that has the objective of not only punishing the offender but also reforming them towards reintegration into the society. This assertion is in agreement with the views expressed by the majority of the respondents (representing 87.6% in Figure 1 above) that the Nigerian criminal justice system needs to be reformed. The author's field survey, as reflected in Table 4, Charts 1 and 2 above, demonstrates the experiences of the respondents with the criminal justice system in Nigeria and the data interrogates the reason why it is apt to reform the criminal justice system, because it has caused more harm than good to the victims, the offenders and the generality of society. The defects in the Nigerian criminal justice system show the need for reform.[104] Hence, the current trends in the administration of criminal justice indicate a need for paradigm shifts from the current retributive penal justice system towards the creative problem-solving

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99 Olonisakin, Ogunleye and Adebayo (n 9).

100 B Ayorinde, "A Reformatory Approach to the Criminal Justice System in Nigeria". Available at <http://www.mondaq.com/Nigeria/x/293894/Public+Order/A+Reformatory+Approach+To+The+Criminal+Justice+System+In+Nigeria> (accessed 27 April 2018).

101 Ayorinde (n 100).

102 Ayorinde (n 100).

103 Ayorinde (n 100).

104 Ayorinde (n 100). See also *Australia Access to Justice Advisory Committee Access to Justice – An Action Plan*. 1994 Australian Government Publication, Canberra.

approaches embodied in ADR mechanism.[105] Thus, ADR seems to be apposite for the needed reform in the criminal justice system in this regard, as its mechanism and tools go beyond punishment and retribution towards a restorative approach.[106] It can therefore be argued that ADR can be appropriate, since its mechanism is flexible and it can therefore provide the most suitable and relevant punishment that meets the needs of each set of circumstances.

Moreover, since ADR is highly beneficial and the attitude towards its application in criminal matters is considerably positive, given the findings in this article, it is therefore recommended that ADR be applied to the Nigerian criminal justice system in order to effect the much-needed reform.

ADR should be strengthened in order to provide for effective and timely dispute resolution that is able to support a modern economy and increase awareness of ADR mechanisms. Indeed, the domestication of ACJA by all 36 States of the Federation would be a better recommendation. There should also be more training courses for all the participants in the justice system, namely: the judges, court staff, law-enforcement and prisons personnel and, most importantly, the State Counsels and prosecutors. Their training would enhance the effective administration of criminal justice in Nigeria. This article further recommends that a clear prosecutorial policy and guidelines be promulgated to guide the office of the Attorney-General in the discharge of its duties for the purpose of maximising the potential of the use of prosecutorial discretion and ADR in criminal cases. In sum, Nigeria needs to move away from the conventional retributive justice system and incorporate a restorative or reparative justice system. To make way for this, the laws governing crime prevention in Nigeria should be amended, repealed and re-enacted in order to render them more restorative or reparative.

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