

## Promoting Alternative Dispute Resolution in Nigeria: Tertiary Institutions in Perspective

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### *Abstract*

This paper examines the role of tertiary institutions in Nigeria in promoting alternatives dispute resolution among Nigerians. Depending on secondary data and published articles online, the paper concludes that the tertiary institutions roles in promoting alternatives dispute resolution in Nigeria include; teaching of alternatives dispute resolution, research on how alternatives dispute resolution can be indigenous, provision of community services that are peace-building and alternatives dispute resolution inclined, provision of technical support to public and private institutions, establishment of centre for the studies of alternatives dispute resolution and development of academic programme alternatives dispute resolution. Based on these findings, the paper hereby recommends that, the government should involve the tertiary institutions in the administration and management of alternatives dispute resolution in Nigeria. Tertiary institutions should give maximum attention to the teaching and researches on effective application of alternatives dispute resolution in resolving disputes in Nigeria. More funds should be allocated to the teaching and researches on alternatives dispute resolution in the tertiary institutions. All tertiary institutions in Nigeria should establish centres for the studies of alternative dispute resolution in Nigeria.

**Keyword:** Alternatives dispute resolution, Tertiary institutions.

### **INTRODUCTION**

Disputes are inevitable in every relationship; they may be civil, commercial or domestic in nature. In a bid to settle this conflict, the affected parties usually go to court in order to seek redress

or to have the issue(s) resolved. These matters could be heard for about two years or more as a result of the complexity of judicial proceedings, copious amount of cases to be heard by a single Judge or Magistrate and the financial burden borne by the parties in trying to obtain justice. For the apparent inconvenience, a need to consider alternative methods of settling dispute arose (Adenekan, 2020).

The Nigerian Legal System recognized the application of Alternatives Dispute Resolution (ADR), in the Section 19(d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), provides for the settlement of disputes by Arbitration, Mediation, Conciliation, Negotiation and Adjudication. Order 19 of the Federal High Court (Civil procedure) Rules of Nigeria provides for supportive court interventions in arbitral proceedings. High Court Civil Procedure Rules of various States also provide for reference of cases to ADR, for example, Order 19 and 28 of the High Court of the Federal Capital Territory and Lagos State Civil Procedure Rules, respectively. Rule 15 (3)(d) of the Rules of Professional Conduct for Legal Practitioners mandates Lawyers to attempt an alternative dispute resolution before bringing any matter before the Court for hearing according to (Adenekan, 2020).

It appears that the knowledge of ADR among Nigerian is low and that is why the application and adoption for resolving crises and disputes is low. Many scholars have been calling on the tertiary institutions to get involved in the development of ADR in Nigeria. They are seen as institutions that can help in the development of ADR in the Nigerian societies. Ogunode & Odo, (2023) believed that tertiary institutions are micro sections of the larger society. They are organized microcosm of society carved out for teaching programme, research and provision of community service. They can also be seen as subsets of the general society. Societies globally have been known to have some peculiar social problems. Social problems of most societies are migrated into the tertiary institutions because the societies and the tertiary institutions are inseparable to some extent. Tertiary education can be described as an organized education saddled with production and reproduction of knowledge for the betterment of the whole country. It is a social agent of development for self and national-realization and for manpower production. Tertiary education in particular, is fundamental to the construction of a knowledge economy and society in all nations ((NOUN, 2012).

Tertiary education is an advanced educational system meant for human capital development through teaching, research and provision of community service (Ogunode, Iyabode, & Olatunde-Aiyedun, 2022). Tertiary education is viewed by National policy on Education (2013) as the education given after Post Basic Education in institutions such as Universities and Inter-University Centres such as the Nigeria French Language Village, Nigeria Arabic Language Village, National Institute of Nigerian Languages, institutions such as Innovation Enterprise Institutions (IEIs), and Colleges of Education, Monotechnics, Polytechnics, and other specialized institutions such as Colleges of Agriculture, Schools of Health and Technology and the National Teachers' Institutes (NTI). Tertiary education or Higher education covers a wider range of higher learning institutions including the university. These higher learning institutions could be organized in different ways, commonly within a university and in a separate institution as university and other tertiary learning institutions (Alemu, 2018).

Tertiary institutions have a lot of roles to play in fixing society problems and contributing to nation-building and national development. Ogunode, Tseveda, and Atim (2024) posited that tertiary institutions are seen as places to look upon when there are pressing issues facing the nation. There has been agreement among scholars that tertiary institutions are designed to proffer solutions to national problems. It is based on this, that this study is aimed to discuss the roles of tertiary institutions in promoting of alternative dispute resolution.

### **Concept of Alternative dispute resolution (ADR)**

Alternative dispute resolution (ADR) refers to the different ways people can resolve disputes without a trial. Common ADR processes include mediation, arbitration, and neutral evaluation. These processes are generally confidential, less formal, and less stressful than traditional court proceedings. ADR often saves money and speeds up settlement. In mediation, parties play an important role in resolving their own disputes. This often results in creative solutions, longer-lasting outcomes, greater satisfaction, and improved relationships. Orojo (undated) observed that "The term Alternative Dispute Resolution is used generally to describe the method and procedures used in resolving dispute either as alternatives to traditional dispute resolution mechanism of the court or some cases supplementary to such mechanism." NYCOURTS (2022) noted that the various definitions of ADR processes include:

**Arbitration:** a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome. Arbitration is less formal than a trial and the rules of evidence are often relaxed. In binding arbitration, parties agree to accept the arbitrator's decision as final, and there is generally no right to appeal. In nonbinding arbitration, the parties may request a trial if they do not accept the arbitrator's decision.

**Collaborative Law:** a problem-solving process that gives divorcing parties and their lawyers a way to end a marriage and restructure families without the stress, delay, at the expense of litigation. Collaborative law is founded on three principles:

1. A pledge not to litigate disputes in court;
2. An honest, voluntary, prompt, and good-faith exchange of relevant information without formal discovery; and
3. A commitment to strive for solutions that takes into account the highest priorities of both parties and their children. Although the lawyers share a commitment to collaborative law principles, each lawyer has a professional duty to represent his or her own client diligently and is not the attorney for the other party.

**Mediation:** a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the case, but helps the parties communicate so they can try to settle the dispute themselves. Mediation may be particularly useful when family members, neighbours, or business partners have a dispute. Mediation may be inappropriate if a party has a significant advantage in power or control over the other.

**Neutral Evaluation:** a neutral person with subject-matter expertise hears abbreviated arguments, reviews the strengths and weaknesses of each side's case, and offers an evaluation of likely court outcomes in an effort to promote settlement. The neutral evaluator may also provide case planning guidance and settlement assistance with the parties' consent.

**Parenting Coordination (PC):** a child-focused process in which a trained and experienced mental health or legal professional called a "parenting coordinator" assists high-conflict parents to carry out their parenting plan. With prior approval of the parties and the court, the parenting coordinator may make decisions within the scope of the court order or appointment contract. The purpose of Parent Coordination is to help parents resolve conflicts regarding their children in a timely manner and try to promote safe, healthy, and meaningful parent-child relationships.

**Restorative Justice:** a process meant to address an incident of harm, or other dispute, in which stakeholders collectively identify and address impacts, needs and obligations, and create an action plan to move forward.

**Settlement Conferencing:** in settlement conferencing, a judge or the judge's representative meets with the parties and their attorneys to try to settle some or all of the issues in dispute before going to trial. Parties' participation is limited, and the focus is on narrowing the issues in dispute.

**Special Master:** a neutral appointed by a court to carry out some sort of action on its behalf. This may include overseeing discovery issues, conferencing cases, or overseeing post-judgment activity.

**Summary Jury Trials (SJT):** In this adversarial dispute resolution process, each side presents its case in a shortened form to a jury. The jury then makes a decision, which is advisory only, unless parties request that it be a binding decision. A summary jury trial gives parties a preview of a potential verdict should the case go to trial. SJTs are available in limited jurisdictions.

### **Mechanisms of Alternative Dispute Resolution**

Adenekan (undated) listed the following as some of the mechanisms of ADR in Nigeria:

1. **Negotiation:** Negotiation is an informal bargaining process in which parties in dispute communicate directly to reach an agreement. It involves an interaction between two or more parties; either directly or through their representatives, where the issues surrounding the conflict are deliberated upon, for the purpose of solving the problem and or reaching a joint decision. This process requires thorough preparation, careful listening and an exquisite sense of timing on the part of the negotiator. Negotiation is one of the most common ADR mechanisms used in managing disputes and to reach consensus under a friendly atmosphere.

2. **Mediation:** Mediation is said to be a facilitated negotiation involving the assistance of a neutral third party whose basic functions are; to engineer civility, facilitate candid discussions, and help the parties to reach consensual solutions. Its popularity is hinged on the premise that it promotes a win-win scenario where successful settlement leaves each party feeling like a winner. The mediator must be neutral and should ensure that the needs of both parties are met. The mediator is to guide the process as well as help both parties identify and concentrate on their major interests.

3. **Conciliation:** Conciliation is a method of settling disputes by consensus rather than by adjudication. It is the process whereby parties, through a third party identify the disputed issues, formulate options, explore alternatives and then try to reach agreement. A Conciliator only plays an advisory role in formulating a framework for resolution of the dispute. Hence, the distinguishing factor between Conciliation and Mediation is the degree of intervention and influence of the third party in settling the dispute. The Conciliator goes a step further by drawing up and proposing the terms of an agreement, which in his wisdom, represents a fair settlement after hearing both sides while exploring the opportunity for settlement and helping them reach an agreed settlement. Conciliation in Nigeria is governed by The Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria, LFN, (2004) (the Act) which provides for the right to settle disputes by conciliation. Section 37 of the Act provides that the parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation under the provisions of the Act. In addition, Section 55 of the Act provides that parties to an international commercial agreement may agree in writing that a dispute in relation to the agreement shall be settled by conciliation under the Conciliation Rules set out in the Third Schedule to the Act 10.

4. **Arbitration:** Arbitration is a simplified process of trial without the technicalities of courtroom litigation; where the parties agree to appoint their own third party neutral known as the Arbitrator. The Arbitrator reaches a decision based on the Law, which will be binding on the parties. The decision reached is referred to as an Award. The case of *MISR Nig Ltd. V. Oyedele* defines arbitration as the reference of a dispute between two or more parties for determination after hearing both sides in a judicial manner by a person other than a court of competent jurisdiction. Arbitration is governed by the Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria, LFN, (2004) (the Act). This Act is based on the UNCITRAL Model Law and Incorporates the UNCITRAL Arbitration Rules. Also, the Act ratifies and incorporates the New York Convention Rules of 1976, and the Convention on recognition and enforcement of foreign arbitral awards of 1958 (New York Convention) on the recognition and enforcement of Foreign Arbitral Awards (NYC).

5. **Mini-trial:** The mini-trial is a non-binding ADR process. This technique gives room for the disputants to be represented by their respective Legal Practitioners, who in turn present the matter to the representatives of the parties; usually executives of their organisation, who are authorised to enter into a settlement. After the attorney's presentations, the parties' representatives negotiate; if they are not able to reach a settlement, the neutral member of the panel will be asked to render an opinion on the merits of the case. The neutral's opinion is generally non-binding. There are no rules governing the conduct of mini-trials. The procedures are agreed upon by the parties in writing, before the initiation of the process (Adenekan, 2020).

Also, Adenekan (2020) outline the following as advantages of alternative dispute resolution

1. **It is confidential in nature:** All documents disclosed in an ADR process for the purpose of settlement are confidential and cannot be released to any third party without the consent of the parties or by an order of the court. However, in the process of arbitration for example, confidentiality does have its limits in that it is not always possible to ensure that witnesses maintain confidentiality unless they are required to sign a confidentiality agreement. The ADR procedure also ensures privacy, only the parties involved and their representatives are present at the meeting.

2. **It is cost effective:** Settling disputes through any of the ADR mechanism is affordable. One of the reasons for this is that parties will agree with their appointed third parties on the scope, duration and scheduling of the whole process.

3. **It brings about quick dispensation of justice:** The ADR tribunal is faster than the court in reaching its decision. This is based on the fact that there is no issue of technicalities, the neutral party is available most times and some laws provide a time frame within which a matter should be heard. An example is the Rules of the Regional Centre Lagos; it prescribes a maximum of six months within which to conclude any arbitral proceedings.

4. **It is flexible:** The ADR mechanisms are flexible as a result of its informality and simplicity. The parties are opportune to agree to their own procedure thereby reducing costs and delays. Its flexibility allows for the arbitral tribunal to conduct the arbitral proceedings in a manner it deems fair where no rules exists to cover a particular situation.

5. **Preservation of existing relationship:** Alternative dispute resolution helps to preserve the relationship that exists between the parties before the dispute arose. It is advisable to make use of any ADR option where the parties have business or personal relationships, they intend to preserve. The atmosphere is friendly and congenial; the parties can go with their relationship unimpaired as it is not entirely a win-lose situation (Adenekan, 2020).

## **The Role of Tertiary Institutions in Promoting Alternative Dispute Resolution**

There are many roles the tertiary institutions can play in promoting alternatives dispute resolution among Nigerians as the best option to adopt in settling disputes. Some of the critical roles of the tertiary institutions include; teaching alternatives dispute resolution, research on how alternatives dispute resolution can be indigenous, provision of community services that are peace-building and alternatives dispute resolution inclined provision of technical support to public and private institutions and establishment of centres for the studies of alternatives dispute resolution.

### **Teaching alternatives dispute resolution**

Many tertiary institutions in Nigeria have been teaching alternatives dispute resolution in their various institutions of learning. This has been helping to promoting alternatives dispute resolution in Nigeria but the adoption and implementation of the programme in the few institutions appears low. Ogunode, Tseveda and Atim (2024) noted that tertiary institutions are institutions saddled with responsibilities of character building and behaviour modifications. It is expected of every tertiary institutions graduate to have acquired a positive best acceptable societal value that is gender friendly which is regarded as international best practices. With this functions and responsibilities, tertiary institutions in Nigeria should ensure that lecturers create time during the lectures to teach the students peace education, conflict management and ADR. There has been problem with development of ADR in Nigeria. Adenekan (2020) noted that ADR has not assumed a significant status in our legal culture as seen in U.S.A or England. This is due to the fact that the benefits derivable from ADR and its successes so far have not been made known to all. This issue will always be a clog to the success of ADR in Nigeria. There is need for more tertiary institutions to embrace the alternatives dispute resolution programme and include it their institutions programme. The tertiary institutions have the roles to teach Nigerian students in tertiary institutions the concept of alternatives dispute resolution and usage to solve various disputes and communal conflicts....concluded that the role of tertiary institutions in advocating for ADR include teaching of ADR, inculcating on students the skills of ADR and development of academic programme on ADR.

### **Research on Alternatives Dispute Resolution**

Ogunode, Jegede, Adah, Audu, and Ajape (2021) submitted that research is been carried out by both lecturers, students and researchers. Tertiary institutions have great roles in the research on alternative dispute resolution in Nigeria. They should carry out researches on application of ADR in communities, knowledge of ADR among students, religious institutions, civil servants, and farmers in rural areas, researches on how to advance the use of ADR in dispute resolution in Nigeria and researches on teaching ADR in Nigeria. Academic staff can ask their Ph.D. students to research on some areas of alternative dispute resolution. For example, Arbitration and Conciliation Act in Nigeria reform, Award in Arbitration and Conciliation Act can be studied, recognition and enforcement of Award, methodologies, instructional resources, funding of ADR in Nigeria. Also, research on how alternatives dispute resolution ADR teaching and learning, students-led ADR clinic.

### **Community services that are peace-building and alternatives dispute resolution inclined.**

Community service is another important function of tertiary institutions. Ogunode, Iyabode, and Olatunde-Aiyedun (2022) observed that the Community service programme is the third cardinal programme of tertiary institutions. A community service programme is an organized and planned service programme of higher institutions for the benefit and betterment of their host communities. Community service programmes of higher institutions are community-inclined services initiated by

the institutions to develop the communities. Community service of higher institutions is service provided by institutions to benefit the community people. Community service programmes are done near the area where the institutions are located so that the host community can enjoy the benefits of the institutions. Community service in higher institutions includes all kinds of services that are meant to improve the well-being of the people and society in general. It is an essential service designed by institutions to provide socio-economic development to the community. Community service is one of the roles tertiary institutions should play in contributing towards societal development via active community service provision (Ogunode, et al, 2024). Ogunode & Ayeni, (2024) concluded that tertiary institutions in Nigeria can use their community service programme to promote peace-building in their respective host communities. Tertiary institutions can organize annual programmes in the host communities to discuss issues concerning peace-building and conflict management. Ogunode, & Ayeni (2024) observed that tertiary institutions can adopt a community-based approach to promote peace-building and adoption of ADR in the respective host communities as conflict resolution approach. They can also contribute to the peaceful society through engaging with the public and other audience outside the sector. Tertiary institutions in Nigeria can embark on sensitization in communities to teach community members about the use of ADR as alternative instead of formal litigation processes in court.

#### **Technical support services to public and private institutions**

Technical support services refer to professional support service provided by professionals to institutions to aid their service delivery. Technical support also, connotes professionals advice, guidance, directive, motivation and intellectual assistance rendered to an individual or corporate institutions for the purpose of leveraging the concerned for speedy development. Technical support services are services that only professional in specific field or profession can provide to an individual or organization that are key to the improvement of the service delivery of such a person or an institutions. Tertiary institutions in Nigeria are host to many professors in the field of alternative dispute resolution, peace-building, conflict management and resolution, ADR litigation and research experts in ADR. These professors in the various tertiary institutions can offer technical services to public and private institutions in the service of promoting alternative dispute resolution. It has been observed that most public institutions in Nigeria lack capacity on alternative dispute resolution methodologies. The gap in capacity building in most public and private institutions can be filled up by using the various expertise in the tertiary institutions to provide technical support services.

#### **Establishment of Centres for the Study of Alternatives Dispute Resolution**

Tertiary institutions in Nigeria can establish centres for the studies of alternative dispute resolution in their respective institutions to advance the development of alternative dispute resolution. Ogunode and Onakoya (2024) opined that tertiary institutions are created to provide solution to the various problems confronting the societies. The main functions of the tertiary institutions apart from the teaching programme are problem solving inclined. They can structured their programmes to be able to establish special centres to tackle particular projects or issues considering as important and that needs special studies.

#### **Development of Academic Programme in ADR**

Tertiary institutions in Nigeria have the responsibilities of developing academic programmes on alternatives dispute resolution in their respective institutions. They can develop academic

programmes in alternative dispute resolution at both first degree, second degree (master) and at the Ph.D. levels. Ogunode and Idris (2023) attested that universities have the power to mount academic problems in areas that will help to solve society problems. The universities were also established to help solve pressing problems in the labour market by introducing a new programmes to fit into the dynamic workforce nationwide and globally. Ogunode & Idris (2023) maintained that universities are known for introducing new programmes and mounting programmes to meet up with the demand of the modern economy. The traditional roles of the universities are namely; teaching; research; dissemination of existing and new information; pursuit of service to the community; and being a storehouse of knowledge. The general philosophy of Universities is to produce graduates with high academic and ethical standards and adequate practical exposure for self-employment as well as being of immediate value to industry and the community in general. The reasons for introducing new programmes in the higher institutions include; addressing manpower shortage in the forth-industry; helping reduce unemployment in the country; meeting up with the demand for ICT skills shortage in the country; to provide manpower with the right skills and qualifications to the emerging sector (Ogunode & Idris 2023). The development of academic programme in alternative dispute resolution by Nigerian tertiary institutions will help to develop of alternative dispute resolution in Nigeria.

### **Conclusion and Recommendations**

This paper examined the roles of tertiary institutions in Nigeria in promoting alternatives dispute resolution among Nigerians. The paper concludes that the tertiary institutions' role in promoting alternatives dispute resolution in Nigeria include; teaching alternatives dispute resolution, research on how alternatives dispute resolution can be indigenous, provision of community services that are peace-building and alternatives dispute resolution inclined, provision of technical support to public and private institutions, establishment of centres for the studies of alternatives dispute resolution and development of academic programme alternatives dispute resolution.

Based on these findings, the paper hereby recommends that the government should involve the tertiary institutions in the administration and management of alternatives dispute resolution in Nigeria. Tertiary institutions should give maximum attention to the teaching and researches on effective application of alternatives dispute resolution in resolving disputes in Nigeria. More funds should be allocated to the teaching and researches on alternatives dispute resolution in the tertiary institutions. All tertiary institutions in Nigeria should establish centres for the studies of alternatives dispute resolution in Nigeria.

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